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Case No. 2024-1247-NAC

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE AGILITI, INC. STOCKHOLDER LITIGATION	))	(CONSOLIDATED) C.A. No. 2024-1247-NAC **Public Version E-Filed on: August 6, 2026**

PLAINTIFF'S BRIEF IN SUPPORT OF THE PROPOSED SETTLEMENT, CLASS CERTIFICATION, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND AN INCENTIVE AWARD

Kimberly A. Evans (#5888)
BLOCK & LEVITON LLP
222 Delaware Avenue, Suite 1120
Wilmington, DE 19801
(302) 499-3600

Dated: August 4, 2026

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Lead Plaintiff Eric M. Maglione ("Maglione" or "Plaintiff"), by and through his undersigned attorneys, individually and on behalf of the Class[1] of former stockholders of Agiliti common stock, respectfully submits his opening brief in support of his application for: (i) approval of the proposed Settlement between Plaintiff; Defendants Thomas H. Lee Partners, L.P. and THL Agiliti LLC (collectively, "THL"), Thomas J. Leonard, Scott M. Sperling, Michael A. Bell, Joshua M. Nelson, Megan M. Preiner, and James B. Pekarek (collectively, the "THL and Agiliti Defendants"); John L. Workman, Diane B. Patrick, Gary L. Gottlieb, and C. Martin Harris (collectively, the "Special Committee Defendants") (collectively, with the THL and Agiliti Defendants, "Defendants")[2] as set forth in the Stipulation; (ii) approval of the Plan of Allocation; (iii) certification of the proposed Class for Settlement purposes; (iv) a Fee and Expense Award; and (v) an Incentive Award to

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[1] Unless otherwise noted, all defined terms have the meaning ascribed in the Stipulation and Agreement of Settlement, Compromise, and Release (Trans. ID 79496047), all emphasis is added, and all internal citations and quotation marks are omitted. "¶" or "¶¶" refers to the Verified Class Action Complaint (the "Complaint") (Trans. ID 75138347), submitted herewith as Exhibit A.

[2] Centerview Partners LLC ("Centerview"), which served as the Special Committee's financial advisor, was originally named as a defendant but was voluntarily dismissed without prejudice on May 15, 2025 in exchange for its agreement to participate in party discovery. Trans. ID 76282051. Darren M. Friedman, an Agiliti director and partner at THL co-investor StepStone Group LP ("StepStone"), was also originally named as a defendant but was voluntarily dismissed without prejudice on May 12, 2025 in exchange for his agreement to participate in party discovery. Trans. ID 76251345.

be paid to Plaintiff from the requested Fee and Expense Award, if granted by the Court.

Class Members were given notice of the Settlement in accordance with the scheduling order entered by the Court on June 2, 2026 (the "Scheduling Order").[3] To date, Plaintiff's Counsel have received no objections.

A hearing is scheduled for September 17, 2026 at 11:00 a.m. ET for the Court to consider these matters. As set forth below, the proposed Settlement is fair and reasonable, and its approval is in the best interests of the Class.

PRELIMINARY STATEMENT

Plaintiff seeks final approval of a $32 million all-cash Settlement resolving claims challenging the take-private acquisition of Agiliti by its controlling stockholder, THL, at $10.00 per share (the "Merger").

The Settlement is the product of two years of vigorously contested litigation. Plaintiff investigated the Merger before filing suit, fought for and won appointment to lead the Action, and thereafter built the record that made this recovery possible. Among other things, Plaintiff briefed and prevailed on multiple discovery motions, took key depositions and prepared a full deposition campaign, and was working with

[3] Trans. ID 79623564.

valuation experts in anticipation of expert discovery when the parties reached agreement.

The $32 million recovery is an outstanding result for Agiliti's minority stockholders. It represents an approximately 8.9% increase over the Merger Consideration—the equivalent of an additional $0.89 per share on top of the $10.00 per share the Class already received—and falls well within the range of what Plaintiff could reasonably have expected to recover after prevailing at trial on both liability and damages. Unlike a judgment after trial, the Settlement delivers that value to the Class now, and without the very real risk that continued litigation could have yielded nothing at all.

Plaintiff further requests approval of an all-in Fee and Expense Award of $6.72 million, or 21% of the cash Settlement amount inclusive of expenses. As explained below, that request is consistent with this Court's precedent in light of the benefits conferred on the Class and the efforts required to achieve it. To compensate Plaintiff for the time and effort devoted to this Action, Plaintiff's Counsel further respectfully request that the Court approve a $5,000 incentive award for Plaintiff to be paid solely from the Fee and Expense Award approved by the Court.

FACTUAL BACKGROUND

I. THL CONTROLLED AGILITI.

THL created Agiliti and never loosened its grip. In January 2019, THL's special-purpose acquisition vehicle, Federal Street Acquisition Corp., merged with Universal Hospital Services, Inc. to form Agiliti, with THL as the Company's majority stockholder.[4] When Agiliti went public in April 2021 at $14.00 per share, an amended nomination agreement preserved that control, giving THL control over every Board nominee and the right to seat its designees on every Board committee.[5] As of March 31, 2024, THL held 72.2% of Agiliti's common stock.[6] THL's control was no secret inside the boardroom: as former CEO Thomas Boehning testified, it was "very obvious" "that THL was the ultimate decisionmaker on important company decisions at Agiliti," and the Board never "dissent[ed] or overrul[ed]" a THL decision.[7]

II. THL REJECTS UNSOLICITED THIRD-PARTY BIDS IN 2022.

Agiliti drew serious takeover interest within a year of its IPO. In July 2022, the Company received separate unsolicited expressions of interest in take-private

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[4] Federal Street Acquisition Corp., Form 8-K, at Ex. 99.1 (Aug. 13, 2018); Agiliti, Inc. Form 8-K, at Ex. 10.3 (Jan. 10, 2019) (Nomination Agreement).

[5] Agiliti, Inc., Form 424B4 (Apr. 26, 2021) at 94.

[6] Agiliti, Inc. Schedule 14C (Apr. 15, 2024) ("Information Statement") at 13.

[7] Deposition Transcript of Thomas Boehning ("Boehning Tr.") at 38.

transactions from the [redacted] and Goldman Sachs, and the Board formed a special committee comprising Workman, Patrick, and Gottlieb to respond (the "2022 Committee" or "Committee").[8]

From the outset, the 2022 Committee did not function as an independent body. It did not choose its own advisors. The full, THL-dominated Board installed Michael Aiello of Weil, Gotshal & Manges LLP ("Weil")—THL's longtime outside counsel—as the Committee's counsel, and the Committee delegated the selection of a financial advisor to Workman and then-CEO Leonard, who simply accepted Aiello's recommendation and engaged Centerview.[9] No one vetted Centerview's conflicts; the Committee relied instead on Aiello's assurance that Centerview was unconflicted.[10]

Nor did the 2022 Committee run its own process. Leonard—Agiliti's CEO, a THL insider, and not a Committee member—ran the response to Goldman.[11] On August 3, 2022, Goldman offered $25 to $27 per share for a portion of THL's stake in Agiliti, plus all of the minority shares.[12] Days later, Leonard suggested that THL

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[8] GS_Agiliti_0108938; THL_CA_0022903; AGTI CA_0081212.

[9] Deposition Transcript of John Workman ("Workman Tr.") at 61-62; AGTI CA_0081212; AGTI CA_0293042; AGTI CA_0080408.

[10] Workman Tr. at 115, 126-28.

[11] AGTI CA_0134097.

[12] AGTI-WEIL-CA_00014236.

make its own take-private offer instead, which could "allow current co-investors and Fund VIII"—a THL fund in which Leonard was personally invested—"to achieve some level of near-term liquidity."[13] After Goldman lowered its proposal to $20 per share—still double what THL itself would later pay—Centerview told the Committee that THL would not accept it, and the Committee rejected it.[14]

III. AGILITI'S CEO LEONARD RETIRES—TO WORK FOR THL.

In March 2023, Leonard stepped down as CEO and was succeeded by Agiliti's then-President, Boehning. The next month, Leonard joined THL as a paid Executive Partner on its healthcare team, working alongside Defendants Nelson and Bell, while keeping his THL-designated seat on Agiliti's Board.[15] Leonard also had more than $1 million of his personal wealth invested in THL funds, including the very fund that held THL's Agiliti investment.[16] And joining THL did not mean stepping back from the Company: in August 2023, five months into Boehning's tenure, Leonard provided THL with his own "Operation ReStart" diagnosis of the Company's problems—without copying the sitting CEO.[17]

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[13] AGTI-WEIL-CA_00017561; THL_CA_0071988.

[14] THL_CA_0028987; AGTI CA_0080418.

[15] AGTI CA_0133395; Information Statement at 16, 74.

[16] THL and Agiliti Defendants' Second Amended Responses and Objections to Lead Plaintiff Eric M. Maglione's First Set of Interrogatories to Defendants ("THL Second Supp. ROG Resp.") at Response No. 38; Workman Tr. at 224; THL_CA_0071988.

