

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 83598, 84971, and 85358

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IN RE PARAMETRIC SOUND CORPORATION  
SHAREHOLDERS' LITIGATION.

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Electronically Filed  
Jan 12 2023 08:04 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

PAMTP, LLC,

*Appellant,*

v.

KENNETH F. POTASHNER; VTB HOLDINGS, INC.;  
STRIPE GROUP, LLC; SG VTB HOLDINGS, LLC;  
JUERGEN STARK; and KENNETH FOX,

*Respondents.*

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Consolidated Appeals from Final Judgment and Fees and Costs Awards  
Eighth Judicial District Court Case No. A-13-686890-B

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	Trial Exhibit 364	17	AA 3085- AA 3087
	Trial Exhibit 376	9	AA 1574- AA 1575
	Trial Exhibit 413	19	AA 3580- AA 3600
	Trial Exhibit 425	17	AA 3088- AA 3106
	Trial Exhibit 428	18	AA 3411- AA 3415
	Trial Exhibit 464	18	AA 3416- AA 3422
	Trial Exhibit 775	13	AA 2388
	Trial Exhibit 776	13	AA 2389- AA 2390
	Trial Exhibit 781	13	AA 2391- AA 2394
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<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 789	13	AA 2412- AA 2413
	Trial Exhibit 821	13	AA 2414
	Trial Exhibit 837	13	AA 2415- AA 2416
	Trial Exhibit 909	18	AA 3423- AA 3433
	Trial Exhibit 1052	16	AA 2818- AA 2862

## AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 12th day of January, 2023.

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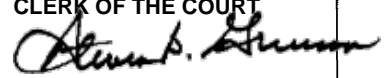
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## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on January 12, 2023, a true and correct copy of the foregoing was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In re PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

) Lead Case No. A-13-686890-B  
) Dept. No. XI

) CLASS ACTION

This Document Relates To:

) AMENDED CLASS ACTION AND  
) DERIVATIVE COMPLAINT

ALL ACTIONS.

) DEMAND FOR JURY TRIAL



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1   **I.     INTRODUCTION**

2           1.     This is a direct stockholder action brought by Grant Oakes and Kearney IRRV Trust  
3 on behalf of the holders of Parametric Sound Corporation (“Parametric” or “PAMT”) common stock  
4 at the time of the Merger (defined below) against its then-current Board of Directors (the “Board” or  
5 the “Parametric Board”), VTB Holdings, Inc. (“VTBH”), Stripes Group, LLC (“Stripes Group”), and  
6 SG VTB Holdings, LLC (“SG VTB”).

7           2.     This is also a stockholder derivative action brought by Lance Mykita on behalf of  
8 nominal defendant Turtle Beach Corporation (“Turtle Beach” or the “Company”) for breach of the  
9 fiduciary duties of loyalty and good faith, gross mismanagement, abuse of control, and corporate  
10 waste against the Parametric Board, and for aiding and abetting against VTBH, Stripes Group, and  
11 SG VTB.<sup>1</sup>

12           3.     Defendants designed the transaction as a dilutive reverse merger wherein the  
13 privately-held VTBH merged into a Parametric subsidiary, at which time Stripes obtained control  
14 over the post-close entity (the “Merger”). Defendants announced the Merger on August 5, 2013, and  
15 the transaction closed on January 15, 2014. Immediately after close of the Merger, Parametric  
16 issued millions of highly dilutive shares to Stripes and VTBH insiders, the net effect being that  
17 Stripes controlled approximately 81% of the post-Merger Company. Meanwhile, Parametric  
18 shareholders, who owned a combined 100% of the Company before the Merger, were reduced to a  
19 minority 19% interest in the post-Merger Company. On May 27, 2014, the Company changed its  
20 name from “Parametric Sound Corporation” to “Turtle Beach Corporation.”

21           4.     It is now irrefutable that the Merger was, and still is, an unmitigated disaster for the  
22 Company and its stockholders. On August 4, 2013, just before the Merger was announced,  
23 Parametric’s stock closed at *\$17.69 per share*. The market reacted negatively to the Merger and by  
24 January 15, 2014, the day the Merger closed, Parametric’s stock dropped to \$14.19 per share.

25  
26           <sup>1</sup> As used herein, “Parametric” refers to the publicly traded entity in the time period leading up to,  
27 and including, the consummation of the Merger. Thus, “Parametric Board” or the “Board” refers to  
28 the Parametric board of directors at the time of the Merger. Several months after the Merger,  
Parametric was renamed “Turtle Beach Corporation.” Where applicable, Stripes Group and SG  
VTB are collectively referred to herein as “Stripes.”

1           5.       Today, the Company's stock price sits at a *\$0.57 per share* (as of its close on  
2 November 28, 2017). In other words, each Parametric stockholder continuing to hold shares lost  
3 over *96%* of the value of his or her investment as a result of the Merger. This decline represents  
4 over *\$100 million* in destroyed market value between pre-Merger Parametric and the post-Merger  
5 entity.

6           6.       This remarkable destruction of value was not an accident, nor was it the result of  
7 unforeseen problems. Stripes knew that VTBH was under severe financial distress, but forced the  
8 deal in order to gain liquidity via the public markets at the expense of Parametric stockholders.  
9 Since the Merger, Stripes insiders have used their control to usurp the Company's publicly traded  
10 status and extract tens of millions of dollars for themselves, while the Company sinks.

11          7.       Throughout the Merger process, Stripes manipulated, encouraged, and emboldened  
12 improper and selfish conduct by Parametric's corporate fiduciaries. Kenneth Potashner  
13 ("Potashner") and the full Board knew of VTBH's financial problems, but concealed the facts from  
14 Parametric stockholders and completed the deal regardless. Here, however, defendants' misconduct  
15 is best described in the contemporaneous statements, emails, and words of the defendants  
16 themselves, including the following:

17          8.       Defendant and Parametric Board member Robert Kaplan ("Kaplan"), regarding  
18 Parametric's Chief Executive Officer ("CEO") during Merger negotiations: "Ken [Potashner] is  
19 totally conflicted, ignored his fiduciary responsibility to our shareholders, and has been negotiating  
20 constantly for his own self-interest."<sup>2</sup>

21          9.       Defendant and Parametric Board member Elwood G. Norris ("Norris") pleading with  
22 Potashner during Merger negotiations: "Please start acting like you are working for PAMT, not  
23 yourself!"<sup>3</sup>

24          10.       Defendant and Parametric CEO Potashner regarding his expectation of personal  
25 benefit from the Merger: "[The] whole reason that I entered into the deal in the first place [was] [t]o  
26

---

27 <sup>2</sup> PAMTNV0112517.

28 <sup>3</sup> PAMTNV0112541.

1 build a multi-billion dollar [subsidiary] and benefit from it. . . . My intent was to sell PAMT at the  
2 right time and keep [the subsidiary] as the foundation of a new company.”<sup>4</sup>

3 11. Defendant and Parametric Board member Kaplan requesting personal payouts for  
4 voting on the Merger: “I think the BoD should pass a resolution giving some kind of healthy golden  
5 parachutes to all the BoD members upon their termination, *e.g.*, stock options . . . . My real  
6 suggestion is to have an average of all the executive bonuses and that figure is what the IDs  
7 [Independent Directors] should get. Ken [Potashner] has granted himself rather large bonuses. This  
8 will get even with him, not that I want to get even, I really just want equality.”<sup>5</sup>

9 12. Kaplan, regarding Potashner’s unilateral Merger discussions with the VTBH: “I feel  
10 we [the Board] have been left in the dark and have had misrepresentations presented to us.”<sup>6</sup>

11 13. Potashner, regarding his suppression of positive company announcements in order to  
12 create a manipulated premium on the Merger: “[Stripes’] preference is that we don’t defend the  
13 stock in that premium on deal will look better. . . . Withholding licens[ing] deals and  
14 announcements is contrary to the responsibility that I have.”<sup>7</sup>

15 14. Potashner writing to Stripes regarding his stalling of licensing partners during the  
16 Merger process (which he continued to stall): “My stock is taking a beating due to me deferring  
17 signing licensing deals. Any ideas? . . . I am still in a precarious situation delaying licenses that  
18 [would otherwise] bring us economic value and valuation.”<sup>8</sup>

19 15. Potashner upon learning (but not disclosing to stockholders) of VTBH’s distressed  
20 financial state: “The biggest issue outstanding in my mind is an issue concerning \$12M of debt that  
21 VTB[H] has that was not disclosed to us at the time we negotiated the exchange rates. . . . I believe  
22 this is indication that their balance sheet wasn’t as strong as they represented and we should get  
23

24 <sup>4</sup> VTBH017661; VTBH000124.

25 <sup>5</sup> PAMT0033288; PAMT0072292.

26 <sup>6</sup> PAMT0033243.

27 <sup>7</sup> VTBH001759; PAMT0040595.

28 <sup>8</sup> PAMT0039840; VTBH002189; VTBH001759; PAMTNV0106815.

1 something as an offset. . . . I think we (PAMT) are under tremendous pressure in that the [VTBH]  
2 numbers keep getting softer, the apparent lack of controls, and the covenant exposures. . . . This is  
3 getting scary.”<sup>9</sup> Yet the Parametric Board did not negotiate any “offset.”

4 16. Potashner to Stripes regarding the Merger proxy: “I have to do some damage control  
5 necessary to assure success with shareholder vote. . . . [A]s we discussed, it is critical that the proxy  
6 leaves the tone of very positive financial numbers going forward even [if] the actuals are weak for  
7 2013.”<sup>10</sup>

8 17. Potashner to Stripes, again regarding VTBH’s distressed financial state: “Please note  
9 I didn’t try to renegotiate deal after you did a downward reforecast and then missed that reforecast.”  
10 “The war is going to be getting shareholder support with deal terms that keep getting worse. . . .”  
11 “[I] have been going over [VTBH] financials in proxy with Jim. Shitty numbers. Money losing,  
12 negative equity, etc. If Stripes was really interested in doing an IPO next year they never should  
13 have replaced cash with debt layer. Anyway glad to rescue your sorry ass and get you public.”<sup>11</sup>

14 18. Potashner to VTBH regarding the post-singing “go-shop,” during which he was  
15 supposed to be soliciting competing bids from companies like Amazon.com, Inc. (“Amazon”): “I  
16 like our deal. I don’t want to be an operating unit of Amazon. . . . You and I are totally aligned. I  
17 know the [Parametric] stock price doesn’t matter now for your or mine personal liquidity.”<sup>12</sup>

18 19. Potashner to VTBH regarding his work to block competing acquirers from submitting  
19 higher all-cash acquisition offers for Parametric stockholders:

20 Dolby and Amazon had interest. I will take you through the discussions when we are  
21 together. I put boundaries that were very difficult in that I didn’t want an exit given  
22 that the \$150M valuation although good for merger calculations was light in mind for  
23 an exit. I would not have let you take us private either. Better to discuss face to  
24 face.<sup>13</sup>

24 <sup>9</sup> PAMTNV0105759; VTBH073092.

25 <sup>10</sup> PAMTNV0104228; VTBH056534.

26 <sup>11</sup> PAMTNV0095569; PAMTNV0099861; VTBH062712; PAMTNV0096468.

27 <sup>12</sup> VTBH004040.

28 <sup>13</sup> PAMTNV0090998.

1           20.     To place that last admission in context, a valuation for Parametric of \$150 million  
2 would have amounted to above \$19.00 per share at the time of the Merger. On August 2, 2013, just  
3 prior to announcement of the Merger, for example, Parametric's market capitalization was  
4 approximately \$135 million.<sup>14</sup> Yet Potashner "put boundaries in place" to prevent \$150 million  
5 offers because he personally did not want them – a higher price "didn't matter" to his "personal  
6 liquidity." Now the Company's stock sits at 57 cents per share and is on the verge of being delisted  
7 from the NASDAQ exchange.

8           21.     Defendants effectuated the Merger by issuing a materially misleading and coercive  
9 Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 (the  
10 "Proxy"), filed with the SEC on December 3, 2013. The Proxy misrepresented a multitude of  
11 information as described herein and painted a particularly misleading picture regarding VTBH's  
12 deteriorating finances and actual value.

13           22.     In sum, the Merger constituted a fraudulent expropriation of equity, whereby a  
14 majority-conflicted Parametric Board, for self-interested reasons, excessively overvalued VTBH's  
15 assets and gave up a controlling stake in the Company for negative value. This gross overvaluation  
16 was not due to an honest error of judgment, but was the result of intentional bad faith and a reckless  
17 indifference to the rights of Parametric's former stockholders. In addition, in light of their joint  
18 conspiracy, Stripes, VTBH, and the Parametric Board acted as a control group that intentionally  
19 harmed Parametric stockholders while each reaping unique, personal benefits. All defendants had  
20 the ability to use the levers of their corporate control to benefit themselves and each took advantage  
21 of that opportunity.

22           23.     The current board of directors of the Company has not filed suit against Stripes,  
23 VTBH, and the former Parametric directors responsible for this debacle, which, to date, has cost the  
24 Company over one-hundred million dollars in market value. Indeed, a majority of the Company's  
25 board members are presently reaping the benefits, personally and through Stripes, from their  
26 usurpation of the Company's publicly traded status. The current directors also will not commence  
27

28 <sup>14</sup> PAMTNV0101319.



1 such legal action because a majority of the current directors is beholden to Stripes for their  
2 livelihoods and, therefore, will not expose Stripes to significant liability and bring suit against  
3 Stripes. Thus, a majority of the current Company board is disabled from fairly and objectively  
4 considering any pre-suit demand that plaintiff may have made. As such, a pre-suit demand is  
5 excused as futile.

## 6 **II. JURISDICTION AND VENUE**

7 24. Pursuant to the Constitution of the State of Nevada, Article 6, §6, this Court has  
8 jurisdiction over all causes of action asserted herein. This Court has jurisdiction over each defendant  
9 named herein because each defendant is either a corporation that is incorporated in, conducts  
10 business in, and maintains operations in this State, or is an individual who has sufficient minimum  
11 contacts with the State of Nevada so as to render the exercise of jurisdiction by the Nevada courts  
12 permissible under traditional notions of fair play and substantial justice. Parametric was a public  
13 corporation incorporated under the laws of the state of Nevada; Turtle Beach (the same entity)  
14 remains a public corporation incorporated under the laws of the state of Nevada.

15 25. In addition, the Court has jurisdiction over Stripes Group and SG VTB because both  
16 entities maintain substantial, continuous and systematic contacts with Nevada and the aiding and  
17 abetting cause of action against Stripes Group and SG VTB arises from Stripes Group's and SG  
18 VTB's contacts with Nevada. Stripes Group and SG VTB purposefully availed themselves of the  
19 protection of the laws of Nevada, purposefully established contacts with Nevada, and affirmatively  
20 directed contact toward Nevada. Parametric was, and Turtle Beach is, a Nevada corporation. Stripes  
21 Group and SG VTB invoked the protection of Nevada law by forcing a merger between a company  
22 they controlled, Turtle Beach, and Parametric, a Nevada corporation. Thereafter, Stripes Group and  
23 SG VTB chose to continue to invoke the protection of Nevada law by retaining the Nevada corporate  
24 form for the Company, which they control (as described below). Indeed, Kenneth Fox ("Fox"), the  
25 founder, sole owner, and Managing General Partner of Stripes Group and sole manager of SG VTB,  
26 signed the Agreement and Plan of Merger ("Merger Agreement"). Stripes Group and SG VTB also  
27 aided and abetted breaches of fiduciary duty by directors of a Nevada corporation, which further  
28 supports the exercise of jurisdiction by Nevada courts.

1 **III. PARTIES AND RELEVANT NON-PARTIES**

2 **A. Parties**

3 26. Direct Plaintiff Grant Oakes was a shareholder of Parametric during the Merger  
4 process.

5 27. Direct Plaintiff Kearney IRRV Trust was a shareholder of Parametric during the  
6 Merger process.

7 28. Derivative Plaintiff Lance Mykita was a shareholder at the time of the Merger and is  
8 currently a shareholder of the Company.

9 29. Nominal Defendant Turtle Beach is headquartered in San Diego, California and was  
10 incorporated in the state of Nevada in 2010. The Company calls itself a “premier audio technology  
11 company with expertise and experience in developing, commercializing and marketing innovative  
12 products across a range of large addressable markets under the Turtle Beach® and HyperSound®  
13 brands.” The Company’s stock is (as of the date of this filing) traded on NASDAQ Global Market  
14 under the symbol HEAR.

15 30. Defendant Potashner was the Executive Chairman of Parametric’s Board at the time  
16 of the Merger. He was appointed a director in December 2011 and Executive Chairman in March  
17 2012. He essentially acted as Parametric’s CEO.

18 31. Defendant Norris was a member of Parametric’s Board at the time of the Merger and  
19 is Parametric’s founder. He served as Parametric’s CEO and Chairman of the Board since the  
20 Company’s incorporation on June 2, 2010, but resigned from these positions concurrent with the  
21 appointment of Potashner as the Company’s Executive Chairman in March 2012. Norris remained  
22 with the Company post-Merger as its “Chief Scientist” at least through the end of 2016.

23 32. Defendant Seth Putterman (“Putterman”) was a member of Parametric’s Board at the  
24 time of the Merger. He was appointed a director in May 2011.

25 33. Defendant Kaplan was a member of Parametric’s Board at the time of the Merger.  
26 He was appointed a director in May 2011.

27 34. Defendant Andrew Wolfe (“Wolfe”) was a member of Parametric’s Board at the time  
28 of the Merger. He was appointed a director in February 2012.

1           35. Defendant James L. Honore (“Honore”) was a member of Parametric’s Board at the  
2 time of the Merger. He was appointed a director in March 2012.

3           36. The Parametric Board members (other than Potashner) named above in ¶¶31-35 are  
4 sometimes collectively referred to herein as the “Outside Directors.”<sup>15</sup>

5           37. The defendants named above in ¶¶30-35 are sometimes collectively referred to herein  
6 as the “Individual Defendants.”

7           38. Defendant VTBH was a company that designed and marketed audio peripherals for  
8 video game, personal computer, and mobile platforms. It was headquartered in Valhalla, New York.  
9 It was majority owned by Stripes Group and SG VTB. VTBH is not a wholly owned subsidiary of  
10 the Company, as its Series B preferred stock currently remain outstanding.

11           39. Defendant Stripes Group is a private equity firm focused on internet, software,  
12 healthcare, IT and branded consumer products businesses. Stripes Group is incorporated in  
13 Delaware and headquartered at 402 West 13th Street, New York, NY 10014.

14           40. Defendant SG VTB is a Delaware LLC and is a wholly-owned subsidiary of Stripes  
15 Group. Fox is its sole manager. Stripes Group formed SG VTB in 2010 in order to acquire a  
16 majority position in VTBH. SG VTB is an investment vehicle for Stripes Group.

17           **B. Stripes Principals and Other Relevant Non-Defendants**

18           41. Kenneth Fox is Stripes Group’s founder and Managing General Partner. Fox is also  
19 the sole manager of SG VTB, which is the largest current stockholder of the Company (along with a  
20 “control group” controlled by Fox and Stripes). Fox signed the Merger Agreement, which  
21 effectuated the Merger described herein. Fox directly participated in the Merger process and  
22 personally directed and controlled Stripes Group and VTBH principals throughout the Merger  
23 process. Fox sits on the Company’s current board of directors.

24           42. Ronald Doornink (“Doornink”) is an Operating Partner of Stripes Group and has been  
25 a principal at Stripes Group since May 2006. Doornink was the Chairman of VTBH during the sale

26 <sup>15</sup> While Norris held the position of “President and Chief Scientist” and was thus a member of  
27 Parametric’s management during the Merger process, he did not directly participate in Potashner’s  
28 unilateral Merger negotiations with VTBH and Stripes, and is thus referenced as an “Outside  
Director” for purposes of this Complaint.

1 process, and is now Board Chairman of the Company. Doornink is also part of the current “control  
2 group,” which owns a majority of the Company’s outstanding shares. Doornink was instrumental  
3 for Stripes Group in effectuating the Merger. Doornink is currently the Chairman of the Company’s  
4 current board of directors.

5 43. Karen Kenworthy (“Kenworthy”) is a partner at Stripes Group and has been with  
6 Stripes Group since 2006. As detailed herein, Kenworthy was intimately involved in the Merger  
7 process.

8 44. Juergen Stark (“Stark”) was CEO of VTBH during the sale process, and was named  
9 to that position by Stripes in September 2012. During the Merger process, Stripes demanded that  
10 Stark continue as CEO of Turtle Beach post-Merger and Stark remains in that position today. Stark  
11 also sits on the Company’s current board of directors. As with Fox, Doornink, and Kenworthy,  
12 Stark frequently interacted with Potashner throughout the Merger process and was fully aware of,  
13 and encouraged, Potashner’s misconduct as set forth herein.

14 45. James Barnes (“Barnes”) was Parametric’s Chief Financial Officer (“CFO”) during  
15 the Merger process, but was ousted by Stripes following completion of the Merger.

16 46. John Todd (“Todd”) was a Parametric “consultant” during the sales process, was  
17 hired by Potashner, and was directly involved (through Potashner) in the Merger. Like Potashner,  
18 Todd was one of the few option holders in HyperSound Health, Inc. (“HHI”). Todd has been found  
19 liable to the SEC for securities fraud. In 2012, the Southern District of California entered final  
20 judgment after the Ninth Circuit found substantial evidence in the trial record to support a  
21 unanimous 2007 jury verdict that found Todd unlawfully misrepresented a company’s financial  
22 condition while CFO. In addition to monetary penalties, Todd was banned from acting as an officer  
23 of any public company for a ten-year period. Likewise, the State of California has prohibited Todd  
24 from operating a franchise within the state, because, given his history of fraud, “the involvement of  
25 Todd in the sale or management of [a] franchise in this State would create unreasonable risk to  
26 prospective franchisees.”<sup>16</sup>

27  
28 <sup>16</sup> [www.dbo.ca.gov/ENF/pdf/b/BevMaxFranchising\\_SIS.pdf](http://www.dbo.ca.gov/ENF/pdf/b/BevMaxFranchising_SIS.pdf).

1 **IV. ENCOURAGED BY STRIPES AND VTBH, THE PARAMETRIC BOARD**  
2 **ENGAGED IN DISLOYAL AND BAD FAITH CONDUCT DURING THE**  
3 **MERGER PROCESS**

4 47. Potashner met with Doornink, Kenworthy, and Stark throughout March and April  
5 2013 and ironed out a deal on the Merger. During that time, Potashner sought the assistance of  
6 bankers at Houlihan Lokey Capital, Inc. ("Houlihan Lokey"), which already harbored a conflicting  
7 relationship with Stripes Group. Potashner wasted no time in threatening the Outside Directors to go  
8 along with the Merger. On March 30, 2013, regarding his just-commenced negotiations with Stripes  
9 and VTBH, Potashner wrote to Norris: "If the Board costs us this deal I will look for them all to  
10 resign or I will resign." Norris responded to other Board members, "Is this blackmail or what[?]"<sup>17</sup>

11 48. On April 19, 2013, Potashner reached an agreement on the Merger with Stripes and  
12 VTBH without consulting the Outside Directors or conducting any real diligence or audit of VTBH's  
13 finances. Potashner's initial term sheet contemplated a reverse merger at a 78%/22% split, meaning  
14 that Parametric stockholders would receive 22% of the combined company after the Merger.<sup>18</sup>

15 49. After Potashner's initial agreement, there was no improvement in the final bid from  
16 VTBH – it actually got worse. By the time the Board signed the Merger Agreement in August 2013,  
17 Parametric shareholders' post-Merger interest had dropped from 22% down to 19%.

18 50. Over the next two months, the Outside Directors continued to allow Potashner to  
19 negotiate the Merger with no real oversight, supervision or guidance. For example, from April 25,  
20 2013 to June 25, 2013, the Board held just two telephone conferences, one lasting a mere 28 minutes  
21 and the other lasting just 45 minutes. The Outside Directors requested a copy of the draft-Merger  
22 Agreement for the first time on July 1, 2013. A quick review of Potashner's draft caused Outside  
23 Director Kaplan to state that: "I needed this as I feel we have been left in the dark and have had  
24 misrepresentations presented to us."<sup>19</sup> During this time, Potashner conceded that the Outside

25  
26 <sup>17</sup> PAMT0033560-62.

27 <sup>18</sup> PAMT0049600-07; PAMT0006093-103.

28 <sup>19</sup> PAMT0061426.

1 Directors also informed him that he was “giving the company away.”<sup>20</sup> Despite those accusations,  
2 the Outside Directors did nothing to stop Potashner. Worse, they enabled him.

3 **A. Potashner Defied Board Orders Then Obtained a Payoff for His**  
4 **Options in HHI, a Parametric Subsidiary**

5 51. Throughout the Merger process, Potashner personally held an ownership interest in a  
6 Parametric subsidiary called HyperSound Health, Inc., or “HHI.” In 2012, Parametric formed HHI  
7 “to develop technology for products targeting persons requiring sound amplification and the more  
8 than 36 million Americans who suffer from hearing loss.”<sup>21</sup> Potashner saw great value in HHI and,  
9 in part, effectuated the Merger because he believed that he could continue to profit from HHI after  
10 the deal. Potashner repeatedly stated that he believed HHI was worth \$1 billion.<sup>22</sup> Whether or not  
11 that valuation was objectively supportable, Potashner believed it and worked to secure that value for  
12 himself.

13 52. This conflict is better described in Potashner’s own words. Potashner confided to  
14 Stark on July 11, 2013 that the “whole reason that I entered into the deal [with VTBH] in the first  
15 place [was] [t]o build a multi-billion dollar HHI and benefit from it.”<sup>23</sup> In the same email, Potashner  
16 described his request for a secret post-close consulting agreement, writing: “I . . . said in a  
17 gentlemen agreement to give me a consulting deal if I couldn’t talk you into keeping [HHI] equal to  
18 what you think my stake was worth.”<sup>24</sup> Stripes was aware of Potashner’s confession.<sup>25</sup>

19 53. A few days later, on July 20, 2013, Potashner described his HHI-related conflict  
20 directly to Stripes as follows:

21 As we established HHi my intention was to hire a new CEO for PAMT and  
22 commit my full energies to developing HHi. I got BOD support, we hired a search

23 <sup>20</sup> VTBH008868.

24 <sup>21</sup> <http://corp.turtlebeach.com/media-resources/releases/releases-detail/125/parametric-sound-corporation-reports-year-end-fiscal-2012-results>.

25 <sup>22</sup> VTBH005061; PAMTNV0113764.

26 <sup>23</sup> PAMTNV0105035; VTBH009741.

27 <sup>24</sup> *Id.*

28 <sup>25</sup> VTBH017661.

1 firm (swbi), and actually were interviewing CEO candidates on the first day I met  
2 Juergen [Stark] . . . . My intent was to sell PAMT at the right time and keep HHI as  
3 the foundation of a new company. . . . The problem very simply is that [you] didn't  
sign up for buying party of the company, you wanted it all.<sup>26</sup>

4 54. Stark considered it remarkable that he was even involved "in a discussion where 2  
5 insiders somehow have a potential future ownership stake in [HHI] that is now driving the dynamics  
6 of the [overall] deal . . . it's just crazy."<sup>27</sup>

7 55. In fact, when selecting the Merger form, Stark reported that Potashner "said he liked  
8 the reverse merger option the best and is happy we are headed in that direction because it 'allows  
9 him to participate in the upside of commercial and health [HHI] which he feels is large.'"<sup>28</sup> Notably,  
10 Fox responded that Potashner's self-interest was "[g]ood news."<sup>29</sup>

11 56. This conflict did not exist in a vacuum, as Potashner acted in furtherance of his HHI-  
12 related objectives throughout the Merger process. In his first meetings with Stripes and VTBH in  
13 March and April 2013, Potashner repeatedly expressed a desire to carve out HHI and "make sure the  
14 potential value in health is enabled to occur."<sup>30</sup>

15 57. On July 1, 2013, the Parametric Board held a meeting to discuss Potashner's HHI-  
16 related conflict. Just before the meeting, Potashner was caught lying to the Board about whether he  
17 had reached an agreement with VTBH and Stripes regarding his HHI options.<sup>31</sup> Potashner said an  
18 agreement was finalized, but Stark confirmed to the Outside Directors this was false.<sup>32</sup> During the  
19 July 1, 2013 meeting, the Board gave its first of three instructions to Potashner that he "immediately  
20  
21

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22 <sup>26</sup> VTBH000124.

23 <sup>27</sup> PAMTNV0104290.

24 <sup>28</sup> VTBH007727.

25 <sup>29</sup> *Id.*

26 <sup>30</sup> VTBH002990; VTBH006603.

27 <sup>31</sup> PAMT0000160.

28 <sup>32</sup> *Id.*

1 cease all discussions with [Stripes and VTBH] regarding HHI and HHI stock options to avoid any  
2 conflict of interest and attain clarity regarding the position of [Stripes and VTBH] on this issue.”<sup>33</sup>

3 58. This mandatory blackout period existed from Monday, July 1, 2013 through the close  
4 of the Merger. Potashner violated the instruction on multiple occasions. Stripes, on the other hand,  
5 knew of Potashner’s ban and, after initially resisting, willingly participated in Potashner’s prohibited  
6 HHI discussions. Indeed, the following interactions occurred during just the first two days of the  
7 blackout period:

- 8 • Tuesday, July 2, 2013: The morning following the instruction to “immediately  
9 cease” HHI-related discussions, Potashner emails Stark and Doornink at 6:47 a.m. to  
10 justify his position on HHI and invite Doornink to discuss the matter at dinner the  
11 upcoming Sunday.<sup>34</sup> Potashner and Stark also speak by phone that evening about  
12 HHI.<sup>35</sup>
- 13 • Wednesday, July 3, 2013: Potashner writes Stark to propose that HHI option-holders  
14 (including Potashner) retain their interest in HHI, writing: “At a personal level I  
15 believe [retaining HHI] will be supported and avoid scenarios that I believe would  
16 put substantial risk and litigation exposures into the PAMT/VTB transaction.”<sup>36</sup>  
17 Stark knew this contact was improper, responding, “Shouldn’t I be discussing this  
18 with Seth [Putterman] and Jim [Barnes]?”<sup>37</sup> Despite that knowledge, Stark continues  
19 to discuss HHI with Potashner.

20 59. On Friday, July 5, 2013, following a second Parametric Board meeting on HHI,  
21 Wolfe informed Potashner:

22           Regarding HHI related matters, the Board affirmed its prior direction to you  
23           to avoid all discussions with VTB/Juergen/Stripes regarding your HHI stock options

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24 <sup>33</sup> *Id.*

25 <sup>34</sup> PAMTNV0105781.

26 <sup>35</sup> PAMT0033890.

27 <sup>36</sup> PAMTNV0105854.

28 <sup>37</sup> *Id.*



1 since you have a conflict of interest. Because your stock options are interrelated with  
2 the stock options of John [Todd] and the doctors of HHI, you should also avoid any  
discussion of their stock options or HHI in general.<sup>38</sup>

3 60. Potashner responded, "I understand your request relative [to] HHI negotiations and  
4 will comply."<sup>39</sup> As one might expect, Potashner was lying. Potashner thereafter engaged in the  
5 following prohibited communications:

- 6 • Saturday, July 6, 2013: Potashner forwards Stark a proposal from Wolfe (not meant  
7 for Stark) providing that Potashner keep all of his HHI shares.<sup>40</sup> Potashner stated,  
8 "[a]s I mentioned, the bankers are running an analysis as well and I expect it to  
9 confirm this view." Potashner concluded by asking Stark to keep the email  
10 confidential.<sup>41</sup>
- 11 • Sunday, July 7, 2013: Potashner meets with Stark in person to discuss HHI-related  
12 issues.
- 13 • Tuesday, July 9, 2013: Potashner proposes to meet with Stark, Barnes, and HHI's  
14 consulting doctors to discuss an HHI spin-out transaction.<sup>42</sup>
- 15 • Thursday, July 11, 2013: Potashner and Stark discuss HHI valuation details over  
16 email, while Potashner continues to argue his position that HHI be retained as a  
17 subsidiary, describing HHI as a "cottage" in which Potashner wanted to "live" post-  
18 Merger.<sup>43</sup> Potashner forwards his "HHI as a cottage" email chain with Stark to  
19 colleagues at another company, bragging that it showed "[h]ow to harass the CEO of  
20  
21  
22

23 <sup>38</sup> PAMT0041051.

24 <sup>39</sup> PAMTNV0115321.

25 <sup>40</sup> PAMTNV0105120.

26 <sup>41</sup> PAMTNV0105120.

27 <sup>42</sup> VTBH001503.

28 <sup>43</sup> PAMTNV0104270; PAMTNV0104315.

- 1 a company that is effectively buying you into an entity structure you require using  
2 parables.”<sup>44</sup>
- 3 • Saturday, July 13, 2013: Potashner invites Stark to discuss HHI issues “by phone  
4 today and then in person on Sunday.”<sup>45</sup> Stark responds to confirm a meeting with  
5 Potashner regarding HHI the upcoming Wednesday.
  - 6 • Sunday, July 14, 2013: Potashner and Stark discuss HHI in detail over email, where  
7 Potashner concludes by again explaining, “I am convinced we can’t solve [HHI  
8 issues] pre-deal because of litigation scenarios plus shareholder vote issue. I am  
9 convinced we can solve post deal.”<sup>46</sup>
  - 10 • Monday, July 15, 2013: Potashner emails Stark to negotiate a list of five  
11 “[c]oncessions made on HHI,” concluding, “hope you can be flexible and we get the  
12 deal done.”<sup>47</sup> Stark keeps Stripes and Doornink informed of Potashner’s improper  
13 communications.<sup>48</sup>
  - 14 • Wednesday, July 17, 2013: Potashner and Stark meet with Barnes and doctors  
15 working with HHI to discuss HHI-related issues. Following the meeting, Potashner  
16 emails Stark regarding the scope of HHI’s license.<sup>49</sup>
  - 17 • Thursday, July 18, 2013: Potashner and Doornink discuss HHI by phone and, as a  
18 result, Potashner states that “I will make a proposal to my BOD on HHI Saturday.”<sup>50</sup>
- 19 61. On Friday, July 19, 2013, Outside Director Norris emailed Potashner to reiterate the  
20 ban on HHI discussions:

21 

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<sup>44</sup> PAMTNV0104315.

22 <sup>45</sup> PAMTNV0104228.

23 <sup>46</sup> PAMTNV0104263.

24 <sup>47</sup> PAMTNV0104268.

25 <sup>48</sup> VTBH013712.

26 <sup>49</sup> VTBH001516.

27 <sup>50</sup> VTBH002140.

1 It turns out you have been speaking with TB folks without Andy in on the  
2 conversation(s). I expressly remember the board having stated that you are NOT  
3 authorized to do that as it relates to the subject of HHI. Phone calls, emails, texts,  
etc. You are major conflicted on that matter.

4 Please start acting like you are working for PAMT, not yourself!<sup>51</sup>

5 62. Unfortunately, after Potashner browbeat Norris and the other Outside Directors into  
6 submission (as described below), the Outside Directors would not order Potashner to do anything  
7 again. So, Potashner continued his prohibited discussions:

- 8 • Friday, July 19, 2013: In support of his ownership interest in HHI, Potashner emails  
9 Stark to describe an earlier “precedence” where executives at Maxwell Technologies  
10 (including Potashner) held interest in a subsidiary company.<sup>52</sup> The same day,  
11 Potashner, Stark, and others – with no Outside Directors present – conduct a  
12 conference call to discuss HHI-related issues. Stark writes Potashner, “geezus, I  
13 continue to be stunned that you don’t see the significant issues with HHI. [W]hat a  
14 gigantic mess. [R]on [Doornink] is 100% aligned with this view.”<sup>53</sup>
- 15 • Saturday, July 20, 2013: Potashner writes Doornink, stating that “[a]s we established  
16 HHI, my intention was to hire a new CEO for PAMT and commit my full energies to  
17 developing HHI. . . . My intent was to sell PAMT at the right time and keep HHI as  
18 the foundation of a new company.”<sup>54</sup>
- 19 • Sunday, July 21, 2013: Potashner asks Stark for a continued role with HHI post  
20 close, stating: “If I did a good job on HHI and we agreed that there was an options  
21 scenario for me there tied to downstream vesting . . . . By then I plan on having it  
22 worth \$100m.”<sup>55</sup> Potashner emails Doornink the same day, writing: “Hi Ron[.]

23  
24 <sup>51</sup> PAMTNV0112541.

25 <sup>52</sup> PAMTNV0104836.

26 <sup>53</sup> PAMTNV0104902.

27 <sup>54</sup> PAMTNV0104837.

28 <sup>55</sup> PAMTNV0104912.

1 Requiring HHI options to be canceled unconditionally cancelled prior to the [Merger  
2 Agreement] signing, not at close, is an unreasonable request. You are telling us how  
3 we have to run our business even in the event we don't close the deal."<sup>56</sup> Potashner  
4 and Doornink hash out a deal on HHI over ensuing emails that day, with no one else  
5 copied.<sup>57</sup>

6 63. As he was externally violating the blackout period, Potashner internally engaged in a  
7 series of threats and demands to the Outside Directors in order to secure payment for his HHI  
8 options. The Outside Directors first proposed a dissolution of HHI to Potashner at a July 5, 2013  
9 Parametric Board meeting. Potashner did not take the news well. The Board minutes state:

10 Further, if the Board were to dissolve HHI, Mr. Potashner stated that he would call a  
11 special meeting of stockholders for the purpose of replacing the Board. Mr.  
12 Potashner informed the Board that he could obtain proxies for 40% of the  
Company's outstanding shares to effectuate such a replacement.<sup>58</sup>

13 64. Following that meeting, Potashner confided to Wolfe and outlined his litigation plan  
14 against the Outside Directors if they did not comply: "All other choices we face (unilaterally cutting  
15 options, limiting license, firing people, etc.) will result in . . . very aggressive claims against  
16 individuals and the company that I am convinced will not only blow up the [VTBH] deal but result  
17 in substantial corporate and personal legal exposures."<sup>59</sup>

18 65. Potashner's threats caused the Company's founder and President, Norris, to threaten  
19 to disassociate from the Company, stating that "Potashner's proposed actions would be unacceptable  
20 to him and that he would not continue with the Company if the Board were replaced."<sup>60</sup>

21 66. Over the next two days, Potashner laser-focused on Outside Director Putterman. On  
22 July 6, 2013, Potashner wrote to Putterman to describe Potashner's prior litigation against individual

23  
24 <sup>56</sup> VTBH012528.

25 <sup>57</sup> VTBH013436.

26 <sup>58</sup> PAMT0000164.

27 <sup>59</sup> PAMT0033294.

28 <sup>60</sup> PAMT0000164.

1 board members at SonicBlue where “we settled and I received a large check from the  
2 Company/BOD.”<sup>61</sup> Potashner concluded his email with the not-so-veiled threat, “[w]ould not like to  
3 ever have to go through that again.”<sup>62</sup> The next morning, Potashner informed Putterman by email  
4 that cancelling HHI before the deal “will result in lawsuits.”<sup>63</sup> Potashner then picked up the phone to  
5 call Putterman, threatening to call a shareholder meeting and “fire” the rest of the Board.<sup>64</sup> Two  
6 days later, Potashner again called Putterman to state that if the Board did not accept his position, in  
7 Putterman’s words, “the lawsuit from John [Todd] if we do otherwise will be devastating . . . .”<sup>65</sup>

8 67. The Board held a meeting on July 20, 2013, where Potashner made a number of  
9 additional demands regarding HHI, including:

- 10 • A cash payment of \$250,000 in exchange for Todd’s agreement not to sue the Board;
- 11 • A continuation of Todd’s consulting agreements with HHI for another fifteen months  
12 so that he would continue to receive additional cash and options; and
- 13 • An additional cash payment for Potashner, Barnes, and Todd “equal to nine-months  
14 salary.”<sup>66</sup>

15 68. At the same meeting, Potashner threatened that if his demands were not met, “Todd  
16 would sue the Company and the [VTBH] merger transaction could be derailed in such [a] case.”<sup>67</sup>  
17 Interestingly, however, neither Potashner nor Todd had any legal right to demand payment in  
18 exchange for cancellation of their HHI options. Their HHI 2013 Equity Incentive Plan provided that  
19 in the event of a “change in control” or other merger by Parametric, the merger agreement may  
20  
21

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22 <sup>61</sup> PAMTNV0112643.

23 <sup>62</sup> *Id.*

24 <sup>63</sup> *Id.*

25 <sup>64</sup> PAMTNV0112625.

26 <sup>65</sup> PAMTNV0112558.

27 <sup>66</sup> PAMT0000171.

