

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

1 THRASIO ONE, INC.,

*Reorganized Debtor.*¹

Chapter 11

Case No. 24-11850 (CMG)

(Jointly Administered)

META ADVISORS, LLC, solely in its
capacity as Trustee of the Thrasio Legacy
Trust,

Plaintiff,

Adv. Pro. No. _____

v.

JOSHUA SILBERSTEIN; CARLOS
CASHMAN; DANIEL BOOCKVAR;
JOSEPH FALCAO; MOUNIR OUHADI;
ADITYA RATHOD; ARI HOROWITZ;
EVERYTHING'S COMING UP
MILLHOUSE, LLC; CASHMAN FAMILY
INVESTMENT II, LLC; HUDSON PALM
LLC; and YARDLINE CAPITAL CORP.,

Defendants.

COMPLAINT

¹ The last four digits of Reorganized Debtor's tax identification number are 4771. The Reorganized Debtor's service address for purposes of this chapter 11 case is 85 West Street, 3rd Floor, Walpole, MA, 02081.



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META Advisors, LLC, solely in its capacity as trustee ("Plaintiff") of the Thrasio Legacy Trust (the "Trust"), the successor-in-interest to the claims of Thrasio Holdings, Inc. and its affiliated debtors ("Thrasio" or the "Company"), files this complaint (the "Complaint") against certain former directors and officers (the "D&O Defendants") of Thrasio, along with certain affiliated investment vehicles, and certain other transferees of Thrasio's property (collectively with the D&O Defendants, the "Defendants"). In support of this Complaint, Plaintiff alleges the following:

PRELIMINARY STATEMENT

1. The D&O Defendants used their positions of control over Thrasio to enrich themselves with hundreds of millions of dollars, leaving the creditors of Thrasio with nothing but broken promises. This Complaint seeks to remedy that wrong.

2. Less than three years before the high flying Thrasio crashed into bankruptcy, the D&O Defendants misled numerous equity investors, lenders and small business owners to invest in a "business" they falsely claimed to be worth more than \$12 billion.

3. Almost all of the \$3.4 billion that was invested in the Company was squandered by Silberstein, Cashman, and the other D&O Defendants in their frenzied and unsustainable pursuit of a growth-at-all-costs strategy designed to enrich themselves by inflating the value of *their* personal economic interests in Thrasio.

4. Through a combination of self-dealing, gross mismanagement and deception, the D&O Defendants made sure they got paid before the inevitable day of reckoning, first by forcing Thrasio to purchase their insider shares in an illegal tender offer, and then by selling their other insider shares using misleading financial information to deceive buyers.

5. As described in detail herein and shown in the below chart, the Defendants made off with hundreds of millions of dollars in the years leading up to the bankruptcy filing:

Defendant	Tender Offer	Secondary Sales	Total
Joshua Silberstein	\$ 31,714,653	\$ 195,875,920	\$ 227,590,573
Carlos Cashman	\$ 25,500,408	\$ 65,869,719	\$ 91,370,127
Daniel Boockvar	\$ 932,512	\$ 6,075,000	\$ 7,007,512
Joseph Falcao	\$ 2,425,525	\$ 6,550,000	\$ 8,975,525
Aditya Rathod		\$ 975,000	\$ 975,000
Mounir Ouhadi		\$ 750,000	\$ 750,000
Ari Horowitz	\$ 1,720,274		\$ 1,720,274
Grand Total			\$ 338,389,011

6. The sham that was the Thrasio “business” was simple. The D&O Defendants told investors that Thrasio was able to “cheaply” acquire businesses from unsophisticated “mom & pop” Amazon Sellers. These acquisitions were typically funded, in part, by deferring payment of a substantial portion of the purchase price to the small business owners over a period of years. The D&O Defendants alleged that, once acquired, the Thrasio team of online retail “experts” would “seamlessly” onboard the small businesses as part of the larger Thrasio business, which they would then operate them to generate “above normal returns,” due to synergies and alleged expertise.

7. In reality, the D&O Defendants achieved no synergies, because they never bothered to integrate the acquired businesses and instead simply adopted whatever logistics the acquired company had in place. This resulted in an incredibly inefficient network of numerous third-party logistics companies (“3PL”) and warehouse agents that Thrasio lacked the infrastructure to manage or track. Thrasio was completely unaware of its own operations, relying on a jumble of outsourced providers to handle one of the most basic, but essential tasks for any retailer, namely managing its inventory. The business became a logistics nightmare, at one point using more than 40 different 3PL providers across over 250 different locations. By way of comparison, any rational

company of a similar scale would have used two or three 3PL providers with warehouses in a few key geographic locations.

8. Nor did Thrasio have the competence to improve (or even maintain) the profitability of the acquired businesses, often causing once successful product lines to operate at a loss, through errors, mistakes, and neglect. Notwithstanding the D&O Defendants’ “moon-shot” projections and false representations that Thrasio had been “[p]rofitable every month, since inception,” Thrasio’s operations burned through cash, resulting in billions of dollars of losses during its brief existence.

9. Under the D&O Defendants’ leadership, Thrasio—a business that was purportedly worth billions of dollars—had no functioning general ledger, was unable to track the amount, value or location of its inventory, had finance personnel who were not properly trained, and was incapable of preparing accurate financial statements. In many instances, after Thrasio acquired a company, it never confirmed inventory counts, did not know where the inventory it purchased was located, and was unable to reasonably estimate how much additional inventory would be needed post-acquisition. Under the control of the D&O Defendants, Thrasio purchased inventory based on what amounted to pure guesswork. Indeed, by early 2022, Thrasio had managed to acquire more than **\$800 million** in “excess” inventory—inventory that Thrasio had to pay millions of dollars to store, caused the Company to incur substantial fees from Amazon, and was eventually sold at a substantial loss or destroyed at a steep cost.

10. The D&O Defendants ignored Thrasio’s operational nightmare, as they were exclusively focused on growing quickly at all costs in support of inflated “pro forma” financials falsely showing how the newly combined businesses would perform. Implementing proper controls only stood to increase costs that would weigh down projections and provided no benefit

to the D&O Defendants personally. For years, therefore, the D&O Defendants did nothing to correct Thrasio's operational deficiencies and focused exclusively on acquiring as many companies as possible to support the fairy tale they were spinning of Thrasio as an amazing success story that had achieved astounding growth in a short period of time.

11. In addition, between 2020 and 2021, Defendants Silberstein and Cashman misappropriated tens of millions of dollars in valuable Company resources by causing Thrasio to invest in a related entity founded by Defendant Horowitz. This investment was entirely motivated by the D&O Defendants' personal interests at the expense of Thrasio's financial well-being. Among other things, Thrasio, controlled by Silberstein and Cashman, "gifted" more than \$20 million to the related entity in the form of promissory notes, which were then forgiven only a few months later.

12. Upon learning that Silberstein and Cashman were selling massive amounts of their own equity in direct competition with the Company's capital raises, and that Silberstein had concealed the precipitous resignation of the Company's recently hired Chief Financial Officer (who lasted only 4 months), certain investors grew concerned and brought in AlixPartners, LLP ("AlixPartners") to investigate how Thrasio was being operated.

13. AlixPartners confirmed what the D&O Defendants already knew:

- The financials provided to Thrasio's investors were not accurate;
- Thrasio had no functioning general ledger;
- Thrasio lacked adequate controls over financial reporting;
- "Pro-forma" financials employed irregular methods to make it appear that the Company was more profitable, for example, by improperly accelerating revenue

recognition, capitalizing expenses, excluding certain Amazon transactions, and delaying reporting for other transactions;

- Defendant Silberstein improperly influenced Thrasio's reported financial results and reported numbers to lenders which the finance and accounting teams knew were incorrect;
- Thrasio did not have the ability to determine the value of existing inventory, or at times, whether the inventory even existed at all;
- Transactions were being recorded on a delayed basis—at times purchases were recorded more than five months after they occurred; and
- Inventory was being purchased based on fundamentally flawed information and without adequate procedures to check whether such purchases were reasonable.

14. Due to the utter disarray of Thrasio's inventory and finance systems, Thrasio was unable to complete audited financials for the year 2020 until June 30, 2022, allowing the D&O Defendants to conceal the fact that Thrasio had been insolvent for years prior to its bankruptcy. When finally completed, contrary to the D&O Defendants' representations, Thrasio's audited financials for 2020 showed an accumulated deficit of \$302.9 million following a net loss of \$148.1 million and included a statement from its auditors that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern." Audited financials for 2021 and 2022 showed increasing losses, and, again, emphasized that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

15. To date, unsecured creditors of Thrasio, including many of the Amazon Sellers—small business owners convinced to sell their businesses in exchange for debt—have recovered nothing in connection with their claims. This action seeks damages to compensate them for the

D&O Defendants' wrongful conduct, as well as the hundreds of millions of dollars that Silberstein, Cashman, and the other Defendants received on account of their wrongful conduct.

JURISDICTION AND VENUE

16. This is an adversary proceeding brought pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure.

17. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and the *Standing Order of Reference* from the United States District Court for the District of New Jersey, dated July 23, 1984, and amended on September 18, 2012.

18. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Alternatively, this Court has noncore concurrent jurisdiction over this proceeding under 28 U.S.C. § 1334(b), as the causes of action have a close nexus to the Debtors' chapter 11 plan and will have a significant impact on implementation of the plan.

19. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

20. Plaintiff consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PROCEDURAL BACKGROUND

21. On February 28, 2024 (the "Petition Date"), Thrasio and its debtor affiliates (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the U.S. Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of New Jersey (the "Court").

22. On June 13, 2024, the Court entered the Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Case No. 24-11840, Docket

No. 1124] (the “Confirmation Order”), confirming the First Amended Joint Plan of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Case No. 24-11840, Docket No. 1125] (the “Plan”).² The Confirmation Order approved the terms of the Plan, including, without limitation, the Committee Settlement, as described in the Plan and summarized herein.

23. On June 18, 2024, the Court entered the Notice of (I) Entry of the Order Confirming the First Amended Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (Further Technical Modifications) and (II) Occurrence of the Effective Date [Case No. 24-11840, Docket No. 1143], notifying parties that the Effective Date had occurred.

24. The Plan included a “Committee Settlement,” pursuant to which, among other things, Excluded Parties would not be Released Parties or Releasing Parties under the Plan, and the Vested Causes of Action³ would not be released by the Debtors on the Effective Date. Specifically, the Plan defined “Excluded Parties” to mean, among others:

(i) Joshua Silberstein, Carlos Cashman, Joseph Falcao, Daniel Boockvar, Mounir Ouhadi, and Aditya Rathod, (ii) transferees of Thrasio’s assets in connection with transactions involving Yardline Capital Corp. between April 2020 and January 2022, including, but not limited to, Ari Horowitz . . . (iv) the family members, related trusts, investment vehicles, affiliates, and successors and assigns of the persons in (i), (ii)

Plan at Art. I.A.75.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

³ The Plan defines “Vested Causes of Action” as (i) any Claims and Causes of Action, including Avoidance Actions, against the Excluded Parties and (ii) all Claims and Causes of Actions not released under the Plan.

25. Defendants in this action are all Excluded Parties under the Plan.

26. Further, the Plan provided that on the Effective Date, the Debtors and the Thrasio Legacy Trust Administrator would execute the Thrasio Legacy Trust Agreement and take all steps necessary to establish the Trust. And on that date, the Debtors would irrevocably transfer to the Trust all rights, title, and interest in and to the Thrasio Legacy Trust Assets,⁴ and in accordance with Section 1141 of the Bankruptcy Code, the Thrasio Legacy Trust Assets would automatically vest in the Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Thrasio Legacy Trust Interests and the Thrasio Legacy Trust Fees and Expenses, as provided for in the Plan and the Thrasio Legacy Trust Agreement, and shall become assets of the Trust for all purposes.

27. The Trust's primary purpose includes investigating, prosecuting, settling, or abandoning the Vested Causes of Action. The Trust has the sole authority to do this.

28. In pursuing any claim, right, or Vested Cause of Action, the Trust is entitled to the tolling provisions of Section 108 of the Bankruptcy Code and succeeded to the Debtors' rights with respect to the time periods in which a Cause of Action may be brought under the Bankruptcy Code.

THE PARTIES

29. Plaintiff is the trustee for the Trust, a common law trust governed by New York law, and a grantor trust pursuant to federal regulations. The Trust was created pursuant to the Plan.

30. Defendant Joshua Silberstein ("Silberstein") is a co-founder, former Co-Chief Executive Officer ("Co-CEO"), and former member of the Board of Directors of Thrasio (the

⁴ The Plan defines "Thrasio Legacy Trust Assets" as "the Thrasio Legacy Trust Initial Funding, the Vested Causes of Action, and any additional assets that the Reorganized Debtors (subject to the terms of the Exit Facilities Documents), in their reasonable discretion and with the consent of the Thrasio Legacy Trust and the Required Consenting Lenders, may transfer to the Thrasio Legacy Trust from time to time, and any proceeds associated therewith."

“Board”). During his tenure at Thrasio, as an officer and director, Silberstein was involved with and/or oversaw all aspects of Thrasio’s formation, policies, and operations, including communications with investors, and preparation of financial statements.

31. Defendant Carlos Cashman (“Cashman”) is a co-founder, former Co-CEO, and former Board member of Thrasio, as well as a former board member of Yardline Capital Corp. (“Yardline”). During his tenure at Thrasio, as an officer and director, Cashman was involved with and/or oversaw all aspects of Thrasio’s formation, policies, and operations, including communications with investors, and preparation of financial statements.

