



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THOMAS BAILEY and DENNIS PAGAN,
individually and on behalf of all other
similarly situated former stockholders of
AGILITI, INC.,

Plaintiffs,

v.

THOMAS H. LEE PARTNERS, L.P., THL
AGILITI LLC, APEX INTERMEDIATE
HOLDCO, INC., MICHAEL A. BELL,
JOSHUA M. NELSON, MEGAN M.
PREINER, SCOTT M. SPERLING,
THOMAS J. LEONARD, GARY L.
GOTTLIEB, C. MARTIN HARRIS,
DIANE B. PATRICK, JOHN L.
WORKMAN, and DARREN M.
FRIEDMAN,

Defendants.

C.A. No. 2024-1247-MTZ

Redacted Version Dated:

December 10, 2024

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Thomas Bailey and Dennis Pagan (together, “Plaintiffs”), on behalf of themselves and similarly situated former stockholders of Agiliti, Inc. (“Agiliti” or the “Company”) bring this Verified Class Action Complaint (the “Complaint”) against Defendants Thomas H. Lee Partners, L.P., THL Agiliti LLC, Apex Intermediate Holdco, Inc., Michael A. Bell, Joshua M. Nelson, Megan M. Preiner, Scott M. Sperling, Thomas J. Leonard, Gary L. Gottlieb, C. Martin Harris, Diane B. Patrick, John L. Workman, and Darren M. Friedman. The allegations herein are based on Plaintiffs’ knowledge as to themselves and, as to all other matters, on

information and belief, including counsel’s investigation, the review of publicly available information, and the review of certain books and records produced by Agiliti in response to Plaintiffs’ demands pursuant to 8 *Del. C.* § 220 as to all other matters.

INTRODUCTION

1. In May of 2024, Agiliti’s controlling stockholder, private equity firm Thomas H. Lee Partners, L.P. (together with its affiliates, “THL”), took the Company private pursuant to an unfair process and for an unfair price of \$10 per share (the “Buyout”). THL crammed down the transaction on minority stockholders by unilaterally approving the Buyout through its own written consent.

2. The Buyout was a great deal for THL. After thwarting separate outside takeover approaches in late 2022 and early 2023 that valued Agiliti at \$20 and \$16 per share, respectively, THL pounced in the fall of 2023. First, THL staged a management coup, replacing Agiliti’s CEO with prior Agiliti CEO and then THL Executive Partner Thomas L. Leonard, who had retired from the Company just six months earlier. Then, five days after the management change, while the market’s overreaction to a disappointing second quarter suppressed Agiliti’s stock at a steep discount to its intrinsic value, THL swooped in with a well-timed offer to freeze out minority stockholders.

3. THL boxed out the competition, insisting that it would not sell its stake or partner with a potential superior bidder. And THL expressly eschewed the best-in-class minority stockholder protections outlined in *Kahn v. M&F Worldwide Corp.* (“*MFW*”), which would have threatened THL’s chances for expropriating the minority stake in Agiliti.

4. Unsurprisingly, the final Buyout terms foisted on minority stockholders were unfair. Stockholders were sold out by a special committee (the “Special Committee” or “Committee”) that suffered from the double sting of conflict and complacency.

5. One member of the Special Committee was a former partner and then-special counsel at Ropes & Gray LLP (“Ropes”), which was not only frequent counsel to THL but also represented THL on the Buyout. The Special Committee’s counsel, Michael Aiello of Weil Gotschal & Manges LLP (“Weil”), also frequently represented THL, a fact he highlighted in Weil’s advertising materials.

6. Within weeks, the Special Committee all but accepted THL’s proposal to acquire the rest of Agiliti for \$10 per share even though Leonard remained steadfastly optimistic about the Company’s prospects. But when THL initially would not agree to pay Leonard millions of dollars for his unvested equity at close, Leonard singlehandedly shut down negotiations. And during that impasse, Leonard

and the Special Committee summarily rejected another third-party offer that did not require THL's participation. Leonard and the Committee had eyes only for THL.

7. Talks resumed between Leonard and THL in January of 2024. During this period, Leonard advised the Special Committee that the Company was progressing well on its long-term plan. Despite Leonard extolling the Company's prospects and maintaining to THL that "the equity market is always a laggard and today it significantly undervalues [Agiliti] and its future prospects," and that Agiliti's "stock price will more accurately reflect our intrinsic value once we have the opportunity to demonstrate consistent business performance," Leonard was willing to roll over for THL—so long as management had a "logical model" for treatment of their equity in the post-transaction company. By mid-January, THL met Leonard's demands concerning the treatment of equity, thus removing the only impediment to a deal.

8. In late January 2024, THL formally renewed its interest in acquiring the rest of the Company. As Leonard told the Special Committee, he had "no interest in getting sideways with THL again on this proposed transaction," and "it remain[ed] very uncomfortable [for him] to continue to stand in the way of THL's goal." As Leonard saw it, everyone at Agiliti could "save a lot of time and energy if [the parties] quickly arrive again at \$10 or more per share."

9. Once Leonard bent the knee to favor his own personal relationship with his employer THL, the Special Committee followed suit even though Leonard was a recent THL insider and despite the fact that he openly prioritized his self-interest concerning the treatment of management's equity above the interests of the stockholders to whom he owed fiduciary duties. Following a month of token negotiations, the Special Committee accepted a rushed, flawed fairness opinion from its financial advisor Centerview Partners LLC ("Centerview") and recommended approval of the deal. The board of directors (the "Board") followed suit and agreed.

10. The \$10 per share that minority stockholders were forced to accept significantly undervalues Agiliti. The imposed deal price was well-below the \$11.38 per share midpoint valuation determined by Centerview's DCF model. Moreover, in addition to using financial projections for Agiliti that excluded the Company's historical and stated prospective growth initiatives, Centerview's financial analyses were rife with THL-favoring errors that, upon correction, indicate that Agiliti was worth much more.

11. Centerview departed from reality, convention, and its typical practices by modeling Agiliti's cash flows to be recognized at year-end even though Agiliti's cash flows come in steadily. Had Centerview's model reflected reality by using a mid-year recognition convention, Agiliti's projected cash flows would have been more valuable and Centerview's DCF valuation would have been 9% higher.

Centerview's DCF also undervalued Agiliti because the advisor used peer company capital structure metrics to calculate a discount rate instead of using Agiliti's own debt-to-equity ratio. Altogether, if corrected, Centerview's DCF analysis would have revealed that Agiliti was worth at least \$13.18 per share. Centerview also ignored forward-looking multiples in its comparable companies analysis when available and reliable forward-looking estimates would have yielded a more reliable estimate of Agiliti's value.

12. Plaintiffs seek to recover damages on behalf of the putative class (the "Class") of all former public Agiliti stockholders who received the unfair Buyout consideration caused by Defendants' fiduciary duty breaches and other misconduct.

PARTIES

A. The Plaintiffs

13. **Plaintiff Thomas Bailey** owned shares of Agiliti common stock at all relevant times and received \$10 per share in the Buyout.

14. **Plaintiff Dennis Pagan** owned shares of Agiliti common stock at all relevant times and received \$10 per share in the Buyout.

B. The THL Entity Defendants

15. **Defendant Thomas H. Lee Partners, L.P.** (previously defined as "THL"), a Delaware entity, is a Boston-based private equity firm and has been Agiliti's controller at all relevant times.

16. **Defendant THL Agiliti LLC** (“THL Agiliti”) is a Delaware entity that served as THL’s vehicle for owning a controlling interest in Agiliti. THL Agiliti’s members are Thomas H. Lee Equity Fund VIII, L.P., Thomas H. Lee Parallel Fund VIII, L.P., THL Executive Fund VIII, L.P., THL Fund VIII Coinvestment Partners, L.P., THL Equity Fund VIII Investors (Agiliti), L.P., and FS Sponsor LLC.

17. **Defendant Apex Intermediate Holdco, Inc.** (“Parent”) was formed as a Delaware entity on February 23, 2024 for the purpose of consummating the Buyout. Parent is an affiliate of THL and is wholly owned by THL Agiliti. Apex Merger Sub, Inc. (“Merger Sub”) was formed as a Delaware entity and wholly owned subsidiary of Parent on February 23, 2024 for the purpose of consummating the Buyout. As part of the Buyout, Merger Sub merged with and into Agiliti and then ceased to exist.

18. The Defendants referenced in ¶¶ 15-17 are collectively referred to herein as the “THL Entity Defendants.”

C. The Directors

19. **Defendant Michael A. Bell** is a Managing Director of THL who served on the Board of Agiliti from 2019 through the completion of the Buyout. Bell also served as a director of Federal Street Acquisition Corp. (“FSAC”), a special purpose acquisition corporation (“SPAC”) which THL formed and which first acquired Agiliti in 2019 before delisting the Company (the “De-SPAC Transaction”).

20. **Defendant Joshua M. Nelson** is a Managing Director and the Head of Healthcare at THL, has been affiliated with THL since 2003, and served on the Board from 2019 through the completion of the Buyout. Nelson also served as a director of FSAC prior to its 2019 acquisition of Agiliti.

21. **Defendant Megan M. Preiner** is a Managing Director of THL and has been affiliated with THL since 2008. Preiner served on the Board from 2019 through the completion of the Buyout. Preiner also served as a director of FSAC prior to its 2019 acquisition of Agiliti.

22. **Defendant Scott M. Sperling** is THL's Co-Chief Executive Officer and co-chair of THL's Management Committee, having been affiliated with THL since 1994. Sperling served on the Board from 2019 through the completion of the Buyout. Sperling also served as a director of FSAC prior to its 2019 acquisition of Agiliti.

23. **Defendant Thomas J. Leonard** has served on the Board since April 2015 (when the Company operated as UHS, defined below), and served as the Company's CEO from the De-SPAC Transaction through March 10, 2023, after which he served in an advisor role through March 30, 2023. In April 2023, Leonard became an Executive Partner of THL. While still an Executive Partner of THL, Leonard resumed working as Agiliti's CEO on September 28, 2023, upon the termination of Thomas W. Boehning, who had been Leonard's successor as Agiliti's

CEO. Leonard remained as Agiliti's CEO following the Buyout and will rolled over Agiliti equity into the post-close company.

24. **Defendant Gary L. Gottlieb** served on the Board from January 2019 through the completion of the Buyout. Boston-based Gottlieb was a member of the Special Committee. Gottlieb previously served as a director of FSAC. Gottlieb also served as CEO of Partners HealthCare (n/k/a MassGeneral Brigham), a healthcare organization chaired by THL Co-CEO Scott M. Sperling, and where Agiliti director and Special Committee member Diane B. Patrick also serves as a director. Gottlieb also overlapped with THL Managing Director Mark A. Bell during their tenure at inVentiv Health, Inc., where Bell held high-level executive positions.

25. **Defendant C. Martin Harris** served on the Board from May 2022 through the completion of the Buyout. Harris was a member of the Special Committee.

26. **Defendant Diane B. Patrick** served on the Board from April 2021 through the completion of the Buyout. Boston-based Patrick was a member of the Special Committee. Patrick is Senior Counsel and former Partner of Ropes & Gray LLP (previously defined as "Ropes"), one of THL's longtime go-to law firms. Ropes represented THL in connection with: the Buyout, the March 2022 acquisition of Intelligent Medical Objects, the close of the \$ [REDACTED] Thomas H. Lee Equity Fund IX in 2021, a secondary investment transaction involving wealth management

firm Hightower in December 2020, the November 2020 close of the \$ [REDACTED] THL Automation Fund, L.P., the 2011 sale of Warner Music Group, the 2010 acquisition of inVentiv Health, Inc., the 2009 acquisition of Clear Channel Communications, Inc. and related litigation, and the 2006 recapitalization of West Corporation. Ropes has also represented THL in lawsuits for more than three decades. One of Patrick's former Ropes partners, Shari H. Wolkon, left Ropes to join THL to serve as its general counsel, during which time she also served as FSAC's general counsel. Patrick also serves as a director of MassGeneral Brigham board alongside Gottlieb and THL Co-CEO Sperling.

27. **Defendant John L. Workman** served on the Board from 2014 (when the Company operated as UHS, defined below) through the completion of the Buyout. Harris was a member of the Special Committee.

28. **Defendant Darren M. Friedman**, who has served on the Board since March 2019, is a Partner of StepStone Group, LP, a global private markets firm with material ties to THL. For example, THL Executive Partner Jason Corsello currently serves as an advisor to StepStone. As discussed below, StepStone partnered with THL to provide equity financing for the Buyout.

29. The Defendants references in ¶¶ 19-28 are collectively referred to herein as the "Director Defendants."

SUBSTANTIVE ALLEGATIONS

A. THL Acquires Agiliti Through a De-SPAC and Promptly Delists the Company

30. Agiliti is a Minnesota-based Delaware corporation that provides medical equipment management and service solutions company. Prior to December 3, 2018, Agiliti was known as Universal Hospital Services, Inc. (“UHS”).

31. In 2017, THL formed and took Federal Street Acquisition Corp. (previously defined as “FSAC”) public for the purpose of acquiring a target business in the healthcare industry.

32. THL maintained control over FSAC after its public offering. As FSAC’s IPO Prospectus (the “FSAC IPO Prospectus”) acknowledged, FSAC “was formed by senior executives of, and advisors to, [THL], an affiliate of our sponsor,” and “[a]ll of the members of [FSAC’s] management team are employed by or otherwise have a relationship with THL.” The FSAC IPO Prospectus conceded that FSAC officers and directors had conflicting duties to other entities, and that those conflicts “may not be resolved in our [*i.e.*, FSAC’s] favor.”

33. The FSAC IPO Prospectus highlighted as part of its value proposition that U.S. healthcare costs grow at a faster rate than GDP and that the healthcare market is expected to grow considerably as obesity and other health problems become more common and as America’s population ages.

34. Ultimately, FSAC set its sights on a deal with privately-held UHS.

35. On August 13, 2018, FSAC announced that it had entered into agreement to merge with UHS, through which a new entity (*i.e.*, Agiliti) was created (previously defined as the “De-SPAC Transaction”). UHS’s CEO, Leonard, would lead Agiliti following the De-SPAC Transaction.

36. In connection with the De-SPAC Transaction, THL agreed to invest an additional \$200 million through a private placement priced at \$10 per share. According to the preliminary and definitive De-SPAC Transaction proxy statements, THL was expected to own 29% of the post-merger Agiliti. THL also intended to enter into a director nomination agreement (the “Director Nomination Agreement”) that would give it the right to designate four directors to the post-merger board. Accordingly, even at a sub-majority ownership expectation, FSAC warned stockholders that THL would have “the ability to strongly influence all corporate actions requiring stockholder approval.”

37. On December 20, 2018, FSAC supplemented the De-SPAC Transaction proxy, announcing it had entered into an amended merger agreement, under which THL would provide up to an additional \$750 million in backstop equity financing, priced at \$8.50 per share, related to and depending on potential redemptions.

38. With that additional financing, THL would emerge from the De-SPAC Transaction owning between 55% and 99.6% of Agiliti. THL was guaranteed

control regardless of how many of FSAC's public stockholders redeemed in the De-SPAC Transaction.

39. Ultimately, THL invested an additional \$737.8 million, obtaining another 86,795,398 shares of newly formed Agiliti.

40. The De-SPAC Transaction closed on January 4, 2019, with THL owning 99.3% of Agiliti's post-merger common stock.

41. FSAC and UHS also waived the provision in the De-SPAC Transaction merger agreement requiring Agiliti to remain listed on a national exchange, and the Company promptly de-listed.

42. Agiliti remained unlisted for the next two years. During this period, the Company's revenue increased substantially, from \$565 million in 2018 to \$773 million in 2020, a roughly 40% increase. Agiliti's operating income saw an even greater uptick, from negative \$17 million in 2018 to positive \$36 million in 2019. At the same time, THL nearly doubled Agiliti's debt, which rose from under \$700 million at the end of 2018 to \$1.2 billion at the end of 2020.

B. THL Takes Agiliti Public in 2021 Through an IPO But Retains Control

43. In 2021, THL took Agiliti public through an IPO for the primary purpose of raising money to repay outstanding borrowings.

44. At the time of the IPO, THL owned more than 99% of Agiliti's outstanding shares. And pursuant to an amended Director Nomination Agreement

executed in connection with the IPO, THL had the right to nominate *all of the nominees to the Board* so long as it beneficially owned 40% or more of Agiliti's shares.

45. On April 27, 2021, Agiliti completed its IPO, selling 30,263,789 shares priced at \$14 per share and raising approximately \$400 million after deducting underwriting commissions and offering expenses. Immediately following the IPO, THL owned 98,195,398 shares, or 76% of Agiliti's outstanding common stock.

46. THL has kept its grip on Agiliti ever since. The Schedule 14C Information Statement (the "Information Statement") Agiliti filed with the SEC in anticipation of the Buyout pegged THL's ownership percentage at 72.2% of outstanding common as of March 31, 2024. The only other holder above 1% was Leonard, at 2.8% ownership.