28 <sup>67</sup> *Id.*

1 provide for all HHI options "cancellation with or without consideration, in all cases without the  
2 consent of the Participant [*i.e.*, Potashner or Todd]."<sup>68</sup>

3 69. The Outside Directors saw through Potashner's threats, which he purportedly made  
4 on Todd's behalf. During this time, Kaplan confided to the other Outside Directors that Potashner's  
5 HHI options

6 were issued because of false representations to the BoD. . . . And of course Ken is  
7 using JT [John Todd] as a surrogate for getting as much as he can for his own HHI  
8 position. . . . I believe JT is not really the problem. It is Ken pushing him and hiding  
9 behind JT's coattails. . . . Yet, as it has been presented to us, we are being held  
hostage and being blackmailed by this consultant. His strength is a lawsuit that could  
delay the merger.<sup>69</sup>

10 Similarly, Norris wrote:

11 Since John [Todd] and Ken [Potashner] are threatening now, why should we  
12 think they'll be easier after the deal? Juergen [Stark] is asking for a lawsuit if he  
13 buys that. John and Ken will force TB to let them run HHI or sue TB. That's the  
next shoe that'll drop. I guarantee it. I don't think they connected that dot.<sup>70</sup>

14 70. Despite recognizing the conflict, the Outside Directors caved and allowed Potashner,  
15 Wolfe, and Barnes to call VTBH and convey Potashner's demands. The demands included that  
16 VTBH not shut down or dismantle HHI for six months following the close of a merger, pay cash  
17 payments to Potashner and Todd at 100% of 2013 bonus levels (whether or not they earned such  
18 amounts), and agree not to restructure the HHI license agreement. In return, Potashner and Todd  
19 would agree not to sue VTBH and Parametric (despite their lack of any legal right to do so).<sup>71</sup>

20 71. Potashner, Wolfe, and Barnes jointly made these demands to Turtle Beach on July 20,  
21 2013. Notably, the Outside Directors asked Potashner to throw in a gift for themselves in the same  
22 call. When reporting back to the Board, Potashner stated, "I also introduced [to Stark] the concept of  
23  
24

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25 <sup>68</sup> PAMT0000024.

26 <sup>69</sup> PAMTNV0115292.

27 <sup>70</sup> PAMT0033904.

28 <sup>71</sup> PAMT0000171.

1 accelerating BOD options and there was no adverse reactions.”<sup>72</sup> The next day, Potashner also  
2 surreptitiously emailed and called Stark to discuss his position in HHI.<sup>73</sup>

3 72. On July 21, 2013, Potashner wrote to Norris, stating: “In the event that the BOD  
4 decides to cancel [my HHI options with no guarantee that the Merger will close,] please consider this  
5 my formal resignation for the company.”<sup>74</sup> As noted above, however, Potashner worked out a deal  
6 directly with Doornink, whereby VTBH promised that it would postpone any cancellation of HHI.  
7 So Potashner followed up the next day after another development: “I am glad that Ron Doornink,  
8 VTB Chairman has revised their position so our BOD doesn’t need to face the issue of cancelling the  
9 options prior to DA [Merger Agreement signing]. I therefore will withdraw the resignation threat  
10 and we don’t need to get everybody further worked up.”<sup>75</sup>

11 73. The Parametric Board set another meeting to discuss the issue on July 23, 2013. That  
12 morning, Wolfe indicated that Stark wanted HHI options to be cancelled. Rather than stand up to  
13 Potashner, Wolfe acted as his mouthpiece, calling Stark’s request “unreasonable” and stating, “I  
14 think this is the point where we say no.”<sup>76</sup> Wolfe’s solution – worked out in advance with Potashner  
15 – was to pay Potashner a cash ransom. Wolfe proposed that “[w]e would approve 2013 bonuses for  
16 key personnel including . . . Ken [Potashner], and John [Todd].”<sup>77</sup> When another Outside Director  
17 indicated that Potashner’s options should indeed be canceled because “the options are still wrong  
18 and not in the best interest of our shareholders,” Potashner wrote that any proposal to cancel his  
19 options “would blow up the deal, result in a massive amount of lawsuits and personal liability for the  
20 BOD, and is the worst thing for our shareholders.”<sup>78</sup>

21  
22 <sup>72</sup> PAMTNV0112539.

23 <sup>73</sup> PAMTNV0104912.

24 <sup>74</sup> PAMT0033914.

25 <sup>75</sup> PAMT0033915.

26 <sup>76</sup> PAMTNV0112504.

27 <sup>77</sup> *Id.*

28 <sup>78</sup> *Id.*

1           74.     Pressured by Potashner's threats, the Board again caved at the July 23rd meeting.  
2     The Board agreed to pay Potashner and Barnes their full 2013 cash bonuses (whether entitled or not),  
3     but deferred the final approval to a Compensation Committee meeting.<sup>79</sup> The Board also agreed to  
4     pay Todd \$250,000 in exchange for an agreement not to sue Parametric (despite his lack of a legal  
5     right to do so).<sup>80</sup>

6           75.     Stripes and VTBH continued to manipulate Potashner and lead him to believe that he  
7     would continue with HHI post-close, despite the eventual cancellation of his options. On July 21,  
8     2013, Stripes agreed that it would not seek cancellation of Potashner's HHI options before signing  
9     the Merger Agreement, but would defer the matter to address in the Merger Agreement itself and  
10    postponed until the Merger's close.<sup>81</sup> On July 23, 2013, Stark circulated a draft press release  
11    announcing the Merger, which contained the following line: "Ken Potashner . . . will continue a  
12    leadership role for Hypersound Health, Inc. ('HHI'), the Company's health subsidiary, which  
13    continues to demonstrate extraordinary results for those with hearing deficiencies."<sup>82</sup>

14          76.     While Stripes externally manipulated Potashner into believing he would continue to  
15    have a role, Stripes internally planned to kick him out. On August 5, 2013, Fox wrote regarding the  
16    Merger announcement press release: "My reaction to the press release is too much Ken P. [H]e is  
17    going to have effectively no role going forward."<sup>83</sup> Stripes knew how to manipulate Potashner,  
18    however, and kept that plan a secret until ousting him just months after the Merger closed.

19          77.     On January 10, 2014, less than a week before the close, Potashner learned that  
20    VTBH's lenders were forcing it to dissolve HHI. Potashner panicked. Potashner asked his CFO to  
21    cancel Merger-related payments (but they had already been sent) and wrote to Stark, "lets delay the  
22  
23

24    <sup>79</sup> PAMT0000175; PAMTNV0112625.

25    <sup>80</sup> PAMT0000175.

26    <sup>81</sup> VTBH013436.

27    <sup>82</sup> PAMTNV0103786; VTBH008077.

28    <sup>83</sup> VTBH000822.



1 closing and renegotiate the [HHI] point.”<sup>84</sup> Potashner asked Stark to “[s]ee if there is another way to  
2 push on the bank.”<sup>85</sup> Potashner admitted that “[a]t a personal level and as a shareholder of PAMT, I  
3 would not have supported the deal if I thought HHI was going to be dismantled.”<sup>86</sup>

4 **B. Stripes and Potashner Conspired to Delay Positive Company**  
5 **Announcements in an Attempt to Create a Manipulated Premium**

6 78. Potashner conspired with Stripes to illegally manipulate Parametric’s stock price by  
7 suppressing it in advance of the Merger announcement. In Potashner’s and Stripes’ view, the 81/19  
8 dilution ratio would look slightly better for stockholders if Parametric’s stock price were lower upon  
9 announcement. In Potashner’s words, Fox – the head of Stripes – personally expressed a  
10 “preference” that Potashner and Parametric “don’t defend the stock in that premium on deal will  
11 look better.”<sup>87</sup> Potashner admitted that doing so was in breach of his fiduciary duties. During the  
12 process, he confirmed to VTBH that “[w]ithholding licensing deals and announcements is contrary  
13 to the responsibility that I have.”<sup>88</sup> Yet, Potashner continued to delay and suppress several favorable  
14 and material announcements keeping Parametric’s stock price artificially low.

15 79. Potashner confirmed on March 27, 2013, in one of his first discussions with Stripes,  
16 that “I expressed to Karen [Kenworthy] that we collectively should not be overly concerned by the  
17 stock run up in that we have choices in terms of where we assign the valuation. . . . We also have  
18 now accumulated unannounced wins that I plan on delaying announcements on for as long as  
19 possible.”<sup>89</sup>

20 80. Just a week later, Potashner informed Stripes that his suppression of material  
21 information was against the advice of Parametric’s outside securities counsel. On April 4, 2013,  
22 Potashner wrote to Kenworthy and Stark, stating: “Our corp counsel said we need to do an 8-k on

23 <sup>84</sup> PAMTNV0086620.

24 <sup>85</sup> VTBH066656.

25 <sup>86</sup> PAMTNV0086617.

26 <sup>87</sup> PAMT0040595.

27 <sup>88</sup> PAMTNV010627.

28 <sup>89</sup> VTBH011084.

1 the McD. If it weren't for our discussion I would do a full press release but I have deemed that it  
2 would be bad form. Taking one for the team."<sup>90</sup> Potashner was referencing an agreement to place a  
3 Hypersound technology installation at McDonald's Disneyland restaurant, which represented a  
4 significant development in Parametric's efforts to commercialize and implement its audio  
5 technology. But rather than file an 8-K and inform stockholders of the positive news, as company  
6 counsel recommended, Potashner concealed this material information.

7 81. Potashner admitted that delaying the positive announcements harmed Parametric. On  
8 April 8, 2013, Potashner informed Stark that "[a]lso I wanted to mention that we will do a press  
9 release in the morning. Our shares have come under substantial pressure in the last couple days  
10 relative to the delay in me announcing licensing deals."<sup>91</sup> Stark intervened, however, and Parametric  
11 issued no such press release the next morning, nor did Parametric announce any licensing deals at  
12 any point thereafter. Instead:

- 13 • On May 17, 2013, Potashner outlined for Stark his plan for a post-Merger-  
14 Announcement press strategy: "I also have been stockpiling announcements that we  
15 can roll out to solidify price if there is weakness. You and I can strategize on  
16 whether we want to lay low or get more aggressive in terms of supporting the  
17 stock."<sup>92</sup>
- 18 • The same day, John Todd wrote to Potashner: "As I understand they [Stripes and  
19 VTBH] believe the stock will drop once we announce and that this will make the  
20 deal less favorable than an IPO. . . . If they have announcements and we have  
21 announcements [to release after the Merger] we can not only hold price but  
22 significantly improve price."<sup>93</sup>

23 82. Parametric's stock price declined significantly between May 28 and June 1, 2013.  
24 Regarding the McDonald's signage, on May 31, 2013, Potashner wrote to Stark: "I have . . . an  
25  
26  
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28

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<sup>90</sup> VTBH006261.

<sup>91</sup> PAMTNV0108985.

<sup>92</sup> PAMT0040368.

<sup>93</sup> PAMT0040339.

1 announcement on our completion of Disneyland McD . . . . I am waiting to see if we are a go before  
2 making decisions.”<sup>94</sup> Potashner’s draft internal press release stated, in part, as follows:

3           The Company’s commercial business focuses on the ability to target  
4           communication and create sound zones in various retail sites. The Company  
5           completed the scheduled installation of HyperSound technology at a McDonald’s  
6           Disneyland restaurant last week and continues to grow its commercial product  
7           pipeline.<sup>95</sup>

8           83.     This language would have defended the stock and signaled to the markets that the  
9           company was executing on its prior promises of commercialization. Indeed, Potashner would later  
10          confirm the importance of McDonalds’ selection of the HyperSound pilot by reporting to Stark that  
11          it “led to McDonald’s Channel selecting HyperSound as a premium audio solution for McDonalds  
12          Channel restaurant installations.” Potashner used this information to ask for a restructured deal,  
13          writing to Stark: “[T]ell Ken Fox I want 75-25 deal based on this.”<sup>96</sup> Potashner confirmed that this  
14          specific information, if released, would constitute “powerful . . . stuff” that “will be an exclamation  
15          point on what we are doing,” demonstrating Parametric’s “great hand going forward” if a deal  
16          wasn’t reached.<sup>97</sup>

17          84.     Fox intervened and, through Stark, asked Potashner to keep the material information  
18          from stockholders. As noted, Potashner followed up with a phone call to Stark on June 2, 2013 and  
19          wrote: “Just spoke to Juergen [Stark] and his preference (and Ken [Fox’s]) preference is that we  
20          don’t defend the stock in that premium on deal will look better.”<sup>98</sup> (Parenthesis in original.)  
21          Potashner complied with Fox’s wishes and deleted the McDonald’s Disneyland reference from the  
22  
23

24           <sup>94</sup> PAMT0040576.

25           <sup>95</sup> PAMT0040591; PAMT0040592.

26           <sup>96</sup> VTBH013765.

27           <sup>97</sup> PAMTNV0101694.

28           <sup>98</sup> PAMT0040595.

1 final press release.<sup>99</sup> On June 5, 2013, Potashner confirmed to Stark, "I will defer the release based  
2 on our discussion."<sup>100</sup> As a result, Parametric's stock price continued to decline.

3 85. On July 17, 2013, Potashner ultimately confirmed to Stark that, as a result of the  
4 suppression of announcements, "[s]tock is under tremendous pressure now."<sup>101</sup> Just before the  
5 announcement of the Merger on August 5, 2013, Parametric's stock price remained under pressure,  
6 which made a terrible deal look slightly better.

7 **C. At Stripes' Urging, Potashner and the Board Stalled and Undermined**  
8 **Competing Corporate Opportunities**

9 86. Stripes Group principals (Fox, Doornink, and Kenworthy), along with Stark, also  
10 successfully encouraged Potashner to undermine the Company's potential corporate opportunities  
11 during Merger negotiations. Potashner obliged. As a result, Potashner stalled discussions with other  
12 licensing partners and potential acquirers as soon as Stripes Group and VTBH arrived on the scene.

13 87. Potashner admitted that doing so was in breach of his fiduciary duties. Potashner  
14 explained to VTBH that "Withholding licens[ing] deals . . . is contrary to the responsibility that I  
15 have." And during the process, Potashner wrote: "My stock is taking a beating due to me deferring  
16 signing licensing deals. . . . I have intentionally constrained the progress [of Amazon attempting to  
17 buy the Company]. . . . I am still in a precarious situation delaying licenses that [would otherwise]  
18 bring us economic value and valuation."<sup>102</sup>

19 88. The first time they spoke, Stripes Group made it clear that Potashner should stall  
20 other corporate opportunities. On March 12, 2013, Potashner wrote to Kenworthy, stating: "I may  
21 need help on how to slow down one of the discussions we have underway. The time urgency is that  
22 they are targeting a gaming accessory product for this Xmas and thinking in the 200-300k unit  
23 range."<sup>103</sup> Potashner was referencing the SIIG/Optek deal described herein.

24 <sup>99</sup> See [http://www.parametricsound.com/press\\_release\\_details.php?id=82](http://www.parametricsound.com/press_release_details.php?id=82).

25 <sup>100</sup> PAMTNV0106696; PAMT0040658.

26 <sup>101</sup> VTBH008077.

27 <sup>102</sup> PAMT0039840; VTBH002189; VTBH001759; PAMTNV0106815.

28 <sup>103</sup> PAMT0039368.

1           89.     On March 27, 2013, Kenworthy reported directly to Fox that Potashner complained  
2 “[h]e’s receiving substantial pressure from one of his other potential licensing partners to advance  
3 their discussion[s] (but claims it would clearly not be in the interest of [VTBH] or Stripes for us to  
4 do so. . . . I assume it’s Sony).”<sup>104</sup> (Parentheses in original.) The very next day, March 28, 2013,  
5 Potashner confirmed to Kenworthy that “I will suspend any licensing discussions with any parties  
6 while we have our discussions with TB/Stripes.”<sup>105</sup> Kenworthy responded in approval.

7           90.     On April 4, 2013, Potashner confirmed to Stark that he “will slow play” an active and  
8 then-promising collaboration with Qualcomm.<sup>106</sup> The next day, Qualcomm stated that it “would be  
9 interested in a potential licensing discussion” and “will get the NDA taken care of today.”<sup>107</sup>  
10 Potashner did nothing for a week. On April 12, 2013, Potashner wrote to Stark that “it makes sense  
11 for me to advance this discussion,” but Stark responded that “I would slow-roll a bit.”<sup>108</sup>

12           91.     On April 7, 2013, Potashner confirmed to Stark that “I would be able to announce the  
13 license [with VTBH] and buy additional time both with the parties that we have stalled . . . . I have  
14 several things going on including defining a financing and the pressures of the license activities we  
15 put on hold.”<sup>109</sup> Stark agreed, responding to Potashner that: “In fact I assumed you would absolutely  
16 not want to announce any license deal since you’ve stalled all the other parties.”<sup>110</sup>

17           92.     Days later, Potashner admitted the harm caused by his stalling efforts. On April 9,  
18 2013, Potashner wrote to Kenworthy and Stark: “My stock is taking a beating due to me deferring  
19 signing licensing deals. Any ideas?”<sup>111</sup> On April 15, 2013, Potashner forwarded an email to Stark

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21 <sup>104</sup> VTBH005649.

22 <sup>105</sup> PAMT0039561.

23 <sup>106</sup> PAMTNV0108760.

24 <sup>107</sup> PAMTNV0109178.

25 <sup>108</sup> *Id.*

26 <sup>109</sup> PAMT0039816.

27 <sup>110</sup> *Id.*

28 <sup>111</sup> PAMT0039840.

1 from SIIG/Optek, explaining “[t]his is one of the license deals I have frozen. Very high royalty rate  
2 9% and China [is a] big market. If I signed and announced this deal our stock would be in the  
3 20s.”<sup>112</sup>

4 93. On April 19, 2013, Doornink reported to Fox, Kenworthy, and Stark, *inter alia*, and  
5 confirmed that “[t]he Parametric guys . . . face a lot of pressure from their potential licensing  
6 partners (having put several deals on hold).”<sup>113</sup>

7 94. During this time, capable buyers were interested in purchasing Parametric. On  
8 April 12, 2013, Potashner described a conversation with an Amazon executive as follows: “He  
9 declared Amazon is interested in buying the company. . . . He said they are familiar with our  
10 technology and believe it will be highly relevant to future products Amazon plans on launching.”<sup>114</sup>  
11 But on May 20, 2013, Potashner forwarded an Amazon email to Stark writing, “I have intentionally  
12 constrained the progress here but I don’t believe I can further do so. Even though you don’t see  
13 Amazon as viable I see it as a means of selling PAMT . . . .”<sup>115</sup>

14 95. On May 25, 2013, Potashner admitted to Stark that “[I] need to get on running my  
15 business and getting shareholder value. Withholding license deals and announcements is contrary to  
16 the responsibility that I have.”<sup>116</sup> Despite recognizing the problem, Potashner continued to withhold  
17 licensing deals and positive announcements through the Merger.

18 96. Potashner again confirmed that delaying licenses was contrary to his fiduciary duties.  
19 On June 2, 2013, Potashner explained to Stark that “I am still in a precarious situation delaying  
20 licenses that do [otherwise] bring us economic value and valuation. . . . I am not in a position where  
21 I can sit back and let stock fall too far.”<sup>117</sup> Yet Potashner did just that because, as noted, the very

22  
23 <sup>112</sup> PAMTNV0108344.

24 <sup>113</sup> VTBH011638.

25 <sup>114</sup> PAMT0039865.

26 <sup>115</sup> VTBH002189.

27 <sup>116</sup> VTBH001759.

28 <sup>117</sup> PAMTNV0106815.

1 same day – June 2, 2013 – VTBH informed Potashner that it was Stripes’ preference to avoid  
2 defending the stock because the “premium on deal will look better.”<sup>118</sup>

3 97. The rest of the Parametric Board finally noticed Potashner’s improper stalling efforts.  
4 On July 6, 2013, Kaplan wrote:

5 Personally I think this has gone on far too long. We need to get on with the  
6 business of running the business. What has been going on since this VTB [Stripes]  
7 idea surfaced? Where are our licensing agreements, where are sales (incremental  
8 improvement due to David), Epsilon, Amazon, The Chinese, McDonalds, The Bear  
9 stores (still in beta mode), Sony, Samsung, etc.? AND WE HAVE SURE BURNED  
10 THROUGH A HELL OF A LOT OF MONEY. . . .

11 It is time for the BOD to step up and take charge! We have been far too  
12 passive in the past. It is good to have a strong leader but not a dictator.<sup>119</sup>

13 98. While Kaplan’s email demonstrated a brief glimpse of spirit, the next day, July 7,  
14 2013, Kaplan embarked on his personal quest for an additional bonus in connection with the Merger  
15 (described below). After realizing the potential for personal benefit, Kaplan fell in line. The Outside  
16 Directors, through Kaplan’s email, were thus informed of Potashner’s stalling efforts and by their  
17 acquiescence, were complicit in the misconduct.

18 99. Ultimately, before the Board even voted on the Merger, Potashner gave VTBH and  
19 Stripes “veto rights on all licenses,” precluding the Company from entering into a superior licensing  
20 agreement before giving control of the Company to Stripes.<sup>120</sup>

21 **D. The Parametric Board Knew that VTBH’s Balance Sheet Was**  
22 **Deteriorating but Voted in Favor of the Unfair Merger Regardless**

23 100. Before voting on the Merger, Potashner and the Outside Directors *knew* that VTBH’s  
24 finances were in bad shape and that, as a result, Parametric would be issuing millions of dilutive  
25 shares in exchange for an entity with negative value.

26 101. On June 29, 2013, Potashner expressed the following alarming concerns to all of the  
27 Outside Directors, including Honore, Kaplan, Norris, Putterman, and Wolfe:

28 <sup>118</sup> PAMT0040595.

<sup>119</sup> PAMT0061365.

<sup>120</sup> PAMT0060525.

1           The key concern I have has been the financing challenges for VTB. They had  
2 both covenant issues and the need to increase the credit line to support their growth  
as well as the inclusion of the PAMT expenses post closing.

3                           \*       \*       \*

4           [The] biggest concerns I have highlighted include unaudited financials and a new  
5 item around the independence of their [VTB's] auditors.

6                           \*       \*       \*

7           The biggest issue outstanding in my mind is an issue concerning \$12M of  
8 debt that VTB has that was not disclosed to us at the time we negotiated exchange  
rates. . . . I believe this is indication that their balance sheet wasn't as strong as they  
9 represented and we should get something as an offset.<sup>121</sup>

10           102. VTBH's balance sheet did not thereafter improve. A month later, on July 31, 2013  
11 (two days before the Parametric Board voted on the Merger), VTBH provided its second quarter  
12 financials to Barnes, Parametric's CFO. Barnes promptly forwarded the numbers to Potashner  
13 writing, "FYI. Proxy may not be pretty. Going to have some selling to do."<sup>122</sup>

14           103. Notably, despite their awareness of Turtle Beach's dire financial state and previously  
15 undisclosed debt, Potashner and the Outside Directors did not negotiate anything "as an offset," did  
16 not renegotiate the exchange rates, and continued to pay no heed to the red flags regarding Turtle  
17 Beach's poor financial condition.

18           104. On August 2, 2013, the Board met and voted in favor of the Merger Agreement. This  
19 August 2nd meeting took the form of a one-hour conference call. During that call, the Outside  
20 Directors met Potashner's cash demands and agreed to pay his 2013 bonus payments at the  
21 maximum target rate of \$210,000.<sup>123</sup>

22           105. As described in greater detail below, during the very meeting they were supposed to  
23 be paying attention to a fairness opinion and assessing the fairness of the Merger for Parametric  
24 stockholders, the Outside Directors spent their time emailing about their own personal payouts. The  
25 Outside Directors knew that the Merger was potentially disastrous and knew that they would be

26 <sup>121</sup> PAMTNV0105759.

27 <sup>122</sup> PAMT0057372.

28 <sup>123</sup> PAMT0000189.



1 issuing highly dilutive equity, and thus control of the Company, for almost nothing in return. But  
2 the Parametric Board was more concerned with getting paid.

3 106. At that meeting, Craig-Hallum Capital Group, LLC (“Craig-Hallum”) presented its  
4 “fairness opinion” to the Parametric Board. While the flawed substance of that opinion is also  
5 described in greater detail below, Potashner explained that it was a close call. The following day,  
6 Potashner wrote to Stark in an email entitled “fairness opinion”:

7 We did get it but you should know that just barely. With the renegotiation to  
8 81-19 we were below one of the 3 metrics and when you aggregate the 3 metrics the  
9 deal is “barely fair.”

10 The issue with this is that the document goes public and can make the vote  
11 harder for the shareholders. I will need to do a good job selling the strategic  
12 ramifications.<sup>124</sup>

13 107. Potashner later lamented to Stark, “If we received 22% of the shares we wouldn’t  
14 have been out of bounds on the fairness opinion.”<sup>125</sup> Nevertheless, the Board still approved the  
15 Merger at the severely dilutive ratio of 80.9% to 19.1%.<sup>126</sup>

16 108. Parametric announced the Merger after the market closed on August 5, 2013. The  
17 Company’s shares immediately tanked. Parametric’s stock closed at \$17.69 per share on August 5,  
18 2013, and dropped to just \$14.08 per share by August 6, 2013 –a 20% decline in shareholder value.  
19 The drop would have even been more significant had Stripes and Potashner not suppressed  
20 Parametric’s stock price in the preceding five months.

21 **E. The Go-Shop Was a Sham**

22 109. The Merger Agreement contained a provision requiring Parametric to contact parties  
23 within 30 days of the signing of the Merger Agreement to secure a competing deal. The go-shop  
24 commenced on August 5, 2013. During the go-shop, however, Potashner sabotaged other potential  
25 bidders through delay and refusals, then referred them directly to Stark and Stripes. Stark would  
26 then swat them away.

27 <sup>124</sup> PAMTNV0101203.

28 <sup>125</sup> VTBH068943.

<sup>126</sup> PAMTNV0101319.

1 110. Potashner and Stark's correspondence regarding the go-shop is illuminating. On  
2 August 3, 2013, Potashner sent Stark a draft Merger announcement with the following reference to  
3 the go-shop: "Parametric, with the assistance of an independent financial advisor, will actively  
4 solicit alternative proposals during this period."<sup>127</sup> Stark responded right away to demand removal  
5 of that sentence, writing, "You're not looking for an alternative and neither are we."<sup>128</sup>

6 111. Potashner responded minutes later to confirm that he would "soften" that language,  
7 because:

8 We were not shopping the company,

9 Just to [be] 100% transparent there were 2 others that we discussed but I put them on  
10 licensing track discussions and anticipate they will stay there – Amazon and Dolby.  
11 I have slowed both discussions to get our deal done but this will be a topic for you  
and I next week.<sup>129</sup>

12 112. On August 7, 2013, Potashner informed Stark that VTBH should not "invit[e]  
13 in/embolden one of the other companies that expressed interest in us" because "I like our deal. I  
14 don't want to be an operating unit of Amazon. . . . You and I are totally aligned. I know the stock  
15 price doesn't matter now for your or mine personal liquidity."<sup>130</sup>

16 113. On August 12, 2013, one week into the go-shop period, Motorola Mobility's Senior  
17 Vice President and General Counsel contacted Parametric to "re-engage" because "Motorola wanted  
18 to own [Parametric's] IP."<sup>131</sup> Even though Motorola was on the "Go Shop Buyers List," Potashner  
19 and Houlihan Lokey did not directly respond regarding this serious indication of interest, rather,  
20 Potashner leaked the contact to Stark and asked that VTBH respond.<sup>132</sup> On August 15, 2013, Stark  
21

22  
23 <sup>127</sup> VTBH008036.

24 <sup>128</sup> PAMT0056829.

25 <sup>129</sup> VTBH008036.

26 <sup>130</sup> VTBH004040.

27 <sup>131</sup> PAMT0060361.

28 <sup>132</sup> PAMT0038812; PAMT0060361; PAMT0060361; PAMT0060541.

1 spoke directly with Motorola to hear that Motorola – a potential acquirer competing with Stark –  
2 purportedly was not interested.<sup>133</sup>

3 114. In addition, on August 13, 2013, Potashner thwarted Amazon by informing it that  
4 Parametric’s video gaming licenses were off limits (despite Amazon’s interest in purchasing  
5 Parametric as a whole).<sup>134</sup>

6 115. After the go-shop expired, Potashner confirmed to Stark that he had blocked  
7 competing bids. On November 19, 2013, Stark asked Potashner about a negative online article  
8 regarding the Merger. Stark quoted the following line in his email: “HL [Houlihan Lokey]  
9 contacted 13 parties with no interest and then 49 parties with no interest.”<sup>135</sup> Stark asked Potashner,  
10 “Can you provide the bullets to counter this please?”<sup>136</sup> What Stark did not realize – nor did  
11 Potashner when he responded – was that the above quoted line was in fact summarizing language  
12 from the Proxy itself.<sup>137</sup> Regarding the go-shop, after mentioning that 49 parties were contacted, the  
13 Proxy stated: “None of these prospective buyers, or any other parties, expressed interest in making  
14 an acquisition proposal for Parametric.”<sup>138</sup>

15 116. Potashner responded with his “counter” to this language, writing to Stark:

16 Dolby and Amazon had interest. I will take you through the discussions when we are  
17 together. I put boundaries that were very difficult in that I didn’t want an exit given  
18 that the \$150M valuation although good for merger calculations was light in mind for  
19 an exit. I would not have let you take us private either. Better to discuss face to  
20 face.<sup>139</sup>

21 117. For context, a valuation for Parametric of \$150 million would have amounted to  
22 above \$19.00 per share at the time of the Merger. On August 2, 2013, for example, Parametric’s

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23 <sup>133</sup> PAMT0052416.

24 <sup>134</sup> PAMT0041742.

25 <sup>135</sup> PAMTNV0090998.

26 <sup>136</sup> *Id.*

27 <sup>137</sup> VTBH048603.

28 <sup>138</sup> Proxy at 58.

<sup>139</sup> PAMTNV0090998.

1 market capitalization existed at approximately \$135 million.<sup>140</sup> Yet Potashner egregiously “put  
2 boundaries in place” to prevent \$150 million offers because he personally did not want them. Now  
3 the Company’s stock sits at 57 cents per share.

4 118. The go-shop also contained several structural problems. First, the Break-Up License  
5 applied fully during the go-shop, which precluded bids (as discussed below). Second, the five day  
6 business match-right provision also barred potential bidders by, according to Professor Subramanian  
7 of Harvard Business School and Harvard School of Law, “allow[ing] Turtle Beach to slow down,  
8 and potentially run out the clock on, a potential third-party bid,” resulting in an “infeasible”  
9 timeframe for a competing bid. Third, Houlihan Lokey, a conflicted financial advisor, was allowed  
10 to participate in the “solicitation” of other bidders in Potashner’s “go shop.” Like Potashner and  
11 Stark, Houlihan Lokey had no incentive to actually find an alternate bidder during the go-shop  
12 process, and every incentive not to. Houlihan Lokey’s engagement fee had already been curtailed  
13 significantly when it was forced to rebate \$300,000 to pay for the Craig-Hallum fairness opinion fee  
14 after it was discovered that Houlihan Lokey had represented VTBH in its private sales process in  
15 2011 and was thus conflicted.<sup>141</sup> Houlihan Lokey also sought a financing role from Stripes Group on  
16 the Merger itself.<sup>142</sup>

17 **V. THE STOCKHOLDER VOTE WAS BOTH UNINFORMED AND**  
18 **COERCIVE**

19 **A. Defendants Purposefully Submitted a Misleading Proxy to Parametric**  
20 **Stockholders**

21 119. As noted, the August 5, 2013 Merger announcement was not well received.  
22 Stockholders and the financial press both strenuously criticized the Merger and the stock sharply  
23 decreased. During this time, defendants expressed repeated concern regarding the likelihood that  
24 stockholders might vote against the deal based on VTBH’s deteriorating balance sheet.

25  
26 <sup>140</sup> PAMTNV0101319.

27 <sup>141</sup> Deposition Transcript of Daniel Hoverman (“Hoverman Tr.”) at 110-11, 154, 213-20.

28 <sup>142</sup> *Id.*

1 120. Defendants designed the Proxy in order to conceal material information from  
2 Parametric stockholders and cram through the disastrous Merger for their personal benefit. Unlike  
3 most mergers where a pure majority is required for approval, this Merger only required a majority  
4 approval of the votes cast at the special meeting. When Kenworthy asked how many non-insider  
5 votes were required, Potashner proudly explained, "I skewed the scenario so we don't need 50% of  
6 the vote. Just 50% of those in attendance or those who vote their proxy. This should help."<sup>143</sup>

7 **1. The Proxy Omits Material Information Concerning VTBH's**  
8 **Financial Decline and True Value**

9 121. Defendants knew that VTBH had experienced a significant financial decline in the  
10 months leading to the Merger, rendering the projections used in Craig-Hallam's fairness opinion and  
11 disclosed in the Proxy (the "Fairness Opinion/Proxy Projections") false when the Proxy was filed on  
12 December 3, 2013. Yet, the Proxy failed to alert Parametric stockholders of this material fact.

13 122. The Fairness Opinion/Proxy Projections were actually developed in spring 2013. As  
14 a result of their age, the Fairness Opinion/Proxy Projections were both over-influenced by VTBH's  
15 strong first quarter of 2013 and not influenced at all by VTBH's financial decline in the second half  
16 of 2013. Indeed, on October 25, 2013, Stark described the Fairness Opinion/Proxy Projections as  
17 follows:

18 Our [Fairness Opinion/Proxy Projections] are a bit high and reflect what we believed  
19 would happen this year. I believe they were done in the Spring timeframe (May?)  
20 though and we had just come off of a very strong Q1 so there is grounding for these.  
Since then, the market has clearly slowed much more than we expected. And even  
by August DA signing, I had adjusted the range down accordingly.<sup>144</sup>

21 123. On August 2, 2013, Craig-Hallum relied on these outdated projections to render its  
22 fairness opinion.<sup>145</sup> Notably, the Fairness Opinion/Proxy Projections contained 2013 Adjusted  
23 EBITDA of \$40.6 million and 2013 net revenue of \$218 million for VTBH.<sup>146</sup> Less than a week

24  
25 <sup>143</sup> VTBH015502.

26 <sup>144</sup> VTBH093183.

27 <sup>145</sup> PAMT0056986; Proxy at 74.

28 <sup>146</sup> *Id.*

1 later, Stark confirmed to Fox, Kenworthy, Doornink, and others that those numbers were inaccurate,  
2 and that VTBH's "best estimates right now" came to just \$32 to \$40 million for 2013 EBITDA, and  
3 just \$190 to \$215 million for 2013 net revenue, meaning the entire ranges provided by Stark fell  
4 below the corresponding values used in the Fairness Opinion/Proxy Projections.<sup>147</sup>

5 124. Potashner also voiced concern that VTBH's deteriorating financial condition put  
6 Craig-Hallum's fairness opinion in jeopardy, as disclosing VTBH's then-current financial state could  
7 prevent Craig-Hallum from standing by its original fairness opinion and/or executing a new fairness  
8 opinion at the Merger ratio.

9 125. Potashner knew as of August 8, 2013 that VTBH's latest "best estimates" were below  
10 the corresponding values in the Fairness Opinion/Proxy Projections, but was determined to push the  
11 Merger through even if it meant standing by the inaccurate values. On August 8, 2013, Potashner  
12 told Stark to "be aware that the fairness opinion will become public with proxy so you don't want to  
13 be pessimistic to the point you contradict the data you provided that was basis for that opinion."<sup>148</sup>  
14 Potashner forwarded this email to Todd, at which point Todd responded:

15 The more I think about it I don't know how you can go out with any numbers that are  
16 lower than fairness opinion unless there has been a material change in business. . . . I  
17 think we are boxed in that 2013, 2014 first look must match fairness opinion.  
18 Otherwise you need to conclude fairness opinion was wrong.<sup>149</sup>

19 126. On August 21, 2013, Potashner admitted to Kenworthy and Stark:

20 I recommend we take the long view, don't get greedy and help us sail through the  
21 shareholder vote. Please note I didn't try to renegotiate deal after you [VTBH] did a  
22 downward reforecast and then missed that reforecast.<sup>150</sup>

23 127. VTBH continued its precipitous financial decline in September and October 2013.  
24 On October 7, 2013, Potashner explained to Stark that "Jim Barnes has been nervous for a bit that  
25  
26  
27  
28

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<sup>147</sup> VTBH015820.

<sup>148</sup> PAMTNV0100953.

<sup>149</sup> *Id.*

<sup>150</sup> PAMTNV0099861.

1 your Q2 numbers show you as losing money and having negative equity value.”<sup>151</sup> On October 14,  
2 2013, Potashner wrote to Stark, “[t]he war is going to be getting shareholder support with deal terms  
3 that keep getting worse.”<sup>152</sup> Potashner also stated to Stark, “I have to do some damage control  
4 necessary to assure success with shareholder vote.”<sup>153</sup> Similarly, on October 18, 2013, Potashner  
5 told Stark that he has “been going over [numbers] with Jim [Barnes]. Shitty numbers. Money  
6 losing, negative equity, etc.”<sup>154</sup>

7 128. Despite VTBH’s deteriorating financial state, Defendants were determined to  
8 consummate the Merger, even if it meant defrauding Parametric stockholders. On October 25, 2013,  
9 Potashner informed Stark that “[i]nitial input is that changing the numbers might necessitate new  
10 fairness opinion. We are discussing implications of simply taking the numbers out of the proxy. Jim  
11 is leading this assessment and will [provide] more info later today.”<sup>155</sup> On October 29, 2013,  
12 Potashner made the following revealing comment to Stark, Barnes and others:

13 As we discussed it is critical that the proxy leaves the tone of very positive financial  
14 numbers going forward. Even the actuals are weak for 13. Do you believe you  
15 accomplished this? This is the one key determinate of what the company will be  
valued at the day after the proxy and set the stage going forward.<sup>156</sup>

16 129. Likewise, on October 31, 2013, Potashner explained to Stark that “there is a concern  
17 that given you brought down 2013 due to MSFT and CH [Craig-Hallum] may believe that [20]14 is  
18 off as well and thus fairness opinion exposed.”<sup>157</sup>

19 130. On November 30, 2013, Potashner explained to Stark that “I think we (pamt) are  
20 under tremendous pressure in that the numbers keep getting softer, the apparent lack of controls, and

21  
22 <sup>151</sup> VTBH095533.

23 <sup>152</sup> PAMTNV0095569; PAMTNV0099861; PAMTNV0096468.

24 <sup>153</sup> PAMTNV0104228.

25 <sup>154</sup> PAMTVNV0095570.

26 <sup>155</sup> PAMTVNV0094986.

27 <sup>156</sup> PAMTNV0095423.

28 <sup>157</sup> VTBH089382.

1 the covenants exposures. The [“]does this deal make sense[”] question is being asked.”<sup>158</sup> Later in  
2 the email chain Potashner stated that he has a “CFO who is very nervous and I am trying to get to the  
3 bottom of it.”<sup>159</sup>

4 131. During this period, VTBH developed an updated set of projections that it would  
5 ultimately provide to its lender – PNC – to certify its compliance with certain debt covenants (the  
6 “Bank Projections”). On December 6, 2013, only three days after filing the Proxy, VTBH circulated  
7 a substantially final version of the Bank Projections.<sup>160</sup> VTBH ultimately sent the Bank Projections  
8 to PNC on December 19, 2013.<sup>161</sup>

9 132. Predictably, the Bank Projections made two things very clear: (i) VTBH’s financial  
10 condition continued to worsen throughout the fall of 2013; and (ii) the projections used in the  
11 fairness opinion and disclosed in the Proxy were grossly inflated and overvalued VTBH. The  
12 following table provides 2013 net revenue and EBITDA values for the sets of projections discussed  
13 above:

Set of Projections	2013 Net Revenue	2013 ADJUSTED EBITDA
Fairness Opinion/Proxy Projections	\$218 million	\$40.6 million <sup>162</sup>
Bank Projections Low-End	\$179.6 million	\$22.2 million
Bank Projections High-End	\$193 million	\$27.5 million <sup>163</sup>

14  
15  
16  
17  
18  
19  
20 <sup>158</sup> VTBH073092; PAMTNV0088385.

21 <sup>159</sup> *Id.*

22 <sup>160</sup> VTBH02263.

23 <sup>161</sup> VTBH020031.

24 <sup>162</sup> PAMT0056986; Proxy at 74.

25 <sup>163</sup> VTBH020033. As contained in the Bank Projections’ calculation of EBITDA, which is  
26 consistent with, if not conservative relative to, the Proxy’s description of Adjusted EBITDA for  
27 VTBH used in Craig-Hallum’s fairness opinion: “EBITDA is calculated as net income (earnings),  
28 plus interest, taxes, depreciation and amortization. Adjusted EBITDA adds back certain additional  
items, and was calculated differently for Parametric and Turtle Beach . . . . For Turtle Beach,  
Adjusted EBITDA included addbacks of amounts for stock-based compensation and business  
transaction expenses.”



1  
2 133. The misleading summary of VTBH's expected financial results injected a material  
3 element of falsity into the Proxy, particularly given that 80% of the proffered Merger consideration –  
4 and thus Craig-Hallum's fairness opinion as presented in the Proxy – was based on inaccurately  
5 inflated figures.

6 **2. Additional Facts Omitted and/or Misrepresented in the Proxy**

7 134. The Proxy also left shareholders woefully uninformed about multiple issues described  
8 herein. These issues include: (a) the distressed financial nature of VTBH; (b) the Board's attempts  
9 to angle for personal payments in the hours leading up to, and during, the final Merger vote; (c) the  
10 Board's actions in stalling other potential acquirers and licensing discussions; (d) the material  
11 updates suppressed by Stripes and Potashner in order to create a fictional and manipulated premium;  
12 (e) the detail behind Potashner's threats to the rest of the Board; and (f) the fact that the Board's  
13 financial advisors did not provide any opinion, informal or otherwise, on the terms of the Break-Up  
14 License, the Company's expected licensing revenues, or the value of the SIIG/Optek project. These  
15 issues go to the heart of the shareholders' decision whether to vote in favor of the Merger and in the  
16 absence of their disclosure, the shareholder vote could not have been fully informed.