[17] Deposition Transcript of Michael A. Bell ("Bell Tr.") at 256-57, 277, 279.

IV. TEMPORARY, POST-PANDEMIC HEADWINDS HAND THL A BUY-LOW OPPORTUNITY.

Agiliti's results softened in 2023 for reasons everyone understood to be temporary. As the COVID-19 pandemic receded, customers drew down their stockpiles of medical equipment, and near-term demand for the Company's devices—and with it, EBITDA—contracted.[18] Since going public, Agiliti had beaten top-line and adjusted EBITDA estimates in nearly every quarter, held a federal contract to maintain the national stockpile of ventilators, and continued signing long-term business, including a five-year [redacted] renewal worth at least $100 million.[19] Management told investors the dip would pass: in March 2023, Leonard predicted that back-half results would "more clearly demonstrate the predictable organic growth of our base business," and by August, management reported that placements had "seemingly leveled off."[20] Nonetheless, while delivering second-quarter results in August 2023, the Board cut full-year adjusted EBITDA guidance by approximately ten percent, from $295–$305 million to $260–$270 million.[21] The market's reaction was swift: Agiliti's stock, which had

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[18] THL_Appraisal_0003796.

[19] Information Statement at 16; AGTI CA_0084810 at -814; ¶2.

[20] Agiliti, Inc., Q4 2022 Earnings Call (Mar. 7, 2023); AGTI CA_0212231 at -235.

[21] AGTI CA_0212231 at -251; Agiliti, Inc., Current Report (Form 8-K) Ex. 99.1 (Aug. 8, 2023).

traded between roughly $15 and $18 as late as spring 2023, fell from $17.03 per share on August 8, 2023 to $12.27 the next day, and below $10 by month's end.[22]

THL recognized the disconnect between price and value—and set out to capture it for itself. THL believed the public market undervalued Agiliti and had been exploring its exit for months. By April 2023, an internal THL model assumed THL would "exit Agiliti in Dec. 2023"; Goldman quietly canvassed roughly fifteen parties on THL's behalf; and THL's internal presentations modeled a full sale or a 50% selldown of its stake.[23] Meanwhile, buyers surfaced, but THL turned them away as undervaluing the Company. In April 2023, THL rejected a $16.00-per-share offer from investment firm Stonepeak.[24] And when [redacted] approached Agiliti management in September 2023 about a potential acquisition—internally modeling bids ranging from $11 to $13 per share—the Company simply did not respond for over a month while THL negotiated its own take-private.[25]

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22 Workman Tr. at 195-96.

23 THL_Appraisal_0061649; THL_Appraisal_0002728; THL_Appraisal_0129871; THL_CA_0011800.

24 Stonepeak_CA_00002419; AGTI APPRAISAL_0007424.

25 [redacted]00000169 (Sept. 18, 2023 analysis at $11/share); [redacted]00000452 (Sept. 22, 2023 analysis at $13/share); Information Statement at 17.

V. THL REINSTALLS LEONARD AS CEO AND MAKES A STRATEGICALLY TIMED OFFER.

On August 11, 2023, Leonard—still consulting for THL and still on Agiliti's Board—pitched Agiliti's THL-affiliated directors on returning to run the Company.[26] Boehning was not invited, and no minutes of the meeting were kept.[27] Leonard's diagnosis was a problem of investor confidence, not fundamentals: Agiliti's EBITDA multiple had "collapsed, reflecting, in part, a lack in confidence"; the Company's troubles were "self-inflicted – and subject to improvement"; and the cure was Leonard's own return.[28] In the expanded "Operation ReStart" deck he provided to the full Board in September, Leonard called a recent share buyback "a strategic error, unless intent is a take-private" and pitched "achieving med tech multiples once again"—the premium valuation Leonard believed Agiliti should command as a medical-technology company.[29] He urged the Board to announce that Agiliti was "evaluating strategic alternatives" and to "look at sell or take private options."[30] The Board did neither—no announcement, no marketing process—but it did reinstall

[26] Information Statement at 17.

[27] *Id*.

[28] THL_CA_0002797.

[29] *Id*.

[30] *Id*.

Leonard as CEO, effective October 1, 2023, with a compensation package of more than $8 million, weighted toward equity.[31]

THL made its bid days later. On October 6, 2023, with Agiliti's stock at an all-time low of $5.62 per share, THL offered to take the Company private for $9.00 per share. Sperling, Nelson, and Preiner signed the offer letter, which called for signing the transaction before Agiliti released its third-quarter earnings.[32] That same day, Agiliti CFO Pekarek reminded Leonard that the $9.00 bid compared unfavorably to the $16.00 Stonepeak offer THL had rejected months earlier.[33] At an October 9 Board meeting, Sperling told the directors that THL itself "would not be a seller at the [$9.00] per share offer price."[34] Indeed, the outcome was so preordained that THL's co-investor StepStone called it before THL even bid: on an October 5 StepStone call, Friedman told his team that Agiliti could be bought for $10 per share. As Friedman conceded at his deposition, the estimate "matched the exact ultimate deal price," even though "[a]t this time, we didn't do any due diligence."[35]

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[31] AGTI-SC_CA_00017517; Information Statement at 17.

[32] AGTI-SC_CA_00017478.

[33] AGTI_220_00007424.

[34] AGTI_220_00005002; AGTI-WEIL-CA_00049720 ("THL is not a seller at the level they bid because they think the value is higher.").

[35] Deposition Transcript of Darren Friedman ("Friedman Tr.") at 107-09.

VI. THE THL-DOMINATED BOARD APPOINTS A CONFLICTED SPECIAL COMMITTEE WITH CONFLICTED ADVISORS.

A. The Special Committee Members Were Conflicted.

To respond to THL's offer, the Board turned to the same directors who had handled the 2022 approaches—Workman, Patrick, and Gottlieb—now joined by Harris (the "Special Committee" or "Committee"). The Board did not test their independence from THL beyond confirming their status as independent directors under NYSE listing standards. Each member had material ties to THL—or in the case of the Committee's chair, simply ceded the process to someone who did.[36]

Gottlieb. Bell described Gottlieb as "a friend of [the] thl family," and the two have been friends for over two decades.[37] Before Agiliti, THL placed Gottlieb on the board of another THL portfolio company, inVentiv Health. Gottlieb also served as a paid THL consultant; flew on THL's private plane to Agiliti Board meetings—including the October 31, 2023 meeting held weeks after THL's initial offer; and received, but never disclosed, an invitation to invest in a THL fund on favorable terms as a member of THL's select "executive network."[38] After the Merger closed,

[36] Workman Tr. at 67, 69; Deposition Transcript of Gary L. Gottlieb ("Gottlieb Tr.") at 196, 198-99; Deposition Transcript of C. Martin Harris ("Harris Tr.") at 145-47.

[37] AGTI-SC_00003676; Bell Tr. at 109, 122; Gottlieb Tr. at 20, 112.

[38] The Special Committee Defendants' Objections and Responses to Plaintiff's First Set of Interrogatories to Defendants ("SC First ROG Resp.") Resp. No. 43; THL_CA_0032164; Gottlieb Tr. at 17, 35-36, 77, 179, 198-99; AGTI-SC_CA_00004035; AGTI-SC_CA_00005176; THL_CA_0030323; AGTI-SC_00003825.

THL appointed Gottlieb as a director and paid consultant of yet another THL-portfolio company—a gesture Gottlieb called "genero[us]" and for which he was "deeply appreciative."[39]

Patrick. A longtime partner at Ropes & Gray—which counts THL among its clients and advised THL on the Merger itself—Patrick joined the Board in 2021 after Defendant Sperling, at her request, advocated for her appointment. Patrick and Sperling also served together on the board of MassGeneral Brigham, and Sperling supported Patrick's husband's political campaigns.[40]

Workman. The Special Committee's chair handed effective control of the process to THL-affiliated Leonard. At the outset, Leonard assured THL's Nelson that he would "ke[ep] [Workman] in lockstep with us on the journey."[41] Workman did just that: without consulting the other Committee members, he authorized Leonard to "negotiate with Centerview on the SC['s] behalf"[42] and deferred to his judgment throughout the process.[43]

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[39] THL_CA_0016098; AGTI-SC_00003704; Gottlieb Tr. at 25-26, 28, 106.

[40] THL_CA_0009313; THL_Appraisal_0092032; THL_CA_0009312; THL_CA_0003609; Bell Tr. at 71; SC First ROG Resp. No. 42.

[41] THL_Appraisal_0031617.

[42] AGTI-WEIL-CA_00016902; Workman Tr. at 275.

[43] AGTI-SC_00004050; THL Second Supp. ROG Resp. No. 38 (disclosing Leonard's investments in four THL funds, including $1 million in Fund VIII, THL's Agiliti investment vehicle); Workman Tr. at 121, 224; AGTI APPRAISAL_0118551.

