

**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-TOM

Jointly Administered

**FIRST AND FINAL FEE APPLICATION FOR
COMPENSATION AND EXPENSES**

1. Name of Applicant: Marcus & Millichap
2. Date Application for Employment was filed: February 14, 2024 (Docket No. 467)
3. Date of Order Authorizing Employment: March 12, 2024 (Docket No. 535)
4. Professional Services Provided to: Debtors and Debtors in Possession
5. Period for Which Compensation is Sought: October 25, 2023 – April 3, 2024
6. Amount of Compensation Sought: \$52,400.00
7. Amount of Expenses Sought: \$0
8. This is an: First and Final Application
9. This is the first application filed in this case by this professional.
10. Total aggregate amount of compensation and expenses allowed to date: \$0.00
11. The aggregate amount of compensation and expenses paid to date: \$0.00

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.



Dated: April 4, 2024.
Birmingham, Alabama

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**Admitted Pro Hac Vice*

**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-TOM

Jointly Administered

**FIRST AND FINAL FEE APPLICATION OF MARCUS & MILLICHAP
AS REAL ESTATE BROKER FOR THE DEBTORS WITH RESPECT TO THE SALE
OF CERTAIN REAL PROPERTY LOCATED IN LAWRENCEBURG, TENNESSEE**

Marcus & Millichap Real Estate Investment Services, Inc. (“Marcus & Millichap”), real estate broker for the debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”), submits this first and final fee application (the “Application”), pursuant to sections 327(a), 328(a), and 330 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Rule 2016-1 for the United States Bankruptcy Court for the Northern District of Alabama (the “Local Rules”), and the *Order (I) Approving the Retention and Employment of Marcus & Millichap as Real Estate Broker and (II) Authorizing Assumption of the Listing Agreement* [Doc. No. 535] (the “Retention Order”) for the final allowance of compensation for commission earned by Marcus & Millichap in connection with the sale of certain real property located in Lawrenceburg, TN (as described below). In support of this Application, Marcus & Millichap respectfully states 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 GA, 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. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016(b), and Local Rule 2016-1, the Interim Compensation Order, and the Retention Order.

BACKGROUND

A. The Chapter 11 Cases

4. 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. On November 6, 2023, the Bankruptcy Administrator for the Northern District of Alabama (the “Bankruptcy Administrator”) filed the *Notice of Appointment of Unsecured Creditors’ Committee* [Doc. No. 135].

B. The Property

5. Debtor Premier Kings of North Alabama, LLC (“Debtor PKNA”) owned certain real property in Lawrence County, Tennessee Parcel Number 078E D 010.00 a/k/a 1214 N. Locust Avenue, Lawrenceburg, Tennessee 38464 (the “Property”). The Property consists of 0.66 acres improved with a 2,800 square foot building that historically operated as a Burger King Restaurant, although the restaurant is currently closed.

6. The Debtors determined, prior to bankruptcy, that it was appropriate to list the Property on the market for sale in order to maximize value to the Debtors’ estate and creditors. In connection therewith, Debtor PKNA retained Marcus & Millichap to market and sell the Property

in accordance with the terms of that certain Representation Agreement dated as of August 1, 2023 between Marcus & Millichap and debtor Premier Kings of North Alabama LLC (the “Listing Agreement”). Pursuant to the Listing Agreement, and subject to Court approval, the Debtors agreed to pay Marcus & Millichap a commission equal to four percent (4%) of the purchase price of the Property (the “Commission”) upon closing of the sale of such Property.

7. In early 2024, Marcus & Millichap identified a buyer for the Property. As a result, the Debtors sought to retain Marcus & Millichap as the Debtors’ real estate broker and obtain Court approval for the sale of the Property.

C. The retention of Marcus & Millichap in these Chapter 11 Cases

8. On February 14, 2024, the Debtors filed an *Application for Entry of an Order (I) Approving the Retention and Employment of Marcus & Millichap as Real Estate Broker and (II) Authorizing Assumption of the Listing Agreement* [Doc. No. 467] (the “Marcus & Millichap Retention Application”). The Marcus & Millichap Retention Application sought an order (i) authorizing the retention and employment of Marcus & Millichap as the Debtors’ real estate broker with respect to the Property, effective as of the Petition Date; and (ii) authorizing the Debtors to assume the Listing Agreement under section 365 of the Bankruptcy Code, which is attached thereto as Exhibit 1.

9. On March 12, 2024, the Court entered the Retention Order authorizing such retention pursuant to the terms of the Application and the Listing Agreement and approving the Debtors’ assumption of the Listing Agreement [Doc. No. 535].

D. The Sale of the Property

10. Concurrently with the Marcus & Millichap Retention Application, the Debtors filed a *Motion for an Order Pursuant to Section 363 of the Bankruptcy Code Authorizing and Approving*

the Sale of Certain Real Property Located in Lawrenceburg, Tennessee and Certain Related Personal Property Free and Clear of Liens, Claims, Interests and Encumbrances [Doc. No. 466] (the “Lawrenceburg Sale Motion”). The Lawrenceburg Sale Motion sought an order authorizing the Debtors to sell the Property—along with certain other “Purchased Assets” (as that term is defined in the motion)—to Newell-Berg Holdings TN, LLC (the “Purchaser”) pursuant to the terms and conditions set forth in the Real Estate Sale and Purchase Agreement between the Debtors and the Purchaser dated January 24, 2024 (the “Purchase Agreement”).