47. As Agiliti forecasted in its annual reports for the years ending 2021 through 2023, "THL and its affiliates may engage in activities where their interests conflict with our interests or those of our other shareholders. . . . *THL may have an interest in pursuing acquisitions, divestitures, and other transactions that, in its judgment, could enhance its investment, even though such transactions might involve risks to you.*" Agiliti's IPO Prospectus put it bluntly: "THL controls us, and its interests may conflict with [minority stockholders] or [ours] in the future."

48. THL also held influence over the Company's management and Board through additional affiliations and entanglements. As alleged above, at least seven of Agiliti's ten directors worked for or were affiliated with THL or otherwise had connections that rendered them non-independent or at least put their independence in serious doubt.

49. Moreover, THL contractually structured Agiliti to make it difficult for anyone to wrest away control. Agiliti's governing documents provided, among other things:

- A staggered board, with three-year terms.
- Agiliti's power to issue preferred stock with superior rights to common.
- Advance notice bylaws that would not apply to THL, so long as THL owned at least 10% of Agiliti's voting power.
- If THL's voting power fell below 50%, any bylaws amendment would require supermajority approval, up from the simple majority required if THL retained majority voting power.
- If THL's voting power fell below 40%, "directors may only be removed for cause, and only by" a supermajority vote of then-outstanding shares entitled to vote, voting together as a single class.
- If THL's voting power fell below 35%, stockholder action could no longer be taken by written consent.

50. THL also kept close tabs on Agiliti's operations. THL representatives met with both Agiliti's Chairman and CEO on a biweekly basis to discuss the business, and THL intermittently proposed acquisition targets to Company management.¹

C. Agiliti Is an Industry Leader With Strong Long-Term Prospects

51. Agiliti provides medical equipment and services to hospitals and hospital systems. The Company manufactures its own medical equipment and also acquires equipment from third parties. Agiliti then services, manages, maintains, and helps mobilize this equipment for a customer basis consisting of more than 10,000 national, regional, and local acute care hospitals, health systems and integrated delivery networks, and alternate site providers (such as surgery centers, specialty hospitals, home care providers, long-term acute care hospitals, and skilled nursing facilities). Agiliti also helps federal, state, and city governments manage and maintain emergency equipment stockpiles.

52. Agiliti organizes its business across three lines: (i) Equipment Solutions, which includes the peak need rental ("PNR") business, surgical equipment services ("SES"), and other surgical services; (ii) Clinical Engineering, which provides maintenance, repair, and remediation solutions for medical equipment; and (iii) On-Site Managed Services. Equipment Solutions and Clinical Engineering each supply

¹ AGTI_220_00005643.

approximately 40% of Agiliti's revenues, and On-Site Managed Services supplies the remaining 20%.

53. Agiliti delivers value by addressing governments' and health systems' inefficient use and underutilization of essential medical equipment. As Agiliti explained in a recent annual report, filed on a Form 10-K with the SEC on March 6, 2024 (the "2024 10-K"), hospitals typically only utilize approximately 42% of their owned medical equipment inventory at any given time, despite caregivers reporting that they routinely lack access to readily available patient-ready equipment. Operational silos that naturally occur among hospital departments create inadvertent breakdowns within equipment management workflows. In addition, the repair and maintenance of medical equipment continues to increase in complexity and cost. The period of 15 years from 1995 to 2010 saw a 62% increase in the number of medical devices per hospital bed and a 90% increase in costs related to maintaining this equipment. An average 2,500 bed integrated delivery network may waste more than \$11 million annually on inefficient equipment maintenance and unnecessary capital purchases. Agiliti aims to curtail waste and increase efficiency in the provisioning and use of medical equipment.

54. Agiliti's 2024 10-K also highlighted how changing demographics underscore the long-term need for the Company's products and services. The U.S. population is aging. According to the U.S. Census Bureau, individuals aged 65 and

older constitute the fastest growing segment of the population. This segment is expected to grow to approximately 95 million individuals by 2060, representing a 93.9% increase in the 65-and-older segment of the population as compared to 2016. In addition to the aging population, the U.S. population continues to enjoy longer life expectancies, according to the CDC's National Center for Health Statistics. At the same, the CDC also reports that severe obesity and incidence of chronic diseases are on the rise.

55. As a result of these demographic trends, and consistent with THL's investment thesis underlying FSAC's formation, the number of patients and the volume of hospital admissions are expected to grow over time, thus propelling demand for healthcare services and, in turn, the market for Agiliti's products and services.

56. Agiliti's financial performance following its 2021 IPO demonstrated the Company's promising long-term potential.

57. On March 8, 2022, Agiliti announced its financial results for the fourth quarter and year ended December 31, 2021. Among other things, the Company reported 34% year-over-year revenue growth, a 41% increase in Adjusted EBITDA, and a new agreement with the U.S. Department of Health and Human Services' ("HHS") Assistant Secretary for Preparedness and Response for the comprehensive maintenance and management services of medical ventilator equipment. In the

earnings release, CEO Leonard praised the Company’s progress and said regarding the future: “As we turn the corner to 2022, we are even more excited about the momentum in our business and the opportunity ahead of us.”

58. Agiliti continued its progress into 2022. For the second quarter, the Company recorded 25% year-over-year revenue gains and a 108.2% increase in net income. Leonard explained in the March 8, 2022 release: “We are pleased with our Q1 performance, with results that reflect the importance of our value proposition and the durability of our business model.” Leonard also acknowledged that Agiliti’s customers “are emerging from the pandemic with a new set of economic challenges, and we are proud to bring solutions that address many of the financial, clinical and operational constraints facing our healthcare system today.”

D. Agiliti Receives Third-Party Takeover Interest in 2022 for Over \$25 Per Share

59. In July 2022, Agiliti received separate takeover interest from the [REDACTED]

[REDACTED] and [REDACTED]

[REDACTED]

[REDACTED]

60. On July 15, 2022, the Board convened to discuss [REDACTED]’s and

[REDACTED]’s interest, code-named “Project Marina.”² Leonard informed the Board he

² AGTI_220_00004973 at 973.

had told both parties that, while “the Company is not currently for sale and continues to have strong performance as a publicly traded company,” it “would be willing to engage in further discussions.”³

61. Leonard further advised the Board that [REDACTED] was a significant investor in funds affiliated with THL and that “given THL’s significant position in the Company and that one or more interested parties might want THL to participate in some way in a potential transaction, the directors affiliated or associated with THL could be conflicted with respect to Project Marina.”⁴

62. Both [REDACTED] indicated that any transaction would involve THL rolling over enough equity so as not to trigger a change of control under Agiliti’s credit agreement. Despite THL’s disparate interest in such a transaction, there is no indication [REDACTED] conditioned any transaction on the approval of an independent special committee and the Company’s disinterested stockholders.

63. Following discussion, the Board “decided to form” a Special Committee composed of John Workman, Diane Patrick, and Gary Gottlieb

³ *Id.*

⁴ *Id.*

(previously defined as the “Special Committee” or “Committee”) to oversee Project Marina.⁵

64. However, the Committee was plagued by direct conflicts of interest, with least two of its three members having significant ties to THL leadership. Gottlieb previously served as a director of FSAC and as CEO of Partners HealthCare (n/k/a MassGeneral Brigham), where Sperling, THL’s Co-CEO, was Chair. He also overlapped with THL’s Bell at inVentiv Health, where Bell held senior executive positions. Patrick likewise had deep connections to THL. She was Senior Counsel and former Partner at Ropes & Gray LLP (previously defined as “Ropes”), which has represented THL for over three decades, including in connection with the Buyout and other major transactions. Her ties to THL were further cemented when her former Ropes colleague, Wolkon, left the firm to become THL’s general counsel and later served in the same role at FSAC. Patrick also serves as a director of MassGeneral Brigham board alongside Gottlieb and THL’s Sperling. These intertwined relationships compromised the Committee’s ability to act independently in safeguarding the interests of Agiliti’s minority stockholders.

65. Despite purporting to form a Special Committee, the Board did not adopt formal resolutions appointing its members or establishing its authority. As a

⁵ *Id.* THL, which had a contractual right to designate a representative to serve on each Board Committee, would waive that right with respect to each iteration of the Special Committee discussed herein.

result, the Board did not commit that it would not enter into a transaction that provided non-ratable benefits to THL without the prior approval of an independent Special Committee. Moreover, the Special Committee settled into a backseat role, letting Leonard oversee and run the process.

66. The full Board, as opposed to the Special Committee, also discussed engaging a potential financial advisor for Project Marina, including Goldman, Centerview, and Evercore.⁶ The Board’s minutes indicate that it preferred to hire Goldman, but [REDACTED] [REDACTED]⁷ Therefore, the Board directed Michael Aiello from Weil, Gotshal & Manges LLP (previously defined as “Weil”) to reach out to Centerview and Evercore on a no-names basis to perform conflict checks.⁸

67. Directing Aiello to perform the conflict check was itself problematic as Aiello and Weil were conflicted. In February 2024, at the very end of the process, Aiello told the Special Committee that “David Cohen (from Centerview) and Anthony DiNovi (Chairman of THL) were both minor investors in an Italian soccer

⁶ *Id.* at 973-74.

⁷ *Id.* at 974.

⁸ *Id.*

team that he was affiliated with,”⁹ and Aiello also “reminded the Special Committee that Weil had been engaged by THL previously.”¹⁰

68. What Aiello failed to disclose was that “THL ha[d] been a Weil client for many years.”¹¹ Indeed, Weil’s relationship with THL dates back more than 40 years, to the late 1970s or early 1980s, when Weil’s former senior corporate partner Charles Robins helped THL namesake Thomas Lee start a predecessor company in Boston.¹²

69. Weil’s website highlights its role in advising THL and its portfolio companies “on their most significant matters.”¹³ According to Aiello’s profile on Weil’s website, he personally led Weil teams representing THL in numerous high-profile transactions, including (i) the \$5.1 billion sale of West Corporation (in which THL was a significant shareholder) to Apollo Global Management; (ii) THL’s sale of a 50% interest in inVentiv Health, Inc. (n/k/a Syneos Health, Inc.) to Advent International, valuing inVentiv at \$3.8 billion; (iii) THL’s \$2.7 billion acquisition of a majority stake in Party City from a group of private investors; (iv) THL’s

⁹ AGTI_220_00003951 at 961.

¹⁰ *Id.*

¹¹ Brian Baxter, *Fried Frank, Weil Help Thomas H. Lee Partners Chow Down on Food Company*, THE AM LAW DAILY (Jan. 5, 2011), <https://amlawdaily.typepad.com/amlawdaily/2011/01/thomashleeacosta.html>.

¹² *Id.*

¹³ WEIL, <https://www.weil.com/locations/boston> (last visited Nov. 22, 2024).

acquisition and subsequent sale of a majority stake in 1-800 CONTACTS, Inc.; (v) THL's sale of its stake in Sterling Financial Corp. to Umpqua Holdings in a transaction valued at \$2 billion; (vi) CompuCom Systems, Inc. (a THL portfolio company)'s \$1 billion sale to Office Depot, Inc.; and (vii) THL's sale of THL Credit Advisors LLC to First Eagle Investment Management, LLC.¹⁴

70. Beyond these, Weil advised THL and its portfolio companies on other significant deals, including:

- Ceridian HCM Holding Inc. (a THL portfolio company)'s \$531 million IPO, \$100 million private placement, and subsequent \$980 million credit facilities refinancing;¹⁵
- Federal Street Acquisition Corp. (a SPAC sponsored by THL)'s \$460 million IPO;¹⁶

¹⁴ WEIL, <https://www.weil.com/people/michael-aiello> (last visited Nov. 22, 2024).

¹⁵ WEIL, <https://www.weil.com/experience/practices/finance/capital-markets/equity> (last visited Nov. 22, 2024); WEIL, <https://www.weil.com/experience/practices/finance/banking-and-finance/leveraged-finance> (last visited Nov. 22, 2024).

¹⁶ WEIL, <https://www.weil.com/experience/practices/finance/capital-markets/equity> (last visited Nov. 22, 2024).

- Univision Communication (a THL portfolio company)'s \$7.2 billion high-yield notes offerings and \$3.9 billion credit facilities refinancing;¹⁷
- THL's \$2 billion acquisition of food marketing and services company Acosta;¹⁸
- THL's \$1.7 billion sale of its majority stake in Michael Foods to an affiliate of Goldman Sachs;¹⁹
- THL's increased stake in Spokane-based thrift Sterling Financial;²⁰
- THL's \$605 million senior secured term loan facility and \$225 million senior unsecured notes offerings to finance its acquisition of CompuCom Systems;²¹

¹⁷ WEIL, <https://www.weil.com/experience/practices/finance/capital-markets/debt> (last visited Nov. 22, 2024); WEIL, <https://www.weil.com/experience/practices/finance/banking-and-finance/leveraged-finance> (last visited Nov. 22, 2024).

¹⁸ Brian Baxter, *Fried Frank, Weil Help Thomas H. Lee Partners Chow Down on Food Company*, THE AM LAW DAILY (Jan. 5, 2011), <https://amlawdaily.typepad.com/amlawdaily/2011/01/thomashleeacosta.html>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ WEIL, <https://www.weil.com/experience/practices/finance/banking-and-finance/private-equity-finance> (last visited Nov. 22, 2024).

- THL's acquisition of Intermedix Corporation; and²²
- THL's acquisition of a 57% interest in Refco.²³

71. Weil's longstanding relationship with THL extended beyond transactional work, encompassing litigation and tax matters.²⁴ Given this deep and ongoing relationship, Weil could not be expected to serve as an independent advisor to a Special Committee already conflicted with respect to THL.

72. On July 20, 2022, the Special Committee held its first meeting, with Leonard in attendance.²⁵ Leonard attended and presented at this and almost all subsequent Special Committee meetings, despite being conflicted due to his management role and close ties with THL, having led Agiliti, a THL-controlled company, since the De-SPAC Transaction in 2018. Similarly, Weil served as the Special Committee's counsel despite its concurrent role as the Board's and the Company's counsel and its other conflicts. Nothing in the record indicates the Special Committee considered at this time whether Weil was too conflicted to serve

²² Erin Marie Daly, *Weil Gotshal Reps THL In Intermedix Deal*, LAW 360, <https://www.law360.com/articles/184413/weil-gotshal-reps-thl-in-intermedix-deal> (July 30, 2010).

²³ Brian Baxter, *Weil Partner Takes the Stand in Refco Case*, THE AM LAW DAILY (May 26, 2009), <https://amlawdaily.typepad.com/amlawdaily/2009/05/weil-lawyer-grilled-by-cooley-lawyer-in-refco-case.html>.

²⁴ For example, Weil also provided tax advice to THL on its acquisition of Party City. *See WEIL, Weil Elects 9 New Partners and 9 New Counsel* (Nov. 21, 2013), <https://www.weil.com/articles/weil-elects-9-new-partners-and-9-new-counsel>.

²⁵ AGTI_220_00004975.

as its counsel. Instead, the Special Committee discussed a strategy on how to respond to [REDACTED] and [REDACTED] “with extensive input provided by Michael Aiello of Weil, Gotshal & Manges.”²⁶

73. Leonard updated the Committee on the progress of Project Marina, noting that while initial conversations had occurred, no material non-public information had been shared with [REDACTED] or [REDACTED]. He noted that “management does not intend to share material non-public information with the potential bidders at this point,” pending the execution of non-disclosure agreements and initial valuation discussions.²⁷

74. During this meeting, Aiello emphasized the importance of maintaining confidentiality and protecting the interests of minority stockholders.²⁸ Aiello advised the Committee [REDACTED]

[REDACTED]²⁹

The Committee agreed to this approach, but would later struggle to fully assert its independence as negotiations progressed.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

75. The Committee also reviewed Agiliti’s financial projections, which forecasted robust growth over the next three years.³⁰ According to these projections, the Company expected to achieve a compound annual growth rate of █%, with revenues increasing from \$ █ in 2022 to \$ █ by 2025.³¹



76. Aiello also claimed that both Evercore and Centerview cleared conflicts and the Special Committee authorized entering into non-disclosure agreements with both to facilitate initial meetings.³²

77. On July 25, 2022, the Company hosted a site visit with █ “█
█”

The Information Statement does not disclose any details of the site visit.

78. Evercore and Centerview both provided the Company with presentations at the end of July 2022 soliciting their retention by the Special Committee. However, neither Evercore nor Centerview formally presented to the Special Committee before the Special Committee determined to retain Centerview

³⁰ AGTI_220_00004849.

³¹ *Id.* at 850.

³² AGTI_220_00004975.

as discussed below. Instead, the Information Statement claims that at some point “a member of the 2022 Special Committee,” not the full Special Committee, met with each of Centerview of Evercore. It appears that this member—likely Workman given his role as the Special Committee’s point person in the process—selected Centerview.

