

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

In re:)	
)	Case No. 23-02871-TOM11
)	
PREMIER KINGS, INC., et al.,)	Chapter 11
)	
Debtors.¹)	Substantively Consolidated

MOTION FOR EXAMINATION OF MERIT BANK

Mark Smith as Plan Administrator (the “Plan Administrator”) pursuant to the *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*, ECF 627 (the “Confirmation Order”) confirming that certain *Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtor*, ECF 554 (the “Plan”) filed by Premier Kings, Inc., and related debtors (collectively, the “Debtors”) moves this Court pursuant to 11 U.S.C. § 704(a)(4) and Fed. R. Bankr. P. 2004 to enter an order for the examination of Merit Bank (“Merit Bank”) substantially in the form attached hereto as **Exhibit A**, and authorize the Plan Administrator to issue a subpoena substantially in the form attached hereto as **Exhibit B**, and directing the production of documents and examination of witnesses regarding the Debtors’ transactions with Merit Bank. Merit Bank was a party to loan transactions with one or more of the Debtors’ non-debtor affiliates (the “Affiliates”). The Debtors’ and the Affiliates’ common owner – Manraj Sidhu (“Sidhu”) – caused or allowed Merit Bank to obtain a security interest in and lien upon the Debtors’ assets. The Plan Administrator believes that Sidhu’s actions were contrary to reasonable

¹ The Debtors in these cases are Premier Kings, Inc., Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, LLC.



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business judgment and materially contributed to the Debtors' insolvency and bankruptcy, causing harm to the Debtors' creditors. In further support of this Motion, the Plan Administrator states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b), 151, and 157(a), and the District Court's General Order of Reference dated July 16, 1984, as amended July 17, 1984.
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory bases for the relief requested herein are section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Background Facts

5. Sidhu owned both the Debtors and the Affiliates.
6. The Debtors and the Affiliates had common management including but not limited to common officers and directors.
7. On or around November 22, 2019, one or more of the Affiliates entered into loan transactions with Merit Bank (the "Affiliate Loans"). *See* Claim No. 165.

8. Pursuant to the loan documents governing the Affiliate Loans (the “Affiliate Loan Documents”) the Affiliates granted Merit Bank liens on and security interests in certain collateral, including but not limited to assets belonging to the Debtors (the “Merit Bank Liens”).

9. The Merit Bank Liens became a cloud on the Debtors’ title to their assets

10. Sidhu and the Debtors’ other officers and directors’ actions of granting the Merit Bank Liens on the Debtors’ assets contributed to the Debtors’ insolvency and eventual bankruptcy.

Relief Requested

11. The Plan Administrator seeks authorization, pursuant to Bankruptcy Rule 2004, to obtain the production of documents and oral testimony from Merit Bank concerning, but not limited to, the Affiliate Loans and Merit Bank Liens, including but not limited to communications between the Affiliates and Merit Bank, and payments that Merit Bank received on account of the Affiliate Loans.

12. Bankruptcy Rule 2004(a) provides, in pertinent part, that “[o]n motion of any party in interest, the court may order the examination of any entity.” Fed. R. Bankr. P. 2004(a).

13. Rule 2004(b) states that the examination may relate to, among other things, “any matter which may affect the administration of the debtor’s estate.” Fed. R. Bankr. P. 2004(b).

14. The scope of a Rule 2004 examination is “unfettered and broad,” as the wording of the rule indicates. *In re Bazemore*, 216 B.R. 1020, 1023 (Bankr. S.D. Ga. 1998) (Dalis J.).

15. The scope of a Rule 2004 examination is far broader than the scope of discovery under Rule 26 of the Federal Rules of Civil Procedure. *See, e.g., In re Lang*, 107 B.R. 130, 132 (Bankr. N.D. Ohio 1989).

16. Examinations under Rule 2004 may include within their scope, among many other things, any matter which may affect “the administration of the debtor’s estate,” and any matter relevant to the case. *In re Brazemore*, 216 B.R. at 1023.

17. The well-settled scope of discovery conducted under Rule 2004 is so fundamental to the bankruptcy process and permissibly broad that courts have gone so far as to use with approval words and phrases such as “fishing expedition,” “exploratory and groping,” and “inquisition.” *See, e.g., In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 456 (Bankr. D. N.J. 1998); *In re Drexel Burnham Lambert Group*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991); *In re Johns-Manville Corp.*, 42 B.R. 362, 364 (S.D.N.Y. 1984).

18. In the instant case, the requested examination falls well within the scope of Bankruptcy Rule 2004. *See In re Recoton Corp.*, 37 B.R. 751 (S.D.N.Y. 2004) (finding that an investigation into a debtor’s former directors and officers is within the scope of a 2004 examination).

19. The Plan Administrator proposes that the documents be produced by Friday, June 28, 2024, and that the examinations, to the extent necessary, take place during the week of July 8, 2024.

WHEREFORE, the Plan Administrator respectfully requests that the Court (i) enter the Rule 2004 Order substantially in the form attached as Exhibit A; and (ii) grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted this day June 11, 2024.