32. Defendant Daniel Boockvar (“Boockvar”) is a former President of Thrasio and former board member of Yardline. During his tenure at Thrasio, Boockvar was responsible for overseeing all aspects of Thrasio’s operations, including finance and inventory functions, as well as notifying the Board of issues that needed their approval.

33. Defendant Joseph Falcao⁵ (“Falcao”) is a former Chief Financial Officer (“CFO”) and former Senior Vice President of Finance and Treasurer of Thrasio. During his tenure at Thrasio, Falcao was responsible for managing Thrasio’s finances and financial systems, which should have included establishing a general ledger, drafting Thrasio’s financial policies and procedures, ensuring Thrasio’s compliance with accounting rules, and maintaining accurate books and records for Thrasio and its related entities.

34. Defendant Mounir Ouhadi (“Ouhadi”) is a former Chief Supply Chain Officer of Thrasio. During his tenure at Thrasio, Ouhadi was responsible for all aspects of Thrasio’s supply chain and operations, including the development of policies and procedures regarding Thrasio’s supply chain and inventory systems.

⁵ Falcao used multiple spellings of his first name including “Jose” or “Joe” Falcao.

35. Defendant Aditya Rathod (“Rathod”) is a former Vice President of Strategic Planning & Analysis of Thrasio. During his tenure at Thrasio, Rathod was responsible for developing financial models for Thrasio, creating reports of Thrasio’s financial performance for Thrasio’s lenders, investors, Board members, and executives, and maintaining books and records for Thrasio.

36. Defendant Ari Horowitz (“Horowitz”) is a former Senior Vice President of Strategic Partnerships & Corporate Development of Thrasio, the former CEO of Yardline, and the current Chairman and CEO of Swiftline Corp. (“Swiftline”).

37. Defendant Hudson Palm LLC (“Hudson Palm”) is a limited liability company incorporated in Connecticut. Upon information and belief, Horowitz is the managing member of Hudson Palm.

38. Defendant Everything’s Coming Up Millhouse LLC (“Millhouse”) is a limited liability company incorporated in Delaware. Upon information and belief, Silberstein is the managing member of Millhouse.

39. Defendant Cashman Family Investment II, LLC (“Cashman Investment”) is a limited liability company incorporated in Delaware. Upon information and belief, Cashman and/or one of his family members is the managing member of Cashman Investment.

40. Defendant Yardline is a corporation incorporated in Delaware and maintains a headquarters in New York.

FACTUAL ALLEGATIONS

A. Thrasio’s Business Was Insolvent and in Disarray from the Start as a Result of Defendants’ Gross Mismanagement and Focus on Growth at All Costs.

41. Defendants Silberstein and Cashman founded Thrasio in 2018, a corporation organized under the laws of Delaware that was premised on the following strategy. First, convince

small “mom & pop” businesses, who largely sold their products through Amazon’s distribution channels (“Amazon Sellers”) to sell their companies to Thrasio on the “cheap.” Then, having aggregated the Amazon Sellers under the larger Thrasio umbrella, the Company valued these businesses using misleading “pro forma” financial statements and over-inflated projections. Thrasio generally funded the acquisitions of Amazon Sellers using an upfront cash payment plus deferred “earnout” payments that would be paid out over years after the acquisition. This allowed Silberstein, Cashman, and the other D&O Defendants to accumulate massive gains (at least on paper), simply by aggregating the smaller Amazon Sellers’ EBITDA and revenues with little upfront cash outlay and no investment in a proper infrastructure to integrate and operate the acquired businesses.

42. From the outset, the D&O Defendants’ primary focus was to buy up small businesses at an incredible pace in order for Thrasio to grow as fast as possible. Between 2019 and 2021, Thrasio, led by the D&O Defendants, acquired approximately 181 businesses and hundreds of different brands. Defendants focused on making Thrasio appear cash-flow positive and attracting large scale investments, rather than investing in the logistics and infrastructure necessary to stabilize and profitably operate the Company in the long term. As a result, the various Amazon Sellers acquired by Thrasio were never integrated into a unified business.

43. Contrary to the D&O Defendants’ representations to Thrasio’s investors, lenders, and Amazon Sellers, Thrasio’s operations were never profitable, and its accumulated losses grew larger with each passing year. Indeed, over a period of five years, Thrasio suffered **more than \$2.5 billion** of losses: \$535,939 in 2018; approximately \$5.5 million in 2019; approximately \$148.1 million in 2020; approximately \$624.6 million in 2021; approximately \$762.4 million in

2022; and approximately \$1.02 billion in 2023. As early as 2020, Thrasio had a negative enterprise value by as much as approximately \$400 million and was hopelessly insolvent.

B. Defendants Knowingly Failed to Implement Proper Internal Controls.

1. Lack of Proper Financial and Accounting Controls

44. Under the D&O Defendants' leadership, Thrasio—a business they alleged was purportedly worth billions of dollars—had no functioning general ledger, and its financial reporting failed to follow Generally Accepted Accounting Principles (“GAAP”). The Company had such deficient accounting procedures that its 2020 financial audit could not be completed until mid-2022.

45. As the Debtors acknowledged in the bankruptcy proceeding, Thrasio “quickly grew without the proper protocols in place,” although the D&O Defendants had been fully aware of these deficiencies since at least early 2019.

46. On January 15, 2019, Silberstein emailed Cashman, expressing concerns that the business was making decisions “based on really bad info” and identifying serious internal control issues, including materially inaccurate financial statements and an incident where the Company accidentally shipped tens of thousands of dollars' worth of product for free. Silberstein admitted that “every day something else comes up” that required him to change Thrasio's “financials and external narrative.” Cashman viewed all of that as matters of little import, and nothing was done by the Company's management to address these issues.

47. For years, Thrasio did not prepare financial statements in accordance with GAAP, choosing instead to prepare its financial statements on a “pro forma” basis that was rampant with mistakes and false assumptions and did not reflect the Company's true financial condition. For a company that raised billions of dollars in funding, Thrasio's lack of internal controls was shocking.

Thrasio kept track of its finances by manually inputting numbers into spreadsheets rather than the standard double-entry accounting recorded in a general ledger.

48. Notably, when PricewaterhouseCoopers (“PwC”) was brought in to audit the Company’s 2020 financials, it took PwC about two years to complete its audit because, among other things, PwC had to order a physical count of Thrasio’s inventory. PwC found that Thrasio lacked sufficient personnel and effective controls to analyze and account for non-routine transactions, including the effects of debt modifications and equity transactions on the Company’s financial statements.

49. Although the Board recognized the need for an audit committee in 2020, the Board did not hold a vote to establish an audit committee until December 2021.

50. Moreover, Thrasio’s “pro forma” financial reporting enabled the D&O Defendants to manipulate accounting procedures to make the Company appear more profitable than it really was. A “quality of earnings” report prepared in fall 2021 by AlixPartners, a consulting firm engaged by Thrasio’s concerned investors, suggested that the Company had been underreporting its losses. For instance, the Company arbitrarily decided that certain Amazon promotional transactions did not factor into its 2020 EBITDA calculation and omitted those transactions that should have reflected a \$5.8 million decrease in reported revenue and a \$4.2 million increase in reported expenses. Similarly, the Company failed to record \$3.1 million of fees related to transporting inventory to Amazon warehouses as expenses.

51. Under GAAP, these and all other omitted expenses (and the corresponding reductions in revenue) would have been reported, but the use of non-standard accounting allowed the D&O Defendants to hide serious accounting irregularities and financial losses from Thrasio’s stakeholders.

52. None of AlixPartners' findings was news to the D&O Defendants. In fact, the D&O Defendants knew all along that the Company's "pro forma" calculations led to underreporting of expenses. For instance, on August 1, 2019, Silberstein and Defendant Falcao, the CFO of Thrasio at the time, compared the Company's 2018 "pro forma" financial statements previously distributed to its lenders and investors with audited financial statements issued the day before, which showed close to three times more losses than the "pro forma" statements. Subsequently, in November and December 2020, Falcao identified additional issues with the Company's accounting practices, including material issues with "account reconciliations." Yet, this information too was withheld from Thrasio's investors.

53. Further, AlixPartners reported that Silberstein had "improperly influenced" the Company's financial reporting and reported numbers to the Company's "lenders" that the finance and accounting teams knew to be incorrect. Indeed, Silberstein played fast and loose with Thrasio's financial reporting for years, starting no later than May 2019, when he directed management to gather documents that portrayed Thrasio in a favorable light in response to investor inquiries and to avoid providing the Company's full financial picture.

2. Lack of Proper Inventory Controls

54. Despite being an e-commerce company at its core, one of Thrasio's most egregious failures was its lack of inventory management controls. Thrasio relied heavily on reports from third parties like Amazon, Shopify, and other 3PL companies, but did not have a unified system in place to independently verify its inventory. In many instances, after buying a new business, Thrasio never confirmed the amount of inventory it acquired. The D&O Defendants did not know how much inventory to purchase, where the purchased inventory was located, whether the purchased inventory in fact existed, or how to value the inventory.

55. Even though the D&O Defendants recognized the weak inventory control environment as early as in March and April 2019, again, nothing was done. The D&O Defendants became aware of additional inventory control issues in 2020 and 2021, including risks with respect to tracking inventory transfers, records of inventory stored at 3PL warehouses, and Amazon order fulfillment.

56. In 2021, the AlixPartners “quality of earnings” report confirmed that Thrasio (i) had fundamentally flawed information and could not determine the reasonableness of its inventory purchases; (ii) did not have the ability to determine the value of any existing inventory, and often could not ascertain whether such inventory even existed; and (iii) did not timely record inventory transactions, including recording purchases more than five months after they occurred.

57. Thrasio’s lack of appropriate inventory controls contributed to its financial reporting weaknesses and resulted in losses from which it could not recover. Throughout 2021—when Thrasio was trying to go public and the D&O Defendants were involved with secondary sales—Thrasio suffered from massive inventory problems. By the end of 2021, Thrasio still did not have a functional inventory tracking system and used three different methods to calculate the value of its inventory, which yielded results that were tens of millions of dollars apart.

58. This disorganization led to the Company over-purchasing inventory to an astonishing degree and prevented the Company from effectively disposing of the massive amounts of excess inventory that resulted. By early 2022, Thrasio had managed to pay for more than **\$800 million** in “excess” inventory—inventory that Thrasio had to pay to store and was eventually sold at a substantial loss or destroyed at a steep cost. After filing for bankruptcy in 2024, Thrasio identified another 12.4 million units of “excess” inventory valued at \$92.3 million that it could not sell and would have to pay millions to liquidate.

C. Defendants Extracted Value at the Expense of the Company for Personal Gain.

1. Tender Offer

59. Merely two years after the founding of Thrasio, Silberstein and Cashman orchestrated an opportunity to cash in on their equity interest behind the smoke screen of a hugely successful company. Around July 15, 2020, Thrasio closed on a \$260 million Series C-1 round of funding. Three days later, on July 18, 2020, the D&O Defendants caused the Board to approve a tender offer to repurchase up to \$160 million worth of shares of Thrasio stock, including shares owned by insiders (the “Tender Offer”), which would have the effect of depleting **over 60%** of the proceeds received by the Company from its Series C-1 funding. Rather than recuse themselves based on their fiduciary obligations, Silberstein and Cashman, as Co-CEOs and directors, voted in favor of the Tender Offer.

60. Once approved, the Company repurchased approximately three million shares of common and preferred stock, along with a number of options and warrants. The Company distributed \$144,941,591.75 in net proceeds to the participating shareholders (the “Proceeds”).

61. Among the shareholders participating in the Tender Offer were a number of insiders, who exercised control over the Company, ensuring its approval: (i) Millhouse, an entity affiliated with Silberstein; (ii) Cashman Investment, an entity affiliated with Cashman; (iii) Boockvar; (iv) Falcao; and (v) Horowitz. Each of these insiders received a sizable distribution as detailed in the following chart, with Defendants Silberstein and Cashman collectively receiving nearly **40%** of the total amount of the Proceeds.

Defendant	Amount of Proceeds Received for Participation in the Tender Offer
Millhouse/Silberstein	\$31,714,653.22
Cashman Investment/Cashman	\$25,500,407.99
Boockvar	\$932,512.46
Falcao	\$2,425,524.92
Horowitz	\$1,720,273.53

62. Thrasio did not receive any value in return for the Proceeds that it distributed in the Tender Offer and immediately retired the shares that were tendered.

63. In the resolution approving the Tender Offer, the Board represented in a conclusory manner that Thrasio had an available surplus as calculated in accordance with the Delaware General Corporation Law and that the Tender Offer would not impair the Company's capital. The Board, however, was not presented with any proper calculation of the surplus amount prior to voting on the Tender Offer. Nor could the D&O Defendants have presented such a calculation, as Thrasio did not have a surplus at the time.

64. Contrary to the Board's unsupported conclusion, in 2020, during the time when the Board approved the Tender Offer and distributed approximately \$145 million of newly raised capital, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets, and Thrasio was insolvent with no reasonable prospects to continue its business successfully. The Company's audited 2020 financial statements reflect an operating loss of approximately **\$88.04 million**, a net loss of approximately **\$148.71 million**, and an accumulated deficit of approximately **\$302.95 million**. PwC emphasized on the very first page of its audit report that, as of 2020, "substantial doubt" existed as to the Company's "ability to continue as a going concern," citing Thrasio's substantial accumulated deficit, cash burn, and the fact that there was, "no

certainty that additional capital . . . would be raised” or that Thrasio would be able to “attain[] profitable operations.”