79. Evercore’s presentation emphasized Agiliti’s “highly-differentiated business model” and its substantial market leadership.³³ Evercore underscored that Agiliti’s stock had outperformed the broader market since its 2021 IPO, generating a 51% return compared to a 5.1% decline in the S&P 500.³⁴ Evercore projected that the Company’s strong operational performance, combined with its growth in the healthcare services sector, made it an attractive target for investors.

80. Centerview similarly described Agiliti as a “clear industry leader in medical equipment management and service solutions,”³⁵ and “one of the few ‘bright spots’ across newly public healthcare services names” with “top tier share price performance relative to recent IPO peers.”³⁶ As such, Centerview listed a wide field of potential buyers for Agiliti. Centerview also highlighted that the “**THL**

³³ AGTI_220_00004854 at 855.

³⁴ *Id.* at 867.

³⁵ *Id.* at 884.

³⁶ *Id.* at 884, 895.

overhang remains a structural constraint similar to other sponsor IPO situations.”³⁷

81. On August 3, 2022, the Company received a non-binding proposal from ██████ to acquire all of Agiliti’s outstanding shares not owned by THL for between \$25 and \$27 per share.³⁸ The ██████ proposal was based on its belief that Agiliti’s “go-forward prospects” were highly promising, and that significant value could be unlocked by taking the Company private and investing in areas such as technology, analytics, and healthcare services.³⁹ ██████ conditioned its proposal on THL rolling over a substantial portion of its shares, allowing it to maintain a significant equity stake in the post-transaction entity.⁴⁰ The accompanying term sheet provided by ██████ indicated it intended to own 49.9% of the Company’s fully-diluted equity post-closing, presumably with THL and management owning the rest.⁴¹ Despite the inclusion of a THL rollover, ██████ did not condition its proposal on a “majority of the minority vote.”⁴²

³⁷ *Id.* at 884 (emphasis in original).

³⁸ AGTI_220_00000847.

³⁹ *Id.*

⁴⁰ ██████’s offer was also represented in a summary deck, which contemplated that ██████ would have 49% interest in post-close (AGTI_220_00000849).

⁴¹ *Id.*

⁴² AGTI_220_00000847.

82. The Board met on August 3, 2022.⁴³ CFO Jim Pekarek presented Agiliti’s Q2 2022 financial results. While the Company had experienced strong bookings growth, rental equipment placements remained “below pre-COVID levels,” and delays in [REDACTED] renewals had impacted revenue.⁴⁴ Nonetheless, Pekarek expressed optimism about Agiliti’s future, highlighting that Agiliti was well-positioned to secure new government contracts and pursue M&A opportunities.⁴⁵ Boehning (then-Company President) echoed this optimism, emphasizing that Agiliti was pursuing a “[REDACTED] [REDACTED]” which was expected to be awarded by Q4 2022.⁴⁶ The Executive team assured the Board that despite short-term setbacks, the Company’s long-term growth prospects remained strong, particularly in its government contract work and its comprehensive services across the healthcare industry.⁴⁷

83. The Special Committee met later on August 3, 2022 to discuss the status of Project Marina, including “whether to approve that representatives of THL be permitted to engage in [] discussions with [REDACTED]” as well as “the

⁴³ AGTI_220_00004919.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 920; AGTI_220_00004703 at 706.

⁴⁷ AGTI_220_00004703; AGTI_220_00004919.

85. THL breached these Guidelines in at least two material respects: THL retained [REDACTED] its exclusive financial advisor for the Buyout without Special Committee authorization, and THL would eventually discuss management rollover with Leonard without Committee awareness or authorization.

86. On August 15, 2022, the Special Committee met. Leonard provided an update on “the status of conversations with [REDACTED] and [REDACTED],” including that [REDACTED] had submitted an offer based on “publicly available information regarding the Company” and that [REDACTED] had “a site visit and two management calls.”⁵² Leonard also informed the Special Committee that [REDACTED]

87. At the end of the meeting, the Special Committee resolved to engage Centerview as “the Special Committee’s financial advisor in connection with a potential transaction to take the Company private” and authorized management to finalize the engagement letter with Centerview.⁵³ However, the decision to retain Centerview instead of Evercore appears to have already been made before this meeting as Centerview was present at the beginning of this meeting and Evercore was not.

⁵² AGTI_220_00003611.

⁵³ *Id.* at 612.

88. Centerview was conflicted with respect to THL. In its August 5, 2022 disclosure letter to the Special Committee (later supplemented on November 5, 2023 and February 15, 2024),⁵⁴ Centerview shared that: (i) since January 2021, it had been engaged in discussions with and soliciting business from THL and its portfolio companies; (ii) Centerview’s Michael Muntner had a business relationship with Defendants Bell, Nelson, and Preiner, all of whom are members of Agiliti’s Board and Managing Directors at THL, as well as with Todd Abbrecht, THL’s Co-CEO; and (iii) Centerview’s David Cohen had a business and social relationship with THL Chairman Anthony DiNovi and co-invested with him in an entity that owns equity in an Italian football club. Aiello failed to inform the Special Committee that he was affiliated with that same Italian football club.

89. On August 24, 2022, the Special Committee formally engaged Centerview as its financial advisor for the proposed transaction.⁵⁵ The terms of the engagement included an upfront retainer fee of \$████████, \$████████ for delivering a fairness opinion, a contingent transaction fee calculated based on the “Aggregate Consideration” paid in any transaction, and a discretionary fee up to \$████████ payable at the Company’s, not the Special Committee’s, discretion in a non-change

⁵⁴ AGTI_220_00000149; AGTI_220_00000152.

⁵⁵ AGTI_220_00000025.

of control transaction (*i.e.*, if THL retained control).⁵⁶ By vesting discretion to pay that fee in the Company rather than the Special Committee, the parties effectively delegated to THL the ability to incentivize Centerview to support any transaction that resulted in THL continuing as Agiliti's controlling stockholder.

90. The contingent transaction fee component of Centerview's compensation was dependent on the specific transaction structure and whether more than █% of the Company's outstanding equity was sold. If less than █% of the Company's equity was sold, Centerview's fee would scale up based on the percentage sold. If more than █% of the company's equity were sold, Centerview's fee would be based on an assumption that 100% was sold.

91. On August 29, 2022, the Special Committee convened a meeting attended by members of the THL team, including Scott Sperling, Josh Nelson, and Megan Preiner.⁵⁷ Nelson provided an update on THL's discussions with █ and █ and stated that both parties had shown "interest in moving forward with diligence in an expeditious manner."⁵⁸ Centerview provided an update on its discussions with █ noting that both parties were keen to move

⁵⁶ *Id.* at 28.

⁵⁷ AGTI_220_00003613.

⁵⁸ *Id.*

forward, with non-disclosure agreements “in process,” meetings with Agiliti’s management scheduled, and diligence ready to commerce.⁵⁹

92. Following the August 29 meeting, both [REDACTED] signed non-disclosure agreements (“NDAs”) with Agiliti that included standstill provisions, with [REDACTED].⁶¹ In its NDA, [REDACTED] Leonard had informed the Special Committee that [REDACTED] which [REDACTED]’s 13F filings confirm.

93. On September 15, 2022, Centerview sent formal bid process letters to [REDACTED] setting a September 30, 2022 deadline for [REDACTED] to submit a “proposal” (given that [REDACTED] had yet to indicate an offer price) and an October 11, 2022 deadline for [REDACTED] submit a “best and final offer.” Both letters only requested that the bidders submit a price they were willing to pay “to acquire a portion” of Agiliti’s outstanding shares, conceding that THL would rollover in any transaction. Similarly, both letters requested that the bidders provide their proposed pro forma ownership and capitalization, including that of existing equity holders.

⁵⁹ *Id.*

⁶⁰ AGTI_220_00003593.

⁶¹ AGTI_220_00003582.

94. On September 22, 2022, Weil circulated a draft merger agreement.⁶² This draft contemplates that the transaction would be accomplished by written consent, as opposed to a stockholder vote, meaning that THL, despite rolling over a significant portion of its equity, would dictate the consideration that the minority stockholders would be receiving.⁶³

95. On October 2, 2022, ██████████ submitted an updated proposal to acquire the Agiliti shares not owned by THL for \$20 per share.⁶⁴ ██████████’s offer contemplated that it would own 49.9% of the post-close fully-diluted equity. The offer was contingent on a substantial equity rollover by THL and was dependent on the “active participation and continued commitment of key Company executives.”⁶⁵ ██████████ praised the quality of the management team and stated that it expected management to rollover a significant portion of their after-tax proceeds into the post-close Company. ██████████ also discussed its enthusiasm for the Company’s go-forward prospects and its belief that there was a substantial opportunity to grow Agiliti.

96. Although ██████████ conditioned its offer on the approval of the Special Committee, it did not condition its offer on the approval of disinterested stockholders.

⁶² AGTI_220_00000860.

⁶³ *Id.*

⁶⁴ AGTI_220_00000850.

⁶⁵ *Id.*

97. On October 4, 2022, the Special Committee met again to review [REDACTED] offer. Management was present. Centerview reported THL's preliminary feedback that [REDACTED]'s key proposed terms, including the \$20 per share offer price, "were not acceptable," and Leonard agreed that [REDACTED]'s offer "did not represent an attractive potential transaction for the Company."⁶⁶ Although the Information Statement states that THL considered the terms unacceptable, it does not disclose Leonard's view that [REDACTED]'s proposal did not represent an attractive transaction.

98. In an accompanying presentation, Centerview included its preliminary discounted cash flow analysis of Agiliti, which valued the Company at \$20.25 to \$27 per share.⁶⁷

99. After further discussion, the Special Committee determined to reject [REDACTED]'s \$20 per share offer as it undervalued Agiliti.

100. Later in October 2022, [REDACTED] informed Centerview that it was no longer interested in pursuing an acquisition of Agiliti.⁶⁸ However, [REDACTED] continued to discuss a potential transaction and rollover terms with THL into at least December 2022.

⁶⁶ *Id.*

⁶⁷ AGTI_220_00002651 at 662.

⁶⁸ *Id.*

101. On November 3, 2022, the Board convened to review Agiliti's performance. The meeting highlighted "bright spots" such as new agreements with ██████████ and ██████, but also pointed out challenges, including the continued delays in the renewal of a key ██████████ contract with ██████, that PNR utilization remained below pre-COVID levels, and the "[g]rowing pains" Agiliti faced as it signed larger customer contracts.⁶⁹

102. As Leonard would recount the following September, Leonard told the Board at this November 2022 meeting that Agiliti needed to make changes to address the foregoing problems. But, at least in the near-term, Agiliti did not change, perpetuating the Company's problems.

103. The presentation materials circulated in connection with the Board's meeting also indicate that the Board would devote a portion of its executive session for a discussion of "succession planning status and updates," indicating that Leonard had already expressed that he planned to step down in the near future.

104. On November 10, 2022, Agiliti released its Q3 financial results. Leonard acknowledged the "short-term headwinds" caused by the delayed HHS contract and the onboarding of larger-scale contracts but reassured investors that the

⁶⁹ AGTI_220_00004642 at 645.

company's long-term growth strategy remained intact. He stressed that Agiliti was well-positioned to weather the macroeconomic challenges ahead.

105. According to the Information Statement, discussions between [REDACTED] and THL about the potential participation of THL in a transaction between the Company and [REDACTED] discontinued in December 2022. This was misleading because, according to the press release announcing the Buyout, [REDACTED] [REDACTED]. At no point does the Information Statement, or the accompanying Schedule 13E-3, disclose that THL co-opted one of the potential bidders for Agiliti [REDACTED]. Nor do the filings contain any valuation presentations [REDACTED] provided to THL as required by applicable securities regulations.

E. Leonard's Temporary Retirement, Further Third-Party Interest, and Short-Term Turmoil

106. Following the Board's November succession planning discussion, Leonard formally notified Board Chair Workman on January 6, 2023 that he intended to retire and resign as CEO effective March 10, 2023. That same day, the Board executed a written consent formalizing Leonard's retirement, effective March 31, 2023, and approving the execution of a Transition Agreement.⁷⁰ In the same written consent, the Board appointed Boehning, then President of the Company, as

⁷⁰ AGTI_220_00004812.

Leonard’s successor as CEO.⁷¹ The written consent described this transition as part of the Company’s “routine and robust leadership succession planning.”⁷²

107. On January 9, 2023, Agiliti publicly announced Leonard’s upcoming retirement and the appointment of Boehning as CEO.⁷³ The announcement also framed this change as part of a seamless leadership succession, emphasizing the Company’s purported robust leadership planning.⁷⁴

108. On January 18, 2023, Workman, on behalf of the Special Committee, sent Centerview a letter terminating Centerview’s engagement, which indicated the Special Committee believed the Company would continue to operate as a standalone entity.⁷⁵

109. On March 1, 2023, the Agiliti Board convened at THL’s Boston offices, underscoring THL’s control over Agiliti.⁷⁶ The Board reviewed the Company’s full-year financial results for 2022 and 2023 financial plan.⁷⁷ Agiliti’s 2022 revenue and adjusted EBITDA had come in below the Company’s operating plan, but had

⁷¹ *Id.*

⁷² *Id.*

⁷³ Kate Kaiser, *Agiliti Announces Leadership Succession*, AGILITI (Jan. 9, 2023), <https://investors.agilitihealth.com/news/news-details/2023/Agiliti-Announces-Leadership-Succession/default.aspx>.

⁷⁴ *Id.*

⁷⁵ AGTI_220_00000843.

⁷⁶ AGTI_220_00004933.

⁷⁷ *Id.*; AGTI_220_00004490.

exceeded the midpoint of its guidance to analysts.⁷⁸ Management also presented on a variety of initiatives it intended to pursue in 2023 and informed the Board that its 2023 plan exceed analysts median consensus with respect to both revenue and adjusted EBITDA.

110. In addition to the financial overview, the Audit Committee also presented its findings regarding internal controls, noting certain material weaknesses.⁷⁹

111. Agiliti's earnings release on March 7, 2023, painted a picture of cautious optimism.⁸⁰ While revenue showed signs of a post-COVID dip, Leonard, in what was intended to be his last earnings announcement as CEO, expressed "confidence in [the Company's] near-term financial outlook and [] long-term potential."⁸¹

112. According to the Information Statement, in March 2023, a Board member affiliated with THL was contacted by [REDACTED] [REDACTED] expressed interest in acquiring Agiliti and executed an

⁷⁸ AGTI_220_00004490 at 4528.

⁷⁹ AGTI_220_00004933; AGTI_220_00004076.

⁸⁰ Kate Kaiser, *Agiliti Announces Financial Results for Fourth Quarter and Full-Year 2022 and Provides 2023 Outlook*, AGILITI (Mar. 7, 2023), <https://investors.agilitihealth.com/news/news-details/2023/Agiliti-Announces-Financial-Results-for-Fourth-Quarter-and-Full-Year-2022-and-Provides-2023-Outlook/default.aspx>.

⁸¹ *Id.*

NDA with the Company on March 17, 2023.⁸² ██████████'s NDA contained a ██████████
██████████ It is unclear who authorized discussions with ██████████ or the
execution of the NDA, as the Board never formally discussed ██████████ interest.

113. On March 31, 2023, Leonard's retirement as an Agiliti employee became effective. Leonard continued to serve as a non-employee director of Agiliti.

114. On April 3, 2023, THL engaged Leonard as an executive Partner pursuant to a consulting agreement that paid Leonard \$100,000 per year in monthly installments.

115. On April 8, 2023, ██████████ submitted a formal non-binding offer to acquire 100% of Agiliti's outstanding shares at \$16 per share.⁸³ In the offer letter, ██████████ emphasized its extensive due diligence into the medical equipment leasing and services market, calling Agiliti "the premier asset in its market."⁸⁴ The offer detailed ██████████'s belief in Agiliti's long-term growth prospects, driven by demographic trends and healthcare infrastructure needs.⁸⁵ ██████████ assured the Board that their offer had no financing contingencies, signaling their readiness to move forward swiftly.⁸⁶

⁸² AGTI_220_00003570.

⁸³ AGTI_220_00000926.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

116. Notably, ██████████ did not offer a rollover to THL. Instead, ██████████ indicated it was open to providing public stockholders a higher price if THL accepted a corresponding discount in consideration of the fact that THL would be able to receive immediate liquidity for its entire shareholdings.

117. The Board did not meet to consider ██████████'s offer, and neither the Board nor management appear to have obtained any outside financial or legal advice concerning the offer. Instead, the Information Statement claims that, on April 11, 2023, "following conversations with the Board, the Company rejected" ██████████'s offer because its valuation was too low. Later emails indicate that the offer was never brought to the full Board and instead was rejected directly by THL in conversations with ██████████.⁸⁷ Presumably, THL made the unilateral decision to reject ██████████'s proposal because it would not sell its Agiliti shares for only \$16 per share.