Harris. Sperling brought Harris onto the Agiliti Board, and the two had served together on another board for more than a decade.[44]

B. The Special Committee's Advisors Were Conflicted.

The Special Committee did not independently select its advisors in 2023 any more than it had in 2022. The prior engagements simply "roll[ed] over," and the Committee retained Weil and Centerview without considering alternatives, seeking conflict disclosures, or negotiating engagement terms.[45]

What the Committee learned about its advisors' conflicts, it learned from Aiello—and Aiello disclosed almost nothing. He told the Special Committee only that Weil had done "unrelated" work for THL generating fees "de minimis relative to [Weil's] total revenues" and that he, Centerview's David Cohen, and THL Chairman Anthony DiNovi were "minor investors in an Italian soccer team."[46] The relationships went materially further. Weil had represented THL for decades and was advising THL and its portfolio companies on other matters before and during the Merger negotiations—[redacted].[47] Aiello

[44] Harris Tr. at 18, 21; SC First ROG Resp. No. 44.

[45] Harris Tr. at 98, 157; AGTI_220_00005002; AGTI-WEIL-CA_00049720; Gottlieb Tr. at 209, 211-12; Workman Tr. at 227, 243-45.

[46] AGTI CA_0083553 at -563.

[47] AGTI-WEIL-CA_00001142.

himself called THL a "longtime client."[48] The "minor" soccer investments were anything but: $[redacted] from Aiello, $[redacted] from DiNovi, and €[redacted] from Cohen—and the three were close friends who shared "team" dinners, golfed together, and messaged frequently about their club, Cesena FC.[49] Centerview, for its part, had earned millions in fees from THL portfolio companies, and its lead bankers, Cohen and Muntner, had both worked for and solicited business from THL.[50]

VII. THE SPECIAL COMMITTEE PROCESS WAS CONFLICTED AND INEFFECTIVE.

A. Management, Not the Committee, Quarterbacked Negotiations With THL.

Leonard functioned as the Special Committee's de facto leader. He attended virtually every Committee meeting and joined the Committee members' group texts; across the entire process, the Committee deliberated with its advisors outside

48 Liz Hoffman, *M&A MVP: Weil Gotshal's Michael Aiello*, Law360, https://www.law360.com/articles/397504/m-a-mvp-weil-gotshal-s-michael-aiello (Nov. 30, 2012).

49 The THL and Agiliti Defendants' Supplemental Responses and Objections to Lead Plaintiff Eric M. Maglione's First Set of Interrogatory Nos. 43, 46, 49, and 52 ("THL Third Supp. ROG Resp.") (Feb. 10, 2026) at 7, 10; Centerview Partners LLC's Second Amended Responses and Objections to Lead Plaintiff's First Set of Interrogatories to Defendants ("Centerview Second ROG Resp.") Resp. No. 52; AGTI-WEIL-CA_00001119; AGTI-WEIL-CA_00001061; CENTERVIEW_0164807; CENTERVIEW_0212429.

50 AGTI-WEIL-CA_00017199; CENTERVIEW_0137268.

Leonard's presence for a total of seventy-four minutes.[51] Leonard and Pekarek also controlled the information Centerview received, withholding Company data without the Committee's knowledge.[52] Pekarek described Centerview's role as doing "'what they need to do' to get us to a finish line."[53]

B. The Special Committee Ceded to THL's Rushed Timeline.

On October 23, 2023, the Special Committee countered THL's $9.00 bid at $13.00 per share, then gave ground fast. THL moved up $0.35 the next day, prompting the Committee to cut its demand by $3.00 less than a week later. THL bid $9.75 on November 1; the Committee countered at $10.00; and THL agreed to $10.00 on November 3.[54] All told, in eleven days the Committee came down $3.00 while THL came up $1.00. At no point did the Committee run a market check, approach other bidders, or ask Centerview to solicit competing offers—despite Centerview recommending market outreach and Agiliti's history of inbound interest from financial and strategic buyers.[55] Nor did the deal include a majority-of-the-minority vote condition: THL never offered one, and the Committee never asked.

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[51] AGTI-WEIL-CA_00035247; AGTI CA_0083553; AGTI-SC_CA_00017861.

[52] AGTI CA_0063653; CENTERVIEW_0182066; Gottlieb Tr. at 239; Workman Tr. at 263-64.

[53] AGTI APPRAISAL_0091018.

[54] AGTI-WEIL-CA_00035247 at -297-318; AGTI_220_00006791.

[55] Workman Tr. at 532; Gottlieb Tr. at 317-18; CENTERVIEW_0071107 at -124.

A bidder surfaced anyway, and the Committee ignored it. On November 5, 2023, [redacted] submitted a written indication of interest at $8.00 to $10.00 per share to Centerview, which shared it with Leonard, Aiello, and Workman.[56] The proposal was not shared with the other Committee members.[57] Having met on November 2, the Special Committee did not convene again until December 6. On November 30, Leonard told the group that the "goal for the brief [December 6] meeting [was] to formally close the process" and "respond (reject) the 3rd party bid we had received."[58] On December 6, the Committee did as instructed: it rejected [redacted] proposal without consulting Centerview.[59] [redacted] internal analyses contemplated bids of as much as $11 to $13 per share.[60]

VIII. LEONARD HOLDS UP THE MERGER OVER HIS PERSONAL EQUITY.

By early November 2023, price was no longer an obstacle to a deal—Leonard's personal equity was. Leonard refused to roll his unvested shares into the post-Merger company, telling Centerview it was "not going to happen," and by

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[56] AGTI-WEIL-CA_00013143; AGTI-WEIL-CA_00013145.

[57] Harris Tr. at 221-22; Gottlieb Tr. at 291, 294 (no recollection of receiving [redacted] offer). Defendants produced no documents showing the proposal was shared with members other than Workman.

[58] AGTI-WEIL_00000148.

[59] AGTI-WEIL-CA_00035247 at -319; Gottlieb Tr. at 289.

[60] [redacted]00001826 ($10-$12 range); [redacted]00000169 ($11); [redacted]00000452 ($13).

November 6, the parties were "pencils down."[61] The transaction then sat on hold for months while Leonard negotiated his own liquidity and compensation directly with THL, without Special Committee oversight.[62] Through it all, the Committee did nothing. It never reassessed Leonard's role in the process. It never used his demands—or the treatment of management equity generally—as leverage to extract a better price for stockholders. And it never used the pause to seek another buyer.

IX. LEONARD GREENLIGHTS THE MERGER, AND THE SPECIAL COMMITTEE FAILS TO NEGOTIATE A HIGHER PRICE.

While the deal sat in limbo over Leonard's equity, Agiliti's business began recovering. On November 7, 2023, the Company announced third-quarter earnings that beat its previous outlook, and the stock climbed from $6.11 per share to over $8 per share by the start of 2024.[63] Centerview told the Committee that the "market responded well to Tom's leadership, multiple expanded . . . so the business is worth more today than early November."[64] Leonard said the same to THL: on January 12, 2024, he told Nelson and Preiner that Agiliti would finish the year "around our

[61] CENTERVIEW_0145756; AGTI_220_00006163; THL_Appraisal_0046198.

[62] THL_Appraisal_0082395; AGTI CA_0137682.

[63] Agiliti, Form 8-K, Ex. 99.1 (Nov. 7, 2023); CENTERVIEW_0050062 at -063.

[64] AGTI-WEIL-CA_00049741 (Weil's notes of Feb. 6, 2024 Special Committee meeting).

forecast and a bit better than analyst consensus"—a "Goldilocks finish," good, but not so good as to prevent THL from re-engaging.[65]

THL responded to the improved results by bidding less. On January 26, 2024, THL re-bid at $9.00 per share—a dollar below the price the parties had reached in November when the stock price was lower—while conceding to Leonard that he would be paid out for all vested equity that he had received before October 2023.[66] The concession worked. Four days later, Leonard told the Special Committee that he was "willing to support a potential transaction," as "it remains very uncomfortable to continue to stand in the way of THL's goal" and that he had "no interest in getting sideways with THL again on this proposed transaction."[67] On February 2, despite acknowledging that Agiliti had "performed on forecast and ahead of street expectations," Leonard urged the Committee: "[w]e will save a lot of time and energy if we can quickly arrive again at $10 or more per share."[68]

The Committee obliged. After fewer than two hours of total deliberation, it resolved that $10.00 per share was acceptable.[69] It countered once, at $11.50; THL came back at $9.25; and on February 6, Workman and Centerview told THL that the

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[65] AGTI APPRAISAL_0124378.

[66] AGTI-SC_00004374; AGTI-SC_00004050.

[67] AGTI-SC_00004050.

[68] AGTI-SC_CA_00006511.

[69] Gottlieb Tr. at 314-17; AGTI CA_0083553 at -555-60.

