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Case No. 2022-0207-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF WARREN GENERAL EMPLOYEES' RETIREMENT SYSTEM, Plaintiff, vs. MICHAEL ALKIRE, PETER FINE, MARC MILLER, MARVIN O'QUINN, TERRY D. SHAW, RICHARD STATUTO, JOHN BIGALKE, HELEN BOUDREAU, JODY DAVIDS, ELLEN C. WOLF, BARCLAY BERDAN, STEPHEN D'ARCY, DAVID LANGSTAFF, WILLIAM MAYER, SCOTT REINER, ERIC J. BIEBER, WILLIAM B. DOWNEY, PHILIP A. INCARNATI, and SUSAN DEVORE, Defendants, and PREMIER, INC., Nominal Defendant.	C.A. No. 2022-0207-JTL **REVISED PUBLIC VERSION FILED MARCH 31, 2022**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff City of Warren General Employees' Retirement System ("Plaintiff"), by and through its undersigned counsel, based upon knowledge as to itself and the review of publicly available information and non-public documents obtained pursuant

to a demand to inspect books and records under 8 *Del. C.* § 220 as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this stockholder derivative action in connection with the actions of the Board of Directors (the "Board") of Premier, Inc. ("Premier" or the "Company") and the Company's current and former CEOs, Michael Alkire and Susan DeVore, in pursuing and approving the decision to pay $473.5 million to the Company's pre-IPO investors, including companies affiliated with a majority of the members of the Board, for highly contingent tax receivable agreement assets (the "TRA Payout"). Each director knew the tax assets were worth approximately $225 million less than the Company paid.

2. In 2013, Premier went public in an initial public offering (the "IPO") using an "Up-C" corporate structure with two classes of stock. Premier's Class A common stock was publicly traded and held by unaffiliated investors. Premier's Class B common stock was held exclusively by companies managed by Premier directors and other pre-IPO investors, who are often referred to as "Member Owners" in Premier's public filings (the "Member Owners").

3. Premier adopted the Up-C structure to create tax savings for the Company, in the form of deferred tax assets ("DTAs"), which were created whenever

Class B stockholders exchanged their equity interests for Class A shares. Rather than allowing Premier to retain the resulting financial benefits of the DTAs, Premier directors and other insiders created a tax receivable agreement (the "TRA") immediately prior to the IPO, which allowed the Member Owners to capture most of these financial benefits for themselves. The TRA required the Company to make cash payments to the Member Owners equal to 85% of the cash savings resulting from the use of the DTAs, with the Company retaining the other 15%.

4. Under the terms of the TRA, Premier was required to make TRA payments to the Member Owners only as the Company had actual cash tax savings resulting from the Company's use of the DTAs, which would occur over a period of at least 15 years due to provisions of the Internal Revenue Code that restrict how quickly companies can utilize these DTAs.[1] In audited financial statements filed with the United States Securities and Exchange Commission (the "SEC"), the Board represented that the value of the DTAs and the amount of the accompanying TRA liability were inherently uncertain and speculative because the associated tax savings "depend[] on a number of assumptions, including that [Premier] will earn sufficient taxable income each year." Due to this uncertainty over the use of the DTAs, the

[1] *See* I.R.C. §197.

Board disclosed that the Company "may be unable to realize all or a portion of these expected benefits."[2]

5. Between January 2018 and late 2019, the Company engaged financial advisors from Bank of America ("BofA") and legal advisors from Cravath, Swaine and Moore LLP ("Cravath") to consider various options to "transform" the Company because the "[s]tock price performance has been muted." During this period, DeVore, Alkire, and other members of management regularly met with their advisors and ultimately determined that "the most optimal structure" would be a "take private" option whereby the public Class A shares would be bought out by a third-party investor at a significant premium, with some Member Owners continuing to own a portion of the private company. Premier received multiple indications of interest from third parties at a premium ranging from [redacted].

6. On December 6, 2019 and December 17, 2019, BofA, Cravath, DeVore, and Alkire presented this "take private" proposal to the full Board, including the Member Owners who control the Company. Their presentation noted that one potential downside of the "take private" option would be a required acceleration of the TRA payments under the terms of the TRA, and an advantage of remaining public was that this TRA acceleration could be avoided.

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[2] Premier, Inc. Prospectus, at 56, 71 (September 25, 2013).

7. On January 23, 2020, the Board held a meeting where DeVore and Alkire announced that they had changed course, abandoning the strategic alternatives they had developed for the previous two years "in light of feedback received from the Board and certain member owners." Instead, the Board, a majority of whom were affiliated with Member Owners who were parties to the TRA, "requested that management analyze [an option] in which Premier would accelerate future Tax Receivable Agreement (TRA) payments" without a sale of the Company. In other words, at some point between the December 17, 2019 and January 23, 2020 Board meetings, a number of Member Owners, including those whose affiliates served on the Board, asked DeVore and Alkire to develop a new plan to make the TRA Payout to the Member Owners.

8. Prior to January 23, 2020, the Board had never considered an option where the Company would choose to accelerate the TRA payments. In fact, management, led by DeVore and Alkire, and their advisors repeatedly treated a TRA acceleration as something to be avoided because they acknowledged a TRA acceleration would be harmful to the public Class A stockholders and the Company, especially if it was accelerated under terms that were favorable to the Member Owners. The terms the Member Owners proposed were grossly unfair to the Company. The Member Owners proposed that the TRA Payout be calculated

assuming that the Company would have sufficient income in each of the next 15 years to use all of the available DTAs and using a 1.15% discount rate to determine the present value of the TRA Payout.

9. In February 2020, at the same time the Board and DeVore and Alkire were considering the TRA Payout, the Board negotiated a separate TRA payout to one of the Company's largest Member Owners, the Greater New York Hospital Association ("Greater New York Hospital"), which was selling its entire interest in the Company.[3] Because these future TRA payments were uncertain, speculative, and would have been paid over a minimum of 15 years, the Company agreed to pay Greater New York Hospital "the estimated discounted present value of the expected Tax Receivable Agreement" payments to Greater New York Hospital "using a discount rate of 10% per annum."[4] The Greater New York Hospital TRA payout was an arm's-length transaction, and the Board and a special committee of independent directors each received fairness opinions from their financial advisors that the 10%

[3] Premier, Inc., Asset Purchase Agreement (Feb. 3, 2020).

[4] Premier, Inc., Asset Purchase Agreement (Feb. 3, 2020) (definition of "Net Present Value").

discount rate resulted in a "'fair price'" for the Greater New York Hospital TRA payout.[5]

10. In January 2020 the Board created a committee of purportedly independent directors (the "Special Committee") to consider the TRA Payout. The Special Committee only had the authority to "recommend" a decision on the TRA Payout and it left the ultimate authority to approve the TRA Payout to the entire Board, including those directors affiliated with Member Owners who would receive a substantial portion of the TRA Payout. Two months after it was created, and before it ever held a meeting, the Special Committee chose as its "independent" financial and legal advisors the same bankers and lawyers from BofA and Cravath who developed the TRA Payout with the Board and management, and who had significant historical ties to the Board.

11. By the time the Special Committee was formed, DeVore and Alkire had already worked with Member Owners to determine the Member Owners' preferred strategic direction and had sought and received Board approval to move forward with meetings with Member Owners on the TRA Payout under the terms proposed by the Member Owners. By the time the Special Committee held its first meeting on April

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[5] *See* Premier, Inc., Form 8-K (Feb. 4, 2020); Asset Purchase Agreement (Feb. 3, 2020).

20, 2020, the Tax Receivable Acceleration Agreement was already finalized and management had already met with over the half of the Member Owners to discuss the TRA Payout, with many Member Owners already having submitted signed agreements.

12. BofA repeatedly advised the Special Committee that the low discount rate that the Member Owners proposed resulted in a financial windfall for the Member Owners. BofA advised that "If [the] TRA were Negotiated" a 8-10% discount rate would be appropriate, given "how much member owners, who are potentially more cash-strapped, would value the accelerated payments." BofA's ultimate conclusion was that the "TRA acceleration is a 'give'" from the Company to the Member Owners at a 1.15% discount rate and that because of this, "[c]areful [m]essaging to [i]nvestors [w]ill [b]e [i]mportant."

13. There was no justification for using a lower discount rate for the TRA Payout than the arm's-length Greater New York Hospital TRA payout. Both transactions involved the payout of the same TRA and the factors for determining the appropriate discount rate would have been identical in both transactions. BofA advised that if Premier used a 10% discount rate to calculate the TRA Payout, the rate used for the Greater New York Hospital TRA payout for which the Board and a special committee of independent directors received a fairness opinion, then the TRA

Payout would have been just $249 million – a difference of ***$224.5 million*** compared to the actual TRA Payout.

14. The Special Committee and Board nonetheless disregarded BofA's advice, and their own recent experience in negotiating the Greater New York Hospital TRA Payout, and allowed management to continue meeting with the Member Owners based on the Member Owners' proposal to apply a 1.15% discount rate to the TRA Payout. The Board, the Special Committee, and DeVore and Alkire never attempted to engage in any negotiation with the Member Owners with respect to the TRA Payout. Unlike with the Greater New York Hospital TRA payout, the Special Committee and the Board never asked their financial advisors for a fairness opinion with respect to the TRA Payout.

15. On August 5, 2020, the Board, a majority of whom were affiliated with Member Owners receiving a portion of the TRA Payout, voted to approve the TRA Payout. The Board's decision to approve the TRA Payout was entirely optional. Thus, the Board decided to replace its obligations under the TRA – which were payable over multiple decades, contingent on Premier having sufficient taxable income, and always offset by associated cash tax savings – with an immediate and definite liability that must be paid regardless of the Company's income or ability to

use the DTAs. The terms of the TRA Payout clearly benefited the Member Owners and harmed the Company.

16. The TRA Payout was infected by conflicts of interest and procedural unfairness. Premier management, including DeVore and Alkire, and the Board, including members of the Special Committee who recommended approval of the TRA Payout, had historical and ongoing financial and professional ties to the Member Owners. Approximately $[redacted] of the TRA Payout is allocated to Member Owners that had Board designees who voted in favor of the TRA Payout.

