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14 **UNITED STATES BANKRUPTCY COURT**
15 **EASTERN DISTRICT OF WASHINGTON**

16 In re:
17 ASTRIA HEALTH, *et al.*,¹

18 Debtors and Debtors
19 In Possession.

20 Chapter 11
21 Lead Case No. 19-01189-11
22 Jointly Administered

23 **LIMITED OBJECTION OF**
24 **PREMIER, INC. AND ITS**
25 **SUBSIDIARIES TO**
26 **CONFIRMATION OF**
DEBTORS' SECOND
AMENDED JOINT CHAPTER
11 PLAN OF
REORGANIZATION

[ECF Nos. 1986, 2003]

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (91-01197-11), Sunnyside Home Health d/b/a Astria Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11) and Yakima HMA Home Health, LLC (19-01200-11).

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LIMITED OBJECTION OF PREMIER, INC.
AND ITS SUBSIDIARIES TO
CONFIRMATION OF DEBTORS' PLAN - 1



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1 Premier, Inc. (with its consolidated subsidiaries, including Premier
2 Healthcare Solutions, Inc. (“PHSI”) and Healthcare Insights, LLC (“Healthcare
3 Insights”), collectively, “Premier”) hereby asserts this limited objection (the
4 “Objection”) to confirmation of the *Second Amended Joint Chapter 11 Plan of*
5 *Reorganization of Astria Health and its Debtor Affiliates* [ECF No. 1986, 2003
6 (with proposed amendments)] (the “Plan”).

7 **BACKGROUND**

8 As Premier has set forth previously before this Court, Premier (primarily
9 through PHSI and Healthcare Insights) provides critical information technology
10 and related healthcare improvement products and services. Premier provides and
11 has provided these products and services, and access thereto, to certain of the
12 debtors and debtors in possession in the above-captioned chapter 11 bankruptcy
13 cases (collectively, the “Debtors”) pursuant to a number of prepetition executory
14 contracts (the “Premier Agreements”), primarily enterprise agreements, as more
15 particularly listed out on Exhibit A hereto. Under the Premier Agreements,
16 Premier also makes available licenses to use Premier intellectual property, as well
17 as other products, services and benefits, to the Debtors on an enterprise basis.

18 As of the Debtors’ May 6, 2019 filing and commencement of the above-
19 referenced bankruptcy cases (the “Petition Date”), Premier (with its consolidated
20 subsidiaries, including PHSI and Healthcare Insights, LLC) held pre-petition
21 claims against the Debtors’ estates in relation to the Premier Agreements of no
22 less than \$236,408.70. Premier has timely filed proofs of claim in relation to such
23 pre-petition claims, and has submitted a ballot to reject the Debtors’ Plan in
24 connection with such claims.²

25 _____
26 ² If the Debtors do reject any or all of the Premier Agreements in connection with the Plan or
otherwise, Premier's rejection and other claims are likely to be greatly in excess of the amount
originally proposed in Premier's initial proofs of claim. Accordingly, Premier reserves any and

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LIMITED OBJECTION OF PREMIER, INC.
AND ITS SUBSIDIARIES TO
CONFIRMATION OF DEBTORS' PLAN - 2

1 As this Court is aware, these many months following the Petition Date, the
2 Debtors have filed their Plan, which the Debtors now seek to confirm. The Plan
3 provides for the rejection of all Executory Contracts (as such term is defined in
4 the Plan) that are not otherwise (i) assumed by order of the Court, (ii) subject to a
5 motion to assume pending on the Effective Date or (iii) identified on a list of to-
6 be-assumed contracts that was filed with this Court [ECF No. 2043]. See Plan at
7 Section IV.B.1. Rejection of such Executory Contracts, under the Plan, is to occur
8 “[i]mmediately prior to the Effective Date”. *Id.* (also noting that the
9 “Confirmation Order will constitute a Court order approving such rejections of
10 Executory Contracts as of the Effective Date”). The Effective Date is also defined
11 in the Plan as the date upon which the conditions set forth in the Plan have been
12 satisfied or waived. See Plan at Section I.A.1.64.

13 On November 24, 2020, Premier received a notice from the Debtors (the
14 “November 24th Letter”) stating that the Debtors intend to seek to reject the
15 Premier Agreements pursuant to the rejection provisions of the Plan. A copy of
16 the November 24th Letter is attached as Exhibit A to the Declaration of Joseph
17 Hamell. However, the November 24th Letter also states that the Debtors propose
18 to reject the Premier Agreements as of August 27, 2020, a date that is several
19 months prior to the date of the letter. Because the Plan clearly states that rejection
20 of Executory Contracts, such as the Premier Agreements, can only occur as of the
21 Effective Date, which has not yet occurred, and because the Debtors appear to
22 want to bypass or alter the very rejection provisions they have proposed and this
23 Court’s oversight of same – Premier is hereby filing this limited Objection to
24 confirmation of the Plan.