17 **B. Defendants Coerced Parametric Stockholders into Voting in Favor of  
the Merger**

18 135. In addition to the misleading Proxy, defendants structurally coerced Parametric  
19 stockholders into voting in favor of the Merger. The Merger Agreement contained a draconian  
20 "Break-Up License" provision, which prevented other bids and penalized Parametric stockholders in  
21 the event they voted against the Merger. If Parametric shareholders had voted against the Merger or  
22 Parametric otherwise accepted a better offer, Parametric would have been forced to provide VTBH  
23 with (1) an exclusive (even as to Parametric) worldwide license to Parametric's HyperSound  
24 technology in the "console audio products field" (*i.e.*, gaming applications), and (2) a non-exclusive  
25 worldwide license to Parametric's HyperSound technology in the "computer audio products field."  
26 Parametric would have received a 6% royalty on net sales of such products, and 30% from any  
27 sublicenses that VTBH negotiated. The term of the Break-Up License was a minimum of ten years,  
28 with a minimum royalty payment of \$2.0 million during the first five years and \$1.0 million for each

1 year after that (for a total minimum royalty payment of \$7.0 million). If these minimum royalty  
2 payments were not made, Parametric had the right to convert the gaming license to non-exclusive,  
3 but Parametric could not otherwise seek recourse from Turtle Beach for any unpaid “minimum”  
4 royalties. The Merger Agreement also contained a highly unusual combination of a five business  
5 day match-right provision and a 30-day “go-shop” provision.

6 136. The “Break-up License” was coercive. Had Parametric stockholders voted against  
7 the Merger, the Company would have been crippled by the one-sided Break-Up License.

8 **1. Potashner Negotiated the Break-Up License at Well Below Fair**  
9 **Market Value**

10 137. Potashner licensed Parametric’s “crown jewel” intellectual property at less than fair  
11 market value and under terms that did not reflect Parametric’s existing licensing strategy.  
12 Parametric’s IP commanded higher royalties in other licensing agreements. In fact, all of  
13 Parametric’s then-existing licensing agreements existed at a 15% royalty rate, much higher than the  
14 paltry 6% rate contained in the Break-Up License. For example, Parametric signed a deal with  
15 Epsilon to license HyperSound’s automotive applications for \$1 million for development of a new  
16 device and a 15% royalty for revenue over \$6.67 million.<sup>164</sup> Parametric also licensed HyperSound’s  
17 health care application to its subsidiary HHI for 15% of revenue.<sup>165</sup> Given that the latter was an  
18 interested transaction with Potashner, the Board cannot argue that 15% HHI royalty was not made on  
19 fair terms.

20 138. Potashner confirmed these facts when he admitted to Stark that the Break-Up  
21 License’s royalty, then at 5.5%, was “well below the other deals I am working on within the  
22 licensing realm.”<sup>166</sup> Potashner also stated: “I am also willing to have a break up consideration that  
23  
24

25 <sup>164</sup> PAMT0007031.

26 <sup>165</sup> Parametric Sound Corp., Quarterly Report (Form 10-Q), at 14 (May 2, 2013), *available at*:  
27 [http://www.sec.gov/Archives/edgar/data/1493761/000101968713001603/pamt\\_10q-033113.htm](http://www.sec.gov/Archives/edgar/data/1493761/000101968713001603/pamt_10q-033113.htm).

28 <sup>166</sup> PAMT0039816.

1 results in you achieving a gaming license at well below market value. . . . As a demonstration of my  
2 conviction towards closing a deal I will offer up gaming in the context of a breakup fee.”<sup>167</sup>

3 **2. The Break-Up License Was Impermissibly Coercive and**  
4 **Impaired the Shareholder Franchise**

5 139. After analyzing the deal protection provisions in the Merger Agreement, Professor  
6 Guhan Subramanian of Harvard Business School and Harvard School of Law, concluded as follows:

7 I reach the following conclusions in my assessment of the Turtle Beach-Parametric  
8 deal:

9 (1) Asset lockups such as the Break-Up Fee License Agreement are extremely  
10 unusual in the modern M&A marketplace;

11 (2) The particular combination of the 5-Day Match Right and the 30-Day Go-Shop  
12 Provision is also not typical among comparable transactions;

13 (3) The Break-Up Fee License Agreement is a very potent asset lockup, because it  
14 represents a large fraction of the overall value of Parametric, other bidders cannot  
15 keep the HyperSound technology out of Turtle Beach’s hands by bidding, and the  
16 evidence suggests that it was granted at less than fair market value;

17 (4) The combination of the 5-Day Match Right and the 30-Day Go Shop Provision  
18 puts additional “furniture against the door,” creating no clear pathway for success for  
19 a third-party bidder; and

20 (5) While the Break-Up Fee License Agreement and the Match Right/Go-Shop  
21 Provision each have a deterrent effect on their own, it is my opinion that the  
22 combined effect of these three provisions is highly likely to deter other bidders. This  
23 conclusion becomes stronger to the extent that the Break-Up Fee License Agreement  
24 was struck at less than fair market value.<sup>168</sup>

25 140. The Break-Up License coerced Parametric’s shareholders to vote in favor of the  
26 Merger. If shareholders had voted against the Merger, the Break-Up License would have triggered  
27 and Parametric would have been crippled, having just licensed away its most-crucial intellectual  
28 property. This acted as a coercive penalty for a “no” vote. Professor Subramanian explained this  
scenario as follows:

[A]n asset lockup struck at less than fair market value reduces the stand-alone value  
of the company in the event of a negative shareholder vote, because the acquirer will

167 *Id.*; PAMT0039756.

168 Subramanian Decl., ¶14.

1 exercise the option and siphon value out of the company. Foreseeing this,  
2 shareholders may vote for the deal even if they believe it is below fair value.<sup>169</sup>

3 141. That is in fact what happened. Parametric stockholders voted in favor of the Merger,  
4 even though it was (and has indisputably proven to be) “below fair value.”

5 **3. The Parametric Board Did Not Rely on Its Advisors in**  
6 **Approving the Terms of the Break-Up License**

7 142. Neither Potashner nor the rest of the Board asked their financial advisors, Houlihan  
8 Lokey and Craig-Hallum, to conduct a valuation of the Break-Up License or otherwise analyze its  
9 appropriateness as a deal term.<sup>170</sup> Craig-Hallum did not even know the provision existed.<sup>171</sup>

10 143. Potashner and the Board did nothing to value the asset lockup, even though  
11 Parametric’s CFO recognized that “[a]n exclusive license has a major impact on valuation, etc. so  
12 that needs evaluation.”<sup>172</sup> In addition, Potashner did not take any real effort to consider the value of  
13 the Break-Up License to VTBH or any other potential buyer.<sup>173</sup>

14 **4. Potashner Agreed to the Break-Up License Terms and No**  
15 **Outside Director Had Any Material Impact on the**  
16 **Negotiations**

17 144. Potashner negotiated all major terms of the Break-Up License without Outside  
18 Director involvement. Potashner and Stark first conceived the Break-Up License during their initial  
19 discussions in March 2013.<sup>174</sup> By April 19, 2013, Stark and Potashner agreed on a term sheet that  
20 noted the Break-Up License “still needs discussion,” but specifically described an exclusive license  
21 for gaming, exclusive license for “PC audio,” and the same 6% royalty rate and 30% re-license  
22 royalty rate that ultimately appeared in the Merger Agreement.<sup>175</sup>

23 <sup>169</sup> Subramanian Decl., ¶57.

24 <sup>170</sup> Deposition Transcript of David Wambeke (“Wambeke Tr.”) at 157-58; Deposition Transcript of  
25 Kenneth Potashner (“Potashner Tr.”) at 78.

26 <sup>171</sup> Wambeke Tr. at 157-58.

27 <sup>172</sup> Potashner Depo. Ex. 4.

28 <sup>173</sup> Potashner Tr. at 67-68.

<sup>174</sup> Potashner Depo. Ex. 3; Potashner Depo. Ex. 5; PAMT0039748-49.

<sup>175</sup> PAMT0049600-07.

1 145. Potashner wrote the following to Stark on April 24, 2013:

2 I am getting substantial push back from counsel on the exclusive license of the  
3 element of the break up fee.

4 The issue is there is a BOD record that we were not interested in segregating  
5 exclusive gaming from consumer in that several of the potential licensees had  
6 presence in both sectors (i.e. Sony). We have BOD record that states we would want  
7 near full market cap exclusive full consumer/gaming.

8 Therefore the issuance of an exclusive gaming as breakup is deemed well in excess  
9 of traditional break up fees and thus BOD fiduciary issue.<sup>176</sup>

10 146. Potashner overcame the resistance from his counsel and convinced the Outside  
11 Directors to agree to the Break-Up License without analysis. During a Board telephone conference  
12 the next day, April 25, 2013, Potashner requested and received approval for the Break-Up  
13 License.<sup>177</sup>

14 147. Over the next two months, the Board continued to allow Potashner to negotiate the  
15 terms of the Merger, again, with little supervision or involvement. During this time, no Outside  
16 Director was involved in a single discussion with Turtle Beach regarding the Break-Up License.  
17 While defendants claimed in this litigation that Wolfe became involved in the matter, it was in fact  
18 Potashner – not Wolfe – who finalized the key terms of the Break-Up License. On June 19, 2013,  
19 Potashner unilaterally approved *all* of the key terms of the Break-Up License for inclusion into the  
20 Merger Agreement.<sup>178</sup>

21 148. After that point, the attorneys for both sides simply scrivened non-substantive  
22 definitions, while Wolfe sat back as a pedestrian cc'd on emails. Indeed, the core terms finalized by  
23 Potashner on June 19, 2013 remained in the drafts circulated throughout July 2013, and made their  
24 way into both the final Merger Agreement and the Break-Up License.<sup>179</sup> Wolfe only participated in

25 <sup>176</sup> PAMT0040125; PAMTNV0108234; PAMT0070745-48.

26 <sup>177</sup> PAMT0000122.

27 <sup>178</sup> PAMT0040772.

28 <sup>179</sup> See, e.g., PAMT0065129; PAMT0065220; PAMT0069830.

1 a single conference call with Turtle Beach and counsel on July 24, 2013, which had already been  
2 pre-negotiated by Stark and Potashner “before we engage the lawyers tomorrow.”<sup>180</sup>

3 149. Potashner never ceded control to Wolfe on Break-Up License negotiations. As late as  
4 July 31, 2013, two days before the Board voted on the Merger, Stark attempted to re-trade on the  
5 prior 6% license deal and Potashner responded directly before even informing Wolfe.<sup>181</sup> By the time  
6 Wolfe found out that there were open issues on the Break-Up License, he deferred to Potashner and  
7 asked him to work it out directly with Stark.<sup>182</sup> Potashner then provided final comments and  
8 approval.<sup>183</sup> Throughout negotiations, Wolfe did not offer a single substantive comment on any  
9 material Break-Up License term.

10 **VI. PARAMETRIC SHAREHOLDERS AND THE COMPANY WAS**  
11 **DAMAGED BASED ON THE EXCESSIVE OVERVALUATION OF VTBH**  
**AND THE UNDERVALUATION OF PARAMETRIC**

12 150. Before Potashner embarked on the value-destroying Merger process, Parametric was  
13 a promising young tech company with a valuable intellectual property portfolio and that expected  
14 full profitability in 2014. On March 18, 2013, Potashner remarked to a fellow Board member that  
15 Parametric was “one of the biggest success stories on NASDAQ this year.”<sup>184</sup> Potashner confirmed  
16 three days later that Parametric was “one of the best performing companies in the country.”<sup>185</sup> On  
17 March 25, 2013, the Company provided outlook for fiscal year 2013. The Company announced that  
18 it was expecting to be cash flow positive from operations for 2014 from its core digital signage and  
19 licensing business: “We have been able to advance strategic licensing discussions and we have  
20 achieved success on several recent digital signage pilot projects that we expect will translate to high  
21 volume customer orders late in 2013 and in 2014. As a result, we anticipate that we will be

22  
23 <sup>180</sup> PAMT0057667.

24 <sup>181</sup> PAMT0057413.

25 <sup>182</sup> VTBH000527.

26 <sup>183</sup> See, e.g., PAMT0066252; PAMT0066296; PAMT0066298.

27 <sup>184</sup> PAMTNV0113889.

28 <sup>185</sup> *Id.*

1 operating cash flow positive in 2014.” Around that time, however, Potashner began delaying  
2 Parametric’s business efforts and licensing activities, thus materially undermining the Company’s  
3 future business prospects.

4 151. As noted, Parametric’s stock closed at \$17.69 per share on August 5, 2013, and now  
5 the same share of stock sits at less than \$1.00 per share. Defendants knew – but concealed – that  
6 they were causing Parametric to grossly overpay for VTBH’s assets.

7 **A. The Parametric Board Grossly Overpaid for VTBH’s Assets**

8 152. When agreeing to the Merger, the Parametric Board applied an excessive valuation  
9 for VTBH’s assets, which was not an honest error of judgment, but was the result of a bad faith and  
10 reckless indifference to the rights of Parametric stockholders. Parametric shareholders were reduced  
11 from full majority ownership to less than a 20% ownership in a deteriorating financial entity. In the  
12 months leading to the Merger, VTBH repeatedly tripped its debt covenants with third-party lenders  
13 and defendants were forced to scramble in order to figure out how to finalize a transaction where 4/5  
14 of the consideration was allocated to a distressed entity. As Potashner summarized on December 12,  
15 2013, Parametric’s stock price had declined since the Merger because, *inter alia*, of the perception  
16 that “PAMT shareholders are getting 19% of something not worth much.”<sup>186</sup>

17 153. As also described in greater detail above, all defendants knew that VTBH’s  
18 performance was falling to levels well below the numbers presented to Craig-Hallum for its “fairness  
19 opinion” on the Merger. For example, regarding VTBH’s anticipated 2013 revenues and cash flows,  
20 defendants knew that the numbers used by Craig-Hallum were inaccurate, outdated, and misleading.  
21 These problems of course flowed through the later years of VTBH’s financial projections, rendering  
22 the 2014-2016 figures used by Craig-Hallum for VTBH inflated and misleading as well. As noted  
23 above, Potashner explained that Craig-Hallum’s fairness opinion resulted in an opinion of “barely  
24 fair.” And that was with VTBH’s inflated numbers. If Craig-Hallum had utilized VTBH’s real  
25 financial numbers during pendency of the Merger, the valuations would have shifted entirely outside  
26 the range of fairness.

27  
28 <sup>186</sup> PAMTNV0088100.

1 154. Ultimately, on August 2, 2013, conflicted Craig-Hallum gave a fairness opinion that  
2 concluded the Per Share Exchange Ratio was fair based on a materially flawed analysis skewed to  
3 make the unfair deal look fair.

4 155. On December 12, 2013, Potashner wrote to Stark that Parametric's stock price had  
5 declined, *inter alia*, because "PAMT shareholders are getting 19% of something not worth much."<sup>187</sup>

6 **B. The Parametric Board Acted in Bad Faith When It Excluded**  
7 **Licensing Revenues When Valuing Parametric**

8 156. The Board approved the Merger based on Craig-Hallum's analysis that excluded all  
9 licensing revenue for Parametric, even though Parametric's CFO admitted that "we fully expect" a  
10 licensing revenue stream.<sup>188</sup> Digital signage and HHI were the only sources of revenue included in  
11 the final projections.<sup>189</sup> In contract, however, Parametric's March 2013 investor presentation  
12 identified its "Licensing strategy" as a key "Capital Light Business Model" that could generate  
13 "Recurring Revenue Streams."<sup>190</sup> The same presentation touted Parametric's "Strong IP Portfolio"  
14 and explained that "Strong IP supports licensing for volume markets." Similarly, Parametric's 2012  
15 investor presentation touted "Gaming Consoles/Computers" as part of its 2012-2013 "IP Strategy –  
16 Partner and License" and planned a lucrative entry into a \$68 billion annual video gaming market.<sup>191</sup>  
17 The Board knew that the Company's licensing activities were viable, but acted in bad faith when it  
18 approved the Merger based on flawed financial projections with a material omission.

19 157. The Board also acted in bad faith when it consciously disregarded a known  
20 component of Parametric's standalone value by engaging and/or permitting Potashner to engage, in  
21 the following activity: (a) Potashner sat on Optek Electronics' offer to pay Parametric a 9% royalty  
22 to "aggressive[ly] rollout" Hypersound technology in hundreds of thousands of Optek soundbars and  
23 headphones destined for Costco Wholesale Corporation ("Costco") shelves in time for the 2013

24 <sup>187</sup> PAMTNV0088100.

25 <sup>188</sup> PAMT0044589; PAMT0053793.

26 <sup>189</sup> PAMT0044589.

27 <sup>190</sup> PAMT0000313.

28 <sup>191</sup> PAMT0053887.



1 Christmas shopping season; (b) the Board approved the Merger based on Craig-Hallum analysis the  
2 Board knew excluded potential Optek revenue; and (c) Potashner encouraged Turtle Beach CEO  
3 Stark to negotiate with Optek for Turtle Beach's benefit two weeks into the Go-Shop process and  
4 months before shareholders voted on the Merger.<sup>192</sup>

5 **C. Craig-Hallum Was Conflicted**

6 158. Craig-Hallum was using the fairness opinion, for which it was paid just \$200,000, as  
7 an opportunity to pitch a more lucrative role in obtaining \$500,000 to \$700,000 in fees for additional  
8 equity financing.<sup>193</sup> In March 2013, Craig-Hallum pitched for a role in an equity offering by  
9 Parametric and, days after rendering the fairness opinion, Rick Hartfiel, Director of Investment  
10 Banking at Craig-Hallum, recommended a \$10 million offering "at around a 15-20% discount to  
11 market."<sup>194</sup> In fact, Craig-Hallum's representative admitted at deposition that it was "pitching its  
12 participation in [an] equity offering" during the August 2013 timeframe.<sup>195</sup> There was no ethical  
13 wall to separate the bankers involved in the fairness opinion and those individuals simultaneously  
14 pitching the more lucrative work.<sup>196</sup>

15 **D. Defendants Deprived Stockholders of Appraisal Rights**

16 159. Defendants also deprived plaintiffs and the stockholder class of their rights to  
17 appraisal. Nevada Revised Statute Section 78.3793 provides dissenting shareholders the right to  
18 "dissent in accordance with the provisions of NRS 92A.300 to 92A.500, inclusive, and obtain  
19 payment of the fair value of his or her shares" unless the acquired company has "otherwise provided  
20 in the articles of incorporation or the bylaws of the issuing corporation in effect on the 10th day  
21 following the acquisition of a controlling interest." But on August 2, 2013, the Parametric Board  
22 voted to amend Parametric's bylaws so that "the provisions of Nevada Revised Statutes Sections

23 <sup>192</sup> PAMT0032661; PAMT0000006; PAMT0039019; PAMT0034497; PAMT0058676;  
24 PAMT0060525; PAMT0044589; PAMT0053793; PAMT0061365.

25 <sup>193</sup> PAMT0038785.

26 <sup>194</sup> Wambeke Tr. at 122-23 and Ex. 2; PAMT0047470; PAMT0046980.

27 <sup>195</sup> Wambeke Tr. at 118.

28 <sup>196</sup> Wambeke Tr. at 119-20, 122-23, 125-26.

1 78.378 to 78.3783, inclusive, shall not apply to the Corporation or to the acquisition of a controlling  
2 interest by existing or future stockholders.”<sup>197</sup> This definition included the Merger and Parametric  
3 shareholders were thus left without rights to appraisal for their shares in connection with the Merger.

4 **VII. THE MERGER WAS NOT APPROVED BY AN INDEPENDENT,**  
5 **DISINTERESTED MAJORITY OF DIRECTORS – ALL SIX MEMBERS**  
6 **WERE CONFLICTED**

7 160. The Merger was not approved by a majority of disinterested and independent  
8 directors. At the time of the Board’s Merger vote on August 2, 2013, the Board had six members.  
9 All six of those individuals were conflicted and/or acted in self-interest when voting on the Merger.  
10 Those conflicts are broken down as follows.

11 161. **Kenneth Potashner.** Potashner’s fellow Board members and co-defendants here  
12 concede that he was conflicted: “Ken [Potashner] is totally conflicted, ignored his fiduciary  
13 responsibility to our shareholders, and has been negotiating constantly for his own self-interest.”<sup>198</sup>

14 162. Potashner suffered from multiple conflicts in connection with the Merger. *First*,  
15 Potashner was conflicted in light of his plan to use the Merger as a means to personally profit from  
16 Parametric’s hearing-related initiatives. Potashner saw great personal “liquidity” in HHI, later  
17 admitting that “I believe over time the HHI component will be worth a billion.”<sup>199</sup> In fact, at a  
18 December 13, 2012 Board meeting, Potashner “outlined the longer-term plans for him to transition  
19 more time to HHI” and that, as a result, Parametric itself would need a new CEO.<sup>200</sup>

20 163. As noted above, Potashner admitted that the “whole reason that I entered into the deal  
21 [with VTBH] in the first place [was] [t]o build a multi-billion dollar HHI and benefit from it”<sup>201</sup> and  
22 that “[m]y intent was to sell PAMT at the right time and keep HHI as the foundation of a new  
23

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24 <sup>197</sup> PAMT0000189.

25 <sup>198</sup> PAMTNV0112517.

26 <sup>199</sup> PAMT004036.

27 <sup>200</sup> PAMT0000006-07; PAMT0000062.

28 <sup>201</sup> PAMTNV0105035; VTBH009741.

1 company.”<sup>202</sup> Potashner also requested a “gentlemen agreement” for a consulting deal.<sup>203</sup> And as  
2 noted above, even after the Parametric Board voted on the Merger, Stripes manipulated Potashner  
3 into believing that he could monetize his role in HHI.<sup>204</sup>

4 164. **Second**, Potashner received golden parachute compensation of \$2,807,738 in the  
5 Merger, which further motivated him to complete the deal. Potashner negotiated his own severance  
6 payments and lockup agreements directly with Stark, including the day the Board voted on the  
7 Merger.<sup>205</sup> Indeed, another Parametric Board member confirmed on August 2, 2013, the morning of  
8 the final Board vote on the Merger, that “since [Potashner] has been spending all his time on this  
9 merger and not on getting us licenses for the technology, he has negotiated that he get paid his bonus  
10 anyway – if the deal goes through.”<sup>206</sup>

11 165. Analysts observed the conflict these windfall payments created for Potashner. For  
12 example, in a November 13, 2013 article posted on the website *Seeking Alpha*, a writer noted  
13 VTBH’s disturbing financial picture and queried, “So why would Parametric pursue an acquisition  
14 with a floundering company like Turtle Beach?”<sup>207</sup> His answer:

15 Personal enrichment, of course. As a result of the merger, special golden  
16 parachute payments will be triggered for the executive management of Parametric.  
17 For instance, we can see on page 77 [of the Proxy] that Kenneth Potashner, the  
18 Chairman, will be entitled to over \$2.8 million of payments that are triggered on a  
change of control. The proxy also reveals that he will continue on with a board seat  
following the merger, which is likely to be a cushy and lucrative endeavor for him.<sup>208</sup>

19 166. **Third**, Potashner also negotiated for himself a continued seat on the Company’s board  
20 after the Merger, which he believed would assist in his monetization of HHI. Potashner even snuck

21  
22 <sup>202</sup> VTBH000124.

23 <sup>203</sup> *Id.*

24 <sup>204</sup> *See also* PAMTNV0099274.

25 <sup>205</sup> VTBH000111; VTBH006118; VTBH013231.

26 <sup>206</sup> PAMTNV0115196.

27 <sup>207</sup> VTBH048603.

28 <sup>208</sup> *Id.*

1 in a reference to his being named to that position to the Merger press release. Stark reported on  
2 August 3, 2013, two days before the Merger was announced, that “Ken added a sentence to the press  
3 release saying he was going to be on the combined company board.”<sup>209</sup> Potashner was forced to  
4 apologize three months later, at an October 24, 2013 Parametric Board meeting, for naming himself  
5 without Board approval.<sup>210</sup> In response, Putterman reasonably proposed a re-vote to name a  
6 different individual.<sup>211</sup> Potashner so coveted the post-Merger board seat that he responded to  
7 Putterman later that day: “[Your proposal] hits a nerve with me. It is unlikely that I can work with  
8 you in the future or support your involvement on anything I am affiliated with. More important you  
9 take on incredible personal liability if it can be demonstrated that you are participating in a plan to  
10 deceive our shareholders.”<sup>212</sup> Potashner was right on the latter point.

11 167. Potashner sought the outside director board seat to avoid the hours required by a chief  
12 executive officer. In Potashner’s own words, “[I am] not interested in being CEO. . . . The whole  
13 point of me doing the deal was to not have to be a CEO.”<sup>213</sup>

14 168. When Fox of Stripes learned that Potashner was named Parametric’s post-Merger  
15 board representative, he observed: “Interesting outcome . . . I guess in the end he just cared more  
16 than all the directors and won the battle.”<sup>214</sup>

17 169. **Fourth**, Potashner was so determined to protect his own interests that he made a  
18 series of threats and misrepresentations to the Parametric Board throughout the Merger negotiations.  
19 Potashner repeatedly misrepresented and concealed information to the rest of the Parametric Board,  
20 defied the Board’s orders not to discuss certain issues with VTBH on several occasions, and  
21 threatened to displace the entire Board and sue them all if they did not cave to his personal  
22

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23 <sup>209</sup> VTBH001587.

24 <sup>210</sup> PAMTNV0115179.

25 <sup>211</sup> *Id.*

26 <sup>212</sup> PAMTNV0112296.

27 <sup>213</sup> PAMTNV0086846.

28 <sup>214</sup> VTBH016192.

1 compensation demands. In sum, Potashner's conduct is not the hallmark of a disinterested,  
2 independent director acting with fidelity to corporate interest alone.

3       170. **Elwood "Woody" Norris.** Norris was also conflicted as a result of his vying for  
4 employment in the post-Merger entity, resulting financial interest in completing the Acquisition, and  
5 related susceptibility to Potashner's threats. Potashner recognized these conflicts and pounced,  
6 threatening Norris that he would personally lose millions if Norris did not go along with the planned  
7 Merger. On March 29, 2013, as Potashner was working out a deal with Stark, Potashner emailed  
8 Norris privately to state that the Merger was in doubt and that "[i]f the bod [Board of Directors]  
9 costs us this deal I will look for them all to resign or I will resign. The Bod is on the verge of losing  
10 you at least \$10m personally."<sup>215</sup> Norris was thus uniquely susceptible to Potashner's threats.

11       171. Norris was also conflicted when voting on the Merger because, at the same meeting  
12 where he approved the deal, the Board – with Norris present – agreed to pay Norris his maximum  
13 target bonus rate of \$81,000, even though the performance conditions had not yet been met.<sup>216</sup>

14       172. Moreover, Norris remained with the Company post-Merger as its "Chief Scientist" at  
15 least through the end of 2016.<sup>217</sup> Norris was aware of this incentive when he voted on the Merger –  
16 by July 1, 2013, Potashner stated that a term of the then-current Merger Agreement stated, "Woody  
17 Norris to have an employment contract with 'Newco'" post-Merger.<sup>218</sup>

18       173. **Andrew Wolfe.** Wolfe was beholden to Potashner in light of their prior relationship  
19 in threatening boards for personal compensation and Potashner's continued improper incentivizing  
20 of Wolfe to do Potashner's bidding. Potashner, Wolfe, and Todd worked together, respectively, as  
21 CEO, Chief Technology Officer ("CTO"), and Vice President of SonicBlue, Inc. ("SonicBlue").

22  
23 <sup>215</sup> PAMT0033560.

24 <sup>216</sup> PAMT0000189.

25 <sup>217</sup> <http://hypersound.com/hypersound-expecting-european-growth-with-directional-audio-systems.php>.

26 [https://www.sec.gov/Archives/edgar/data/1493761/000149376116000065/](https://www.sec.gov/Archives/edgar/data/1493761/000149376116000065/hearinvestorpresentation.htm)  
27 [hearinvestorpresentation.htm](https://www.sec.gov/Archives/edgar/data/1493761/000149376116000065/hearinvestorpresentation.htm).

28 <sup>218</sup> PAMT0061388.

1 Potashner promoted Wolfe to CTO and Senior Vice President of Business Development then  
2 procured company-issued loans for himself and Wolfe to purchase shares of a SonicBlue subsidiary,  
3 RioPort, Inc. (similar to HHI).

4 174. When SonicBlue's board later voted to convert their own loans (but not Potashner's  
5 and Wolfe's) to non-recourse, Potashner publically demanded the board pay up or resign. Potashner  
6 then sued his own board. Through his lawsuit, Potashner successfully extracted a lump-sum  
7 payment for Wolfe of a full ten-month salary in October 2002 and a \$1 million payment for himself.

8 175. Wolfe was in Potashner's debt and Potashner continued this pattern by personally  
9 luring Wolfe to the Parametric Board in February 2012. When Potashner began angling for a post-  
10 Merger board seat with Turtle Beach, Potashner pushed for only two candidates – Potashner and  
11 Wolfe. Potashner did so repeatedly, including on April 23, 2013 (Wolfe identified by Stripes as  
12 post-close member "recommended by Ken Potashner"); July 1, 2013 (Potashner writes to Stark, "I  
13 will be the choice . . . I will also recommend we add Andy Wolfe to BOD"); July 3, 2013 (Potashner  
14 writes to Stark regarding the post-Merger board, "I highly recommend myself and Andy Wolfe  
15 become the 2 from our side. Not one of the other directors is even remotely qualified."); and July 5,  
16 2013 (Potashner to Stark, Wolfe "will be my recommendation for the 2ND BOD seat should PAMT  
17 go to 2").<sup>219</sup> Wolfe currently remains on the post-Merger Turtle Beach board of directors.

18 176. In light of their mutual history of threats and incentives, Wolfe was in a position to  
19 comport with the wishes and interest of Potashner, rather than Parametric stockholders generally.

20 177. **Dr. Robert Kaplan.** Despite not participating in a single discussion with VTBH,  
21 Kaplan voted on the Merger while vying for a personal payment to "get even" with Potashner.  
22 Kaplan explained on July 28, 2013 that he should be personally paid because the independent  
23 directors "are legally exposed to a lot of the decisions he [Potashner] forces upon us."<sup>220</sup>

24 178. The day of the most significant vote in Parametric's corporate existence, Kaplan spent  
25 his time emailing about the personal bonus he felt the independent directors should receive. The  
26

27 <sup>219</sup> PAMTNV0105448; VTBH013411; VTBH010857; VTBH004242; PAMTNV0105849.

28 <sup>220</sup> PAMTNV0115287.

1 Parametric Board voted on the Merger at a 4 p.m. meeting on August 2, 2013. That morning,  
2 Kaplan expressed surprise to Putterman that “Neither the vesting of our options nor the  
3 compensation of the independent directors is mentioned in the [Merger Agreement].”<sup>221</sup> So, one  
4 hour before the meeting, Kaplan wrote to propose the following resolution:

5 “\$50,000 is to be paid to each of the independent directors as compensation for their  
6 continuing efforts and activity in Corporate Development. This money is to be paid  
7 immediately.” I mentioned this thought to you previously and have discussed it with  
8 Seth [Putterman]. Since it should not be tied to the merger, I have described it  
9 differently.<sup>222</sup>

10 179. At the meeting an hour later, a few minutes before the Board actually voted on the  
11 Merger, the Board agreed to table the final decision on their bonuses: “The Board next discussed  
12 potential cash bonuses for the directors based on their increased level of work related to the Merger  
13 Agreement and other contemporaneous matters, but deferred any decision related thereto.”<sup>223</sup> After  
14 voting on the Merger, the Board adjourned at 5:00 p.m.<sup>224</sup> Kaplan, however, still believed he would  
15 receive a cash bonus. At 7:35 p.m. that evening, Kaplan continued in his personal quest for a  
16 Merger-related bonus, upping the ante:

17 I used 50K as a starting point. . . . My real suggestion is to have an average of all the  
18 executive bonuses and that figure is what the IDs [Independent Directors] should get.  
19 Ken has granted himself rather large bonuses. This will get even with him, not that I  
20 want to get even, I really just want equality.<sup>225</sup>

21 180. Kaplan demonstrated the same money-hungry approach earlier in the Merger  
22 negotiation process as well. On July 7, 2013, Kaplan emailed Barnes and Norris stating: “I think the  
23 BoD should pass a resolution giving some kind of healthy golden parachutes to all the BoD members  
24 upon their termination, *e.g.*, stock options (VTB is issuing an unlimited amount of options pre  
25  
26  
27  
28

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24 <sup>221</sup> PAMTNV0115196.

25 <sup>222</sup> PAMT0072324.

26 <sup>223</sup> PAMT0000189.

27 <sup>224</sup> *Id.*

28 <sup>225</sup> PAMT0072292.

1 merger).”<sup>226</sup> As a result, the Board attempted to put a last-minute addition into the Merger schedules  
2 that each outside director receive a personal fee for the Merger.<sup>227</sup>

3 181. These payments were material to Kaplan personally and, as demonstrated above, he  
4 was operating under the belief that he would receive the Merger-related bonus at the time he voted  
5 on the Merger. In fact, even in the Proxy released on December 3, 2013, defendants kept the option  
6 open, stating that “in connection with the negotiation and execution of the merger agreement,  
7 Parametric may elect to pay a fee to each of the non-employee members of the Parametric Board,  
8 commensurate to the incremental time devoted by them apart from normal board of director service  
9 in 2013, related to review and analysis of strategic transactions and related matters.”<sup>228</sup>

10 182. **Seth Putterman.** Like Kaplan, Putterman also voted on the Merger with the  
11 expectation of receiving a cash bonus. At 4:50 p.m. on August 2, 2013, during the very meeting  
12 while Putterman and the rest of the Board were voting on the Merger, Putterman agreed with  
13 Kaplan’s bonus request in general, but offered a different rationale: “Can the bonus be made  
14 contingent on successfully raising the 5-15M\$ that we seek prior to closing but that we need in any  
15 event!”<sup>229</sup> Putterman knew his proposed rationale had no merit – Putterman was not involved in  
16 obtaining the financing and conducted no actual work in doing so. Putterman did not contact any  
17 financing sources, did not engage in an independent discussion with the bankers, and did not perform  
18 any analysis on the financing documents.

19 183. Moreover, Putterman held a consulting agreement with Parametric and was forced to  
20 resign before the Merger’s close. On November 12, 2013, Parametric notified the NASDAQ Stock  
21 Market (“NASDAQ”) that Putterman was not actually “independent” under NASDAQ rules. The  
22 Board had earlier failed to disclose that it gave a consulting contract to Putterman and granted him  
23 options vesting over three years valued at \$162,775 and, according to Parametric, the payments

24  
25 <sup>226</sup> PAMT0033288.

26 <sup>227</sup> VTBH001570.

27 <sup>228</sup> Proxy at 75.

28 <sup>229</sup> PAMT0072324.



1 “exceeded the \$120,000 compensation limit set forth in NASDAQ Marketplace Rule 5605(a)(2)(B)  
2 and therefore precludes Dr. Putterman from being deemed independent according to this rule.”<sup>230</sup>  
3 This meant that Parametric had been operating in violation of NASDAQ rules throughout the Merger  
4 process because half of its six-member Board was not independent (Potashner, Norris and  
5 Putterman). Consequently, on November 21, 2013, three months after voting on the Merger,  
6 Putterman tendered his resignation from the Parametric Board.

7 184. **James L. Honore.** As with the other Outside Directors, Honore established a lack of  
8 independence from Potashner when repeatedly bowing to Potashner’s threats during the sale process.  
9 In the face of those threats, Honore agreed to pay Potashner in exchange for agreeing to relinquish  
10 options in HHI that Potashner had no legal right to hold; refused to intervene when it became clear  
11 that Potashner was pursuing the Merger for improper and self-interested reasons; purposefully  
12 disregarded Potashner’s warning that VTBH had undisclosed debt and had misrepresented its  
13 finances; and intentionally issued a false and misleading Proxy as described below. And despite  
14 realizing that Potashner had committed a fraud on the Board, Honore and the Outside Directors did  
15 nothing to revise the terms of the Break-Up License or exchange ratio that Potashner had already  
16 negotiated with Turtle Beach. In addition, Honore also expected that he would be paid in connection  
17 with the Merger, given Kaplan’s and Putterman’s comments at the final meeting, as well as the  
18 Proxy’s inclusion of language allowing the receipt of a Merger-related payment for the Outside  
19 Directors.

20 **VIII. STRIPES SOUGHT TO EFFECTUATE THE MERGER FOR ITS OWN**  
21 **SELF-INTERESTED REASONS**

22 **A. Through the Merger, Stripes Obtained Access to the Public Markets**  
23 **for Its Failing Investment in VTBH**

24 185. Stripes pushed through the Merger in order to obtain liquidity for its failing  
25 investment in VTBH. Stripes intentionally did so in a way that harmed Parametric stockholders. As  
26 Potashner succinctly put it, “[I] have been going over [VTBH] financials in proxy with Jim. Shitty  
27 numbers, money losing negative equity, etc. If Stripes was really interested in doing an IPO next

28 <sup>230</sup> See [http://www.sec.gov/Archives/edgar/data/1493761/000101968713004399/parametric\\_8k.htm](http://www.sec.gov/Archives/edgar/data/1493761/000101968713004399/parametric_8k.htm).

1 year they never should have replaced cash with debt layer. Anyway glad to rescue your sorry ass  
2 and get you public.”<sup>231</sup>

3 186. In 2013, Stripes Group – through SG VTB – was majority owner of VTBH. Given  
4 VTBH’s rapidly deteriorating financial state, Stripes knew that it had to take VTBH public to  
5 capitalize VTBH and gain liquidity for itself. But Stripes also knew it could not do so by way of a  
6 traditional IPO. A traditional IPO would have subjected Stripes and VTBH to intense financial  
7 scrutiny, which would have amounted to a test that VTBH could not pass. In fact, in May 2013, Fox  
8 was specifically informed by the Global Head of Equity Sales at Barclays, regarding a potential IPO  
9 for VTBH: “Right now, if you came to me and said we need to get an offering done – I would say  
10 you can’t get it done.”<sup>232</sup>

11 187. As a result, Stripes found an easier path forward – it pushed through a reverse merger  
12 of VTBH into the publicly traded, but smaller, Parametric. By completing a reverse merger with  
13 Parametric, Stripes was able to gain access to the public markets and take advantage of the  
14 Parametric Board’s bad faith unwillingness to properly diligence the financially stressed Turtle  
15 Beach. Put differently, rather than complete a traditional IPO, Stripes chose the path of least  
16 resistance and pushed the Merger through by manipulating a conflicted and ineffective Parametric  
17 Board.

18 188. Potashner stated on several occasions that Stripes was using the Merger to go public  
19 and all defendants understood this fact.<sup>233</sup> For example, on September 5, 2013, while discussing a  
20 closing condition PNC Bank placed on the Merger, Potashner stated to Stark and Barnes:

21 Its not silly if Stripes group is able to preserve a high market valuation for the  
22 entity they are using to go public with and build the value up from there. . . .

23 what was silly was for stripes to allow PNC to dictate a term of a requirement  
24 to raise \$5M as a closing condition at a time that I cant use my shelf to do a  
25 reasonable deal due to my inability to integrate VTB numbers. This drives me down  
a path of having to sell discounted stock that will take our market cap down further.

26 <sup>231</sup> PAMTNV0095569.

27 <sup>232</sup> VTBH007665.

28 <sup>233</sup> PAMT0041988; VTBH004981; PAMTNV0095553.

1 When all the smoke settles Stripes will have 80% of something worth \$400M if we  
2 are lucky instead of 80% of \$500M. \$80M paper loss. I know we can argue day 1  
valuation doesn't matter but if it were me I write a \$5M check to get the \$80M.

3 I know you are tired of this discussion but I am the one who is taking all the  
4 calls from the pissed off investors.<sup>234</sup>

5 189. After the Merger closed, Stripes engineered a series of post-close transactions  
6 whereby SG VTB (Fox), Doornink, and Stark loaned money to the Company at exorbitant interest  
7 rates, then forced the Company to issue stock to pay them back, with interest.<sup>235</sup> Even Potashner  
8 labeled the 20% yield in year two "way above market" in an email exchange with Stark.<sup>236</sup>

9 190. Importantly, all repayment came from public offerings and proceeds from a loan  
10 drawn on the Company's post-Merger credit facility – sources that were not available to Stripes  
11 before the Merger. Stripes also repeatedly forced the Company to issue stock to those same Stripes  
12 insiders at below-market prices, often purportedly in "consideration" for these one-sided loans.

13 191. Former VTBH insiders took notice of this scheme. In February 2015, a VTBH  
14 preferred stockholder, Dr. John Bonanno, filed a lawsuit in the Delaware Court of Chancery against  
15 VTBH in order to force a redemption of Bonanno's preferred stock as a result of the Merger. In  
16 support for his allegation that Stripes Group and the Company had sufficient cash flow to redeem  
17 Bonanno's shares, Bonanno stated:

18 *[O]ver the course of the past year, [VTBH] and Parametric, which report on a*  
19 *consolidated basis, have paid back to affiliates of Kenneth Fox more than \$17*  
20 *million.* In June 2014, Parametric used funds from a public offering to pay off  
21 subordinated notes issued by [VTB Holdings, Inc.] to SG VTB and affiliates, which  
22 included \$10 million outstanding principal plus related accrued interest that did not  
23 mature until August 22, 2016. In December 2014, Parametric (now Turtle Beach  
Corporation), [VTB Holdings, Inc.], and related entities entered into an Amendment  
to Turtle Beach Corporation's Loan, Guaranty and Security Agreement with Turtle  
Beach Corporation's lenders (the "Amendment"), which permitted the Turtle Beach  
Corporation to repay approximately \$7.7 million to SG VTB of existing subordinated

24 <sup>234</sup> PAMT0041988; VTBH004981; PAMTNV0095569.