2. 2020 Secondary Sales & Efforts to Go Public

65. By the end of 2020 and continuing into early 2021, not satisfied with their haul from the Tender Offer, the D&O Defendants urgently sought other ways to monetize their remaining equity before the Company’s inevitable collapse. For instance, on December 31, 2020, Silberstein and Cashman sold their Thrasio stock to secondary buyers for an aggregate amount of \$24.35 million in proceeds, in direct competition with the Company’s Series C fundraising initiated earlier that year.

66. Around the same time, Silberstein also began discussing a potential initial public offering with Cashman and other Board members as a means to generate additional liquidity for their equity.

67. On February 10, 2021, Silberstein, seeking to further enrich himself and the Company insiders, sent an email to the Board, asserting that Thrasio should focus on going public as fast as possible. Silberstein and the rest of the Board were well aware, however, that Thrasio was in no position to become a publicly reporting company, because the management had made no effort to address any of the numerous issues identified over the years in connection with the Company’s lack of proper internal controls. This deficiency was later confirmed by an assessment conducted in April 2021 by Protiviti Inc., a consulting firm, which concluded that Thrasio did not have the internal infrastructure commensurate with the Company’s purported multibillion-dollar business.

68. Nonetheless, Silberstein was intent on moving forward with a public offering. On March 15, 2021, Thrasio hired Bill Wafford, who had relevant public company experience, to replace Falcao as CFO and help Thrasio ready itself to go public.

69. On April 27, 2021, Silberstein informed the Board that he had received a verbal offer from a potential partner to provide \$600 million of financing in connection with a SPAC transaction that would take the Company public, and that the deal had already generated about \$1 billion of “hard demand” from the investor base. Concurrent with its plan to go public, Thrasio also initiated a Series D round equity raise for additional capital.

70. In addition, Silberstein informed the Board that, regardless of whether the SPAC transaction could be realized or how much additional capital was available to the Company, it “has always been the plan” for Thrasio’s insiders, including Silberstein and Cashman, to sell \$350 million of their own shares to potential SPAC and Series D investors through secondary sales.

3. 2021 Secondary Sales

71. While the SPAC negotiations were progressing and the Company was actively marketing its Series D raise, Silberstein prioritized pitching his own stock to potential investors, ensuring that he would be able to cash out through secondary sales whether or not Thrasio was getting the financing it needed.

72. On June 21, 2021, Silberstein and Cashman informally agreed that they would try to sell, respectively, \$125 million and \$75 million worth of shares through additional secondary sales.

73. Silberstein emphasized that the secondary sale transactions needed to be structured to exclude the Company, because having the Company as a party would trigger additional disclosure requirements related to tender offers and likely limit the amount of stock he could sell. Silberstein and Cashman agreed that they would both reach out to potential investors and grant them access to the same data room that the Company had set up for potential SPAC and Series D investors.

74. Around the end of June 2021, when the Company was finalizing a term sheet for the SPAC transaction, Silberstein, negotiating on behalf of Thrasio, insisted that the Company make no “unnecessary changes” to the terms that might “screw up” his secondary sales and rejected certain revisions that he perceived as “major problems,” including language that would have limited the valuation of the secondary sales.

75. Despite getting to an agreed term sheet, the SPAC transaction fell through by early July 2021, and Silberstein blamed it on the Company’s inability to complete a timely audit and the lack of support from the Company’s major investor. What Silberstein did not reveal to the Board was that the negotiations broke down in large part due to his insistence on a price that was well-beyond what the SPAC investor could bear. At least one investment banker suggested at the time that Silberstein’s negotiation tactics were motivated by his desire to prioritize secondary sales to further enrich himself.

76. On or about July 8, 2021, just four months after he was hired, Thrasio’s CFO, Wafford, submitted his resignation to Silberstein and left Thrasio days later. In the midst of pursuing the secondary sales, Silberstein believed that Wafford’s abrupt departure was likely to raise questions from the Board members and lead to increased scrutiny of his involvement in Thrasio’s financial reporting. Therefore, Silberstein withheld notice of the CFO’s resignation from the Board and Thrasio’s shareholders.

77. On July 12, 2021, without informing the Board about the CFO’s abrupt departure, Silberstein and Cashman had the Board sign a written consent approving the secondary sales of up to 14 million shares of Thrasio common stock owned by Defendants Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod, and entities affiliated with the D&O Defendants, for a purchase price of \$25 per share. The Board’s consent authorized the sale of approximately

\$350 million worth of common stock, of which \$150 million could be sold by each of Silberstein and Cashman. The shareholders did not find out about Wafford's resignation until *after* the Board signed this approval.

78. Around the same time in July 2021, Silberstein began soliciting potential SPAC investors and participants of the Company's Series D financing to purchase stock directly from Silberstein and the other D&O Defendants. Throughout July 2021, the potential buyers—other than investors who had initially received access to the data room in connection with SPAC negotiations in May 2021—were provided with access to the same data room to facilitate diligence. The buyers would eventually realize—after they had already purchased stock from Silberstein—that the financial documents made available by the D&O Defendants in the data room contained false and misleading information.

79. Between July and December 2021, the Defendants executed a series of sales of their insider stock, knowingly sabotaging the Company's efforts to raise capital. A summary of the shares sold by each Defendant and their respective proceeds derived from the secondary sales in 2021 is set forth in the chart below.

Defendant	Secondary Sales
Silberstein/Millhouse	\$ 183,700,919
Cashman/Cashman Investment	\$ 65,869,719
Boockvar	\$ 6,075,000
Falcao	\$ 6,550,000
Ouhadi	\$ 750,000
Rathod	\$ 975,000
Grand Total	\$ 256,795,639

80. The D&O Defendants' wrongdoing in these secondary sales caused substantial harm to the Company and its stakeholders in at least two ways. *First*, while Thrasio was actively marketing its Series D financing, the D&O Defendants, especially Silberstein, convinced investors who might have otherwise purchased Thrasio stock to buy personal shares from himself and the

other Defendants. Their direct competition with the Company, while utilizing the Company's resources and leveraging their positions as Thrasio insiders, benefited the D&O Defendants individually and seriously hindered the Company's capital raising efforts. While Thrasio had investors interested in providing well over \$2 billion in financing as part of the Series D, due to the actions of the D&O Defendants, it was only able to raise \$1 billion.

81. During the Series D equity round, Silberstein relentlessly competed with the Company to cash out at least \$150 million of his own stock through secondary sales. Silberstein went so far as to inform potential investors that he was offering his stock at a better price than Thrasio's Series D, which would be based on a higher valuation.

82. *Second*, the D&O Defendants knowingly provided false or inaccurate information regarding Thrasio's financial condition and future profitability to the potential purchasers of their stock. Specifically, a number of documents uploaded to the data room for the investors' review contained false or inaccurate information, including a spreadsheet that purported to represent actual financial results for 2020, misleadingly showing that Thrasio was close to breaking even and was operating at a profit for its core business. The spreadsheet also projected that the Company would achieve positive net income in 2021. A separate balance sheet was also uploaded to the data room, falsely indicating that the Company had been profitable from its inception.

83. In comparison to the audited 2020 financial statements, the earnings figures provided by the D&O Defendants in the data room were massively inflated by hundreds of millions of dollars, as demonstrated in the chart below, which also clearly shows that the Company had not been profitable since its inception.

	Misrepresentations in Data Room Documents	2020 Audited Financials	Variance
Selling, General, and Administrative Expenses	–\$32.7 million	–\$222.7 million	\$190 million
Operating Profit/Loss (EBIT)	–\$32.5 million	–\$88 million	\$120.5 million
Net Loss	–\$13.4 million	–\$148.7 million	\$135.3 million
Retained Earnings/Accumulated Deficit	\$266,400	–\$302.9 million	Approximately \$300 million

84. In addition, the D&O Defendants provided overly optimistic projections to potential investors in at least two other one-off interactions. On July 25, 2021, Defendant Rathod, a Vice President of Thrasio, sent an investor a presentation deck dated July 2021 in response to certain questions about the secondary sales, which purported to show that Thrasio had approximately \$100 million in adjusted EBITDA for 2020 and would have approximately \$248 million in EBITDA by year end 2021. The presentation similarly misrepresented that Thrasio had been profitable “every quarter since inception,” specifically citing to the Company’s operating profits. Subsequently, in a July 30, 2021 email from Silberstein to an investor, Silberstein represented, among other things, that Thrasio’s EBITDA for 2022 was expected to be approximately \$600 million. The D&O Defendants’ projections were completely detached from reality as the Company has been deeply insolvent since 2020, and management was wholly focused on misleadingly inflating value and monetizing their equity rather than attempting to turn the business around.

85. Indeed, the Company’s insolvency continued to deepen rapidly in 2021, with the audited 2021 financial statements showing an operating loss of approximately **\$583.92 million** (reflecting an increase of approximately \$495.88 million in losses since 2020), a net loss of approximately **\$624.59 million** (reflecting an increase of approximately \$476.50 million in losses

since 2020), and an accumulated deficit of approximately **\$927.53 million** (reflecting an increase in deficit of approximately \$624.59 million since 2020). In its 2021 audit, PwC again emphasized that “substantial doubt” existed as to the Company’s “ability to continue as a going concern,” citing the Company’s tripled accumulated deficit and continuing cash burn, as well as uncertainties surrounding the Company’s plans for attaining the “necessary” profitability.

86. Each D&O Defendant involved knew that the documents and statements providing optimistic financial information were false due to their outright manipulation of the numbers and Thrasio’s hopelessly disorganized internal controls as described herein, none of which was improved by the time the secondary sales took place.

87. Defendants Silberstein and Cashman, as members of the Board and Co-CEOs of Thrasio at various times, had extensive knowledge of the Company’s lack of controls over the years, as well as the Company’s challenges with financial reporting. Moreover, Silberstein manipulated the Company’s valuation and financial statements, and on more than one occasion directly made false statements to potential investors.

88. Defendant Boockvar, who was responsible for overseeing all aspects of operations, was also well-aware of the Company’s dysfunctional financial and inventory controls. For instance, on March 3, 2021, Boockvar was informed by Falcao that he was not comfortable with a number of the Company’s controls or lack thereof.

89. In the midst of the push to complete the secondary sales, Defendants Falcao and Rathod knew that the Company’s financial statements were wildly inaccurate and withheld that information from potential investors. Rathod, in charge of Thrasio’s financial planning and analysis, included assumptions in his financial models that were not accurate. For instance, on July 11, 2021, the day before Thrasio’s Board approved the secondary sales, Rathod sent a message

to Falcao and Thrasio's then-CFO, noting that he knew that the D&O Defendants had reported false information to an investor, because the Company's actual financial figures would be lower than those reported due to \$6 million of unrecorded general and administrative expenses.

90. Lastly, Defendant Ouhadi was in charge of inventory as the Chief Supply Chain Officer and had first-hand knowledge that the Company could not accurately track or value its inventory, which would surely impact the value of assets listed on any financial statement.

91. Nevertheless, the D&O Defendants profited from, and were responsible for, or did nothing to prevent, false financial information being provided to the potential investors.

D. Silberstein and Cashman Misappropriated Thrasio Resources for Their Personal Benefit in Connection with Yardline.

92. In addition, in 2020 and 2021, Silberstein and Cashman caused Thrasio to waste millions of dollars on a related company, Yardline, for personal reasons that were clearly at odds with the best interests of Thrasio.

93. The story of Yardline began with Cashman's invitation of a longtime friend to join his and Silberstein's exploitation of Thrasio. In April 2019, Cashman arranged for his friend Horowitz to be employed as a Senior Vice President of Thrasio and receive certain Thrasio stock options in connection with his employment.

94. Contrary to Cashman's hopes, Silberstein and Horowitz did not get along, and Silberstein wanted to terminate Horowitz. In consideration of Cashman's friendship with Horowitz, Silberstein and Cashman agreed that, although Horowitz would leave Thrasio, the Company would support Horowitz in starting a new company in a related line of business.

95. On March 31, 2020, Horowitz's employment with Thrasio was terminated. Shortly thereafter, Thrasio entered into an advisory agreement with Horowitz, pursuant to which Horowitz was to continue to provide services to Thrasio.

96. In May 2020, in coordination with Thrasio, Horowitz formed a new company, Yardline. Silberstein envisioned that Yardline would complement Thrasio's business model by providing debt financing to small businesses that sold products on Amazon but were not yet ready to be acquired by Thrasio.

97. In conjunction with this plan, on June 3, 2020, Thrasio's Board approved an amendment of Horowitz's Thrasio stock options. The amendment provided that, if Yardline successfully closed a capital raise of at least \$4 million in debt or equity by April 30, 2021, Horowitz's Thrasio stock options would vest early.

98. In September 2020, Thrasio provided Yardline with \$1 million of founding capital in exchange for (i) convertible preferred stock equal to 19.9% of Yardline's class A common stock and (ii) non-voting class B common stock, which would automatically convert into 47.1% of the outstanding class A common stock on March 31, 2021, provided that Thrasio was in compliance with a service level agreement between it and Yardline (the "Service Level Agreement"), which required that Thrasio hold monthly business updates. If Thrasio was not in compliance with the Service Level Agreement on March 31, 2021, conversion would be delayed until Thrasio came into compliance. Since the preferred stock held by Thrasio was equal to only 19.9% of Yardline's voting shares, Yardline was not a subsidiary of Thrasio at this time, but Thrasio did receive a consent right over any future equity financing by Yardline on account of the preferred stock.