/s/ Bill D. Bensinger
Bill D. Bensinger
Attorney for Mark Smith, as Plan
Administrator

OF COUNSEL:

CHRISTIAN & SMALL, LLP
1800 Financial Center
505 North 20th Street
Birmingham, Alabama 35203
Tel: 205-250-6626
Fax: 205-328-7234
Email: bdb@csattorneys.com

Certificate of Service

I do hereby certify that I have had served a copy of the above and foregoing on the creditor matrix attached hereto, and the parties identified below, via U.S. Mail on this the 11 day of June, 2024:

Charles N. Parnell, III
Parnell & Parnell, P.A.
PO Box 224
Montgomery, Alabama 36102

Merit Bank
100 North Gay Street
Merit, Alabama 36830

/s/ Bill D. Bensinger _____

Bill D. Bensinger

Exhibit A

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

In re:)
) **Case No. 23-02871-TOM11**
)
 PREMIER KINGS, INC., et al.,) **Chapter 11**
)
) **Substantively Consolidated**
 Debtors.¹)

ORDER GRANTING MOTION FOR EXAMINATION OF MERIT BANK

Upon Mark Smith’s, as Plan Administrator, motion (the “Motion”)² for entry of an order (this “Order”), (a) authorizing the Plan Administrator to issue subpoenas under Federal Rules of Bankruptcy Procedure 2004 and 9016 to Merit Bank and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the District Court’s General Order of Reference; and this Court having the power to enter a final order; and this Court having found that venue of these cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Plan Administrator’s notice of the Motion and opportunity for a hearing thereon were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

¹ The Debtors in these cases are Premier Kings, Inc., Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, LLC.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Exhibit A

1. The Motion is **GRANTED**.
2. Merit Bank shall comply with the document requests attached to the Motion as Exhibit B by no later than Friday, June 28, 2024, and shall provide a witness for examination no later than the week of July 8, 2024, to the extent that the Plan Administrator determines that such examination is necessary.
3. To the extent necessary, the Plan Administrator's rights are reserved to request depositions and any additional documents under Bankruptcy Rule 2004 based on any other information that may be revealed as a result of the documents provided pursuant to this Order.
4. This Order is without prejudice to the Plan Administrator's rights to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable law.
5. No documents produced or testimony given pursuant to this Order shall be admissible in any proceeding, whether before this Court or any other court, of any claim or element of any claim.
6. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any particular claim by or against the Debtors; (b) a waiver of the Plan Administrator's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a waiver or limitation of the Plan Administrator's rights under the Bankruptcy Code or any other applicable law; or (f) a concession by the Plan Administrator that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and

Exhibit A

the Plan Administrator expressly reserves his rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

8. The Plan Administrator is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order, including, but not limited to, any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order.

June __, 2024

/s/

Tamara O. Mitchell

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

Northern

District of Alabama

In re Premier Kings, Inc.
Debtor

Case No. 23-02871-TOM11

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: Merit Bank
(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

PLACE Christian & Small, LLP 1800 Financial Center 505 North 20th Street Birmingham, Alabama 35203	DATE AND TIME July 10, 2024 1:00 PM (Central)
--	---

The examination will be recorded by this method: Court reporter

Production: You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Attachment 1.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing *(name of party)* _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day’s attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server’s signature

Printed name and title

Server’s address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

Attachment 1

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

In re:)	
)	Case No. 23-02871-TOM11
)	
PREMIER KINGS, INC., et al.,)	Chapter 11
)	
Debtors.¹)	Substantively Consolidated

PLAN ADMINISTRATOR’S RULE 2004 DISCOVERY REQUESTS

Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, the Plan Administrator for the bankruptcy estates of Premier Kings, Inc., and affiliated debtors (collectively, the “Debtors”) request Merit Bank (“Merit Bank”) to produce for the Plan Administrator’s inspection and copying all documents and tangible things requested below (each such request, a “Request”) in accordance with the Definitions and Instructions below at the office of the Plan Administrator’s counsel, Christian & Small, LLP, 1800 Financial Center, 505 North 20th Street, Birmingham, Alabama 35203. Each of the following Requests is continuing in nature, such that if Merit Bank obtains or discovers additional responsive Documents and things at a later date, such Documents and things are to be made available promptly to the Plan Administrator for inspection and copying.

Instructions and Definitions

For purposes of these requests, the following instructions and definitions apply:

1. If you object to any Request, state the basis for that objection.

¹ The Debtors in these cases are Premier Kings, Inc., Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, LLC.

Attachment 1

2. The “Company” means Premier Kings, Inc., including any and all of its current and former affiliates and/or subsidiaries, expressly including, but not limited to Premier Kings of Georgia, Inc., Premier Kings of North Alabama, LLC, Premier Holdings, LLC, and Premier Holdings of Georgia, LLC.

3. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

4. “Collateral” means the collateral securing any Company obligation.

5. “Document” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

6. “You” or “Your” means Merit Bank including any and all of its agents, counsel, and other persons acting on its behalf.

7. The time period for these requests is from January 1, 2019, to the present.

Requests for Production

1. All communications between the Company and You related to any of the Company’s obligations to You.

2. All internal communications concerning any of the Company’s obligations to You.

3. All loan documents related to any to any of the Company’s obligations to You.

4. A loan history report for each of the Company’s obligations to You.

5. All due diligence You performed prior to extending Credit to the Company.

6. All valuations or appraisal of any Collateral.

[Remainder of page intentionally left blank]

Attachment 1

/s/ Bill D. Bensinger _____

Bill D. Bensinger

Attorney for Mark Smith, as Plan
Administrator

OF COUNSEL:

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