

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

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

MOTION FOR RULE 2004 EXAMINATION OF ALABAMA POWER COMPANY

Pursuant to Fed. R. Bankr. P. 2004,² Mark Smith as Plan Administrator (the “Plan Administrator”) hereby moves this Court to enter an Order requiring Alabama Power Company (“Alabama Power”) to produce all documents in its possession or control which are responsive to the list of requests included here as **Exhibit A** and authorizing the Plan Administrator to issue subpoenas, as necessary, in connection with the same. A proposed order granting the relief requested here is attached as **Exhibit B**. In support, the Plan Administrator states the following:

1. The Plan Administrator was appointed in connection with the Order (Doc. 627 – the “Confirmation Order”) confirming the Debtors’ *Second Amended Plan of Liquidation* (Doc. 554 – the “Plan”). The Confirmation Order was entered on May 1, 2024. (Doc. 627).

2. The Confirmation Order preserves certain causes of action for the benefit of creditors, and it also makes clear that the Plan Administrator “shall have the exclusive right to enforce any and all Causes of Action and Specified Causes of Action retained by the post-

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

² This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334, and the General Order of Reference from the District Court. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory basis for the relief requested here is §§ 105 and 704(a)(4) along with and Rules 2004, 9014, and 9016 of the Federal Rules of Bankruptcy Procedure.



confirmation Debtors against any Person.” (Doc. 627, at pp. 3 (¶ F), 12 (¶ 13), and 15 (¶ 26)). The Plan Administrator is also specifically granted the authority to investigate, institute, and prosecute claims. (*Id.* at p. 16 (¶ 26(i)(c))). Thus, pursuant to the rights, duties, and responsibilities set out in the Plan and Confirmation Order, the Plan Administrator is actively investigating potential claims to augment the post-confirmation estate for the benefit of creditors.

3. Prior to filing bankruptcy in October 2023, the Debtors owned and operated 174 Burger King restaurants. (Doc. 556, at p. 9). The Debtors’ sales revenue in the years leading up to 2022 sometimes exceeded \$200 million and the Debtors employed over 3,500 employees in their restaurants. (*Id.*). Naturally, the Debtors’ business operations involved transactions with numerous vendors, service providers, landlords, banks, and other financial institutions.

4. In order to fulfill his duties under the confirmed Plan, the Plan Administrator requires records held by many of the entities the Debtors transacted business with prior to their October 25, 2023 petition date (the “Petition Date”), including Alabama Power. The Plan Administrator is working with limited information as to the Debtors’ prepetition transactions with Alabama Power. However, information currently in the Plan Administrator’s possession indicates that during the ninety-day period preceding the Petition Date, Alabama Power received a number of payments from two of the three Debtor entities.

5. Thus, the Plan Administrator seeks authorization, pursuant to Bankruptcy Rule 2004, to obtain documents from Alabama Power concerning the Debtors’ prepetition transactions and communications with Alabama Power. A list of the documents the Plan Administrator seeks from Alabama Power is included here as **Exhibit A**. Though the Plan Administrator only seeks the production of documents at this time, the Plan Administrator may later require oral testimony from a representative (or representatives) of Alabama Power and the Plan Administrator reserves

all rights in that regard. The Plan Administrator proposes that the requested documents be produced **within forty-five (45) days** of this Court's entry of an Order granting this motion.

6. 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). 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).

7. 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.). The scope of a Rule 2004 examination exceeds 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). Examinations under Rule 2004 are permissible as to any matter which may affect “the administration of the debtor’s estate,” and any matter relevant to the case. *Bazemore*, 216 B.R. at 1023. Rule 2004 examinations permit such a broad inquiry that courts often describe their scope using phrases like “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 Wade*, No. 13-21432-K, 2014 Bankr. LEXIS 5366, at *9 (Bankr. W.D. Tenn. 2014); *In re Millenium Lab Holdings II, LLC*, 562 B.R. 614, 626 (Bankr. D. Del. 2016). “Importantly, ‘[b]ecause Rule 2004 examinations are independent of a complaint or contested matter, the examination need not be tied to specific factual allegations and is subject to fewer objections on grounds of relevance’” *In re Moore Trucking, Inc.*, No. 2:20-bk-20136, 2020 Bankr. LEXIS 1861, at *17 (Bankr. S.D. W.Va. 2020).