17. The $473.5 million TRA Payout, which is one of the largest payouts ever by a public company in terminating a TRA, exceeded Premier's average annual income over the last five years by approximately $148 million and was nearly five times the amount of cash Premier had on hand. Premier therefore needed to make the TRA Payout in 18 quarterly installments of approximately $26 million that will continue through the second quarter of 2025. The TRA Payout had a quick and negative impact on the Company. The Company announced that free cash flow in the last six months of 2020 "was $37.1 million, compared with $127.9 million for the same period a year ago," and that the decrease was largely driven by "an increase in

Tax Receivable Agreement payments made as a result of the acceleration of payments to former limited partners of Premier LP as part of the company's restructure."[6]

18. Plaintiff brings this action to recover the damages and to prevent future harm caused by Defendants' breaches of fiduciary duty.

PARTIES AND RELEVANT NON-PARTIES

Plaintiff

19. Plaintiff City of Warren General Employees' Retirement System is, and continuously has been, a Premier stockholder since August 2017.

Nominal Defendant

20. Nominal Defendant Premier, Inc. is a Delaware corporation with its principal executive offices located at 13034 Ballantyne Corporate Place, Charlotte, North Carolina, 28277. Premier operates as a "healthcare alliance" composed of "U.S. hospitals, health systems and other healthcare organizations." Premier is one of the largest group purchasing organizations ("GPO") in the United States. Through its GPO, Premier purchases medical supplies from vendors in bulk on behalf of GPO members. Premier receives administrative fees from vendors in exchange for buying their products. These administrative fees represent the bulk of Premier's revenue.

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[6] Premier, Inc., Form 8-K, Exhibit 99.2 at 7 (Feb. 2, 2021).

Premier shares a portion of these administrative fees with its GPO members through GPO agreements.

21. Premier went public in October 2013 with an "Up-C" corporate structure. Premier was a holding company, and its primary asset was an equity interest in an operating partnership, Premier Healthcare Alliance, L.P. ("Premier LP"), which conducted substantially all of Premier's business operations. Premier LP was treated as a partnership for United States federal income tax purposes and was generally not subject to income tax.

22. Premier went public in 2013 with two classes of stock. Premier's Class A common stock was publicly traded, held by unaffiliated investors, and had both voting rights and equity rights in the publicly traded corporation. Premier's Class B common stock was held exclusively by healthcare companies affiliated with Premier directors and other pre-IPO investors. The Class B stockholders were among the Company's largest clients and are often referred to as "Member Owners" in Premier's public filings. The Class B shares had voting rights in the Company, but the Member Owners' corresponding equity interests came through direct ownership of units in the operating partnership, Premier LP.

23. Directors affiliated with Member Owners have made up a majority of the Board since the IPO. As part of the IPO, the Member Owners entered into a voting

trust agreement pursuant to which a trustee voted their interests "as a block in the manner determined by the plurality of the votes received by the trustee from the member owners."[7]

24. Premier's Up-C structure was intended to create tax savings that resulted from the Member Owners exchanging their illiquid Class B shares and corresponding units in Premier LP for publicly traded Class A shares on a one-for-one basis. Member Owners had the right to exchange up to one-seventh of their Class B shares and units in Premier LP for shares of Class A stock on an annual basis, subject to the approval of the Board's Audit and Compliance Committee (the "Exchange Agreement"). These exchanges created DTAs for the Company by causing a "step-up" in the tax basis of Premier's underlying assets.[8]

25. In connection with its IPO, Premier entered into a TRA with its Member Owners. The TRA required the Company to make annual cash payments to the Member Owners equal to 85% of the cash savings resulting from the use of the DTAs created by exchanges, with the Company retaining the other 15%. Under the terms of the TRA, Premier was required to make TRA payments to the Member Owners only

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[7] Premier, Inc., Prospectus, at 10 (September 25, 2013).

[8] The exchanges turn "non-depreciable, self-developed goodwill into depreciable goodwill." *See* Gladriel Shobe, *Supercharged IPOs and the Up-C*, 88 U. COLO. L. REV. 913, 938 (2017).

as the Company had actual cash tax savings resulting from the Company's use of the DTAs. In periods where the Company did not have taxable income, TRA payments were not required. Even if Premier had sufficient taxable income to utilize the maximum amount of DTAs each year, the TRA payments would occur over a period of at least 15 years due to the tax rules that restrict how quickly companies can utilize their DTAs.[9]

Defendants

Peter S. Fine (Member-Director)

26. Defendant Fine has been a member of the Board and the Management Committee of Premier Services, LLC since October 2013. Premier Services, LLC is a wholly-owned subsidiary of Premier and, at the time the Board approved the TRA Payout, was the general partner of Premier LP. Fine is the Chairman of the Premier Board's Finance Committee. Fine previously served on the board of directors of Premier Healthcare Solutions, Inc. from 2003 through 2009.

27. Fine has been the Chief Executive Officer and a member of the board of directors of Banner Health, one of Premier's Member Owners, since November 2000. Banner Health operates 30 hospitals, including three academic medical centers and other related health entities and services in six states. At the time the Board approved

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9 *See* I.R.C. §197.

the TRA Payout, Banner Health held approximately [redacted] Class B shares. Banner Health is entitled to approximately [redacted] from the TRA Payout.

28. Premier's 2020 annual proxy statement identified Fine as a "Member-Director," which is a "director employed by a hospital or health system or by a group affiliate or other non-provider organization affiliated with one or more Premier member facilities participating in the Company's GPO that is or has been during the last three fiscal years a stockholder of Premier."[10] Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[11]

29. Fine received director compensation of $476,106 from Premier in 2019 and 2020. Fine signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Marc D. Miller (Member-Director)

30. Defendant Miller has been a member of the Board since August 2015 and is a member of the Finance committee.

31. Miller has been Chief Executive Officer and President of Universal Health Services, Inc. ("UHS") since January 2021, and he previously held the position

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10 *See* Premier, Inc., Schedule 14A, 9 (October 21, 2020).

11 *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

of President since 2009. Defendant Miller has been a member of the UHS board of directors since 2006 and serves on that Board's Executive and Finance Committees. UHS provides hospital and healthcare services through 26 acute care hospitals, 334 behavioral health facilities, and 39 outpatient facilities in 38 states, Washington, D.C., Puerto Rico and the United Kingdom. At the time the Board approved the TRA Payout, UHS was a Member Owner and held approximately [redacted] Class B shares. UHS is entitled to approximately [redacted] from the TRA Payout.

32. Premier's 2020 annual proxy statement identified Miller as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[12]

33. Miller received director compensation of $460,890 from Premier in 2019 and 2020. Defendant Miller signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Marvin R. O'Quinn (Member-Director)

34. Defendant O'Quinn has been a member of the Board since August 2015 and is a member of the Finance Committee.

35. O'Quinn has been the Senior Executive Vice President and Chief Operating Officer of Dignity Health in San Francisco, California since 2009 and the

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12 *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

Chief Executive Officer and President of CommonSpirit Health since 2019. CommonSpirit Health owns and operates health care facilities in 21 states and is the sole corporate member of Dignity Health. At the time the Board approved the TRA Payout, Dignity Health was a Member Owner of Premier LP and held approximately [redacted] Class B shares. Dignity Health is entitled to approximately [redacted] from the TRA Payout.

36. Premier's 2020 annual proxy statement identified O'Quinn as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[13]

37. O'Quinn received director compensation of $454,026 from Premier in 2019 and 2020. O'Quinn signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Terry D. Shaw (Member-Director)

38. Defendant Shaw has been a member of the Board since May 2013 and Board Chair since August 2019. Prior to his service as Chair, Shaw served as Vice Chair from 2015 until August 2019. Shaw has also served on the Management Committee of Premier Services, LLC since September 2013.

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13 *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

39. Shaw has been the Chief Executive Officer of AdventHealth (f/k/a Adventist Health System), a nine-state health system headquartered in Florida, since 2016. Shaw is also a member of the board of directors for AdventHealth. Defendants Bigalke and DeVore serve on the AdventHealth board of directors with Shaw. Shaw also has close financial ties to Berdan. AdventHealth conducts substantial business with Texas Health Resources, where Berdan serves as CEO. At the time the Board approved the TRA Payout, AdventHealth was a Member Owner and held (along with its subsidiaries) approximately [redacted] Class B shares. AdventHealth is entitled to approximately [redacted] from the TRA Payout.

40. Premier's 2020 annual proxy statement identified Shaw as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[14]

41. Defendant Shaw is a member of the Healthcare Leadership Council along with Berden, Alkire and, formerly, DeVore. The Healthcare Leadership Council is a coalition of chief executives from within the American healthcare industry who jointly develop policies, plans, and programs to improve healthcare accessibility. Shaw also co-authored an article with Reiner and Berdan regarding the availability of generic drugs.

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[14] *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

42. Defendant Shaw received director compensation of $472,813 from Premier in 2019 and 2020. Shaw signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Richard J. Statuto (Member-Director)

43. Defendant Statuto has been a member of the Board since May 2013 and previously served as Chair from 2013 to August 2019. Statuto was a member of the board of directors of Premier Healthcare Solutions, Inc. and the Board of Managers for Premier Plans from 2011 to 2013. Statuto serves on the Board's Compensation committee and is Chairman of the Nominating and Governance Committee. Statuto was also a member of the Special Committee, which recommended that the Board approve the TRA Payout.