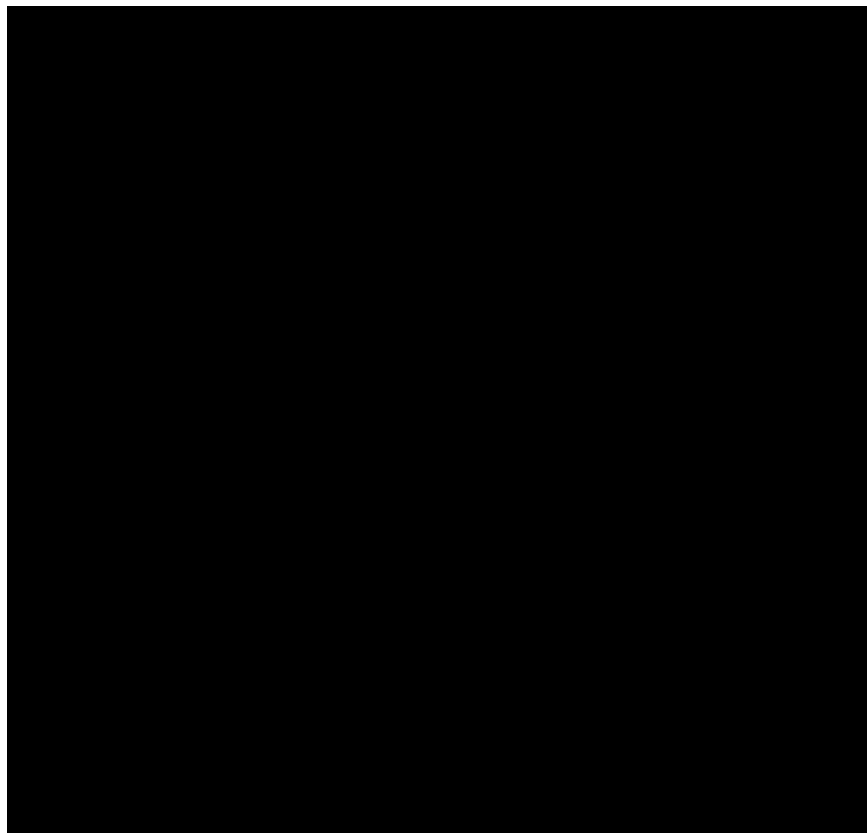
118. On May 4, 2023, the Board held a regular meeting to discuss Agiliti's quarterly earnings results.⁸⁸ While some contract renewals were celebrated, such as the renewal with ██████████, the overall outlook for key business lines fell short. The presentation acknowledged that "Peak Need Rental placements remain well below 2019 levels," a problem attributed more to broader market

⁸⁷ AGTI_220_00007288.

⁸⁸ AGTI_220_00004964; AGTI_220_00004401.

dynamics beyond Agiliti's direct control.⁸⁹ Management also admitted that "growing pains continue as we sign larger customer contracts," particularly with [REDACTED], raising concerns about the Company's ability to execute on these significant agreements.⁹⁰

119. The Board approved a three-year strategic plan (as shown below), aiming to put the Company back on a path of steady growth.⁹¹



⁸⁹ AGTI_220_00004401 at 405.

⁹⁰ *Id.*

⁹¹ *Id.* at 464.

120. However, concerns about the Company's ability to fully capitalize on its 2022 bookings loomed large, with the Board presentation bluntly noting that Agiliti was not maximizing or living up to expectations on 2022 bookings, casting doubt on the Company's operational efficiency and ability to convert potential into revenue.⁹² Moreover, Agiliti had already underperformed its plan with respect to quarterly bookings by \$9 million, or nearly 33%.

121. By Agiliti's August 3, 2023 Board meeting, held again at THL's Boston offices, the Company's struggles had not subsided.⁹³ Despite an earlier plan to meet in San Diego,⁹⁴ the Board convened at THL headquarters—a subtle but telling indication of THL's continued influence over the Company and the Board.

122. Management reported that Agiliti's revenue, adjusted EBITDA, and bookings were all trending unfavorably against the Company's plan. Revenue for Q2 2023 was down \$18 million, down 5.8% compared to the plan, and adjusted EBITDA was down \$10 million, or 13% below expectations.⁹⁵ Bookings for the quarter were especially concerning, coming in at \$8 million below plan—marking a \$13 million decline compared to the same period in the prior year.⁹⁶ Acknowledging

⁹² AGTI_220_00004323 at 336.

⁹³ AGTI_220_00004948; AGTI_220_00004323.

⁹⁴ See AGTI_220_00004401 at 432.

⁹⁵ AGTI_220_00004323 at 329.

⁹⁶ *Id.*

these shortfalls, the Board emphasized that the “[e]xecution of new business development and onboarding of existing business” had become a critical priority.⁹⁷ The leadership team was tasked with accelerating improvements in these areas to drive growth and meet performance targets.

123. After Agiliti announced its earnings results for the second quarter of 2023 on August 8, its stock price entered a freefall, dropping from \$17.03 per share to \$12.27 per share in one day. It would continue to steadily decline over the next two months.

124. Recognizing that Agiliti’s stock was significantly undervalued due to a short-term over reaction to a poor earnings report, on August 18, 2023, the Agiliti Board executed a unanimous written consent approving a \$50 million share repurchase program. The prior closing price when the Agiliti Board, including THL’s designees, approved the share repurchase program was \$10.25, 2.5% higher than the final Buyout price.

125. The Board justified this move as being in the best interests of the Company and its stockholders, stating that the repurchase would help stabilize the stock price amidst the ongoing market volatility.⁹⁸ The resolution authorized the repurchase of common stock on the open market or through privately negotiated

⁹⁷ *Id.* at 327.

⁹⁸ AGTI_220_00004795.

transactions, which, in practice, could have the effect of bolstering THL’s control by consolidating ownership at a depressed price.⁹⁹ Notably, the written consent explicitly recognized that Leonard had adopted Rule 10b5-1 trading plans for the sale of his shares, a fact the Board considered when approving the repurchase program.¹⁰⁰

F. THL Begins Laying the Groundwork for the Leonard Coup and Buyout

126. Sensing an opportunity with the market’s overreaction to one bad earnings report, THL began taking concrete steps to acquire the Company at a bargain price by orchestrating a replacement of the Agiliti’s CEO, conducting diligence, and preparing a bid.

127. By August 11, 2023, THL’s leadership, including THL designees on Agiliti’s Board, began conspiring with Leonard and Workman to orchestrate Leonard’s return as CEO. That day, Leonard provided a presentation to a “select group” that included THL designees and Workman strategizing about how the Board should bring him back to replace Boehning.¹⁰¹

128. Leonard’s “[s]trongly suspect[ed] that [management] decisions are responsible for a good amount of the current pain.”¹⁰² He proposed that he could

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *See* AGTI_220_00006413; AGTI_220_00006414; AGTI_220_00004977.

¹⁰² AGTI_220_00004977 at 978.

assume the Executive Chair role first and then shift into being a full-time CEO.¹⁰³ Leonard proposed a series of short-term “tactical” changes, including bringing back certain executives that had recently departed and halting “obvious misguided projects/programs,” as well as a long-term “strategic reset.” As to the latter, Leonard proposed “[r]estart[ing] the M&A pipeline” and posited that the “Board may want to consider announcing AGTI is ‘evaluating strategic alternatives’ at the same time as the announcement of my expanded role in the business. Re-engage with Centerview. Look at sell or take-private options.”¹⁰⁴

129. Leonard further proposed that the Board agree to pay him a “non-standard form of compensation” of \$7 million annually, consisting of a \$2 million base salary and \$5 million in restricted RSUs that would vest in monthly installments, or immediately upon a change of control.¹⁰⁵

130. On September 12, 2023, with Agiliti’s stock trading at half its price from a month earlier, management received an unsolicited inquiry from [REDACTED] about a potential acquisition of Agiliti.

131. On September 13, 2023, Leonard presented a more detailed presentation he called “Operation ReStart” to the Board, excluding Boehning, in

¹⁰³ AGTI_220_00004977.

¹⁰⁴ *Id.* at 978.

¹⁰⁵ *Id.* at 979.

which he laid out his assessment of the Company’s deep-rooted issues.¹⁰⁶ He acknowledged that while some of Agiliti’s problems were market-driven, he “personally suspect[ed] the larger portion is self-inflicted” and that the “[c]urrent leadership does not fully understand what I describe in this deck.”¹⁰⁷ Leonard highlighted that “many decisions of consequence have moved the Company in the wrong direction,” effectively suggesting that current leadership was incapable of reversing the decline.¹⁰⁸

132. Leonard also asserted that he tried to raise these issues with the Board in November 2022 and was rebuffed,¹⁰⁹ perhaps because THL was looking for an opportunity to take the Company private cheaply. In his words, “[w]e have been digging for another year... Many good people throughout the organization have left and are leaving. Time to put the shovel down.”¹¹⁰ Leonard’s twenty-page presentation went into detail regarding what he believed needed to be fixed at Agiliti.

133. By September 20, 2023, Leonard, THL, and the Company’s attorneys at Kirkland & Ellis were in the middle of detailed planning about how to

¹⁰⁶ AGTI_220_00006539.

¹⁰⁷ AGTI_220_00004982 at 983 (emphasis in original).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ AGTI_220_00004982.

communicate his return as CEO, indicating a formal Board decision to that effect was a *fait accompli*.¹¹¹

134. At the same time, THL, Leonard, and Agiliti management (excluding Boehning) were already preparing for THL’s eventual takeover.

135. Likely in response to a request from management, on September 21, 2023, an attorney from the law firm Katzke & Morgenbesser LLP, which specializes in executive compensation matters, forwarded a brochure to Leonard and Lee Neumann, Agiliti’s General Counsel, from Jamieson Corporate Finance US LLC (“Jamieson”),¹¹² a consulting firm that “structure[s], navigate[s], and implement[s] equity incentive arrangements for management teams in private capital transactions.”¹¹³ Leonard retained Jamieson in February 2024 when agreement to the Buyout was imminent.

136. By mid-September, THL requested and had received detailed diligence on the Company’s then-current budget and 2024 plans.¹¹⁴ On September 22, 2023, THL’s Chief Information Officer sent a message to Boehning that THL’s recent requests “[f]eels like a change of tone[.]”¹¹⁵

¹¹¹ AGTI_220_00008309.

¹¹² AGTI_220_00007328.

¹¹³ JAMIESON, <https://www.jamiesoncf.com/about/> (last visited Nov. 26, 2024).

¹¹⁴ AGTI_220_00005300.

¹¹⁵ *Id.*

137. Further indicating a formal offer was imminent, on September 26, 2023, Agiliti’s CFO, Pekarek, sent a message to Nelson, Preiner, Boehning, and Agiliti’s General Counsel with a reminder of the Company’s previous fee agreement with Centerview “[g]iven that we have been talking with a couple of folks on the M&A side recently.”¹¹⁶ Pekarek further added that he “

[REDACTED]”¹¹⁷

[REDACTED]

[REDACTED]

[REDACTED].

G. THL Reinstalls Leonard as CEO and Confirms Its Interest in Taking Agiliti Private Again, and the Board Forms a Heavily Conflicted Special Committee

138. On September 28, 2023, the Agiliti Board, excluding Boehning met in executive session to formally consider replacing Boehning as CEO with Leonard. The Board determined to replace Boehning with Leonard and grant Leonard a \$1 million base salary, a \$1.25 million signing bonus to be paid in fifteen monthly installments, and \$6.25 million RSUs to vest over 15 monthly installments—higher compensation than Leonard had requested in August.¹¹⁸ The Board also incentivized

¹¹⁶ AGTI_220_00006415.

¹¹⁷ *Id.*

¹¹⁸ AGTI_220_00005239 at 240; AGTI_220_00004768.

Leonard to support a quick sale of Agiliti by providing that, upon a change of control, his unvested RSUs would vest and he would be paid out any remaining unpaid portion of his annual salary and bonus through 2024.¹¹⁹

139. On October 2, 2023, Agiliti publicly announced Boehning’s ouster and Leonard’s return. In the release, Workman expressed his “admiration” of Leonard, who conveyed optimism about the Company’s path forward.

140. Based on employee feedback, Leonard’s return as Agiliti’s CEO was an important step forward for the Company. THL’s Preiner conveyed that, according to General Counsel Neuman, Agiliti’s employees were “all been looking for direction on strategy and it was reassuring to have [Leonard] back on the zoom.”¹²⁰ Similarly, Leonard reported employees felt the organization had been “rudderless” and that his post-return discussions with employees and management were “[g]enerally very positive.”¹²¹

141. Just days after Leonard’s reinstatement, on October 6, 2023, THL submitted a formal offer signed by THL executives and Agiliti directors Sperling, Nelson, and Preiner to acquire all outstanding shares of Agiliti that it did not already own, at a price of \$9.00 per share.¹²² Although the offer was contingent upon

¹¹⁹ *Id.*

¹²⁰ AGTI_220_00006647.

¹²¹ AGTI_220_00006529.

¹²² AGTI_220_00000382.

approval by a special committee, it was not contingent on the approval of disinterested stockholders. THL, in an effort to take advantage of the Company's depressed stock price, also indicated its readiness to move quickly and hoped to announce the transaction in conjunction with the Company's earnings release that was expected to occur about a month later.

142. Immediately after receiving the offer, Workman emailed Leonard and said he wanted to reengage Weil and Centerview.¹²³

143. On October 9, 2023, the Agiliti Board convened to discuss THL's \$9 per share offer. During the meeting, THL representatives, including Sperling and Nelson, admitted that the Company's low stock price had influenced the timing of the offer.¹²⁴ Having spearheaded a management coup, effectively endorsing Leonard's turnaround plan in the process, THL quickly pivoted, arguing that Agiliti would struggle to execute its strategic plan in the public market and would be better positioned as a private company.¹²⁵ However, given THL's control, the Company faced no risk of a proxy contest and could also do anything as a public company that it could do as a private company. Moreover, THL's representatives on the Board also clarified that THL itself would not consider selling its stake at \$9 per share,

¹²³ AGTI_220_00005595.

¹²⁴ AGTI_220_00005002.

¹²⁵ *Id.*

underscoring that THL’s proposal undervalued the Company’s long-term potential and would be a raw deal for minority stockholders.¹²⁶

144. Following discussion, the Board, including the THL designees, approved the formation of a Special Committee composed of Gottlieb, Harris, Patrick, and Workman.¹²⁷ As in 2022, the Board undertook no factfinding, engaged in no discussion, and reached no conclusions regarding the Special Committee’s members’ conflicts.

145. The Board determined the Special Committee should be granted full authority to consider and potentially reject the offer, as well as to explore alternative transactions with third parties.¹²⁸ However, the Board once again failed to adopt resolutions establishing the authority of the Special Committee.

146. Moreover, the Special Committee and its advisors were conflicted as discussed in more detail *supra*.

147. After the THL-affiliated directors left the meeting, the Board also discussed “other inbound inquiries that the Company had received over the past couple of months,” and Leonard provided his preliminary view of THL’s offer.¹²⁹

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 003.

148. Following a discussion between the members of the Special Committee and management, the Special Committee agreed to retain Weil and Centerview again, despite their conflicts of interest as discussed above.¹³⁰

H. Merger Discussions Breakdown in November 2023 Over Management’s Interest in Monetizing Its Unvested Stock Awards

149. On October 10, 2023, before even being retained by the Special Committee and without Special Committee authorization, representatives of Centerview met directly with Leonard and Pekarek to discuss the process leading up to the Buyout, codenamed “Project Apex.”¹³¹

150. Three days later, on October 13, 2023, Agiliti’s management shared its management plan (the “Management Plan”) with Centerview.¹³² Given the recent CEO upheaval, the Management Plan was unavoidably underdeveloped. Indeed, just a week later, Leonard admitted that he was still “racing to relearn the business,”¹³³ which neither the Special Committee nor Centerview ever appear to have acknowledged.

151. Also on October 13, 2023, the Special Committee met with representatives of Centerview and Weil, with Leonard and Pekarek also attending,

¹³⁰ *Id.*

¹³¹ AGTI_220_00003299 at 324.

¹³² *Id.*

¹³³ AGTI_220_00005758.

to discuss a response to THL's offer.¹³⁴ Centerview's presentation indicated it needed to clarify whether there was any price at which THL would be a "seller," whether THL would consider partnering with another buyer, and how THL envisioned structuring stockholder approval.¹³⁵ Centerview advised the Committee that the bank was reviewing the Management Plan with Agiliti's management, and that Leonard had shared his perspectives (the substance of which the minutes do not disclose) on THL's offer. Following discussion, the Special Committee decided to continue evaluating THL's offer and also to engage Centerview as its financial advisor.

152. The Special Committee deferred to Leonard and Pekarek to facilitate Centerview's engagement. This was not reflected in any meeting minutes, but Workman later confirmed by email that Leonard could negotiate directly with Centerview on the Special Committee's behalf.¹³⁶

153. Possibly from management, THL learned that the Special Committee had interacted with and was likely to reengage Centerview to serve as the Committee's financial advisor. Undermining the notion that the Special Committee had full authority to consider THL's offer free of any interference, THL's Nelson

¹³⁴ AGTI_220_00003299 at 300.