Committee would go no lower than $10.00. THL agreed—to the same $10.00 per share the parties had reached in November when the stock traded at historic lows.[70] The recovery Centerview had described to the Committee bought the minority nothing. The Board approved the Merger on February 25, 2024, and THL approved it by written consent the next day, without a vote of the minority stockholders.[71]

PROCEDURAL HISTORY

I. PLAINTIFF INVESTIGATES THE MERGER AND FILES SUIT.

Plaintiff's work began long before the Complaint. In March 2024, Plaintiff served a books-and-records demand under 8 *Del. C.* § 220, negotiated confidentiality and standing agreements with the Company's counsel, and pressed Agiliti through successive productions and deficiency demands. Agiliti received books-and-records demands from several stockholders following the Merger's announcement. By the time Plaintiff filed his Complaint on December 4, 2024, Plaintiff alone had obtained 88% of all documents Agiliti produced in response to those demands—the most complete pre-suit record any stockholder developed, and one that surfaced some of the most damaging evidence of the Special Committee's conflicts and Leonard's control of the process.

[70] AGTI CA_0083553 at -559-63; THL_Appraisal_0084680.

[71] AGTI CA_0083553 at -563-66; AGTI CA_0081339.

Three stockholder groups competed to lead the consolidated class action. On March 18, 2025, following leadership briefing, the Court appointed Maglione as Lead Plaintiff and Block & Leviton and Elsberg Baker & Maruri as Co-Lead Counsel, citing Plaintiff's Section 220 investigation as "the strongest predictor … of counsel's representation of the class."[72]

II. PLAINTIFF SUBSTANTIALLY EXPANDS THE DISCOVERY RECORD.

Plaintiff served his first document requests on April 23, 2025, weeks after his leadership appointment, and ultimately propounded 102 document requests and eighty-seven interrogatories to Defendants and Centerview.

In May 2025, the Court consolidated the class action with two pending appraisal actions (the "Appraisal Action").[73] When class discovery opened, Defendants and third parties took the position that their existing Appraisal Action productions were sufficient. Plaintiff refused to accept that record.[74] He negotiated his own expanded search protocols—search terms, date ranges, and custodians—with two Defendant groups and at least twelve third parties, and the results broadened discovery record on every dimension: the Class case extended the

[72] Telephonic Bench Ruling on the Plaintiffs' Motions for Appointment of Lead Plaintiff and Lead Counsel ("Leadership Tr."), Tr. at 18 (Mar. 18, 2025) (TRANSCRIPT).

[73] Order Consolidating Cases (May 21, 2025) (Trans. ID 76317906).

[74] Plaintiff took the same position in correspondence with various other third parties.

discovery period years beyond the appraisal window for conflicts and governance subjects and reached data sources that never had been collected, including text messages, Microsoft Teams data, voicemails, personal email accounts, and the Special Committee's board-management files on the Diligent platform.

Plaintiff also subpoenaed seventeen third parties with meaningful roles in the run-up to the Merger—among them Goldman Sachs (simultaneously a would-be acquirer and THL's financial advisor), THL's fund investors, the Special Committee's advisors, potential bidders, and Agiliti's former CEO. None of it came easily: over ten months, Class counsel participated in at least fifty-two document discovery meet-and-confers and issued more than twenty substantive deficiency letters challenging objections, redactions, privilege assertions, and collection methods.

III. PLAINTIFF PREVAILS ON FOUR DISCOVERY MOTIONS.

Where negotiation failed, Plaintiff litigated—and prevailed on all four contested discovery motions: two motions to compel, a motion to quash Defendants' subpoena to Plaintiff's broker, and the defeat of a motion to quash filed by Kellogg Hansen, the THL and Agiliti Defendants' litigation counsel.

Both motions to compel followed months of correspondence, meet-and-confers, and full briefing.[75] On January 2, 2026, the Court granted the first motion in full and shifted fees, ordering the THL and Agiliti Defendants to produce documents and complete interrogatory responses concerning the advisors' conflicts—discovery the Court held was "highly relevant"—and ordering Centerview to produce text messages between its lead banker and THL's chairman.[76] Four days later, the Court granted the second motion in large part: it ordered removal of the relevance redactions Defendants had applied across their entire production, observing that Defendants "faced an uphill climb to justify any relevance redactions in plenary discovery"; ordered collection of a custodian's personal Gmail account, finding her self-collection "unacceptable" and her representations "proven to be unreliable"; and rejected Defendants' text-message review protocol, requiring a more comprehensive production.[77]

Plaintiff prevailed on the defensive motions as well. When Defendants subpoenaed Maglione's broker for all of his investment records—any company, any industry, over eleven months, broader than the discovery that Defendants sought

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[75] Pl.'s First Mot. to Compel Discovery (Nov. 13, 2025) (Trans. ID 77774520); Pl.'s Second Mot. to Compel Discovery (Nov. 26, 2025) (Trans. ID 77880924).

[76] Order Granting Pl.'s First Mot. to Compel (Jan. 2, 2026) (Trans. ID 78111271).

[77] Order on Pl.'s Second Mot. to Compel (Jan. 6, 2026) (Trans. ID 78129228).

from Plaintiff himself—the Court quashed the subpoena as a "fishing expedition" that would impose an "invasive burden."[78] And when Kellogg Hansen moved to quash Plaintiff's subpoena concerning the firm's early involvement in the Merger process, the Court denied the motion and ordered production.[79]

Motion practice, though, was the exception, not the rule. Most of what Plaintiff obtained came through negotiation and persistent pursuit of deficiencies, including supplemental interrogatory responses from the THL and Agiliti Defendants; imaging of the Special Committee's complete Diligent file; a two-tier date range from the Special Committee reaching back to 2020 for relationship subjects; the addition of Centerview's lead banker as a sixth custodian, with review of firm-issued mobile phones; and unredacted re-productions from third parties.

IV. THE DISCOVERY RECORD PLAINTIFF DEVELOPED.

Plaintiff's efforts produced a record that did not exist when Plaintiff filed suit—and would not have existed otherwise:

Source of Documents	**Approx. Documents**
Section 220 productions (pre-suit)	1,150
Appraisal Action discovery (commenced 2024)	54,000
Class discovery (excluding re-produced Appraisal Action documents)	146,000
Total record	**200,000+**

[78] Order Granting Mot. to Quash (Dec. 30, 2025) (Trans. ID 78099288).

[79] Order Denying Kellogg Hansen's Mot. to Quash (Aug. 7, 2025) (Trans. ID 76822633).

Class discovery thus added approximately 146,000 documents—more than 800,000 pages—beyond the record that predated it, and Plaintiff's Counsel reviewed the entire 200,000-plus-document record with a supervised review team.[80]

That record supplied the critical evidence at the core of Plaintiff's case. Weil's notes of the February 6, 2024 Special Committee meeting came from Plaintiff's subpoena to Weil, under a negotiated protocol that ran back to 2018 for conflicts-related information. The undisclosed relationships among Weil's Aiello, Centerview's Cohen, and THL's Chairman DiNovi—the shared dinners, the golf outings, and the true materiality of their Cesena FC investments—came from the Weil and Centerview productions and from the supplemental interrogatory responses and personal-phone text messages that Plaintiff's first motion to compel forced out. The record likewise established that Leonard had more than $1 million invested in THL funds, including the fund that indirectly held Agiliti stock.

V. PLAINTIFF PREPARES A FULL DEPOSITION CAMPAIGN AND TAKES KEY INITIAL DEPOSITIONS.

Plaintiff and the Appraisal Action petitioners noticed twenty-four depositions and divided primary responsibility for the witnesses evenly between them.

[80] Document counts are approximate and are drawn from the parties' production cover letters and Plaintiff's Counsel's production log; Class-discovery counts exclude re-produced copies of Appraisal Action documents.

Depositions commenced on February 4, 2026. Before the parties reached their agreement in principle, Plaintiff's Counsel had deposed Special Committee members Workman (over two days) and Gottlieb, as well as StepStone's Friedman, and assisted in preparing the examinations of Bell, Boehning, and Harris, where Plaintiff's Counsel attended and prepared to ask questions but for which Appraisal Action counsel took the lead. Plaintiff's Counsel had also prepared outlines, document sets, and witness files for nearly a dozen additional depositions, including five depositions scheduled in the month after the agreement in principle was reached.

VI. THE PARTIES RESOLVE THE CASE.

The parties mediated before David M. Murphy of Phillips ADR Enterprises, spending a full day in mediation on February 17, 2026, while depositions were ongoing. Despite substantial efforts on both sides, they left the session without a deal, and the litigation did not pause: Gottlieb's deposition went forward two days later. Additional rounds of negotiation followed with Mr. Murphy's assistance, culminating in an agreement in principle reached through a double-blind mediator's proposal on February 27, 2026. The parties executed a term sheet on March 27, 2026 and filed the Stipulation on May 18, 2026.