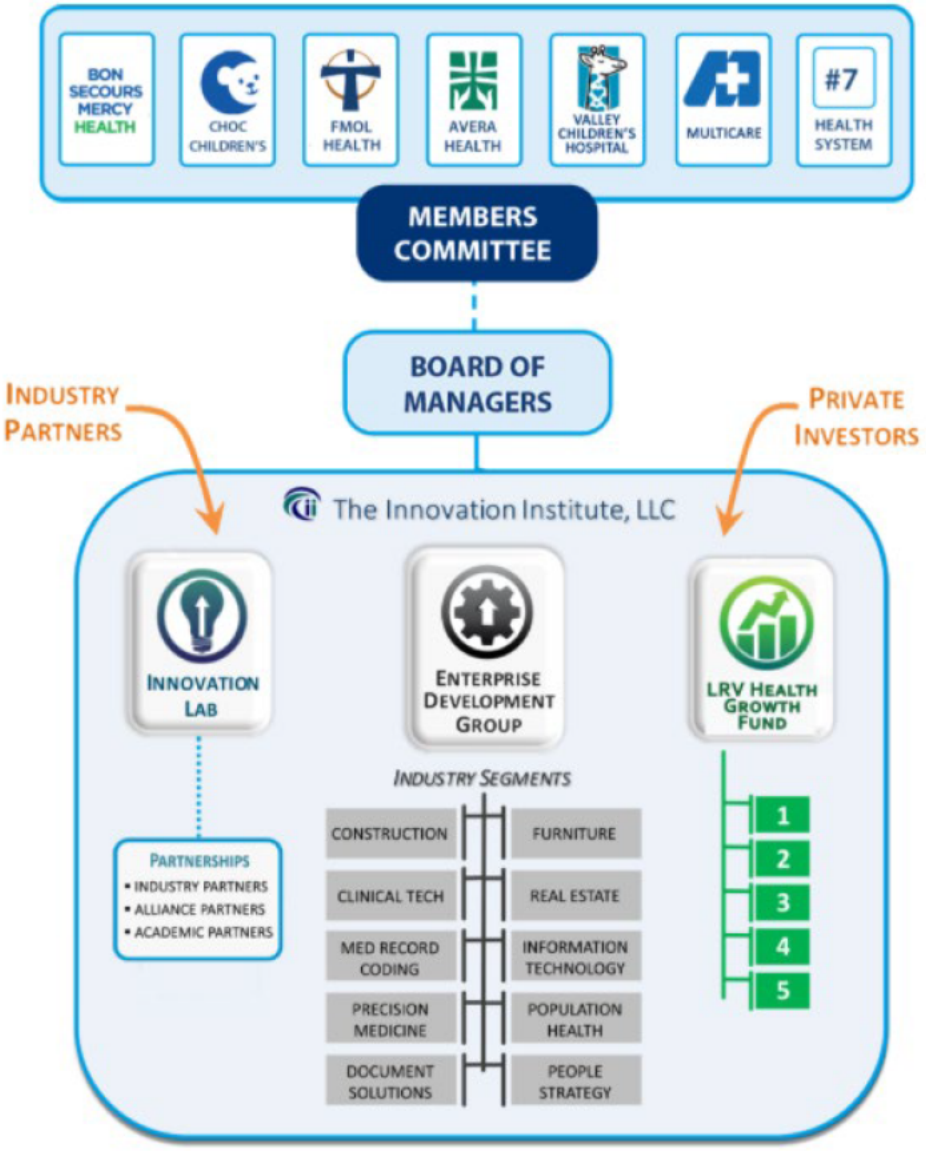
44. Statuto was President and Chief Executive Officer of Bon Secours Health System from 2005 to September 2018. From September 2018 through August 2019, Statuto was an advisor to Bon Secours Mercy Health, primarily focused on strategic growth and innovation. Bon Secours Mercy Health is the fifth largest Catholic health care ministry and one of the nation's 20 largest healthcare systems. At the time the Board approved the TRA Payout, Bon Secours Health System was a Member Owner of Premier LP and held approximately [redacted] Class B shares. Bon Secours Health System is entitled to approximately [redacted] from the TRA Payout.

45. Statuto retained a deep relationship with Bon Secours Mercy Health following his retirement. For example, Statuto continues to serve as a member of the board of the Innovation Institute. The Innovation Institute is a private, for profit healthcare incubator co-owned by six health care systems, including Bon Secours Mercy Health. Statuto, in his role as then-CEO of Bon Secours Health System, led Bon Secours' 2013 investment in the Innovation Institute. Statuto's continued membership on the Innovation Institute's board depends on the support of Bon Secours Mercy Health, as depicted in the following graphic from the Innovation Institute's website:[15]

[15] https://ii4change.com/our-story/unique-business-model/

Unique Business Model

The Innovation Institute has six non-profit health systems as equity investors or "Member Owners." Each investor holds a seat on the Members Committee. The day-to-day operations are managed by a Board of Managers. Launched in January 2013 as a for-profit LLC, The Innovation Institute has three major elements:



46. Statuto also continues to work closely with Bon Secours Mercy Health and its leaders as a board member of the Catholic Medical Mission Board ("CMMB"). Bon Secours Health System and Mercy Health are "Featured Partners" and key

supporters of CMMB.[16] Statuto joined the CMMB board in 2015 when Statuto was the CEO of Bon Secours Health System.[17] Statuto now serves as Vice Chair of the CMMB board as well as the Governance Committee Chair.[18] As Governance Committee Chair, Statuto has facilitated the addition of four CMMB board members with deep ties to Bon Secours Mercy Health System in the last two years: Mary Leahy, CEO of Bon Secours Charity Health System; Jerry Judd, Senior Vice President, Treasury for Bon Secours Mercy Health; Colleen Scanlon, board member of Bon Secours Mercy Health Ministries and the sponsor of Bon Secours Mercy Health System; and Janice Burnett, recently retired CFO of Bon Secours Health System.[19]

47. Premier's 2019 annual proxy statement identified Statuto as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[20]

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16 *See* https://cmmb.org/about-us/partners/?member_type=organizations; https://cmmb.org/bon-secours-health-system/; https://cmmb.org/mercy-health/.

17 *See* Premier, Inc., Schedule 14A, 16 (October 19, 2016).

18 https://cmmb.org/staff/richard-j-statuto-mba/.

19 *See* https://cmmb.org/staff/mary-p-leahy-md/; https://cmmb.org/staff/jerome-judd/; https://cmmb.org/staff/colleen-scanlon/; https://cmmb.org/staff/janice-burnett/; *see also* https://bsmhealth.org/personnel/colleen-scanlon/.

20 *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

48. Statuto received director compensation of $569,604 from Premier in 2019 and 2020. Statuto signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Defendant Michael Alkire

49. Defendant Alkire has been a director since 2021. He joined Premier in 2003, became Chief Operating Officer in 2013, was named Senior Vice President in 2014, was elevated to President 2019, and was most recently named CEO in May 2021. Premier considers Alkire not to be independent.

50. Alkire received executive compensation of over $9.4 million in 2019 and 2020 while he was actively facilitating and pursuing the TRA Payout with the Board for the benefit of the Member Owners. The Board and Compensation Committee each approved Alkire's new employment agreement, which became effective May 1, 2021. The agreement provides an annual base salary of $1,000,000, a target bonus equal to 150% of his base salary, and an equity target of 425% of his base salary. The Board's Compensation Committee, which determines Alkire's compensation, is dominated by Member Owner directors: Miller, who is CEO of a Member Owner who received a TRA Payout; O'Quinn, who is COO of a Member Owner who received a TRA Payout; and Statuto, who recently retired as CEO of a Member Owner who received a TRA Payout.

51. Defendant Alkire is also a member of the Healthcare Leadership Council along with Member Owners and Premier directors Shaw and Berdan, and formerly DeVore, who was CEO at the time of the TRA Payout. The Healthcare Leadership Council is a coalition of chief executives from within the American healthcare industry who jointly develop policies, plans, and programs to improve healthcare accessibility.

Barclay E. Berdan (Member-Director)

52. Defendant Berdan was a member of the Board from December 2015 until August 31, 2021, and he served on the Board's Finance Committee. Berdan also served on the Management Committee of Premier Services, LLC, which is a wholly-owned subsidiary of Premier and was the general partner of Premier LP.

53. Berdan has been the Chief Executive Officer of Texas Health Resources, one of Premier's Member Owners, since 2014. Texas Health Resources is a faith-based health system that operates 27 hospitals and numerous other healthcare facilities throughout North Texas. Texas Health Resources conducts substantial business with AdventHealth, where Shaw serves as CEO. At the time the Board approved the TRA Payout, Texas Health Resources held approximately [redacted] Class B shares. Texas Health Resources is entitled to approximately [redacted] from the TRA Payout.

54. Berdan is also on the board of directors for Fairview Health Services, another of Premier's Member Owners. Fairview Health Services provides a full network of healthcare services for patients in Minnesota.

55. Premier's 2020 annual proxy statement identified Berdan as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[21]

56. Berdan is a member of the Healthcare Leadership Council, along with Shaw, Alkire and, formerly, DeVore. The Healthcare Leadership Council is a coalition of chief executives from within the American healthcare industry who jointly develop policies, plans, and programs to improve healthcare accessibility. Berdan co-authored an article with Reiner and Shaw regarding the availability of generic drugs.

57. Berdan received director compensation of $402,000 from Premier in 2019 and 2020. Berdan signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Scott Reiner (Member-Director)

58. Defendant Reiner was a member of the Board from December 2015 until August 31, 2021, and he served on the Board's Finance Committee.

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[21] *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

59. Reiner has been Chief Executive Officer of Adventist Health System/West Texas Health Resources since 2014. Adventist Health System/West Texas Health Resources is a hospital system serving more than 75 communities in California, Oregon, Washington, and Hawaii. Reiner also sits on the Adventist Health board of directors. At the time the Board approved the TRA Payout, Adventist Health System/West Texas Health Resources was a Member Owner and held approximately [redacted] Class B shares. Adventist Health System/West Texas Health Resources is entitled to approximately [redacted] from the TRA Payout.

60. During his tenure, Premier's annual proxy statements identified Reiner as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[22]

61. Reiner co-authored an article with Berdan and Shaw regarding the availability of generic drugs.

62. Reiner received director compensation of $455,526 from Premier in 2019 and 2020. Reiner signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

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22 *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

Eric J. Bieber, MD (Member-Director)

63. Defendant Bieber was a member of the Board from 2015 until July 31, 2020 and served on the Nominating and Governance Committee. He currently serves as co-chair of the Board Advisory Council, a position he assumed immediately after leaving the Board.

64. Bieber has been the President and Chief Executive Officer of Rochester Regional Health System since 2014. Rochester Regional Health System has 9 hospital locations and 147 primary care and ambulatory locations providing services in Western, Central, and Northern New York. At the time the Board approved the TRA Payout, Rochester Regional Health System was a Member Owner and held approximately [redacted] Class B shares. Rochester Regional Health System is entitled to approximately [redacted] from the TRA Payout.

65. During his tenure, Bieber was identified in Premier's annual proxy statement as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[23]

66. Bieber received director compensation of $460,026 from Premier in 2019 and 2020. Bieber signed Premier's 2019 annual report filed with the SEC on a Form 10-K.

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[23] *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

William B. Downey (Member-Director)

67. Defendant Downey was a member of the Board from 2015 until July 31, 2020 and served on the Nominating and Governance Committee. He currently serves as co-chair of the Board Advisory Council, a position he assumed immediately after leaving the Board.