¹³⁵ *Id.* at 309.

¹³⁶ AGTI_220_00005715.

contacted Leonard, Pekarek, and Workman by email on October 13, 2023, inquiring whether Centerview’s prior engagement letter still applied and cautioning that THL was “focused on the fees” and was “happy to discuss.”¹³⁷

154. The subsequent exchange on the same email chain underscored THL’s involvement in Centerview’s retention, as well as Leonard’s views as to the minor role THL, Leonard, and the Special Committee all expected Centerview to play. Specifically, Nelson expressed concern that Centerview’s interest in “refreshing” the fee structure was code for “increasing” the fees to be earned, and that Centerview’s

[REDACTED]

[REDACTED]

[REDACTED] Leonard acknowledged Nelson’s concern and added, “I noted [to Centerview] that the intended scope of work was small”¹³⁸ Leonard and the Special Committee would later keep Centerview starved of information, possibly due to THL’s concerns with fees.

155. Agiliti management and representatives of Centerview had multiple preliminary discussions regarding a potential fee structure. And on October 18, 2023, Centerview formally submitted a fee proposal to Leonard and Workman for their

¹³⁷ AGTI_220_00007426.

¹³⁸ *Id.*

review.¹³⁹ Leonard promptly forwarded the proposal to Nelson specifically so that THL could share its views with the Special Committee on the terms of Centerview’s engagement.¹⁴⁰

156. During this same timeframe, Centerview met with Agiliti management three more times—on October 16, 17, and 20, 2023—to discuss the Management Plan.¹⁴¹

157. Meanwhile, on October 17, 2023, THL and Leonard terminated his formal consulting agreement with THL and returned the fees he had already been paid by THL for October.¹⁴²

158. As reflected by internal communications, Agiliti’s financial performance was already on the rebound. On October 19, 2023, Leonard advised the full Board, including THL’s designees, as well as his management team, that the Company’s preliminary third quarter financial results exceeded analyst expectations, and “the team currently expects our full year results to land at/near the high end of the revised external guidance range.”¹⁴³ Leonard added with respect to the future: “For now I will simply say that the team is positive and highly engaged, and as we

¹³⁹ AGTI_220_00005886.

¹⁴⁰ *Id.*

¹⁴¹ AGTI_220_00003299 at 324.

¹⁴² AGTI_220_00005412.

¹⁴³ AGTI_220_00005574.

dig into the myriad of details within the business we see clear paths to improve its financial health. I am personally as excited as I have ever been about the competitiveness and long-term potential of this company.”¹⁴⁴

159. THL’s regular biweekly update call with Leonard and Workman was scheduled for October 20, 2023, but the parties agreed to cancel it because of scheduling conflicts. However, in lieu of the call, Leonard shared an update with THL based on his “[f]ull week of deep dive reviews.” As part of his attempt to “relearn the business,” Leonard wrote to Nelson and Preiner that a few areas of the business were better than expected, while others were worse. Leonard concluded: “The important take-away is that there are clear self-inflicted challenges and lots of backsliding, which also means clear paths for improvement.”¹⁴⁵ In the same email, Leonard also passed along to THL the status of the Special Committee’s work, admitting that the Committee had not yet received any “preliminary valuation output” from Centerview.

160. On October 21, 2023, Leonard emailed Centerview to request Centerview’s planned presentation for the next Special Committee meeting.¹⁴⁶ Centerview complied with Leonard’s request and emailed Leonard and Pekarek a

¹⁴⁴ *Id.*

¹⁴⁵ AGTI_220_00005758.

¹⁴⁶ AGTI_220_00006874.

Agiliti’s best interest that “any potential transaction be explored expeditiously” and, moreover, that THL’s interest in a transaction was “dependent on the Company’s ability to consummate the transaction on an accelerated timetable”¹⁵⁶ THL’s proposed timeline contemplated announcing a transaction in conjunction with the Company’s third quarter earnings release—*i.e.*, approximately two weeks from this updated proposal—and to that end, THL said its diligence would be “focused and confirmatory in nature”¹⁵⁷

166. On October 25, 2023, Agiliti management held a call with ██████████ to discuss the Company’s business and industry dynamics.¹⁵⁸ Separately, Leonard requested that Centerview call him directly on his cell phone to discuss its subsequent discussions with ██████████.

167. On October 26, 2023, the Special Committee met with its advisors, with management also in attendance. Following discussion, the Special Committee authorized Centerview to continue discussing a transaction with THL, and it authorized Centerview, Leonard, and Pekarek to continue discussions with ██████████¹⁵⁹.

¹⁵⁶ AGTI_220_00000384 at 385.

¹⁵⁷ *Id.*

¹⁵⁸ AGTI_220_00003299 at 355.

¹⁵⁹ *Id.* at 349.

168. During this time, Workman also asked Leonard if he thought that Weil should update the Board regarding the status of the Special Committee’s process, to which Leonard inquired “When?” and “Why?”¹⁶⁰ In a separate email chain concerning a due diligence meeting with THL, Workman expressed his willingness and desire to attend, but Leonard said his attendance was not “necessary” because the attendees would only be addressing questions that Goldman had about Agiliti’s financial model.¹⁶¹ CFO Pekarek also called Workman to say he did not need to attend.¹⁶²

169. On October 30, 2023, the Special Committee met again, this time inviting Sperling, Nelson, and Preiner as well as StepStone partner Friedman to attend so that they could offer their perspectives on THL’s proposal. The results were unsurprising, given the close ties THL had with Sperling, Nelson, and Preiner. Sperling asserted that, based solely on Agiliti’s stock price at the time, THL’s \$9.35 per share offer was the “best price” for the Company and its stockholders.¹⁶³ Nelson also appeared to question whether institutional investors would want to invest in Agiliti given its “profile,” presumably referring to the Company’s status as a controlled company without an independent board. THL’s Board designees

¹⁶⁰ AGTI_220_00007446.

¹⁶¹ AGTI_220_00006999.

¹⁶² AGTI_220_00007212.

¹⁶³ AGTI_220_00003299 at 365.

expressed no doubt concerning the Company’s business prospects but questioned whether and when its stock price would rebound—spelling out exactly the bargain THL would get by snapping up Agiliti now.

170. Also on October 30, 2023, Agiliti management met with representatives of THL and StepStone to discuss the Management Plan. THL requested that its advisors from Goldman be allowed to join, but Leonard asked that they not do so because he did not want portions of the diligence session to be shared “beyond ‘family.’”¹⁶⁴

171. On October 31, 2023, the full Board, including THL’s designees, held a regularly scheduled quarterly meeting. Leonard provided a general business update, which included as a “Key takeaway” that emphasized—refuting THL’s supposed doubt about Agiliti as a public company—that “no part of our business faces a structural hurdle that impact its long-term viability.”¹⁶⁵ Leonard’s presentation added: “We have many, many issues to tackle, but we have just as many levers we can pull. It is an exciting time to be part of this company.”¹⁶⁶ Management’s presentation to the Board also reflected that there had been “[c]onstructive meetings” with numerous institutional investors following the CEO

¹⁶⁴ AGTI_220_00005467.

¹⁶⁵ AGTI_220_00004259 at 260 (emphasis in original).

¹⁶⁶ *Id.*

transition announcement, with additional meetings to happen with other investors.¹⁶⁷ Asset manager Janus Henderson was quoted in the presentation as stating: “We continue to believe in Agiliti’s long-term business opportunity, given its strong competitive positioning and existing relationship with hospitals.”¹⁶⁸

172. In addition to the traditional Board materials, prior to this meeting, Leonard forwarded certain “pre-read” materials that he had presented to just a subset of the Board, likely the THL designees, before his return to the Company.¹⁶⁹ Leonard considered the materials to be “highly sensitive content and never intended to be shared in this form beyond this team.”¹⁷⁰ Centerview asked management to provide it with the full Board materials because “[i]t’s important we have what [THL has] for our ongoing diligence.”¹⁷¹ Leonard refused to provide Centerview with the full Board materials,¹⁷² even though Leonard had already indicated those materials would “provide a summary for many of the answers [on] what [THL is] looking for.”¹⁷³ Management’s refusal to share with Centerview what it readily gave THL undermined the reliability of any opinion Centerview would ultimately render.

¹⁶⁷ *Id.* at 268.

¹⁶⁸ *Id.*

¹⁶⁹ AGTI_220_00005717.

¹⁷⁰ *Id.*

¹⁷¹ AGTI_220_00005339.

¹⁷² *Id.*; AGTI_220_00007434.

¹⁷³ AGTI_220_00007401.

173. Later that day, the Special Committee met with representatives of Centerview and Weil, as well as Leonard and Pekarek. Following discussion, the Special Committee authorized Workman to contact THL directly to discuss whether THL would be willing to raise its offer to \$10.00 per share. In addition, following an update from Centerview, the Special Committee authorized Centerview to continue interacting with [REDACTED].

174. On November 1, 2023, THL submitted a revised offer of \$9.75 per share via a letter from its three Board designees.¹⁷⁴ As before, THL did not condition any resulting transaction on minority stockholder approval. THL also reiterated that any potential transaction should be explored “expeditiously” and that its “interest in, and willingness to enter into this transaction, is dependent on the Company’s ability to consummate the transaction on an accelerated timetable”¹⁷⁵

175. On November 2, 2023, Special Committee members Workman and Gottlieb met with representatives of Weil and Centerview, and Leonard, to discuss THL’s updated proposal.¹⁷⁶ Committee members Harris and Patrick did not attend, thus precluding a “quorum” under Section 5.4 of Agiliti’s Third Amended and Restated Bylaws. In email correspondence scheduling the meeting, Leonard’s

¹⁷⁴ AGTI_220_00000386.

¹⁷⁵ *Id.* at 387.

¹⁷⁶ AGTI_220_00003299 at 369.

executive assistant recognized, “I believe we need 3 Special Committee members[,]”¹⁷⁷ which Patrick also appears to have acknowledged.¹⁷⁸ Harris said he could not make it,¹⁷⁹ but the meeting proceeded nonetheless.

176. Just prior to the meeting, Leonard emailed the members of the Special Committee to share his thoughts.¹⁸⁰ Leonard explained that the market undervalued Agiliti’s stock, lamenting that “[i]t is the market that has changed,” not that Agiliti’s long-term value proposition had diminished, and that “[t]he market is fickle and currently punishes many companies operating under similar circumstances.” (Emphasis in original). Leonard then concluded that market underappreciation militated against a sale at that time: “Because the market does not ‘like’ us today simply tells me it is not a good time to sell.”

177. Again refuting THL’s self-serving suggestion that Agiliti could not execute its plan as a public company, Leonard also wrote positively in his email of the Company’s standalone prospects. He asserted that the “newly energized and engaged leadership team . . . see[s] a clear path to near term improvement to financial performance and a long runway for equity value creation. If you liked and believed what you heard from the team, then I hope that you also recognize that there is a

¹⁷⁷ AGTI 220 00006750.

¹⁷⁸ AGTI 220 00005430.

¹⁷⁹ AGTI 220 00006814.

¹⁸⁰ AGTI 220 00005735.

good alternative to accepting a low Bid.” Leonard also wrote that he had to go “pencils down” over the coming days as relating to the merger in order to focus on Agiliti’s quarterly earnings report.¹⁸¹

178. The attendees at the November 2, 2023 meeting discussed THL’s most recent proposal and related considerations. Despite lacking a quorum, “it was determined”—the minutes fail to state by whom—that Workman would “go back to THL to confirm whether THL would be in a position to sign and announce a transaction in conjunction with the Company's third quarter earnings release and to make a counteroffer of \$10 per share in cash.”¹⁸²

179. Also on November 2, 2023, Weil sent THL’s counsel, Ropes, a draft merger agreement that did not contemplate any management rollover but did provide for the following with respect to equity awards:

- a. Vested and unvested stock options would be cashed out at the deal price;
- b. RSUs with time-based vesting conditions would be cashed out at the merger price; and

¹⁸¹ *Id.*

¹⁸² AGTI_220_00003299 at 370.

- c. 2021, 2022, and 2023 performance RSUs would be cashed out at the merger price.¹⁸³

180. Company-wide, there were only minimal vested or unvested in-the-money stock options at the time, but the treatment of unvested RSUs and performance RSUs was a significant issue, especially for Leonard. Based on the expected \$10.00 per share merger price, Leonard would have received \$8.6 million at close under Weil’s draft based solely on the vesting and acceleration of his unvested equity awards, including the \$6.25 RSU grant he had received just one month earlier.

181. Meanwhile, despite telling the Special Committee he had to go “pencils down,” so as to concentrate on the Company’s upcoming earnings release, Leonard and Pekarek were hard at work behind the scenes shoring up their own financial interests. Leonard and Pekarek had engaged in telephone discussions with their executive compensation consultant at Jamieson.¹⁸⁴ And on November 2, 2023, Jamieson submitted a draft engagement letter “to advise senior management” and “to assist in establishing the Company’s anticipated Management Incentive Plan” as part of the proposed takeover by THL.¹⁸⁵ Jameison also submitted a presentation

¹⁸³ AGTI_220_00005004 at 018-20.

¹⁸⁴ AGTI_220_00006821.

¹⁸⁵ AGTI_220_00006822.

outlining as an exemplar a process that contemplated negotiating post-close management incentives in parallel with deal negotiations,¹⁸⁶ thus directly pitting management against stockholders.

182. On November 3, 2023, Workman emailed Leonard, suggesting that they cancel the regular, biweekly update call with THL “with everything going on and the process we are in,” adding that cancelling “probably helps the record that will be created also.”¹⁸⁷ Leonard agreed and emailed the “THL team,” suggesting that they should cancel the standing meeting “while both side [sic] work towards completing the proposed transaction.”¹⁸⁸

183. Separately, Leonard and Pekarek, who were angling to participate in the post-close entity and thus had interests that diverged from Agiliti’s minority stockholders, had assumed primary responsibility for negotiating with Centerview over its engagement as the Special Committee’s financial advisor. By early November, the Special Committee had still not formally retained Centerview as its financial advisor.

184. On November 3, 2023, Pekarek emailed Leonard, Workman, and a Weil lawyer to move things along, writing: “We need to get [open issues regarding

¹⁸⁶ AGTI_220_00006843.

¹⁸⁷ AGTI_220_00005764.

¹⁸⁸ AGTI_220_00005768.

the engagement] done today. I tried to reach out [to Centerview] and they hide behind the lawyers. What do we need to do to wrap this up?”¹⁸⁹ In a response, Workman acknowledged that “we will need a fairness opinion from [Centerview] prior to closing,”¹⁹⁰ but also documented the advisor’s ineffectiveness, writing: “BTW, I also think they delivered limited value other than their model and the fairness opinion.”¹⁹¹ Leonard agreed: “Their best work was in representing their position on their fees and contract.”¹⁹²

185. On November 3, 2023, THL emailed Leonard and Workman a revised offer to buy the Agiliti shares it did not already own for \$10.00 per share.¹⁹³ THL’s revised offer disclosed a preliminary “sources and uses” schedule, which assumed \$260 million in new investor equity (likely from StepStone) and, in contrast to Weil’s November 2, 2023 draft merger agreement, \$6 million in rollover equity attributable to unvested management equity.¹⁹⁴ Leonard’s unvested equity constituted almost all of THL’s contemplated management rollover.

¹⁸⁹ AGTI_220_00006891.

¹⁹⁰ AGTI_220_00006886.

¹⁹¹ AGTI_220_00006959.

¹⁹² AGTI_220_00007370.

¹⁹³ AGTI_220_00000388.

¹⁹⁴ *Id.*

186. Leonard, who had cemented his position as chief intermediary (as opposed to Workman), thereafter forwarded THL’s revised proposal to the Special Committee’s members and recommended that the committee delegate to Workman the authority to represent the Special Committee in finalizing the merger agreement and any related documents.¹⁹⁵ All Special Committee members authorized Workman to proceed.

187. Early on November 4, 2023, Ropes sent Weil a revised draft of the merger agreement, which included mandatory rollover of vested equity in an amount “TBD” and markedly less favorable terms for Agiliti management—Leonard, in particular—concerning the treatment of unvested equity awards.¹⁹⁶ Specifically, the Ropes draft provided:

- a. [REDACTED]
- b. [REDACTED]

¹⁹⁵ AGTI_220_00006790.

¹⁹⁶ AGTI_220_00005073.

[REDACTED]

[REDACTED].

c.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

188. Based on the expected \$10.00 per share merger price, Leonard would have received nothing under the November 4 Ropes draft for his unvested equity at the completion of the Buyout, \$8.6 million less than he would have received at close under Weil’s November 2 draft.