25 <sup>235</sup> Doornink's transactions were executed through various trusts affiliated with Doornink, including  
26 the Doornink Revocable Living Trust, the Ronald Doornink 2012 Irrevocable Trust, and the Martha  
27 M. Doornink 2012 Irrevocable Trust. Doornink is co-trustee of the Doornink Revocable Living  
Trust and is the beneficial owner of all shares held by that trust.

28 <sup>236</sup> PAMTNV0104810.

1 debt and accrued interest with the proceeds of an additional loan drawn pursuant to  
2 the Credit Agreement.

3 192. Bonanno's allegations represent just the tip of the iceberg. In a series of transactions  
4 spanning August 2013 to February 2016, SG VTB, Doornink and Stark purchased \$37.3 million in  
5 high-yield notes from the Company at exorbitant interest rates. Specifically, SG VTB purchased  
6 \$33,296,975 in notes, Doornink purchased \$3,503,025 in notes, and Stark purchased \$500,000 in  
7 notes. The notes generally bore interest at a rate of 10% for the first year, and then ballooned to 20%  
8 for all periods thereafter. To date, Turtle Beach has paid \$22,489,000 million on the notes,  
9 distributed as follows: \$20,867,386.33 to SG VTB (*i.e.*, Fox), \$1,082,163.67 to Doornink, and  
10 \$539,450 to Stark. Moreover, as additional purported "consideration" for purchasing or amending  
11 the notes, SG VTB (Fox) and Doornink have been granted a significant number of stock warrants at  
12 below-market prices. Specifically, SG VTB (Fox) obtained warrants that allow it to purchase  
13 1,384,884 shares of Post-Close Turtle Beach at \$2.54 and 1,400,000 shares of Post-Close Turtle  
14 Beach at \$2.00, and Doornink obtained warrants that allow him to purchase 306,391 shares of Post-  
15 Close Turtle Beach at \$2.54. On February 2, 2016, SG VTB (Fox) was able to purchase 2.5 million  
16 Post-Close Turtle Beach shares at \$1.00 per share when the stock was trading significantly higher  
17 than that. These conflicted transactions included:

- 18 • August 30, 2013: as a closing condition for the Merger, the Company issued \$10  
19 million of subordinated notes (the "August 2013 Notes") to SG VTB, Doornink and  
20 Stark that bore interest at a rate of (i) 10% per annum for the first year, and (ii) 20%  
21 per annum thereafter.<sup>237</sup>
- 22 • January 15, 2014: the Company issued a \$7 million subordinated note (the "January  
23 2014 Note") to SG VTB on substantially similar terms as the August 2013 Notes.
- 24 • April 24, 2014: the Company conducted a public offering and used more than \$10  
25 million of the proceeds to pay back the outstanding principal and accrued interest of  
26 the August 2013 Notes to SG VTB, Doornink and Stark.
- December 2014: the Company used more than \$7 million from an existing Credit  
Facility to repay the outstanding principal and accrued interest of the January 2014  
Notes to SG VTB.

27 <sup>237</sup> Parametric's December 3, 2013 Proxy informed Parametric stockholders that "the Stripes  
28 Group" received these notes.

- 1 • April 23, 2015: the Company issued a \$5 million subordinated note (the “April 2015  
2 Note”) to SG VTB on substantially similar terms as the August 2013 Notes.
- 3 • May 13, 2015: the Company issued \$3.8 million of subordinated notes (the “May  
4 2014 Notes”) to SG VTB on substantially similar terms as the August 2013 Notes.
- 5 • June 17, 2015: the Company issued a \$3 million subordinated note (the “June 2015  
6 Note”) to SG VTB that bore interest at a rate of (i) 10% per annum until September  
7 17, 2015 (roughly three months after its issuance), and (ii) 20% per annum thereafter.
- 8 • July 8, 2015: SG VTB advanced the Company an additional \$6 million under the  
9 same terms as the June 2015 Note.
- 10 • July 22, 2015: the Company amended and restated each of the outstanding above-  
11 mentioned subordinated notes (the “Amended Notes”). The maturity date for the  
12 Amended Notes was extended to September 29, 2019, and the interest rate was  
13 amended so that the Amended Notes bore interest at a rate of LIBOR plus 10.5%. As  
14 purported “consideration” for accepting the terms of the Amended Notes, the  
15 Company issued warrants to purchase 1.7 million of the Company’s common stock  
16 at an exercise price of \$2.54 per share to SG VTB and Doornink.
- 17 • November 16, 2015: the Company issued \$2.5 million in a subordinated note (the  
18 “November 2015 Note”) to SG VTB that bore interest at a rate of 15% per annum  
19 until its maturity. As purported “consideration” for entering into the November 2015  
20 Note, SG VTB received a Guaranty and Security Agreement that, *inter alia*, provided  
21 for a warrant to SG VTB to purchase roughly 1.4 million shares of the Company’s  
22 common stock at an exercise price of \$2.00 per share.
- 23 • February 2, 2016: the Company entered into an underwriting agreement relating to  
24 an underwritten public offering of 5,000,000 shares of common stock at a discounted  
25 price of \$1.00 per share. SG VTB purchased 800,000 shares, and Doornink  
26 purchased 500,000 shares in the public offering. In a concurrent private placement,  
27 the Company offered 1,700,000 shares of common stock at the same discounted price  
28 of \$1.00 per share to SG VTB only.

193. Despite the Company’s significant decline in value, Stripes Group and SG VTB continued to reap the benefits by usurping the Company’s public status. Stripes is causing Turtle Beach to pay its affiliates tens of millions of dollars, while the Company’s stock price flounders at less than \$1.00 per share.

**B. Relationship Between Fox, Stripes Group, and SG VTB**

194. Stripes Group, through Fox, exercises complete control over SG VTB and is responsible for its transactions and investments. Fox is the founder, sole owner, and Managing General Partner of Stripes Group. Fox is also the sole manager of SG VTB. SG VTB has stated in

1 public filings that “Fox . . . has voting and investment control over the securities held by SG VTB,”  
2 which includes a majority interest in VTBH and now Turtle Beach (through a “control group”).<sup>238</sup>  
3 Moreover, according to Fox’s public filings: “SG VTB Holdings, LLC is wholly owned by SG  
4 Growth Partners I, LP. SGGP I, LLC is the general partner of SG Growth Partners I, LP. SGGP  
5 Holdings, LLC exercises investment discretion and control over securities held by SGGP I, LLC.  
6 Stripes Group, LLC, which is wholly owned by [Fox], exercises investment discretion and control  
7 over securities held by SGGP Holdings, LLC.”<sup>239</sup> Given their affiliation and overlap in  
8 management, SG VTB’s actions can be attributed to Stripes Group.

9       195. In a lawsuit in the Delaware Court of Chancery (described below), the court found  
10 that, with respect to the relationship between Stripes Group and its subsidiaries, including SG VTB,  
11 “[t]his is not a case where a parent sat by idly as its subsidiary transacted deals with third parties –  
12 Stripes Group played a direct role in consummating the financing through entities that pervaded the  
13 [Merger’s] structure and personnel [including Fox] who signed key documents.”

14       196. Stripes Group and SG VTB also acted in concert with VTBH and Parametric  
15 throughout the unfair and unlawful Merger process. Stripes Group and SG VTB principals approved  
16 virtually every material decision VTBH made relating to Parametric. Further, Stripes Group and SG  
17 VTB principals participated in no less than 15 meetings between Parametric and VTBH in Merger  
18 negotiations between March 21, 2013 and August 4, 2013.

19       197. In committing the wrongful acts alleged herein, Stripes Group, SG VTB, VTBH and  
20 the Parametric Board joined in the pursuit of a common course of conduct, and acted in concert with  
21 and conspired with one another, in furtherance of their common plan or design. Each of the  
22 defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein.  
23 In taking such action to substantially assist the commission of the wrongdoing complained of herein,  
24 each defendant acted with knowledge of the primary wrongdoing, substantially assisted the  
25

26 <sup>238</sup> <https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddef14a.htm>.

27 <sup>239</sup> [https://www.sec.gov/Archives/edgar/data/1493761/000118143114004004/xslF345X03/](https://www.sec.gov/Archives/edgar/data/1493761/000118143114004004/xslF345X03/rdd400192.xml)  
28 [rdd400192.xml](https://www.sec.gov/Archives/edgar/data/1493761/000118143114004004/xslF345X03/rdd400192.xml).

1 accomplishment of that wrongdoing, and was aware of his or her overall contribution to and  
2 furtherance of the wrongdoing.

3 **IX. CLASS ACTION ALLEGATIONS**

4 198. Direct Plaintiffs bring this action individually and as a class action on behalf of all  
5 holders of Parametric stock harmed by defendants' actions described below (the "Class"). Excluded  
6 from the Class are defendants herein and any person, firm, trust, corporation, or other entity related  
7 to or affiliated with any defendant.

8 199. This action is properly maintainable as a class action.

9 200. The Class is so numerous that joinder of all members is impracticable. According to  
10 Parametric's SEC filings, there were 6,837,321 shares of Parametric common stock outstanding as of  
11 November 11, 2013, held by hundreds if not thousands of shareholders geographically dispersed  
12 across the country.

13 201. There are questions of law and fact which are common to the Class and which  
14 predominate over questions affecting any individual Class member. The common questions include,  
15 *inter alia*, the following:

16 (a) whether the Individual Defendants have breached their fiduciary duties of  
17 undivided loyalty or independence with respect to plaintiffs and the other members of the Class in  
18 connection with the Merger;

19 (b) whether the Individual Defendants engaged in self-dealing in connection with  
20 the Merger;

21 (c) whether the Individual Defendants unjustly enriched themselves and other  
22 insiders or affiliates of Parametric;

23 (d) whether the Individual Defendants have breached any of their other fiduciary  
24 duties to plaintiffs and the other members of the Class in connection with the Merger, including the  
25 duties of good faith, diligence, honesty and fair dealing;

26 (e) whether the defendants, in bad faith and for improper motives, usurped a  
27 corporate opportunity belonging to Parametric; and  
28

1 (f) whether the defendants, in bad faith and for improper motives, impeded or  
2 erected barriers to discourage other offers for the Company or its assets.

3 202. Direct Plaintiffs' claims are typical of the claims of the other members of the Class  
4 and Direct Plaintiffs do not have any interests adverse to the Class.

5 203. Direct Plaintiffs are adequate representatives of the Class, have retained competent  
6 counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of  
7 the Class.

8 204. Direct Plaintiffs anticipate that there will be no difficulty in the management of this  
9 litigation. A class action is superior to other available methods for the fair and efficient adjudication  
10 of this controversy.

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

14 **X. DEMAND FUTILITY ALLEGATIONS**

15 206. Derivative Plaintiff incorporates herein all of the allegations above, except those  
16 exclusively related to equity expropriation direct class action allegations.

17 207. Derivative Plaintiff brings this action derivatively on behalf of Turtle Beach to  
18 redress injuries suffered, and to be suffered, by the Company as a result of defendants' breaches of  
19 fiduciary duty, gross mismanagement, abuse of control, corporate waste and unjust enrichment.  
20 Derivative Plaintiff will adequately and fairly represent the interests of the Company in enforcing  
21 and prosecuting these derivative claims.

22 208. The current Post-Close Turtle Beach board of directors has six members: Doornink  
23 (Chairman), Fox, Stark, Wolfe, William E. Keitel ("Keitel"), and L. Gregory Ballard ("Ballard")  
24 (together, the "Current Board"). No pre-suit demand on the Current Board is necessary in this case  
25 because a majority of the Board is disabled from fairly, independently and objectively considering  
26 such a demand. As VTBH has asserted in other litigation pending in New York: "It is undisputed  
27 that, as a result of the Acquisition, pre-merger VTBH stockholders [*i.e.*, Stripes] retained  
28 ***unequivocal, overwhelming control*** of the voting power of VTBH through their control of



1 Parametric.” Based on the particularized facts set forth in this complaint, a pre-suit demand on the  
2 Current Board is legally excused for several reasons.

3 209. **First**, at least three Current Board members (half of the Current Board) are  
4 inextricably linked and/or employed by Stripes and could not possibly be considered independent of  
5 Stripes. Stripes is liable to the Company for massive damages as a result of its principals’ conduct in  
6 connection with the Merger. If any Current Director investigated a pre-suit demand, it would only  
7 increase Stripes’ exposure to liability for the severe wrongdoing of Fox, Doornink and Kenworthy in  
8 connection with the Merger.

9 210. As described in greater detail herein, Stripes controls the Company – both through  
10 sheer voting power and through the tangible, day-to-day manifestation of that power. Indeed, in its  
11 latest proxy, Stripes and the Company concede that out of the six Current Board members, **only**  
12 Keitel, Ballard, and Wolfe are “‘independent’ as defined in the applicable NASDAQ listing  
13 standards and the applicable rules under the Exchange Act.”<sup>240</sup> Thus, Stripes and the Company fully  
14 concede that Fox, Doornink, and Stark are not independent from Stripes. That concession was  
15 presumably based on at least the following facts:

16 211. **Fox**: As described in greater detail herein, Fox is synonymous with Stripes Group  
17 and SG VTB. Fox is Stripes Group’s founder, sole owner, and Managing General Partner. The  
18 Company’s latest proxy states that “Mr. Fox is the sole manager of SG VTB and, as such, has voting  
19 and investment control over the securities held by SG VTB.”<sup>241</sup> Any liability faced by either Stripes  
20 Group or SG VTB is liability suffered by Fox personally; Fox’s personal financial interests are  
21 inextricably intertwined with that of Stripes Group and SG VTB.

22 212. **Doornink**: Doornink is an Operating Partner of Stripes Group and has been a  
23 principal at Stripes Group since May 2006. Any liability faced by Stripes will be suffered by  
24 Doornink personally; Doornink’s personal financial interest is inextricably intertwined with that of  
25 Stripes Group and Doornink depends on Stripes Group for his personal livelihood. In addition, the

26 <sup>240</sup> <https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddefl4a.htm>.

27 <sup>241</sup> [https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddefl4a.htm](https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddefl4a.htm#tx381010_15)  
28 #tx381010\_15.

1 Company concedes that Doornink is part of the “control group” owning a majority interest in the  
2 Company, led by Fox and Stripes. Doornink is bound by a Stockholder Agreement to vote for any  
3 slate of directors for the Company as designated by SG VTB (Fox), which means that Doornink is  
4 legally bound to vote consistent with SG VTB rather than in the interests of the Company or its  
5 minority stockholders. Doornink has no power to vote his shares in the interests of stockholders at  
6 large, but instead must vote his shares according to however SG VTB and Fox direct him.<sup>242</sup> As a  
7 result, the Company concedes in its most recent proxy that SG VTB and Fox are the beneficial  
8 owners of Doornink’s shares. As illustrated throughout this complaint, during the Merger process,  
9 Doornink repeatedly acted at the behest of Fox and Kenworthy, demonstrating his beholdenness to  
10 Stripes on a day-to-day basis.

11       213. **Stark:** Stripes named Stark the CEO of VTBH in September 2012. During the  
12 Merger process, Stripes demanded that Stark continue as CEO of post-Merger Turtle Beach – Stark  
13 remains in that position today. Stark depends on Stripes for his personal livelihood. In fact, despite  
14 the Company’s recent woeful stock performance, Stripes allowed Stark to extract from the Company  
15 over \$1.5 million in executive compensation in 2015 and over \$1.3 million in 2016. As a result, in  
16 its latest proxy, the Company concedes that Stark is not independent from Stripes. In fact, on July  
17 24, 2013, Doornink confirmed that Stripes would retain control of any post-Merger board of  
18 directors and that, as was ultimately the case, “Stripes also needs to have the right to hire/fire the  
19 CEO [Stark], so he can be counted as a Stripes board appointee . . . .”<sup>243</sup> Just as Doornink  
20 previewed, Stripes indeed possesses the right to hire and fire Stark through its control over Turtle  
21 Beach and its dominance of the Current Board. Moreover, as illustrated throughout this complaint,  
22 during the Merger process, Stark repeatedly acted at the behest of Fox, Kenworthy, and Doornink,  
23 which also demonstrates his beholdenness to, and control by, Stripes on a day-to-day basis.

24       214. **Second,** Wolfe faces significant personal liability in this lawsuit and is liable to the  
25 Company and shareholders for the significant damages caused by his intentional misconduct, fraud,

26 <sup>242</sup> [https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddef14a.htm#](https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddef14a.htm#tx381010_6)  
27 [tx381010\\_6](https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddef14a.htm#tx381010_6).

28 <sup>243</sup> VTBH007979.

1 and/or knowing violation of the law. If Wolfe investigated a pre-suit demand, it would only increase  
2 his already significant exposure to liability for, *inter alia*, the following acts: (1) Wolfe personally  
3 enabled and facilitated Potashner's self-interested threats and ransom demands for Potashner's HHI  
4 options; (2) Wolfe approved the issuance of a misleading Proxy, particularly with respect to VTBH's  
5 deteriorating financial state, even though Wolfe was apprised of the real facts; (3) Wolfe  
6 intentionally shirked his responsibility to become involved in the Break-Up License while instead  
7 allowing the highly conflicted Potashner to negotiate all material terms of that license; and (4) Wolfe  
8 intentionally issued a misleading Proxy.

9       215. **Third**, a pre-suit demand is also excused because the entire Current Board – including  
10 Keitel and Ballard – is beholden to defendant Stripes for their nomination and election to the  
11 Company's board of directors. Stripes controls over 50% of the total voting power of the Company.  
12 Defendants freely admit that Turtle Beach is now a "controlled" company under NASDAQ  
13 Marketplace Rules, and has been since the day the Merger closed. *See* 2017 Proxy Statement at 5  
14 ("The Board has elected for the Company to be treated as a 'controlled company' under NASDAQ's  
15 listing rules. A 'controlled company' under NASDAQ rules is a listed company more than 50  
16 percent of the voting power of which is held by an individual, a group or another company [and  
17 which elects to be treated as a 'controlled company' ].").<sup>244</sup> The Company also freely admits that, as  
18 the result of an ongoing voting agreement, SG VTB – the Stripes Group shell entity, of which Fox is  
19 the sole manager – has the right to designate all seven directors to the Current Board so long as SG  
20 VTB and its affiliates collectively beneficially own at least 10% of the Company's outstanding  
21 capital stock (as SG VTB continues to do). Indeed, the Company's Nominating Governance  
22 Committee consists of Fox (Stripes), Doornink (Stripes), and Wolfe. This is because, "[a]s a  
23 'controlled company,' as defined under NASDAQ rules, the Company is not required to establish a  
24 Nominating and Governance Committee comprised entirely of independent directors or otherwise  
25 ensure that director nominees are determined, or recommended to the Board, by the independent  
26

27  
28 <sup>244</sup> <https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddef14a.htm>.

1 members of the Board.”<sup>245</sup> Therefore, all of the Company’s current directors are 100% dependent on  
2 Stripes for their seats on the Current Board and would be expelled from their positions, and the  
3 perquisites derived therefrom, for bringing the derivative claims against Stripes Group and SG VTB  
4 (*i.e.*, Fox).

5       216. In 2016, the Company paid Keitel \$89,000 per year and Ballard is likely receiving a  
6 similar amount annually. In addition, each non-employee director receives an annual grant of  
7 options to purchase a number of shares of Company common stock with a grant date fair market  
8 value of \$50,000 *and* a grant of restricted shares having a grant date fair market value of \$50,000.  
9 Keitel and Ballard are thus receiving nearly \$200,000 per year for their directorships in a Stripes-  
10 controlled entity. Due to the internal dynamics and structural dependencies surrounding the Current  
11 Board, the entire Current Board is legally disabled from fairly and objectively considering a pre-suit  
12 demand to bring, let alone vigorously prosecute, the claims asserted in this complaint.

13       217. In fact, Stripes set out to effectuate the Merger in order to gain control of a public  
14 company, as it now does. As early as April 23, 2013, Doornink remarked that “[i]f we merge the  
15 two companies, we’d definitely want the Newco to be designated as a ‘controlled company’ so we  
16 do not have to comply with the NASDAQ listing standards requiring majority board independence  
17 . . . . (A controlled company is defined as a company in which more than 50% of the voting power  
18 for the election of directors is held by an individual, a group or another company).”<sup>246</sup> (Parentheses,  
19 emphasis in original.) Doornink set out to ensure that, with respect to post-Merger Turtle Beach,  
20 Stripes would “have the same voting power on the new BOD as it has today on the VTB BOD.”<sup>247</sup>  
21 Doornink made similar comments throughout the Merger process, openly conceding that under any  
22 structure of the post-Merger board, Stripes would retain control.<sup>248</sup>

23

24

25 <sup>245</sup> *Id.*

26 <sup>246</sup> VTBH013411.

27 <sup>247</sup> *Id.*

28 <sup>248</sup> VTBH007979; VTBH005631.

1           218. *Fourth*, the Company has been and will continue to be exposed to significant losses  
2 due to the wrongdoing complained of herein, yet the Current Board has not filed any lawsuits against  
3 defendants or others who were responsible for that wrongful conduct to attempt to recover for the  
4 Company any part of the damages the Company has suffered and will suffer thereby. Despite the  
5 pervasive misconduct in connection with the Merger, the Current Board has turned a blind eye and  
6 has not conducted any investigation or initiated any action that would compensate the Company  
7 based on defendants' irrefutable and admitted wrongdoing. This is powerful additional evidence of  
8 the futility of demand on the Current Board.

9 **XI. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Direct Equity Expropriation Claim for Breach of Fiduciary Duties**  
12 **Against the Individual Defendants**

13           219. Direct Plaintiffs repeat and reallege each and every allegation supporting the equity  
14 expropriation claims as set forth herein.

15           220. The Merger constituted a dilutive expropriation of equity whereby the Individual  
16 Defendants, in concert with the aiding and abetting defendants, engaged in "actual fraud" under the  
17 meaning of NRS 78.200(2) and NRS 78.211(1). The majority-conflicted Parametric Board applied  
18 an excessive valuation for VTBH's assets, which was not an honest error of judgment, but was the  
19 result of a bad faith and reckless indifference to the rights of Parametric's stockholders. All  
20 defendants conspired to expropriate significant value from the Company, which caused all other  
21 stockholders' equity interests to be diluted.

22           221. Despite the unattractiveness of the dilutive Merger to Parametric public stockholders,  
23 the Parametric Board agreed that Stripes and VTBH could acquire Parametric through a stock  
24 issuance that specifically diluted plaintiffs' and the rest of Parametric's stockholder base. The Board  
25 received unique benefits in exchange for this expropriation of equity, not shared by stockholders at  
26 large.

222. The Individual Defendants violated fiduciary duties of loyalty, good faith, and honesty owed under Nevada law to the public shareholders of Parametric and acted to put their personal interests ahead of the interests of Parametric shareholders.

223. By the acts, transactions and courses of conduct alleged herein, defendants, individually and acting as a part of a common plan, advanced their interests at the expense of plaintiffs and other members of the Class.

224. The Individual Defendants violated their fiduciary duties by entering into a transaction without regard to the fairness of the transaction to Parametric's shareholders.

225. The Individual Defendants engaged in self-dealing, did not act in good faith toward plaintiffs and the other members of the Class, and breached their fiduciary duties to the members of the Class.

226. The Individual Defendants are not exculpated for the acts alleged herein, because each engaged in intentional misconduct, fraud, and a knowing violation of the law.

## SECOND CAUSE OF ACTION

**Direct Claim For Aiding and Abetting Equity Expropriation-Based Breaches of Fiduciary Duty Against Defendants Stripes Group, SG VTB, and VTBH**

227. Direct Plaintiffs repeat and reallege each and every allegation supporting the equity expropriation claims as set forth herein.

228. Defendants Stripes Group, SG VTB, and VTBH aided and abetted the Individual Defendants in breaching their fiduciary duties owed to the public shareholders of Parametric, including plaintiffs and the members of the Class.

229. The Merger constituted a dilutive expropriation of equity whereby the Individual Defendants, in concert with the aiding and abetting defendants, engaged in “actual fraud” under the meaning of NRS 78.200(2) and NRS 78.211(1). The majority-conflicted Parametric Board applied an excessive valuation for VTBH’s assets, which was not an honest error of judgment, but was the result of a bad faith and reckless indifference to the rights of Parametric’s stockholders. All defendants conspired to expropriate significant value from the Company, which caused all other stockholders’ equity interests to be diluted.

1           230. Despite the unattractiveness of the dilutive Merger to Parametric public stockholders,  
2 the Parametric Board agreed that Stripes Group, SG VTB, and VTBH could acquire Parametric  
3 through a stock issuance that specifically diluted plaintiffs' and the rest of Parametric's stockholder  
4 base. Executives from Stripes Group, SG VTB, and VTBH knowingly induced the Parametric  
5 Board to breach its fiduciary duties and, as a result, Stripes Group, SG VTB, and VTBH benefitted  
6 by obtaining control of the Company and usurping its publicly traded status.

7           231. The Individual Defendants owed to Direct Plaintiffs and the members of the Class  
8 certain fiduciary duties as fully set out herein.

9           232. By committing the acts alleged herein, the Individual Defendants breached their  
10 fiduciary duties owed to Direct Plaintiffs and the members of the Class.

11           233. Stripes Group, SG VTB, and VTBH colluded in or aided and abetted the Individual  
12 Defendants' breaches of fiduciary duties, and were active and knowing participants in the Individual  
13 Defendants' breaches of fiduciary duties owed to Direct Plaintiffs and the members of the Class.

### 14                                   **THIRD CAUSE OF ACTION**

#### 15                   **Derivative Claim For Breach of Fiduciary Duties of Loyalty and Good Faith** 16                   **Against The Individual Defendants**

17           234. Derivative Plaintiff repeats and realleges each and every allegation supporting the  
18 derivative claims as set forth herein.

19           235. The Individual Defendants violated fiduciary duties of loyalty, good faith, and  
20 honesty owed under Nevada law to the Company and acted to put their personal interests ahead of  
21 the interests of the Company.

22           236. By the acts, transactions and courses of conduct alleged herein, defendants,  
23 individually and acting as a part of a common plan, advanced their interests at the expense of the  
24 Company.

25           237. The Individual Defendants violated their fiduciary duties by entering into a  
26 transaction without regard to the fairness of the transaction to the Company.

27           238. As demonstrated by the allegations above, the Individual Defendants breached their  
28 duties of loyalty, good faith, and honesty owed to the Company.

239. The Individual Defendants engaged in self-dealing, did not act in good faith toward the Company, and have breached and breached their fiduciary duties to the Company.

240. The Individual Defendants are not exculpated for the acts alleged herein, because each engaged in intentional misconduct, fraud, and a knowing violation of the law.

#### FOURTH CAUSE OF ACTION

## Derivative Claim For Gross Mismanagement Against the Individual Defendants

241. Derivative Plaintiff repeats and realleges each and every allegation supporting the derivative claims as set forth herein.

242. The Individual Defendants abandoned and abdicated their responsibilities and fiduciary duties to competently direct and manage the Company's business and engaged in egregious misconduct constituting gross mismanagement in connection with the Merger. As a direct and proximate result of the Individual Defendants' gross mismanagement, the Company has sustained significant damages.

243. Accordingly, the Individual Defendants breached their fiduciary duties of loyalty and good faith owed to the Company by grossly mismanaging its business and affairs. As a result, each of the Individual Defendants is liable to the Company.

### FIFTH CAUSE OF ACTION

### Derivative Claim For Abuse of Control Against the Individual Defendants

244. Derivative Plaintiff repeats and realleges each and every allegation supporting the derivative claims as set forth herein.

245. The Individual Defendants' misconduct alleged herein constitutes a breach of their fiduciary duties because they abused their ability to control and influence the Company, for which they are legally responsible.

246. As a direct and proximate result of the Individual Defendants' abuse of control, the Company has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.



1 **SIXTH CAUSE OF ACTION**

2 **Derivative Claim For Corporate Waste**  
3 **Against the Individual Defendants**

4 247. Derivative Plaintiff repeats and realleges each and every allegation supporting the  
5 derivative claims as set forth herein.

6 248. By their wrongful acts, the Individual Defendants wasted the Company's valuable  
7 corporate assets by, among other things, causing the Company to issue equity to Stripes, SG VTB,  
8 and VTBH, which induced the Individual Defendants to breach their fiduciary duties owed to the  
9 Company. As a result, the Individual Defendants damaged the Company and are liable to the  
10 Company for corporate waste.

11 **SEVENTH CAUSE OF ACTION**

12 **Derivative Claim against Stripes Group and SG VTB**  
13 **for Aiding and Abetting the Individual Defendants' Breaches**  
14 **of Fiduciary Duty, Gross Mismanagement, and Waste**

15 249. Derivative Plaintiff repeats and realleges each and every allegation supporting the  
16 derivative claims as set forth herein.

17 250. Defendants Stripes Group and SG VTB aided and abetted the Individual Defendants  
18 in breaching their fiduciary duties owed to the Company.

19 251. The Individual Defendants owed to the Company certain fiduciary duties as fully set  
20 out herein.

21 252. By committing the acts alleged herein, the Individual Defendants breached their  
22 fiduciary duties owed to the Company.

23 253. Stripes Group and SG VTB colluded in and aided and abetted the Individual  
24 Defendants' breaches of fiduciary duties, and were active and knowing participants in the Individual  
25 Defendants' breaches of fiduciary duties owed to the Company.

26 **EIGHTH CAUSE OF ACTION**

27 **For Unjust Enrichment Against the Individual Defendants,**  
28 **Stripes Group, and SG VTB**

29 254. Derivative Plaintiff repeats and realleges each and every allegation supporting the  
30 derivative claims as set forth herein.

255. By their wrongful acts and omissions, the Individual Defendants, Stripes Group, and SG VTB were unjustly enriched at the expense of and to the detriment of the Company.

256. All the payments, equity shares, and benefits provided to defendants were at the expense of the Company. The Company received no benefit from these payments.

257. Derivative Plaintiff, on behalf of the Company, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

## PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment in their favor, in favor of the Class and the Company, and against all defendants as follows:

A. Declaring that as to the First and Second Causes of Action, this action is properly maintainable as a class action;

B. Declaring that as to the Third through Eighth Causes of Action, Derivative Plaintiff may maintain this action on behalf of the Company and that Derivative Plaintiff is an adequate representative of the Company;

C. Declaring and decreeing that the Merger Agreement was unlawfully entered into and that the Merger was consummated in breach of the fiduciary duties of the Individual Defendants;

D. Awarding damages to plaintiffs and the Class sustained as a result of the misconduct set forth above by each of the defendants, jointly and severally, together with interest thereon;

E. Awarding damages to the Company sustained as a result of the misconduct set forth above by each of the defendants, jointly and severally, together with interest thereon;

F. Awarding the Company restitution from defendants;

G. Determining and awarding to the Company and the Class exemplary damages in an amount necessary to punish Stripes and Potashner and to make an example of Stripes and Potashner to the corporate community, according to proof at trial;

H. Awarding plaintiffs the costs of this action, including a reasonable allowance for the fees and expenses of plaintiffs' attorneys and experts; and

1 I. Granting plaintiffs and the other members of the Class such further relief as the Court  
2 deems just and proper.

3 **JURY DEMAND**

4 Plaintiffs hereby demand a trial by jury on all applicable claims.

5 DATED: December 1, 2017

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Co-Lead Counsel for Plaintiffs

## VERIFICATION

I, Lance Mykita, hereby declare as follows:

I am a shareholder of Turtle Beach Corporation ("Turtle Beach"). I was a shareholder at the time of the wrongdoing complained of and I remain a shareholder. I have retained competent counsel and I am ready, willing and able to pursue this action vigorously on behalf of Turtle Beach. I have reviewed the substantially completed Amended Class Action and Derivative Complaint. Based upon discussions with and reliance upon my counsel, and as to those facts of which I have personal knowledge, the Complaint is true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury under the law of the State of Nevada.

DATED: 11/30/17

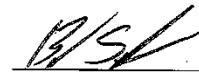
  
\_\_\_\_\_  
LANCE MYKITA

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document via email and the Court's Electronic Filing System on all participants as follows:

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DATED: December 1, 2017



BRYAN SNYDER

**FILED**  
**MAR 27 2018**  
*Order Denying Motion*  
**CLERK OF COURT**

1 ORDR

2 **EIGHTH JUDICIAL DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4  
5 **IN RE PARAMETRIC SOUND**  
6 **CORPORATION SHAREHOLDERS'**  
7 **LITIGATION**

**LEAD CASE NO.: A-13-686890-B**  
**DEPT. NO.: XI**

8 **This Document Related To:**  
9 **ALL ACTIONS**

**ORDER DENYING DEFENDANTS'**  
**MOTIONS TO DISMISS THE AMENDED**  
**CLASS ACTION AND DERIVATIVE**  
**COMPLAINT**

10  
11  
12  
13  
14 This matter came on for hearing on March 13, 2018, on the "Director Defendants'  
15 Motion to Dismiss Plaintiffs' Amended Class Action and Derivative Complaint" and "Defendant  
16 VTB Holdings, Inc. and Specially Appearing Defendants Stripes Group, LLC and SG VTB  
17 Holdings LLC's Motion to Dismiss the Amended Class Action and Derivative Complaint" (the  
18 "Motions") This Court read the pleadings and papers filed by the parties, reviewed the exhibits  
19 attached to the briefing, and considered the oral and written arguments of counsel.

20 1. In its September 14, 2017 decision, the Nevada Supreme Court stated that "[t]he  
21 shareholders do not argue, and we do not address, whether they can assert a derivative claim."  
22 *Parametric Sound Corp. v. Eighth Jud. Dist. Ct.*, 401 P.3d at 1100, 1104 n.9 (Nev. 2017). The  
23 Nevada Supreme Court did not foreclose Plaintiffs' ability to assert derivative claims in the  
24 Amended Complaint.

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1           2.       Under NRCP 23.1, a shareholder who has not made a demand on the corporate  
2 board is required to allege with particularity why a demand would be futile. NRCP 23.1. Under  
3 the *Rales* test, which Nevada has adopted, the court “evaluate[s] whether particularized facts in  
4 the shareholder derivative complaint ‘raise[ ] a reasonable doubt that the current board of  
5 directors would be able to exercise its independent and disinterested business judgment in  
6 responding to a demand.’” *In re AMERCO Derivative Litig.*, 127 Nev. 196, 219, 252 P.3d 681,  
7 698 (2011) (citation omitted). The court is required to accept the plaintiff’s allegations as true  
8 and draw all reasonable inferences in favor of the plaintiff. *In re EZCORP Inc.*, No. 9962-VCL,  
9 2016 Del. Ch. LEXIS 14, at \*109 (Del. Ch. Jan. 25, 2016). The court must “consider all  
10 particularized facts pled by the plaintiffs about the relationships between the director and the  
11 interested party in their totality and not in isolation from each other.” *Id.* To plead demand  
12 futility for a six-member board, shareholders must show that at least three of the directors lack  
13 independence or are not disinterested. *Beam ex. Rel. Martha Stewart Living Omnimedia, Inc. v.*  
14 *Stewart*, 845 A.2d 1040, 1046 n.8 (Del. 2004).

15           3.       When the Amended Complaint was filed, the Turtle Beach Board consisted of the  
16 following six members: Kenneth Fox (“Fox”), Ron Doornink (“Doornink”), Juergen Stark  
17 (“Stark”), Andrew Wolfe (“Wolfe”), William E. Keitel, and L. Gregory Ballard. ¶208.  
18 Accepting the allegations in the Amended Complaint as true, the Court finds that Plaintiffs have  
19 alleged particularized facts showing that a majority of these six directors would be unable to  
20 exercise their independent and disinterested business judgment in responding to a demand.

21           4.       According to the Amended Complaint, Fox is the founder, sole owner, and  
22 Managing General Partner of Stripes Group and sole manager of SG VTB. ¶211. Both of those  
23 entities are defendants in this Action, this Court has determined herein that Plaintiffs sufficiently  
24 plead direct and derivative claims against both entities, and Fox’s personal financial interests are  
25 closely related to that of Stripes Group and SG VTB. *Id.* Based on these allegations, the Fox  
26 cannot exercise his independent and disinterested business judgment in responding to a demand.

27           5.       Doornink is currently an Operating Partner at Stripes Group and Chairman of the  
28 Turtle Beach Board. ¶212. The Amended Complaint alleges that Doornink owes his livelihood

1 to Fox/Stripes because they are responsible for each of his current positions. *Id.* Doornink owes  
2 conflicting fiduciary duties to both Stripes Group and Turtle Beach. *Id.* Through his actions  
3 during Merger negotiations, Doornink was "controlled by" Fox/Stripes Group. *Id.* Finally,  
4 according to Turtle Beach in its latest Proxy, Doornink cannot exercise independent judgment in  
5 carrying out his responsibilities as a director of Turtle Beach, as defined by the NASDAQ listing  
6 standards. *Id.* Based on these allegations, Doornink cannot exercise his independent and  
7 disinterested business judgment in responding to a demand.

8         6. Stark is currently the President, CEO, and a director at Turtle Beach, and was CEO  
9 and a director of VTBH prior to the Merger. ¶213. The Amended Complaint alleges that Stark  
10 owes his livelihood to Fox/Stripes because they are responsible for placing Stark in each of these  
11 positions. *Id.* Fox also has the power to hire and fire Stark from each of these positions, which  
12 Fox negotiated for during Merger negotiations. *Id.* Stark was also "controlled by" Fox/Stripes  
13 during Merger negotiations. *Id.* Finally, according to Turtle Beach in its latest Proxy, Stark is not  
14 independent from Stripes Group under the NASDAQ listing standards. *Id.* Based on these  
15 allegations, Stark cannot exercise his independent and disinterested business judgment in  
16 responding to a demand.

17         7. Wolfe was a director of the Parametric Board during Merger negotiations. ¶214.  
18 The Court finds below that the Amended Complaint adequately pleads a breach of fiduciary duty  
19 claim (both direct and derivative) against Wolfe. *Id.* Wolfe faces a substantial likelihood of  
20 liability and therefore cannot exercise his independent and disinterested business judgment in  
21 responding to a demand.

22         8. Accepting the allegations in the Amended Complaint as true, the demand is  
23 excused as futile because Plaintiffs have raised a reasonable doubt as to whether a majority of  
24 Turtle Beach's six directors would be able to exercise their independent and disinterested  
25 business judgment in responding to a demand.

26         9. "[T]he duty of loyalty requires the board and its directors to maintain, in good  
27 faith, the corporation's and its shareholders' best interests over anyone else's interests." *Shoen v.*  
28 *SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171 (2006); NRS 78.138(1). In order to plead



1 a non-exculpated breach of fiduciary duty claim against a corporate director, plaintiffs must show  
2 that: (1) the business judgment rule has been rebutted; (2) the director breached his or her  
3 fiduciary duty; and (3) the director's breach involved "intentional misconduct, fraud or a knowing  
4 violation of law." NRS 78.138(7); *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct. of Nev.*, 399 P.3d  
5 334, 342 (Nev. 2017); *EXX, Inc. v. Stabosz*, No. 10A627976, 2014 WL 10251999 (D. Nev. Feb.  
6 10, 2014).

7 10. In addition, "[t]he business judgment rule . . . pertains only to directors whose  
8 conduct falls within its protections." *Shoen*, 122 Nev. at 635. Under the business judgment rule,  
9 directors "are presumed to act in good faith, on an informed basis and with a view to the interests  
10 of the corporation." NRS 78.138(3). However, plaintiffs can "rebut the [business judgment]  
11 presumption that a director's decision was valid by showing either that the decision was the  
12 product of fraud or self-interest or that the director failed to exercise due care in reaching the  
13 decision." *Wynn Resorts*, 399 P.3d at 343.

14 11. The Amended Complaint sufficiently pleads facts demonstrating that with respect  
15 to each Individual Defendant: (i) the business judgment rule under NRS 78.138(3) is rebutted  
16 because each Individual Defendant acted in bad faith, on an uninformed basis, and/or to further  
17 their own self-interests when approving the Merger; (ii) each Individual Defendant's actions or  
18 failures to act constituted a breach of his or her fiduciary duties as a director and/or officer; and  
19 (iii) each Individual Defendant engaged in a breach of fiduciary duty that involved non-  
20 exculpated intentional misconduct and/or fraud.

21 12. For purposes of the motion to dismiss the Court accepts all allegations in the  
22 Amended Complaint as true. The Plaintiffs allege sufficient facts to demonstrate that all of the  
23 Parametric directors were conflicted and acted in self-interest when voting on the Merger. The  
24 Amended Complaint alleges that Individual Defendant Robert Kaplan ("Kaplan") wrote the  
25 following about the Company's Executive Chairman – fellow individual Defendant Kenneth  
26 Potashner ("Potashner"): "Ken is totally conflicted, ignored his fiduciary responsibility to our  
27 shareholders, and has been negotiating constantly for his own self-interest." ¶¶8, 161. Potashner  
28 allegedly stated that "the whole reason that I entered into the deal in the first place [was] [t]o

1 build a multi-billion dollar [subsidiary] and benefit from it. . . . My intent was to sell PAMT at  
2 the right time and keep [the subsidiary] as the foundation of a new company." The Amended  
3 Complaint also alleges that Potashner acted in self-interest by, *inter alia*: negotiating the Merger  
4 as a means to personally profit from Parametric's hearing related initiatives (§§162-163);  
5 negotiating his own severance payments and lockup agreements directly with Stark, including on  
6 the day the Board voted on the Merger (§164); misrepresenting material information to the rest of  
7 the Parametric Board (such as his prohibited HHI discussions with VTBH and Stripes) (§§47-99);  
8 ignoring the Board's orders not to discuss certain issues with VTBH on several occasions (§§47-  
9 77); and stating he would replace and/or sue Board members who did not agree to his  
10 compensation requests. §§47-99, 169.