99. In order to obtain additional liquidity, in August and November 2020, Yardline issued convertible notes due 2025 to outside investors (the "Convertible Notes" and the holders thereof, the "Convertible Noteholders"), which could be converted into Yardline stock at the time of an equity financing, among other things.

100. Around February 2021, Horowitz began soliciting interest in a Series A preferred stock financing (the “Series A”) for Yardline. Horowitz was intent on closing the Series A by April 30, 2021, in order to trigger the vesting of his Thrasio stock options, which he believed to be worth up to \$62.5 million at the time.

101. In late February 2021, Yardline signed a term sheet with several investors, providing that, among other things, upon the closing of the Series A equity financing, Yardline’s outstanding Convertible Notes could be converted into preferred stock in accordance with the terms of the Convertible Notes. The Series A investors subsequently purchased Convertible Notes in hopes of obtaining additional Yardline equity through the conversion feature.

102. On February 26, 2021, Horowitz requested approval from the Yardline board of directors to close the Series A. At the time, in addition to Horowitz, Yardline’s five-member board included three Thrasio insiders—Cashman, Boockvar, and Stephanie Fox (a Thrasio officer).

103. Notably, Horowitz also needed consent from Thrasio for Yardline to close any equity financing, including the Series A. Silberstein not only withheld Thrasio’s consent, but also convinced the Thrasio-affiliated directors that the Yardline board should not support the transaction. Silberstein claimed that Horowitz had acted improperly by signing the term sheet without obtaining advance approval from Thrasio and the Yardline board. Throughout March 2021, the companies discussed various alternatives to the Series A, including a potential acquisition of Yardline by Thrasio.

104. Silberstein himself, despite being vocally against the Series A, admitted that he did not have good reasons for pursuing an acquisition of Yardline. Indeed, on March 9, 2021, Silberstein declared that he kept “coming back to the simple fact that Yardline has not created anything that [he] ha[s] much interest in owning, or that has meaningful value to Thrasio.”

Yardline's only non-Thrasio-affiliated director acknowledged that Silberstein may have thought that "there [was] zero value in the current Yardline asset." This was in fact supported by Yardline's financial statements showing that Yardline was projected to have negative EBITDA in 2021.

105. Meanwhile, Horowitz continued to market the Series A, much to Silberstein's dismay. By the end of March 2021, Horowitz had secured enough commitments that would have allowed for the Series A to close and thus trigger the vesting of his Thrasio stock options. This enraged Silberstein, who insisted that Horowitz was a "self-serving con artist" who generated interest in the Series A by "lying" about Thrasio's support for the proposed financing.

106. In April 2021, Silberstein decided to proceed with the acquisition of Yardline to remove Horowitz and claim control of the company for Thrasio. Working with Cashman, Boockvar, and certain other D&O Defendants, Silberstein moved to finalize a takeover transaction that would result in Yardline becoming a wholly owned subsidiary of Thrasio.

107. Thrasio's takeover of Yardline was unlike a typical acquisition and executed in three major steps. **First**, on April 27, 2021, Thrasio held a business update as required under the Service Level Agreement to come into compliance with the agreement. Once Thrasio came into compliance with the Service Level Agreement, its class B stock—which had not converted previously due to the lack of compliance—automatically converted into class A common stock, making Thrasio the majority shareholder of Yardline, holding 67% of Yardline's voting stock.

108. **Second**, in order to prevent dilution of its ownership, Thrasio took advantage of a special feature of Yardline's Convertible Notes to eliminate the possibility of their conversion. Under the terms of the Convertible Notes, if an extraordinary event occurred prior to the conversion or maturity of the notes (an "Extraordinary Event"), the Convertible Notes would automatically become due and payable, and the Convertible Noteholders would lose their call

option. An Extraordinary Event could be triggered in several scenarios, including if Thrasio became required under applicable rules to consolidate Yardline's financial statements into its own and provided notice to Yardline that it intended to operate Yardline as a subsidiary. Specifically, if an Extraordinary Event was triggered by Thrasio's consolidation of Yardline, the Convertible Noteholders would be compensated for the loss of their conversion right by a payment equal to 120% or 200% of the outstanding principal, as applicable, plus any accrued and unpaid interest, in full consideration for all outstanding amounts under the notes.

109. On April 27, 2021, after becoming the majority shareholder of Yardline, Thrasio notified Yardline that Thrasio was now required to consolidate Yardline's financial statements with its own and that it had decided to operate Yardline as its subsidiary. The Yardline board confirmed on April 28, 2021 that, because of Thrasio's notice, an Extraordinary Event had occurred pursuant to the terms of the Convertible Notes, upon which the Convertible Noteholders lost their call option and Yardline became obligated to make full payment of the notes with the applicable premium.

110. **Third**, in order to remove Yardline completely from Horowitz's control, Thrasio retired the stock held by Horowitz and other Yardline insiders in May 2021, after which Thrasio became the sole shareholder of Yardline. On or about May 10, 2021, Thrasio paid approximately \$1.8 million for Horowitz's Yardline shares through a transfer to Hudson Palm, an entity affiliated with Horowitz. At no point did Thrasio have any legitimate business justification to acquire Yardline, nor did Thrasio conduct proper diligence prior to the acquisition. When Thrasio's then-CFO Wafford requested additional information from Thrasio's finance team regarding the transaction, he was informed that no one at Thrasio had "put together a business case on Yardline (ROI, payback, etc.)," and that in the materials provided by Yardline to Thrasio, there was "no

financial analysis or anything that [one] would typically see in the context of pricing/valuation and very little on the future strategy plans.”

111. Instead, Thrasio’s management understood that the acquisition was driven by personal animosity. Cashman wrote to Boockvar on April 29, 2021, describing Thrasio’s decision to acquire Yardline as purely a result of Silberstein’s irrational, emotional response: “[T]his was a bad move. Simply bad, and not well done. We took Josh [Silberstein]’s anger at Ari [Horowitz] and ignored every other stakeholder in making this decision.”

112. Thrasio’s interference with Yardline’s capital raise antagonized the leading Series A investors, who had been holding its commitment in escrow in anticipation of closing, as well as the Convertible Noteholders, some of whom had also committed to participating in the equity financing and were expecting greater returns on their investment based on Horowitz’s Series A pitch. A few of those entities contacted Thrasio’s investors and even threatened legal action, convinced that Thrasio acted in bad faith in the takeover and that Thrasio’s management exerted improper control over the Yardline board.

113. Cashman was especially uneasy with the fact that the Convertible Noteholders were trying to rile up Thrasio investors, who would clearly disapprove of a reckless investment based on Silberstein’s personal feud. He wrote to Boockvar: “I hate that I’m dragged into something that I can’t still explain clearly to outside investors. ‘Josh didn’t like the way Ari went about [the Series A]’ is not something I can say to them.”

114. At the same time, Cashman took the threats of litigation from the Yardline Convertible Noteholders seriously. Cashman communicated the importance of “put[ting] to bed” any litigation risks “quickly and quietly” for the good of the Company, because being dragged to court would not only damage Thrasio’s reputation in the capital markets, but also “open up all of

[their] communications” through discovery, which might expose the ugly truths of Thrasio hidden in emails that Cashman did not want to “be seen out there.”

115. Cashman also grew “personally legally worried” about any liability he might have incurred in his dual role as a Thrasio D&O and a Yardline director. Cashman shared with Silberstein that he believed that “the lawsuit threats are real” and needed to be resolved, even if at a great “cost.” Silberstein promised his Co-CEO: “[W]e’ll use company resources to make sure that you feel covered. Your well being matters more to me than any of this other [expletive].”

116. Just as promised, Silberstein and Cashman used Thrasio resources to appease Yardline’s angry lenders and investors, shelling out payments for nearly three times more than the amounts legally owed by Yardline. Between late April and early May 2021, Thrasio provided six promissory notes (the “Promissory Notes”) to Yardline and arranged for Yardline to make payments to its Convertible Noteholders and investors. Five of the Promissory Notes contained specific provisions prohibiting Yardline from using the funds for any purpose other than paying off the Convertible Noteholders and Series A investors until those entities were paid off. The Promissory Notes totaled approximately \$20.9 million, even though the Convertible Noteholders were only contractually entitled to a little over a third of that amount under the terms of the Convertible Notes. Around October 2021, Thrasio forgave all outstanding amounts under the Promissory Notes, having received not one cent in return from Yardline.

117. The story did not end there. After acquiring Yardline, Thrasio continued to pump cash into an unprofitable business: \$1 million in June 2021; \$1.8 million in September 2021; and another \$1.3 million in November 2021.

118. Changes in Thrasio’s management in September 2021 led to Cashman becoming the sole CEO of Thrasio, and Cashman quickly decided to sell Yardline back to his old friend

Horowitz, despite the millions of dollars spent by Thrasio just a few months ago on the acquisition. By September 2021, Cashman had already begun negotiations with Horowitz, who had created a new business called Swiftline.

119. In January 2022, Thrasio sold Yardline to Swiftline for \$7.1 million in cash and \$5 million in Swiftline stock, which was of dubious value. What Thrasio recouped from the sale barely made up for a portion of its expenses on Yardline, which totaled north of \$26 million over the course of a year and half, including \$1 million of founding capital, \$20.9 million of Promissory Notes that were never repaid, and another \$4.2 million of cash injected into the company, in addition to payments made to Yardline's former insiders.

E. Thrasio Terminated Defendants Silberstein and Cashman and Attempted to Release Valuable Claims Against Them for No Consideration.

120. Starting in July 2021, and around the time the Board members discovered that Silberstein had failed to inform them of Wafford's departure, the relationship between Silberstein and Thrasio's major equity investors with seats on the Board deteriorated.

121. By August 14, 2021, the Board determined that Silberstein could no longer stay at the Company. It took some time, however, to negotiate the terms of Silberstein's departure.

122. On or about September 25, 2021, Silberstein resigned and entered into a Confidential Separation Agreement and Mutual Release (the "Silberstein Separation Agreement"). That same day, the Board approved the Silberstein Separation Agreement.

123. The Silberstein Separation Agreement provided that Thrasio and the Board released Silberstein, and entities related to Silberstein, from all claims that the Company had against Silberstein arising from facts that occurred before the date of the agreement (the "Silberstein Release").

124. The Silberstein Release did not apply to claims arising from Silberstein’s “grossly negligent actions, fraudulent conduct, or any felony criminal conduct about which neither Company Releasers nor the officers of [the] Company . . . have actual or constructive knowledge as of the Employment Separation Date,” in addition to claims based on Silberstein’s indemnity obligation in favor of Thrasio in connection with the 2021 secondary sales.

125. Following Silberstein’s departure, Cashman became sole CEO, but issues arising from the Company’s still wholly inadequate internal controls continued to rear their ugly heads. In February 2022, Thrasio’s then-CFO called one of the major investors, who was also a Board member, to report that the Company incurred \$150 million in additional supply chain costs that were not accounted for in the 2022 budget. The Board member became alarmed and realized that, contrary to what he had been led to believe, the Company was not operating at a profit. The Board decided that a significant management change was needed and, in search of a new CEO, immediately engaged a “Chief Transformation Officer” from AlixPartners to salvage what the investors had come to realize was a failing business.

126. Subsequently, on August 1, 2022, Cashman’s employment with Thrasio was terminated pursuant to a separation agreement (the “Cashman Separation Agreement”). Under the Cashman Separation Agreement, Cashman would continue to serve as a member of the Thrasio Board until his resignation or termination for cause.

127. The Cashman Separation Agreement provided that Thrasio and the Board released Cashman, and entities related to Cashman, from all claims that the Company had against Cashman arising from facts that occurred before the date of the agreement (the “Cashman Release”).

128. The Cashman Release did not apply to claims arising from Cashman’s “grossly negligent actions, fraudulent conduct, or any felony criminal conduct about which neither

Company Releasors nor the officers of [the] Company . . . have actual or constructive knowledge as of the Employment Separation Date”

F. Defendants Drove Thrasio into Bankruptcy.

129. Once investors became aware of Thrasio’s substantial financial and operational issues in late 2021, Thrasio was no longer able to raise additional equity financing, and its stock price plummeted in the secondary market. Thrasio never recovered as a business from the damage caused by the D&O Defendants’ actions despite the changes in management, eventually filing for chapter 11 bankruptcy after its out-of-court restructuring efforts failed to turn things around. The value of the stock was completely wiped out once Thrasio entered bankruptcy.

CAUSES OF ACTION

COUNT I

**Breach of Fiduciary Duty of Loyalty – Approving Tender Offer
(Against Silberstein and Cashman)**

130. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

131. At all times relevant to the allegations in this Complaint: (i) Silberstein, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; and (ii) Cashman, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio.

132. As officers and directors of Thrasio, Silberstein and Cashman owed Thrasio, a Delaware corporation, fiduciary duties, including, but not limited to, fiduciary duties of good faith, candor, care, and loyalty, and the duty to act in good faith and in the best interest of Thrasio, to promote the success of Thrasio, and, at all times, to subordinate their personal interests to the interests of Thrasio.