189. In email to the Special Committee and Weil and Centerview representatives,¹⁹⁷ Leonard expressed his view that all employees’ unvested RSUs should “just pay out at the transaction,” flatly rejecting the notion of a mandatory rollover based on his own personal financial interest. Underscoring his desire for liquidity, Leonard stated:

With regard to roll-over of owned common equity, that will be a non-starter. At 9 years, I have been amongst here the shortest of anyone on my team. The bulk of the value I receive at this transaction is a return of the value I rolled over at the last transaction - roughly \$11M. I will

¹⁹⁷ AGTI_220_00008213.

not be rolling into an illiquid private company equity at this stage in my career. . . .¹⁹⁸

190. Also on November 4, 2023, the Special Committee formally engaged Centerview to act as the Committee’s financial advisor.¹⁹⁹ Under the terms of its engagement letter, Centerview would receive at least \$ [REDACTED] in fees in connection with the Buyout, \$ [REDACTED] of which was contingent on the provision of its fairness opinion and then the closing of the Buyout. Centerview’s engagement letter also provided that it could receive an additional \$ [REDACTED] fee at the discretion of the Company, as opposed to the Special Committee, which incentivized Centerview to make the ultimate decisionmaker at the post-close Company, *i.e.* THL, happy.

191. The following day, Centerview belatedly provided a conflict disclosure memorandum, which asserted that Centerview had not received any fees from either Agiliti or THL but revealed that Centerview “has from time to time been and may currently be engaged in regular ordinary course discussions with, performing services unrelated to the Company on an informal basis for, and soliciting business from [THL] and/or portfolio companies and companies in which THL holds venture

¹⁹⁸ *Id.*

¹⁹⁹ AGTI_220_00000001.

capital or similar investments.”²⁰⁰ These activities and any resulting fees were not previously discussed with or disclosed to the Board or the Special Committee.

192. Throughout the weekend of November 4 and 5, 2023, Leonard, Pekarek, Weil, and Centerview continued to discuss a management equity rollover, which was the main outstanding issue to resolve. As conveyed to the Special Committee, while secretly discussing a lucrative post-close management incentive plan with Jamieson, Leonard and Pekarek sought immediate liquidity and, thus, opposed any mandatory rollover, while THL continued to insist on at least some degree of rollover by management.

193. Given the apparent impasse—which Centerview contributed to due to its failure to relay Leonard and Pekarek’s updated “sources and uses” model,²⁰¹ leading to Pekarek complaining that they “just do not get it”²⁰²—Weil advised Leonard and Pekarek on November 5 that THL had gone “pencils down.”²⁰³

194. But talks had not completely broken down. Later on November 5, 2023, THL advised Weil that THL planned to submit a revised proposal. Weil then conveyed THL’s intention to Leonard and Pekarek.

²⁰⁰ AGTI_220_00000149.

²⁰¹ AGTI_220_00007348.

²⁰² AGTI_220_00006207.

²⁰³ AGTI_220_00007206.

195. Late November 5 or early November 6, 2023, THL submitted a counter-proposal to representatives of Weil regarding the treatment of management equity, which specified the previously “TBD” amount of vested equity rollover and continued to contemplate that management would roll over its unvested equity. Weil conveyed to Leonard, Workman, and representatives of Centerview as follows: “Below is [the] counter from THL: [a] of the \$20mm vested equity, sell \$10mm at deal closing and roll remaining \$10mm [and] [b] recently issued [unvested] stock grant gets rolled into deal.”²⁰⁴

196. Leonard unilaterally rejected THL’s revised proposal, responding by email to Weil’s offer to discuss: “No need. Not going to happen.”²⁰⁵ In a separate email to his management team, Leonard said that “[i]t is possible that we may revisit a transaction in the future” but that “[i]t is now critical to focus on the business and our near-term performance.”²⁰⁶

197. Talks with THL regarding a proposed buyout terminated at that time.

198. Meanwhile, ██████████ continued to express interest in acquiring Agiliti, having submitted an offer on November 5, 2023 to acquire the Company for between

²⁰⁴ AGTI_220_00005457.

²⁰⁵ AGTI_220_00005755.

²⁰⁶ AGTI_220_00006223.

\$8.00 and 10.00 per share.²⁰⁷ ██████'s proposal indicated that it was completely aligned on the Company's investment thesis:

We are extremely impressed with the management team's accomplishments and have a shared belief that, given secular trends in the U.S. healthcare system, we are in the early stages of a robust long-term investment cycle in the outsourcing of medical equipment ownership and servicing, and have a common vision for the convergence of that infrastructure's usage.

199. ██████ further indicated that it was "prepared to move expeditiously" and wanted to conduct due diligence under a non-disclosure agreement. ██████ also said the transaction would be financed entirely with funds from its global infrastructure fund, and indicated that it would "welcome a meaningful rollover of THL," that but its offer was not conditioned on any THL rollover. However, ██████ stated that if THL elected to rollover shares in any ██████-led takeover, ██████ offer would be conditioned on compliance with *MFW*.

200. On November 7, 2023, Agiliti released its earnings report for the third quarter. In the earnings release, Leonard touted "strong results in the third quarter, beating top and bottom line expectations and giving us confidence in our full year outlook."

201. As of mid-November 2023, the Special Committee was effectively defunct given the breakdown in talks with THL. On the other hand, the formalized

²⁰⁷ AGTI_220_00000372.

relationship with Centerview was still operative, and ██████'s takeover proposal remained outstanding. But because Leonard never wanted to pursue a deal with anyone other than THL, Leonard and Workman conspired to dispose of it quickly despite the Board ostensibly imbuing the Special Committee with the prerogative to “consider alternative transactions with third parties.”

202. On November 16, 2023, Workman emailed Leonard, stating: “Got a letter to sign to terminate Centerview. I think we probably should have a SC meeting to consider ██████ proposal (and eliminate it). Prefer to wait [to terminate Centerview] until after that [*i.e.*, rejecting ██████] as we need [Centerview’s] perspective.”²⁰⁸ Leonard responded, confirming his lack of interest in dealing with ██████ and his continued preference for a deal, if any, with THL, stating that he had reached out to THL’s Nelson to “clear the air” and that their relationship was “All good.” Leonard added that “there remains a small chance they would restart” and that he had made clear “management’s perspective on a successful go-forward arrangement and liquidity needed in a deal for it to make sense.”²⁰⁹ Reflecting and echoing Leonard’s disinterest in a deal with ██████, Pekarek even confessed later

²⁰⁸ AGTI_220_00005784.

²⁰⁹ *Id.*

that month in an email to Leonard that he was not even aware that [REDACTED] had made a proposal.²¹⁰

203. On December 6, 2023, the Special Committee met for the pretextual purpose, according to the meeting invite, of “(re) introduce[ing] the Centerview team to the committee members and get their initial thoughts on the proposed transaction [REDACTED], current market context, and recommendations on next step deliverables.”²¹¹ But as indicated above, as well as through multiple emails exchanged in advance of the meeting,²¹² Workman and Leonard had already decided to reject [REDACTED] November 5, 2023 merger proposal and also to terminate Centerview immediately upon formally rebuffing [REDACTED]. Accordingly, at the meeting, without any apparent financial analysis of [REDACTED]’s offer or consideration of whether [REDACTED] might improve on its offer, the Special Committee summarily decided to reject the offer.²¹³ The Special Committee also determined to terminate Centerview’s engagement.²¹⁴

204. Throughout the remainder of 2023, Agiliti continued to execute on its strategic plan.

²¹⁰ AGTI_220_00006126.

²¹¹ AGTI_220_00008236.

²¹² AGTI_220_00005389; AGTI_220_00005437.

²¹³ AGTI_220_00003371.

²¹⁴ *Id.*; AGTI_220_00000845.

I. The Parties Resume Discussions in January 2024 and Rapidly Reach a Deal

205. Buyout talks between Leonard and THL reignited in January 2024.

206. On January 2, 2024, Leonard email THL partners Nelson and Preiner requesting some time to meet in the near future to discuss “AGTI strategy work.”²¹⁵ Leonard previewed, “There are some interesting things on our near-term horizon that will create much greater equity value than a strategy of rolling up these roll-ups (not that you were suggesting this path).”²¹⁶

207. On January 4, 2024, Craig-Hallum Capital Group LLC (“Craig-Hallum”) initiated coverage of Agiliti and established a price target of \$23 per share. In its report, Craig-Hallum stated that, after a “rough” 2023, “We believe the corner is being turned and as a result Agiliti can return to high single digit revenue growth.” Craig-Hallum also highlighted, “Recent Challenges Being Addressed, Valuation Doesn’t Reflect the Opportunity,” adding that Agiliti’s trading discount versus its peers was “unwarranted given the recurring nature of the business and their higher EBITDA margins of 22% (peer group margin of 21%) and better revenue growth.”

208. On January 5, 2024, following three days of off-site meetings with his executive team, Leonard emailed the full Board to provide an update on

²¹⁵ AGTI_220_00005867.

²¹⁶ *Id.*

management’s plan “on returning [Agiliti] to a predictable growth, mid-20% EBITDA margin, high cash-generating business, and resetting the company on a path for structure multiple expansion over time.”²¹⁷ Leonard also established specific, 2-year goals of, among other things: \$30 million in additional PNR revenue, and 10% revenue growth in both surgical services and SES, the three-largest drivers of the Company’s Equipment Solutions business.²¹⁸ In the Equipment Solutions business alone, Leonard’s plan represented an additional \$30 million in growth by 2025, none of which was ever reflected in the Company’s Management Plan.

209. On January 12, 2024, in anticipation of the biweekly THL call, Leonard forwarded THL partners Nelson and Preiner a “Privileged” summary of cash and equity compensation that management had prepared for the Board’s Compensation Committee. In the email, Leonard added: “Do not yet have a ‘23 close. Revenue came in just north of where we expected. Expect to finish Q around our forecast and a bit better than analyst consensus - Goldilocks finish ...”²¹⁹

210. On January 19, 2024, THL’s Nelson emailed Leonard to follow up on a conversation, saying: “Hopefully we are good on [a Management Incentive Plan] now and you have what you need.”²²⁰

²¹⁷ AGTI_220_00005800.

²¹⁸ AGTI_220_00006517.

²¹⁹ AGTI_220_00005833.

²²⁰ AGTI_220_00007842.

211. Late in the evening of January 19 or early in the morning on January 20, 2024, Leonard emailed Nelson with Workman and Weil copied “to keep both in the communication loop.” Leonard expressed that “the equity market is always a laggard and today it significantly undervalues [Agiliti] and its future prospects,” that Agiliti’s “stock price will more accurately reflect our intrinsic value once we have the opportunity to demonstrate consistent business performance,” and that he had “full confidence in our team and our plan of execution.”²²¹

212. Incredibly, Leonard’s conclusion from all of this was not that Agiliti should hold fast for a deal that matched his views of its underlying value and future performance. Instead, Leonard put a thumb on the scale for THL over Agiliti’s minority stockholders, pressing that “it makes perfect sense for THL (or frankly any other intelligent investor) to pursue a take-private if such a deal can reasonably get done[.]” However, there was a catch for Leonard: management had to have a “logical model” to get them on board. As Leonard sold it to THL in his email, “[t]he benefit to THL is that a meaningful number of shares will also be purchased/retired at little to no cost” while putting “management properly in alignment with THL.”²²² Leonard’s email essentially invited THL to make another offer.

²²¹ AGTI_220_00007846.

²²² *Id.*

213. As a result, on January 26, 2024, THL submitted an offer to purchase all Agiliti stock not already owned by THL for \$9.00 per share.²²³ THL's offer contemplated that management would rollover \$24 million in unvested equity. An email exchange among the Special Committee included Patrick inquiring, "I suppose we should meet soon,"²²⁴ and Workman said he would be discussing the proposal offline with Leonard to get his views prior to any Special Committee meeting.²²⁵ Minutes from the next Special Committee meeting also indicate that Leonard had separate discussions with representatives of THL concerning the offer.

214. On January 30, 2024, the Special Committee met to discuss THL's latest offer, including, specifically, "correspondence that Tom Leonard had with representatives of THL regarding his views on the THL Proposal" and "management's willingness to participate on the proposed terms contemplated by the THL Proposal." Leonard participated in the meeting. The Special Committee instructed Centerview to update its financial analysis in light of then-current market conditions and any updates to management's financial plan. The Special Committee took two minutes to determine to reengage Centerview, and then spent a mere five minutes discussing the "process related to the potential transaction" with Weil.²²⁶

²²³ AGTI_220_00000374.

²²⁴ AGTI_220_00006454.

²²⁵ AGTI_220_00006778.

²²⁶ AGTI_220_00003951 at 953.

215. Within an hour of the meeting’s conclusion, Leonard forwarded his January 19 email to THL to the rest of the Special Committee as a “summary of my position on [management’s equity rollover].” He asserted that prior THL offers “stalled, in part, based on their expectation that management roll virtually all of their equity . . . into the deal.” Further still, Leonard explained that, subsequent to the January 19 email, he conversed with THL’s Sperling, who “outlined a new model that appears to mirror my last offer to them in November”—*i.e.*, that all of Leonard’s equity roll over, while only unvested equity from other management roll over.²²⁷

216. Leonard “share[d] these details with [the Special Committee], in writing, to ensure the Special Committee has a clear understanding of the present facts and circumstances.” Namely, that Leonard had “no interest in getting sideways with THL again on this proposed transaction,” and that “it remains very uncomfortable to continue to stand in the way of THL’s goal.” Thus, even though “doing a deal at/near \$10 and under these terms is far from the best financial path for [him] personally”—underscoring further the price inadequacy—Leonard would “support a potential transaction” and was not interested in “burn[ing] an excessive amount of time, emotional energy and political capital fighting over a deal that isn’t

²²⁷ AGTI_220_00006528.

in my interest and was not in scope when the Board asked me to return to the company.”²²⁸

217. On February 1, 2024, Leonard again emailed the Special Committee to provide “[his] input as [the Special Committee] prepare[d] a response to THL’s *unsolicited* bid,” thus mischaracterizing that Leonard had effectively solicited THL’s bid by working behind the scenes in December and January to resolve the equity treatment concerns that halted deal discussions in November. On pricing, Leonard expressed confidence in Agiliti’s business: “Since the time we paused negotiations, AGTI has performed on par and ahead of street expectations. More importantly for our future, the executive team and key senior leadership are highly engaged and have a credible plan to quickly address the challenges within our business.”²²⁹

218. Leonard then urged the Special Committee to negotiate at speed. “THL had previously indicated that moving expeditiously to complete a deal was in the best interest of all shareholders. We agree that minimizing the distractions for management . . . will give them back the critical time and focus they require to get the business on track quickly. ***We will save a lot of time and energy if we can quickly arrive again at \$10 or more per share.***” Moreover, Leonard stressed the importance of how management’s equity and go-forward compensation would be

²²⁸ *Id.*

²²⁹ AGTI_220_00007867 (emphasis added).

treated, indicating that “[q]uickly getting to agreement on transaction price and the disposition of the existing equity plan will provide more time to address this critical element.”²³⁰

219. Leonard’s message was clear: get the deal done “quickly”—\$10.00 per share was fine. Given that Leonard would be rolling over a substantial portion of his own equity, he deprioritized securing the highest price for the Company’s minority stockholders who would be cashed out. And seeing no path to get liquidity from the Buyout (his preference), Leonard was no longer interested in burning his “political capital” at THL with “exceedingly uncomfortable” negotiations just to hold the line for a better deal on behalf of the Company and its minority stockholders.