11 13. The Amended Complaint alleges that Elwood G. Norris ("Norris") was conflicted  
12 and susceptible to Potashner's influence when voting on the Merger due to his financial interest in  
13 completing the Merger and his post-close position with Turtle Beach, which he held until at least  
14 the end of 2016 (§§170-172). The Amended Complaint alleges that Kaplan and Seth Putterman  
15 ("Putterman") acted in self-interest by casting their votes on the Merger while vying for personal  
16 payments. §§11, 178-179. The Amended Complaint alleges that James L. Honore ("Honore")  
17 acted in self-interest as well. §178.

18 14. The Amended Complaint further alleges that Wolfe, Norris, Kaplan, Putterman,  
19 and Honore were controlled by and lacked independence from Potashner. *See, e.g.*, §§62-77.

20 15. The Amended Complaint sufficiently pleads facts demonstrating that all of the  
21 Parametric directors acted in bad faith when negotiating and approving the Merger. For example,  
22 the Amended Complaint alleges that Potashner misrepresented material facts to the Outside  
23 Directors and ignored their instructions not to discuss HHI-related issues directly with Stripes and  
24 VTBH. §§51-63. Potashner also made a series of coercive demands to the Outside Directors in  
25 order to secure payment for his HHI options. §§63-77. Despite recognizing the conflict, the  
26 Outside Directors agreed to Potashner's demands, not for the interests of the Company or its  
27 shareholders, but because the Outside Directors asked Potashner to include a benefit for  
28 themselves in negotiations with VTBH. §71.

1           16. At this stage, the Plaintiffs have alleged sufficient facts to demonstrate that, with  
2 respect to the Individual Defendants, the business judgment presumption has been rebutted, each  
3 Individual Defendant breached his or her fiduciary duties as a director and/or officer of  
4 Parametric, and each Individual Defendant engaged in a breach of fiduciary duty that involved  
5 non-exculpated intentional misconduct and/or fraud.

6           17. Corporate waste “entails an exchange of corporate assets for consideration so  
7 disproportionately small as to lie beyond the range at which any reasonable person might be  
8 willing to trade.” *Lewis v. Vogelstein*, 699 A.2d 327, 336 (Del. Ch. 1997). “The essence of waste  
9 is the diversion of corporate assets for improper or unnecessary purposes.” *Patrick v. Allen*, 355  
10 F. Supp. 2d 704, 714-15 (S.D.N.Y. 2005).

11           18. Accepting all factual allegations in the Amended Complaint as true, the Plaintiffs  
12 sufficiently plead a claim for corporate waste against the Individual Defendants. According to the  
13 Amended Complaint, the Individual Defendants knew that VTBH’s finances were deteriorating  
14 during the Merger process, and that, as a result, Parametric would be issuing shares in exchange  
15 for an entity with a depressed value. ¶100. The Amended Complaint alleges that despite this  
16 knowledge, the Individual Defendants agreed to the disproportionately undervalued Merger for  
17 self-interested reasons. ¶105.

18           19. Unjust enrichment exists where: (1) a benefit is conferred on the defendant by the  
19 plaintiff; (2) appreciation of the benefit by the defendant; and (3) acceptance and retention of the  
20 benefit by the defendant under circumstances where it would be inequitable for the defendant to  
21 retain the benefit without payment. *See LeasePartners Corp. v. Robert L. Brooks Tr.*, 113 Nev.  
22 747, 755, 942 P.2d 182, 187 (1997). An indirect benefit will support an unjust enrichment claim.  
23 *Topaz Mut. Co., Inc. v. Marsh*, 108 Nev. 845, 855-56, 839 P.2d 606, 613 (1992).

24           20. Accepting all factual allegations in the Amended Complaint as true, the Plaintiffs  
25 sufficiently plead a claim for unjust enrichment against the Individual Defendants, Stripes Group,  
26 and SG VTB. Plaintiffs allegedly conferred a substantial benefit on each Individual Defendant,  
27 ranging from millions of dollars of golden parachute payments to hundreds of thousands of  
28 dollars from the immediate vesting of options (¶¶160-184), and on Stripes Group and SG VTB by

1 providing access to public capital to effectuate their self-interested transactions. ¶192. In light of  
2 the alleged conduct detailed in the Amended Complaint, it would be inequitable for the Individual  
3 Defendants, Stripes Group, or SG VTB to retain these funds.

4 21. Under Nevada law, to plead an aiding and abetting claim for breach of fiduciary  
5 duty, plaintiffs must show “(1) a fiduciary relationship exists, (2) the fiduciary breached the  
6 fiduciary relationship, (3) the third party knowingly participated in the breach, and (4) the breach  
7 of the fiduciary relationship resulted in damages.” See *AMERCO*, 127 Nev. at 225. “Creating or  
8 exploiting a fiduciary breach is not part of legitimate arm’s-length bargaining; it is an  
9 impermissible intrusion into the relationship between the fiduciary and beneficiary.” *In re Del*  
10 *Monte Foods Co. S’holders Litig.*, 25 A.3d 813, 837 (Del. Ch. 2011).

11 22. Accepting all factual allegations in the Amended Complaint as true, the Plaintiffs  
12 sufficiently plead a claim for aiding and abetting against Stripes Group and SG VTB. With  
13 regard to “knowing participation,” the Amended Complaint alleges facts that demonstrate Stripes  
14 Group and SG VTB knowingly participated in the Parametric Board’s breaches of fiduciary duty  
15 by, *inter alia*: (i) willingly participating in Potashner’s prohibited discussions concerning HHI  
16 (¶¶58-62); (ii) working with Potashner to manipulate Parametric’s stock price to create an  
17 artificial Merger premium (¶75); (iii) facilitating the Parametric’s Board’s fraudulent go-shop  
18 period (¶¶109-118); and (iv) assisting in filing a knowingly false and misleading Proxy (¶¶121-  
19 133).

20 23. Under NRCP 15(c), an amended complaint relates back to a previously-filed  
21 complaint “[w]henver the claim or defense asserted in the amended pleading arose out of the  
22 conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.”  
23 NRCP 15(c). NRCP 15(c) “is to be liberally construed to allow relation back of the amended  
24 pleading where the opposing party will be put to no disadvantage.” *Costello v. Casler*, 127 Nev.  
25 436, 441, 254 P.3d 631, 634-35 (2011). The Nevada Supreme Court ruled that NRCP 15(c)  
26 applies to the addition and substitution of parties, as well as claims. *Amezcuca v. Jordan Transp.,*  
27 *Inc.*, No. 2:13-CV-01608-APG-CWH, 2015 U.S. Dist. LEXIS 170815, at \*9 (D. Nev. Dec. 18,  
28 2015); see also *Costello*, 127 Nev. at 441. The Rules of Civil Procedure are intended to allow the

1 court to reach the merits of claims, rather than dispose of claims on technical niceties. *Jackson v.*  
2 *Groenendyke*, 369 P.3d 362, 365 (Nev. 2016); *Costello*, 127 Nev. at 441.

3 24. Courts applying identical or similar “relation back” statutes have held that  
4 amended pleadings alleging new derivative claims relate back to the original complaint where the  
5 derivative claims arose out of the same conduct, transaction, or occurrence as the preexisting  
6 direct claims. See *In re Westinghouse Sec. Litig.*, 832 F. Supp. 989, 999 (W.D. Pa. 1993);  
7 *Centerre Bank, N.A. v. Angle*, 976 S.W.2d 608, 616-17 (Mo. Ct. App. 1998); *Telxon Corp. v.*  
8 *Bogomolny*, 792 A.2d 964, 972 (Del. Ch. 2001).

9 25. The Court therefore finds that the derivative claims alleged in the Amended  
10 Complaint were timely-filed. The Amended Complaint relates back to the previous complaint  
11 under NRCP 15(c), as Plaintiffs’ claims arose out of the same conduct and transaction. The fact  
12 that the derivative claims are brought on behalf of Turtle Beach does not preclude application of  
13 NRCP 15(c).

14 26. In this case, the Nevada Supreme Court explained that “Delaware courts . . . have  
15 recognized that a certain class of equity dilution claims, equity expropriation claims, have a dual  
16 nature, being both direct and derivative shareholder claims.” *Parametric*, 401 P.3d at 1109. The  
17 Court continued:

18 Equity expropriation claims involve a controlling shareholder’s or director’s  
19 expropriation of value from the company, causing other shareholders’ equity to be  
20 diluted. *Id.*; see also *Gatz v. Ponsoldt*, 925 A.2d 1265, 1277 (Del. 2007). As the  
21 shareholders have not currently couched their complaint in terms of equity  
22 expropriation and the district court has not considered this issue, we decline to  
23 consider further whether the shareholders can adequately plead such a claim.  
24 Nevertheless, the shareholders’ complaint does suggest equity dilution, and we  
25 conclude that the shareholders should be allowed to amend their complaint to  
26 articulate equity expropriation claims, if any such claims exist.

27 *Id.*

28 27. Nevada looks to Delaware law to determine the contours of an equity  
expropriation claim. See *Parametric*, 401 P.3d at 1109. Under Delaware law, a direct claim for  
equity expropriation can exist where “the board that effectuated the transaction lacks a  
disinterested and independent majority.” *Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618,

1 658 (Del. Ch. 2013). Thus, in addition to establishing the existence of a control group, in order to  
2 plead a direct claim for equity expropriation, “as an alternative ground, the Plaintiffs may also  
3 establish standing by proving that a majority of the Board was conflicted – here, meaning  
4 interested or not independent – when it approved and implemented the [challenged transaction].”  
5 *In re Nine Sys. Corp. S’holders Litig.*, No. 3940-VCN, 2014 Del. Ch. LEXIS 171, at \*63-\*96  
6 (Del. Ch. Sept. 4, 2014), *aff’d*, 129 A.3d 882 (Del. 2015). In an equity expropriation claim, the  
7 ultimate transferee may be a third party. *See, e.g., id.; Gatz v. Ponsoldt*, 925 A.2d 1265, 1281  
8 (Del. 2007).

9 28. In addition, to plead a claim for equity expropriation under Nevada law,  
10 shareholders must show “actual fraud,” as the Nevada Legislature enacted statutes that give  
11 conclusive deference to the directors’ judgment as to the consideration received for issued stock  
12 absent actual fraud. *See Parametric*, 401 P.3d at 1110 n. 15; NRS 78.200(2), 78.211(1).

13 29. Nevada has not defined “actual fraud” in this context, but Delaware courts have  
14 held that the “actual fraud” standard is met where shareholders show that the excessive valuation  
15 on consideration received for a stock issuance was “so gross as to lead the Court to conclude that  
16 it was due, not to an honest error of judgment but to bad faith or a reckless indifference to the  
17 rights of others.” *Lewis v. Scotten Dillon Co.*, 306 A.2d 755, 758 (Del. Ch. 1973); *Parfi Holding*  
18 *AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, at 1234-35 (Del. Ch. 2001).

19 30. Accepting all factual allegations in the Amended Complaint as true, the Plaintiffs  
20 sufficiently plead a claim for equity expropriation against the Individual Defendants. As detailed  
21 above, the Amended Complaint contains facts alleging that a majority of the Parametric Board  
22 was neither disinterested nor independent when negotiating and voting on the Merger. ¶¶160-184  
23 (“The Merger was not approved by a majority of disinterested and independent directors. At the  
24 time of the Board’s Merger vote on August 2, 2013, the Board had six members. All of those six  
25 individuals were conflicted and/or acted in self-interest when voting on the Merger.”); ¶¶161-169  
26 (Potashner); ¶¶170-172 (Norris); ¶¶173-176 (Wolfe); ¶¶177-181 (Kaplan); ¶¶182-183  
27 (Putterman); ¶184 (Honore).

1           31. Plaintiffs also allege that the majority-conflicted Parametric Board excessively  
2 overvalued VTBH in the Merger, knew that Parametric would be issuing millions of dilutive  
3 shares in the Merger for an entity with a depressed value, and that the Parametric Board's  
4 excessive valuation was the result of a bad faith indifference to the rights of Parametric  
5 stockholders. ¶¶22, 100, 105, 152.

6           32. Accepting all factual allegations in the Amended Complaint as true, the Plaintiffs  
7 have sufficiently alleged a claim for aiding and abetting equity expropriation against Stripes  
8 Group, SG VTB, and VTBH. The Amended Complaint alleges that Stripes Group, SG VTB, and  
9 VTBH: (i) knew that VTBH had experienced a significant financial decline in the months leading  
10 to the Merger, rendering the projections used in Craig-Hallam's fairness opinion and disclosed in  
11 the Proxy misleading (¶121); "knowingly participated" in the Parametric Board's "actual fraud"  
12 related to the dilutive stock issuance to gain access to the public markets (¶¶185-193); and  
13 intentionally did so in a way that harmed Parametric stockholders. *Id.*

14           33. "Nevada has an interest in adjudicating the derivative claims of a Nevada  
15 corporation to which Nevada law applies, and [a derivative plaintiff] plainly has an interest in  
16 obtaining convenient and effective relief and has selected this forum." *Sonoro Invest S.A. v.*  
17 *Miller*, No. 2:15-cv-02286-JAD-CWH, 2017 U.S. Dist. LEXIS 9657, at \*15 (D. Nev. Jan. 24,  
18 2017). "Nevada's long-arm statute permits personal jurisdiction over a nonresident defendant  
19 unless the exercise of jurisdiction would violate due process." *Consipio Holding, BV v. Carlberg*,  
20 128 Nev. 454, 457, 282 P.3d 751, 754 (2012). *See* NRS 14.065(1). Specific personal jurisdiction  
21 exists where: "(1) the defendant purposefully avails himself of the privilege of serving the market  
22 in the forum or of enjoying the protection of the laws of the forum, or where the defendant  
23 purposefully establishes contacts with the forum state and affirmatively directs conduct toward  
24 the forum state, and (2) the cause of action arises from that purposeful contact with the forum or  
25 conduct targeting the forum." *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 699-700, 857 P.2d  
26 740, 748-49 (1993).

27           34. The Nevada Supreme Court has found personal jurisdiction over foreign citizens  
28 who direct harm towards a Nevada corporation. *Consipio*, 128 Nev. at 457. *Consipio* remains

1 good law in Nevada. *See In re Beatrice B. Davis Family Heritage Tr.*, 394 P.3d 1203, 1208 (Nev.  
2 2017).

3 35. Stripes Group and SG VTB purposefully availed themselves of the protection of  
4 Nevada law and that this Action arises from the entities' conduct targeting Nevada, including the  
5 following:

- 6 • Through the Merger, SG VTB and Stripes Group gained control of a Nevada  
7 corporation, and continue to operate the Company as a Nevada corporation (§40);
- 8 • Stripes Group and SG VTB selected, negotiated for, and consummated the merger  
9 of a company they controlled, VTBH, and Parametric, a Nevada corporation (§§6,  
10 41, 185-188);
- 11 • Stripes Group and SG VTB were involved in negotiating and approving nearly all  
12 material decisions concerning the Merger (§§41-43, 47-48, 194-197);
- 13 • Stripes Group and SG VTB knowingly participated in the breaches of fiduciary  
14 duty by the Parametric Board (§§7, 52-53, 56, 58-60, 75-76, 78-99);
- 15 • Since the Merger, Stripes Group and SG VTB have effectuated a series of post-  
16 close transactions governed, at least in part, by Nevada law (§§6, 189-193); and
- 17 • Fox, owner of Stripes Group and SG VTB, signed the Merger Agreement, which  
18 was then filed with the Nevada Secretary of State to consummate the Merger. §25.

19 36. The exercise of jurisdiction over Stripes Group and SG VTB is reasonable. This  
20 Court has a strong interest in adjudicating Plaintiffs' claims. *See Sonoro*, 2017 U.S. Dist. LEXIS  
21 9657, at \*15. Plaintiffs also have a significant interest in obtaining convenient and effective relief  
22 in their selected forum – this Court. *Id.* Requiring Plaintiffs to litigate their aiding and abetting  
23 claims in another jurisdiction would be inefficient and costly.

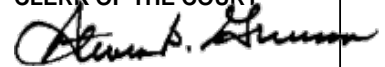
24 BASED UPON THE FOREGOING, THE COURT HEREBY ORDERS that the Director  
25 Defendants' Motion to Dismiss Plaintiffs' Amended Class Action and Derivative Complaint and  
26 the Defendant VTB Holdings, Inc. and Specially Appearing Defendants Stripes Group, LLC and  
27 SG VTB Holdings LLC's Motion to Dismiss the Amended Class Action and Derivative  
28 Complaint are DENIED.



1 THE COURT FURTHER ORDERS that Defendants shall serve a responsive pleading to  
2 the Amended Class Action and Derivative Complaint on or before thirty (30) days from entry of  
3 this Order.

4 DATED: 27 Mar 18

5   
6 THE HONORABLE ELIZABETH GONZALEZ



1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)

Liaison Counsel for Plaintiffs

[Additional counsel appear on signature page.]

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

8 In re PARAMETRIC SOUND )  
9 CORPORATION SHAREHOLDERS' )  
10 LITIGATION )

Lead Case No. A-13-686890-B  
Dept. No. XI

CLASS ACTION

11 This Document Relates To: )

STIPULATION OF SETTLEMENT

12 ALL ACTIONS. )  
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1 This Stipulation of Settlement, dated November 14, 2019 (the “Stipulation”), is made and  
2 entered into by and among the following Settling Parties to the above-captioned litigation (the  
3 “Litigation”), plaintiffs Kearney IRRV Trust, on behalf of itself and each of the Class Members, and  
4 Lance Mykita, on behalf of himself and derivatively on behalf of the publicly-traded Turtle Beach  
5 Corporation (collectively, “Plaintiffs”), and defendants Kenneth Potashner, Robert Kaplan, Elwood  
6 G. Norris, Seth Putterman, Andrew Wolfe, James Honore, VTB Holdings, Inc., Stripes Group, LLC,  
7 SG VTB Holdings, LLC, and nominal defendant Turtle Beach Corporation (collectively,  
8 “Defendants”) (together with Plaintiffs, the “Settling Parties”). The Stipulation is intended by the  
9 Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon  
10 and subject to the terms and conditions hereof and subject to the approval of the Eighth Judicial  
11 District Court for the State of Nevada in and for the County of Clark (the “Court”).

12 **I. THE LITIGATION**

13 Parametric Sound Corporation (“Parametric”) and privately held VTB Holdings, Inc.  
14 (“VTBH”) announced, on August 5, 2013, a reverse merger wherein VTBH merged into a  
15 Parametric subsidiary (the “Merger”) and Parametric survived as a publicly-traded company, later  
16 renamed Turtle Beach Corporation.

17 After Defendants announced the Merger on August 5, 2013, multiple purported Parametric  
18 shareholders filed suit in San Diego, California, including the action *James Harrison, Jr. v.*  
19 *Parametric Sound Corporation, et al.*, No. 37-2013-00061953-CU-BT-CTL, filed on August 8,  
20 2013; the action *Grant Oakes v. Parametric Sound Corporation, et al.*, No. 37-2013-00062060-CU-  
21 SL-CTL, filed on August 9, 2013; and the action *Raymond Boytim v. Parametric Sound*  
22 *Corporation, et al.*, No. 37-2013-00062214-CU-BT-CTL, filed on August 12, 2013 (together, the  
23 “California Cases”). Purported Parametric shareholders also filed suit in Nevada, including the  
24 actions *Kearney IRRV Trust v. Kenneth Potashner, et al.*, No. A-13-686890-B (filed August 13,  
25 2013), *Vitie Rakauskas v. Parametric Sound Corp., et al.*, No. A-13-687232-B (filed August 20,  
26 2013), *George Prieston v. Kenneth Potashner, et al.*, No. A-13-687354-B (filed on August 21,  
27 2013), and *Josh Hansen v. Parametric Sound Corp., et al.*, No. A-13-687665-B (filed August 28,  
28 2013) (together, the “Nevada Cases”).

1 On September 10, 2013, Judge William S. Dato ordered the California Cases consolidated.

2 On November 18, 2013, plaintiffs Boytim and Grant Oakes filed an Amended Complaint in  
3 the California Cases.

4 On December 3, 2013, Parametric filed a Proxy Statement pursuant to Section 14(a) of the  
5 Securities Exchange Act of 1934 (the “Proxy”) with the United States Securities and Exchange  
6 Commission (“SEC”) in connection with the Merger.

7 On December 11, 2013, plaintiffs in the Nevada Cases filed a Motion for Preliminary  
8 Injunction. On December 18, 2013, plaintiffs Boytim and Grant Oakes filed a Supplemental Brief in  
9 Support of a Preliminary Injunction in the Nevada Cases. The Honorable Elizabeth Gonzalez, Eight  
10 Judicial District Court Judge, heard the matter on December 26, 2013. The Court denied the Motion  
11 for Preliminary Injunction.

12 In connection with both the California and Nevada Cases, Plaintiffs’ Counsel conducted three  
13 depositions: Parametric CEO Kenneth Potashner (December 11, 2013); Craig Hallum VP David  
14 Wambeke (December 13, 2013); and Houlihan Lokey Director Daniel Hoverman (December 17,  
15 2013).

16 On February 20, 2014, certain plaintiffs and certain defendants filed a stipulation to dismiss,  
17 without prejudice, the California Cases.

18 On February 28, 2014, certain plaintiffs in the California Cases filed a Motion to Intervene in  
19 the Litigation.

20 On April 10, 2014, the Court granted the Motion to Intervene and designated the Complaint  
21 in Intervention as the operative complaint in the Litigation and ordered “counsel for the Nevada  
22 Plaintiffs and Intervening Plaintiffs to confer in an attempt to provide the Court with an agreed upon  
23 leadership structure by Thursday, April 24, 2014.”

24 On April 26, 2014, the Court granted in part Intervening Plaintiffs’ Motion to vacate the prior  
25 leadership structure, appointing Co-Lead Counsel (defined below).

26 The then-Defendants filed motions to dismiss the Complaint in Intervention on June 20,  
27 2014. After full briefing and a hearing on August 28, 2014, the Court entered an order denying the  
28 motions to dismiss on September 10, 2014.

1 On October 16, 2014, Defendants Kenneth Potashner, Robert Kaplan, Elwood G. Norris,  
2 Seth Putterman, Andrew Wolfe, James Honore, Turtle Beach Corporation and VTB Holdings, Inc.  
3 (together the “Petitioners”) filed a Petition for Writ of Mandamus or, in the Alternative, Writ of  
4 Prohibition with the Nevada Supreme Court.

5 On November 20, 2014, the Court set its Scheduling Order and Trial Setting Order.

6 On November 26, 2014, the Nevada Supreme Court ordered the then-Plaintiffs to answer the  
7 Petitioners’ October 16, 2014 Petition. On January 16, 2015, the then-Plaintiffs filed an Answer of  
8 Real Parties in Interest to the Petition for Writ of Mandamus or, in the Alternative, Writ of  
9 Prohibition. Petitioners filed a Reply on February 23, 2015.

10 On January 21, 2015, the Court issued an Order establishing an ESI Protocol for the  
11 Litigation.

12 The Court granted then-Defendants’ Motion to Stay Action Pending Consideration of Writ  
13 Petition by the Nevada Supreme Court on December 8, 2014. On February 17, 2015, the Court  
14 extended that stay of proceedings for an additional six weeks. On May 15, 2015, the Court denied  
15 then-Defendants’ Motion to Extend Stay Pending Consideration by the Nevada Supreme Court and  
16 Request for an Order Shortening Time. On May 20, 2015, the Nevada Supreme Court granted an  
17 emergency motion to stay the underlying proceedings pending consideration of the Petition for Writ  
18 of Mandamus or, in the Alternative, Writ of Prohibition.

19 On September 1, 2015, the Nevada Supreme Court held a hearing on Petitioners’ Writ  
20 Petition. On September 3, 2015, the Nevada Supreme Court ordered the parties to submit additional  
21 briefing regarding the legal tests for determining derivative claims as well as whether share dilution  
22 claims could be direct or derivative. Counsel for the parties submitted supplemental briefings on  
23 September 18, 2015 and October 12, 2015, respectively.

24 On August 2, 2016, Lance Mykita filed a complaint for Aiding and Abetting Breach of  
25 Fiduciary Duty against Stripes Group, LLC and SG VTB Holdings, LLC. On November 10, 2016,  
26 the Aiding and Abetting complaint against Stripes and SG VTB Holdings, LLC was consolidated  
27 into the Litigation.

28

1 On September 14, 2017, the Nevada Supreme Court issued a Writ of Mandamus instructing  
2 the Court to “dismiss the complaint without prejudice to the shareholders’ ability to file an amended  
3 complaint.”

4 On December 1, 2017, Plaintiffs filed their Amended Class Action and Derivative  
5 Complaint. On December 29, 2017, Plaintiffs filed a Motion to Unseal the Amended Class Action  
6 and Derivative Complaint, which Defendants did not oppose. On March 7, 2018, Plaintiffs refiled  
7 their Amended Class Action and Derivative Complaint.

8 Defendants moved to dismiss the Amended Class Action and Derivative Complaint on  
9 January 2, 2018. On March 12, 2018, after full briefing, the parties argued Defendants’ Motions to  
10 Dismiss the Amended Class Action and Derivative Complaint. On March 27, 2018, the Court issued  
11 its Order Denying Defendants’ Motions to Dismiss the Amended Class Action and Derivative  
12 Complaint.

13 On April 18, 2018, Defendants petitioned the Nevada Supreme Court for Writs of Mandamus  
14 and Prohibition. On June 15, 2018, the Nevada Supreme Court denied Defendants’ Petition for a  
15 Writ of Mandamus or Prohibition.

16 After full briefing and hearing argument on January 7, 2019, the Court issued an Order  
17 Regarding Class Certification on January 18, 2019, certifying the Class (defined below).

18 On February 19, 2019, the Settling Parties mediated before the Honorable Philip Pro (Ret.)  
19 and did not reach a settlement.

20 The parties conducted numerous additional depositions including: Stephen L. Kearney on  
21 behalf of Plaintiff Kearney IRRV Trust (September 18, 2018); Plaintiff Lance Mykita (September  
22 28, 2018); Defendants’ valuation expert, John Montgomery (October 31, 2018 and August 21,  
23 2019); Parametric Director James Honore (May 10, 2019); Parametric Director Robert Kaplan (May  
24 17, 2019); Stripes Partner Karen Kenworthy (May 29, 2019); VTBH CFO Bruce Murphy (June 27,  
25 2019); Parametric Director Seth Putterman (July 2, 2019); VTBH Director and Stripes Operating  
26 Partner Ronald Doornink (July 11, 2019); Houlihan Lokey Director Mark Dufilho (July 23, 2019);  
27 Parametric CFO James Barnes (July 25, 2019); Parametric CEO Kenneth Potashner (deposed a  
28 second time on August 8, 2019); Craig-Hallum Managing Director David Wambeke (deposed a

1 second time on August 9, 2019); VTBH CFO John Hanson (August 14, 2019); VTBH CEO Juergen  
2 Stark (August 15, 2019); Parametric Consultant John Todd (August 16, 2019); Plaintiffs' valuation  
3 expert, John T. Atkins (August 20, 2019); Stripes Founder and Partner Kenneth Fox (August 22,  
4 2019); Parametric Director Andrew Wolfe (September 5, 2019); and Parametric Director Elwood  
5 Norris (September 6, 2019).

6 On September 27, 2019, Plaintiffs filed a Motion for Sanctions Against Defendants Kenneth  
7 Potashner and VTBH for Willful Spoliation of Evidence.

8 Also on September 27, 2019, certain individual defendants filed a Motion for Summary  
9 Judgment Regarding the First Cause of Action in the Amended Class Action and Derivative  
10 Complaint; Motion for Partial Summary Judgment Regarding the First and Third Causes of Action  
11 in the Amended Class Action and Derivative Complaint; Motion in Limine No. 1 to Exclude  
12 Evidence Concerning Certain Stock Options Granted in the Hypersound Health, Inc. Subsidiary of  
13 Parametric; Motion in Limine No. 2 to Exclude Evidence Concerning Discussions Regarding a  
14 Potential Bonus Payment to Independent Directors of Parametric; Motion in Limine No. 3 to  
15 Exclude Evidence Regarding Non-Party John Todd's Prior Litigation and Settlement with the SEC;  
16 and Motion in Limine No. 4 to Exclude Reference to Other Litigation Involving Kenneth Potashner.

17 Also on September 27, 2019, Defendant VTBH and Defendants Stripes Group, LLC and SG  
18 VTB Holdings, LLC filed a Motion in Limine to Exclude All Reference, Evidence, and Testimony  
19 Regarding Post-Merger Stock Performance of Turtle Beach Corp.; a Motion in Limine to Exclude  
20 the Opinions, Testimony, and Reports of J.T. Atkins; a Motion in Limine to Exclude Evidence  
21 Related to Damages Not Addressed in Plaintiffs' Expert's Report; and a Motion for Summary  
22 Judgment.

23 After extensive and arm's-length discussions and negotiations, the parties reached an  
24 agreement on October 11, 2019 to settle this Litigation. On October 15, 2019, respective counsel for  
25 Settling Parties executed the Settlement Term Sheet.

## 26 **II. DEFENDANTS' DENIALS OF LIABILITY**

27 Defendants deny liability, deny that Plaintiffs' allegations accurately describe Defendants'  
28 conduct, deny that the conduct alleged in this action caused the damages Plaintiffs were seeking to

1 recover in this action, and deny that Defendants or their counsel failed to comply with any applicable  
2 rules of civil procedure. Nevertheless, Defendants agree to settle this action voluntarily after  
3 consultation with competent legal counsel to eliminate the burden, expense, inconvenience, and  
4 distraction of further litigation, as well as the risk of liability, and to finally put to rest and terminate  
5 all the claims that Plaintiffs asserted or could have asserted against them.

### 6 **III. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLEMENT**

7 Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence  
8 developed to date supports those claims. Plaintiffs, however, recognize and acknowledge the  
9 expense and length of continued proceedings necessary to prosecute the Litigation against  
10 Defendants through trial, potential post-trial proceedings sought by Defendants, and appeals.  
11 Plaintiffs also have taken into account the uncertain outcome and the risk of any litigation, especially  
12 in complex actions such as this Litigation, as well as the difficulties and delays inherent in such  
13 litigation. Plaintiffs also are mindful of the inherent problems of proof and possible defenses to the  
14 violations asserted in the Litigation. Co-Lead Counsel (defined below) and Plaintiffs believe that the  
15 Settlement set forth in this Stipulation confers substantial benefits upon the Class and, derivatively,  
16 upon Parametric through its stockholders. Based on their evaluation, Plaintiffs and Co-Lead Counsel  
17 have determined that the Settlement set forth in this Stipulation is in the best interests of the Class  
18 and, derivatively, of Parametric through its shareholders, and that the Settlement provided for herein  
19 is fair, reasonable and adequate.

### 20 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

21 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among  
22 Plaintiffs and Defendants, by and through their respective counsel of record, that, subject to the  
23 approval of the Court, pursuant to NRC Rule 23, the Litigation and the Released Claims shall be  
24 finally and fully compromised, settled, and released, and the Litigation shall be dismissed with  
25 prejudice, upon and subject to the terms and conditions of the Stipulation, as follows:

#### 26 **1. Definitions**

27 As used in the Stipulation the following terms have the meanings specified below:  
28



1 1.1 “Authorized Claimant” means any Class Member/Merger Stockholder whose claim  
2 for recovery has been allowed pursuant to the terms of the Stipulation.

3 1.2 “Parametric,” or the “Company,” or “Turtle Beach Corporation” means Parametric  
4 Sound Corporation at the time of the Merger or, as it is currently named, Turtle Beach Corporation.

5 1.3 “Claims Administrator” means the firm of Gilardi & Co. LLC.

6 1.4 “Class” means: All persons and/or entities that held shares of Parametric common  
7 stock on January 15, 2014, at the time Parametric issued shares in the Merger pursuant to the  
8 Agreement and Plan of Merger, whether beneficially or of record, including the legal  
9 representatives, heirs, successors-in-interest, transferees, and assignees of all such foregoing holders,  
10 but excluding Defendants, executive officers of Parametric as of January 15, 2014, and their legal  
11 representatives, heirs, successors-in-interest, transferees, and assignees, excluding any Persons who  
12 timely and validly submitted a request for exclusion.

13 1.5 “Class Member” or “Merger Stockholders” means any Person who falls within the  
14 definition of the Class as set forth in ¶1.4 above.

15 1.6 “Co-Lead Counsel” means Robbins Geller Rudman & Dowd LLP and Saxena White  
16 P.A. or their respective successors(s).

17 1.7 “Defendants” means Kenneth Potashner, Robert Kaplan, Elwood G. Norris, Seth  
18 Putterman, Andrew Wolfe, James Honore, VTBH, Stripes Group, LLC, SG VTB Holdings, LLC,  
19 and nominal defendant Turtle Beach Corporation.

20 1.8 “Parametric Director Defendants” means Kenneth Potashner, Robert Kaplan, Elwood  
21 G. Norris, Seth Putterman, Andrew Wolfe, and James Honore.

22 1.9 “Effective Date” means the first date by which all of the events and conditions  
23 specified in ¶7.1 of the Stipulation have been met and have occurred.

24 1.10 “Escrow Agent” means Robbins Geller Rudman & Dowd LLP or its successor(s).

25 1.11 “Final” means when the last of the following with respect to the Order and Final  
26 Judgment, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of  
27 three (3) business days after the time for the filing of any motion to alter or amend the Order and  
28 Final Judgment under NRCP 59(e) without any such motion having been filed; (ii) the expiration of

1 the time for the filing or noticing of any appeal from the Order and Final Judgment without any  
2 appeal having been filed; and (iii) if such motion to alter or amend is filed or if an appeal is filed or  
3 noticed, then immediately after the determination of that motion or appeal so that the Order and  
4 Final Judgment is no longer subject to any further judicial review or appeal whatsoever, whether by  
5 reason of affirmance by court of last resort, lapse of time, voluntary dismissal of the appeal or  
6 otherwise, and in such a manner as to permit the consummation of the Settlement in accordance with  
7 the terms and conditions of this Stipulation. For purposes of this paragraph, an appeal shall include  
8 any petition for a writ that may be filed in connection with the approval or disapproval of this  
9 Settlement, but shall not include any appeal that concerns only the issue of attorneys' fees and  
10 expenses, reimbursement of Plaintiffs' time and expenses or the Plan of Allocation of the Settlement  
11 Fund. Any proceeding or order, or any appeal or petition for a writ pertaining solely to any plan of  
12 distribution and/or application for attorneys' fees, costs, or expenses and/or Plaintiffs' request for  
13 reimbursement of time and expenses, shall not in any way delay or preclude the Order and Final  
14 Judgment from becoming Final.

15 1.12 "Final Approval Hearing" means the hearing to determine whether the proposed  
16 Settlement embodied by this Stipulation is fair, reasonable, and adequate to the Class, and whether  
17 the Court should: (1) enter the Order and Final Judgment approving the proposed Settlement;  
18 (2) approve the Plan of Allocation of Settlement proceeds; and (3) assess Co-Lead Counsel's petition  
19 for attorneys' fees and expenses to Plaintiffs' Counsel and Plaintiffs' request for reimbursement of  
20 time and expenses.

21 1.13 "Liaison Counsel" means The O'Mara Law Firm, P.C.

22 1.14 "Order and Final Judgment" means the judgment to be rendered by the Court, in the  
23 form attached hereto as Exhibit B.

24 1.15 "Person" means a natural person, individual, corporation, limited liability corporation,  
25 professional corporation, limited liability partnership, partnership, limited partnership, limited  
26 liability company, association, joint stock company, estate, legal representative, trust, unincorporated  
27 association, government or any political subdivision or agency thereof, and any business or legal  
28

entity and all of their respective spouses, heirs, beneficiaries, executors, administrators, predecessors, successors, representatives, or assignees.

1.16 “Plaintiffs” means Kearney IRRV Trust and Lance Mykita.

1.17 “Plaintiffs’ Counsel” means Robbins Geller Rudman & Dowd LLP, The O’Mara Law Firm, P.C., Saxena White P.A., and any other attorneys specifically appearing for Kearney IRRV Trust and Lance Mykita in the Litigation.

1.18 “Plan of Allocation” means a plan or formula of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the Settlement, Taxes and Tax Expenses, and such attorneys’ fees, costs, expenses, and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and Defendants shall have no responsibility or liability with respect thereto.

1.19 “Preliminary Approval Order” means the order described in ¶3.1 hereof.

1.20 “Released Claims” means all claims, demands, rights, actions or causes of action, liabilities, debts, demands, rights, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, whether based in law or equity, that have been, or could have been, asserted in the Litigation or any forum by Plaintiffs for themselves or by or on behalf of any member of the Class and/or derivatively on behalf of Turtle Beach Corporation, based on, arising out of, or relating to: (A) his, her, or its ownership of Parametric stock (whether individual, class, derivative, representative, legal, equitable, or any other type or in any other capacity); and (B) the allegations and claims in the Amended Class Action and Derivative Complaint; provided, however, that the Released Claims shall not include any claims to enforce the Settlement Term Sheet or the Stipulation. “Released Claims” includes “Unknown Claims” as defined in ¶1.30 hereof.

1.21 “Released Defendant Parties” means (i) Defendants; (ii) Defendants’ affiliates; and (iii) all of the respective families, heirs, executors, personal or legal representatives, counsel (including, but not limited to, Defendants’ counsel), insurers, estates, administrators, predecessors, successors and assigns for those persons identified in part (i) of this paragraph.

1 1.22 “Settled Defendants’ Released Claims” means all actions, claims, debts, demands,  
2 liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever, known or  
3 unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether  
4 concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal,  
5 state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore  
6 have existed, that have been or could have been asserted in the Litigation or any forum by the  
7 Released Defendant Parties or any of them against Plaintiffs, Class Members, or Plaintiffs’ Counsel,  
8 that arise out of or relate in any way to the institution, prosecution, or settlement of the claims  
9 against the Released Defendant Parties, provided, however, that this release shall not include any  
10 claims to enforce the Settlement Term Sheet or the Stipulation in the Litigation. “Settled  
11 Defendants’ Released Claims” includes “Unknown Claims” as defined in ¶1.30 hereof.

12 1.23 “Settlement” means the settlement of the Litigation as set forth in this Stipulation.

13 1.24 “Settlement Amount” means the principal amount of Nine Million, Six Hundred and  
14 Fifty Thousand Dollars (\$9,650,000.00), to be paid pursuant to ¶2.1 of this Stipulation, which is  
15 allocated as follows: Five Million, Four Hundred Thousand Dollars (\$5,400,000.00) from the  
16 Parametric Director Defendants; Three Million Dollars (\$3,000,000.00) from Stripes Group, LLC  
17 and SG VTB Holdings, LLC; and One Million, Two Hundred and Fifty Thousand Dollars  
18 (\$1,250,000.00) from VTBH. Defendants shall have no obligation to pay any amount over and  
19 above their respective allocations of the principal amount of \$9,650,000.00, and such amount is paid  
20 as consideration for full and complete settlement of all the Released Claims.

21 1.25 “Settlement Fund” means the Settlement Amount plus all interest and accretions  
22 thereto after being transferred to an account controlled by the Escrow Agent, and which may be  
23 reduced by payments or deductions as provided for herein or by court order.

24 1.26 “Stipulation” means this stipulation of settlement, including the recitals and Exhibits  
25 thereto.

26 1.27 “Stripes” refers to Defendants Stripes Group, LLC and SG VTB Holdings, LLC.

27 1.28 “Tax Expenses” means expenses and costs incurred in connection with the calculation  
28 and payment of taxes or the preparation of tax returns and related documents including, without

1 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs relating to  
2 filing (or failing to file) the returns described in ¶2.8.

3 1.29 “Taxes” means all taxes (including any estimated taxes, interest or penalties) arising  
4 with respect to the income earned by the Settlement Fund as described in ¶2.8.