68. Downey has been President and Chief Executive Officer of Riverside Health System since 2012. Riverside Health System is a hospital system in Newport News, Virginia that provides services for 8,000 square miles of Coastal Virginia. At the time the Board approved the TRA Payout, Riverside Health System was a Member Owner and held approximately [redacted] Class B shares. Riverside Health System is entitled to approximately [redacted] from the TRA Payout.

69. During his tenure, Defendant Downey was identified in Premier's annual proxy statement as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company deemed them "as not independent."[24]

70. Downey received director compensation of $456,526 from Premier in 2019 and 2020. Downey signed Premier's 2019 annual report filed with the SEC on a Form 10-K.

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[24] *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

Philip A. Incarnati (Member-Director)

71. Defendant Incarnati was a member of the Board from 2013 until July 31, 2020 and served on the Finance Committee. He currently serves as co-chair of the Board Advisory Council, a position he assumed immediately after leaving the Board.

72. Incarnati has been the Chief Executive Officer and a director of McLaren Health Care Corporation since 1989. McLaren Health Care Corporation is a fully integrated health care delivery system that includes 15 hospitals in Michigan and Ohio and operates Michigan's largest network of cancer centers and providers. At the time the Board approved the TRA Payout, McLaren Health was a Member Owner and held approximately [redacted] Class B shares. McLaren Health is entitled to approximately [redacted] from the TRA Payout.

73. During his tenure, Incarnati was identified in Premier's annual proxy statement as a "Member-Director." Due to the relationship a Member-Director and/or their employer has with Premier, the Company has deemed them "as not independent."[25]

74. Incarnati received director compensation of $457,026 from Premier in 2019 and 2020. Incarnati signed Premier's 2019 annual report filed with the SEC on a Form 10-K.

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[25] *See* Premier, Inc., Schedule 14A, 31 (October 21, 2020).

John T. Bigalke

75. Defendant Bigalke has been a member of the Board since October 2019 and is a member of the Compensation and Audit and Compliance Committees. Bigalke was also a member of the Special Committee, which recommended the full Board approve the TRA Payout.

76. Bigalke is a member of the Board of Directors of AdventHealth, along with Shaw and DeVore. Shaw is also the CEO of AdventHealth. At the time the Board approved the TRA Payout, AdventHealth was a Member Owner and held (along with its subsidiaries) approximately [redacted] Class B shares. AdventHealth is entitled to approximately [redacted] from the TRA Payout.

77. Bigalke received director compensation of $253,060 from Premier in 2019 and 2020. Bigalke signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Susan D. DeVore

78. Defendant DeVore joined Premier in 2006 and held various positions of escalating authority until her retirement on June 30, 2021. Between May 2013 and May 1, 2021, DeVore was a member of the Board and the Company's CEO. DeVore was also President of the Company from 2013 until April 2019. Starting in 2013, DeVore was the Chief Executive Officer of Premier Healthcare Solutions, Inc. She

was a member of the board of directors of Premier Healthcare Solutions, Inc. from 2009 until her retirement and was on the Board of Managers of Premier Plans from 2009 to 2013.

79. DeVore received executive compensation of over $16.2 million in 2019 and 2020 while she was actively facilitating and pursuing the TRA Payout with the Board. When she left Premier, DeVore's severance included access to the Company's health insurance for 36 months and a 24-month consulting arrangement whereby Defendant DeVore will provide up to forty hours per month, in exchange for payments of $60,000 per month for the first 12 months and at least $9,375 per month for the second 12 months.

80. During her tenure with the Company, DeVore also served on the board of directors for AdventHealth with Shaw and Bigalke and was a member of the Healthcare Leadership Council with Berdan and Shaw.

Helen M. Boudreau

81. Defendant Boudreau has served as a member of the Board since June 2020 and is a member of the Nominating and Governance Committee.

82. Boudreau was the Chief Operating Officer of the Bill & Melinda Gates Medical Research Institute from June 2018 until June 2019. The Bill & Melinda Gates foundation is listed as having provided substantial funding for the Aspen

Institute's National Commission on Social, Emotional, and Academic Development (the "Commission"). The Commission operated until March 2019. Defendant Langstaff has been an Executive Vice-President at the Aspen Institute since March 2018. Similarly, Defendant Mayer is an Aspen Institute Trustee and Chairman Emeritus of the Aspen Institute Board of Trustees. Mayer was the Chairman of the Aspen Institute from 2000 until 2008 and is currently on its Executive Committee.

83. Boudreau received director compensation of $7,001 from Premier in 2020. Boudreau signed Premier's 2020 annual report filed with the SEC on a Form 10-K.

Jody R. Davids

84. Defendant Davids has served as a member of the Board and the Management Committee of Premier Services, LLC since January 2015. Davids is a member of the Audit and Compliance, Compensation, Member Agreement Review, and Conflict Advisory Committees of the Premier Board. Davids was also a member of the Special Committee, which recommended that the full Board approve the TRA Payout.

85. Davids received director compensation of $503,108 from Premier in 2019 and 2020. Davids signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Ellen C. Wolf

86. Defendant Wolf has been a member of the Board and the Management Committee of Premier Services, LLC since October 2013. Wolf is the Chair of the Audit and Compliance Committee as well as a member of the Nominating and Governance, Member Agreement Review, and Conflict Advisory Committees. Defendant Wolf was also Vice Chairman of the Special Committee, which recommended that the full Board approve the TRA Payout.

87. Wolf received director compensation of $552,280 from Premier in 2019 and 2020. Wolf signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

Stephen R. D'Arcy

88. Defendant D'Arcy was a member of the Board and the Management Committee of Premier Services, LLC from October 2013 until August 31, 2021. D'Arcy was a member of the Audit and Compliance, Nominating and Governance, Compensation, and Conflict Advisory Committees of the Premier Board. Defendant D'Arcy was also a member of the Special Committee, which recommended that the full Board approve the TRA Payout.

89. D'Arcy received director compensation of $519,336 from Premier in 2019 and 2020. D'Arcy signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

David Langstaff

90. Defendant Langstaff was a member of the Board from September 2016 until August 31, 2021 and served on its Audit and Compliance, Nominating and Governance, Member Agreement Review, and Conflict Advisory Committees. Langstaff was also a member of the Special Committee, which recommended that the full Board approve the TRA Payout.

91. Langstaff also serves as Executive Vice President of The Aspen Institute, where he has held various other leadership roles since 1998. During Langstaff's tenure at the Aspen Institute, Boudreau was the Chief Operating Officer of the Bill & Melinda Gates Medical Research Institute, which is listed as having provided substantial funding for the Commission. The Commission operated until March 2019. In addition, Defendant Mayer is an Aspen Institute Trustee and Chairman Emeritus of the Aspen Institute Board of Trustees. Mayer was the Chairman of the Aspen Institute from 2000 until 2008 and is currently on its Executive Committee.

92. Langstaff received director compensation of $507,336 in 2019 and 2020. Langstaff signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

William E. Mayer

93. Defendant Mayer was a member of the Board from May 2013 until August 31, 2021. Mayer was the Board's Lead Independent Director from October 2019 until August 31, 2021. Mayer was on the Management Committee of Premier Services, LLC from September 2013 until August 31, 2021. Mayer was the Chair of the Compensation and Member Agreement Review Committees as well as a member of the Finance Committee. Mayer was a member of the board of directors of Premier Healthcare Solutions, Inc. and on the Board of Managers of Premier Plans from 1997 to 2013. Mayer was also the Chair of the Special Committee, which recommended that the full Board approve the Transaction.

94. Mayer is an Aspen Institute Trustee and Chairman Emeritus of the Aspen Institute Board of Trustees. Mayer was the Chairman of the Aspen Institute from 2000 until 2008 and is currently on its Executive Committee.

95. Mayer received director compensation of $574,323 from Premier in 2019 and 2020. Mayer signed each of Premier's 2019 and 2020 annual reports filed with the SEC on a Form 10-K.

THE UNFAIR TRANSACTION

The Board Explores a Premium-Generating Sale

96. Between January 2018 and late 2019, the Board held a series of regularly scheduled meetings in which management, led by DeVore and Alkire, discussed strategic plans for the Company. During this time, DeVore and Alkire engaged financial advisors at Centerview Partners and BofA to consider various options to "transform" the Company because the "[s]tock price performance has been muted." DeVore also noted that another impetus for action was that the Company was likely to lose its controlled company status in the near future and would therefore be required to elect a majority independent Board, which would subject the Board to "potential for activism." Over this nearly two year period, DeVore, Alkire, the Board, and their advisors met regularly and developed four possible options for this transformation, including: (i) additional leverage to fund transformational M&A strategy; (ii) taking on "additional leverage" or issuing "preferred equity"; (iii) the Class B stockholders conducting a "Take Private" transaction; and (iv) selling the public Class A stock to a "Strategic/Financial Partner" in a "Take Private" transaction, with some Class B stockholders retaining a financial interest in the Company.

97. One consistent message from the Company's financial advisors at BofA and Centerview Partners was that an acceleration of the TRA payments in a sale of the

Company could be harmful to the Company and the Class A stockholders. The TRA contained a provision that, in the event of a sale of the majority of the Company, required the TRA to be paid out in an accelerated lump-sum payment to the Member Owners under assumptions extremely favorable to the Member Owners, and unfavorable to the Company. This provision assumed that Premier would always have sufficient taxable income to use all of the DTAs that generate TRA payments, something that had historically not been true, and used an extremely low discount rate of just over 1% that did not reflect the Company's cost of capital and riskiness of the cash flows. The Company's financial advisors made clear that a TRA acceleration would make the Company less valuable to a potential investor and "will reduce value to Class A ... shareholders" because "accelerated TRA payments" "limit[] potential investor upside." The Company's financial advisors also noted that an upside to other options that did not involve an acquisition was that the "TRA acceleration [is] likely avoided."

98. On December 6, 2019, the Board received a presentation from DeVore, Alkire, and BofA with "a detailed review of the strategic plan options." Lawyers from Cravath also "provided overview of Board's role in strategic plan process." The presentation noted that "[o]ver the past several months, Centerview and BofA have spent significant time with management and the Board of Director evaluating ...

potential options/structures." The Board's financial advisors at Centerview Partners and BofA, along with DeVore and Alkire, arrived at the conclusion that "a take private of Premier in partnership with a financial or strategic investor is the most optimal structure," and would include a "buyout of Class A shareholders" with Member Owners retaining interests in the post-transaction Company. In fact, Premier had already received multiple indications of interest from third parties for such a transaction, with prices ranging from [redacted] per Class A share (approximately [redacted] premiums based on Premier's Class A stock price at the end of November 2019), and retained outside legal counsel to advise on that process. The Company's advisors noted that a sale of a majority of the Company would trigger "all or some TRA acceleration payment" and provided an "Illustrative Potential Transaction Structure" showing the TRA acceleration payment being only "50% of TRA" "Current Net Present Value," as calculated in the TRA under the assumption that a potential buyer would negotiate any TRA acceleration payment to an amount in line with its fair value.