220. Now that Leonard rolled over for THL, the Special Committee followed suit.

221. The Special Committee met again on February 2, 2024.²³¹ Centerview shared its updated financial analysis, which was based on a management plan that continued to exclude growth via acquisitions and was largely unchanged from the October version despite Leonard’s having just recently boasted about Agiliti’s turnaround progress.²³² THL’s offer—or even an offer at \$10 per share—was on the

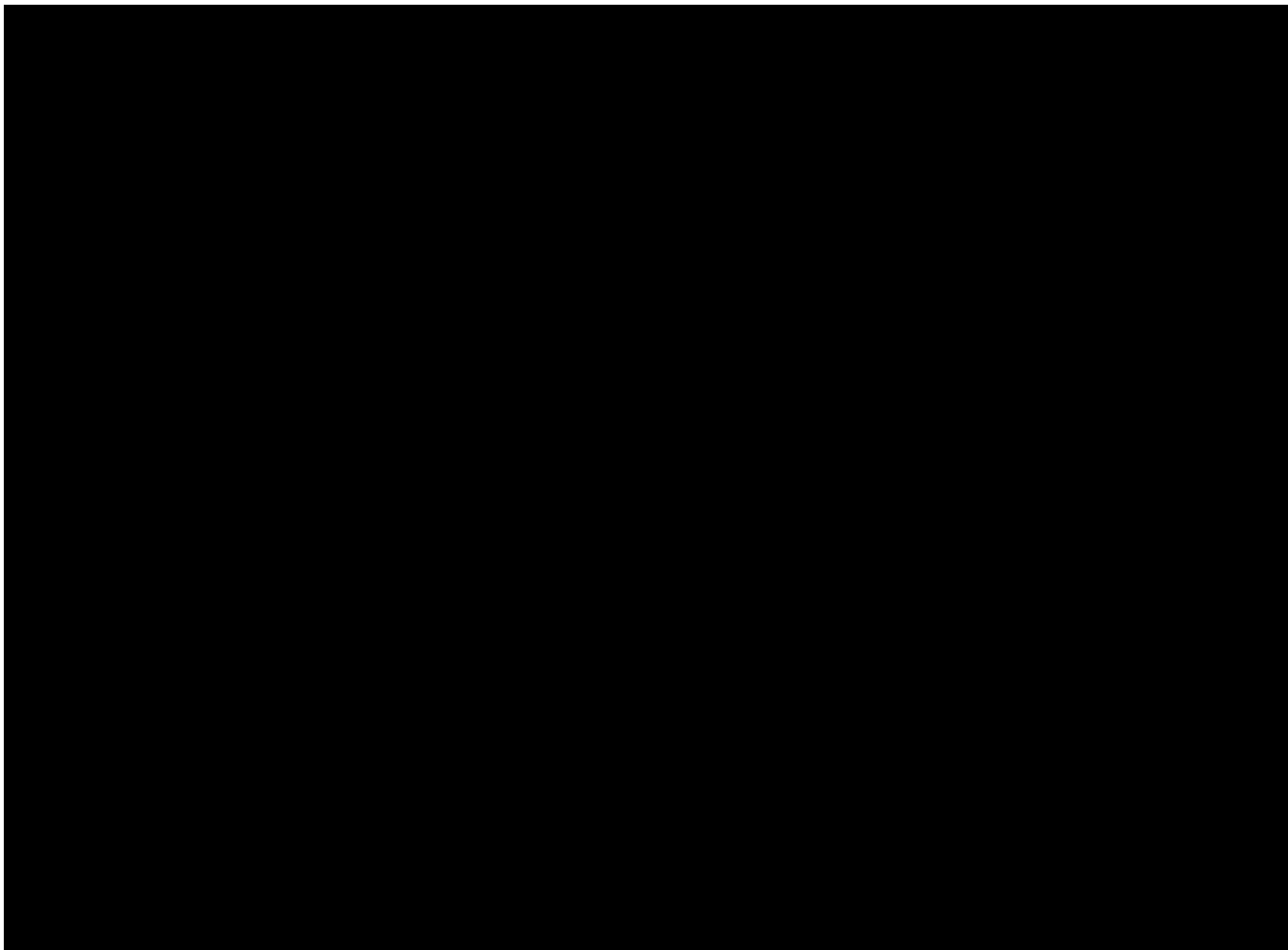
²³⁰ *Id.*

²³¹ AGTI_220_00003951 at 955.

²³² AGTI_220_00008179.

low side. Centerview's DCF, for instance, implied a range from \$ [REDACTED] to \$ [REDACTED] per share even though management had already substantially lowered the projections from just a year earlier. And Centerview's collection of Wall Street analyst price targets implied a range of up to \$ [REDACTED] per share.

222. While some mixed sentiment remained among brokers, Centerview reported the generally positive share price reactions from analysts.



223. Despite the ample third party interest in Agiliti just months prior and Centerview's identification of potential strategic and financial acquirors, the minutes

reflect no consideration of reaching out to other buyers. Instead, following a discussion of “the execution risk associated with the management plan”—despite Leonard’s having previously reiterated his confidence—the Special Committee just determined to counter at \$11.50 per share.

224. On February 5, 2024, THL countered with a proposal of \$9.25 per share.²³³

225. The Special Committee met on February 6, 2024 to discuss THL’s proposal.²³⁴ Leonard and other members of management provided their “insights with respect to the understanding into the assumptions underlying the THL Proposal and their understanding of the Company.” Ultimately, the Special Committee determined to counter seeking a price “no less” than \$10 per share.

226. Also on February 6, 2024, as the parties were in the middle of price negotiations, Workman emailed Nelson and Bell, who were two of THL’s representatives on the Compensation Committee, to ask that the Compensation Committee agree to pay the members of the Special Committee for their work on the Buyout.²³⁵ The origin of this request is not reflected in any SEC filings or the Section 220 materials.

²³³ AGTI_220_00000376.

²³⁴ AGTI_220_00003951 at 957.

²³⁵ AGTI_220_00008253.

227. On February 8, 2024, THL countered, inching up to \$9.50 per share.²³⁶ The Special Committee met on February 9, 2024, when it “discussed the various increases that THL had made to its proposal”—all two of them—“and the rationale for THL’s valuation, including with respect to the execution risk of the management plan.” Given Leonard’s recent assurances about Agiliti’s direction and strong long-term prospects, concerns about “execution risk” appear trumped up solely to justify the hastened sale to THL. It was determined that the Special Committee should convey to THL that they were unwilling to move forward at a price less than \$10 per share.

228. On February 16, 2024, THL increased its offer to \$10 per share. THL did not suggest that it was making a best and final offer. Nonetheless, when the Special Committee met on February 18, 2024, it authorized its representatives to negotiate a deal at \$10 per share, concluding that “delaying with another set of counteroffers did not contain much upside[.]”²³⁷ That decision stood at curious odds with Centerview’s presentation to the Special Committee, where Centerview highlighted that Agiliti’s share price (\$7.93) was \$1.92 higher than it was in November 2023 (\$6.01), nearly \$1 higher than it was earlier that month (\$7.09), and only likely to keep growing over the coming years.

²³⁶ AGTI_220_00000378.

²³⁷ AGTI_220_00003951 at 961.

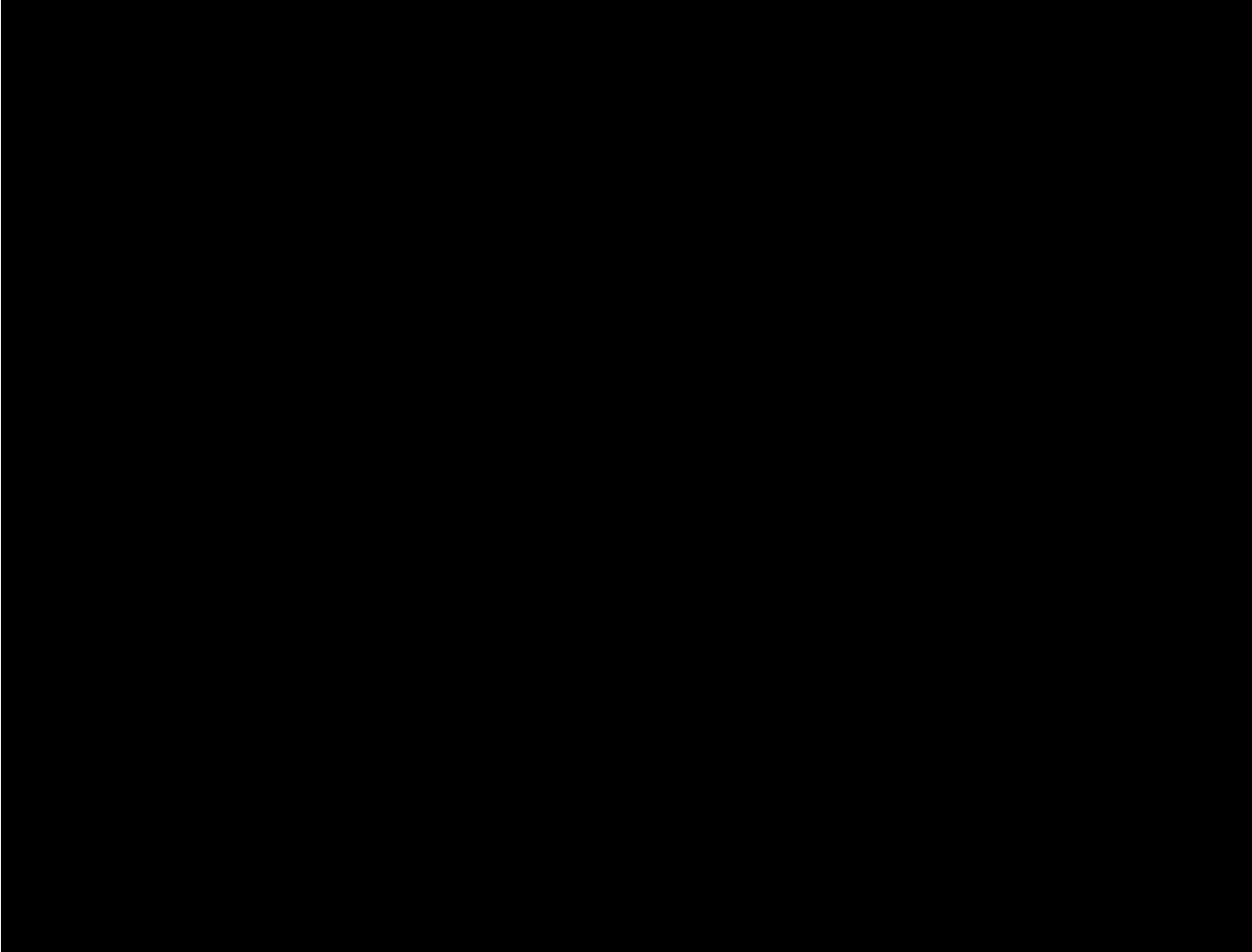
229. Over the next several days, the parties continued negotiating over a potential Buyout. During this time, management began working with Jamieson on their own compensation and post-closing incentive plan.²³⁸

230. On February 25, 2024—just one week after authorizing negotiations at \$10 per share—the Special Committee met to review a merger agreement (the “Merger Agreement”) with its advisors and management.²³⁹

231. As with its presentations to the Special Committee, Centerview’s fairness presentation to the Special Committee once again reflected that \$10 per share was on the low end of a number of valuation metrics. Notably, Centerview had *increased* the high end of its DCF from its analysis presented to the Special Committee earlier that month.

²³⁸ AGTI_220_00007457.

²³⁹ AGTI_220_00003951 at 962; AGTI_220_00000136.



232. During the meeting, the Special Committee “reflected on certain potential negative factors,” such as: “non-THL and non-employee Company stockholders [] not participat[ing] in future earnings or growth and [] not benefit[ing] from any appreciation in value,” and THL’s intention to approve the Buyout by written consent rather than with input from unaffiliated stockholders. Nonetheless, the Special Committee determined to recommend that Agiliti follow through with the Buyout.

233. That same day, the Board met. Defendants Friedman, Gottlieb, Harris, Patrick, Leonard, and Workman attended the meeting and constituted a quorum.

Leonard and Friedman recused themselves from the vote on the Buyout and the remaining directors in attendance voted to approve the Buyout.

J. The Merger Agreement, Announcement, and Completion of the Buyout

234. On February 26, 2024, the Merger Agreement was finalized. That same day, THL delivered a written consent approving the Buyout. Agiliti sought no input from its unaffiliated stockholders. Under the terms of the Merger Agreement, THL acquired all issued and outstanding shares of Agiliti’s common stock, other than shares owned by THL or its affiliates, for \$10 per share, implying an enterprise value for Agiliti of \$3.7 billion.

235. Contemporaneously with the Merger Agreement, Leonard entered into a rollover commitment letter (the “Rollover Commitment”), under which he agreed to roll over 892,462 of his shares of common stock or restricted stock units into the post-Buyout entity.

236. THL and Stepstone affiliates also entered into an Equity Commitment letter committing them to invest \$100 million in new equity to fund the Merger with Stepstone responsible for approximately █████ of the commitment.²⁴⁰

237. The Merger Agreement is lined with toothless provisions commensurate with its controller-led nature. Section 6.2 of the Merger Agreement includes what purports to be a fiduciary out, giving the Board the right—“prior to

²⁴⁰ AGTI_220_00000231.

the delivery of [THL’s] Written Consent” approving the Buyout—to engage with other interested parties that could reasonably be expected to lead to a superior proposal. The Board was required to provide at least three business days’ prior written notice of any exercise of the fiduciary out. Yet the Merger Agreement obligated THL to provide its written consent approving the Buyout within 24 hours of the Merger Agreement’s execution—which THL did, delivering its written consent the same day that the parties signed the Merger Agreement. The fiduciary out was a sham.

238. On February 28, 2024, the Board met to discuss, among other things, Agiliti’s full-year 2023 performance and plan for 2024. Agiliti was ahead of analyst consensus estimates, had “socialized the root causes of our recent financial challenges” and had developed positively received “get-well plans.” In stark contrast to the supposed “execution risk” that drove the Special Committee’s decision to agree to the Buyout, the 2024 plan was optimistic, reflecting management’s enthusiasm in achievable, organic revenue growth and gross margin rates. All that was left to do was “execute, measure and adjust.”

239. On March 6, 2024, Agiliti filed its 2023 annual report on a Form 10-K (previously defined as the “2024 10-K”). In addition to disclosing its full-year financial results, Agiliti’s 2024 10-K also reiterated prior year disclosures that “Key Elements of [the Company’s] Growth Strategy” included “Opportunistically

pursu[ing] accretive M&A.” Agiliti’s 2024 10-K further explained: “Due to our high and sustained value creation for customers and significant white space within existing customer relationships, we believe that pursuing opportunistic M&A will drive increasing returns through embedded customer relationships. From 2016-2023, we successfully integrated 11 acquisitions and will continue to pursue opportunistic M&A as part of our long-term growth strategy.” This starkly contrasts with the assumption underlying Agiliti’s Management Plan that the Company would not pursue growth through acquisitions.

240. On March 11, 2024, the Special Committee met to ratify its prior recommendation of approval of the Merger Agreement in the wake of the Court’s ruling in *Sjunde AP-Fonden v. Activision Blizzard*, C.A. No. 2022-1001-KSJM (Del. Ch. Feb. 29, 2024), and the Board adopted resolutions ratifying its approval of the Buyout. That same day, THL executed another written consent approving the Buyout in connection with the Board’s ratification.

241. On April 15, 2024, Agiliti filed the Information Statement.

242. On May 7, 2024, the Buyout closed.

K. The Buyout Was Unfair to Agiliti’s Public Stockholders

243. The Buyout was an opportunistic maneuver designed to capture value for THL while Agiliti’s stock price was temporarily depressed due to the market’s

overreaction to a bad quarter. As a result, the \$10 per share Buyout price foisted on public stockholders was unfair.

244. *First*, in 2022 and 2023, Agiliti received serious takeover interest from [REDACTED], with [REDACTED] submitting a final offer in October 2022 worth \$20 per share and [REDACTED] submitting an initial offer in April 2023 worth \$16 per share. THL had unilaterally rejected other offers as too low. Leonard agreed that [REDACTED]'s \$20 offer was not attractive. THL did not even tell the rest of the Board about [REDACTED]'s \$16 offer, thus rendering the Special Committee and Centerview uninformed about the Company's value. Then, instead of seeing if [REDACTED] was still interested in Agiliti in late 2023, [REDACTED]

245. Although THL would not sell its shares for \$20 per share, it was happy to pounce on an opportunity to force all other stockholders to sell for even less after Agiliti announced disappointing earnings in only Boehning's second quarter on the job. Mere days after the announcement of second quarter earnings in August 2023 cause Agiliti's stock to plummet, THL began conspiring with Leonard and Workman to bring Leonard back to replace Boehning. Simultaneously, THL prepared its own Buyout proposal, which it submitted only a week after Leonard returned to the Company.

246. *Second*, Leonard himself repeatedly made clear that the Company should not be sold while the market was pessimistic. Although Leonard supported the replacement of Boehning, even he acknowledged that it was a terrible time to sell the Company. On November 2, 2023, Leonard bluntly told the Special Committee “it is not a good time to sell” and that “we see a clear path to near term improvement to financial performance and a long runway for equity value creation . . . there is a good alternative to accepting a low bid.” He also explained that employees would not welcome an acquisition and that the “stock ‘fixing the company is easier as a private company’ [explanation] insults their collective intelligence[.]”

247. On January 20, 2020, one week before THL submitted a new proposal to acquire Agiliti, Leonard wrote to THL, Workman, and Weil, and made clear that he “believe[s] the equity market is always a laggard and today it significantly undervalues AGTI and its future prospects,” and that he “believe[s] it makes perfect sense for THL (or frankly any intelligent investor) to pursue a take-private if such a deal can reasonably be done.” He also expressed his confidence that “our stock price will more accurately reflect our intrinsic value once we have the opportunity to demonstrated consistent business performance.” In the rest of his email, he explained that his main concern with any deal would be the treatment of

management's existing equity and a go-forward management incentive plan, which practically invited THL to submit another lowball offer.

248. On January 30, 2024, after THL submitted another lowball offer, Leonard forwarded this email to the Special Committee and further bemoaned the situation. Leonard explained that he “would personally prefer to either stay public or have THL do the deal without me.” However, he would accede to THL’s interests, explaining that “it remains very uncomfortable to continue to stand in the way of THL’s goal so I am willing to support a potential transaction . . . I have no interest in getting sideways with THL again on this proposed transaction.”