11. On March 12, 2024, the Court entered an Order approving the Lawrenceburg Sale Motion and authorizing and approving the sale of the Property and Purchased Assets to the Purchaser on the terms and conditions set forth in the Purchase Agreement [Doc. No. 534].

12. On April 2, 2024, the Purchaser closed on the Property for a purchase price of \$1,310,000. Pursuant to the terms of the Purchase Agreement, upon closing the Debtors received the Purchaser’s payment, net of closing cost deductions, in the amount of \$1,307,553.85.

RELIEF REQUESTED

13. Pursuant to the Retention Order, and section 328 and 330 of the Bankruptcy Code, Marcus & Millichap submits this Application for the final allowance of compensation for professional services rendered in the amount of \$52,400.

APPLICATION

A. Compensation Requested.

14. Through this Application, Marcus & Millichap seeks compensation for the Commission it earned in connection with the sale of the Property. Attached hereto as **Exhibit A** is

a Commission Closing Invoice, which provides for a total Commission of \$52,400, or 4% of the \$1,310,000 purchase price, to be paid by the Debtors.²

15. Marcus & Millichap calculated the Commission identified above based on § 5 of the Listing Agreement, which provides that Marcus & Millichap shall be paid “a commission equal to Four percent (4%) of the purchase price of the Property” upon closing of the sale of such Property. This compensation structure is consistent with the terms of the Retention Order, which authorized Marcus & Millichap to provide services to the Debtors “on the terms set forth in the Application, the Sturdivant Declaration **and the Listing Agreement**[.]” Retention Order at ¶ 2 (emphasis added).

16. Marcus & Millichap submits that the compensation structure is reasonable and is comparable to and not significantly different from (a) the amount Marcus & Millichap charges for other similar types of representations or (b) the amount that other comparable real estate brokerage firms would charge to do work similar to the work Marcus & Millichap performed for the Debtors.

17. There is no agreement or understanding between Marcus & Millichap and any other entity to share any compensation received by the firm in connection with the Chapter 11 Cases.

CERTIFICATE OF COMPLIANCE AND WAIVER

18. The undersigned representative of Marcus & Millichap certifies that he has reviewed the requirements of Local Rule 2016-1 and that the Application substantially complies with that Local Rule. To the extent that the Application does not comply in all respects with the

² The invoice complies with the Retention Order. Marcus & Millichap, in line with market convention, does not bill by the hour. The Retention Order indicates that Marcus & Millichap need not maintain time records with respect to “the flat fee arrangement set forth in the Listing Agreement.” Retention Order at ¶ 4.

requirements of Local Rule 2016-1, Marcus & Millichap believes that such deviations are not material and respectfully requests that any such requirements be waived.

NOTICE

19. The Debtors have provided notice of this Application to the following parties or their respective counsel: (i) the Bankruptcy Administrator; (ii) Official Committee of Unsecured Creditors; and (iii) any party that, as of the filing of this Application, has requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no further notice need be given.

CONCLUSION

WHEREFORE, Marcus & Millichap respectfully requests the Court enter an order: (i) granting the Application and authorizing final allowance of compensation in the amount of \$52,400; (ii) directing payment by the Debtors of \$52,400, which is the amount outstanding and owed of the allowed compensation incurred as an administrative expense claim in these Chapter 11 Cases; and (iii) granting such other and further relief to Marcus & Millichap as the Court deems just and proper.

Dated: April 4, 2024

By: /s/ Justin R. Sturdivant
Justin R. Sturdivant

Representative for Marcus & Millichap

Dated: April 4, 2024
Birmingham, Alabama

/s/ Jesse S. Vogtle, Jr.
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EXHIBIT A

Marcus & Millichap Invoice

Marcus & Millichap

Real Estate Investment Services

Commission Closing Invoice & Wire Instructions

To: Cole Sholtz P.C., Aurora Management Partners
C/O: Premier Kings of N Alabama, LLC, Premier Kings of GA, Inc,
RE: Burger King | Lawrenceburg, TN
Date: 3/26/2024

Please find the wiring instructions for the **Burger King Restaurant** property located at **1214 N Locust Ave, Lawrenceburg, TN 38464**. The property is scheduled to close on or before **Tuesday, April 2nd, 2024**. Marcus & Millichap Real Estate Investment Services is the broker involved in the transaction.

The total commission is **\$52,400 (Fifty-Two Thousand Four Hundred Dollars)** which reflects Four Percent (4%) of the purchase price. Please wire the funds due Marcus & Millichap per the instructions below:

Bank of America, N.A.
275 Valencia Ave, Brea, CA 92823
For Credit to: Marcus & Millichap Real Estate Investment Services, Inc.
23975 Park Sorrento, Ste 400, Calabasas, CA 91302
Account Number: 1416511444
ABA Routing Number: 026009593
Reference to Beneficiary: Activity ID: ZAE0480047

Thank you,

Justin R. Sturdivant
First Vice President Investments

Marcus & Millichap	(615) 997-2851 direct
6 Cadillac Drive	(615) 997-2900 main
Suite 100	(615) 296-0440 fax
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