99. The Board also discussed upcoming Board Advisory Council meetings. The Board Advisory Council was created at the request of DeVore, Statuto, and Shaw and was "comprised of the three non-independent directors who [were] asked to step down early from the Board as well as a limited number of other strategically-aligned

member CEOs." Board materials show that the Member Owners on the board Advisory Council "can help determine the future direction of the Company." Indeed, Board materials repeatedly state that "[i]n large part, this group determines our future direction!" According to the Board Advisory Council's initial Charter, "[t]he purpose of the Board Advisory Council (BAC) is to (i) provide a forum for alignment between Premier and [the Member Owners] and (ii) perform a strategic role by informing the Premier Board of Directors ... of [the Member Owners'] views on the strategies and direction of Premier's initiatives, products and services." The scope of their work would include making "recommendations regarding Premier's corporate strategic alternatives, initiatives and goals" and "[e]ngag[ing] in strategic dialogue and participat[ing] in robust discussions that will help shape Premier in the future." The membership of the Board Advisory Council was chosen at the discretion of management.

100. DeVore and Alkire presented to the Board a draft presentation for the Board Advisory Council stating that the role of the Board Advisory Council was to "create active strategic alignment for the most impactful owners to drive transformation of our business." According to this presentation, DeVore and Alkire planned to tell the Board Advisory Council that they did not believe "that 'going it alone' is the preferred strategy," and instead, "[a]fter assessing the various

opportunities and challenges the Company faces, it is our belief that a take private of Premier in partnership with a financial or strategic investor is the most optimal structure" to "create shareholder value." DeVore and Alkire had made "[a]n initial exploratory outreach ... to these selected partners."

101. On December 17, 2019, the Board held a meeting with DeVore, Alkire, bankers from BofA, and lawyers from Cravath presenting to the entire Board, including the directors affiliated with Member Owners. DeVore and Alkire disclosed to the Board that they had "[e]ngaged Cravath, Swaine & Moore LLP for legal advisory counsel as we continue down the path of strategic evaluation." This presentation showed that DeVore and Alkire had narrowed the possible options to "Remain Public" with "no change" or "Take Private with Strategic/Financial Partner" and indicated that the take-private option was best for both Class A stockholders and the Member Owners. The presentation noted that a few potential buyers who had previously indicated interest chose not to make an offer because of "[c]hallenging returns profile due to ... TRA acceleration" and "uncertainty over any potential TRA acceleration payment" in an acquisition. The presentation also noted that one of the "Key Benefits" of remaining public is that there is "[n]o change of control or accelerated one-time TRA payment" and that one of the benefits for only the Member Owners in a sale of a majority of the Company was "immediate liquidity through ... all

or partial TRA acceleration." No scenario contemplated a voluntary, accelerated TRA Payout.

The Member Owners Push for an Immediate TRA Payment

102. On January 23, 2020, the Board held a meeting with all directors present, including those affiliated with Member Owners. Management, led by DeVore and Alkire, announced that they had changed course, abandoning the strategic alternatives they had developed for the previous two years and, instead, were pursuing the TRA Payout. DeVore stated that "in light of feedback received from the Board and certain member owners ... the Company had placed on hold its communications with potential strategic and financial partners." Instead, after "[f]urther discussions in Dec 2019" that are not evident in any documents produced to date, "the Board requested that management analyze [an option] in which Premier would accelerate future Tax Receivable Agreement (TRA) payments." In other words, at some point between the December 17, 2019 and January 23, 2020 Board meetings, the Board, a majority of whom were affiliated with Member Owners who would receive a significant portion of the TRA Payout, asked DeVore and Alkire to develop a new plan to make the voluntary TRA Payout instead of pursuing any of the options DeVore, Alkire, the Board, and their advisors had been considering and actively pursuing for two years.

103. Prior to January 23, 2020, the Company had never considered an option where the Company would accelerate the TRA absent a sale of a majority of the Company. In fact, DeVore, Alkire, the Board, and their advisors repeatedly treated a TRA acceleration as something to be avoided because they acknowledged it would be harmful to the public Class A stockholders and the Company, especially if it was accelerated under terms that were favorable to the Member Owners.

104. DeVore's presentation to the Board shows that the new TRA Payout proposal weighed and closely considered "Member Owner Requirements and Value Considerations," but showed no such concern for the public Class A stockholders or the Company. DeVore's presentation noted that in the event of a TRA Payout, "[p]articipating member owners receive benefit of accelerated TRA payments without a change of control." This "benefit" to the Member Owners would come at the direct expense of the Class A stockholders and the Company, which would fund this "benefit" by significantly overpaying for the value of the TRA.

105. Tellingly, DeVore advised the Board that "[n]o stockholder approval [is] required," presumably because she knew that Class A stockholders would not have voted for such a massive, voluntary payout. The $473.5 million TRA Payout exceeded Premier's average annual income over the last five years by approximately $148 million and was nearly five times the amount of cash Premier had on hand.

Premier did not have enough cash to make a full lump sum payment, so DeVore proposed that the accelerated TRA payment be made over a five-year period.

106. During the January 23 meeting, the Board considered two additional, separate transactions that would take place concurrently with the TRA Payout, which they referred to collectively as "Project Bridge." First, DeVore proposed renegotiating the terms of the GPO agreements with each Member Owner "on economic terms incrementally more favorable to such member owner than its current terms." These separate negotiations ultimately led to the Member Owners receiving on average a more than 50% increase in the fee share payments they receive from the Company under the GPO agreements.[26]

107. DeVore also proposed exchanging all of the Member Owners' remaining Class B units for Class A shares (the "Final Unit Exchange"). The Final Unit

[26] The Company's public disclosures repeatedly make clear that the increase in GPO agreement fee share payments to Member Owners was a "separate" and independent transaction from the TRA Payout. The Special Committee and Board resolutions also treated them as separate transactions with independent approvals. The regulations relating to GPOs do not allow for the negotiation of GPO fee share agreements in conjunction with other financial arrangements because of stringent federal anti-kickback statutes that govern GPO fee-share agreement payments. *See, e.g.*, HHS Office of Inspector General, Advisory Opinion 13-09 (July 23, 2013) (advising that an arrangement where a GPO would grant remuneration to members in exchange for them agreeing to five-to-seven year contract extensions of their GPO agreements "would not meet any safe harbor to the anti-kickback statute" and has a high "risk of fraud and abuse").

Exchange allowed the Member Owners to exchange their remaining Class B units, which were not publicly tradable and which were subject to other restrictions set forth in the Exchange Agreement, for freely-tradeable Class A shares. In the January 23 meeting, DeVore also stated that as part of the Final Unit Exchange, the Member Owners "would agree to a 'standstill provision' that allows for sale of Class A shares over time in order to provide orderly process and reduce stock overhang implications." DeVore proposed imposing a restriction allowing the Member Owners to sell only up to "20% [of equity] per year" following the Final Unit Exchange. As discussed below, this restriction was later removed at the request of the Member Owners, thereby giving the Member Owners full, immediate liquidity for their remaining equity interests in the Company.

108. As with prior exchanges of Class B units for Class A shares, the Class B units exchanged in the Final Unit Exchange created DTAs that were subject to the TRA. As with prior exchanges, these DTAs could be used by the Company over a minimum of 15 years from the date of the Final Unit Exchange, and TRA payments would only be required as the Company was able to use these DTAs over this 15 plus year period. In other words, the Final Unit Exchange was no different than all other exchanges that had occurred since the IPO in 2013, which only obligated the

Company to pay the Member Owners 85% of the value of DTAs if and when those DTAs created cash tax savings for the Company.

109. At the conclusion of the January 23 meeting, DeVore requested that the Board authorize management to present the proposed TRA Payout to "certain significant [Member Owners]," and to "make a presentation of those concepts at the Board Advisory Council meeting scheduled for early February." The Board, including the directors affiliated with Member Owners, approved.

The Board Belatedly Forms an Unempowered and Ineffective Special Committee

110. It was only in this January 23 meeting, after the Board had decided to discard all other options and pursue the TRA Payout, that they decided to create the *ad hoc* Special Committee to consider the proposed transaction because of "the actual and potential conflicts of interest and related party risks presented by the" TRA Payout. Members of the Special Committee had historical and ongoing financial and professional ties to the Member Owners. The Special Committee was also not fully empowered. The Board neutered the effectiveness of the committee by limiting its authority to "recommend" a decision with the final authority resting with the majority-conflicted full Board.

111. Although the Special Committee was created on January 23, 2020, it did not hold a meeting until April 20, 2020 – *i.e.*, nearly three months later.

112. In the interim, DeVore and Alkire led another Board meeting, which included directors affiliated with the Member Owners who would receive the TRA Payout where they "provided an update on the status of meetings" with Member Owners regarding the conflicted transaction. DeVore, Alkire, and a number of conflicted directors also held a meeting with the Board Advisory Council, consisting of a number of the Member Owners who would receive the TRA Payout, to discuss the conflicted transaction.

The Board Negotiates a TRA Payment with Greater New York Hospital on Vastly Different Terms than the TRA Payout

113. On February 4, 2020, at the same time the Board and management were considering the TRA Payout, the Company announced that it had separately negotiated a TRA payout with one large Member Owner, Greater New York Hospital, in conjunction with Greater New York Hospital selling certain assets to the Company and liquidating its interest in the Company. In the Greater New York Hospital TRA payout, Premier agreed to pay "the estimated discounted present value of the expected Tax Receivable Agreement" payments to Greater New York Hospital "using a discount rate of 10% per annum."[27] In other words, the Company engaged in an arm's-length negotiation with Greater New York Hospital, which resulted in a TRA

[27] Asset Purchase Agreement (Feb. 3, 2020).

payout using a 10% discount rate. As explained below, the challenged TRA Payout to the other Member Owners used a discount rate of slightly over 1%, thereby doubling the amount of the TRA Payout relative to a calculation using a 10% discount rate.

