

**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 (TOM11)

Jointly Administered

**THIRD OMNIBUS MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR ENTRY OF AN ORDER (I) AUTHORIZING REJECTION OF UNEXPIRED
LEASES, AND (II) SETTING A DEADLINE FOR
THE FILING OF REJECTION CLAIMS**

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”), by their undersigned counsel and pursuant to sections 105(a) and 365(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby move (the “Motion”) for entry of an order substantially in the form of that attached hereto as **Exhibit A** authorizing and approving the rejection of certain unexpired leases, effective as of February 29, 2024, and setting a deadline for the filing of rejection claims. In further support of this Motion, the Debtors respectfully state as follows:

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.



JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order of Reference* from the United States District Court for the Northern District of Alabama, dated July 16, 1984, as amended July 17, 1984.

2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief sought herein are Sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006.

BACKGROUND

I. Introduction.

5. On October 25, 2023 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code, thus commencing these Chapter 11 Cases. The Debtors continue to manage and operate their businesses as a debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On November 6, 2023, the Bankruptcy Administrator for the Northern District of Alabama appointed the Official Committee of Unsecured Creditors in these Chapter 11 Cases [Doc. No. 135]. No request for a trustee or examiner has been made in these Chapter 11 Cases.

7. Detailed information addressing the Debtors’ businesses, their finances, and the circumstances leading to the filing of these Chapter 11 Cases is contained in the *Declaration of David Baker in Support of First-Day Motions* (the “First Day Declaration”) [Doc. No. 20]. Those facts are incorporated herein by reference.

II. Sale of the Debtors’ Assets.

8. In consultation with their professionals, the Debtors determined that a sale of substantially all of the Debtors’ assets was necessary to preserve the go-forward value of the

Debtors' businesses and maximize the return to creditors. The Debtors crafted a strategy to sell the Debtors' restaurants (the "Restaurants") either as a complete package or by geographical region. The proposed transaction contemplated the purchasers continuing operations at most or all of the purchased Restaurants after assuming the applicable real property leases from the Debtors, except at those Restaurants the purchasers chose not to include in the sale, pursuant to the applicable procedures and sale agreements.

9. To effectuate this strategy, the Debtors' filed a Bidding Procedures Motion on October 26, 2023 [Doc. No 42], which the Court granted by Order dated November 20, 2023 [Doc. No. 232] (the "Bidding Procedures Order"). The Debtors simultaneously filed a Sale Motion seeking the approval of the sale of the Debtors' assets following an auction (the "Auction") to be conducted in accordance with the Bidding Procedures Order [Doc. No. 43] (the "Sale Motion").

10. The Debtors and their professionals conducted the Auction on December 4, 2023, following which four "Successful Bidders" and two "Back-Up Bidders" were selected to purchase most of the Restaurants comprising the Debtors' portfolio, divided by region.

11. Bulldog Restaurants, LLC ("Bulldog") was named the Successful Bidder for 49 of the Restaurants located in the region including Birmingham and Montgomery, Alabama and other areas, under an Asset Purchase Agreement with the Debtors dated as of October 26, 2023, as amended (the "Bulldog APA").

12. The Court conducted the Sale Hearing on December 11, 2023 and issued an Order on December 13, 2023 approving the Sale Motion and, applicable here, the Bulldog APA [Doc. No. 355] (the "Sale Order"). The sale to Bulldog closed on January 9, 2024 (the "Closing Date").

13. Pursuant to the Bulldog APA, the leases corresponding to each of the purchased Restaurants were assumed by the Debtors and assigned to Bulldog, with the exception of those leases that Bulldog chose to exclude from the sale pursuant the process described below.

III. The Leases to be Rejected.

14. Section 5.4 of the Bulldog APA permitted Bulldog to defer assumption and assignment of one or more store leases (the “Deferred Store Leases”) for up to 120 days following Closing (the “Deferred Closing Date”).

15. Section 5.4 further allowed Bulldog to provide notice to the Debtors that it would exclude one or more of the Deferred Store Leases from the sale, and to direct the Debtors to seek Court authorization to reject any such leases, without affecting the purchase price set forth in the Bulldog APA.

