

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 TRUIST BANK

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 Truist Bank (“Truist”) to produce any and all documents in its possession or control which are responsive to the list of requests included here as **Exhibit A** and to issue subpoenas, as necessary, in connection with the same. A proposed order granting the relief requested here is also included here 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 172 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, landlords, banks, and other financial institutions.

4. Prior to their October 25, 2023 petition date (the “Petition Date”), the Debtors’ operating accounts were held at Truist. (Doc. 7, at *Exhibit C*). In order to discharge his duties in this case, the Plan Administrator requires bank records and statements from Truist as to the Debtors’ operating accounts dating back at least one year. Thus, the Plan Administrator seeks authorization, pursuant to Bankruptcy Rule 2004, to obtain such documents from Truist. A specific list of the documents the Plan Administrator seeks from Truist is included as here as **Exhibit A**. The Plan Administrator proposes that the requested documents be produced **within thirty (30) days** of this Court’s entry of an Order granting this motion.

5. 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).

6. 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).

7. 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.”).

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 Truist to produce the documents detailed on the attached **Exhibit A**.

Respectfully submitted this day September 4, 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 September 4, 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 same on the following individuals in the manner indicated below:

Via U.S. Mail, first class, postage prepaid:

Truist Bank
c/o Corporation Service Company, Inc. (Registered Agent)
641 South Lawrence Street
Montgomery, AL 36104

Truist Bank
214 N. Tryon Street
44th Floor - c/o Hasana Stanberry
Charlotte, NC 28202

/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 Truist Bank (“Truist”) 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 Truist 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

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

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 applicable time period for the following Requests for Production is from October 25, 2022 to the Petition Date.

Requests for Production

1. Bank statements and transaction records related to an account in the name of Premier Kings of Georgia, Inc. which is associated with account number xxxx-8155.

2. Bank statements and transaction records related to an account in the name of Premier Kings of North Alabama LLC which is associated with account number xxxx-3265.

3. Bank statements and transaction records related to an account in the name of Premier Kings, Inc. which is associated with account number xxxx-7212.

4. Bank statements and transaction records related to an account in the name of Premier Kings, Inc. which is associated with account number xxxx-7620.

/s/ Thomas B. Humphries

Bill D. Bensinger
Thomas B. Humphries

Counsel for Mark Smith, as Plan
Administrator

OF COUNSEL:
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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 TRUIST BANK

Upon the motion³ (the “Motion” – Doc. ___) of Mark Smith, as Plan Administrator, for entry of an order (the “Order”), (a) directing Truist Bank (“Truist”) to produce certain documents, (b) authorizing the Plan Administrator to issue subpoenas under Federal Rules of Bankruptcy Procedure 2004 and 9016 to Truist, 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 granted herein; and upon all

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

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. Truist shall comply with the document requests detailed on Exhibit A of the Motion within thirty (30) 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. The Plan Administrator is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. 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