114. In considering the Greater New York Hospital TRA payout, the Board, the Conflict Advisory Committee of the Board (including no current Member Owner directors), and the Member Agreement Review Committee of the Board (including no current Member Owner directors), "each received a fairness opinion from their respective financial advisors stating that the transaction was fair, from a financial point of view, to Premier," and each "determined that the transaction had a 'fair process' and 'fair price.'"[28] While the Board and Conflict Advisory Committee received fairness opinions with respect to this arm's-length TRA payout, the Board and Special Committee never sought, and never received, a fairness opinion from their advisors for the TRA Payout to the other Member Owners.

The Member Owners Continue to Influence the TRA Payout Negotiations

115. On February 6, 2020, management, led by DeVore and Alkire, held a meeting with the Board Advisory Council. At this meeting, management and Shaw presented the Company's proposal to representatives of 19 of the Member Owners, including 6 of the members of the Board who worked for a Member Owner. The

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[28] *See* Premier, Inc., Form 8-K (Feb. 4, 2020).

purpose of this meeting was to "[d]iscuss structural options and gain feedback," "[r]eview economic impacts to [Member Owners] and Premier," and to "[d]iscuss [Member Owner] requirements." Management's presentation reiterated that "[m]ost importantly, this group largely determines our future direction!" Management listed the "Key Benefits" of the TRA Payout and Final Unit Exchange as "[m]ember owners receive benefit of accelerated TRA payments without a change of control" and "members hold tradable public company stock rather than illiquid Class B units." The only potential downside to the Member Owners of the proposal was that they would be "limited to selling not more than 20% of Class A shares per year," which "[r]educes uncertainty regarding Class B units exchanges and new shares flooding the market." As noted below, this restriction was subsequently removed by management at the request of the Member Owners.

116. On March 20, 2020, the full Board, including the members of the Board affiliated with the Member Owners, again met to discuss the TRA Payout. Even though the Special Committee had not yet held a meeting, management presented to the full Board on their progress in negotiating the terms of Project Bridge with Member Owners, explaining that "definitive agreements [are] being finalized" including the "Tax Receivable Acceleration Agreement." Management explained that they had already held 24 meetings with Member Owners regarding the TRA Payout.

Following these meetings, Premier management had sent a letter of intent ("LOI") to the Member Owners seeking their agreement to these material terms. As of March 20, 2020, 4 of the 47 LOIs had already been signed.

The Special Committee Finally Meets

117. On April 20, 2020, the Special Committee held its first meeting to discuss Project Bridge and the TRA Payout. In January, the Board had authorized the Special Committee to hire its own independent advisors. Instead, on March 19, 2020, before it had ever held a meeting, the Special Committee chose the same bankers and lawyers from BofA and Cravath that DeVore, Alkire, and the full Board had already been working with for months in developing the TRA Payout. Although BofA and Cravath had previously developed and recommended different strategic options, BofA and Cravath quickly pivoted once DeVore, Alkire, and the Board decided to pursue the TRA Payout. Raj Bhatia from BofA, who was the Special Committee's lead financial advisor, had a longstanding relationship with management and the majority-conflicted Board.

118. The Special Committee's engagement agreement with BofA from March 19, 2020 agreed to pay BofA, in addition to any compensation for their work for the Board, $500,000 to start plus $500,000 per month, and in no case less than $2,000,000. This agreement noted that BofA "will use and rely upon the information

furnished to BofA Securities ... and BofA Securities does not assume responsibility for independent verification of any information ... relating to the Company, the Special Committee, any Transaction or a potential counterparty, including, without limitation, any financial information, forecasts or projections ...." The agreement disclaimed any advice on whether the transaction was fair to the Company and bizarrely advised the Special Committee to consult with its own advisors: "the Special Committee and the Company shall consult with its own advisors concerning the advisability of any Transaction and shall be responsible for making its own independent investigation and appraisal of any Transaction."

119. The April 20, 2020 presentation from BofA to the Special Committee explained that the TRA "[a]cceleration should be viewed as a positive event by" Member Owners both: (i) because it "will accelerate TRA payment and provide 'front-loaded' cash proceeds to participating member owners over next 18 quarters vs. next 15+ years," "which benefits members"; and (ii) "because the contractually specified discount rate" of 1.15% was "meaningfully lower than Premier's or any member owner's cost of capital (*i.e.*, greater than 6%)."

120. BofA's presentation showed that if the Company did not make the accelerated TRA Payout, it would be expected to make TRA payments of only $14 million in 2021, $19 million in 2022, $21 million in 2023, $22 million in 2024, and

$23 million in 2025, for a total of $99 million, in each case contingent on the Company having sufficient taxable income to be able to use the DTAs. By contrast, the presentation showed that the required TRA payments under the TRA Payout, regardless of the Company's performance, would be $51 million in 2021, $102 million in 2022, $102 million in 2023, $102 million in 2024, and $102 million in 2025, for a total of $459 million.

121. BofA noted that the proposed TRA Payout eliminated any downside risk of the TRA to the Member Owners because "[a]cceleration payment assumes utilization of all tax benefits generated, not subject to sufficient Premier pre-tax earnings limitations throughout the 15-year time period" and "[q]uantum of benefit determined based on share price at closing, thereby eliminating downside risk to value of TRA" to the Member Owners.

122. BofA discussed what the "TRA Discount Rate" would be "[i]f TRA were [n]egotiated." According to BofA, one "defensible" discount rate would be Premier's 6% Weighted Average Cost of Capital, which is the rate Premier would use "[i]f evaluating the TRA as any other investment." Using the Company's weighted average cost of capital ("WACC") as the discount rate would value the TRA at $320 million. As another alternative, BofA proposed an 8-10% discount rate, which they said would be more in line with "how much member owners, who are potentially

more cash-strapped, would value the accelerated payments." According to BofA, a 10% discount rate would put the TRA value at $249 million, or nearly half of the $473.5 million TRA Payout calculated using a 1.15% discount rate. BofA described the discount rate of 1.15% that DeVore and Alkire proposed, and that the Board ultimately decided to use to calculate the TRA Payout, as "favorable to member owners." BofA's ultimate conclusion was that the "TRA acceleration is a 'give'" from the Company to the Member Owners at a 1.15% discount rate and that because of this, "[c]areful [m]essaging to [i]nvestors [w]ill [b]e [i]mportant."

123. The Special Committee and Board knew that 10% was a market discount rate because just over two months earlier, they had applied a 10% discount rate to the exact same TRA assets in their own arm's-length negotiation with Greater New York Hospital, for which they had received a fairness opinion. The Special Committee and Board nonetheless disregarded the most comparable precedent transaction. The Special Committee allowed management to move forward with meetings with Member Owners based on DeVore's and Alkire's proposal to apply a 1.15% discount rate to the TRA Payout for the Member Owners. The Special Committee and the Board never asked their advisors for, and never received, a fairness opinion respecting the TRA Payout or any other aspect of Project Bridge.

Management Unilaterally Makes Concessions to the Member Owners

124. On April 24, 2020, the Board held another meeting to discuss the transaction with all directors present, including directors affiliated with the Member Owners that would receive the TRA Payout. Although the Special Committee held its first meeting just a few days before, Premier management reported to the Board that management had already held "51 meetings" with Member Owners representing "63% of Member Owner gross administrative fees" and noted that there was "strong support" for Project Bridge. Management reported that 10 of the 47 LOIs had already been signed.

125. In this April 24, 2020 meeting, management reported that they had unilaterally decided, without consulting the Board or Special Committee, to remove the restriction on the Member Owners' ability to sell the new Class A shares the Member Owners would receive as part of the Final Unit Exchange. Doing so meant that the primary benefit of the Final Unit Exchange and TRA Payout to the Class A stockholders, which according to management and the Board's advisors was to avoid "new shares flooding the market," was removed. Management also noted that the "TRA Acceleration is welcomed" by the Member Owners because it is "in-line with [their] needs."

126. On May 28, 2020, the Board held another meeting to discuss the transaction with all Board members present, including directors affiliated with the Member Owners who would receive the TRA Payout. The Board colluded with DeVore and Alkire to disguise the negative financial impact of Project Bridge from the public. DeVore and Alkire discussed the fact that Project Bridge would have a negative impact on the Company's performance and would cause its earnings to come in below management's previous public guidance. DeVore and Alkire proposed using COVID-19 as an excuse to suspend earnings guidance in order to hide the negative financial impact of Project Bridge on the Company from the public:

> Project Bridge will have a negative impact on Fiscal 2021 results relative to Fiscal 2020, and a subsequent reduction of guidance with the Project Bridge announcement would likely damage management's credibility and reputation. One way to mitigate this potential negative impact would be to suspend annual guidance or switch to quarterly guidance due to the uncertainty created by COVID-19.

Sure enough, shortly after the TRA Payout was announced, the Company hid behind the pandemic to mask the financial effects of the TRA Payout and other aspects of Project Bridge: "Due to the continued uncertainty caused by the Covid-19 pandemic, Premier is currently unable to accurately estimate the effect of the pandemic on its

business in fiscal year 2021. Therefore, the company is not establishing fiscal 2021 annual guidance at this time."[29]

127. On June 18, 2020, the Board Advisory Council met again. DeVore and Alkire provided an update on the TRA Payout. DeVore and Alkire told the Member Owners that based on "feedback from the February [Board Advisory Council] meeting and additional member discussions," they had "[r]emoved the resale limitation that would have required a one year holding period and 20% limitation on sale of stock as originally considered." DeVore and Alkire notified the Member Owners that their shares would "be freely tradeable shortly after execution of the restructuring with no extended holding period."

128. On July 20, 2020, the Board met again. All members of the Board, including the members of the Board affiliated with the Member Owners who would receive the TRA Payout, attended. Although the Special Committee had only met once and was purportedly still negotiating the TRA Payout and other aspects of Project Bridge, management, led by DeVore and Alkire, notified the full Board that "member owners are supportive of the" transaction and that "[t]o date, owners representing 63% of gross administrative fees have executed restructure agreements." The Board also discussed management's "communications strategy" to publicly

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[29] Premier, Inc., Form 8-K, Exhibit 99.1 at 3 (Aug. 25, 2020).

announce Project Bridge, for which management received input from BofA. This communications strategy included no mention of the TRA Payout.