5 1.30 “Unknown Claims” means any of the Released Claims which Plaintiffs or any Class  
6 Member does not know or suspect to exist in such party’s favor at the time of the release of the  
7 Released Defendant Parties, and any of the Settled Defendants’ Released Claims that the Released  
8 Defendant Parties do not know or suspect to exist in his, her, or its favor at the time of the release of  
9 Plaintiffs, each and all of the Class Members and Plaintiffs’ Counsel, which, if known by such party,  
10 might have affected such party’s settlement with and release of the Released Defendant Parties or  
11 Plaintiffs, each and all of the Class Members and Plaintiffs’ Counsel, or might have affected such  
12 party’s decision not to object to this Settlement or seek exclusion. Unknown Claims include those  
13 Released Claims in which some or all of the facts comprising the claim may be suspected, or even  
14 undisclosed or hidden. With respect to any and all Released Claims and the Settled Defendants’  
15 Released Claims, upon the Effective Date, Plaintiffs and Defendants shall expressly, and each of the  
16 Class Members and Released Defendant Parties shall be deemed to have, and by operation of the  
17 Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the  
18 provisions, rights, and benefits of California Civil Code §1542, which provides:

19 *A general release does not extend to claims that the creditor or releasing*  
20 *party does not know or suspect to exist in his or her favor at the time of executing*  
21 *the release and that, if known by him or her, would have materially affected his or*  
22 *her settlement with the debtor or released party.*

23 Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Defendant  
24 Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have,  
25 expressly waived any and all provisions, rights, and benefits conferred by any law of any state or  
26 territory of the United States, or principle of common law, which is similar, comparable or  
27 equivalent to California Civil Code §1542. Plaintiffs, Class Members and the Released Defendant  
28 Parties may hereafter discover facts in addition to or different from those which such party now  
knows or believes to be true with respect to the subject matter of the Released Claims and the Settled

1 Defendants' Released Claims, but Plaintiffs and Defendants shall expressly, and each Class Member  
2 and Released Defendant Parties, upon the Effective Date, shall be deemed to have, and by operation  
3 of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all  
4 Released Claims, or the Settled Defendants' Released Claims, as the case may be, known or  
5 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or  
6 hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing  
7 or coming into existence in the future, including, but not limited to, conduct that is negligent,  
8 reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to  
9 the subsequent discovery or existence of such different or additional facts, whether or not previously  
10 or currently asserted in any action. Plaintiffs and Defendants acknowledge, and the Class Members  
11 and Released Defendant Parties shall be deemed by operation of the Order and Final Judgment to  
12 have acknowledged, that the foregoing waiver was separately bargained for and a key element of the  
13 Settlement of which this release is a part.

14 **2. The Settlement**

15 **a. The Settlement Fund**

16 2.1 In consideration of the terms of this Stipulation, Defendants shall cause their insurers  
17 to pay the Settlement Amount (pursuant to the allocation described in ¶1.24) into the Escrow  
18 Account no later than fourteen (14) calendar days after the later of: (i) entry of the Preliminary  
19 Approval Order, as defined in ¶3.1 herein; or (ii) the provision to counsel for Defendants of payment  
20 instructions and a W-9 providing the tax identification number for the Escrow Agent. The Escrow  
21 Agent shall deposit the Settlement Amount, plus any accrued interest, in a segregated escrow  
22 account ("Escrow Account") maintained by the Escrow Agent.

23 2.2 The deposit of the Settlement Amount is the only payment to be made by or on behalf  
24 of Defendants in connection with this Settlement. As set forth below, all fees, costs, and expenses  
25 incurred by or on behalf of Plaintiffs and the Class associated with the Settlement, including, but not  
26 limited to, Taxes, Tax Expenses, administrative costs and costs of providing notice of the Settlement  
27 to the Class Members, any award of attorneys' fees and expenses of Co-Lead Counsel, Liaison  
28

Counsel, or Plaintiffs' Counsel shall be paid from the Settlement Fund, and in no event shall Defendants bear any additional responsibility for any such fees, costs or expenses.

**b. The Escrow Agent**

2.3 The Escrow Agent will invest the Settlement Fund created pursuant to ¶2.1 hereof only in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and will reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All costs and risks related to the investment of the Settlement Fund in accordance with the guidelines set forth in this paragraph shall be borne by the Settlement Fund and neither Defendants nor the Released Defendant Parties shall have any responsibility for, interest in, or liability whatsoever with respect to the funds held in the Escrow Account, including with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

2.4 The Escrow Agent shall not disburse the Settlement Fund except as provided by: (i) the Stipulation; (ii) an order of the Court; or (iii) prior written agreement of counsel for Defendants.

2.5 Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute such transactions on behalf of the Class Members as are consistent with the terms of the Stipulation. The Released Defendant Parties shall have no responsibility for, interest in, or liability whatsoever with respect to, the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

2.6 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and/or further order(s) of the Court.

2.7 The Escrow Agent may pay from the Settlement Fund the costs and expenses reasonably and actually incurred in connection with providing notice to members of the Class, mailing the Notice and Proof of Claim and Release form and publishing notice (such amount shall include, without limitation, the actual costs of publication, printing and mailing the Notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting Class

1 claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund  
2 (defined in ¶5.2 below) to Authorized Claimants, processing Proof of Claim and Release forms, and  
3 paying escrow fees and costs, if any, and the administrative expenses incurred and fees charged by  
4 the Claims Administrator in connection with providing notice and processing the submitted claims  
5 (“Notice and Administration Costs”). In the event that the Settlement does not become final, any  
6 money paid or incurred for the above purposes, including any related fees, shall not be returned or  
7 repaid to Defendants or their insurers.

8 **c. Taxes**

9 2.8 (a) The Settling Parties and the Escrow Agent agree that the Settlement Fund is  
10 intended to be and should be treated as being at all times a “qualified settlement fund” within the  
11 meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections  
12 as necessary or advisable to carry out the provisions of this ¶2.8, including the “relation-back  
13 election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such  
14 elections shall be made in compliance with the procedures and requirements contained in such  
15 Treasury regulations promulgated under §1.468B of the Internal Revenue Code of 1986, as amended  
16 (the “Code”). It shall be the responsibility of the Escrow Agent to timely and properly prepare and  
17 deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the  
18 appropriate filing to occur.

19 (b) For the purpose of §1.468B of the Code and the Treasury regulations  
20 promulgated thereunder, the Escrow Agent shall be designated as the “administrator” of the  
21 Settlement Fund. The Escrow Agent shall timely and properly file all informational and other tax  
22 returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the  
23 returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in  
24 ¶2.8(a) hereof) shall be consistent with this ¶2.8 and in all events shall reflect that all Taxes as  
25 defined in ¶1.29 hereof (including any estimated Taxes, interest, or penalties) on the income earned  
26 by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(c) hereof.

27 (c) All: (a) Taxes (including any estimated Taxes, interest, or penalties) arising  
28 with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that



1 may be imposed upon Defendants or the Released Defendant Parties with respect to any income  
2 earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a  
3 “qualified settlement fund” for federal or state income tax purposes; and (b) Tax Expenses, and costs  
4 incurred in connection with the operation and implementation of this ¶2.8 (including, without  
5 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and  
6 expenses relating to filing (or failing to file) the returns described in this ¶2.8), shall be paid out of  
7 the Settlement Fund. In no event shall Defendants have any responsibility for or liability with  
8 respect to the Taxes or the Tax Expenses. The Escrow Agent shall indemnify and hold the  
9 Defendants harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by  
10 reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and  
11 considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the  
12 Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent  
13 shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to  
14 Authorized Claimants any funds necessary to pay such amount, including the establishment of  
15 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to  
16 be withheld under Treas. Reg. §1.468B-2(1)(2)); Defendants are not responsible therefor and shall  
17 have no liability with respect thereto. The Settling Parties hereto agree to cooperate with the Escrow  
18 Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry  
19 out the provisions of this ¶2.8.

20 (d) Neither the Defendants nor the Released Defendant Parties are responsible for  
21 Taxes, Tax Expenses, or Notice and Administration Costs, nor shall they be liable for any claims  
22 with respect thereto.

23 **d. Termination of Settlement**

24 2.9 In the event that the Stipulation is not approved, or is terminated, canceled, or fails to  
25 become effective for any reason, including, without limitation, in the event the Order and Final  
26 Judgment is reversed or vacated following any appeal taken therefrom, or is successfully collaterally  
27 attacked, the Settlement Fund (including accrued interest and income), less Notice and  
28 Administration Costs, Taxes or Tax Expenses paid in connection with the Settlement provided for

1 herein, incurred or due and owing, shall be refunded in accordance with the instructions to be  
2 provided by counsel for Defendants no later than ten (10) business days from the termination event  
3 or as otherwise agreed upon in writing by counsel for Defendants.

4 **3. Preliminary Approval Order and Final Approval Hearing**

5 3.1 Promptly after execution of the Stipulation, Plaintiffs shall submit the Stipulation  
6 together with its Exhibits to the Court and Co-Lead Counsel shall apply for entry of an order,  
7 substantially in the form and content of Exhibit A attached hereto (the "Preliminary Approval  
8 Order"), requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Stipulation,  
9 approval for the mailing of the Notice of Proposed Settlement of Class and Derivative Action (the  
10 "Notice") and the Proof of Claim and Release form, substantially in the forms of Exhibits A-1 and  
11 A-2 attached hereto, and approval of the publication of a Summary Notice, substantially in the form  
12 of Exhibit A-3 attached hereto, or such other substantially similar form agreed to by the Settling  
13 Parties.

14 3.2 Plaintiffs will request that the Court hold the Final Approval Hearing and finally  
15 approve the Settlement of the Litigation as set forth herein. At or after the Final Approval Hearing,  
16 Co-Lead Counsel also will request that the Court approve the proposed Plan of Allocation and the  
17 Fee and Expense Application.

18 **4. Releases**

19 4.1 Upon the Effective Date, as defined in ¶1.9 hereof, Plaintiffs, and each and all of the  
20 Class Members and anyone claiming through or on behalf of any of them, including, but not limited  
21 to, their predecessors, successors, agents, representatives, attorneys, affiliates, heirs, executors,  
22 administrators, and assigns, shall be deemed to have, and by operation of the Order and Final  
23 Judgment shall have completely discharged, dismissed with prejudice, settled, relinquished, and  
24 released all of the Released Claims (including, without limitation, Unknown Claims), against the  
25 Released Defendant Parties, regardless of whether such Class Member executes and delivers a Proof  
26 of Claim and Release form, except that claims relating to the enforcement of the Settlement shall not  
27 be released.

1           4.2     Upon the Effective Date, as defined in ¶1.9 hereof, Plaintiffs, each and all of the  
2 Class Members and anyone claiming through or on behalf of any of them, including, but not limited  
3 to, their predecessors, agents, representatives, attorneys, affiliates, heirs, executors, administrators,  
4 successors, and assigns, are forever barred and enjoined from commencing, instituting, asserting,  
5 maintaining, enforcing, prosecuting, or continuing to prosecute any action or proceeding in any  
6 forum (including, but not limited to, any state or federal court of law or equity, any arbitral forum,  
7 any tribunal, administrative forum, or the court of any foreign jurisdiction, or any other forum of any  
8 kind), any of the Released Claims (including, without limitation, Unknown Claims), against any or  
9 all of the Released Defendant Parties, regardless of whether such Class Member executes and  
10 delivers a Proof of Claim and Release form, except that claims relating to the enforcement of the  
11 Settlement shall not be released.

12           4.3     The Proof of Claim and Release to be executed by Class Members shall release all  
13 Released Claims against the Released Defendant Parties and shall be substantially in the form  
14 contained in Exhibit A-2 attached hereto.

15           4.4     Upon the Effective Date, as defined in ¶1.9 hereof, each of the Released Defendant  
16 Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have,  
17 completely discharged, settled, relinquished, and released Plaintiffs, each and all of the Class  
18 Members, and Plaintiffs' Counsel from all Settled Defendants' Released Claims, and shall forever be  
19 enjoined from prosecuting such claims, except for claims relating to the enforcement of the  
20 Settlement.

21           4.5     Pending approval of the Court of the Stipulation, all proceedings in the Litigation,  
22 other than such proceedings as are necessary to effectuate the terms of the Settlement Term Sheet,  
23 this Stipulation, and the Court's approval of the Settlement, shall be stayed.

24           **5.     Administration and Calculation of Claims, Final Awards, and**  
25           **Supervision and Distribution of Settlement Fund**

26           5.1     The Claims Administrator, subject to such supervision and direction of the Court  
27 and/or Co-Lead Counsel as may be necessary or as circumstances may require, shall administer and  
28

1 calculate the claims submitted by Class Members/Merger Stockholders and shall oversee distribution  
2 of the Net Settlement Fund (defined below) to Authorized Claimants.

3 5.2 The Settlement Fund shall be applied as follows:

- 4 (a) to pay all Notice and Administration Costs;
- 5 (b) to pay the Taxes and Tax Expenses;
- 6 (c) to pay Plaintiffs' Counsel's attorneys' fees and expenses with interest thereon  
7 (the "Fee and Expense Award") and reimburse Plaintiffs' time and expenses; and
- 8 (d) after the Effective Date, to distribute the balance of the Settlement Fund (the  
9 "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of  
10 Allocation, or the Court.

11 5.3 Upon the Effective Date and thereafter, and in accordance with the terms of the  
12 Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may  
13 be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to  
14 Authorized Claimants, subject to and in accordance with the following:

15 (a) Each Class Member/Merger Stockholder shall be required to submit a Proof of  
16 Claim and Release form, substantially in a form approved by the Court, supported by such  
17 documents as are designated therein, including proof of the transactions claimed, or such other  
18 documents or proof as the Claims Administrator, in its discretion, may deem acceptable;

19 (b) All Proof of Claim and Release forms must be submitted by the date specified  
20 in the Notice unless such period is extended by Court order. Any Class Member/Merger  
21 Stockholder who fails to submit a Proof of Claim and Release form by such date shall be forever  
22 barred from receiving any payment pursuant to this Stipulation, but shall in all other respects be  
23 bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and  
24 Final Judgment to be entered in the Litigation and the releases provided for herein, and will be  
25 barred from bringing any action against the Released Defendant Parties concerning the Released  
26 Claims. A Proof of Claim and Release form shall be deemed to have been submitted when posted, if  
27 received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in  
28 accordance with the instructions thereon. In all other cases, the Proof of Claim and Release form

1 shall be deemed to have been submitted when actually received by the Claims Administrator.  
2 Notwithstanding the foregoing, Co-Lead Counsel shall have the discretion (but not the obligation) to  
3 accept for processing late-submitted claims so long as the distribution of the Net Settlement Fund to  
4 Authorized Claimants is not materially delayed thereby. No person shall have any claim against  
5 Plaintiffs, Co-Lead Counsel or the Claims Administrator by reason of the decision to exercise or not  
6 exercise such discretion;

7 (c) Each Proof of Claim and Release form shall be submitted to and reviewed by  
8 the Claims Administrator, who shall determine in accordance with this Stipulation and the approved  
9 Plan of Allocation the extent, if any, to which each claim shall be allowed, subject to review by the  
10 Court pursuant to subparagraph (e) below;

11 (d) Proof of Claim and Release forms that do not meet the submission  
12 requirements may be rejected. Prior to rejection of a Proof of Claim and Release form, the Claims  
13 Administrator shall communicate with the claimant in order to attempt to remedy the curable  
14 deficiencies. The Claims Administrator shall notify, in a timely fashion and in writing, all claimants  
15 whose Proof of Claim and Release forms it proposes to reject in whole or in part, setting forth the  
16 reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has  
17 the right to a review by the Court if the claimant so desires and complies with the requirements of  
18 subparagraph (e) below;

19 (e) If any claimant whose claim has been rejected in whole or in part desires to  
20 contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the  
21 notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and  
22 statement of reasons indicating the claimant's grounds for contesting the rejection, along with any  
23 supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a  
24 claim cannot be otherwise resolved, Co-Lead Counsel shall thereafter present the request for review  
25 to the Court;

26 (f) Each claimant who submits a Proof of Claim and Release shall be deemed to  
27 have submitted to the jurisdiction of the Court with respect to the claimant's claim, including, but  
28 not limited to, all releases provided for herein and in the Order and Final Judgment, and the claim

1 will be subject to investigation and discovery under the NRCP, provided that such investigation and  
2 discovery shall be limited to the claimant's status as a Class Member/Merger Stockholder and the  
3 validity and amount of the claimant's claim. In connection with processing the Proofs of Claim and  
4 Release, no discovery shall be allowed on the merits of the Litigation or the Settlement; and

5 (g) The Claims Administrator shall calculate the claims of Authorized Claimants  
6 in accordance with the Plan of Allocation. Following the Effective Date, the Claims Administrator  
7 shall send to each Authorized Claimant his, her, or its *pro rata* share of the Net Settlement Fund. No  
8 distributions will be made to Authorized Claimants who would otherwise receive a distribution of  
9 less than \$10.00.

10 5.4 Except for their obligation to pay or cause payment of the Settlement Amount as set  
11 forth herein, the Released Defendant Parties shall have no responsibility for, interest in, or liability  
12 whatsoever with respect to the investment or distribution of the Settlement Fund, the Plan of  
13 Allocation, the determination, administration, or calculation of claims, the payment or withholding  
14 of Taxes or Tax Expenses, or any losses incurred in connection therewith. The Settlement claims  
15 process will be administered by an independent claims administrator selected by Co-Lead Counsel  
16 and approved by the Court, with the costs of the claims administration process deducted from the  
17 Settlement Amount. Defendants will have no involvement in reviewing or challenging claims and  
18 Defendants will have no obligations in connection with the Settlement claims process. Defendants  
19 and the Released Defendant Parties will take no position on, and will have no obligations or  
20 involvement regarding, the allocation of the Settlement Fund, including any allocation of the  
21 Settlement Fund between the direct and derivative claims in the Litigation and/or the utilization of  
22 any pass-through allocation structure on the derivative claims.

23 5.5 No Person shall have any claim of any kind against Defendants, the Released  
24 Defendant Parties, or counsel for Defendants with respect to the matters set forth in this Section 5.

25 5.6 No Person shall have any claim against Plaintiffs, the Escrow Agent, Plaintiffs'  
26 Counsel, the Claims Administrator, or any Person designated by Co-Lead Counsel based on  
27 distributions made substantially in accordance with this Stipulation and the Settlement contained  
28 herein, the Plan of Allocation, or further order(s) of the Court.

1           5.7     Defendants shall not have a reversionary interest in the Net Settlement Fund. The Net  
2 Settlement Fund shall be distributed to the Authorized Claimants in accordance with the Plan of  
3 Allocation set forth in the Notice and approved by the Court. The Claims Administrator will make  
4 reasonable and diligent efforts to have Class Members/Merger Stockholders who are entitled to  
5 participate in the distribution of the Net Settlement Fund cash their distributions. If there is any  
6 balance remaining in the Net Settlement Fund after a reasonable period of time after the initial  
7 distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or  
8 otherwise), Co-Lead Counsel, shall, if feasible, reallocate on a *pro rata* basis among Authorized  
9 Claimants who negotiated the checks sent to them in the initial distribution and who would receive a  
10 minimum of \$10.00. These reallocations shall be repeated until the balance remaining in the Net  
11 Settlement Fund is *de minimis* and any remainder shall thereafter be donated to an appropriate non-  
12 profit organization selected by Co-Lead Counsel.

13           5.8     It is understood and agreed by the Settling Parties that any proposed Plan of  
14 Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an  
15 Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered  
16 by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy  
17 of the Settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of  
18 Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's  
19 Order and Final Judgment approving the Stipulation and the Settlement set forth therein, or any other  
20 orders entered pursuant to the Stipulation.

21           5.9     The Settling Parties shall be bound by the terms of this Stipulation, irrespective of  
22 whether the Court disapproves or modifies the Plan of Allocation. The time to appeal from approval  
23 of the Settlement shall commence upon the Court's entry of the Order and Final Judgment regardless  
24 of whether a Plan of Allocation has been approved.

25           **6.     Plaintiffs' Counsel's Attorneys' Fees and Expenses**

26           6.1     Co-Lead Counsel may submit an application or applications (the "Fee and Expense  
27 Application") for: (a) an award of attorneys' fees; and (b) payment of expenses in connection with  
28 prosecuting the Litigation; and (c) any interest on such attorneys' fees and expenses at the same rate

1 and for the same periods as earned by the Settlement Fund (until paid). Any and all such fees,  
2 expenses, charges and costs awarded by the Court shall be payable solely out of the Settlement Fund.  
3 In addition, Plaintiffs may seek payment from the Settlement Fund for reimbursement of time and  
4 expenses incurred in pursuing these claims. Co-Lead Counsel reserve the right to make additional  
5 applications for fees and expenses incurred.

6       6.2     The attorneys' fees and expenses, as awarded by the Court (the "Fee and Expense  
7 Award"), shall be paid to Co-Lead Counsel from the Settlement Fund, as ordered, immediately upon  
8 execution of an order awarding such fees and expenses, notwithstanding the existence of any timely  
9 filed objection thereto, any appeal or potential for appeal therefrom, or collateral attack on the  
10 Settlement or any part thereof. Co-Lead Counsel may thereafter allocate the attorneys' fees among  
11 other Plaintiffs' Counsel, if any, in a manner which they, in good faith, believe reflects the  
12 contributions of such counsel to the initiation, prosecution, and resolution of the Litigation,  
13 consistent with paragraph 2 of the Court's April 29, 2014 Order on Plaintiffs' Counsel Leadership  
14 Structure.

15       6.3     In the event that the Effective Date does not occur, or the Order and Final Judgment  
16 or Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for  
17 any other reason, and such reversal, modification, cancellation or termination becomes final and not  
18 subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then  
19 such of Plaintiffs' Counsel who have received any portion of the Fee and Expense Award shall  
20 within ten (10) business days from receiving notice from the Defendants' counsel or from a court of  
21 appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to  
22 them from the Settlement Fund plus the interest earned thereon at the same rate as earned on the  
23 Settlement Fund consistent with such reversal or modification. Any refunds required pursuant to this  
24 ¶6.3 shall be the several obligations of Plaintiffs' Counsel receiving fees or expenses to make  
25 appropriate refunds or repayments to the Settlement Fund. Each such Plaintiffs' Counsel's law firm  
26 receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself  
27 and each partner and/or shareholder of it, agrees that the law firm and its partners and/or  
28



1 shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of  
2 this paragraph.

3       6.4     The procedure for and the allowance or disallowance by the Court of the Fee and  
4 Expense Application are not part of the Settlement, and are to be considered by the Court separately  
5 from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any  
6 order or proceeding relating to the Fee and Expense Application or any appeal from any order  
7 relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the  
8 Settlement, or affect or delay the finality of the Order and Final Judgment approving this Stipulation  
9 and the Settlement of the Litigation.

10       6.5     Any fees and expenses awarded by the Court shall be paid solely from the Settlement  
11 Fund. No Released Defendant Parties shall have any responsibility for any payment of any kind  
12 apart from payment of the Settlement Amount pursuant to ¶2.1.

13       **7.       Conditions of Settlement, Effect of Disapproval, Cancellation or**  
14       **Termination**

15       7.1     The Effective Date of the Stipulation shall be conditioned on the occurrence of all of  
16 the following events:

17               (a)     Execution of this Stipulation and such other documents as may be required to  
18 obtain final Court approval of the Stipulation in a form satisfactory to the Settling Parties;

19               (b)     the Settlement Amount has been deposited in the Escrow Account, as required  
20 by ¶2.1 above;

21               (c)     the Court has entered the Preliminary Approval Order, as required by ¶3.1  
22 hereof;

23               (d)     the Court has approved this Stipulation, following notice to the Class  
24 Members/Merger Stockholders and the Final Approval Hearing, as prescribed by the NRCP;

25               (e)     the Court has entered the Order and Final Judgment in the form of Exhibit B  
26 attached hereto; and

27               (f)     the Order and Final Judgment has become Final, as defined in ¶1.11 hereof.  
28

1           7.2     The Settlement is non-recapture, *i.e.*, it is not a claims-made settlement. As of the  
2 Effective Date, Defendants, their insurance carriers, and/or any such Persons or entities funding the  
3 Settlement on the Defendants' behalf, shall not have any right to the return of the Settlement Fund or  
4 any portion thereof for any reason. Upon the occurrence of all of the events referenced in ¶7.1  
5 hereof, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any,  
6 shall be absolutely and forever extinguished. If all of the conditions specified in ¶7.1 hereof are not  
7 met, then this Stipulation shall be cancelled and terminated subject to ¶7.5 hereof unless Co-Lead  
8 Counsel and counsel for Defendants mutually agree in writing to proceed with the Settlement.

9           7.3     The Settling Parties shall have the right to terminate the Settlement and this  
10 Stipulation by providing written notice of their election to do so ("Termination Notice") to all other  
11 parties hereto within thirty (30) days of: (a) the Court's declining to enter a Preliminary Approval  
12 Order substantively identical to the Preliminary Approval Order submitted by the parties; (b) the  
13 Court's refusal to approve this Stipulation or a substantively identical Stipulation; (c) the Court's  
14 declining to enter the Order and Final Judgment, or substantively identical document; (d) the Order  
15 and Final Judgment being modified or reversed by the Court of Appeals or the Supreme Court in any  
16 manner that results in a document that is not substantively identical to the document submitted by  
17 the parties; or (e) the Effective Date not otherwise occurring. No order of the Court or modification  
18 or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of  
19 any attorneys' fees, costs, expenses, and interest awarded by the Court to Co-Lead Counsel, Liaison  
20 Counsel or Plaintiffs' Counsel shall constitute grounds for cancellation or termination of the  
21 Settlement.

22           7.4     In the event that the Stipulation is not approved by the Court or the Settlement set  
23 forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the  
24 Settling Parties shall not forfeit or waive any factual or legal defense or contention in the Litigation  
25 and shall be restored to their respective positions in the Litigation as of October 11, 2019. In such  
26 event, the terms and provisions of the Stipulation, with the exception of ¶¶2.6, 2.9, 6.3, 7.5 and  
27 9.6-9.10 hereof, shall have no further force and effect with respect to the Settling Parties and shall  
28 not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order

1 entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc*  
2 *pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court  
3 concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses, and interest  
4 awarded by the Court to Co-Lead Counsel, Liaison Counsel, or Plaintiffs' Counsel shall constitute  
5 grounds for cancellation or termination of the Stipulation.

6       7.5     If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its  
7 terms, neither Plaintiffs nor Plaintiffs' Counsel shall have any obligation to repay any amounts  
8 actually and properly disbursed from the Settlement Fund for the Notice and Administration Costs of  
9 the Settlement pursuant to ¶2.7 hereof. In addition, any expenses already incurred and properly  
10 chargeable to the Settlement Fund for the Notice and Administration Costs of the Settlement  
11 pursuant to ¶2.7 hereof at the time of such termination or cancellation, but which have not been paid,  
12 shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the  
13 balance being refunded in accordance with ¶2.9 hereof.

14       **8.     No Admission of Liability**

15       8.1     Defendants' execution of this Stipulation does not constitute an admission by  
16 Defendants: (i) of liability; or (ii) that recovery could be had in any amount should the action not be  
17 settled. Neither this Stipulation, nor any term hereof, may be offered into evidence in any  
18 proceeding or used in any manner as an admission or implication of liability or fault on the part of  
19 Defendants.

20       8.2     Plaintiffs' execution of this Stipulation does not constitute an admission by Plaintiffs:  
21 (i) of the lack of any wrongdoing, violation of law, or liability on behalf of any of the Defendants or  
22 any other Person; or (ii) that recovery could not be had should the action not be settled. Neither this  
23 Stipulation, nor any term hereof, may be offered or received into evidence in any proceeding or used  
24 in any manner as an admission or concession by Plaintiffs that Defendants or any other Person has  
25 not engaged in any wrongdoing or that the conduct of Defendants or any other Person was at all  
26 times legal and proper.

27       8.3     Stripes' execution of this Stipulation does not constitute an admission that Stripes is  
28 subject to general or specific personal jurisdiction within the State of Nevada. Although Stripes

1 consents to the Court's jurisdiction solely for the purpose of enforcing this Stipulation, neither this  
2 Stipulation, nor any term hereof, may be offered into evidence in any proceeding or used in any  
3 manner as an admission or implication that Stripes is otherwise subject to general or specific  
4 personal jurisdiction within the State of Nevada.

5 **9. Miscellaneous Provisions**

6 9.1 The Settling Parties (a) acknowledge that it is their intent to consummate this  
7 agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement  
8 all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the  
9 foregoing terms and conditions of the Stipulation expeditiously.

10 9.2 This Stipulation and the Exhibits attached hereto constitute the entire agreement  
11 between the Settling Parties as to the subject matter hereof and supersede any prior or  
12 contemporaneous written or oral agreements or understandings between the Settling Parties. No  
13 representations, warranties, or inducements have been made to any party concerning the Stipulation  
14 or its Exhibits other than the representations, warranties, and covenants contained and memorialized  
15 in such documents.

16 9.3 Except as otherwise set forth in this Stipulation, or otherwise agreed to in writing by  
17 the Settling Parties hereto, each of the Settling Parties is to bear his, her, or its own respective fees  
18 and costs, including in any dispute over the Settlement, this Stipulation, or any Settlement document.

19 9.4 The Settling Parties intend this Settlement to be a final and complete resolution of all  
20 disputes between them with respect to the Litigation. The Settlement compromises all claims that  
21 were contested and shall not be deemed an admission by any Settling Party as to the merits of any  
22 claim or defense. The Settling Parties agree and the Order and Final Judgment will contain a  
23 statement that, during the course of the Litigation, the Settling Parties and their respective counsel at  
24 all times complied with the requirements of NRCP. The Settling Parties agree that the amount paid  
25 to the Settlement Fund and the other terms of the Settlement were negotiated in good faith by the  
26 Settling Parties, and reflect a settlement that was reached voluntarily after consultation with  
27 competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party  
28

determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

9.5 The Settling Parties agree that throughout the course of the Litigation, all parties and their counsel complied with the provisions of NRCP 11.

9.6 This Stipulation, whether or not consummated, and any negotiations, discussions, or proceedings in connection herewith shall not be:

(a) offered against Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Defendants of the truth of any fact alleged by the Plaintiffs or Class Members, the validity of any claim that has been or could have been asserted in the Litigation, the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault, or wrongdoing of Defendants;

(b) offered against Defendants as evidence of a presumption, concession, admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants;

(c) offered against Defendants as evidence of a presumption, concession, or admissibility of any liability, negligent, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Stipulation, in any other civil, criminal, or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that Defendants may file the Stipulation and/or the Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. In addition, nothing contained in this paragraph shall prevent this Stipulation (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Stipulation (or any agreement or order relating thereto) or the Order and Final Judgment, or to enforce or effectuate provisions of this Settlement, the Order and Final Judgment, or the Proofs of Claim and Release as to the Released Defendant Parties; or

1 (d) construed against Defendants as an admission or concession that the  
2 consideration to be given hereunder represents the amount which could be or would have been  
3 recovered after trial.

4 9.7 Except as otherwise provided for herein, all agreements made and orders entered  
5 during the course of the Litigation relating to the confidentiality of information shall survive this  
6 Stipulation.

7 9.8 This Stipulation shall be construed and interpreted to effectuate the intent of the  
8 Settling Parties, which is to resolve completely those claims and disputes, including in this  
9 Litigation, and as more fully described herein. If any provision of this Stipulation shall be  
10 determined to be invalid, void, or illegal, such provision shall be construed and amended in a manner  
11 that would permit its enforcement, but in no event shall such provision affect, impair, or invalidate  
12 any other provision hereof.

13 9.9 All of the Exhibits to the Stipulation are material and integral parts hereof and are  
14 fully incorporated herein by this reference.

15 9.10 The Stipulation may be amended or modified only by a written instrument signed by  
16 or on behalf of all Settling Parties or their respective successors-in-interest.

17 9.11 None of the Plaintiffs, Class Members nor Defendants shall be bound by the  
18 Stipulation if the Court modifies any terms thereof, provided, however, that it shall not be a basis for  
19 Plaintiffs or Class Members to terminate the Settlement if the Court modifies any proposed Plan of  
20 Allocation or criteria for allocation of the Net Settlement Fund amongst Authorized Claimants, or  
21 the Plan of Allocation is modified on appeal. Nor shall it be a basis to terminate the Stipulation if  
22 the Court disapproves of or modifies the terms of this Stipulation with respect to attorneys' fees or  
23 expenses or the distribution of the Net Settlement Fund. Notwithstanding any such modification of  
24 the terms or Plan of Allocation or the Stipulation with respect to attorneys' fees or expenses,  
25 Defendants shall be entitled to all benefits of the Settlement and shall not, under any circumstances,  
26 be called upon to contribute additional funds to the Settlement Fund.

1           9.12   Plaintiffs and Co-Lead Counsel represent and warrant that none of the Plaintiffs'  
2 claims or causes of action referred to in this Litigation or this Stipulation has been assigned,  
3 encumbered, or in any manner transferred in whole or in part.

4           9.13   Each counsel or other Person executing the Stipulation or any of its Exhibits on  
5 behalf of any party hereto hereby warrants that such Person has the full authority to do so.

6           9.14   All notices, requests, demands, claims, and other communications hereunder shall be  
7 in writing and shall be deemed duly given: (i) when delivered to the recipient; (ii) five (5) business  
8 days after being sent to the recipient by reputable overnight courier service (charges prepaid); or  
9 (iii) eight (8) business days after being mailed to the recipient by certified or registered mail, return  
10 receipt requested, and postage prepaid, and addressed to the intended recipient as set forth below:

11           If to Plaintiffs or to Co-Lead Counsel:

12                     David A. Knotts  
13                     Robbins Geller Rudman & Dowd LLP  
14                     655 West Broadway, Suite 1900  
15                     San Diego, CA 92101-8498  
16                     Telephone: 619/231-1058  
17                     dknotts@rgrdlaw.com

18                     Adam Warden  
19                     Saxena White P.A.  
20                     150 East Palmetto Park Road, Suite 600  
21                     Boca Raton, FL 33432  
22                     Telephone: 561/394-3399  
23                     awarden@saxenawhite.com

24           If to Parametric Director Defendants or to Parametric Director Defendants' counsel:

25                     John P. Stigi III  
26                     Sheppard, Mullin, Richter & Hampton LLP  
27                     1901 Avenue of the Stars, Suite 1600  
28                     Los Angeles, CA 90067  
29                     Telephone: 310/228-3700  
30                     jstigi@sheppardmullin.com

31                     J. Stephen Peek, Esq.  
32                     Holland & Hart L.L.P.  
33                     955 Hillwood Drive, 2d Floor  
34                     Las Vegas, NV 89134  
35                     Telephone: 702/222-2544

36           If to Stripes, VTBH, or their counsel:

37                     Joshua D.N. Hess  
38                     Dechert LLP

1 1900 K Street, NW  
2 Washington, DC 20006-1110  
3 Telephone: 202/261-3300  
4 joshua.hess@dechert.com

5 Richard C. Gordon  
6 Snell & Wilmer L.L.P.  
7 3883 Howard Hughes Parkway, Suite 1100  
8 Las Vegas, NV 89169  
9 Telephone: 702/854-5200  
10 rgordon@swlaw.com

11 9.15 The Stipulation may be executed in one or more counterparts. All executed  
12 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of  
13 executed counterparts shall be filed with the Court. Signatures sent by facsimile or PDF via email  
14 shall be deemed originals.

15 9.16 The Stipulation shall be binding upon, and inure to the benefit of, the heirs,  
16 successors and assigns of the Settling Parties.

17 9.17 The Court shall retain jurisdiction with respect to implementation and enforcement of  
18 the terms of the Stipulation, and the Settling Parties submit to the jurisdiction of the Court for  
19 purposes of implementing and enforcing the Settlement embodied in the Stipulation.

20 9.18 The waiver by one party of any breach of this Stipulation by any other party shall not  
21 be deemed a waiver by any other party or a waiver of any other prior or subsequent breach of this  
22 Stipulation.

23 9.19 The Settling Parties and their respective counsel agree that they will use their  
24 reasonable best efforts to obtain all necessary approvals of the Court required by the Stipulation  
25 (including, but not limited to, using their best efforts to resolve any objections raised to the  
26 Settlement), and to promptly agree upon and execute all such other documentation as may be  
27 reasonably required to obtain final approval by the Court of the Settlement.

28 9.20 The Stipulation and the Exhibits attached hereto shall be considered to have been  
negotiated, executed, and delivered, and to be wholly performed, in the State of Nevada, and the  
rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance  
with, and governed by, the internal, substantive laws of the State of Nevada without giving effect to  
that State's choice-of-law principles.



1           9.21   The headings herein are used for the purpose of convenience only and are not meant  
2 to have legal effect.

3           9.22   This Stipulation shall not be construed more strictly against one party than another  
4 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of  
5 the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the  
6 Settling Parties and the Settling Parties have contributed substantially and materially to the  
7 preparation of this Stipulation.

8           IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by  
9 their duly authorized attorneys dated November 14, 2019.

10                               THE O'MARA LAW FIRM, P.C.  
11                               DAVID C. O'MARA (Nevada Bar No. 8599)

12                                 
13                               \_\_\_\_\_  
14                               DAVID C. O'MARA

15                               311 East Liberty Street  
16                               Reno, NV 89501  
17                               Telephone: 775/323-1321  
18                               775/323-4082 (fax)

19                               Liaison Counsel

20                               ROBBINS GELLER RUDMAN  
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22                               RANDALL J. BARON  
23                               A. RICK ATWOOD, JR.  
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                             Co-Lead Counsel for Plaintiffs

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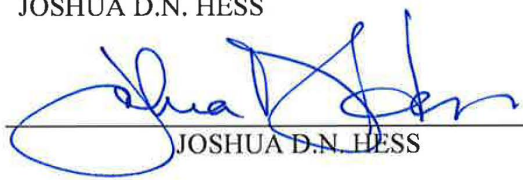
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SNELL & WILMER L.L.P  
RICHARD C. GORDON



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Las Vegas, NV 89169  
Telephone: 702/854-5200  
702/784-5252 (Fax)

Attorneys for Stripes and VTBH

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty  
3 Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing  
4 document via the Court's Electronic Filing System on all participants as follows:

5 <b>Name</b>	<b>Party</b>	<b>E-mail Address</b>
6 Alejandro Moreno	Defendants	<a href="mailto:amoreno@sheppardmullin.com">amoreno@sheppardmullin.com</a>
7 John P. Stigi III	Defendants	<a href="mailto:JStigi@sheppardmullin.com">JStigi@sheppardmullin.com</a>
8 Phyllis Chavez	Defendant	<a href="mailto:pchavez@sheppardmullin.com">pchavez@sheppardmullin.com</a>
9 Tina Jakus	Defendants	<a href="mailto:tjakus@sheppardmullin.com">tjakus@sheppardmullin.com</a>
10 Richard Gordon	Defendants	<a href="mailto:rgordon@swlaw.com">rgordon@swlaw.com</a>
11 Kelly Dove	Defendants	<a href="mailto:kdove@swlaw.com">kdove@swlaw.com</a>
12 Sonja Dugan	Defendants	<a href="mailto:sdugan@swlaw.com">sdugan@swlaw.com</a>
13 Gaylene Kim	Defendants	<a href="mailto:gkim@swlaw.com">gkim@swlaw.com</a>
14 Daniel S. Ivie	Defendants	<a href="mailto:divie@swlaw.com">divie@swlaw.com</a>
15 Karl Riley	Defendants	<a href="mailto:kriley@swlaw.com">kriley@swlaw.com</a>
16 Lara Taylor	Defendants	<a href="mailto:ljtaylor@swlaw.com">ljtaylor@swlaw.com</a>
17 Docket	Defendants	<a href="mailto:Docket_las@swlaw.com">Docket_las@swlaw.com</a>
18 Joshua Hess	Defendants	<a href="mailto:Joshua.Hess@dechert.com">Joshua.Hess@dechert.com</a>
19 Brian Raphael	Defendants	<a href="mailto:Brian.Raphael@dechert.com">Brian.Raphael@dechert.com</a>
20 Neil A. Steiner	Defendants	<a href="mailto:Neil.Steiner@dechert.com">Neil.Steiner@dechert.com</a>
21 Robert Cassidy	Defendants	<a href="mailto:bcassity@hollandhart.com">bcassity@hollandhart.com</a>
22 Steve Peek	Defendants	<a href="mailto:speek@hollandhart.com">speek@hollandhart.com</a>
23 Valerie Larson	Defendants	<a href="mailto:vlarsen@hollandhart.com">vlarsen@hollandhart.com</a>
24 Stephanie C. Morrill	Defendants	<a href="mailto:scmorrill@hollandhart.com">scmorrill@hollandhart.com</a>
25 Ryan Semerad	Defendants	<a href="mailto:RASemerad@hollandhart.com">RASemerad@hollandhart.com</a>

26 DATED: November 15, 2019

27 /s/ Bryan Snyder  
28 BRYAN SNYDER

# **EXHIBIT A**

1 THE O'MARA LAW FIRM, P.C.  
DAVID C. O'MARA (Nevada Bar No. 8599)  
2 311 East Liberty Street  
Reno, NV 89501  
3 Telephone: 775/323-1321  
775/323-4082 (fax)

4 Liaison Counsel for Plaintiffs  
5

6  
7 EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA  
8

9 In re PARAMETRIC SOUND )  
CORPORATION SHAREHOLDERS' )  
LITIGATION )

Lead Case No. A-13-686890-B  
Dept. No. XI

10 CLASS ACTION

11 This Document Relates To:

[PROPOSED] ORDER PRELIMINARILY  
APPROVING SETTLEMENT AND  
PROVIDING FOR NOTICE

12 ALL ACTIONS.  
13

EXHIBIT A  
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1 WHEREAS, a consolidated class and derivative action is pending before this Court entitled  
2 *In re Parametric Sound Corporation Shareholders' Litigation*, Lead Case No. A-13-686890-B (the  
3 "Litigation");

4 WHEREAS, on January 18, 2019, the Court certified the following class pursuant to Rule 23  
5 of the Nevada Rules of Civil Procedure:

6 All persons and/or entities that held shares of Parametric Sound Corporation  
7 ('Parametric') common stock on January 15, 2014, at the time Parametric issued  
8 shares in the Merger pursuant to the Agreement and Plan of Merger, whether  
9 beneficially or of record, including the legal representatives, heirs, successors-in-  
10 interest, transferees, and assignees of all such foregoing holders, but excluding  
11 Defendants, executive officers of Parametric as of January 15, 2014, and their legal  
12 representatives, heirs, successors-in-interest, transferees, and assignees (the 'Class');

13 WHEREAS, Plaintiffs Kearney IRRV Trust and Lance Mykita ("Plaintiffs") have made an  
14 unopposed motion for an order preliminarily approving the settlement of this Litigation, in  
15 accordance with a Stipulation of Settlement dated November 14, 2019 (the "Stipulation"), which,  
16 together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed  
17 Settlement of the Litigation between the Settling Parties and for dismissal of the Litigation against  
18 the Defendants with prejudice upon the terms and conditions set forth therein; and the Court having  
19 read and considered the Stipulation and the Exhibits annexed thereto; and

20 WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set  
21 forth in the Stipulation.

22 NOW, THEREFORE, IT IS HEREBY ORDERED:

23 1. The Court has reviewed the Stipulation, finds that the Stipulation resulted from arm's-  
24 length negotiations, and does hereby preliminarily approve the Stipulation and Settlement set forth  
25 therein as being fair, reasonable and adequate to Class Members and the Company subject to further  
26 consideration at the hearing described in ¶2 below.