ARGUMENT

I. THE PROPOSED SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE, AND ADEQUATE.

Delaware law strongly favors the voluntary settlement of claims.[81] In deciding whether to approve a proposed settlement of a stockholder class action, the Court does not resolve the merits; rather, it looks to the facts and circumstances upon which the claims are based and exercises its informed judgment as to whether the proposed settlement is fair and reasonable.[82] In making that determination, the Court considers the *Polk* factors: (i) the probable validity of the claims; (ii) the apparent difficulties in enforcing the claims through the courts; (iii) the collectability of any judgment recovered; (iv) the delay, expense, and trouble of litigation; (v) the amount of the compromise as compared with the amount of any collectible judgment; and (vi) the views of the parties involved.[83]

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[81] *See*, *e.g.*, *Kahn v. Sullivan*, 594 A.2d 48, 58-59 (Del. 1991); *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 265-66 (Del. 1990); *Nottingham P'rs v. Dana*, 564 A.2d 1089, 1102 (Del. 1989).

[82] *Prezant v. De Angelis*, 636 A.2d 915, 921 (Del. 1994); *see also Wayne v. Util. & Indus. Corp.*, 1979 WL 2699, at *3 (Del. Ch. July 19, 1979) ("The function of this Court in reaching a decision as to whether or not to approve a proposed settlement of a derivative stockholders' action in a situation in which the intrinsic fairness of the settlement must be tested, is to exercise its business judgment.").

[83] *Polk v. Good*, 507 A.2d 531, 535-36 (Del. 1986) (citing *In re Ortiz Est.*, 27 A.2d 368, 374 (Del. Ch. 1942); *Perrine v. Pennroad Corp*., 47 A.2d 479, 488 (Del. 1946); *Krinsky v. Helfand*, 156 A.2d 90, 94 (Del. 1959)).

The Court's "principal focus" is comparing the benefits achieved against the nature and merits of the released claims[84]—weighing the "give" (the value of the claims released) against the "get" (the value of the consideration obtained) to "'determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept.'"[85]

Every consideration supports approval here.

A. The $32 Million Cash Settlement Is a Strong Recovery for the Class in Exchange for a Standard Release of Claims.

The "get" is an "obvious and self-pricing benefit":[86] $32 million in cash, to be distributed *pro rata* across approximately 36 million Class shares—an additional $0.89 per share on top of the $10.00 per share deal price, an 8.9% increase to the Merger Consideration.[87] This Court has described settlement premiums above roughly the 5% level as "exceptional."[88] The recovery here is nearly double that

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[84] *Baupost Ltd. P'ship 1983 A-1 v. Providential Corp.*, 1993 WL 401866, at *2 (Del. Ch. Sept. 3, 1993).

[85] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1043, 1064 (Del. Ch. 2015) (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

[86] *In re Orchard Enters. S'holder Litig.*, 2014 WL 4181912, at *5 (Del. Ch. Aug. 22, 2014).

[87] $32 million ÷ 36 million shares = $0.89 per share; $0.89 ÷ $10 (the per-share Merger Consideration) = 8.9%.

[88] *In re Dell Techs. Inc. Class V S'holders Litig.*, Consol. C.A. No. 2018-0816-JTL, Tr. at 41 (Del. Ch. Apr. 19, 2023) (TRANSCRIPT) ("An exceptional result is at around the 5 percent level"); *see In re Santander Consumer USA Hldgs. Inc. S'holders' Litig.*, 2025 WL

mark, and several times the premium in the routine deal-litigation settlements this Court approves.[89]

The "give" is correspondingly measured. In exchange for this immediate cash recovery, the Class provides a standard release limited to claims arising from or relating to the allegations underlying the Action or the Merger.[90] Weighed against that release—and against the risks and uncertainties of continued litigation, including the risk that Plaintiff would recover nothing for the Class—the Settlement is fair, reasonable, and adequate.

B. The Proposed Settlement Fully Reflects the Strength of Plaintiff's Claims Weighed Against the Risk of Further Litigation.

Plaintiff believes he has a strong liability case, particularly with respect to the conflicts that riddled the Merger process. But even under entire fairness review, Plaintiff faced real risks on both liability and damages—up to and including the possibility of no recovery at all after trial.

1012345, at *5 n.48 (Del. Ch. Mar. 31, 2025) ("Lead counsel represents that 6.5% premium achieved is the largest ever in a Delaware M&A class settlement above $75 million.").

[89] *New Enter. Assoc. 14, L.P. v. Rich*, 292 A.3d 112, 165 n.37 (Del. Ch. 2023) (collecting cases approving settlements providing between a 1.1% and 2.3% premium to deal price).

[90] *See* Stipulation at 15-16.

1. Plaintiff's Unfair Process Claims Were Strong, but Not Risk-Free.

The record gave Plaintiff powerful process arguments. THL, Agiliti's controller, engineered a lowball buyout before Agiliti could recover from temporary COVID-related headwinds. THL ensured it would have a cooperative counterparty by returning Tom Leonard—who had retired as Agiliti's CEO a year earlier to work directly for THL—to the CEO chair. The Special Committee's members were conflicted or beholden to THL,[91] and its advisors labored under debilitating, inadequately disclosed conflicts of their own.[92] The Special Committee allowed THL to rush the Merger process, conducting no meaningful pre-signing outreach or market check despite credible unsolicited interest from potential third-party acquirers.[93] Leonard derailed negotiations for months over his personal equity, negotiating his own liquidity and compensation rights directly with THL,[94] and then blessed the deal—telling the Special Committee that "it remains very uncomfortable to continue to stand in the way of THL's goal."[95] And the Committee failed to convert the Company's emerging turnaround into an improved Merger price.[96]

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[91] THL_CA_0015469; THL_CA_0016098; Gottlieb Tr. at 25-28, 106-12.

[92] AGTI-WEIL-CA_00001142; AGTI-WEIL-CA_00017199; AGTI CA_0083553 at -563.

[93] CENTERVIEW_0071107; AGTI_220_00000072; AGTI_220_00004973.

[94] THL_Appraisal_0046198; THL_Appraisal_0082395; AGTI CA_0137682.

[95] AGTI-SC_00004050.

[96] AGTI_220_00003951; AGTI-SC_CA_00006511.

Still, the process case was not risk-free. Defendants would have argued that the Special Committee did its job: it negotiated THL up from $9.00 per share across multiple rounds and twice held firm at $10.00. Defendants would have also defended the Committee members' independence, invoking Delaware's high bar for impeaching facially independent directors on the basis of social and professional relationships. Defendants likely had an answer to the market-check critique as well: THL, as controller, was entitled to refuse to sell its stake at any price, rendering third-party outreach futile, and the only written third-party proposal actually received topped out at the $10.00 deal price. Were the Court to credit the Committee as even partially well-functioning, that finding could have borne on Plaintiff's burden at trial.

2. Plaintiff Faced Risk in Proving Damages.

Even a finding of liability would not guarantee a meaningful recovery: any award turned on Plaintiff's ability to prove damages. Plaintiff's unfair-price case would have shown that THL stiff-armed comparable or higher third-party expressions of interest in the months prior to the Merger, and that the deal price rested on temporarily depressed performance and flawed valuation assumptions.[97]

Defendants, however, had viable fair-price arguments of their own, with market evidence at their center. The Merger price represented a 31% premium to

[97] Stonepeak_CA_00002419; Stonepeak_CA_00003665; [redacted]00000169; [redacted]00000344.

the Company's unaffected share price and fell within the range of analyst consensus.[98] Independent of the Merger process, a consultant Agiliti retained for goodwill-impairment testing valued the Company at [redacted] per share as of December 31, 2023.[99] And Centerview opined that the Merger price was fair based on management projections that Defendants contended were optimistic[100]—a contention Plaintiff viewed as self-serving, but one that the Company's poor post-Merger performance tended to support.[101] Plaintiff would have sought to undercut Centerview's DCF, but "valuation is not a perfect science,"[102] and there was no assurance the Court would credit Plaintiff's competing valuation over Centerview's.

Finally, even a complete victory lay years away—through the remaining depositions, expert discovery, trial, post-trial briefing, and a likely appeal—at substantial expense to be borne from any judgment. For a Class of former stockholders cashed out in May 2024, the Settlement converts that contingent, distant possibility into a certain and immediate recovery.

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[98] CENTERVIEW_0070945 at -948, -956.

[99] THL_CA_0000014.

[100] CENTERVIEW_0070945 at -950 (showing Centerview DCF range of $8.65-$14.10 per share); Workman Tr. at 470-71.

[101] THL_CA_0000014 at -061 (showing declining revenue growth and EBITDA for 2024).

[102] *In re Rural/Metro Corp. S'holders Litig.*, 102 A.3d 205, 226 (Del. Ch. 2014).

C. The Settlement Was Reached Through Arm's-Length Negotiations.

Delaware courts place considerable weight on whether a settlement was reached through arm's-length negotiations.[103] Here, the parties spent a full day in mediation before David M. Murphy of Phillips ADR without a deal. Depositions went forward while negotiations continued. And the parties settled only when Mr. Murphy issued a double-blind proposal reflecting his independent judgment of the relative strengths and weaknesses of the parties' positions, which both sides accepted.