The Special Committee Rubber Stamps the TRA Payout

129. On July 20, 2020, immediately following the meeting of the entire Board, the Special Committee held a meeting. This was only the Special Committee's second meeting, and its first since April 20, during which time management had already "met with all of the top 50" Member Owners and had received signed "TRA acceleration and unit exchange agreements" from a majority of them. BofA provided an updated presentation to the Special Committee. This presentation provided an update on "[f]eedback from member [owners]," including that the "TRA acceleration payment is helpful to member cash flows in light of current environment." The TRA acceleration payment, on the other hand, was harmful to Premier at a time of significant uncertainty within the Company. The Company's own earnings releases around the time the TRA Payout was announced stated that "'our business performance in the fourth quarter was significantly impacted by lower overall utilization of healthcare-related products.'"[30] DeVore publicly stated that "we do expect continued pressure from the pandemic on our business, but it's difficult to predict exactly how much and

[30] Premier, Inc., Form 8-K, Exhibit 99.1 at 1 (Aug. 25, 2020).

for what duration of time.... There are many variables at play here that make accurate and reliable forecasting extremely difficult in this unprecedented environment."

130. On August 4, 2020, the Special Committee met for a third and final time, with DeVore and Alkire attending. Cravath, BofA, and DeVore presented. The presentation noted that "Premier management has largely concluded its Project Bridge discussions and negotiations with a vast majority of its member owners" and that Member Owners "representing 89% of gross admin fees have executed Unit Exchange and TRA Acceleration Agreements." BofA advised the Special Committee that "from a Member Owner's [p]erspective," the TRA Payout "is a [p]ositive [e]vent as [i]t [a]llows for [a]cceleration of TRA [c]ash [f]lows to Member Owners." BofA and DeVore could not articulate any benefit to the public Class A stockholders other than that it "[s]implifies corporate structure and eliminates the Class B units." The benefits to the Member Owners, on the other hand, were far more tangible: (i) "Accelerated TRA payout – 15+ years of payments streams to be paid within 18 quarters"; (ii) "Amends long-term GPO contracts at enhanced fee share"; and (iii) "Conversion of Class B units into more liquid Class A common shares."

131. On August 5, 2020, the Special Committee adopted resolutions stating that it had discussed the TRA Payout with DeVore and Alkire and claiming that it found "the TRA Termination ... to be fair and in the best interest of Premier and its

stockholders, including its disinterested stockholders" and recommending "that the Board approve the TRA Termination." The Special Committee never provided any justification for why it believed "the TRA Termination ... to be fair," and indeed, the Special Committee could not provide any justification because it knew that the TRA Payout was unfair to the public stockholders and was a windfall to the Member Owners. Among other things, the Special Committee was aware from the February 2020 Greater New York Hospital TRA payout that an appropriate, arm's-length discount rate for a TRA payout was 10% and that using a discount rate of slightly greater than 1% for the TRA Payout instead of an arm's-length discount rate of 10% resulted in the Company overpaying the Members Owners by approximately $225 million. The Special Committee also knew that it had not obtained, and in fact, could not obtain a fairness opinion for the TRA Payout, despite the fact that the Company and its conflicts committee had obtained fairness opinions for the Greater New York Hospital TRA payout only months earlier.

The Full Board Approves the TRA Payout

132. On August 5, 2020, the full Board, including the directors affiliated with Member Owners who would receive the TRA Payout, met to formally approve the TRA Payout. Cravath and BofA, in their dual roles as advisors to the Special Committee and the full Board, made the same presentation to the Board that they

made the previous day to the Special Committee. Lawyers from Cravath also gave the full Board legal advice on "the Board's standard of review with respect to the restructuring and the reasons for the establishment of the Special Committee." BofA summarized the final terms for Project Bridge, which included the Final Unit Exchange with no standstill restrictions, $474 million in accelerated TRA payments that will occur on a quarterly basis over 18 quarters, and the extension of GPO agreements for 5-7 years with fee share provisions that are substantially more lucrative to Member Owners. BofA and Cravath informed the Board that management had agreed to "restructuring contracts" to effectuate Project Bridge with Member Owners "representing at least 96% of the total member owner gross administrative fees," and that management expected additional contract commitments to be received by August 10, 2020. The Board did not request or receive a fairness opinion from BofA in connection with any aspect of the TRA Payout or Project Bridge.

133. DeVore and other members of Premier management then presented to the Board. They told the Board that one measure "[a]dopted to [e]nsure [p]rotection of [s]tockholder [i]nterest" was "[v]igorous negotiation of deal terms with member owners." There is no evidence that the Board ever engaged in any negotiation with respect to the TRA Payout, much less "vigorous negotiation." DeVore, Alkire, and

the majority-conflicted Board developed the TRA Payout proposal, they solely determined that the TRA Payout would be calculated using a 1.15% discount rate, and they assumed that all future tax benefits would be realized as soon as possible. They never deviated from this proposal, and never made any attempt to negotiate the TRA Payout even though they were aware that it was unfair to the Company and resulted in a vast overpayment to the Member Owners.

134. The Board again discussed its "communication plan" developed with BofA to announce Project Bridge, which intentionally avoided any mention of the TRA Payout.

135. At the conclusion of the meeting, the Board, including the directors affiliated with the Member Owners who would receive the TRA Payout, adopted resolutions finding "the TRA Termination and the execution of the Unit Exchange Agreements to be fair and in the best interest of Premier and its stockholders, including its disinterested stockholders" and "authorized, ratified, approved and adopted" the Final Unit Exchange and the accelerated TRA Payout. As with the Special Committee, the Board never provided any basis for its claim that the TRA Payout was "fair and in the best interest of Premier." In fact, like the Special Committee, the Board knew the TRA Payout was unfair to the public stockholders and a windfall to the Member Owners, including based on the Board's knowledge of the

terms of the February 2020 Greater New York Hospital TRA payout and the Board's inability to obtain a fairness opinion for the TRA Payout.

136. On August 11, 2020, the Company announced the TRA Payout, GPO agreement renegotiation, and Final Unit Exchange. The accompanying press release noted "that members representing more than 99% of its member-owner gross administrative fees agreed to the corporate restructuring and termination of the TRA," which was unsurprising given how favorable the terms were to the Member Owners. The press release also claimed that "[t]he termination of the TRA ... is expected to enhance Premier's financial and balance sheet flexibility." DeVore, Alkire, the Board, and their advisors had never made this claim in internal Company documents and they knew it was a lie. In reality, because of the TRA Payout Premier's "overall cash flow and discretionary funds will be reduced, which may limit [Premier's] ability to execute [its] business strategies."[31]

137. The TRA Payout had an immediate and severe negative impact on the Company. The Company announced that free cash flow in the last six months of 2020 "was $37.1 million, compared with $127.9 million for the same period a year ago," and that the decrease was largely driven by "an increase in Tax Receivable Agreement

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31 Premier, Inc., Form 8-K, Exhibit 99.3 at 23 (Aug. 11, 2020).

payments, made as a result of the acceleration of payments to former limited partners of Premier LP as part of the company's restructure."[32]

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

138. Plaintiff incorporates by reference and realleges each and every allegation set forth herein.

139. Plaintiff brings this action derivatively on behalf of Premier to redress injuries suffered, and to be suffered, by Premier as a direct result of Defendants' breaches of fiduciary duty. Premier is named as a nominal defendant solely in a derivative capacity.

140. Plaintiff will adequately and fairly represent the interests of Premier in enforcing and prosecuting its rights. Plaintiff is and was an owner of Premier stock at all times relevant to the wrongful course of conduct alleged herein, and remains a stockholder of the Company.

141. Plaintiff has not made a demand on the present Board to institute this action because such a demand would have been a futile, wasteful, and useless act. As of the filing of this complaint, the Premier Board consisted of ten members: Defendants Alkire, Bigalke, Boudreau, Davids, Fine, Miller, O'Quinn, Shaw, Statuto, and Wolf. Five of the directors were dual fiduciaries interested in the TRA Payout

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[32] Premier, Inc., Form 8-K, Exhibit 99.2 at 7 (Feb. 2, 2021).

and a sixth director is not independent and disinterested due to his long-term relationship with a TRA Payout recipient. All of the directors face a significant likelihood of liability because all were involved in the TRA Payout and knew that it was highly unfair to the Company and its public stockholders.

Bigalke, Fine, Miller, O'Quinn, Shaw, and Statuto Were Not Disinterested in the TRA Payout

142. Each of these Defendants were senior officers and/or directors at companies that were Member Owners and beneficiaries of the TRA Payout.

143. Bigalke is a member of the Board of Directors of AdventHealth, one of Premier's Member Owners, along with Shaw and DeVore. At the time the Board approved the TRA Payout, AdventHealth was a Member Owner and held (along with its subsidiaries) approximately [redacted] Class B shares. AdventHealth is entitled to approximately [redacted] from the TRA Payout.

144. Fine has been the CEO and a member of the board of directors of Banner Health, one of Premier's Member Owners, since November 2000. At the time the Board approved the TRA Payout, Banner Health held approximately [redacted] Class B shares. Banner Health is entitled to approximately [redacted] from the TRA Payout.

145. Miller has served as CEO of UHS, one of Premier's Member Owners, since January 2021, and he previously held the position of President since 2009.

Miller has also been a member of the UHS board of directors since 2006 and serves on its Executive and Finance Committees. At the time the Board approved the TRA Payout, UHS was a Member Owner and held approximately [redacted] Class B shares. UHS is entitled to approximately [redacted] from the TRA Payout.

146. O'Quinn has been the Senior Executive Vice President and COO of Dignity Health, one of Premier's Member Owners, since 2009, and he has been the COO and President of CommonSpirit Health since 2019.[33] At the time the Board approved the TRA Payout, Dignity Health was a Member Owner of Premier LP and held approximately [redacted] Class B shares. Dignity Health is entitled to approximately [redacted] from the TRA Payout.

147. Shaw has been the CEO of AdventHealth (f/k/a Adventist Health System), one of Premier's Member Owners, since 2017. Bigalke is a member of the AdventHealth board of directors. At the time the Board approved the TRA Payout, AdventHealth was a Member Owner and held (along with its subsidiaries) approximately [redacted] Class B shares. AdventHealth is entitled to approximately [redacted] from the TRA Payout.

148. Statuto was President and CEO of Bon Secours Health System, one of Premier's Member Owners, from 2005 to September 2018, was an advisor to the

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[33] CommonSpirit Health is the sole corporate member of Dignity Health.