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26 all rights to amend or modify such proofs of claim and to assert additional or other claims,
including any and all administrative claims, as they become known to Premier.

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LIMITED OBJECTION OF PREMIER, INC.
AND ITS SUBSIDIARIES TO
CONFIRMATION OF DEBTORS' PLAN - 3

1 **LIMITED OBJECTION**

2 **A. Undisclosed “Changes” to the Plan Terms are Impermissible**

3 The Debtors have proposed the terms of the Plan, and as they relate to the
4 rejection of Executory Contracts (including any of the Premier Agreements, to the
5 extent they are deemed Executory Contracts), the terms of the Plan compel
6 rejection effective as of the Effective Date. If the Debtors wish to set an alternate
7 date for the effectiveness of the rejection of Executory Contracts under the Plan,
8 they must re-solicit and seek confirmation of such a material modification to
9 counterparties’ claims. *See U.S. v. Frontier Airlines, Inc.*, 93 B.R. 1014, 1023-24
10 (Bankr. D. Co. 1988) (holding that materially adverse modifications to a plan that
11 are contrary to the Bankruptcy Code’s³ disclosure requirements require re-
12 solicitation); *see, also*, 11 U.S.C. § 1125 (setting forth the disclosure requirements
13 for solicitation of a plan generally); 11 U.S.C. § 1127(c) (requiring re-solicitation
14 for certain modifications). Anything less deprives counterparties of Executory
15 Contracts of their right to notice and certainty with respect to their claims and
16 contracts under the Plan. Alternatively, to the extent that the Debtors intend for
17 the terms of the Plan to be nothing more than a strawman for the imposition of
18 their own secret or arbitrary terms, such actions are contrary to the very core of
19 the Plan confirmation process – and cannot be deemed to meet the “good faith”
20 proponent requirements of plan confirmation. *See* 11 U.S.C. § 1129(a)(3)
21 (requiring that the proponent of a plan propose the plan in good faith); *Platinum*
22 *Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070, 1074
23 (9th Cir. 2002) (holding that a “plan is proposed in good faith where it achieves a
24 result consistent with the objectives and purposes of the Code”) (citation omitted).

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26 _____
³ References herein to the Bankruptcy Code are to Title 11 of the United States Code.

1 In short, the Debtors cannot propose Plan terms to which they do not intend to
2 abide. As such, absent re-solicitation, to the extent the Debtors do not intend to
3 abide by the rejection terms and procedures of the Plan that they proposed –
4 confirmation of such Plan must be denied.

5 **B. Different Rejection Dates Amounts to Disparate Treatment of Premier**

6 Further, to the extent that the Debtors intend to treat Premier, and Premier
7 alone, differently from every other rejected Executory Contract counterparty
8 under the Plan – and every other similar class claimant under the Plan, the
9 Debtors’ Plan must likewise fail. Sections 1123 and 1129 of the Bankruptcy Code
10 bind the Debtors to treating every claim or interest of a particular class “the same”.
11 *See, e.g.*, 11 U.S.C. 1123(a)(4) (providing that a plan “shall... (4) provide the
12 same treatment for each claim or interest of a particular class, unless the holder of
13 a particular claim or interest agrees to a less favorable treatment of such particular
14 claim or interest”); 11 U.S.C. 1129 (a)(1), (2) (requiring that a plan and plan
15 proponent comply with all the “applicable provisions of this title”). By applying
16 an indiscriminate rejection standard to Premier, while allowing another standard
17 for all other rejected Executory Contract counterparties, the Debtors run afoul of
18 these treatment requirements by drastically and adversely altering Premier’s
19 claims. *See, e.g., In re Reid Park Props., L.L.C.*, 2012 Bankr. LEXIS 3316, at *5
20 (Bankr. D. Ariz July 18, 2012) (noting that such “disparate treatment” violates
21 § 1123(a)4)). Premier has not agreed to any different treatment under the Plan,
22 and certainly the Debtors have not set forth any basis for such. To the extent the
23 Debtors seek to deviate from their obligations of equal treatment of rejection
24 counterparties and their related claims, the Debtors’ efforts diminish the very
25 fabric of fairness the Bankruptcy Code seeks to instill. For that reason, any such
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1 deviation in treatment, particularly as it singles out counterparties such as Premier,
2 must be denied.