27 2. A hearing shall be held before this Court on \_\_\_\_\_, 2020, at \_\_\_\_\_.m. (a  
28 date that is at least 110 calendar days from the date of this Order) (the "Final Approval Hearing"),  
before the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of Clark County,  
Nevada, 200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E, to determine whether the proposed

1 Settlement is fair, reasonable, and adequate and should be approved by the Court; to determine  
2 whether an Order and Final Judgment as provided in ¶1.14 of the Stipulation should be entered; to  
3 determine whether the proposed Plan of Allocation should be approved; to determine the amount of  
4 fees and expenses that should be awarded to Plaintiffs' Counsel; to determine any reimbursement to  
5 Plaintiffs; to hear any objections by Class Members or Merger Stockholders to the Settlement or  
6 Plan of Allocation, the award of fees and expenses to Plaintiffs' Counsel and/or reimbursement to  
7 Plaintiffs; and to consider such other matters the Court deems appropriate.

8         3.       The Court approves the form, substance, and requirements of the Notice of Proposed  
9 Settlement of Class and Derivative Action ("Notice") and Proof of Claim and Release form,  
10 substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

11         4.       The Court approves the form of the Summary Notice, substantially in the form  
12 annexed hereto as Exhibit A-3.

13         5.       The firm of Gilardi & Co. LLC ("Claims Administrator") is hereby appointed to  
14 supervise and administer the notice procedure as well as the processing of claims as more fully set  
15 forth below.

16         6.       Not later than five (5) business days from entry of this Order, if they have not already  
17 done so, Defendants shall obtain and provide to Co-Lead Counsel, or the Claims Administrator,  
18 transfer records in electronic searchable format containing the names and addresses of all Persons  
19 who are Class Members.

20         7.       Not later than \_\_\_\_\_, 20\_\_ (the "Notice Date") (a date twenty-one (21)  
21 calendar days after the Court signs and enters this Order), the Claims Administrator shall cause a  
22 copy of the Notice and Proof of Claim and Release form, substantially in the forms annexed hereto,  
23 to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort  
24 and to be posted on its website at [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

25         8.       Not later than \_\_\_\_\_, 20\_\_ (a date ten (10) calendar days after the Notice  
26 Date), the Claims Administrator shall cause the Summary Notice to be published once in the national  
27 edition of *The Wall Street Journal* and once over a national newswire service.

1           9.       Not later than \_\_\_\_\_, 2020 (a date seven (7) business days prior to the Final  
2 Approval Hearing), Co-Lead Counsel shall serve on Defendants' counsel and file with the Court  
3 proof, by affidavit or declaration, of such mailing and publishing.

4           10.      Nominees who held Parametric common stock on January 15, 2014 for the beneficial  
5 ownership of Class Members shall be requested to send the Notice and Proof of Claim and Release  
6 form to such beneficial owners of Parametric common stock within fifteen (15) calendar days after  
7 receipt thereof, or, send a list of the names and addresses of such beneficial owners to the Claims  
8 Administrator within fifteen (15) calendar days of receipt thereof, in which event the Claims  
9 Administrator shall promptly mail the Notice and Proof of Claim and Release form to such  
10 beneficial owners.

11          11.      The form and content of the notice program described herein and the methods set  
12 forth herein for notifying the Class/Merger Stockholders of the Settlement and its terms and  
13 conditions, the Fee and Expense Application, and the Plan of Allocation meet the requirements of  
14 Rules 23 and 23.1 of the Nevada Rules of Civil Procedure, and due process, constitute the best  
15 notice practicable under the circumstances, and shall constitute due and sufficient notice to all  
16 Persons entitled thereto.

17          12.      All fees, costs, and expenses incurred in notifying Class Members/Merger  
18 Stockholders shall be paid from the Settlement Fund and in no event shall any of the Released  
19 Defendant Parties bear any responsibility for such fees, costs or expenses. All members of the Class  
20 (except Persons who request exclusion pursuant to ¶16 below) shall be bound by all determinations  
21 and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases  
22 provided for therein, whether favorable or unfavorable to the Class, regardless of whether such  
23 Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim  
24 and Release form or any similar document, any distribution from the Settlement Fund or the Net  
25 Settlement Fund.

26          13.      Class Members/Merger Stockholders who wish to participate in the Settlement shall  
27 complete and submit the Proof of Claim and Release form in accordance with the instructions  
28 contained therein. Unless the Court orders otherwise, all Proofs of Claim and Release must be

1 postmarked or submitted electronically no later than \_\_\_\_\_, 2020 (a date one hundred and  
2 twenty (120) calendar days from the Notice Date). Any Class Member/Merger Stockholder who  
3 does not submit a Proof of Claim and Release within the time provided shall be barred from sharing  
4 in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court,  
5 but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the  
6 foregoing, Co-Lead Counsel shall have the discretion (but not the obligation) to accept late-  
7 submitted claims for processing by the Claims Administrator so long as distribution of the Net  
8 Settlement Fund is not materially delayed thereby. No person shall have any claim against the  
9 Plaintiffs, Co-Lead Counsel, Plaintiffs' Counsel or the Claims Administrator by reason of the  
10 decision to exercise or not exercise such discretion.

11 14. The Proof of Claim and Release submitted by each Class Member/Merger  
12 Stockholder must, unless otherwise ordered by the Court: (i) be properly completed, signed and  
13 submitted in a timely manner in accordance with the provisions of the preceding paragraph; (ii) be  
14 accompanied by adequate supporting documentation, in the form of broker confirmation slips,  
15 broker account statements, an authorized statement from the broker, or such other documentation  
16 deemed adequate by Co-Lead Counsel or the Claims Administrator; (iii) include in the Proof of  
17 Claim and Release a certification of current authority to act on behalf of the Class Member if the  
18 person executing the Proof of Claim and Release is acting in a representative capacity; (iv) be  
19 complete and contain no material deletions or modifications of any of the printed matter contained  
20 therein; and (v) be signed under penalty of perjury.

21 15. Any member of the Class may enter an appearance in the Litigation, at his, her, or its  
22 own expense, individually or through counsel of their own choice. If they do not enter an  
23 appearance, they will be represented by Co-Lead Counsel.

24 16. Any Person falling within the definition of the Class may, upon request, be excluded  
25 or "opt out" from the Class. Any such Person must submit to the Claims Administrator a request for  
26 exclusion ("Request for Exclusion"), by First-Class Mail such that it is received no later than  
27 \_\_\_\_\_, 2020 (a date twenty-one (21) calendar days before the Final Approval Hearing). A  
28 Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the

1 Person requesting exclusion; (b) the number of shares of Parametric common stock the Person held  
2 on January 15, 2014; and (c) that the Person wishes to be excluded from the Class. All Persons who  
3 submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have  
4 no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and  
5 shall not be bound by the Stipulation or any final judgment.

6 17. Co-Lead Counsel shall cause to be provided to Defendants' counsel copies of all  
7 Requests for Exclusion and a list of all Class Members who have requested exclusion, and any  
8 written revocation of Requests for Exclusion, as expeditiously as possible and in any event no later  
9 than \_\_\_\_\_, 2020 (a date fourteen (14) calendar days prior to the Final Approval Hearing).

10 18. Any member of the Class and/or Merger Stockholder may appear and object if he,  
11 she, or it has any reason why the proposed Settlement of the Litigation should not be approved as  
12 fair, reasonable and adequate, or why a judgment should not be entered thereon, why the Plan of  
13 Allocation should not be approved, why fees and expenses should not be awarded to Co-Lead  
14 Counsel or Plaintiffs; provided, however, that no Class Member or any other Person shall be heard  
15 or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if  
16 approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of  
17 Allocation, or any fees and expenses to be awarded to Co-Lead Counsel or Plaintiffs, unless written  
18 objections and copies of any papers and briefs are received by: Robbins Geller Rudman & Dowd  
19 LLP, David Knotts, 655 West Broadway, Suite 1900, San Diego, CA 92101; Sheppard, Mullin,  
20 Richter & Hampton LLP, John P. Stigi III, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA  
21 90067; and Dechert LLP, Joshua D. N. Hess, 1900 K Street, NW, Washington, DC 20006-1110; no  
22 later than \_\_\_\_\_, 2020 (a date twenty-one (21) calendar days before the Final Approval  
23 Hearing), and said objections, papers and briefs are filed with the Court, no later than \_\_\_\_\_,  
24 2020. Any member of the Class/Merger Stockholder who does not make his, her, or its objection in  
25 the manner provided for herein shall be deemed to have waived such objection and shall forever be  
26 foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed  
27 Settlement as incorporated in the Stipulation, to the Plan of Allocation, and to the Fee and Expense  
28 Application, unless otherwise ordered by the Court. Attendance at the Final Approval Hearing is not

1 necessary. However, Persons wishing to be heard orally in opposition to the approval of the  
2 Settlement, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate  
3 in their written objection their intention to appear at the hearing. Class Members/Merger  
4 Stockholders do not need to appear at the Final Approval Hearing or take any other action to indicate  
5 their approval of the Settlement.

6 19. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*  
7 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such  
8 funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

9 20. All papers in support of the Settlement, Plan of Allocation, any application by Co-  
10 Lead Counsel for attorneys' fees and expenses, and any application for reimbursement to Plaintiffs  
11 shall be filed and served no later than \_\_\_\_\_, 2020 (a date thirty-five (35) calendar days  
12 prior to the Final Approval Hearing), and any reply papers shall be filed and served no later than  
13 \_\_\_\_\_, 2020 (a date seven (7) calendar days prior to the Final Approval Hearing).

14 21. Defendants shall have no responsibility for the Plan of Allocation or any application  
15 for attorneys' fees and expenses submitted by Co-Lead Counsel or Plaintiffs, and such matters will  
16 be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

17 22. At or after the Final Approval Hearing, the Court shall determine whether the Plan of  
18 Allocation proposed by Co-Lead Counsel and any application for attorneys' fees and expenses,  
19 should be approved.

20 23. All reasonable expenses incurred in identifying and notifying Class Members as well  
21 as administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the  
22 Court does not approve the Settlement, or it otherwise fails to become effective, none of the  
23 Plaintiffs nor any of Plaintiffs' Counsel shall have any obligation to repay any amounts actually and  
24 properly incurred or disbursed pursuant to ¶¶2.7 or 2.8 of the Stipulation.

25 24. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations,  
26 discussions, proceedings connected with it, nor any act performed or document executed pursuant to  
27 or in furtherance of the Stipulation or the Settlement may: be construed as an admission or  
28 concession by any of the Released Defendant Parties, any of the Plaintiffs, any Class Member, or

1 any other Person, of the truth or lack of truth of any of the allegations in the Litigation; or be used in  
2 any way as an admission, concession or evidence of the existence or the absence of any liability or  
3 damages as to any claim alleged or asserted in the Litigation; or be otherwise used by any person in  
4 the Litigation, or in any other action or proceeding, whether civil, criminal, or administrative, in any  
5 court, administrative agency, or other tribunal, except in connection with any proceeding to enforce  
6 the terms of the Stipulation. The Released Defendant Parties and/or Plaintiffs may file the  
7 Stipulation of Settlement, the final Court approval of the Settlement, and/or the Order and Final  
8 Judgment in any action that may be brought against them in order to support a defense or  
9 counterclaim based upon principles of *res judicata*, collateral estoppel, release, good faith  
10 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or  
11 similar defense or counterclaim, or as necessary for the prosecution of any other litigation regarding  
12 the Merger.

13 25. All proceedings in the Litigation are stayed until further order of this Court, except as  
14 may be necessary to implement the Settlement or comply with the terms of the Stipulation.

15 26. The Court reserves the right to alter the time or the date of the Final Approval  
16 Hearing without further notice to the Class Members/Merger Stockholders, provided that the time or  
17 the date of the Final Approval Hearing shall not be set at a time or date earlier than the time and date  
18 set forth in ¶2 above, and retains jurisdiction to consider all further applications arising out of or  
19 connected with the proposed Settlement. The Court may approve the Settlement, with such  
20 modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the  
21 Class.

22 27. If the Settlement fails to become effective as defined in the Stipulation or is  
23 terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as  
24 expressly provided in the Stipulation, and this Order shall be null and void, of no further force or  
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effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Settling Parties, and they shall be deemed to have reverted to their respective litigation positions in the Litigation as of October 11, 2019.

IT IS SO ORDERED.

DATED: \_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT



# **EXHIBIT A-1**

1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)

7 Liaison Counsel for Plaintiffs

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 In re PARAMETRIC SOUND  
11 CORPORATION SHAREHOLDERS'  
12 LITIGATION

) Lead Case No. A-13-686890-B  
) Dept. No. XI  
)

13 ) CLASS ACTION  
14 )

15 This Document Relates To:

) NOTICE OF PROPOSED SETTLEMENT OF  
) CLASS AND DERIVATIVE ACTION

16 ALL ACTIONS.  
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) EXHIBIT A-1  
)

TO: ALL PERSONS AND/OR ENTITIES THAT HELD SHARES OF PARAMETRIC SOUND CORPORATION ("PARAMETRIC") COMMON STOCK ON JANUARY 15, 2014, AT THE TIME PARAMETRIC ISSUED SHARES IN THE MERGER PURSUANT TO THE AGREEMENT AND PLAN OF MERGER, WHETHER BENEFICIALLY OR OF RECORD, INCLUDING THE LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS-IN-INTEREST, TRANSFEREES, AND ASSIGNEES OF ALL SUCH FOREGOING HOLDERS, BUT EXCLUDING DEFENDANTS, EXECUTIVE OFFICERS OF PARAMETRIC AS OF JANUARY 15, 2014, AND THEIR LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS-IN-INTEREST, TRANSFEREES, AND ASSIGNEES

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER/MERGER STOCKHOLDER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM ("PROOF OF CLAIM") **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE [INSERT DATE]**.

This Notice of Proposed Settlement of Class and Derivative Action ("Notice") has been sent to you pursuant to an Order of the Eighth Judicial District Court for the State of Nevada, Clark County (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of the Litigation (the "Settlement") and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement and the proposed Plan of Allocation of the Settlement proceeds, as well as Co-Lead Counsel's application for fees and expenses and Plaintiffs' request for reimbursement of time and expenses. This Notice describes the rights you may have in connection with your participation in the Settlement, what steps you may take in relation to the Settlement and this Litigation, and, alternatively, what steps you must take if you wish to be excluded from the Class and this Litigation.<sup>1</sup>

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A PROOF OF CLAIM</b>	The only way to be eligible to receive a payment. <b>Proofs of Claim must be postmarked or submitted online on or before [Insert Date].</b>
<b>EXCLUDE YOURSELF</b>	Receive no payment. This is the only option that <i>potentially</i> allows you to ever be part of any other lawsuit against the Defendants or any of the Released Defendant Parties about the legal claims related to the issues raised in this Litigation. <b>Exclusions must be received no later than [Insert Date].</b>
<b>OBJECT</b>	Write to the Court about why you oppose the Settlement, the Plan of Allocation, the request for attorneys' fees and expenses and/or Plaintiffs' request for reimbursement of time and expenses. You will still be a member of the Class. <b>Objections must be received by the Court and counsel for the Settling Parties on or before [Insert Date].</b>

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement, which, along with other important documents, is available on the Settlement website, [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

1 <b>GO TO A HEARING ON</b> 2 <b>[INSERT DATE], AND</b> 3 <b>FILE A NOTICE OF</b> 4 <b>INTENTION TO</b> 5 <b>APPEAR</b>	Ask to speak in Court about the fairness of the Settlement. <b>Requests to speak must be <i>received</i> by the Court and counsel for the Settling Parties on or before [Insert Date].</b>
6 <b>DO NOTHING</b>	Receive no payment from the Settlement. Members of the Class or Merger Stockholders who do nothing remain bound by the terms of the Settlement unless you have requested exclusion from the Class.

## **SUMMARY OF THIS NOTICE**

### **Statement of Class and Derivative Recovery**

Pursuant to the Settlement described herein, the Settlement Amount is \$9,650,000.00. The Settlement Amount, plus accrued interest, and minus the costs of this Notice, all costs associated with the administration of the Settlement, taxes and tax expenses, as well as attorneys' fees and expenses as approved by the Court, will be distributed *pro rata* to Class Members/Merger Stockholders who submit valid and timely Proofs of Claim pursuant to the Plan of Allocation that is described below in this Notice.

Your share of the fund will depend on several things, including how many Merger Stockholders/Class Members submit timely and valid Proofs of Claim, and the number of shares of Parametric common stock you held and received consideration for in the Merger. Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Class Members/Merger Stockholders who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. If 100% of non-insider shares outstanding immediately prior to the close of the Merger (January 15, 2014) submit a claim, each share's average distribution under the Settlement will be approximately \$1.65 per share, before deduction of any Taxes on any income earned on the Settlement Amount, Tax Expenses, Notice and Administration Costs, the attorneys' fees and expenses and the expenses of Lead Plaintiffs, as determined by the Court.

See the Plan of Allocation at pages \_\_\_\_ hereof for more information on your claim.

### **Reasons for the Settlement**

The principal reason for the Settlement is the cash benefit to be provided to stockholders now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future, against the Defendants. See "Why is there a settlement" at page \_\_\_\_ below for more information.

### **Statement of Attorneys' Fees and Expenses Sought**

Co-Lead Counsel will apply to the Court for an award of attorneys' fees of up to 25% of the Settlement Amount, plus expenses up to \$790,000.00, plus interest on both amounts. Since the Litigation's inception, Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this Litigation on a contingent fee basis and advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage

1 of the common fund recovery as their attorneys' fees, in addition to expenses reasonably incurred in  
2 the litigation. In addition, Plaintiffs may seek reimbursement of their time and expenses up to  
\$3,000.00 each.

3 **Further Information**

4 For further information regarding the Litigation, this Notice or to review the Stipulation of  
5 Settlement, please contact the Claims Administrator toll-free at 1-866-458-2206, or visit the website  
www.ParametricShareholderLitigation.com.

6 You may also contact a representative of Co-Lead Counsel: Rick Nelson, Shareholder  
7 Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA  
8 92101, 1-800-449-4900, www.rgrdlaw.com.

9 Please Do Not Call the Court or the Defendants with Questions About the Settlement.

10 **BASIC INFORMATION**

11 **1. Why did I get this Notice package?**

12 You have been identified as a potential Class Member and Merger Stockholder.

13 The Court directed that this Notice be sent to stockholders at the time of the January 15, 2014  
14 Merger because they have a right to know about the proposed Settlement of this class and derivative  
lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

15 This Notice explains the class action and derivative lawsuit, the Settlement, Class Members'  
16 legal rights, what benefits are available, who is eligible for them, and how to get them.

17 The Court in charge of the Litigation is the Eighth Judicial District Court for the State of  
18 Nevada, Clark County, and the case is known as *In re Parametric Sound Corporation Shareholders'*  
19 *Litigation*, Lead Case No. A-13-686890-B. The case has been assigned to the Honorable Elizabeth  
20 Gonzalez. The Kearney IRRV Trust and Lance Mykita are the lead plaintiffs (referred to as  
"Plaintiffs" in this Notice), and the parties who were sued and who have now settled are called the  
"Defendants."

21 **2. What is this lawsuit about?**

22 This is a shareholder class action seeking monetary damages and alleging that Defendants  
23 Kenneth Potashner, James Honore, Robert Kaplan, Elwood G. Norris, Andrew Wolfe, and Seth  
24 Putterman (referred to as the "Individual Defendants" in this Notice) breached their fiduciary duties  
in connection with the Merger and that Stripes Group, LLC, SG VTB Holdings, LLC, and VTB  
25 Holdings, Inc. aided and abetted those breaches of fiduciary duty. In addition, the lawsuit alleges  
derivatively, on behalf of Nominal Defendant Turtle Beach Corporation, that the Individual  
26 Defendants breached their fiduciary duties to Parametric in connection with the Merger and that  
Stripes Group, LLC, SG VTB Holdings, LLC, and VTB Holdings, Inc. aided and abetted in those  
breaches. The Merger closed on January 15, 2014.

1 **3. Why is this a class action and a derivative action?**

2 In a class action, one or more people called a plaintiff sues on behalf of people who have  
3 similar claims. All of the people with similar claims are referred to as a Class or Class Members.  
4 One court resolves the issues for all Class Members, except for those Class Members who excluded  
5 themselves from the Class. In a derivative action, one or more people sue on behalf of a corporation  
6 in which they own stock for claims belonging to the corporation. This case involves a dual-natured  
7 direct and derivative claim challenging the Merger, which closed on January 15, 2014. The “Class  
8 Members” and the “Merger Stockholders” thus involve the same group of stockholders immediately  
9 prior to effectuation of the Merger on January 15, 2014.

10 **4. Why is there a settlement?**

11 The Court has not decided in favor of the Defendants or the Plaintiffs. Instead, all sides  
12 agreed to the Settlement to avoid the costs and risks of further litigation, including trial and post-trial  
13 appeals. Plaintiffs agreed to the Settlement in order to ensure that Class Members/Merger  
14 Stockholders will receive compensation, and because Plaintiffs (advised by Plaintiffs’ Counsel)  
15 considered the Settlement Amount to be a favorable recovery compared to the risk-adjusted  
16 possibility of recovery after trial and any appeals. Plaintiffs and Plaintiffs’ Counsel believe the  
17 Settlement is in the best interest of all Class Members and the Company in light of the real possibility  
18 that continued litigation could result in no recovery at all.

19 **WHO IS IN THE SETTLEMENT**

20 To see if you will get money from this Settlement, you first have to decide if you are a Class  
21 Member, which involves the same group of stockholders on January 15, 2014 as the “Merger  
22 Stockholders.”

23 **5. How do I know if I am part of the Settlement?**

24 The Court directed that everyone who fits this description is a Class Member: All persons  
25 and/or entities that held shares of Parametric Sound Corporation (“Parametric” or the “Company”)  
26 common stock on January 15, 2014, at the time Parametric issued shares in the Merger pursuant to the  
27 Agreement and Plan of Merger, whether beneficially or of record, including the legal representatives,  
28 heirs, successors-in-interest, transferees, and assignees of all such foregoing holders, except those  
Persons and entities that are excluded, as described below.

Previous stockholders of VTB Holdings, Inc. who received Parametric stock as part of the  
Merger do not fall within this Class definition.

**6. Are there exceptions to being included?**

Excluded from the Class are: Defendants, executive officers of Parametric as of January 15,  
2014, and their legal representatives, heirs, successors-in-interest, transferees, and assignees. Also  
excluded from the Class are those Persons who timely and validly request exclusion from the Class  
pursuant to this Notice and who timely and validly requested exclusion following the notice of  
pendency.

1 **7. What if I am not sure if I am included?**

2 If you are still not sure whether you are included, you can ask for free help. You can contact  
3 the Claims Administrator toll-free at 1-866-458-2206 or visit the Settlement website  
4 [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com), or you can fill out and return the Proof of Claim  
enclosed with this Notice package, to see if you qualify.

5 **THE SETTLEMENT BENEFITS – WHAT YOU GET**

6 **8. What does the Settlement provide?**

7 In exchange for the Settlement and the release of the Released Claims (defined below) as well  
8 as dismissal of the Litigation, Defendants have agreed that a payment of \$9,650,000.00 will be made  
9 by Defendants (or on their behalf) to be divided, after taxes, fees, and expenses, among all Class  
Members and Merger Stockholders who send in a valid Proof of Claim.

10 **HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM**

11 **9. How can I receive a payment?**

12 To qualify for a payment, you must submit a Proof of Claim. A Proof of Claim is enclosed  
13 with this Notice or it may be downloaded at [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com). Read the  
14 instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it,  
and return it so that it is postmarked, if mailed, or received, if submitted online, no later than  
15 \_\_\_\_\_, 2020. The Proof of Claim may be submitted online at  
[www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

16 **10. When would I receive my payment?**

17 The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2020, to decide whether to  
18 approve the Settlement. If the Court approves the Settlement, there might be appeals. It is always  
19 uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than  
a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

20 **11. What am I giving up to receive a payment or to stay in the Class?**

21 Unless you exclude yourself, you will remain a Class Member, and that means that, if the  
22 Settlement is approved, you will give up all “Released Claims” (as defined below), including  
“Unknown Claims” (as defined below), against the “Released Defendant Parties” (as defined below):

- 23 • “Released Claims” means all claims, demands, rights, actions or causes of action,  
24 liabilities, debts, demands, rights, damages, losses, obligations, judgments, suits, fees,  
25 expenses, costs, matters, and issues of any kind or nature whatsoever, whether known  
26 or unknown, contingent or absolute, suspected or unsuspected, disclosed or  
27 undisclosed, hidden or concealed, matured or unmatured, whether based in law or  
28 equity, that have been, or could have been, asserted in the Litigation or any forum by  
Plaintiffs for themselves or by or on behalf of any member of the Class and/or  
derivatively on behalf of Turtle Beach Corporation, based on, arising out of, or  
relating to: (A) his, her, or its ownership of Parametric stock (whether individual,

1 class, derivative, representative, legal, equitable, or any other type or in any other  
2 capacity); and (B) the allegations and claims in the Amended Class Action and  
3 Derivative Complaint; provided, however, that the Released Claims shall not include  
4 any claims to enforce the Settlement Term Sheet or the Stipulation. "Released  
5 Claims" includes "Unknown Claims" as defined below.

- 6 • "Released Defendant Parties" means (i) Defendants; (ii) Defendants' affiliates; and  
7 (iii) all of the respective families, heirs, executors, personal or legal representatives,  
8 counsel (including, but not limited to, Defendants' counsel), insurers, estates,  
9 administrators, predecessors, successors and assigns for those persons identified in  
10 part (i) of this paragraph.
- 11 • "Settled Defendants' Released Claims" means all actions, claims, debts, demands,  
12 liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever,  
13 known or unknown, contingent or absolute, mature or immature, discoverable or  
14 undiscoverable, whether concealed or hidden, suspected or unsuspected, whether  
15 based in law or equity, arising under federal, state, common or foreign law, or any  
16 other law, rule or regulation, which now exist or heretofore have existed, that have  
17 been or could have been asserted in the Litigation or any forum by the Released  
18 Defendant Parties or any of them against Plaintiffs, Class Members, or Plaintiffs'  
19 Counsel, that arise out of or relate in any way to the institution, prosecution, or  
20 settlement of the claims against the Released Defendant Parties, provided, however,  
21 that this release shall not include any claims to enforce the Settlement Term Sheet or  
22 the Stipulation in the Litigation. "Settled Defendants' Released Claims" includes  
23 "Unknown Claims" as defined below.
- 24 • "Unknown Claims" means any of the Released Claims which Plaintiffs or any Class  
25 Member does not know or suspect to exist in such party's favor at the time of the  
26 release of the Released Defendant Parties, and any of the Settled Defendants'  
27 Released Claims that the Released Defendant Parties do not know or suspect to exist  
28 in his, her, or its favor at the time of the release of Plaintiffs, each and all of the Class  
Members and Plaintiffs' Counsel, which, if known by such party, might have affected  
such party's settlement with and release of the Released Defendant Parties or  
Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, or might have  
affected such party's decision not to object to this Settlement or seek exclusion.  
Unknown Claims include those Released Claims in which some or all of the facts  
comprising the claim may be suspected, or even undisclosed or hidden. With respect  
to any and all Released Claims and the Settled Defendants' Released Claims, upon the  
Effective Date, Plaintiffs and Defendants shall expressly, and each of the Class  
Members and Released Defendant Parties shall be deemed to have, and by operation  
of the Order and Final Judgment shall have, expressly waived to the fullest extent  
permitted by law, the provisions, rights, and benefits of California Civil Code §1542,  
which provides:



*A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.*

Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Defendant Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Plaintiffs, Class Members and the Released Defendant Parties may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of the Released Claims and the Settled Defendants' Released Claims, but Plaintiffs and Defendants shall expressly, and each Class Member and Released Defendant Parties, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Released Claims, or the Settled Defendants' Released Claims, as the case may be, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, whether or not previously or currently asserted in any action. Plaintiffs and Defendants acknowledge, and the Class Members and Released Defendant Parties shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

If you remain a Class Member, all of the Court's orders will apply to you and legally bind you.

## EXCLUDING YOURSELF FROM THE CLASS

If you do not want a payment from this Settlement, and you want to keep the right to sue the Defendants and/or the other Released Defendant Parties, on your own, about the legal issues in this Litigation, then you must take steps to remove yourself from the Settlement. This is called excluding yourself.

**12. How do I get out of the proposed Settlement?**

To exclude yourself from the Class, you must send a letter by First-Class Mail stating that you “request exclusion from the Class in the *Parametric Settlement*.” To be valid, your letter must include the number of shares of Parametric common stock you held on January 15, 2014. In addition, you must include your name, address, telephone number, and your signature. You must submit your exclusion request so that it is ***received no later than*** [INSERT DATE] to:

Parametric Settlement  
c/o Gilardi & Co. LLC  
Claims Administrator  
EXCLUSIONS  
3301 Kerner Blvd.  
San Rafael, CA 94901

If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this Litigation, you may want to consult an attorney and discuss whether any individual claim that you wish to pursue would be time-barred by the applicable statutes of limitations or repose.

**13. If I do not exclude myself, can I sue the Defendants and the other Released Defendant Parties for the same thing later?**

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit against the Released Defendant Parties, speak to your lawyer in that case immediately. You must exclude yourself from this Litigation to continue your own lawsuit. Remember, the exclusion deadline is [INSERT DATE].

**14. If I exclude myself, can I get money from the proposed Settlement?**

No. If you exclude yourself, you may not send in a Proof of Claim to ask for any money. But, you may be able to sue or be part of a different lawsuit against the Defendants and the other Released Defendant Parties about the claims raised in this Litigation.

**THE LAWYERS REPRESENTING YOU**

**15. Do I have a lawyer in this case?**

The Court ordered that the law firms of Robbins Geller Rudman & Dowd LLP and Saxena White P.A. represent the Class, including you. These lawyers are called Co-Lead Counsel. They will be paid from the Settlement Fund to the extent the Court approves their application for fees and expenses. If you want to be represented by your own lawyer, you may hire one at your own expense.

**16. How will the lawyers be paid?**

Co-Lead Counsel will move the Court for an award of attorneys' fees of up to 25% of the Settlement Amount and for expenses up to \$790,000.00, plus interest on both amounts. Such sums as may be approved by the Court will be paid from the Settlement Fund. In addition, Plaintiffs may seek reimbursement for their time and expenses up to \$3,000.00 each.

The attorneys' fees and expenses requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this Litigation on behalf of Plaintiffs, the Company, and the Class nor for the litigation expenses Plaintiffs' Counsel have incurred. The fee requested will compensate Plaintiffs' Counsel

for their work in achieving the Settlement Fund and is within the range of fees and expenses awarded to class counsel under similar circumstances in other cases of this type.

### OBJECTING TO THE SETTLEMENT

#### 17. How do I tell the Court that I object to the proposed Settlement?

If you are a Class Member, you can write to the Court to object to the proposed Settlement, the proposed Plan of Allocation, and/or Co-Lead Counsel's fee and expense application. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed Settlement, the proposed Plan of Allocation, and/or the application for fees and expenses, in the *Parametric Settlement* and the reasons you object. Be sure to include your name, address, telephone number, and your signature, identify the number of shares of Parametric common stock you held on January 15, 2014, and state the reasons why you object. Your objection must be filed with the Court **and** mailed or delivered to **each** of the following addresses such that it is **received no later than [insert date]**:

#### COURT

CLERK OF THE COURT  
Department XI  
Eighth Judicial District  
Court  
Clark County, Nevada  
200 Lewis Avenue  
Las Vegas, NV 89101

#### CO-LEAD COUNSEL

David Knotts  
ROBBINS GELLER  
RUDMAN & DOWD LLP  
655 West Broadway,  
Suite 1900  
San Diego, CA 92101

#### DEFENDANTS' COUNSEL

John P. Stigi III  
SHEPPARD, MULLIN,  
RICHTER & HAMPTON  
LLP  
1901 Avenue of the Stars,  
Suite 1600  
Los Angeles, CA 90067

Joshua D. N. Hess  
DECHERT LLP  
1900 K Street, NW  
Washington, DC 20006-1110

#### 18. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the proposed Settlement, the Plan of Allocation, or the fee and expense application. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class.

### THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

#### 19. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Final Approval Hearing at \_\_\_\_ : \_\_\_\_ .m., on \_\_\_\_ day, \_\_\_\_, 2020, before the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of Clark County, Nevada, 200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E. At the hearing the Court will consider whether the Settlement and proposed Plan of Allocation are fair, reasonable, and adequate, and whether Co-Lead Counsel's fee and expense application should be granted. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at

1 the hearing. After the Final Approval Hearing, the Court will decide whether to approve the  
2 Settlement, the Plan of Allocation and the amount of fees and expenses. We do not know how long  
3 these decisions will take. The Court may change the date and time of the Final Approval Hearing  
4 without another notice being sent to Class Members. If you want to attend the hearing, you may wish  
to check with Co-Lead Counsel or the Settlement website beforehand to be sure that the date and/or  
time has not changed.

5 **20. Do I have to come to the hearing?**

6 No. Co-Lead Counsel will answer questions the Court may have. But, you are welcome to  
7 come at your own expense. If you send an objection or statement in support of the Settlement, you  
8 are not required to come to Court to discuss it. As long as you mailed your objection on time, the  
9 Court will consider it. You may also pay your own lawyer to attend, but you are not required to do  
so. Class Members do not need to appear at the hearing or take any other action to indicate their  
approval.

10 **21. May I speak at the hearing?**

11 If you object to the Settlement, the Plan of Allocation, and/or the fee and expense application,  
12 you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must  
13 include with your objection (*see* Question 17 above) a statement saying that it is your “Notice of  
14 Intention to Appear in the *Parametric Settlement*.” Persons who intend to object to the Settlement,  
15 the Plan of Allocation, and/or the application for an award of attorneys’ fees and expenses and desire  
to present evidence at the Final Approval Hearing must include in their written objections the identity  
of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the  
Final Approval Hearing. You cannot speak at the hearing if you exclude yourself.

16 **IF YOU DO NOTHING**

17 **22. What happens if I do nothing at all?**

18 If you do nothing, you will get no money from this Settlement. But, unless you exclude  
19 yourself, you will not be able to start a lawsuit or be part of any other lawsuit against the Released  
20 Defendant Parties about the legal issues in this case ever again.

21 **GETTING MORE INFORMATION**

22 **23. Are there more details about the proposed Settlement?**

23 This Notice summarizes the proposed Settlement. More details are in a Stipulation of  
24 Settlement dated November 14, 2019 (the “Stipulation”). You can obtain answers to common  
25 questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at 1-  
866-458-2206. A copy of the Stipulation and other relevant documents are also available on the  
26 Settlement website at [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

1                                   **PLAN OF ALLOCATION OF NET SETTLEMENT FUND**  
2                                   **AMONG CLASS MEMBERS AND MERGER STOCKHOLDERS**

3           Your share of the Net Settlement Fund will depend on how many shares of Parametric  
4 common stock you held on January 15, 2014, and the number of shares of Parametric common stock  
5 represented by valid claims made by members of the Class.

6           Distributions will be made *pro rata* to Authorized Claimants after all claims have been  
7 processed and after the Court has finally approved the Settlement. The Net Settlement Fund will be  
8 disbursed by the Claims Administrator to the Authorized Claimants and will be allocated on a *pro*  
9 *rata*, equal per-share basis amongst the Authorized Claimants. Any distribution will require a \$10.00  
10 minimum.

11           If there is any balance remaining in the Net Settlement Fund after a reasonable period of time  
12 after the initial distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed  
13 checks, or otherwise), Co-Lead Counsel, shall, if feasible, reallocate on a *pro rata* basis among  
14 Authorized Claimants who negotiated the checks sent to them in the initial distribution and who  
15 would receive a minimum of \$10.00. These reallocations shall be repeated until the balance  
16 remaining in the Net Settlement Fund is *de minimis* and any remainder shall thereafter be donated to  
17 an appropriate non-profit organization selected by Co-Lead Counsel.

18           Class Members who do not submit acceptable Proofs of Claim will not share in the Settlement  
19 proceeds. The Settlement and the Order and Final Judgment releasing the Defendants and other  
20 Released Defendant Parties and dismissing this Litigation will nevertheless bind all Class Members.

21           Please contact the Claims Administrator if you disagree with any determinations made by the  
22 Claims Administrator regarding your Proof of Claim. If you are unsatisfied with the determinations,  
23 you may ask the Court, which retains jurisdiction over all Class Members and the claims  
24 administration process, to decide the issue by submitting a written request.

25           No Person shall have any claim against Plaintiffs' Counsel, Plaintiffs, the Claims  
26 Administrator, Defendants and the Released Defendant Parties, or any Person designated by Co-Lead  
27 Counsel based on distributions made substantially in accordance with the Stipulation and the  
28 Settlement contained therein, or further order(s) of the Court. No Class Member shall have any claim  
against any Released Defendant Parties for any Released Claims.

21                                   **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

22           If you held Parametric common stock on January 15, 2014 for the beneficial interest of an  
23 individual or organization other than yourself, the Court has directed that, WITHIN FIFTEEN (15)  
24 DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator  
25 the name and last known address of each beneficial owner of the common stock, or (b) request  
26 additional copies of this Notice and the Proof of Claim, which will be provided to you free of charge,  
27 and within fifteen (15) days mail the Notice and Proof of Claim directly to the beneficial owners of  
28 the common stock referred to herein. If you choose to follow alternative procedure (b), upon such  
mailing, you must send a statement to the Claims Administrator confirming that the mailing was  
made as directed and retain the names and addresses for any future mailings to Class Members. You  
are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred  
in connection with the foregoing, including reimbursement of postage expense and the cost of

1 ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid  
2 upon request and submission of appropriate supporting documentation. All communications  
concerning the foregoing should be addressed to the Claims Administrator:

3 *Parametric Settlement*  
4 c/o Gilardi & Co. LLC  
Claims Administrator  
5 P.O. Box 43342  
1-866-458-2206  
6 www.ParametricShareholderLitigation.com

7 DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

# **EXHIBIT A-2**

1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)

Liaison Counsel for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

8 In re PARAMETRIC SOUND )  
9 CORPORATION SHAREHOLDERS' )  
10 LITIGATION )

Lead Case No. A-13-686890-B  
Dept. No. XI

CLASS ACTION

11 This Document Relates To: )

PROOF OF CLAIM AND RELEASE

12 ALL ACTIONS. )

EXHIBIT A-2



1 **I. GENERAL INSTRUCTIONS**

2 1. To recover based on your claims in the action entitled *In re Parametric Sound*  
3 *Corporation Shareholders' Litigation*, Lead Case No. A-13-686890-B (the "Litigation"), you must  
4 complete and, on page \_\_ hereof, sign this Proof of Claim and Release. If you fail to submit a  
5 properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, postmarked or  
6 received by the date shown below, your claim may be rejected and you may be precluded from any  
7 recovery from the Net Settlement Fund created in connection with the proposed Settlement of the  
8 Litigation.

9 2. Submission of this Proof of Claim and Release, however, does not assure that you  
10 will share in the proceeds of the Settlement.

11 3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED  
12 PROOF OF CLAIM AND RELEASE, ACCOMPANIED BY COPIES OF THE DOCUMENTS  
13 REQUESTED HEREIN, NO LATER THAN \_\_\_\_\_, 2020, TO THE COURT-  
14 APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

15 *Parametric Settlement*  
16 Claims Administrator  
17 c/o Gilardi & Co. LLC  
18 P.O. Box 43342  
Providence, RI 02940-3342  
Online submissions: [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com)

19 If you are NOT a member of the Class or Merger Stockholder as defined in the Notice of Proposed  
20 Settlement of Class and Derivative Action (the "Notice"), DO NOT submit a Proof of Claim and  
21 Release form.

22 4. If you are a member of the Class or Merger Stockholder and you do not timely  
23 request exclusion in connection with the proposed Settlement, you will be bound by the terms of any  
24 judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT  
25 YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

26 **II. CLAIMANT IDENTIFICATION**

27 If you are a Class Member and held Parametric shares in your name, you are the beneficial  
28 owner as well as the record owner. If, however, you held Parametric common stock and the shares

1 were registered in the name of a third party, such as a nominee or brokerage firm, you are the  
2 beneficial owner and the third party is the record owner.