133. Merely three days after Thrasio closed on a Series C round of funding that raised \$260 million of equity capital for the company, Silberstein and Cashman caused the Board to approve the Tender Offer. Pursuant to the Tender Offer, nearly 60% of the proceeds from the Series C went straight out the door to repurchase Thrasio stock from participating shareholders, including entities controlled by or affiliated with Silberstein and Cashman.

134. In approving and participating in the Tender Offer, Silberstein and Cashman each breached their fiduciary duties to Thrasio by acting in bad faith, failing to act in the best interest of the Company as a whole, failing to act in a way that promoted the success of the Company, failing to subordinate their personal interests to the interests of the Company, and engaging in self-dealing.

135. The Tender Offer provided no benefit to Thrasio. In fact, given that Thrasio was insolvent at the time or was rendered insolvent by the Tender Offer, the Tender Offer harmed Thrasio.

136. But Silberstein and Cashman personally benefited from the Tender Offer. Although as directors and officers they had a duty to put the interests of Thrasio ahead of their own, they breached that duty and acted in their own self-interests in approving and participating in the Tender Offer at the expense of the Company.

137. This, as well as the other numerous breaches of duty by these Defendants detailed in this Complaint, directly and proximately harmed Thrasio.

COUNT II
Avoidance and Recovery of Tender
Offer Proceeds as Constructive Fraudulent Transfers
(Against Silberstein; Millhouse; Cashman;
Cashman Investment; Boockvar; Falcao; and Horowitz)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

138. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

139. Section 544(b) of the Bankruptcy Code authorizes Plaintiff to avoid any transfer of an interest in the Debtors' property or any obligation incurred by the Debtors that is voidable under applicable law by a creditor holding an allowable unsecured claim.

140. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover any fraudulent transfers or the value thereof from the initial transferees and subsequent transferees (*i.e.*, mediate and intermediate transferees).

141. The Tender Offer occurred, and Thrasio transferred the Proceeds, in or about August 2020—within four years of the Petition Date.

142. The transfer of the Proceeds was a transfer of property, or an interest in property, of the Debtors to Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao.

143. Thrasio did not receive anything in return for the transfers.

144. Thrasio was insolvent at the time of the Tender Offer or was rendered insolvent by the Tender Offer. As of the date on which Thrasio paid the Proceeds, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets, and Thrasio was insolvent with no reasonable prospects to continue its business successfully. PwC emphasized in Thrasio's 2020 audit report that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

145. At the time that (or after) Thrasio transferred the Proceeds, Thrasio had one or more creditors who could have sought to avoid the transfer of the Proceeds under applicable state law.

146. The transfer was therefore a constructive fraudulent transfer which should be avoided pursuant to Section 544 of the Bankruptcy Code and applicable state law.

147. Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao were initial transferees of the Proceeds or the immediate or mediate transferees of initial transferees or persons for whose benefit these transfers were made.

148. On or about August 27, 2020, Thrasio wired the Proceeds (*i.e.*, \$144,941,591.75) for payment to the redeeming shareholders.

149. On information and belief, on or about August 28, 2020, Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao received their shares of the Proceeds.

150. On information and belief, Defendant Silberstein, through Millhouse, received a transfer of \$31,714,653.22 of the Proceeds as a result of his participation in the Tender Offer.

151. On information and belief, Defendant Cashman, through Cashman Investment, received a transfer of \$25,500,407.99 of the Proceeds as a result of his participation in the Tender Offer.

152. On information and belief, Defendant Boockvar received one transfer of \$236,815.31 and a second transfer of \$695,697.15 for a total of \$932,512.46 of the Proceeds as a result of his participation in the Tender Offer.

153. On information and belief, Defendant Falcao received one transfer of \$602,937.53, a second transfer of \$663,092.14, and a third transfer of \$1,159,495.25 for a total of \$2,425,524.92 of the Proceeds as a result of his participation in the Tender Offer.

154. On information and belief, Defendant Horowitz received a transfer of \$1,720,273.53 of the Proceeds as a result of his participation in the Tender Offer.

155. The Plaintiff may therefore recover from each of Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao as initial transferees, subsequent transferees, or entities for whose benefit the transfers were made.

COUNT III
Avoidance and Recovery of Tender
Offer Proceeds as Actual Fraudulent Transfers
(Against Silberstein; Millhouse; Cashman;
Cashman Investment; Boockvar; Falcao; and Horowitz)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

156. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

157. The Tender Offer occurred, and Thrasio transferred the Proceeds, in or about August 2020—within four years of the Petition Date.

158. The transfer of the Proceeds was a transfer of property, or an interest in property, of Thrasio to Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao.

159. Thrasio transferred the Proceeds with an actual intent to hinder, delay, and/or defraud its creditors, which may be inferred from the presence of a number of “badges of fraud” associated with the Tender Offer.

160. Silberstein, Cashman, Boockvar, and Falcao were insiders of Thrasio. Millhouse and Cashman Investment were controlled by insiders (*i.e.*, Silberstein and Cashman, respectively). Horowitz was a close friend of an insider, Cashman, and was a former insider of Thrasio.

161. Thrasio did not receive anything in return for the transfers.

162. At the time that Thrasio paid the Proceeds, the Defendants knew that Thrasio had no internal controls and that financial statements shown to investors were not accurate. Despite this knowledge, Silberstein and Cashman approved the Tender Offer.

163. Thrasio was insolvent at the time of the Tender Offer or was rendered insolvent by the Tender Offer. As of the date on which Thrasio paid the Proceeds, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets, and Thrasio was insolvent with no reasonable prospects to continue its business. PwC emphasized in Thrasio's 2020 audit report that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

164. The transfers were therefore actual fraudulent transfers which should be avoided pursuant to Section 544 of the Bankruptcy Code and applicable state law.

165. Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao were initial transferees of the Proceeds or the immediate or mediate transferees of initial transferees or persons for whose benefit these transfers were made.

166. At the time that (or after) Thrasio transferred the Proceeds, Thrasio had one or more creditors who could have sought to avoid the transfer of the Proceeds under applicable state law.

167. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the transfers or the value thereof from the initial transferees and subsequent transferees (*i.e.*, mediate and intermediate transferees).

168. On or about August 27, 2020, Thrasio wired the Proceeds (*i.e.*, \$144,941,591.75) for payment to the redeeming shareholders.

169. On information and belief, on or about August 28, 2020, Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao received their shares of the Proceeds.

170. On information and belief, Defendant Silberstein, through Millhouse, received a transfer of \$31,714,653.22 of the Proceeds as a result of his participation in the Tender Offer.

171. On information and belief, Defendant Cashman, through Cashman Investment, received a transfer of \$25,500,407.99 of the Proceeds as a result of his participation in the Tender Offer.

172. On information and belief, Defendant Boockvar received one transfer of \$236,815.31 and a second transfer of \$695,697.15 for a total of \$932,512.46 of the Proceeds as a result of his participation in the Tender Offer.

173. On information and belief, Defendant Falcao received one transfer of \$602,937.53, a second transfer of \$663,092.14, and a third transfer of \$1,159,495.25 for a total of \$2,425,524.92 of the Proceeds as a result of his participation in the Tender Offer.

174. On information and belief, Defendant Horowitz received a transfer of \$1,720,273.53 of the Proceeds as a result of his participation in the Tender Offer.

175. The Plaintiff may recover from each of Silberstein, Millhouse, Cashman, Cashman Investment, Horowitz, Boockvar, and Falcao as initial transferees, subsequent transferees, or entities for whose benefit the transfers were made. None of these transferees, all of which were insiders of Thrasio, acted in good faith, because each had knowledge of Thrasio's true financial state and the voidability of the transfers.

COUNT IV
Conspiracy to Fraudulently Transfer
Tender Offer Proceeds
(Against Silberstein; Cashman; Boockvar; Falcao; and Horowitz)

176. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

177. Silberstein, Cashman, Horowitz, Boockvar, and Falcao all had an agreement to participate in the Tender Offer and benefit themselves at the expense of the Company. Silberstein and Cashman ensured that the Board approved the Tender Offer and signed the consent approving the Tender Offer. Falcao assisted with organizing the transfer of the Proceeds for the Tender Offer and sought approval for the wire payments. Horowitz, along with Silberstein, Cashman, Boockvar, and Falcao, agreed to and participated in the Tender Offer despite knowing about the internal problems the Company had, including the Company's financial troubles.

178. As set forth herein, the transfer of Tender Offer Proceeds to the participating shareholders constituted a fraudulent transfer.

179. Each of Silberstein, Cashman, Horowitz, Boockvar, and Falcao were parties to the transfer, as participants in the planning and approval of the Tender Offer and as transferees of the Proceeds (or persons or entities for whose benefit the transfer of Proceeds was made).

180. As a direct and proximate result of the Defendants' conduct, Thrasio suffered damages.

COUNT V
Violations of Delaware General Corporation Law
(Against Silberstein and Cashman)
8 Del. Code § 160

181. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

182. Section 160(a)(1) of the Delaware General Corporation Law (the "DGCL") provides, in relevant part, that: "[N]o corporation shall: (1) [p]urchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation."

183. Pursuant to Section 174 of the DGCL, the directors of a corporation are jointly and severally liable for “willful or negligent violation of § 160”

184. The Tender Offer was a purchase by Thrasio of its own shares for cash. At the time of the Tender Offer, as described above, Thrasio was insolvent, its capital was impaired, and it did not have a surplus from which to fund the Tender Offer. As of the date on which Thrasio paid the Proceeds, the total fair value of Thrasio’s liabilities exceeded the total amount of Thrasio’s assets, and Thrasio was insolvent with no reasonable prospects to continue its business. PwC emphasized in Thrasio’s 2020 and 2021 audit reports that there was “substantial doubt” as to Thrasio’s “ability to continue as a going concern.” Thus, the Tender Offer violated Section 160(a)(1) of the DGCL.

185. Silberstein and Cashman, as directors who approved the Tender Offer, are jointly and severally liable due to their willful or negligent approval and/or facilitation of the Tender Offer. Silberstein and Cashman knew that the Company was insolvent, but approved the Tender Offer anyway to benefit themselves. Moreover, Silberstein and Cashman approved the Tender Offer without having any analysis performed of the Company’s surplus.

186. As a direct and proximate result of Silberstein’s and Cashman’s conduct, Thrasio suffered damages.

COUNT VI
Unjust Enrichment
(Against Silberstein; Millhouse; Cashman;
Cashman Investment; Boockvar; Falcao; and Horowitz)

187. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

188. Silberstein and Cashman were the co-founders, senior executives, and Board members of Thrasio who not only turned a blind eye to problems within the Company, but knowingly and willingly participated in pushing the Company to grow as quickly as possible so

that they could cash in on their equity holdings. Upon information and belief, Silberstein is the managing member of Millhouse, and Cashman and/or one of his family members is the managing member of Cashman Investment.

189. Boockvar and Falcao were officers of the Company and knew about the internal problems that the Company was facing, but did nothing to fix the problems—instead, they took every opportunity to cash-in on their equity investments while they could.

190. Horowitz was a Senior Vice President of the Company and similarly sought to enrich himself at the expense of Thrasio and its stakeholders.

191. Each of these Defendants benefited by receiving their share of the Proceeds in the Tender Offer. These Defendants wrongfully obtained their share of the Proceeds through the unfair and fraudulent actions of Silberstein, Cashman, Boockvar, Falcao, and Horowitz. The Company, however, received nothing in return.

192. These Defendants received the Proceeds at the expense, and to the detriment, of Thrasio and its creditors and investors.

193. It would be unconscionable and against the fundamental principles of justice, equity, and good conscience for these Defendants to be permitted to retain such amounts, which they received, and continue to benefit from, without justification.

194. These Defendants were therefore unjustly enriched. Plaintiff is entitled to restitution from these Defendants and an order disgorging amounts received in connection with the Tender Offer.

COUNT VII
Breach of Fiduciary Duty of Oversight/Loyalty – No Controls
(Against Silberstein; Cashman; Boockvar; Falcao; Ouhadi; and Rathod)

195. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

196. At all times relevant to the allegations in this Complaint: (i) Silberstein, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (ii) Cashman, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (iii) Boockvar, as the President, was an officer of Thrasio and was responsible for overseeing Thrasio's operations; (iv) Falcao, as the CFO and Senior Vice President of Finance and Treasurer, was an officer of Thrasio and was responsible for financial oversight and establishing information systems related to financial oversight; (v) Ouhadi, as the Chief Supply Chain Officer, was an officer of Thrasio and was responsible for Thrasio's supply chain operations and inventory systems; and (vi) Rathod, as the Vice President of Strategic Planning & Analysis, was an officer of Thrasio and was responsible for developing financial models and financial reports.

197. As directors and/or officers of Thrasio, Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod owed Thrasio, a Delaware corporation, fiduciary duties, including, but not limited to, fiduciary duties of good faith, candor, care, and loyalty.

198. Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod each breached their fiduciary duties to Thrasio by acting in bad faith, by disregarding knowledge they possessed, and by acting with gross negligence.

199. Thrasio had inadequate internal accounting and inventory controls. Thrasio used spreadsheet-based calculations, which were prone to errors, to prepare its financial statements. Thrasio could not accurately track its inventory or the value of the inventory. In fact, at one point, Thrasio had three different methods to try to calculate the value of its inventory, none of which could be reconciled with the others. The Defendants ignored numerous red flags throughout the years and failed to take any action to remediate the problems.