249. *Third*, as discussed in more detail in ¶¶ 63-71 & 87-90 *supra*, disinterested stockholders were not adequately represented by an independent Special Committee or independent advisors.

250. Reflecting these conflicts, since its initial formation in 2022, the Special Committee took a back seat to THL and let it dominate the process with little to no push back. Then, at the very end of the process, shortly before the parties agreed to the Buyout, Workman emailed THL and asked THL to agree to pay the Special Committee for its work.

251. Beyond these issues, management provided THL with information and materials about Agiliti that it refused to share with Centerview, the Special

Committee's own advisor. Even Workman admitted he believed Centerview "delivered limited value" beyond blessing the deal with its fairness opinion.

252. Management and the Special Committee's own legal advisor failed to keep the Committee informed about key developments. In January 2024, Weil knew that Leonard had continued discussing a management rollover in connection with a potential sale of the Company, but Weil never advised the Special Committee of such discussions, instead waiting for Leonard himself to forward the communications eleven days later. Moreover, Weil failed to correct Leonard's misrepresentation of THL's January 26, 2024 proposal as "unsolicited."

253. *Fourth*, the Buyout was approved by THL through a written consent. At no time did the Special Committee insist that the Buyout be subjected to the approval of disinterested stockholders. As a result, disinterested stockholders had no mechanism by which they could protect themselves from the unfair Buyout.

254. *Finally*, the Buyout price was unfair from a financial perspective. Centerview's analyses provides strong evidence that the price was too low. In October 2022, when the Special Committee was evaluating [REDACTED]'s \$20 per share offer, Centerview presented a discounted cash flow analysis that valued Agiliti at \$20.25 to \$27.00 per share. After THL submitted its first offer in October 2023, the conflicted Centerview advised the Board that it was a challenging environment for

private equity buyouts, suggesting the Company should have remained a standalone entity and waited until interest rates improved.

255. The projections used by Centerview in its fairness analysis, which had already been substantially reduced from management’s projections in 2022 and the first half of 2023, excluded growth from future merger and acquisition activity, which the Company had historically pursued. Even then, Centerview’s discounted cash flow analysis valued the Company as high as \$14.10 per share. Centerview also informed the Special Committee that analysts valued the Company as high as \$23 per share.

256. And even so, Centerview’s analysis *undervalued* the Company. Centerview developed a DCF model that resulted in a valuation ranging from \$8.65 to \$14.10, with a midpoint of approximately \$11.38 per share, 13.8% above the deal price. Yet even a few modest corrections to remove flaws in Centerview’s model results in a valuation leap to \$13.18 per share—31.8% higher than the deal price—where even the low end of the range implied a value for Agiliti of \$10.25 per share.²⁴¹

257. First, in preparing DCF models, it is standard to adopt a mid-year discounting convention for free cash flows—*i.e.*, to assume that cash flows are generated at the midpoint of a given year. Otherwise, cash flows would be treated

²⁴¹ Plaintiffs’ counsel consulted with a financial expert to evaluate Centerview’s financial analysis.

as if they were all generated at year-end, which can be misleading, particularly in Agiliti's case, whose cash flows are spread roughly evenly throughout the financial year. Nonetheless, Centerview used a year-end, rather than a mid-year, discounting convention for calculating the present value of Agiliti's projected cash flows. This is completely contrary to Centerview's standard practice of employing a mid-year discounting convention in its DCF analyses. To wit, Plaintiffs' counsel reviewed the public filings of the thirty deals for which Centerview's analysis and the convention it employed has been disclosed in 2023 and 2024. In each one other than Agiliti, Centerview employed a mid-year discounting convention. Correcting this error alone would have increased the value for Agiliti implied by Centerview's DCF by 9%.

258. Second, Centerview also overstated the discount rate used in its DCF. *First*, as presented to the Special Committee on February 25, 2024, Centerview used a theoretical capital structure from Centerview's selected peer group (17.5% debt-to-total capital)²⁴² instead of the Company's actual capital structure (35% debt-to-total capital using the corrected equity value)²⁴³ as of February 23, 2024. *Second*,

²⁴² AGTI_220_00000136 at 144.

²⁴³ *Id.* at 148. The 35% debt to total capital may not foot due to rounding. Additionally, if Agiliti's capital structure was calculated using the concluded equity values in Centerview's flawed analysis, the allocation of debt in Agiliti's actual capital structure is significantly greater than 35% and would result in a significantly higher indicated value of equity.

Centerview manipulated the Company's cost of equity, including by (i) manufacturing a "historical" equity risk premium (7.2%) instead of using the commonly applied supply side equity risk premium (6.22%), (ii) using Centerview's cherry-picked beta (0.93) instead of Agiliti's own beta (0.97),²⁴⁴ and (iii) using a size premium in the seventh decile (1.39%) instead of the eighth decile (1.14%). *Third*, Centerview increased the offset from cost of debt by assuming that the Company would use the ICE BofA BB High Yield Index Effective Yield (6.3%)—even though the Company's credit rating for this period was a single B, meaning that ICE BofA B High Yield Index Effective Yield (7.43%) was the more appropriate proxy for cost of debt. Correcting these flaws decreases the model's weighted average cost of capital from 11.1% to 9.5%.

259. With these flaws to the discount rate corrected and the use of a mid-year discounting convention for the cash flows, Centerview's DCF implies a \$13.18 value per share, 31.8% in excess of the deal price.

260. Centerview's Selected Public Companies analysis was also questionable. Looking principally to forward looking, projected 2024 EBITDA, Centerview applied a range of multiples to Agiliti that reflected the lower end (7.5x) to the average (10.0x) of the peer group multiples. But even based on Centerview's

²⁴⁴ *Id.* at 144.

own analysis, Agiliti was at least a midrange or better performer relative to the peer group. Relying on a range of multiples at and below the average multiple of the peer group only understated the Company's equity value.

261. Additionally, multiples based on actual results indicate much greater values for the Company. By looking only to multiples based on projections for Agiliti and the selected public companies, Centerview ignored multiples based on actual, verifiable results. Based on the most recent performance of Agiliti and the Centerview's selected public companies, backward looking multiples would have suggested the value of the Company was significantly greater than \$10.00 per share.

L. The Information Statement Failed to Accurately Disclose All Material Information

262. On April 15, 2024, the Company issued the definitive Information Statement describing the Buyout and informing stockholders how to exercise their appraisal rights. The Information Statement states that it was issued “[b]y order of the Board of Directors” and was signed by Leonard. However, the Information Statement omitted material information and contained materially false and misleading statements, depriving minority stockholders of the ability to make an informed decision.

263. *First*, the Information Statement fails to disclose that CEO Leonard expressed strong reservations about selling the Company. Leonard repeatedly warned the Special Committee that THL's bid undervalued Agiliti and came at an

opportunistic time. For example, on November 2, 2023, Leonard emailed the Special Committee, emphasizing that “[i]t is the market that has changed,” not the Company’s intrinsic value, and concluding that “[b]ecause the market does not ‘like’ us today simply tells me it is not a good time to sell.” Leonard further highlighted the Company’s potential for near-term improvement and long-term value creation, but none of this was disclosed to stockholders. In November 2023, Leonard rejected THL’s counterproposal regarding management equity, responding, “No need. Not going to happen.” He told his management team it was “critical to focus on the business and our near-term performance.”

264. Leonard’s concerns persisted into January 2024, just days before THL submitted its \$9.00 per share offer. On January 19, Leonard emailed THL, Workman, and Weil, stating that the equity market “significantly undervalues [Agiliti] and its future prospects” and expressing confidence that the Company’s stock price would eventually reflect its intrinsic value. However, Leonard invited THL to proceed with a take-private deal, stating that “it makes perfect sense for THL (or frankly any other intelligent investor) to pursue a take-private if such a deal can reasonably get done.” Leonard later forwarded this email to the Special Committee on January 30, 2024, explaining that while he personally preferred for Agiliti to remain public, he would support the transaction to avoid further conflict with THL, which was “exceedingly uncomfortable for him,” now that THL had made clear Leonard would roll over all

of his equity. None of these communications—highlighting Leonard’s reluctant acceptance and his consistent belief that the sale was poorly timed—were disclosed in the Information Statement.

265. The Information Statement presents a misleading picture of consensus among the Board and management. It merely states that the Board and management “regularly review[ed] and discuss[ed] the Company’s performance” and “strategic alternatives,” without disclosing Leonard’s strong opposition or his belief that THL was exploiting temporary market conditions. By omitting Leonard’s opposition, the Information Statement deprived stockholders of material information that could have prompted them to exercise their appraisal rights.

266. *Second*, the Information Statement omits critical details about [REDACTED]. While the Information Statement attaches the Merger Agreement, which states that Goldman served as THL’s exclusive financial advisor, it fails to disclose that [REDACTED]. As such, the Information Statement fails to mention that this arrangement violated procedural safeguards set by the Special Committee. These guidelines prohibited THL from engaging in certain negotiations with “[REDACTED]” without prior approval. Despite these restrictions, THL retained Goldman—[REDACTED]—without obtaining the required approval. Goldman’s [REDACTED] should

have precluded it from representing THL. By allowing THL to retain Goldman, the Special Committee failed to enforce its own safeguards, enabling a clear conflict of interest that undermined the fairness of the transaction process.

267. *Third*, the Information Statement omits that shortly before the Buyout's approval, Special Committee member Workman sought confirmation from THL representatives that Committee members would be compensated. Instead, the Information Statement merely discloses that the Board agreed to provide compensation to the Special Committee without disclosing the timing of that decision. On February 6, 2024, amid ongoing price negotiations, Workman emailed THL's Nelson and Bell, asking the Compensation Committee to approve payments to the Special Committee members for their work on the Buyout. The timing of this request strongly suggests a *quid pro quo*, raising serious concerns about the impartiality of the Special Committee's decision-making. By failing to disclose this request and its timing, the Information Statement deprived stockholders of critical information about the fairness of the process.

268. *Fourth*, the Information Statement misleadingly describes THL's renewed offer in late January 2024 as "unsolicited." In fact, Leonard actively encouraged THL to submit a bid in the weeks leading up to the offer. After the Special Committee terminated its engagement of Centerview on December 6, 2023, Leonard continued his discussions with THL representatives about a potential

transaction. On January 19, 2024, THL’s Nelson emailed Leonard to follow up on their prior discussion, stating, “[h]opefully we are good on [a Management Incentive Plan] now and you have what you need.” That evening or early the next morning, Leonard responded, copying Workman and Weil, asserting that the equity market “significantly undervalues [Agiliti] and its future prospects.” Leonard then explicitly invited THL to proceed, stating that “it makes perfect sense for THL (or frankly any other intelligent investor) to pursue a take-private if such a deal can reasonably get done.” He also proposed a structure aligning management’s interests with THL, emphasizing that “a meaningful number of shares will also be purchased/retired at little to no cost.” On January 26, 2024, just days after this exchange, THL submitted its \$9.00 per share offer. The Information Statement discloses nothing about the discussions between THL and Leonard between the termination of Centerview on December 6, 2023 and THL’s submission of a new offer on January 26, 2024.

269. *Fifth*, the Information Statement fails to disclose the potential conflicts of the Special Committee’s advisors. Weil, the Special Committee’s legal advisor, was conflicted due to its decades-long relationship with THL. Weil has represented THL in numerous high-profile transactions dating back over 40 years, including its \$5.1 billion sale of West Corporation, its \$2.7 billion acquisition of Party City, and its \$3.8 billion sale of a 50% interest in inVentiv Health. Beyond these transactions,

Weil has advised THL on various IPOs, acquisitions, and financings, and continues to handle litigation and tax matters for THL and its portfolio companies. Despite Weil's extensive history with THL, none of this was disclosed in the Information Statement. Stockholders were misled into believing Weil was independent, even though its longstanding ties to THL undermined its ability to serve as an unbiased advisor to the Special Committee.

270. The Information Statement also failed to disclose that key Centerview deal team members and close relationships with THL representatives, including that: (i) Centerview's Michael Muntner had a business relationship with Defendants Bell, Nelson, and Preiner, all of whom are members of Agiliti's Board and Managing Directors at THL, as well as with Todd Abbrecht, THL's Co-CEO; and (ii) Centerview's David Cohen had a business and social relationship with THL Chairman Anthony DiNovi and co-invested with him (and Aiello) in an entity that owns equity in an Italian football club.

CLASS ACTION ALLEGATIONS

271. Plaintiffs bring this action on behalf of themselves and on behalf of a class of former public stockholders of Agiliti (the "Class"). Excluded from the Class are Defendants, their officers, directors, and affiliates, and any directors or officers of Agiliti, as well as members of their immediate families, and any entity in which

any of them has a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party.

272. This action is properly maintainable as a class action.

273. The members of the Class are so numerous that joinder of all members is impracticable. According to the Information Statement, as of March 31, 2024, Agiliti had 136,081,290 shares of common stock issued and outstanding.

274. There are common questions of fact and law including, among other things the following:

- a. Whether the THL Entity Defendants breached their fiduciary duties as Agiliti's controlling stockholders;
- b. Whether the Director Defendants breached their fiduciary duties;
- c. Whether Leonard breached his fiduciary duties as an officer; and
- d. Whether Plaintiffs and the other members of the Class are entitled to damages.

275. Plaintiffs' claims are typical of the claims of the members of the Class, and Plaintiffs are not subject to any atypical claims or defenses.

276. Plaintiffs are committed to prosecuting this Action and has retained competent counsel experienced in litigation of this nature. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

277. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

278. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

CAUSES OF ACTION

COUNT I

Breach of Fiduciary Duty Against the THL Entity Defendants

279. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

280. As Agiliti's controlling stockholders, the THL Entity Defendants owed Plaintiffs and the Class the fiduciary duties. The THL Entity Defendants were obligated to act loyally to the Company and its stockholders and to ensure the Buyout was fair both respect to the process leading thereto and the price offered to public stockholders.

281. As alleged herein, the THL Entity Defendants breached these duties by wielding their position as the Company's controller to initiate, time, negotiate, structure, approve, disclose to stockholders, and price the Buyout the serve its own interests at the expense of Agiliti's public stockholders. The THL Entity Defendants

also refused to condition the Buyout on the approval of Agiliti's public stockholders, leaving them no ability to reject the Buyout.

282. As a result, Plaintiffs and the Class have been harmed. Plaintiffs have no adequate remedy at law.

COUNT II

Breach of Fiduciary Duty Against the Director Defendants

283. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

284. As Agiliti directors, the Director Defendants owed Plaintiffs and the Class fiduciary duties of good faith, loyalty, and care. The Director Defendants breached these duties by engaging in conduct that resulted in a sale of the minority stockholders' Agiliti shares at an unfair price following an unfair process.

285. The Director Defendants agreed to initiate, time, structure, negotiate, approve, disclose to the stockholders, and price the Buyout to serve the interests of THL at the expense of the public stockholders. The Director Defendants, among other things, (a) formed an ineffective Special Committee that lacked independence and squandered its negotiating leverage; (b) replaced Boehning with Leonard and allowed THL to take advantage of the temporary upheaval at Agiliti; (c) ceded control of the process to self-interested management; (d) failed to consider any alternatives to the Buyout by THL; (e) approved the Buyout at a price that was

unfair; (f) approved a Merger Agreement that unreasonably locked up the deal; and (g) failed to accurately disclose all material information to stockholders so that they could make an informed decision on whether to exercise their appraisal rights.

286. As a result, Plaintiffs and the Class have been harmed. Plaintiffs have no adequate remedy at law.

COUNT III

Breach of Fiduciary Duty Against Leonard as an Officer

287. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

288. As an officer of Agiliti, Leonard owed Plaintiffs and the Class fiduciary duties of good faith, loyalty and care.

289. In breach of those duties, Leonard unilaterally blocked an agreement on Buyout terms until he knew he could reach an agreement on the treatment of management equity in the Buyout and a post-closing management incentive plan. Then, as he made clear in emails to the Special Committee and others, he decided to support the Buyout because he no longer wanted to “stand in the way of THL’s goal” even though he believed Agiliti was significantly undervalued by the market and that it was not the right time to try to sell the Company. Moreover, despite signing the Information Statement, he failed to ensure that the Information Statement accurately disclosed all material information, including his belief that it was not the right time

to sell Agiliti such that stockholders could not make an informed decision on whether to exercise their appraisal rights.

290. As a result, Plaintiffs and the Class have been harmed. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

- A. Declaring that this action is properly maintainable as a class action and certifying the Class;
- B. Declaring that the THL Entity Defendants breached their fiduciary duties;
- C. Declaring that the Director Defendants breached their fiduciary duties;
- D. Declaring that Leonard breached his fiduciary duties as an officer;
- E. Awarding damages to the Class, including rescissory damages, including pre- and post-judgment interest;
- F. Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' fees, consultants' fees, experts' fees, and expenses; and
- G. Granting such other and further relief as the Court deems just and proper.

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Dated: December 4, 2024

Redacted Version Dated:
December 10, 2024

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