

Premier, Inc.
Form S-8
February 06, 2019

As filed with the Securities and Exchange Commission on February 6, 2019.

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

PREMIER, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

13034 Ballantyne Corporate Place

Charlotte, NC 28277

35-2477140
(IRS Employer

Identification No.)

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(704) 357-0022

(Address of Principal Executive Offices) (Zip Code)

Premier, Inc. 2013 Equity Incentive Plan

(as amended and restated effective December 7, 2018)

(Full title of the plan)

David L. Klatsky

General Counsel

Premier, Inc.

13034 Ballantyne Corporate Place

Charlotte, NC 28277

(704) 357-0022

**(Name, Address and Telephone Number,
Including Area Code, of Agent For Service)**

with copy to:

Andrew A. Gerber

Vice President, Legal Corporate & Securities

Premier, Inc.

13034 Ballantyne Corporate Place

Charlotte, NC 28277

Telephone and Facsimile: (704) 816-5556

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(b) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(3)
Class A Common Stock, par value \$0.01 per share	3,500,000 Shares	\$39.88	\$139,580,000	\$16,918

- (1) Represents shares of Class A common stock of the Company, \$0.01 par value (the Common Stock), issuable pursuant to the Premier, Inc. 2013 Equity Incentive Plan, as amended and restated effective December 7, 2018 (the Plan). In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers an indeterminate amount of Common Stock to be offered or sold pursuant to the Plan described herein to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) In accordance with Rules 457(c) and (h) under the Securities Act, the proposed maximum offering price per share and the maximum aggregate offering price for the shares have been calculated solely for the purpose of determining the amount of the registration fee based on the average of the high and low sales prices of the Common Stock on the Nasdaq Global Select Market on February 1, 2019.
- (3) Determined in accordance with Section 6(b) of the Securities Act at a rate equal to \$121.20 per \$1,000,000 of the proposed maximum aggregate offering price.

EXPLANATORY NOTE

Premier, Inc. (the Company or the Registrant) is filing this registration statement on Form S-8 pursuant to and in accordance with General Instruction E of Form S-8 to register 3,500,000 additional shares of Class A common stock, \$0.01 par value per share (the Common Stock), of the Company, issuable pursuant to the Premier, Inc. 2013 Equity Incentive Plan, as amended and restated effective December 7, 2018 (the Plan). The increase in the number of shares of Common Stock authorized to be issued under the Plan was approved by the Company s stockholders on December 7, 2018. Pursuant to the Registration Statement on Form S-8 filed by the Company with the Securities and Exchange Commission (the SEC) on October 1, 2013 (File No. 333-191484) (the Prior Registration Statement), the Company previously registered 11,260,783 shares of Common Stock for issuance under the Plan. The contents of the Prior Registration Statement are incorporated herein by reference pursuant to General Instruction E to Form S-8, to the extent not modified or superseded hereby or by any subsequently filed document that is incorporated by reference herein or therein.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of the Form S-8 instructions. The documents containing the information specified in Part I will be delivered to the participants in the Plan as required by Rule 428(b)(1). These documents are not being filed with the SEC as part of this Registration Statement or as prospectuses pursuant to Rule 424 promulgated under the Securities Act of 1933, as amended (the Securities Act). These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company (SEC File No. 1-36092) with the SEC pursuant to the Securities Act or the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference herein:

- (a) The Company s Annual Report on Form 10-K for the fiscal year ended June 30, 2018;
- (b) The information specifically incorporated by reference into the Company s Annual Report on Form 10-K for the fiscal year ended June 30, 2018 from the Company s Definitive Proxy Statement on Schedule 14A dated October 24, 2018;
- (c) The Company s Quarterly Reports on Form 10-Q for the fiscal quarters ended September 30, 2018 and December 31, 2018;

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- (d) The Company's Current Reports on Form 8-K filed with the SEC on July 11, July 31, October 31, November 13 and December 7, 2018 and January 31, 2019;
- (e) The description of the Company's Class A common stock contained in the Company's registration statement on Form 8-A dated September 25, 2013, including any amendment thereto or report filed for the purpose of updating such description; and
- (f) All other reports filed with the SEC by the Company pursuant to Section 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered herein have been sold or which deregisters all securities then remaining unsold.

To the extent that any information contained in any current or future Current Report on Form 8-K, or any exhibit thereto, was or is furnished to, rather than filed with, the Commission, such information or exhibit is specifically not incorporated by reference.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Mr. David L. Klatsky, Esq., who is providing an opinion on the legality of the Common Stock being registered hereby, is General Counsel of the Registrant. As an employee of the Registrant, Mr. Klatsky is eligible to participate in employee benefit plans of the Registrant on the same basis as other similarly eligible employees. Pursuant to such plans, he owns or has other rights to acquire an aggregate of less than 1% of the outstanding shares of the Common Stock.