16. Prior to Closing, Bulldog provided notice designating 8 store leases to be Deferred Store Leases under the Bulldog APA, thereby extending Bulldog’s option to assume or reject some or all of those 8 leases for 120 days following the Closing Date.

17. On February 29, 2023, following the Closing Date but before the Deferred Closing Date, Bulldog provided written notice to the Debtors that it had determined to assume two of the Deferred Store Leases and to reject 6 of the Deferred Store Leases, and directed the Debtors to reject those 6 leases (the “Rejected Leases”). A list of the Rejected Leases is attached hereto as **Exhibit B.**

18. The stores corresponding to the Rejected Leases have not been operational and have been in the possession of Bulldog since January 9, 2024, the Closing Date of the sale to Bulldog.

19. The landlords identified on Exhibit B have been or will be notified that they may retake possession of their respective premises, and it is the Debtors' understanding that Bulldog will pay any rent owed through February 29, 2024.²

20. Other than the Brinks safes located in each Restaurant that are used to safeguard cash receipts (the "Brinks Safes"), which are owned by Brinks, it is the Debtors' understanding that Bulldog has removed the personal property from the Restaurants that Bulldog purchased and determined that it was appropriate to remove and any remaining personal property left at the Restaurants should be deemed abandoned. The Brinks Safes are leased through Brinks, and the Debtors will advise Brinks to contact each landlord following entry of the requested Order for Brinks to remove the Safes.

IV. Notice to Counterparties to the Rejected Leases.

21. Pursuant to Bankruptcy Rule 6006(f), counterparties to the Rejected Leases are hereby notified that they should locate their names and leases on the attached Exhibit B, where each Rejected Lease is listed alphabetically by counterparty.

RELIEF REQUESTED

22. By this Motion, the Debtors seek authority under section 365(a) of the Bankruptcy Code to reject the Rejected Leases set forth on Exhibit B hereto, effective as of February 29, 2024. The Debtors further ask the Court to set the deadline for any non-Debtor party to the Rejected Leases to file any claims for "rejection damages" within thirty (30) days after entry of the Order authorizing the Debtors to reject the Rejected Leases.

² To the extent there remains unpaid rent owed on account of the Rejected Leases, the Debtors reserve all rights concerning the respective obligations of the Debtors and Bulldog to pay rent for the period between the Closing Date and the Deferred Closing Date.

BASIS FOR RELIEF REQUESTED

23. Section 365 of the Bankruptcy Code provides that a debtor-in-possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Rejection under section 365 is generally intended to enable the debtor to relieve itself and the bankruptcy estate from burdensome and unprofitable contracts or unexpired leases in order to preserve and maximize the value of the bankruptcy estate. Stewart Title Guar. Co. v. Old Republic Nat’l Ins. Co., 83 F.3d 735, 741 (5th Cir. 1994); In re Mirant Corp., 303 B.R. 319, 330-31 (Bankr. N.D. Tex. 2003) (“There is substantial authority for the proposition that section 365 was intended to allow a trustee or debtor in possession to eliminate burdensome, unprofitable contracts and preserve for the estate’s benefit valuable agreements.”).

24. The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. Nat’l Labor Relations Bd. v. Bildisco and Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) (stating that “the usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgement’ test”). The business judgment standard is satisfied when a debtor determines that rejection will benefit the estate. Commercial Fin. Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) (“Under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate.”) (citation omitted).

25. Courts generally do not second guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47 (4th Cir. 1985), cert. denied, 475 U.S. 1057, 104 S. Ct. 1285 (1986), superseded by statute, 11 U.S.C. § 365(n); In re Health Science Products, Inc., 191 B.R. 895, 909 n.15 (Bankr. N.D. Ala.

1995) ("The issue hereby presented for determination by the bankruptcy court is whether the decision of the debtor is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, whim or caprice.").