8. The Plan Administrator submits that the examination sought via this Motion falls well within the broad scope of Bankruptcy Rule 2004. *See In re Wanamaker*, No. 1:20-bk-10026-VK, 2022 Bankr. LEXIS 1587, at *24 (Bankr. C.D. Cal. 2022) (explaining that the “primary

purpose” of Rule 2004 “is to permit the trustee to quickly ascertain the extent and location of the estate’s assets” and it is “properly used by a trustee to reveal the nature and extent of the estate, and as a pre-litigation device to determine if there are grounds to bring an action.”).

9. Counsel for the Plan Administrator and counsel for Alabama Power have conferred prior to the filing of this Motion and Alabama Power does not oppose the Motion.

THEREFORE, the Plan Administrator respectfully requests that the Court (i) enter an Order, substantially in the form of the proposed order attached here as **Exhibit B**, granting this Motion; and (ii) directing Alabama Power to produce documents responsive to the requests detailed on the attached **Exhibit A**.

Respectfully submitted this 8th day of July, 2024.

/s/ Thomas B. Humphries

Bill D. Bensinger

Thomas B. Humphries

Counsel for Mark Smith, as Plan
Administrator

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, I filed the foregoing document with the Clerk of Court via the CM/ECF electronic filing system and that I served a copy of the forgoing on the following individuals in the manner indicated below:

Via Email and U.S. Mail:

Alabama Power Company
c/o Jeremy L. Retherford
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35203-4642
jretherford@balch.com

/s/ Thomas B. Humphries _____

Thomas B. Humphries

Exhibit A
(Requested Documents)

**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)

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 that Alabama Power Company (“Alabama Power”) 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 Instructions and Definitions 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 Alabama Power 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.
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

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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), specifically including any correspondence by letter or email.

4. “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.

5. “Petition Date” means October 25, 2023.

6. The time period (the “Applicable Period”) for these requests is from October 25, 2021 to the Petition Date.

Requests for Production

1. All contracts and agreements between the Company and Alabama Power which were in effect during the Applicable Period.

2. All Documents and Communications (including all letters, notes, memorandums, or other business records) which relate to or reflect credit or payment terms that existed between the Company and Alabama Power during the Applicable Period.

3. All Documents which reflect Communications between Alabama Power and any principal, representative, agent, or employee of the Company during the Applicable Period.

4. Every invoice Alabama Power sent to the Company within the two years of the Petition Date along with any other Documents which evidence the terms of payment on each such invoice and the date the Company made payment(s) on each such invoice or document.

5. All Documents and Communications which relate to or evidence payments from the Company to Alabama Power during the Applicable Period including any account histories,

invoices, ledgers, journals, purchase orders, invoices, shipping documents, bank records (including, but not limited to any confirmation of wire transfers), and other accounting records.

6. All Documents and Communications in Alabama Power's possession and control which relate to the Company's account with Alabama Power during the Applicable Period and which reflect information recorded during the Applicable Period.

/s/ Thomas B. Humphries

Bill D. Bensinger

Thomas B. Humphries

Counsel for Mark Smith, as Plan
Administrator

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Exhibit B
(Proposed Order)

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

In re:)
) **Case No. 23-02871-TOM11**
)
 PREMIER KINGS, INC., et al.,) **Chapter 11**
)
) **Substantively Consolidated**
 Debtors.²)

**ORDER GRANTING MOTION FOR EXAMINATION OF
ALABAMA POWER COMPANY**

Upon the Motion (the “Motion”)³ of Mark Smith, as Plan Administrator, for entry of an order (the “Order”), (a) directing Alabama Power Company (“Alabama Power”) to produce certain documents, (b) authorizing the Plan Administrator to issue subpoenas under Federal Rules of Bankruptcy Procedure 2004 and 9016 to Alabama Power, and (c) 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

² The Debtors in these cases are Premier Kings, Inc., Premier Kings of Georgia, Inc., and Premier Kings of North Alabama, LLC.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

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 Motion is **GRANTED**.
2. Alabama Power shall comply with the document requests detailed on Exhibit A of the Motion within forty-five (45) days of the entry of this Order.
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. 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 the Plan Administrator expressly reserves his rights to contest the extent, validity, or perfection or seek avoidance of all such liens.
6. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

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

8. 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.

Dated: _____, 2024

/s/

Tamara O. Mitchell,
United States Bankruptcy Judge