3 **C. The Debtors' Attempts Amount to a Violation of Premier's Rights**

4 Last but not least, if the Debtors wish to seek a retroactive rejection date
5 for the Premier Agreements that differs from the Effective Date set forth in the
6 Plan, they must file a separate motion and prove up the relief they seek. By instead
7 trying to boot-strap a contract rejection motion onto the proposed rejection
8 provisions of the Plan, without proving up the exceptional and differing relief
9 sought, the Debtors not only try to skirt the very procedures they proposed, but
10 they also seek to abuse the powers to be conferred by this Court to their gain. The
11 Debtors cannot otherwise use or alter the terms of their proposed Plan to
12 disenfranchise counterparties and claimants' rights which are expressly protected
13 by the provisions of the Bankruptcy Code. *See U.S. v. Arnold & Baker Farms (In*
14 *re Arnold & Baker Farms)*, 177 B.R. 648, 658 (9th Cir. B.A.P. 1994) (holding a
15 plan must comply with the "objectives and purposes of the Bankruptcy Code").
16 Anything less deprives Premier of its right to a hearing and its other due process
17 rights. *See, e.g.*, 11 U.S.C. § 365(a) (requiring that rejection be "subject to the
18 court's approval"); *see also* 11 U.S.C. 1123(b)(2) (providing for the ability to
19 reject executory contracts under a plan, "subject to section 365"). For this reason,
20 as well, the Debtors' efforts to usurp Premier of its rights pursuant to their Plan
21 must be denied.

22 **RESERVATION OF RIGHTS**

23 Premier hereby expressly reserves the right to supplement this Objection.
24 Premier further reserves all of its rights, claims, defenses and remedies with
25 respect to the Debtors and the Premier Agreements, including but not limited to
26 any right to assert any claims, rights of setoff or rights of recoupment against the

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LIMITED OBJECTION OF PREMIER, INC.
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1 Debtors, any right to seek appropriate relief to protect any Premier entity's assets
2 and contractual rights, any right to seek an order from this Court relating to any
3 rejection of the Premier Agreements and any other rights Premier is entitled to
4 assert under the Premier Agreements, the Bankruptcy Code, applicable law or
5 otherwise.

6 **CONCLUSION**

7 WHEREFORE Premier hereby requests that the Court (i) deny Debtors'
8 request to confirm the Plan, to the extent the Debtors seek Executory Contract
9 rejection dates other than as of the Effective Date of the Plan, as presently set forth
10 in the Plan, and (ii) grant such further relief as the Court deems appropriate.

11 DATED this 4th day of December, 2020.

12 /s/ Joseph A. Hamell
13 Joseph A. Hamell WSBA# 29423
14 Attorney for Premier, Inc. and Its
15 Subsidiaries
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1 **Exhibit A**

2 The Premier Agreements include, but are not limited to (and include any
3 and all amendments, ancillary documents, exhibits and agreements related
4 thereto):

- 5 • The Performance Suite Solutions Subscription Agreement
6 (the “Astria PSSA”), dated August 1, 2018, by and
7 between PHSI and Debtor Astria Health;
- 8 • The Business Associate Addendum (the “Astria BAA”,
9 with and incorporated into the Astria PSSA, the “Astria
10 Health Agreement”), dated August 1, 2018, by and
11 between PHSI, Premier Healthcare Alliance, L.P.
12 (“Premier LP”), any other Premier, Inc. subsidiaries that
13 may become a party thereto and Debtor Astria Health;
- 14 • The Performance Suite Solutions Subscription Agreement
15 (the “Sunnyside PSSA”), dated August 1, 2016, by and
16 between PHSI and Sunnyside Community Hospital
17 (“Sunnyside”);
- 18 • The Business Associate Addendum (the “Sunnyside
19 BAA”, with and incorporated into the Sunnyside PSSA,
20 the “Sunnyside Community Hospital Agreement”), dated
21 August 1, 2016, by and between PHSI, Premier LP, any
22 other Premier, Inc. subsidiaries that may become a party
23 thereto and Sunnyside; and
- 24 • The Project Services and License Agreement (the
25 “Healthcare Insights Agreement”), dated as of June 1,
26 2008, by and between Healthcare Insights, a wholly-
owned subsidiary of PHSI, and Sunnyside.

As Premier has set forth previously, the Premier Agreements are enterprise agreements between Premier entities and, respectively, Astria Health and Sunnyside (or the Debtor party currently d/b/a Sunnyside). The Debtors, other

1 than Astria Health (which is the primary Debtor counterparty to the Astria Health
2 Agreement, and the documents and exhibits related thereto) and the Debtor entity
3 currently or previously d/b/a Sunnyside (which is the primary Debtor counterparty
4 to the Sunnyside Community Hospital Agreement and the Healthcare Insights
5 Agreement, and the documents and exhibits related thereto), have the benefit of
6 the licenses, services and products under the Premier Agreements by virtue of
7 their status as subsidiaries or affiliates of the Debtor counterparties.

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