200. Ouhadi, as the Chief Supply Chain Officer, was involved with tracking inventory and had knowledge of the inventory control problems because he received emails about the problems and knew there were problems with excess inventory. Yet, he did nothing to implement proper inventory controls or prevent the Company from over-purchasing hundreds of millions of dollars in excess inventory.

201. Boockvar, as the President, received updates on inventory problems from Falcao and knew that there were problems with inventory controls, but did nothing to address these problems and instead took actions to benefit himself, such as participating in the Tender Offer.

202. Falcao knew about the inventory control problems and did not have confidence in Thrasio's internal controls environment and various problems, yet did not fix the problems and instead took actions to benefit himself, such as participating in the Tender Offer.

203. Rathod, as the Vice President of Strategic Planning & Analysis, knew about the lack of internal controls and that this would lead to inaccurate financial statements and knew that the financial statements were misleading, but did nothing to prevent these problems.

204. Silberstein and Cashman also knew about Thrasio's lack of internal controls and control problems, and took no action to fix the problems, instead accepting problems and harm to the Company as part of running the business, all while they worked to monetize their equity investments for their personal benefit.

205. These Defendants took no action to resolve the various problems and failed to demonstrate the due care attendant to their respective offices. Instead, the Defendants acted in bad faith with gross negligence by either ignoring these problems or affirmatively exploiting them to enable them to monetize their equity investments at overstated values. This allowed the

Defendants to cash-in in the form of participating in the Tender Offer, secondary sales, and receiving equity as part of their compensation packages.

206. The numerous breaches of duty by these Defendants detailed in this Complaint directly and proximately harmed Thrasio.

COUNT VIII
Waste of Corporate Assets – Inventory
(Against Silberstein; Cashman; Boockvar; Falcao; Ouhadi; and Rathod)

207. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

208. At all times relevant to the allegations in this Complaint: (i) Silberstein, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (ii) Cashman, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (iii) Boockvar, as the President, was an officer of Thrasio and was responsible for overseeing Thrasio's operations; (iv) Falcao, as the CFO and Senior Vice President of Finance and Treasurer, was an officer of Thrasio and was responsible for financial oversight and establishing information systems related to financial oversight; (v) Ouhadi, as the Chief Supply Chain Officer, was an officer of Thrasio and was responsible for Thrasio's supply chain operations and inventory systems; and (vi) Rathod, as the Vice President of Strategic Planning & Analysis, was an officer of Thrasio and was responsible for developing financial models and financial reports.

209. As directors and/or officers of Thrasio, Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod owed Thrasio, a Delaware corporation, fiduciary duties, including, but not limited to, fiduciary duties of good faith, candor, care, and loyalty.

210. Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod each breached their fiduciary duties to Thrasio by acting in bad faith, by disregarding knowledge that they possessed, and by acting with gross negligence.

211. Thrasio had inadequate internal accounting and inventory controls. Thrasio used spreadsheet-based calculations, which were prone to errors, to prepare its financial statements. Thrasio could not accurately track its inventory or the value of the inventory. In fact, at one point, Thrasio had three different methods to try to calculate the value of its inventory, none of which could be reconciled with the others. The Defendants ignored numerous red flags throughout the years and failed to take any action to remediate the problems.

212. As a result of the lack of internal controls, Defendants Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod caused Thrasio to accumulate an estimated \$800 million worth of excess inventory by February 2022. This was inventory that Thrasio had no use for, could not sell in a reasonable amount of time, and would be required to pay to store and transport.

213. Defendants irrationally squandered corporate assets by causing Thrasio to purchase an estimated \$800 million in excess inventory by February 2022. No business person of ordinary sound judgment could conclude that the Company received adequate consideration for the purchase of this inventory.

214. As a result of the waste of the corporate assets, Defendants Silberstein, Cashman, Boockvar, Falcao, and Ouhadi are liable to the Company.

COUNT IX
Breach of Fiduciary Duty of Loyalty – Usurping Corporate Opportunity
(Against Silberstein; Cashman; Boockvar; Falcao; Ouhadi; and Rathod)

215. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

216. At all times relevant to the allegations in this Complaint: (i) Silberstein, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (ii) Cashman, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (iii) Boockvar, as the President, was an officer of Thrasio and was responsible for

overseeing Thrasio's operations; (iv) Falcao, as CFO and Senior Vice President of Finance and Treasurer, was an officer of Thrasio and was responsible for financial oversight and establishing information systems related to financial oversight; (v) Ouhadi, as the former Chief Supply Chain Officer, was an officer of Thrasio and was responsible for Thrasio's supply chain operations and inventory systems; and (vi) Rathod, as the former Vice President of Strategic Planning & Analysis, was an officer of Thrasio and was responsible for developing financial models and financial reports.

217. As officers and directors of Thrasio, Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod owed Thrasio, a Delaware corporation, fiduciary duties, including, but not limited to, fiduciary duties of good faith, candor, care, and loyalty, and the duty to act in good faith and in the best interest of Thrasio, to promote the success of Thrasio, and, at all times, to subordinate their personal interests to the interests of Thrasio.

218. Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod breached their fiduciary duties to Thrasio by acting in bad faith, failing to act in the best interest of the Company, failing to subordinate their personal interests to the interests of the Company, and engaging in self-dealing.

219. In 2020, Silberstein and Cashman sold their stock to potential investors of Thrasio at the expense of the Company. Investors bought shares as part of these secondary sales rather than increase their purchase of the Company's Series C stock.

220. In 2021, Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod sold their stock to potential investors of Thrasio at the expense of the Company. Investors bought shares as part of these secondary sales rather than increase their purchase of the Company's Series D stock.

221. There were investors seeking to purchase Thrasio stock and Thrasio had additional Series D stock to sell, but instead the investors bought stock from Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod because of these Defendants' actions.

222. This conduct personally benefited Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod and harmed the Company. The Company received interest for the Series D to be a \$2 billion round. However, due to the actions of the Defendants, the Company ended up raising only \$1 billion.

223. Silberstein engaged in the secondary sales for his own personal, financial benefit. Silberstein used his insider knowledge of Thrasio and his position as a director and officer to ensure that the secondary sales were approved by the Board, despite the fact that the Company was actively in the process of trying to raise money with its own stock sales. By selling his own stock holdings while the Company was trying to raise financing, Silberstein put his personal interests ahead of the interests of Thrasio.

224. Cashman, Boockvar, Falcao, Ouhadi, and Rathod similarly engaged in secondary sales to cash out for their own benefit and at the Company's expense.

225. Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod misled investors by relying on false and/or misleading statements to ensure that their stock sold.

226. The numerous breaches of duty by these Defendants detailed in this Complaint directly and proximately harmed Thrasio.

COUNT X
Breach of Fiduciary Duty of Loyalty – Misuse of Confidential Corporate Information
(Against Silberstein; Cashman; Boockvar; Falcao; Ouhadi; and Rathod)

227. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

228. At all times relevant to the allegations in this Complaint: (i) Silberstein, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (ii) Cashman, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio; (iii) Boockvar, as the President, was an officer of Thrasio and was responsible for overseeing Thrasio's operations; (iv) Falcao, as CFO and Senior Vice President of Finance and Treasurer, was an officer of Thrasio and was responsible for financial oversight and establishing information systems related to financial oversight; (v) Ouhadi, as the former Chief Supply Chain Officer, was an officer of Thrasio and was responsible for Thrasio's supply chain operations and inventory systems; and (vi) Rathod, as the former Vice President of Strategic Planning & Analysis, was an officer of Thrasio and was responsible for developing financial models and financial reports.

229. As officers and directors of Thrasio, Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod owed Thrasio, a Delaware corporation, fiduciary duties, including, but not limited to, fiduciary duties of good faith, candor, care, and loyalty, and the duty to act in good faith and in the best interest of Thrasio, to promote the success of Thrasio, and, at all times, not to use Thrasio's confidential information entrusted to them as fiduciaries of Thrasio to their personal advantage.

230. At the time of the secondary sales in 2021, Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod, by virtue of their respective insider positions, each had access to and in fact possessed material confidential information regarding Thrasio that was not known to the lenders, investors, and other stakeholders of Thrasio, including that Thrasio lacked proper internal accounting and inventory controls, that Thrasio's financing reporting had been inaccurate for

years, and that the financial information provided to potential investors of Thrasio was false and misleading.

231. Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod used material confidential information about Thrasio's finances and operations to their personal advantage, namely to make hundreds of millions of profits through secondary sales of their stock, including by knowingly providing to potential buyers false and/or misleading information that inflated Thrasio's value and projected unrealistic growth, before Thrasio's stakeholders became aware of the extent of Thrasio's gross mismanagement and financial distress.

232. Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod breached their fiduciary duties to Thrasio by misusing material confidential information to pursue secondary sales and unjustly enriching themselves as a result thereof.

COUNT XI
Aiding and Abetting Breach of Fiduciary Duty of Oversight/Loyalty – Secondary Sales
(Against Boockvar; Falcao; Ouhadi; and Rathod)

233. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

234. As officers and/or employees of Thrasio, Boockvar, Falcao, Ouhadi, and Rathod owed Thrasio, a Delaware corporation, fiduciary duties, including, but not limited to, fiduciary duties of good faith, candor, care, and loyalty, including the duty not to assist others who owed fiduciary duties in breaching known fiduciary duties to Thrasio.

235. As detailed above, Boockvar, Falcao, Ouhadi, and Rathod each breached their fiduciary duties to Thrasio. And as detailed above, Silberstein and Cashman breached their fiduciary duties.

236. Boockvar, Falcao, Ouhadi, and Rathod, each knew of the others' fiduciary duty obligations, and knew about the fiduciary duty obligations of Silberstein and Cashman as directors

and officers. Boockvar, Falcao, Ouhadi, and Rathod substantially and actively assisted with the breaches of duty by Cashman and Silberstein, and each other, by, among others, failing to implement internal controls, failing to address red flags, personally profiting from transfers of value from the Company, and usurping the Company's corporate opportunities, and/or causing the Company hundreds of millions of dollars in losses from over-purchasing inventory.

237. The numerous breaches directly and proximately harmed Thrasio.

COUNT XII
Breach of Fiduciary Duty – Silberstein Separation Agreement
(Against Cashman)

238. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

239. At all times relevant to the allegations in this Complaint, Cashman, as the co-founder, Co-CEO, and member of the Board, was an officer and director of Thrasio.

240. As a director and officer of Thrasio, Cashman owed Thrasio, a Delaware corporation, fiduciary duties, including, but not limited to, fiduciary duties of good faith, candor, care, and loyalty.

241. Cashman breached his fiduciary duties to Thrasio by acting in bad faith and by acting with gross negligence in approving the Silberstein Separation Agreement.

242. On or about September 25, 2021, Silberstein resigned from Thrasio and entered into the Silberstein Separation Agreement, which was approved by the Board.

243. The Silberstein Separation Agreement provided that Thrasio and the Board released Silberstein, and entities related to Silberstein, from all claims that the Company had against Silberstein arising from facts that occurred before the date of the agreement, except claims based on (i) Silberstein's grossly negligent actions, fraudulent conduct, or felony criminal conduct, of which neither Thrasio nor its officers had actual or constructive knowledge as of the separation;

or (ii) Silberstein's indemnity obligation in favor of Thrasio in connection with the 2021 secondary sales.

244. Cashman, as a member of the Board, approved the Silberstein Separation Agreement, despite knowing that the Company had valuable claims against Silberstein. Given Cashman's close relationship with Silberstein, and participation in Silberstein's bad acts, Cashman had a personal interest in not seeing the Company bring the valuable claims it possessed against Silberstein. There was no proper business reason for the Company to agree to the Silberstein Separation Agreement.

245. Cashman's breach of his fiduciary duties to Thrasio with respect to the approval of the Silberstein Separation Agreement, as well as the numerous other breaches of duty by Cashman detailed in this Complaint, directly and proximately harmed Thrasio.

COUNT XIII
Avoidance and Recovery of Silberstein Release as Constructive Fraudulent Transfer
(Against Silberstein)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

246. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

247. Thrasio agreed to the Silberstein Separation Agreement allegedly releasing certain claims against Silberstein in 2021—within four years of the Petition Date.

248. Thrasio's alleged release of all claims that the Company had against Silberstein arising from facts that occurred before the date of the agreement, excepting grossly negligent actions, felony criminal conduct which neither Thrasio nor its officers had actual or constructive knowledge of as of the separation, or claims brought by purchasers of the secondary shares Silberstein sold in the summer of 2021, brought within a certain time period in connection with

the Silberstein Separation Agreement was a transfer of Thrasio's property, or an interest in property of Thrasio, to Silberstein and/or a transfer for his benefit.

249. Thrasio did not receive reasonably equivalent value. Thrasio's claims against Silberstein for his negligence and mismanagement and receipt of Thrasio property are extremely valuable. Thrasio did not receive anywhere close to the value of the claims in return.

250. Thrasio was insolvent at the time that Thrasio agreed to the Silberstein Separation Agreement and granted the Silberstein Release. At that time, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets. PwC emphasized in Thrasio's 2020 and 2021 audit reports that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

251. At the time that (or after) Thrasio agreed to the Silberstein Separation Agreement, Thrasio had one or more creditors who could have sought to avoid the transfer of the release of claims to Silberstein under applicable state law.

252. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfer from Silberstein.