Company until August 2019, and continues to have a deep relationship with Bon Secours Mercy Health. At the time the Board approved the TRA Payout, Bon Secours Health System was a Member Owner of Premier LP and held approximately [redacted] Class B shares. Bon Secours Health System is entitled to approximately [redacted] from the TRA Payout.

149. Bigalke, Fine, Miller, O'Quinn, and Shaw are each dual fiduciaries who stood on both sides of Project Bridge as fiduciaries for Member Owners that received financial benefits from the TRA Payout. Further, Statuto was not disinterested and independent due to having divided loyalties given his long-term, deep relationship with Bon Secours Health System, which is receiving unfair benefits from the TRA Payout.

150. Bigalke, Fine, Miller, O'Quinn, Shaw, and Statuto were each members of the Board Advisory Council, along with several other Member Owners, which was co-chaired by Bieber, Downey, and Incarnati. The Board Advisory Council was charged with making "recommendations regarding Premier's corporate strategic alternatives, initiatives and goals." The Board Advisory Committee consisted of the "most strategic and engaged member owners who ha[d] retained [a] significant portion of Class B units" and who "[s]hare our strategic direction and future acquisition plans." As far as Premier was concerned, the Board Advisory Committee "determines our

future direction!" Bigalke, Fine, Miller, O'Quinn, Shaw, and Statuto each authorized Premier management to engage in Project Bridge negotiations and voted to approve the TRA Payout.

151. Bigalke, Fine, Miller, O'Quinn, Shaw, and Statuto are interested in the outcome of this litigation and any demand upon them is excused as futile.

Alkire Is Not Independent

152. Alkire is not independent due to his position as President and CEO of Premier. Alkire received significant compensation from the Company of more than $9.4 million while he was actively pursuing the TRA Payout on behalf of the Member Owners. In addition, the Board – which is dominated by dual fiduciaries who face a substantial likelihood of liability here – promoted Alkire to CEO shortly after the TRA Payout was approved, and his compensation substantially increased from a base salary of $863,992 in 2020 to $1,000,000 in 2021, with a target bonus equal to 150% of his base salary, and an equity target of 425% of his base salary. The Board's Compensation Committee, which determines Alkire's compensation, is composed of Miller, who is CEO of a Member Owner who received a TRA Payout, O'Quinn, who is COO of a Member Owner who received a TRA Payout, Statuto, who recently retired as CEO of a Member Owner who received a TRA Payout, and Boudreau.

Defendants Face a Substantial Likelihood of Liability

153. Demand is futile as to each of the directors who approved the Transaction – Bigalke, Boudreau, Davids, Fine, Miller, O'Quinn, Shaw, Statuto, and Wolf – because they each face a substantial likelihood of liability. These directors caused Premier to pursue and approve the TRA Payout on terms that they knew were harmful to the Company. Each of these directors knew that the valuation of the TRA Payout did not reflect arm's-length bargaining and was based on terms that improperly inflated the TRA Payout by hundreds of millions of dollars.

154. Each of these Premier directors ignored information from BofA that the TRA Payout was a substantial overpayment compared to what it would have been in a "negotiated" transaction. They allowed the TRA Payout to be calculated based on a 1.15% discount rate while knowing that the discount rate that would apply in a negotiated transaction would be far higher. Each director was aware of the contemporaneous Greater New York Hospital TRA payout for one Member Owner who was selling their equity interest in the Company. In the Greater New York Hospital TRA payout, which was negotiated in an arm's-length transaction, the Board and the members of the Special Committee agreed to use a 10% discount rate and each received fairness opinions from their financial advisors stating that it resulted in

a "fair price" and "fair process" to the Company.[34] By allowing a 1.15% discount rate to be used to calculate the TRA Payout, each director knowingly caused hundreds of millions of dollars in additional consideration to be paid to the Member Owners.

155. Additionally, Fine, Miller, and O'Quinn served on the Finance Committee during 2019 and 2020. According to the Finance Committee Charter, the "purpose of the Committee is to assist the Board in its oversight of the Company's financial condition, strategies and capital structure." In turn, the Finance Committee Charter renders these directors responsible to, among other things: "[a]ssist the Board in providing oversight of the financial affairs of Premier"; [r]eview, recommend the Board approve and monitor significant mergers, acquisitions, divestitures, joint ventures, minority investments, and other debt and equity investments involving the Company"; "[r]eview and recommend the Board approve management's recommendations to the Committee with respect to new offerings of equity and debt

[34] *See* Premier, Inc., Form 8-K (Feb. 4, 2020) ("As part of the transaction, Premier's Board of Directors (the "Board"), the Conflict Advisory Committee of the Board (acting through only its independent director members) (the "CAC") and the Member Agreement Review Committee of the Board (acting through only its independent director members) (the "MARC"), each received a fairness opinion from their respective financial advisors stating that the transaction was fair, from a financial point of view, to Premier. In addition, the independent directors on each of the CAC and MARC reviewed and determined that the transaction had a 'fair process' and 'fair price,' respectively."); Premier, Inc., Asset Purchase Agreement (Feb. 3, 2020) (definition of "New Present Value").

securities"; and "[r]eview and recommend the Board approve management's recommendations to the Committee regarding dividends issued by Premier and distributions by Premier Healthcare Alliance, L.P."

156. Therefore, Fine, Miller, and O'Quinn were duty-bound to have regularly and thoroughly evaluated Premier's TRA liability and the value of DTAs. For example, the Finance Committee members were required to examine the Company's financial structure, including the impact that any TRA payments and strategic transactions, such as the TRA Payout, would have on Premier. Fine, Miller, and O'Quinn knew that, among other things, using a discount rate of only 1.15% to determine the present value of future TRA payments based on the formula set by the Member Owners themselves inappropriately benefitted the Member Owners. During the same time the TRA Payout was being contemplated, Fine, Miller, and O'Quinn were each involved in the Greater New York Hospital TRA payout, which used a 10% discount rate. They also knew that Premier's actual cost of capital was 6.0%. Accordingly, they each knew that the TRA Payout resulted in an enormous overpayment and windfall to the Member Owners.

157. Additionally, Bigalke, Davids, and Wolf served on the Audit and Compliance Committee during 2019 and 2020. Pursuant to the Audit and Compliance Committee's charter, these directors were and are responsible for, among other things:

"[r]eview[ing] and discuss[ing] with management and the independent auditors the annual audited financial statements and other related disclosure prior to filing the Company's Annual Report on Form 10-K"; "[r]eview[ing] and approv[ing], in accordance with the Company's Code of Conduct, all 'related party transactions' requiring disclosure under SEC Regulation S-K, Item 404"; and "[r]eview[ing] with the Company's General Counsel and independent auditors (i) legal matters that may have a material impact on the Company's financial statements." Bigalke, Davids, and Wolf's Audit and Compliance Committee duties required them to regularly and thoroughly evaluate Premier's TRA liability and the value of the DTAs.

158. Additionally, demand is futile as to Alkire because he faces a substantial likelihood of liability for his actions in facilitating the unfair TRA Payout in his role as the Company's then-President. As described herein, Alkire attended each Board meeting relating to the TRA Payout, presented to the Board, the Special Committee, and the Board Advisory Council in support of the TRA Payout, and regularly communicated with Members Owners to orchestrate the TRA Payout on terms that benefitted the Member Owners and harmed the Company.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duty Against DeVore and Alkire

159. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

160. DeVore and Alkire owed fiduciary duties of care, loyalty, and good faith to the Company and Premier stockholders by virtue of their positions as Premier's CEO and President, respectively. These duties required them to act reasonably and to place the interests of Premier and its stockholders above their own interests and those of any Premier director or Member Owner. As officers, 8 *Del. C.* §102(b)(7) does not apply to them.

161. DeVore and Alkire breached their fiduciary duties of loyalty, care, and good faith by orchestrating the TRA Payout on terms that they knew were harmful to the Company and the Class A stockholders and by providing materially false, misleading, and incomplete information to the Class A stockholders. They did so for self-interested reasons, due to lack of independence, and/or in bad faith.

162. By engaging in the acts, practices, and course of conduct described herein, DeVore and Alkire failed to faithfully adhere to their fiduciary obligations to Premier and its stockholders.

163. As a result of DeVore's and Alkire's actions, Premier was harmed in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Breach of Fiduciary Duty Against All Defendants

164. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

165. By virtue of their positions as directors of Premier, Defendants owe fiduciary duties of care, loyalty, and good faith to the Company and Premier stockholders. These duties required them to place the interests of Premier and its stockholders above their own interests and those of other directors of Premier and the Member Owners.

166. As described herein, Defendants breached their fiduciary duties and continue to breach their duties. Defendants breached their fiduciary duties of loyalty by approving the TRA Payout and knowingly causing Premier to make a substantial overpayment to the Member Owners in exchange for their interests in the TRA for self-interested reasons, due to lack of independence, and/or in bad faith.

167. By engaging in the acts, practices, and course of conduct described herein, Defendants failed to faithfully adhere to their fiduciary obligations to Premier and its stockholders.

168. As a result of Defendants actions, Premier was harmed in an amount to be proven at trial.

THIRD CAUSE OF ACTION

Corporate Waste Against All Defendants

169. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

170. Defendants owed Premier the obligation not to waste corporate assets.

171. The TRA Payout so disproportionately favored the Member Owners that it could not have been based on a valid assessment of Premier's best interests. Rather, Defendants pursued and approved the TRA Payout to advance the interests of the Member Owners or in bad faith.

172. The TRA Payout was so one-sided that no business person of ordinary, sound judgment could conclude that Premier received adequate consideration.

173. As a result of Defendants' actions, Premier was harmed in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendants:

A. Declaring that Defendants breached their fiduciary duties as Premier directors and/or officers in approving the TRA Payout;

B. Awarding monetary damages, together with pre- and post-judgment interest;

C. Awarding Premier restitution from Defendants, and each of them, including ordering disgorgement of all profits, benefits, and other compensation obtained by Defendants;

D. Ordering equitable relief to prevent future unfair payments to the Member Owners pursuant to the TRA Payout;

E. Directing Premier to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Premier and its stockholders from a repeat of the damaging events described herein;

F. Awarding the costs, expenses, and disbursements incurred in this Action, including experts' and attorneys' fees; and

G. Awarding such other relief as the Court deems just and proper.

FRIEDLANDER & GORRIS, P.A.

/s/ Jeffrey M. Gorris

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