D. The Experience and Opinion of Counsel Favor Approving the Proposed Settlement.

The opinion of counsel is also entitled to weight in assessing fairness.[104] Plaintiff's Counsel are experienced stockholder advocates known to the Court, and the discovery record they developed left them well positioned to evaluate the strengths and weaknesses of Plaintiff's claims when they negotiated the proposed

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[103] *See, e.g.*, *In re Activision Blizzard*, 124 A.3d at 1067 ("The diligence with which plaintiffs' counsel pursued the claims and the hard fought negotiation process weigh in favor of approval of the Settlement.") (citation omitted).

[104] *See, e.g.*, *Polk*, 507 A.2d at 536 (noting the court's consideration of "the views of the parties involved" when determining the "overall reasonableness of the settlement"); *Doe v. Bradley*, 64 A.3d 379, 396 (Del. Super. 2012) ("It is appropriate for the Court to consider the opinions of experienced counsel when determining the fairness of a proposed class action.").

Settlement. Their considered judgment that the proposed Settlement is in the best interests of the Class supports final approval.[105]

II. THE PROPOSED PLAN OF ALLOCATION SHOULD BE APPROVED.

A proposed "allocation plan must be fair, reasonable, and adequate."[106] The plan here is the simplest and fairest available: the Settlement proceeds will be distributed pro rata, directly to Class members (excluding Defendants and their affiliates).[107] Pro rata distribution places every Class member on equal footing, and direct distribution through the Settlement Administrator—the approach endorsed in *In re PLX Technology Inc. Stockholders Litigation*[108]—avoids the "relatively high administrative costs" and "unknown distributional effects" of a claims-submission process.[109] No Class member need file a claim to be paid.

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[105] *See Neponsit Inv. Co. v. Abramson*, 405 A.2d 97, 99 (Del. 1979) (affirming approval of settlement based, in part, on plaintiffs' counsel's conclusion, reached after conducting pretrial discovery, that the settlement was fair and in the best interests of the class).

[106] *Schultz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009), *overruled on other grounds by Urdan v. WR Cap. P'rs, LLC*, 244 A.3d 668 (Del. 2020).

[107] Defendants have provided (or caused to be provided) documentation, including a list of record holders as of the date of the Transaction, the Transfer Agent Instructions Letter associated with the Transaction, and a chill report, to assist with identifying Class members and Excluded Shares. The parties will continue working with the Settlement Administrator to identify and verify Excluded Shares. The Settlement Administrator will provide further explanation of the notice process in its forthcoming affidavit, which will be filed with the Court in accordance with the Scheduling Order.

[108] 2022 WL 1133118 (Del. Ch. Apr. 18, 2022).

[109] *Montgomery v. Erickson Inc.*, C.A. No. 8784-VCL, at 16 (Del. Ch. Sept. 12, 2016) (TRANSCRIPT); *PLX*, 2022 WL 1133118, at *5-6; *see also McKnight v. Alliance Ent.*

III. THE CLASS SHOULD BE PERMANENTLY CERTIFIED.

"Certification of a class under Court of Chancery Rule 23 . . . requires that the purported class meet all four criteria within Court of Chancery Rule 23(a) and at least one of the criteria within Court of Chancery Rule 23(b)."[110]

The Scheduling Order, entered on June 2, 2026, defines the "Class" as follows:

> All record holders and beneficial owners of shares of Agiliti stock whose shares were exchanged for or who had the right to receive $10.00 per share in cash (the "Merger Consideration") in exchange for their Agiliti stock in connection with the transaction (the "Merger") with THL that closed on May 7, 2024 (the "Closing"), including their heirs, successors in interest, successors, transferees, and assigns.
>
> Excluded from the Class are (i) Defendants and Agiliti; (ii) any person who was an officer or director of Agiliti at the time of the Closing; (iii) the members of the Immediate Families of any of the foregoing (as applicable); (iv) any entity in which any of the foregoing has a controlling interest; (v) any of the foregoing's respective parents or subsidiaries or general partners and any trusts, estates, entities, or accounts that held Agiliti shares for the benefit of any of the foregoing; and (vi) the heirs, successors, or assignees of any of the foregoing.[111]

Final certification is appropriate because this Action satisfies Rule 23(a) and fits "within the framework provided for in subsection (b)" of Rule 23.[112]

Holding Corp., C.A. No. 2023-0383-LWW (Del. Ch. June 18, 2025) (Order) and *id.* (Del. Ch. May 16, 2025) (settlement brief) (approving settlement distributing funds to class members *pro rata*).

[110] *In re Ebix, Inc. S'holder Litig.*, 2018 WL 3570126, at *1 (Del. Ch. July 17, 2018).

[111] Scheduling Order (Trans. ID 79623564) ¶3.

[112] *Nottingham P'rs*, 564 A.2d at 1095.

A. The Class Satisfies the Requirements of Rule 23(a).

Rule 23(a) imposes four requirements: (i) the class is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (iv) the representative parties will fairly and adequately protect the class's interests.[113]

1. Numerosity

Where a class comprises common stockholders of a publicly traded company, numerosity is readily satisfied.[114] That is the case here: the Class covers approximately 36 million shares, likely held by thousands of record holders and beneficial owners.

2. Commonality

Commonality is satisfied when "the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[115] The Action presents issues common to all Class members, including whether Defendants breached their fiduciary duties to the Class

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[113] Ct. Ch. R. 23(a).

[114] *See Zimmerman v. Home Shopping Network, Inc.*, 1990 WL 118363, at *12 (Del. Ch. Aug. 30, 1990).

[115] *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) (citations omitted).

and the appropriateness and amount of any relief, including damages. This Action asserts claims that "implicate the interests of all members of the proposed class of shareholders," and thus meets the commonality requirement.[116]

3. Typicality

Typicality exists where, as here, the class representative's claims "arise[] from the same event or course of conduct that gives rise to the claims [or defenses] of other class members and [are] based on the same legal theory."[117] Plaintiff's claims challenge Defendants' conduct in connection with the Merger, and every Class member was affected by the alleged course of conduct in the same manner as Plaintiff: each was cashed out at the same $10.00 per share. Plaintiff's legal and factual positions are accordingly consistent with, and create no conflicts within, the Class.

4. Adequacy

Rule 23(a)(4) requires that the class representative "fairly and adequately protect the interests of the class."[118] A representative is generally adequate where (i) there is no "economic antagonism[] between the representative and the class,"

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[116] *In re Lawson Software, Inc. S'holder Litig.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011).

[117] *N.J. Carpenters Pension Fund v. infoGROUP, Inc.*, 2013 WL 610143, at *3 (Del. Ch. Feb. 13, 2013) (second alteration in original).

[118] *Nottingham P'rs*, 564 A.2d at 1094-95 (quoting Ct. Ch. R. 23(a)).

and (ii) the representative has retained "qualified, experienced, and competent" counsel.[119] "[T]he requirements for an 'adequate' class representative are not onerous."[120]

Rule 23(a)(4) is satisfied here. Plaintiff is a typical member of the Class with no interests antagonistic to it, and Plaintiff retained counsel with significant experience litigating stockholder representative matters—experience borne out by the result achieved.

B. The Class Satisfies the Requirements of Rule 23(b)(1) and (b)(2).

A class must also fit "into one of the three categories specified in Court of Chancery Rule 23(b)."[121] "Delaware courts 'repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2).'"[122]

1. Certification Under Rule 23(b)(1) Is Appropriate.

Rule 23(b)(1) permits certification where separate actions would risk inconsistent or varying adjudications establishing incompatible standards of

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[119] *infoGROUP*, 2013 WL 610143, at *3 & n.24.

[120] *O'Malley v. Boris*, 2001 WL 50204, at *5 (Del. Ch. Jan. 11, 2001).

[121] *In re Ebix*, 2018 WL 3570126, at *4.

[122] *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 432-33 (Del. 2012) (internal citations omitted).

conduct, or adjudications dispositive of the interests of absent class members.[123] Plaintiff's claims challenge a course of conduct that affected all Class members identically—Defendants would be liable to every Class member or to none. Permitting separate actions over the same conduct would create precisely the risk of "inconsistent or varying adjudications" the rule addresses, and any decision could be "dispositive" of, and could "substantially impair or impede" the rights of other Class members.[124]

2. Certification Under Rule 23(b)(2) Is Also Appropriate.

Rule 23(b)(2) certification is appropriate where the particular facts of any one stockholder would have no bearing on the appropriate remedy,[125] and where defendants engaged in a single course of conduct generally applicable to the class—even where the relief sought is monetary.[126] That describes this case: the harm to every Class member arose from the same unfair process and the same unfairly low consideration paid at the Closing, and the pro rata relief treats the Class uniformly.

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[123] *In re Countrywide Corp. S'holders Litig.*, 2009 WL 846019, at *11 (Del. Ch. Mar. 31, 2009).

[124] Ct. Ch. R. 23(b)(1).

[125] *See Hynson v. Drummond Coal Co.*, 601 A.2d 570, 575-77 (Del. Ch. 1991).