26. In the present case, Bulldog has exercised its right under the Bulldog APA to designate the Rejected Leases as excluded from Bulldog's purchase of Restaurants, and the corresponding Restaurants are not operational. The Debtors' estates have derived no value from the Rejected Leases since January 9, 2024, when the sale to Bulldog closed and Bulldog took possession of the leased premises. Moreover, the Debtors filed the instant motion promptly after receiving notice that Bulldog had chosen to reject the Rejected Leases.

27. It would be an undue burden for the Debtors to continue paying rent on leases for non-operational Restaurants that generate no revenue and provide no corresponding benefit to the Debtors' estates. Accordingly, the business judgment standard is satisfied and the relief requested herein should be granted to stem the costs of maintaining the closed Restaurants and to preserve the value of the Debtors' estates for the benefit of creditors and other stakeholders.

28. The Debtors respectfully request that the Order approving this Motion include a provision that any property still located at the Restaurants identified on Exhibit B (with the exception of the Brinks Safes if any are still there) be deemed abandoned by the Debtors, so that landlords may dispose of any such personal property as each they deem appropriate, subject to any rights to such property that may be claimed by parties other than the Debtors.

NOTICE

12. The Debtors will provide notice of this Motion to: (a) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (b) counsel for the Committee of Unsecured Creditors; (c) counsel to BKCI; (d) counsel to Wells Fargo Bank, National Association, as Prepetition 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; (i) the counterparties to the Rejected Leases or, where known, their counsel; (j) counsel for Bulldog, Matthew M. Cahill (mcahill@bakerdonelson.com); and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested herein, and such other and further relief as the Court deems just and proper.

Dated: March 4, 2024
Birmingham, Alabama

/s/ Jesse S. Vogtle, Jr.

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EXHIBIT A

PROPOSED ORDER

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

In re:

PREMIER KINGS, INC., *et al.*,³
Debtors.

(Chapter 11)

Case No. 23-02871 (TOM11)

Jointly Administered

**ORDER (I) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES AND
(II) SETTING A DEADLINE FOR THE FILING OF REJECTION CLAIMS**

Upon consideration of the motion (the “Motion”)⁴ of the Debtors for entry of an order authorizing rejection of certain unexpired leases and setting a deadline by which counterparties to the Rejected Leases must file claims for rejection damages; and upon consideration of all pleadings related thereto; 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, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED;

³ 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.

⁴ All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtors' proposed rejection of the Rejected Leases on Exhibit B to the Motion is hereby approved, effective as of February 29, 2024;

3. Any claim for damages on account of the rejection of the Rejected Leases shall be filed within thirty (30) days of the date of this Order;

4. The Debtors are authorized to take all necessary actions to effectuate the relief granted pursuant to this Order in accordance with the Motion; and

5. To the extent that any property of the Debtors remains in the Restaurants listed on Exhibit B—with the exception of the Brinks Safes described in the Motion—any such property shall be deemed abandoned and no longer property of the Debtors' bankruptcy estates, and each of the respective landlords are hereby authorized to dispose of any such property as they deem appropriate subject to the rights and interests in such property of parties other than the Debtors.

6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____, 2024
Birmingham, Alabama

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

SCHEDULE OF REJECTED LEASES

| Store Number | Store Address | Lessor | Debtor |
|---------------------|---|--|---------------------|
| 7390 | 1780 East Main Street, Prattville, AL | Pramila Khatri | Premier Kings, Inc. |
| 25565 | 30024 State Highway 79, Locust Fork, AL | Premier Holdings, LLC | Premier Kings, Inc. |
| 26914 | 395 Main Street, Shorter AL | Premier Holdings, LLC | Premier Kings, Inc. |
| 27281 | 5482 Highway 280, Harpersville, AL | Premier Holdings, LLC | Premier Kings, Inc. |
| 23135 | 850 Northeastern Boulevard, Montgomery, AL | Premier Kings Holdings, LLC | Premier Kings, Inc. |
| 22803 | 1630 Federal Drive, Montgomery, AL | Premier Kings Holdings of Alabama, LLC | Premier Kings, Inc. |