COUNT XIV
Avoidance of Silberstein Release as Actual Fraudulent Transfer
(Against Silberstein)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

253. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

254. Thrasio agreed to the Silberstein Separation Agreement allegedly releasing certain claims against Silberstein in 2021—within four years of the Petition Date.

255. Thrasio's alleged release of all claims against Silberstein arising from facts that occurred before the date of the agreement,⁶ in connection with the Silberstein Separation Agreement, was a transfer of Thrasio's property, or an interest in property of Thrasio, to Silberstein and/or a transfer for his benefit.

256. Thrasio released claims against Silberstein with an actual intent to hinder, delay, and/or defraud its creditors.

257. The Silberstein Release involved a number of "badges of fraud."

258. Silberstein was an insider of Thrasio.

259. Thrasio did not receive reasonably equivalent value. Thrasio's claims against Silberstein for his negligence and mismanagement and receipt of Thrasio's property are extremely valuable. Thrasio did not receive anywhere close to the value of the claims in return.

260. Thrasio was insolvent at the time that Thrasio agreed to the Silberstein Separation Agreement and granted the Silberstein Release. At that time, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets. PwC emphasized in Thrasio's 2020 and 2021 audit reports that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

261. The transfer was therefore an actual fraudulent transfer which should be avoided pursuant to Section 544 of the Bankruptcy Code and applicable state law.

262. At the time that (or after) Thrasio agreed to the Separation Agreement, Thrasio had one or more creditors who could have sought to avoid the transfer of the release of claims to Silberstein under applicable state law.

⁶ Subject to the above-stated exceptions.

263. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfer from Silberstein.

COUNT XV
Avoidance and Recovery of Cashman Release as Constructive Fraudulent Transfer
(Against Cashman)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

264. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

265. On or about August 1, 2022, Cashman's employment with Thrasio was terminated pursuant to the Cashman Separation Agreement, which was approved by the Board.

266. The Cashman Separation Agreement provided that Thrasio and the Board released Cashman, and entities related to Cashman, from all known and unknown past or future causes of action, claims, or rights, except claims based on Cashman's grossly negligent actions, fraudulent conduct, or felony criminal conduct, which neither Thrasio nor its directors or officers had actual or constructive knowledge of as of the date of the agreement.

267. Thrasio agreed to the Cashman Separation Agreement allegedly releasing certain claims against Cashman in 2022—within four years of the Petition Date.

268. Thrasio's alleged release of all claims against Cashman, except claims for fraud or gross negligence, in connection with the Cashman Separation Agreement was a transfer of Thrasio's property, or an interest in property of Thrasio, to Cashman and/or a transfer for his benefit.

269. Thrasio did not receive reasonably equivalent value. Thrasio's claims against Cashman for his negligence and mismanagement and receipt of Thrasio property are extremely valuable. Thrasio did not receive anywhere close to the value of the claims in return.

270. Thrasio was insolvent at the time that Thrasio agreed to the Cashman Separation Agreement and granted the Cashman Release. At that time, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets. PwC emphasized in Thrasio's 2020 and 2021 audit reports that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

271. At the time that (or after) Thrasio agreed to the Cashman Separation Agreement, Thrasio had one or more creditors who could have sought to avoid the transfer of the release of claims to Cashman under applicable state law.

272. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfer from Cashman.

COUNT XVI
Avoidance of Cashman Release as Actual Fraudulent Transfer
(Against Cashman)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

273. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

274. Thrasio agreed to the Separation Agreement allegedly releasing certain claims against Cashman in 2022—within four years of the Petition Date.

275. Thrasio's alleged release of all claims against Cashman, except claims for fraud or gross negligence,⁷ in connection with the Cashman Separation Agreement, was a transfer of Thrasio's property, or an interest in property of Thrasio, to Cashman and/or a transfer for his benefit.

276. Thrasio released claims against Cashman with an actual intent to hinder, delay, and/or defraud its creditors.

⁷ Subject to the above-stated exceptions.

277. The Cashman Release involved a number of “badges of fraud.”

278. Cashman was an insider of Thrasio.

279. Thrasio did not receive reasonably equivalent value. Thrasio’s claims against Cashman for his negligence and mismanagement and receipt of Thrasio’s property are extremely valuable. Thrasio did not receive anywhere close to the value of the claims in return.

280. Thrasio was insolvent at the time that Thrasio agreed to the Cashman Separation Agreement and granted the Cashman Release. At that time, the total fair value of Thrasio’s liabilities exceeded the total amount of Thrasio’s assets. PwC emphasized in Thrasio’s 2020 and 2021 audit reports that there was “substantial doubt” as to Thrasio’s “ability to continue as a going concern.”

281. The transfer was therefore an actual fraudulent transfer which should be avoided pursuant to Section 544 of the Bankruptcy Code and applicable state law.

282. At the time that (or after) Thrasio agreed to the Separation Agreement, Thrasio had one or more creditors who could have sought to avoid the transfer of the release of claims to Cashman under applicable state law.

283. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfer from Cashman.

COUNT XVII
Breach of Fiduciary Duty – Yardline
(Against Silberstein and Cashman)

284. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

285. As directors and officers of Thrasio, Silberstein and Cashman owed fiduciary duties of good faith, care, and loyalty and the duty to act in good faith and in the best interest of Thrasio,

to promote the success of Thrasio, and, at all times, to subordinate their personal interests to the interests of Thrasio.

286. Silberstein and Cashman breached their fiduciary duties to Thrasio by acting in bad faith, failing to act in the best interest of the Company, and failing to subordinate their personal interests to the interests of the Company.

287. Silberstein and Cashman deliberately sought to trigger an Extraordinary Event under the terms of the Convertible Notes as part of a strategy to acquire Yardline. When that angered Yardline Convertible Noteholders and other Yardline investors who threatened lawsuits, Silberstein and Cashman had Thrasio provide “loans” (later to be forgiven) to Yardline to pay off those noteholders and investors.

288. There was no business reason to acquire Yardline. Yardline was losing money, and Silberstein did not think that Yardline had any value to Thrasio. This is confirmed by the fact that less than six months after acquiring Yardline, Thrasio decided to sell it and got millions less than what Thrasio had put into the company.

289. Moreover, Thrasio had no legal obligation to pay off the Convertible Notes and Yardline investors. Thrasio made the “loans” to Yardline simply to protect Cashman from any potential liability he could have faced for his role in the Series A and as a director of Yardline. Silberstein and Cashman engaged in self-dealing by acting in their own interests and/or in the interests of entities other than Thrasio and did not exercise reasonable care in causing Thrasio to acquire Yardline and pay off the Convertible Notes and Yardline investors.

290. At a minimum, Silberstein and Cashman acted grossly negligently and/or recklessly in facilitating Thrasio’s acquisition of Yardline and the payments to noteholders and investors.

291. Silberstein and Cashman did not act in order to achieve any benefit, or accomplish any legitimate corporate purpose for Thrasio, either short term or long term. To the contrary, Silberstein and Cashman acquired Yardline and injected millions into the Company solely to serve their own interests. As demonstrated by the sale of Yardline, Silberstein and Cashman took actions that were adverse to Thrasio's interests.

292. Thrasio was substantially damaged as a direct and proximate result of these breaches of fiduciary duties.

COUNT XVIII
Aiding and Abetting Breach of Fiduciary Duty – Yardline
(Against Boockvar)

293. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

294. As directors of Thrasio, Silberstein and Cashman owed fiduciary duties of good faith, care, and loyalty to Thrasio. As detailed above, Silberstein and Cashman breached their fiduciary duties.

295. Boockvar knew that Silberstein and Cashman had the fiduciary duties alleged herein.

296. Boockvar substantially assisted with the breaches of fiduciary duties of Silberstein and Cashman and was an active and knowing participant in those breaches of fiduciary duties by, among other things, facilitating Thrasio's acquisition of Yardline and the "loans" from Thrasio to Yardline to pay the Convertible Noteholders and Yardline investors.

297. Thrasio was substantially damaged as a direct and proximate result of these breaches of fiduciary duties.

COUNT XIX
Avoidance and Recovery of Yardline Transfers as Constructive Fraudulent Transfers
(Against Cashman; Horowitz; and Yardline)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

298. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

299. Thrasio provided approximately \$20.9 million to Yardline in exchange for Promissory Notes (that were later forgiven without consideration) in 2021. Specifically, Thrasio provided to Yardline:

- \$2,000,000 on April 29, 2021, for a Promissory Note;
- \$5,370,000 on April 29, 2021, for a Promissory Note;
- \$6,252,851 on May 3, 2021, for a Promissory Note;
- \$449,916 on May 4, 2021, for a Promissory Note;
- \$2,500,000 on May 6, 2021, for a Promissory Note; and
- \$4,355,023 on May 7, 2021, for a Promissory Note.

300. Additionally, Thrasio made additional “cash injections” to Yardline as follows:

- \$1,000,000 on June 23, 2021;
- \$1,800,000 on September 1, 2021; and
- \$1,300,000 on November 23, 2021.

301. All of these transfers from Thrasio to Yardline occurred in 2021—within four years of the Petition Date.

302. Providing these cash payments to Yardline was a transfer of Thrasio’s property, or an interest in property of Thrasio, Yardline, and/or a transfer for the benefit of Horowitz, Cashman, and Yardline.

303. Thrasio did not receive reasonably equivalent value. Thrasio transferred in total \$20.9 million in cash to Yardline in exchange for the Promissory Notes that it later wrote off/forgave—so Thrasio received no value from the transfers. And Thrasio received no value in exchange for the “cash injections.”

304. Thrasio was insolvent at the time or became insolvent as a result of transferring these cash payments to Yardline. At the time of the transfers, the total fair value of Thrasio’s liabilities exceeded the total amount of Thrasio’s assets. PwC emphasized in Thrasio’s 2020 and 2021 audit reports that there was “substantial doubt” as to Thrasio’s “ability to continue as a going concern.”

305. Additionally, Yardline was insolvent from at least April 2021 through November 2021 and was losing money. During this time, Yardline’s liabilities exceeded its assets, and Yardline was not able to pay its debts as they came due.

306. These transfers were made to Yardline. Horowitz, Cashman, and Yardline were the persons for whose benefit these transfers were made. Defendants schemed to have Thrasio issue the Promissory Notes to Yardline and pay the third-party investors, all to benefit Horowitz and Cashman by ensuring that they would not be sued by Yardline investors. This was done at the expense of Thrasio, which received no consideration for issuing the Promissory Notes.

307. At the time that (or after) Thrasio made these transfers, Thrasio had one or more creditors who could have sought to avoid the transfer under applicable state law.

308. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfers from Horowitz, Cashman, and Yardline.

COUNT XX
Avoidance and Recovery of Yardline Payments as Actual Fraudulent Transfers
(Against Cashman; Horowitz; and Yardline)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

309. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

310. Thrasio provided approximately \$20.9 million to Yardline in exchange for Promissory Notes (that were later forgiven without consideration) in 2021. Specifically, Thrasio provided to Yardline:

- \$2,000,000 on April 29, 2021, for a Promissory Note;
- \$5,370,000 on April 29, 2021, for a Promissory Note;
- \$6,252,851 on May 3, 2021, for a Promissory Note;
- \$449,916 on May 4, 2021, for a Promissory Note;
- \$2,500,000 on May 6, 2021, for a Promissory Note; and
- \$4,355,023 on May 7, 2021, for a Promissory Note.

311. Additionally, Thrasio made additional “cash injections” to Yardline as follows:

- \$1,000,000 on June 23, 2021;
- \$1,800,000 on September 1, 2021; and
- \$1,300,000 on November 23, 2021.

312. All of these transfers from Thrasio to Yardline occurred in 2021—within four years of the Petition Date.

313. Providing these cash payments to Yardline was a transfer of Thrasio’s property, or an interest in property of Thrasio, Yardline, and/or a transfer for the benefit of Horowitz, Cashman, and Yardline.

314. These transfers were done with actual intent to hinder, delay, and/or defraud Thrasio's creditors.

315. These transfers involved a number of "badges of fraud."

316. Yardline's founder and CEO, Horowitz, was a former insider of Thrasio and had a close relationship with Cashman, a Thrasio insider.

317. A number of Yardline's directors were insiders of Thrasio.

318. Thrasio did not receive reasonably equivalent value. Thrasio transferred in total \$20.9 million in cash to Yardline in exchange for the Promissory Notes that it later wrote off/forgave—so Thrasio received no value from the transfers. And Thrasio received no value in exchange for the "cash injections."

319. Thrasio was insolvent at the time or became insolvent as a result of transferring these cash payments to Yardline. At the time of the transfers, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets. PwC emphasized in Thrasio's 2020 and 2021 audit reports that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

320. Additionally, Yardline was insolvent from at least April 2021 through November 2021 and was losing money. During this time, Yardline's liabilities exceeded its assets, and Yardline was not able to pay its debts as they came due.

321. These transfers were therefore actual fraudulent transfers which should be avoided pursuant to Section 544 of the Bankruptcy Code and applicable state law.

322. These transfers were made to Yardline. Horowitz, Cashman, and Yardline were the persons for whose benefit these transfers were made. Defendants schemed to have Thrasio issue the Promissory Notes to Yardline and pay the third-party investors, all to benefit Horowitz

and Cashman by ensuring that they would not be sued by Yardline investors. This was done at the expense of Thrasio, which received no consideration for issuing the Promissory Notes and making the cash injections.