[126] *See In re Del Monte Foods Co. S'holders Litig.*, C.A. No. 6027-VCL, at 48-49 (Del. Ch. Dec. 1, 2011) (TRANSCRIPT) ("The idea that a court can't certify a class under (b)(2) simply because it involves monetary damages is . . . based on an overly cramped and unpersuasive reading of *Shutts* and *Wal-Mart*.").

C. The Remaining Requirements of Court of Chancery Rule 23 Are Satisfied.

Plaintiff has submitted an affidavit pursuant to Rule 23(f)(2)(A) in support of the proposed Settlement.[127] As directed in the Scheduling Order, Notice was or will be provided through: (i) U.S. first-class mail, with the Settlement Administrator mailing the Notice to each potential Class member identified through reasonable effort at the last known address appearing in the stock transfer records maintained by or on behalf of Agiliti; (ii) posting the Notice and Stipulation on a website established by the Settlement Administrator for the proposed Settlement; (iii) publication of the Summary Notice in *Investor's Business Daily*; and (iv) transmission of the Summary Notice over the *PR Newswire*. Plaintiff will file the required proof of mailing of the Notice and publication of the Summary Notice at least ten business days prior to the Settlement hearing.

The Settlement also meets the requirements of Rule 23(f)(5) and Rule 23.1(d)(5):

- Rule 23(f)(5)(A) is satisfied because, as set forth *supra* at Section III.A.4, Plaintiff and Plaintiff's Counsel have adequately represented the proposed Class;

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[127] *See* Affidavit of Eric M. Maglione in Support of the Proposed Settlement, Class Certification, an Award of Attorneys' Fees and Expenses, and an Incentive Award ("Maglione Aff.").

- Rule 23(f)(5)(B) is satisfied because, as set forth in this Section—and as will be further detailed in the Affidavit of Notice—adequate notice of the Settlement hearing has been provided;

- Rule 23(f)(5)(C) is satisfied because, as set forth *supra* at Section I.C, the proposed Settlement was negotiated at arm's length; and

- Rule 23(f)(5)(D) is satisfied because, as set forth *supra* at Section I, the relief provided to the proposed Class falls within a range of reasonableness, taking into account (i) the strength of the claims; (ii) the costs, risks, and delay of trial and appeal; (iii) the scope of the release; and (iv) any objections to the proposed Settlement.

IV. THE FEE AND EXPENSE AWARD SHOULD BE GRANTED.

This Court may award attorneys' fees and expenses to counsel whose efforts have created a common fund.[128] "The percentage awarded as attorneys' fees from a common fund is committed to the sound discretion of the Court of Chancery,"[129] exercised through the factors set forth in *Sugarland Industries, Inc. v. Thomas*.[130] Delaware courts assign the greatest weight to the benefit achieved in the litigation;[131] the secondary factors are the contingent nature of the litigation, the complexity of the litigation, the time and effort expended by counsel, the quality of the work performed, and the standing and ability of the lawyers involved.

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[128] *Tandycrafts, Inc. v. Initio P'rs*, 562 A.2d 1162, 1164 (Del. 1989); *see Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012).

[129] *Ams. Mining*, 51 A.3d at 1261.

[130] 420 A.2d 142, 147-50 (Del. 1980).

[131] *Ams. Mining*, 51 A.3d at 1255 ("[T]he first and most important of the *Sugarland* factors [is] the benefit achieved . . . .").

Plaintiff's Counsel seek an all-in Fee and Expense Award of $6.72 million—21% of the $32 million common fund, inclusive of expenses,[132] or 20.2% of the fund if expenses are first extracted.[133] Every *Sugarland* factor supports the request.

A. The Proposed Settlement Confers a Substantial Benefit to the Class.

The "dollar amount of the [payment] created . . . is the heart of the *Sugarland* analysis,"[134] and "[w]hen the benefit is quantifiable . . . by the creation of a common fund, *Sugarland* calls for an award of attorneys' fees based upon a percentage of the benefit."[135] The benefit achieved here is concrete: $32 million in cash, an 8.9% increase to the Merger Consideration.

That benefit was the product of "meaningful litigation efforts" of the kind that supports awards of between 15% and 25% of the common fund.[136] Plaintiff's Counsel (1) conducted an extensive books-and-records investigation; (2) filed a 124-page plenary Complaint that Defendants never moved to dismiss; (3) propounded 102 document requests, eighty-seven interrogatories, and seventeen third-party subpoenas; (4) filed and won three discovery motions and successfully defended

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[132] ($6,720,000 / $32,000,000) * 100% = 21.00%.

[133] ($6,450,651.76 / $32,000,000) * 100% = 20.16%.

[134] *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000).

[135] *Ams. Mining*, 51 A.3d at 1259.

[136] *Id*. at 1259-60.

against a fourth; (5) negotiated expanded discovery protocols and reviewed approximately 200,000 documents produced by Defendants and third parties, including approximately 146,000 documents not produced in the Appraisal Action; (6) deposed three fact witnesses, prepared for and assisted the Appraisal Action petitioners in deposing three others, and prepared for numerous additional depositions scheduled over the following two months; (7) prepared for and attended a full-day mediation, including submitting two pre-mediation statements; and (8) negotiated the term sheet memorializing the Settlement's key terms.

"Precedent awards from similar cases may be considered for the obvious reason that like cases should be treated alike."[137] Fees awarded in comparable cases resolved at similar or earlier stages confirm the reasonableness of the request:

Case	Award	Stage of Settlement
Building Trades Pension Fund of W. Pa. v. Mizel[138]	$25 million settlement, 20.5% fee	Document discovery, one deposition; discovery motion practice resolved without Court rulings
Firefighters' Pension System of Kansas City, Missouri Trust v. Presidio, Inc.[139]	$21.625 million settlement, 25% fee	Document discovery, four depositions

[137] *Olson v. ev3, Inc.*, 2011 WL 704409, at *8 (Del. Ch. Feb. 21, 2011); *see also City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr. v. Foley*, C.A. No. 2020-0650-KSJM, Tr. at 51 (Del. Ch. June 21, 2022) (TRANSCRIPT) ("[W]e look really to precedent to inform the value of the benefits conferred, and for good reason.").

[138] C.A. No. 2024-1138-NAC, Tr. at 39, 42-43 (Del. Ch. June 18, 2026) (TRANSCRIPT).

[139] C.A. No. 2019-0839-JTL, Tr. at 4, 29, 49 (Del. Ch. Nov. 7, 2022) (TRANSCRIPT); 2022 WL 17093207 (Del. Ch. Nov. 18, 2022) (Order).

Case	Award	Stage of Settlement
In re Lordstown Motors Corp. Stockholders Litigation[140]	$15.5 million settlement, 22.5% fee	Some discovery motion practice, no depositions
City of Miami General Employees' and Sanitation Employees' Retirement Trust v. Foley[141]	$20 million settlement, 22% fee	Section 220 investigation, briefing of SLC's motion to stay plenary action, no discovery
In re AVX Corp. Stockholders Litigation[142]	$49.9 million settlement, 21.5% fee	Some discovery motion practice, no depositions
In re MultiPlan Corp. Stockholders Litigation[143]	$33.75 million settlement, 20% fee	Some discovery motion practice, no depositions

Plaintiff's 21% all-in request sits at the low end of this range even though the Action resolved at a stage as late as or later than every cited matter.

[140] 2024 WL 3555798, at *4 (Del. Ch. July 5, 2024) (Order); 2024 WL 2882788 (Del. Ch. June 3, 2024) (Settlement Brief).

[141] *City of Miami*, C.A. No. 2020-0650-KSJM, Tr. at 45, 54.

[142] *In re AVX Corp. S'holders Litig.*, C.A. No. 2020-1046-SG, Tr. at 6, 16 (Del. Ch. Dec. 22, 2022) (TRANSCRIPT).

[143] 2023 WL 2329706 (Del. Ch. Mar. 1, 2023) (Final Order and Judgment); 2023 WL 1927595 (Del. Ch. Feb. 6, 2023) (Settlement Brief).

B. The Secondary *Sugarland* Factors Support the Fee and Expense Award.

1. The Contingent Nature of the Litigation Supports the Requested Fee and Expense Award.

The contingent nature of the representation is the "second most important factor considered by this Court."[144] "It is consistent with the public policy of Delaware to reward [] risk-taking in the interests of shareholders,"[145] and "[t]his Court has recognized that an attorney may be entitled to a much larger fee when the compensation is contingent than when it is fixed on an hourly or contractual basis."[146] Contingency risk is assessed as of the outset of the litigation.[147]

Plaintiff's Counsel prosecuted this case on a fully contingent basis for more than two years, devoting over 7,900 hours and incurring $269,348.24 in expenses to date.[148] Plaintiff's Counsel have received no payment and no reimbursement of costs, apart from the fees the Court shifted in granting Plaintiff's first motion to

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144 *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Mar. 4, 1992).

145 *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005).