Item 6. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law (DGCL) allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of the DGCL or obtained an improper personal benefit. The Company s certificate of incorporation provides for this limitation of liability.

Section 145 of the DGCL (Section 145) provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the corporation s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such person s conduct was illegal. A Delaware corporation may indemnify any person who was or is a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the corporation s best interests, provided that no indemnification is permitted without judicial approval if such person is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify such officer or director against the expenses which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person s status as such, whether or not

the corporation would otherwise have the power to indemnify such person under Section 145.

The Company's certificate of incorporation provides that the Company is required to indemnify its directors to the fullest extent permitted by Delaware law. The certificate of incorporation also provides that, upon satisfaction of specified conditions, the Company is required to advance expenses incurred by a director in advance of the final disposition of any threatened, pending or completed action or proceeding, and permits the Company to secure insurance on behalf of any officer or director for any liability against such person regardless of whether the Company would otherwise be permitted to indemnify such person under the provisions of the certificate of incorporation or otherwise.

The Company has entered and expects to continue to enter into agreements to indemnify its directors, executive officers and other employees as determined by the board of directors. With certain exceptions, these agreements provide for indemnification of expenses and liabilities incurred by the indemnified individual in connection with a proceeding related to such person's service to the Company as a director, executive officer, employee or other agent (including, among other things, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and settlement amounts).

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our certificate of incorporation, our bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

The Company expects to maintain standard policies of insurance that provide coverage (i) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, and (ii) to the Company with respect to indemnification payments that it may make to such directors and officers.

Insofar as the foregoing provisions permit indemnification of directors, executive officers or controlling persons for liability arising under the Securities Act, the Company acknowledges that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Description of Exhibit
4.1	<u>Certificate of Incorporation of Premier, Inc. (incorporated herein by reference to Exhibit 3.1 to the Company's registration statement on Form S-1 (File No. 333-190828) filed with the SEC on August 26, 2013).</u>
4.2	<u>Amended and Restated Bylaws of Premier, Inc., effective as of December 4, 2015 (incorporated herein by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the SEC on December 4, 2015).</u>
4.3	<u>Form of Class A common stock certificate (incorporated herein by reference to Exhibit 4.1 to Amendment No. 1 to the registration statement on Form S-1 (File No. 333-190828) filed with the SEC on September 16, 2013).</u>
5.1	<u>Opinion of David L. Klatsky, Esq. (filed herewith).</u>
23.1	<u>Consent of Ernst & Young LLP pertaining to Premier, Inc. (filed herewith).</u>
23.3	<u>Consent of David L. Klatsky, Esq. (included as part of Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included as part of the signature pages to this registration statement).</u>
99.1	<u>Premier, Inc. 2013 Equity Incentive Plan, as amended and restated effective December 7, 2018 (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on December 7, 2018).</u>

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1)

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To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in

the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on the 6th day of February, 2019.

PREMIER, INC.

By: /s/ Susan D. DeVore
 Name: Susan D. DeVore
 Title: President, Chief Executive Officer and
 Director

POWER OF ATTORNEY

Each of the undersigned executive officers and directors of Premier, Inc. hereby severally constitute and appoint each of Susan D. DeVore, Craig S. McKasson and David L. Klatsky as the attorneys-in-fact for the undersigned, in any and all capacities, with full power of substitution, to sign any and all pre- or post-effective amendments to this registration statement, and to file the same with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Susan D. Devore Susan D. DeVore	President, Chief Executive Officer and Director (principal executive officer)	February 6, 2019
/s/ Craig S. McKasson Craig S. McKasson	Chief Financial Officer and Senior Vice President (principal financial and accounting officer)	February 6, 2019
/s/ Barclay E. Berdan Barclay E. Berdan	Director	February 6, 2019
/s/ Eric J. Bieber Eric J. Bieber	Director	February 6, 2019
/s/ Stephen R. D Arcy	Director	February 6, 2019

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Stephen R. D Arcy		
/s/ Jody R. Davids	Director	February 6, 2019
Jody R. Davids		
/s/ William B. Downey	Director	February 6, 2019
William B. Downey		
/s/ Peter S. Fine	Director	February 6, 2019
Peter S. Fine		
/s/ Philip A. Incarnati	Director	February 6, 2019
Philip A. Incarnati		

Signature	Title	Date
/s/ David H. Langstaff David H. Langstaff	Director	February 6, 2019
/s/ William E. Mayer William E. Mayer	Director	February 6, 2019
/s/ Marc D. Miller Marc D. Miller	Director	February 6, 2019
/s/ Marvin R. O Quinn Marvin R. O Quinn	Director	February 6, 2019
/s/ Scott Reiner Scott Reiner	Director	February 6, 2019
/s/ Terry D. Shaw Terry D. Shaw	Director	February 6, 2019
/s/ Richard J. Statuto Richard J. Statuto	Director	February 6, 2019
/s/ Ellen C. Wolf Ellen C. Wolf	Director	February 6, 2019