323. At the time of these transfers, Thrasio had one or more creditors who could have sought to avoid the transfers of the payments under applicable state law.

324. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfers from Horowitz, Cashman, and Yardline.

COUNT XXI
Avoidance and Recovery of Yardline Transfers as Constructive Fraudulent Transfers
(Against Cashman; Horowitz; and Yardline)

11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

325. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

326. Thrasio writing off/forgiving the Promissory Notes occurred in 2021—within four years of the Petition Date.

327. Writing off/forgiving the six Promissory Notes was a transfer of Thrasio’s property, or an interest in property of Thrasio, to Horowitz, Cashman, and Yardline and/or a transfer for the benefit of Horowitz, Cashman, and Yardline.

328. Thrasio did not receive reasonably equivalent value. Thrasio provided Yardline with Promissory Notes totaling \$20.9 million and then forgave the loans for nothing in return.

329. Thrasio was insolvent at the time that it wrote off/forgave the Promissory Notes. At the time of the transfer, the total fair value of Thrasio’s liabilities exceeded the total amount of Thrasio’s assets. PwC emphasized in Thrasio’s 2020 and 2021 audit reports that there was “substantial doubt” as to Thrasio’s “ability to continue as a going concern.”

330. Additionally, Yardline was insolvent from at least April 2021 through November 2021 and was losing money. During this time, Yardline's liabilities exceeded its assets, and Yardline was not able to pay its debts as they came due.

331. Horowitz, Cashman, and Yardline were the persons for whose benefit the Promissory Notes were written off/forgiven. Defendants schemed to have Thrasio issue the Promissory Notes to Yardline and pay the third-party investors, all to benefit Horowitz and Cashman by ensuring that they would not be sued by Yardline investors. This was done at the expense of Thrasio, which received no consideration for writing off/forgiving the Promissory Notes.

332. At the time that (or after) Thrasio wrote off/forgave the Promissory Notes, Thrasio had one or more creditors who could have sought to avoid the transfer under applicable state law.

333. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfers from Horowitz, Cashman, and Yardline as the entities for whose benefit such transfers were made.

COUNT XXII
Avoidance and Recovery of Yardline Transfers as Actual Fraudulent Transfers
(Against Cashman; Horowitz; and Yardline)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

334. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

335. Thrasio writing off/forgiving the Promissory Notes occurred in 2021—within four years of the Petition Date.

336. Writing off/forgiving the six Promissory Notes was a transfer of Thrasio's property, or an interest in property of Thrasio, to Horowitz, Cashman, and Yardline and/or a transfer for the benefit of Horowitz, Cashman, and Yardline.

337. Thrasio writing off/forgiving the Promissory Notes was done with actual intent to hinder, delay, and/or defraud Thrasio's creditors.

338. The Yardline transfers involved a number of "badges of fraud."

339. Yardline's founder and CEO, Horowitz, was a former insider of Thrasio and had a close relationship with Cashman, a Thrasio insider.

340. A number of Yardline's directors were insiders of Thrasio.

341. Thrasio did not receive reasonably equivalent value. Thrasio forgave \$20.9 million of Promissory Notes provided to Yardline, but received nothing in return.

342. Thrasio was insolvent at the time or became insolvent as a result of forgiving the Promissory Notes. At the time of the transfer, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets. PwC emphasized in Thrasio's 2020 and 2021 audit reports that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

343. Additionally, Yardline was insolvent from at least April 2021 through November 2021 and was losing money. During this time, Yardline's liabilities exceeded its assets, and Yardline was not able to pay its debts as they came due.

344. Writing off/forgiving the Promissory Notes was therefore an actual fraudulent transfer which should be avoided pursuant to Section 544 of the Bankruptcy Code and applicable state law.

345. Horowitz, Cashman, and Yardline were the persons for whose benefit the Promissory Notes were written off/forgiven. Defendants schemed to have Thrasio issue the Promissory Notes to Yardline and pay the third-party investors, all to benefit Horowitz and Cashman by ensuring that they would not be sued by Yardline investors. This was done at the

expense of Thrasio, which received no consideration for writing off/forgiving the Promissory Notes.

346. At the time that (or after) Thrasio wrote off/forgave the Promissory Notes, Thrasio had one or more creditors who could have sought to avoid the transfer of the payments under applicable state law.

347. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfers from Horowitz, Cashman, and Yardline as the entities for whose benefit such transfers were made.

COUNT XXIII
Avoidance and Recovery of Yardline Transfers as Constructive Fraudulent Transfers
(Against Horowitz and Hudson Palm)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

348. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

349. Thrasio's payment to Hudson Palm of \$1,823,707 on May 10, 2021, occurred within four years of the Petition Date.

350. The transfer from Thrasio to Hudson Palm of \$1,823,707 was a transfer of Thrasio's property, or an interest in property of Thrasio, to Hudson Palm and/or a transfer for the benefit of Horowitz.

351. Thrasio did not receive reasonably equivalent value. Thrasio paid \$1,823,707 to Hudson Palm to purchase Horowitz's and/or Hudson Palm's Yardline shares. But Yardline had no value, and Thrasio had no use for additional shares of an insolvent company.

352. Thrasio was insolvent at the time of the transfer. At the time of the transfer, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets. PwC

emphasized in Thrasio's 2020 and 2021 audit reports that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

353. The transfer was made to Hudson Palm, and Horowitz was the person for whose benefit this transfer was made.

354. At the time that (or after) Thrasio made the transfer, Thrasio had one or more creditors who could have sought to avoid the transfer of the payment under applicable state law.

355. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfers from Horowitz and Hudson Palm.

COUNT XXIV
Avoidance and Recovery of Hudson Palm Payment as an Actual Fraudulent Transfer
(Against Horowitz and Hudson Palm)
11 U.S.C. §§ 544 and 550 and Applicable State Fraudulent Transfer Law

356. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

357. Thrasio's payment to Hudson Palm of \$1,823,707 on May 10, 2021, occurred within four years of the Petition Date.

358. The transfer from Thrasio to Hudson Palm of \$1,823,707 was a transfer of Thrasio's property, or an interest in property of Thrasio, to Hudson Palm and/or a transfer for the benefit of Horowitz.

359. Thrasio made this transfer with actual intent to hinder, delay, and/or defraud its creditors.

360. This transfer involved a number of "badges of fraud."

361. Horowitz was a former Thrasio insider and close friend of Cashman, a Thrasio insider.

362. Thrasio did not receive reasonably equivalent value. Thrasio paid \$1,823,707 to Hudson Palm to purchase Horowitz's and/or Hudson Palm's Yardline shares. But Yardline had no value, and Thrasio had no use for additional shares of an insolvent company.

363. Thrasio was insolvent at the time or became insolvent as a result of making the transfer. At the time of the transfer, the total fair value of Thrasio's liabilities exceeded the total amount of Thrasio's assets. PwC emphasized in Thrasio's 2020 and 2021 audit reports that there was "substantial doubt" as to Thrasio's "ability to continue as a going concern."

364. Additionally, Yardline was insolvent from at least April 2021 through November 2021 and was losing money. During this time, Yardline's liabilities exceeded its assets, and Yardline was not able to pay its debts as they came due.

365. The transfer was therefore an actual fraudulent transfer which should be avoided pursuant to Section 544 of the Bankruptcy Code and applicable state law.

366. The transfer was made to Hudson Palm, and Horowitz was the person for whose benefit this transfer was made.

367. At the time that (or after) Thrasio made the transfer, Thrasio had one or more creditors who could have sought to avoid the transfer of the payment under applicable state law.

368. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, Plaintiff is entitled to recover the value of the transfers from Horowitz and Hudson Palm.

COUNT XXV
Conspiracy to Fraudulently Transfer
Yardline Transfers
(Against Silberstein; Cashman; Boockvar; and Horowitz)

369. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

370. Silberstein, Cashman, Boockvar, and Horowitz schemed to have Thrasio: (i) provide the Promissory Notes to Yardline to pay off Yardline's Convertible Noteholders and investors; (ii) write off/forgive those Promissory Notes; (iii) make "cash injections" to Yardline; and (iv) pay Hudson Palm for additional Yardline shares, all for nothing in return at a time when both Thrasio and Yardline were insolvent. The only justification for these transfers was apparently to benefit Cashman's long-time friend Horowitz and protect Cashman from personal liability. By pursuing and approving these transfers, Silberstein, Cashman, and Boockvar took overt acts to further the conspiracy. Horowitz similarly took on overt act by assisting with facilitating the transfers.

371. As a direct and proximate result of the Defendants' conduct, Thrasio suffered damages.

COUNT XXVI
Waste of Corporate Assets – Yardline
(Against Silberstein; Cashman; and Boockvar)

372. Plaintiff repeats and realleges the other allegations contained in this Complaint as if fully set forth herein.

373. Silberstein, Cashman, and Boockvar involved in self-dealing and caused Thrasio to: (i) provide the Promissory Notes to Yardline to pay off Yardline's Convertible Noteholders and investors; (ii) write off/forgive those Promissory Notes; (iii) make "cash injections" to Yardline; and (iv) pay Hudson Palm for additional Yardline shares, all for nothing in return, thereby wasting Thrasio's valuable corporate assets.

374. Defendants irrationally squandered corporate assets by causing Thrasio to purchase Yardline, a company that Thrasio had assessed was without value, and for which Thrasio had no use. No business person of ordinary sound judgment could conclude that the Company received adequate consideration.

375. As a result of the waste of the corporate assets, Defendants Silberstein, Cashman, and Boockvar are liable to the Company.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order:

- (a) Avoiding and recovering the approximately \$62 million paid to Defendants who were redeeming shareholders in the Tender Offer as actual and/or constructive fraudulent transfers;
- (b) Awarding damages against Silberstein and Cashman for violation of Section 160(a)(1) of the DGCL;
- (c) Awarding damages against Silberstein, Millhouse, Cashman, Cashman Investment, Boockvar, Falcao, Ouhadi, and Rathod, in an amount to be determined at trial, for their breaches of fiduciary duties;
- (d) Requiring Silberstein, Cashman, Boockvar, Falcao, Ouhadi, and Rathod to return all profits they realized as a result of misusing confidential information to conduct secondary sales of their stock in breach of their fiduciary duties;
- (e) Avoiding the Silberstein Release, to the extent enforceable, as an actual and/or constructive fraudulent transfer;
- (f) Avoiding the Cashman Release, to the extent enforceable, as an actual and/or constructive fraudulent transfer;
- (g) Avoiding and recovering the Yardline Transfers as actual and/or constructive fraudulent transfers;
- (h) Avoiding and recovering the payment for Horowitz and/or Hudson Palm's Yardline shares as an actual and/or constructive fraudulent transfer;

- (i) Awarding damages against Yardline, Horowitz, and Hudson Palm, in an amount to be determined at trial;
- (j) Awarding costs, including, but not limited, to attorneys' fees;
- (k) Awarding pre-judgment and post-judgment interest; and
- (l) Granting such other and further relief as the Court may deem just and proper.

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Dated: December 3, 2024

KELLEY DRYE & WARREN LLP

/s/ James S. Carr

James S. Carr, Esq.

Connie Choe, Esq.

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-and-

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Douglas Mannal, Esq. (motion for admission *pro hac vice* forthcoming)

Jamie A. Levitt, Esq.

Theresa A. Foudy, Esq. (motion for admission *pro hac vice* forthcoming)

J. Alexander Lawrence (motion for admission *pro hac vice* forthcoming)

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Counsel for Thrasio Legacy Trust

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

In the matter of:

1 Thrasio One, Inc.,

Debtor

META Advisors, LLC, solely in its capacity as Trustee of
the Thrasio Legacy Trust,

Plaintiff(s)

Case No. 24-11850

v.

Joshua Silberstein; Carlos Cashman; Daniel
Boockvar; Joseph Falcao; Mounir Ouhadi;
Aditya Rathod; Ari Horowitz; Everything's Coming
Up Millhouse, LLC; Cashman Family Investment II, LLC; Hudson Palm LLC; and Yardline Capital Corp.

Defendant(s)

Adversary No. _____

Judge: Christine M. Gravelle

SUMMONS AND NOTICE OF PRETRIAL CONFERENCE IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of Clerk

Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street
Trenton, NJ 08608

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

**Name and Address of
Plaintiff's Attorney**

James S. Carr, Esq.
Connie Choe, Esq.
Kelley Drye & Warren LLP
One Jefferson Road, 2nd Floor
Parsippany, NJ 07054

Lorenzo Marinuzzi, Esq.
Douglas Mannal, Esq. (motion for admission *pro hac vice* forthcoming)
Jamie A. Levitt, Esq.
Theresa A. Foudy, Esq. (motion for admission *pro hac vice* forthcoming)
J. Alexander Lawrence (motion for admission *pro hac vice* forthcoming)
Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019

If you make a motion, your time to answer is governed by Fed.R.Bankr.P. 7012.

YOU ARE NOTIFIED that a pretrial conference of the proceeding commenced by the filing of the complaint will be held at the following time and place.

Address

Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Courtroom:

#3

Date and Time:

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

Jeanne A. Naughton, Clerk

Date: _____

By: _____
Deputy Clerk

rev. 1/4/17

Pursuant to D.N.J. LBR 9019-2, Mediation: Procedures, there is a presumption of mediation in all adversary proceedings. For more information regarding the mediation program see the related Local Rules and forms on the Court's web site: nj.uscourts.gov/mediation.