146 *Ryan v. Gifford*, 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009); *see also Seinfeld,* 847 A.2d at 337 (recognizing that when the compensation of plaintiffs' counsel is contingent on recovery, an award of a risk premium and an incentive premium on top of their standard hourly rates is appropriate).

147 *See, e.g.*, *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1140 (Del. Ch. 2011).

148 *See* Affidavit of Kimberly A. Evans in Support of the Proposed Settlement, Class Certification, an Award of Attorneys' Fees and Expenses, and an Incentive Award ("Evans Aff.") ¶¶4-5, 7; Affidavit of Vivek Tata in Support of the Proposed Settlement, Class Certification, an Award of Attorneys' Fees and Expenses, and an Incentive Award ("Tata Aff.") ¶¶4-5, 7.

compel, which have been excluded from the figures herein. This factor weighs in favor of the requested Fee and Expense Award.

2. The Time and Efforts of Plaintiff's Counsel Support the Requested Fee and Expense Award.

"The time and effort expended by counsel serves [as] a cross-check on the reasonableness of a fee award,"[149] though "more important than hours is 'effort, as in what Plaintiffs' counsel actually did[.]'"[150]

Plaintiff's Counsel spent 7,864.95 hours litigating the Action from inception to May 18, 2026, the day the parties filed the Stipulation, for a total lodestar of $6,207,072.00 at counsel's current hourly rates.[151] The requested award represents a lodestar multiple of just 1.08x[152] and an implied hourly rate of $854.42.[153] The implied rate is reasonable compared to the non-contingent hourly rates of experienced and qualified counsel who practice before this Court and below effective hourly rates this Court has approved in comparable contingent matters.[154]

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[149] *Sauer-Danfoss*, 65 A.3d at 1138.

[150] *Ams. Mining*, 51 A.3d at 1258 (citation omitted).

[151] *See* Evans Aff. ¶4; Tata Aff. ¶4.

[152] $6,720,000 / $6,207,072 = 1.083 lodestar multiple. Backing out expenses, the requested award represents a 1.04x multiple. $6,450,651.76 / $6,207,072 = 1.039 lodestar multiple.

[153] $6,720,000 / 7,864.95 = $854.42. Backing out expenses, the requested award implies an hourly rate of $820.18. $6,450,651.76 / 7,864.95 = $820.18.

[154] *See, e.g., Ark. Tchr. Ret. Sys. v. Alon USA Energy, Inc., et al.*, C.A. No. 2017-0453-KSJM (Del. Ch. Oct. 29, 2021) (ORDER) ¶13, (Del. Ch. Oct. 1, 2021) and *id.* (Del. Ch. Oct. 8, 2021) (Settlement Brief) at 62 (awarding $860.43 hourly rate); *Chester Cnty. Emps.' Ret.*

Nor were the hours idly spent. Counsel's efforts centered on trial-focused discovery, including prevailing on motions to compel and defeating a motion to quash.[155] That success produced the settlement leverage that drove the recovery, while equipping Plaintiff to evaluate the "give" and "get" of the Settlement with a full record.

The expenses included in the all-in request are reasonable and typical of complex litigation, consisting primarily of expert fees, discovery-related costs, and mediation expenses.

3. The Standing and Ability of Plaintiff's Counsel Support the Requested Fee and Expense Award.

Under *Sugarland*, the Court should also consider the "standing and ability of plaintiff's counsel."[156] Plaintiff's Counsel are well known to this Court for their experience in successfully prosecuting derivative and class actions. They have amassed an extensive track record in stockholder litigation, securing hundreds of

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Fund v. KCG Holdings, Inc., et al., C.A. No. 2017-0421-KSJM (Del. Ch. Apr. 2, 2020) (ORDER) ¶10, (Del. Ch. Mar. 10, 2020) and *id.* (Del. Ch. Mar. 17, 2020) (Settlement Brief) at 51 (awarding $1,162.04 hourly rate); *Sciabacucchi v. Salzberg,* 2019 WL 2913272, at *6 (Del. Ch. July 8, 2019), *judgment entered*, (Del. Ch. 2019), *vacated on other grounds*, (Del. Ch. 2020) (awarding $11,262.26 hourly rate); *Ams. Mining Corp.*, 51 A.3d at 1252, 1257-58 (affirming award of $35,000 hourly rate).

[155] Trans. ID 77774520; Trans. ID 77880924. *See also* Trans. ID 78111271 (granting Plaintiff's motion to compel "highly relevant" discovery regarding conflicts and shifting fees); Trans. ID 78099288 (granting motion to quash).

[156] *See Sauer-Danfoss*, 65 A.3d at 1140.

millions of dollars in class and derivative recoveries in the last few years alone. Plaintiff's Counsel's record and expertise favor granting the requested Fee and Expense Award.

The Court may also consider the "diligence[,] zealousness . . . [and] experience" of opposing counsel when awarding attorneys' fees.[157] Defendants are represented by experienced, skillful, and well-respected law firms that vigorously defended their clients' interests. The ability of opposing counsel enhances the significance of the benefit achieved for the Class.

V. THE INCENTIVE AWARD SHOULD BE GRANTED.

Plaintiff's Counsel also respectfully seek a modest $5,000 incentive award for Plaintiff, to be paid entirely from the Fee and Expense Award (the "Incentive Award"). Such awards appropriately "give some compensation to people who step forward and take the risk of" participating in adversarial discovery,[158] and are calibrated to the "effort and expertise" of the plaintiff.[159]

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[157] *See Joseph v. Shell Oil Co.*, 1985 WL 150466, at *5 (Del. Ch. Apr. 22, 1985).

[158] *See In re EZCorp Inc. Consulting Agreement Deriv. Litig.*, C.A. No. 9962-VCL (Del. Ch. Apr. 3, 2018) (TRANSCRIPT) at 35-36 (awarding $5,000 incentive award).

[159] *Raider v. Sunderland*, 2006 WL 75310, at *2 (Del. Ch. 2006).

Plaintiff's service warrants the award.[160] He actively monitored counsel, reviewed pleadings, and responded to discovery, including by producing documents from his personal email account.[161] He also bore burdens beyond the ordinary: when Defendants subpoenaed his broker for his personal investment records—discovery unrelated to Agiliti that the Court itself found "invasive"—Plaintiff was forced to move to quash, and prevailed.[162] This Court has granted awards of the same or greater amounts in comparable recent cases,[163] and because the requested award reduces Plaintiff's Counsel's award rather than the Class's recovery, no Class member bears any part of its cost.

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160 *See In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 2023 WL 5165606, at *41 (Del. Ch. Aug. 11, 2023) ("In typical baseline circumstances, an incentive award of $5,000 rewards competent participation.").

161 Maglione Aff. ¶3.

162 *See* Trans. ID 78099288 (granting Plaintiff's motion to quash Defendants' subpoena for Plaintiff's personal Charles Schwab investment account information and characterizing the subpoena as a "fishing expedition").

163 *See*, *e.g.*, *Sciabacucchi v. Liberty Broadband Corp.*, C.A. No. 11418-VCG, Tr. at 23 (Del. Ch. June 22, 2023) (TRANSCRIPT) (approving $50,000 incentive award to plaintiff due to "special equities" of defendants serving subpoena on plaintiff's employer); *In re Golden Nugget Online Gaming, Inc. S'holders Litig.*, C.A. No. 2022-0797-JTL, Tr. at 27 (Del. Ch. July 9, 2024) (TRANSCRIPT) (awarding $5,000 incentive award); *Mesirov v. Enbridge Energy Co.*, 2019 WL 690410, at *1 (Del. Ch. Feb. 18, 2019) (ORDER) (approving $7,500 incentive award); *Kistenmacher v. Atchison*, 2020 WL 2620676, at *2 (Del. Ch. May 22, 2020) (ORDER) (approving $7,500 incentive award).

CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests that the Court approve the Settlement as fair, reasonable, and adequate; approve the Plan of Allocation; finally certify the Class; grant the Fee and Expense Award; and approve the Incentive Award.

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BLOCK & LEVITON LLP

/s/ Kimberly A. Evans
Kimberly A. Evans (#5888)
Lindsay K. Faccenda (#5772)
Daniel M. Baker (#7071)
Robert Erikson (#7099)
222 Delaware Ave., Suite 1120
Wilmington, DE 19801
(302) 499-3600
kim@blockleviton.com
lindsay@blockleviton.com
daniel@blockleviton.com
robby@blockleviton.com

Words: 10,743 / 14,000

Counsel for Lead Plaintiff Eric M. Maglione

OF COUNSEL:

Jason Leviton
Nathan Abelman
BLOCK & LEVITON LLP
260 Franklin St., Suite 1860
Boston, MA 02110
(617) 398-5600

Silpa Maruri
Vivek Tata
Brian Campbell
Chase Shelton
Molly O'Keefe
Silas La Borde
ELSBERG, BAKER & MARURI, PLLC
Empire State Building
350 Fifth Avenue, 38th Floor
New York, NY 10118
(212) 597-2600