3 Use Part I of this form entitled "Claimant Identification" to identify each owner of record  
4 ("nominee"), if different from the beneficial owner of the common stock which form the basis of this  
5 claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER(S) OR THE  
6 LEGAL REPRESENTATIVE OF SUCH OWNER(S) OF THE PARAMETRIC COMMON  
7 STOCK UPON WHICH THIS CLAIM IS BASED.

8 All joint owners must sign this claim. Executors, administrators, guardians, conservators and  
9 trustees must complete and sign this claim on behalf of persons represented by them and their  
10 authority must accompany this claim and their titles or capacities must be stated. The Social  
11 Security (or taxpayer identification) number and telephone number of the beneficial owner may be  
12 used in verifying the claim. Failure to provide the foregoing information could delay verification of  
13 your claim or result in rejection of the claim.

14 If you are acting in a representative capacity on behalf of a Class Member (for example, as an  
15 executor, administrator, trustee, or other representative), you must submit evidence of your current  
16 authority to act on behalf of that Class Member. Such evidence would include, for example, letters  
17 testamentary, letters of administration, or a copy of the trust documents.

18 NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of  
19 transactions may request to, or may be requested to, submit information regarding their transactions  
20 in electronic files. ***All claimants MUST submit a manually signed paper Proof of Claim and***  
21 ***Release form listing all their transactions whether or not they also submit electronic copies.*** If  
22 you wish to file your claim electronically, you must contact the Claims Administrator at  
23 edata@gilardi.com to obtain the required file layout. No electronic files will be considered to have  
24 been properly submitted unless the Claims Administrator issues to the claimant a written  
25 acknowledgement of receipt and acceptance of electronically submitted data.

1 **III. CLAIM FORM**

2 Use Part II of this form entitled "Schedule of Parametric Common Stock held on January 15,  
3 2014" to supply the number of shares of Parametric common stock you held on January 15, 2014,  
4 immediately prior to effectuation of the Merger.

5 Broker confirmations or other documents verifying that you held Parametric common stock  
6 on January 15, 2014 should be attached to your claim. Failure to do so could delay verification of  
7 your claim or result in rejection of your claim.

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IN THE EIGHTH JUDICIAL COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

*In re Parametric Sound Corporation Shareholders' Litigation,*  
Lead Case No. A-13-686890-B  
PROOF OF CLAIM AND RELEASE

Must Be Postmarked or Received No Later Than:

\_\_\_\_\_, 2020

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

Beneficial Owner's Name (First, Middle, Last)

Street Address

City State or Province

Zip Code or Postal Code Country

Social Security Number or Taxpayer Identification Number \_\_\_\_\_ Individual Corporation/Other

Area Code Telephone Number (work)

Area Code Telephone Number (home)

Record Owner's Name (if different from beneficial owner listed above)

1 PART II: SCHEDULE OF PARAMETRIC COMMON STOCK HELD ON JANUARY 15,  
2 2014

3 A. Number of shares of Parametric common stock you held on January 15, 2014,  
4 immediately prior to effectuation of the Merger: \_\_\_\_\_

5 (Be sure to attach the required documentation.)

6 **YOUR SIGNATURE ON PAGE \_\_\_\_ WILL CONSTITUTE YOUR**  
7 **ACKNOWLEDGMENT OF THE RELEASE DESCRIBED IN PART V BELOW.**

8 **IV. SUBMISSION TO JURISDICTION OF COURT AND**  
9 **ACKNOWLEDGMENTS**

10 I (We) submit this Proof of Claim and Release under the terms of the Stipulation of  
11 Settlement described in the Notice. I (We) also submit to the jurisdiction of the Eighth Judicial  
12 District Court of the State of Nevada, Clark County, with respect to my (our) claim as a Class  
13 Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I  
14 am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation.  
15 I (We) agree to furnish additional information to the Claims Administrator to support this claim if  
16 requested to do so. I (We) have not submitted any other claim covering the Parametric common  
17 stock I (we) held on January 15, 2014, and know of no other person having done so on my (our)  
18 behalf.

18 **V. RELEASE**

19 1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby  
20 completely discharge, dismiss with prejudice, settle, relinquish, and release each and all of the  
21 Released Defendant Parties from the Released Claims as provided in the Stipulation of Settlement.

22 2. "Released Defendant Parties" means (i) Defendants; (ii) Defendants' affiliates; and  
23 (iii) all of the respective families, heirs, executors, personal or legal representatives, counsel  
24 (including, but not limited to, Defendants' counsel), insurers, estates, administrators, predecessors,  
25 successors and assigns for those persons identified in part (i) of this paragraph.

26 3. "Released Claims" means all claims, demands, rights, actions or causes of action,  
27 liabilities, debts, demands, rights, damages, losses, obligations, judgments, suits, fees, expenses,  
28 costs, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent

1 or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or  
2 unmatured, whether based in law or equity, that have been, or could have been, asserted in the  
3 Litigation or any forum by Plaintiffs for themselves or by or on behalf of any member of the Class  
4 and/or derivatively on behalf of Turtle Beach Corporation, based on, arising out of, or relating to:  
5 (A) his, her, or its ownership of Parametric stock (whether individual, class, derivative,  
6 representative, legal, equitable, or any other type or in any other capacity); and (B) the allegations  
7 and claims in the Amended Class Action and Derivative Complaint; provided, however, that the  
8 Released Claims shall not include any claims to enforce the Settlement Term Sheet or the  
9 Stipulation. "Released Claims" includes "Unknown Claims" as defined below.

10 4. "Settled Defendants' Released Claims" means all actions, claims, debts, demands,  
11 liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever, known or  
12 unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether  
13 concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal,  
14 state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore  
15 have existed, that have been or could have been asserted in the Litigation or any forum by the  
16 Released Defendant Parties or any of them against Plaintiffs, Class Members, or Plaintiffs' Counsel,  
17 that arise out of or relate in any way to the institution, prosecution, or settlement of the claims  
18 against the Released Defendant Parties, provided, however, that this release shall not include any  
19 claims to enforce the Settlement Term Sheet or the Stipulation in the Litigation. "Settled  
20 Defendants' Released Claims" includes "Unknown Claims" as defined below.

21 5. "Unknown Claims" means any of the Released Claims which Plaintiffs or any Class  
22 Member does not know or suspect to exist in such party's favor at the time of the release of the  
23 Released Defendant Parties, and any of the Settled Defendants' Released Claims that the Released  
24 Defendant Parties do not know or suspect to exist in his, her, or its favor at the time of the release of  
25 Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, which, if known by such party,  
26 might have affected such party's settlement with and release of the Released Defendant Parties or  
27 Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, or might have affected such  
28 party's decision not to object to this Settlement or seek exclusion. Unknown Claims include those

1 Released Claims in which some or all of the facts comprising the claim may be suspected, or even  
2 undisclosed or hidden. With respect to any and all Released Claims and the Settled Defendants'  
3 Released Claims, upon the Effective Date, Plaintiffs and Defendants shall expressly, and each of the  
4 Class Members and Released Defendant Parties shall be deemed to have, and by operation of the  
5 Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the  
6 provisions, rights, and benefits of California Civil Code §1542, which provides:

7 ***A general release does not extend to claims that the creditor or releasing***  
8 ***party does not know or suspect to exist in his or her favor at the time of executing***  
9 ***the release and that, if known by him or her, would have materially affected his or***  
10 ***her settlement with the debtor or released party.***

11 Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Defendant  
12 Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have,  
13 expressly waived any and all provisions, rights, and benefits conferred by any law of any state or  
14 territory of the United States, or principle of common law, which is similar, comparable or  
15 equivalent to California Civil Code §1542. Plaintiffs, Class Members and the Released Defendant  
16 Parties may hereafter discover facts in addition to or different from those which such party now  
17 knows or believes to be true with respect to the subject matter of the Released Claims and the Settled  
18 Defendants' Released Claims, but Plaintiffs and Defendants shall expressly, and each Class Member  
19 and Released Defendant Parties, upon the Effective Date, shall be deemed to have, and by operation  
20 of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all  
21 Released Claims, or the Settled Defendants' Released Claims, as the case may be, known or  
22 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or  
23 hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing  
24 or coming into existence in the future, including, but not limited to, conduct that is negligent,  
25 reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to  
26 the subsequent discovery or existence of such different or additional facts, whether or not previously  
27 or currently asserted in any action. Plaintiffs and Defendants acknowledge, and the Class Members  
28 and Released Defendant Parties shall be deemed by operation of the Order and Final Judgment to

1 have acknowledged, that the foregoing waiver was separately bargained for and a key element of the  
2 Settlement of which this release is a part.

3 6. This release shall be of no force or effect unless and until the Court approves the  
4 Stipulation of Settlement and the Settlement becomes effective on the Effective Date.

5 7. I (We) hereby warrant and represent that I (we) have not assigned or transferred or  
6 purported to assign or transfer, voluntarily or involuntarily, any claim or matter released pursuant to  
7 this release or any other part or portion thereof.

8 8. I (We) hereby warrant and represent that I (we) have included information (including  
9 supporting documentation) about all of my (our) holdings of Parametric common stock requested in  
10 this Proof of Claim and Release form.

11 9. I (We) hereby warrant and represent that I am (we are) not a Defendant or other  
12 person excluded from the Class.

13 I declare under penalty of perjury under the laws of the United States of America that the  
14 foregoing information supplied by the undersigned is true and correct.

15 Executed this \_\_\_\_ day of \_\_\_\_\_ (Month/Year) in  
16 \_\_\_\_\_ (City) (State/Country).

17  
18 \_\_\_\_\_  
(Sign your name here)

19  
20 \_\_\_\_\_  
(Type or print your name here)

21  
22 \_\_\_\_\_  
(Capacity of person(s) signing,  
23 e.g., Beneficial Owner,  
24 Executor or Administrator)

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**ACCURATE CLAIMS PROCESSING TAKES A  
SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and acknowledgment.
2. Remember to attach copies of supporting documentation, if available.
3. Do not send originals of stock certificates or other documentation as they will not be returned.
4. Keep a copy of your Proof of Claim and Release form and all supporting documentation for your records.
5. If you desire an acknowledgment of receipt of your Proof of Claim and Release form, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send your new address to the address below.
7. Do not use red pen or highlighter on the Proof of Claim and Release form or supporting documentation.

THIS PROOF OF CLAIM AND RELEASE MUST BE SUBMITTED ONLINE BY  
\_\_\_\_\_, 2020, OR, IF MAILED, POSTMARKED NO LATER THAN  
\_\_\_\_\_, 2020, addressed as follows:

*Parametric Settlement*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43342\_\_\_\_\_  
Providence, RI 02940-3342  
[www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com)

# **EXHIBIT A-3**

1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)

7 Liaison Counsel for Plaintiffs

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In re PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

) Lead Case No. A-13-686890-B  
) Dept. No. XI  
)

) CLASS ACTION  
)

11 This Document Relates To:

) SUMMARY NOTICE  
)

12 ALL ACTIONS.  
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) EXHIBIT A-3  
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1 TO: ALL PERSONS AND/OR ENTITIES THAT HELD SHARES OF PARAMETRIC SOUND  
2 CORPORATION ("PARAMETRIC") COMMON STOCK ON JANUARY 15, 2014, AT  
3 THE TIME PARAMETRIC ISSUED SHARES IN THE MERGER PURSUANT TO THE  
4 AGREEMENT AND PLAN OF MERGER, WHETHER BENEFICIALLY OR OF  
5 RECORD, INCLUDING THE LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS-IN-  
INTEREST, TRANSFEREES, AND ASSIGNEES OF ALL SUCH FOREGOING  
HOLDERS, BUT EXCLUDING DEFENDANTS, EXECUTIVE OFFICERS OF  
PARAMETRIC AS OF JANUARY 15, 2014, AND THEIR LEGAL REPRESENTATIVES,  
HEIRS, SUCCESSORS-IN-INTEREST, TRANSFEREES, AND ASSIGNEES

6 YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Eighth Judicial District Court  
7 for the State of Nevada, Clark County, that a hearing will be held on \_\_\_\_\_, 2020, at  
8 \_\_\_\_:\_\_\_\_.m., before the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of  
9 Clark County, Nevada, 200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E, for the purpose of  
10 determining: (1) whether the proposed settlement of the Litigation for \$9,650,000.00 should be  
11 approved by the Court as fair, reasonable, and adequate; (2) whether a Final Judgment and Order of  
12 Dismissal with Prejudice should be entered by the Court dismissing the Litigation with prejudice and  
13 releasing the Released Claims and the Settled Defendants' Released Claims; (3) whether the Plan of  
14 Allocation for the Net Settlement Fund is fair, reasonable, and adequate and should be approved;  
15 (4) whether the application of Co-Lead Counsel for the payment of attorneys' fees and expenses  
16 should be approved; and (5) whether any application for reimbursement of time and expenses by  
17 Plaintiffs should be approved.

18 IF YOU HELD SHARES OF PARAMETRIC COMMON STOCK ON JANUARY 15,  
19 2014, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION,  
20 INCLUDING THE RELEASE AND EXTINGUISHMENT OF CLAIMS YOU MAY POSSESS  
21 RELATING TO YOUR OWNERSHIP OF PARAMETRIC COMMON STOCK. If you have not  
22 received a detailed Notice of Proposed Settlement of Class and Derivative Action ("Notice") and a  
23 copy of the Proof of Claim and Release form, you may obtain copies by writing to *Parametric*  
24 *Settlement*, Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 43342, Providence, RI 02940-  
25 3342, or on the Internet at [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com). If you are a Class Member,  
26 in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim  
27 and Release by mail (*postmarked no later than* \_\_\_\_\_, 2020), or online at  
28

1 www.ParametricShareholderLitigation.com **no later than** \_\_\_\_\_, 2020, establishing  
2 that you are entitled to a recovery.

3 If you held shares of Parametric common stock on January 15, 2014 and you desire to be  
4 excluded from the Class, you must submit a request for exclusion so that it is **received no later than**  
5 \_\_\_\_\_, 2020, in the manner and form explained in the detailed Notice referred to above.

6 All members of the Class who do not timely and validly request exclusion from the Class will be  
7 bound by any judgment entered in the Litigation pursuant to the Stipulation of Settlement.

8 Any objection to the Settlement, the Plan of Allocation, and/or Co-Lead Counsel's request  
9 for attorneys' fees and expenses, must be **received by each** of the following recipients **no later than**  
10 \_\_\_\_\_, 2020:

11 CLERK OF THE COURT  
12 Department XI  
13 Eighth Judicial District Court  
14 Clark County, Nevada  
15 200 Lewis Avenue  
16 Las Vegas, NV 89101

17 *Co-Lead Counsel:*

18 David Knotts  
19 ROBBINS GELLER RUDMAN & DOWD LLP  
20 655 West Broadway, Suite 1900  
21 San Diego, CA 92101

22 *Counsel for the Parametric Director Defendants:*

23 John P. Stigi III  
24 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
25 1901 Avenue of the Stars, Suite 1600  
26 Los Angeles, CA 90067

27 Joshua D. N. Hess  
28 DECHERT LLP  
1900 K Street, NW  
Washington, DC 20006-1110

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**PLEASE DO NOT CONTACT THE COURT OR THE CLERK’S OFFICE**  
**REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact  
Co-Lead Counsel at the address listed above.

DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

# **EXHIBIT B**

1 THE O'MARA LAW FIRM, P.C.  
DAVID C. O'MARA (Nevada Bar No. 8599)  
2 311 East Liberty Street  
Reno, NV 89501  
3 Telephone: 775/323-1321  
775/323-4082 (fax)  
4  
Liaison Counsel for Plaintiffs  
5

6  
7 EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA  
8

9 In re PARAMETRIC SOUND ) Lead Case No. A-13-686890-B  
CORPORATION SHAREHOLDERS' ) Dept. No. XI  
LITIGATION )  
10 ) CLASS ACTION  
11 This Document Relates To: ) [PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE  
12 ALL ACTIONS. )  
13 ) EXHIBIT B  
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1 This matter came before the Court for hearing pursuant to the Order Preliminarily Approving  
2 Settlement and Providing for Notice (“Preliminary Approval Order”) dated \_\_\_\_\_, 2019, on  
3 the application of the Settling Parties for approval of the Settlement set forth in the Stipulation of  
4 Settlement dated November 14, 2019 (the “Stipulation”). Due and adequate notice having been  
5 given to the Class as required in the Preliminary Approval Order, and the Court having considered  
6 all papers filed and proceedings had herein and otherwise being fully informed in the premises and  
7 good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

8 1. This Final Judgment and Order of Dismissal with Prejudice (“Order and Final  
9 Judgment” or “Judgment”) incorporates by reference the definitions in the Stipulation, and all terms  
10 used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth  
11 herein.

12 2. This Court has jurisdiction over the subject matter of the Litigation and over all  
13 Settling Parties to the Litigation, including all Class Members.

14 3. Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, this Court previously  
15 certified a Class defined as: All persons and/or entities that held shares of Parametric Sound  
16 Corporation (“Parametric”) common stock on January 15, 2014, at the time Parametric issued shares  
17 in the Merger pursuant to the Agreement and Plan of Merger, whether beneficially or of record,  
18 including the legal representatives, heirs, successors-in-interest, transferees, and assignees of all such  
19 foregoing holders, but excluding Defendants, executive officers of Parametric as of January 15,  
20 2014, and their legal representatives, heirs, successors-in-interest, transferees, and assignees (the  
21 “Class”).

22 4. Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, the Court hereby  
23 approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects,  
24 fair, reasonable, and adequate to the Class.

25 5. Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, the Court finds that the  
26 Settlement is fair, reasonable, and adequate as to each of the Settling Parties, and that the Settlement  
27 set forth in the Stipulation is hereby finally approved in all respects, and the Settling Parties are  
28 hereby directed to perform its terms.

1           6.       Upon careful consideration of the record, the arguments presented, the Court finds  
2 that the Settlement is a good faith settlement under NRS 17.245. The Court's discretionary  
3 determination of good faith is based on, among other things: (1) the fairness of the Settlement  
4 Amount in light of Defendants' potential liability; (2) the pro rata allocation of the settlement  
5 proceeds among the Class and Merger Stockholders; (3) the near-depletion of the insurance policy  
6 limits of the Defendants; and (4) the lack of any collusion, fraud, or tortious conduct in the  
7 Settlement.

8           7.       Accordingly, the Court authorizes and directs implementation of the terms and  
9 provisions of the Stipulation, as well as the terms and provisions hereof. The Court hereby dismisses  
10 with prejudice and without costs, the Litigation and all claims contained therein, and all of the  
11 Released Claims and the Settled Defendants' Released Claims, except as and to the extent provided  
12 in the Stipulation and herein.

13           8.       Upon the Effective Date hereof, and as provided in the Stipulation, the Plaintiffs and  
14 each and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming  
15 through or on behalf of any of them, including, but not limited to, their predecessors, successors,  
16 agents, representatives, attorneys, affiliates, heirs, executors, administrators, and assigns, shall be  
17 deemed to have, and by operation of this Order and Final Judgment shall have completely  
18 discharged, dismissed with prejudice, settled, relinquished, and released all of the Released Claims  
19 (including, without limitation, Unknown Claims), against the Released Defendant Parties, regardless  
20 of whether such Class Member executes and delivers a Proof of Claim and Release form, except that  
21 claims relating to the enforcement of the Settlement shall not be released.

22           9.       Upon the Effective Date hereof, and as provided in the Stipulation, each of the  
23 Released Defendant Parties shall be deemed to have, and by operation of this Order and Final  
24 Judgment shall have completely discharged, settled, relinquished, and released Plaintiffs, each and  
25 all of the Class Members, and Plaintiffs' Counsel from all Settled Defendants' Released Claims, and  
26 shall forever be enjoined from prosecuting such claims, except for claims relating to the enforcement  
27 of the Settlement.  
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1           10.     Upon the Effective Date hereof, and as provided in the Stipulation, Plaintiffs, each  
2 and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming  
3 through or on behalf of any of them, including, but not limited to, their predecessors, agents,  
4 representatives, attorneys, affiliates, heirs, executors, administrators, successors, and assigns, are  
5 forever barred and enjoined from commencing, instituting, asserting, maintaining, enforcing,  
6 prosecuting, or continuing to prosecute any action or proceeding in any forum (including, but not  
7 limited to, any state or federal court of law or equity, any arbitral forum, any tribunal, administrative  
8 forum, or the court of any foreign jurisdiction, or any other forum of any kind), any of the Released  
9 Claims (including, without limitation, Unknown Claims), against any or all of the Released  
10 Defendant Parties, regardless of whether such Class Member executes and delivers a Proof of Claim  
11 and Release form, except that claims relating to the enforcement of the Settlement shall not be  
12 released.

13           11.     The terms of the Stipulation and of this Order and Final Judgment shall be forever  
14 binding on Plaintiffs, all other Class Members (regardless of whether or not any individual Class  
15 Member submits a Proof of Claim and Release or seeks or obtains a distribution from the Net  
16 Settlement Fund), all Released Defendant Parties, as well as their respective heirs, executors,  
17 administrators, predecessors, successors, and assigns.

18           12.     The Escrow Agent shall maintain the Settlement Fund in accordance with the  
19 requirements set forth in the Stipulation. No Released Defendant Party shall have any liability,  
20 obligation, or responsibility whatsoever for the administration of the Settlement or disbursement of  
21 the Net Settlement Fund.

22           13.     The Notice of Proposed Settlement of Class and Derivative Action disseminated in  
23 accordance with the Preliminary Approval Order entered on \_\_\_\_\_, was the best notice  
24 practicable under the circumstances, to all Persons entitled to such notice, of those proceedings and  
25 of the matters set forth therein, including the proposed Settlement set forth in the Stipulation. Said  
26 notice fully satisfied the requirements of Rule 23 of the Nevada Rules of Civil Procedure, the  
27 requirements of due process, and all other applicable law and rules.

28

1           14.     Any plan of allocation submitted by Co-Lead Counsel or any order entered regarding  
2 any attorneys' fee and expense application or reimbursement of time and expenses for Plaintiffs shall  
3 in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

4           15.     Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations,  
5 discussions, proceedings connected with it, nor any act performed or document executed pursuant to  
6 or in furtherance of the Stipulation or the Settlement may: be construed as an admission or  
7 concession by any of the Released Defendant Parties, any Plaintiff, any Class Member, or any other  
8 Person, of the truth or lack of truth of any of the allegations in the Litigation; or be used in any way  
9 as an admission, concession or evidence of the existence or the absence of any liability or damages  
10 as to any claim alleged or asserted in the Litigation; or be otherwise used by any person in the  
11 Litigation, or in any other action or proceeding, whether civil, criminal, or administrative, in any  
12 court, administrative agency, or other tribunal, except in connection with any proceeding to enforce  
13 the terms of the Stipulation. The Released Defendant Parties and/or Plaintiffs may file the  
14 Stipulation of Settlement, the final Court approval of the Settlement, and/or the Final Judgment in  
15 any action that may be brought against them in order to support a defense or counterclaim based  
16 upon principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or  
17 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or  
18 counterclaim, or as necessary for the prosecution of any other litigation regarding the Merger.

19           16.     Without affecting the finality of this Judgment in any way, this Court hereby retains  
20 continuing exclusive jurisdiction over: (a) implementation of this Settlement and any award or  
21 distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the  
22 Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses and  
23 interest in the Litigation; and (d) all Settling Parties hereto for the purpose of construing, enforcing,  
24 and administering the Stipulation.

25           17.     The Court finds that during the course of the Litigation, the Settling Parties and their  
26 respective counsel at all times complied with the requirements of Nevada Rule of Civil Procedure  
27 11.  
28

1           18.     In the event that the Settlement does not become effective in accordance with the  
2 terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement  
3 Fund, or any portion thereof, is returned to the Defendants as required under the terms of the  
4 Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in  
5 accordance with the Stipulation and shall be vacated and, in such event, all orders entered and  
6 releases delivered in connection herewith shall be null and void to the extent provided by and in  
7 accordance with the Stipulation.

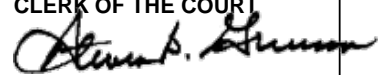
8           19.     Without further approval from the Court, the Settling Parties are hereby authorized to  
9 agree and to adopt such amendments or modifications of the Stipulation or any exhibits attached  
10 thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Order and Final  
11 Judgment; and (ii) do not materially limit the rights of Class Members in connection with the  
12 Settlement. Without further order of the Court, the Settling Parties may agree to reasonable  
13 extensions of time to carry out any of the provisions of the Stipulation.

14           20.     The Court directs immediate entry of this Judgment by the Clerk of the Court.

15           IT IS SO ORDERED.

16 DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT



1 THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA (Nevada Bar No. 8599)  
3 311 East Liberty Street  
4 Reno, NV 89501  
5 Telephone: 775/323-1321  
6 775/323-4082 (fax)

7 Liaison Counsel for Plaintiffs

8 EIGHTH JUDICIAL DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 In re PARAMETRIC SOUND )  
11 CORPORATION SHAREHOLDERS' )  
12 LITIGATION )

Lead Case No. A-13-686890-B  
Dept. No. XI

CLASS ACTION

13 This Document Relates To: )  
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ALL ACTIONS.

~~PROPOSED~~ FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE

1           This matter came before the Court for hearing pursuant to the Order Preliminarily Approving  
2 Settlement and Providing for Notice (“Preliminary Approval Order”) dated January 17, 2020, on the  
3 application of the Settling Parties for approval of the Settlement set forth in the Stipulation of  
4 Settlement dated November 14, 2019 (the “Stipulation”). Due and adequate notice having been  
5 given to the Class as required in the Preliminary Approval Order, and the Court having considered  
6 all papers filed and proceedings had herein and otherwise being fully informed in the premises and  
7 good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

8           1.       This Final Judgment and Order of Dismissal with Prejudice (“Order and Final  
9 Judgment” or “Judgment”) incorporates by reference the definitions in the Stipulation, and all terms  
10 used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth  
11 herein.

12          2.       This Court has jurisdiction over the subject matter of the Litigation and over all  
13 Settling Parties to the Litigation, including all Class Members.

14          3.       Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, this Court previously  
15 certified a Class defined as: All persons and/or entities that held shares of Parametric Sound  
16 Corporation (“Parametric”) common stock on January 15, 2014, at the time Parametric issued shares  
17 in the Merger pursuant to the Agreement and Plan of Merger, whether beneficially or of record,  
18 including the legal representatives, heirs, successors-in-interest, transferees, and assignees of all such  
19 foregoing holders, but excluding Defendants, executive officers of Parametric as of January 15,  
20 2014, and their legal representatives, heirs, successors-in-interest, transferees, and assignees (the  
21 “Class”).

22          4.       Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, the Court hereby  
23 approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects,  
24 fair, reasonable, and adequate to the Class.

25          5.       Pursuant to Rule 23 of the Nevada Rules of Civil Procedure, the Court finds that the  
26 Settlement is fair, reasonable, and adequate as to each of the Settling Parties, and that the Settlement  
27 set forth in the Stipulation is hereby finally approved in all respects, and the Settling Parties are  
28 hereby directed to perform its terms.

1           6.       Upon careful consideration of the record, the arguments presented, the Court finds  
2 that the Settlement is a good faith settlement under NRS 17.245. The Court's discretionary  
3 determination of good faith is based on, among other things: (1) the fairness of the Settlement  
4 Amount in light of Defendants' potential liability; (2) the pro rata allocation of the settlement  
5 proceeds among the Class and Merger Stockholders; (3) the near-depletion of the insurance policy  
6 limits of the Defendants; and (4) the lack of any collusion, fraud, or tortious conduct in the  
7 Settlement.

8           7.       Accordingly, the Court authorizes and directs implementation of the terms and  
9 provisions of the Stipulation, as well as the terms and provisions hereof. The Court hereby dismisses  
10 with prejudice and without costs, the Litigation and all claims contained therein, and all of the  
11 Released Claims and the Settled Defendants' Released Claims, except as and to the extent provided  
12 in the Stipulation and herein.

13           8.       Upon the Effective Date hereof, and as provided in the Stipulation, the Plaintiffs and  
14 each and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming  
15 through or on behalf of any of them, including, but not limited to, their predecessors, successors,  
16 agents, representatives, attorneys, affiliates, heirs, executors, administrators, and assigns, shall be  
17 deemed to have, and by operation of this Order and Final Judgment shall have completely  
18 discharged, dismissed with prejudice, settled, relinquished, and released all of the Released Claims  
19 (including, without limitation, Unknown Claims), against the Released Defendant Parties, regardless  
20 of whether such Class Member executes and delivers a Proof of Claim and Release form, except that  
21 claims relating to the enforcement of the Settlement shall not be released.

22           9.       Upon the Effective Date hereof, and as provided in the Stipulation, each of the  
23 Released Defendant Parties shall be deemed to have, and by operation of this Order and Final  
24 Judgment shall have completely discharged, settled, relinquished, and released Plaintiffs, each and  
25 all of the Class Members, and Plaintiffs' Counsel from all Settled Defendants' Released Claims, and  
26 shall forever be enjoined from prosecuting such claims, except for claims relating to the enforcement  
27 of the Settlement.

28



1           10.     Upon the Effective Date hereof, and as provided in the Stipulation, Plaintiffs, each  
2 and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming  
3 through or on behalf of any of them, including, but not limited to, their predecessors, agents,  
4 representatives, attorneys, affiliates, heirs, executors, administrators, successors, and assigns, are  
5 forever barred and enjoined from commencing, instituting, asserting, maintaining, enforcing,  
6 prosecuting, or continuing to prosecute any action or proceeding in any forum (including, but not  
7 limited to, any state or federal court of law or equity, any arbitral forum, any tribunal, administrative  
8 forum, or the court of any foreign jurisdiction, or any other forum of any kind), any of the Released  
9 Claims (including, without limitation, Unknown Claims), against any or all of the Released  
10 Defendant Parties, regardless of whether such Class Member executes and delivers a Proof of Claim  
11 and Release form, except that claims relating to the enforcement of the Settlement shall not be  
12 released.

13           11.     The terms of the Stipulation and of this Order and Final Judgment shall be forever  
14 binding on Plaintiffs, all other Class Members (regardless of whether or not any individual Class  
15 Member submits a Proof of Claim and Release or seeks or obtains a distribution from the Net  
16 Settlement Fund), all Released Defendant Parties, as well as their respective heirs, executors,  
17 administrators, predecessors, successors, and assigns.

18           12.     The Escrow Agent shall maintain the Settlement Fund in accordance with the  
19 requirements set forth in the Stipulation. No Released Defendant Party shall have any liability,  
20 obligation, or responsibility whatsoever for the administration of the Settlement or disbursement of  
21 the Net Settlement Fund.

22           13.     The Notice of Proposed Settlement of Class and Derivative Action disseminated in  
23 accordance with the Preliminary Approval Order dated January 17, 2020, was the best notice  
24 practicable under the circumstances, to all Persons entitled to such notice, of those proceedings and  
25 of the matters set forth therein, including the proposed Settlement set forth in the Stipulation. Said  
26 notice fully satisfied the requirements of Rule 23 of the Nevada Rules of Civil Procedure, the  
27 requirements of due process, and all other applicable law and rules.

28

1           14.     Any plan of allocation submitted by Co-Lead Counsel or any order entered regarding  
2 any attorneys' fee and expense application or reimbursement of time and expenses for Plaintiffs shall  
3 in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

4           15.     Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations,  
5 discussions, proceedings connected with it, nor any act performed or document executed pursuant to  
6 or in furtherance of the Stipulation or the Settlement may: be construed as an admission or  
7 concession by any of the Released Defendant Parties, any Plaintiff, any Class Member, or any other  
8 Person, of the truth or lack of truth of any of the allegations in the Litigation; or be used in any way  
9 as an admission, concession or evidence of the existence or the absence of any liability or damages  
10 as to any claim alleged or asserted in the Litigation; or be otherwise used by any person in the  
11 Litigation, or in any other action or proceeding, whether civil, criminal, or administrative, in any  
12 court, administrative agency, or other tribunal, except in connection with any proceeding to enforce  
13 the terms of the Stipulation. The Released Defendant Parties and/or Plaintiffs may file the  
14 Stipulation of Settlement, the final Court approval of the Settlement, and/or the Final Judgment in  
15 any action that may be brought against them in order to support a defense or counterclaim based  
16 upon principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or  
17 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or  
18 counterclaim, or as necessary for the prosecution of any other litigation regarding the Merger.

19           16.     Without affecting the finality of this Judgment in any way, this Court hereby retains  
20 continuing exclusive jurisdiction over: (a) implementation of this Settlement and any award or  
21 distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the  
22 Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses and  
23 interest in the Litigation; and (d) all Settling Parties hereto for the purpose of construing, enforcing,  
24 and administering the Stipulation.

25           17.     The Court finds that during the course of the Litigation, the Settling Parties and their  
26 respective counsel at all times complied with the requirements of Nevada Rule of Civil Procedure  
27 11.  
28

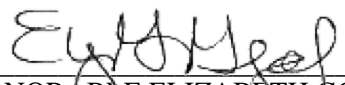
1           18.     In the event that the Settlement does not become effective in accordance with the  
2 terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement  
3 Fund, or any portion thereof, is returned to the Defendants as required under the terms of the  
4 Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in  
5 accordance with the Stipulation and shall be vacated and, in such event, all orders entered and  
6 releases delivered in connection herewith shall be null and void to the extent provided by and in  
7 accordance with the Stipulation.

8           19.     Without further approval from the Court, the Settling Parties are hereby authorized to  
9 agree and to adopt such amendments or modifications of the Stipulation or any exhibits attached  
10 thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Order and Final  
11 Judgment; and (ii) do not materially limit the rights of Class Members in connection with the  
12 Settlement. Without further order of the Court, the Settling Parties may agree to reasonable  
13 extensions of time to carry out any of the provisions of the Stipulation.

14           20.     The Court directs immediate entry of this Judgment by the Clerk of the Court.

15           IT IS SO ORDERED.

16           DATED:     May 18, 2020

  
\_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

# EXHIBIT A



RECEIVED GE

MAR 04 2019

CLAIMS CENTER

## Exclusion Cover Page

Case Name: Parametric Sound Corporation

Case Code: PAO

Exclusion Deadline: April, 1, 2019 (Postmark Date)

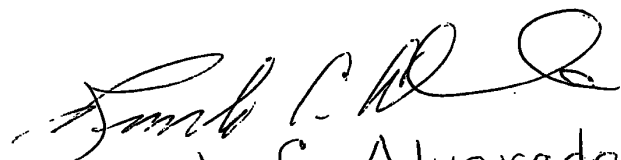
Name of Person Filing Exclusion: Ricardo C Alvarado

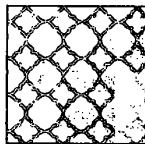
February 28, 2019

Gilardi & Co. LLC  
3301 Kerner Blvd.  
San Rafael, CA 94901

Re: Parametric Fund Corp. Shareholders  
Litigation; Lead Case No. A13-686890-B

This is to request exclusion  
from the above referenced  
litigation.

  
Ricardo C. Alvarado



Mr. Ricardo Alvarado

SANTA ANA CA 926

28 FEB 2019 PM 9 L



FOREVER

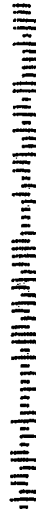
Re: Parametree Sound Corp. Shareholders  
Litigation  
c/o Gilardi & Co. LLC  
3301 Kerner Blvd.  
San Rafael, CA  
94901

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MAR 04 2019

CLAIMS CENTER

94901-485625



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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APR 01 2019

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## Exclusion Cover Page

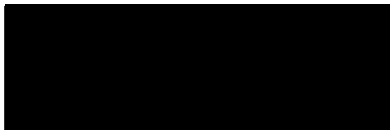
**Case Name:** Parametric Sound Corporation

**Case Code:** PAO

**Exclusion Deadline:** April, 1, 2019 (Postmark Date)

**Name of Person Filing Exclusion:** Howard J & Beverley H Chura



  
March 27, 2019

In re Parametric Sound Corporation Shareholder's Litigation, EXCLUSIONS

c/o Gilardi & Co. LLC

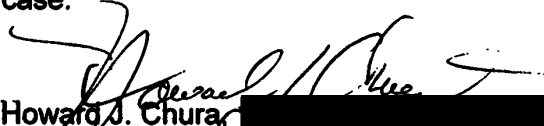

3301 Kerner Blvd.

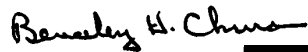

San Rafael, CA 94901

Re: Parametric Sound Corporation Shareholders' Litigation,

Lead Case No. A-13-686890-B

The undersigned hereby request to be excluded from the class in above referenced case.

  
Howard J. Chura, 

  
Beverley H. Chura, 



HOWARD CHURA



NOVA 220

28 MAR 2019 PM 3L



*Parametric Sound Corporation Shareholders Litigation,  
EXCLUSIONS*

*C/o Gilardi & Co. LLC*

*3301 Kerner Blvd.*

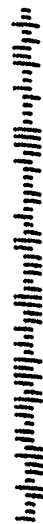
*San Rafael, CA 94901*

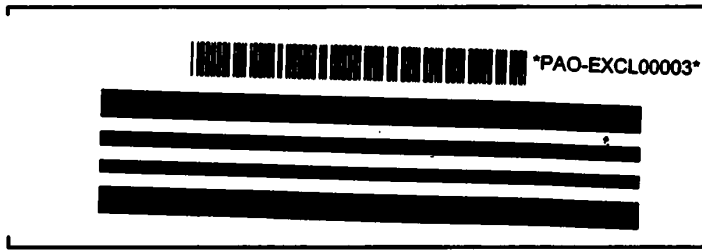
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94901-489625





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APR 01 2019  
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## Exclusion Cover Page

Case Name: Parametric Sound Corporation

Case Code: PAO

Exclusion Deadline: April, 1, 2019 (Postmark Date)

Name of Person Filing Exclusion: Justin P Moreno

March 28, 2019

In re Parametric Sound Corporation Shareholders' Litigation  
c/o Gilardi & Co. LLC  
3301 Kerner Blvd.  
San Rafael, CA 94901

Subject: **Request for Exclusion from being a member of the Class  
*In re Parametric Sound Corporation Shareholders' Litigation*,  
Lead Case No. A13-686890-B2**

To Notice Administrator,


I received a letter from the Eighth Judicial District Court in Clark County, Nevada regarding a class action lawsuit that is now pending "*In re Parametric Sound Corporation Shareholders' Litigation*, Lead Case No. A13-686890-B2".

I am **requesting exclusion** from being a member of the Classes in "*In re Parametric Sound Corporation Shareholders' Litigation*, Lead Case No. A13-686890-B2," so as not to be bound by these proceedings.

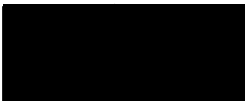
My personal contact information is noted below in my signature line.

If you have any questions or need anything else, please contact me.

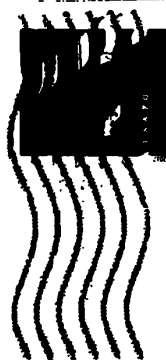
Sincerely,



Justin P. Moreno



Attachments: Scottrade Transaction History for PBR



SANTA CLARITA CA 913  
28 MAR 2019 PM 5:11

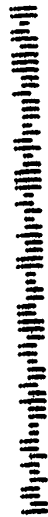
In re Parametric Sound Corp. Shareholders' Lit.  
c/o GILARDI & CO., LLC  
3301 KERNER BLVD.  
SAN RAFAEL, CA 94901

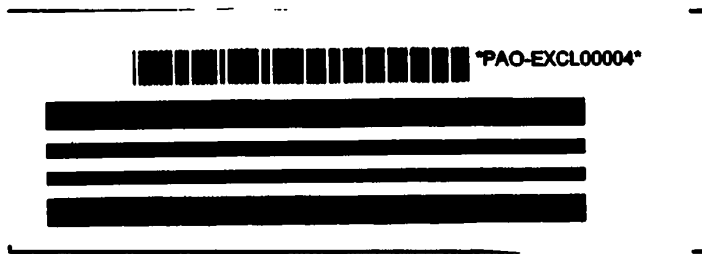
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## Exclusion Cover Page

**Case Name: Parametric Sound Corporation**

**Case Code: PAO**

**Exclusion Deadline: April, 1, 2019 (Postmark Date)**

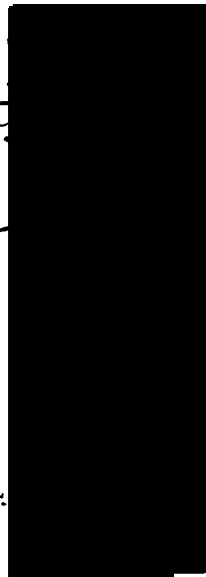
**Name of Person Filing Exclusion: Jackie Lee Graziano**

3/31/2019

Request to be excluded from the Class Action  
Lead Case No. A-13 686890-B  
Dept. No XI  
Class Action

Thank You  
Jackie Lee Grazianno

Jackie Graziano



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c/o Gillard & Co. LLC  
3301 Kerner Blvd  
San Rafael, Ca,  
94901



94901-489625



PAO-EXCL00005

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## Exclusion Cover Page

**Case Name: Parametric Sound Corporation**

**Case Code: PAO**

**Exclusion Deadline: April, 1, 2019 (Postmark Date)**

**Name of Person Filing Exclusion: Elizabeth J Quesinberry**

Mar. 31, 2019

To Whom It May Concern:

I am requesting to be  
excluded from Class of  
Parametric Sound Corp.  
Shareholders' Litigation.  
Lead Case No. A-13-686890-B

Thanks,  
Elizabeth J. Zarinbakhsh

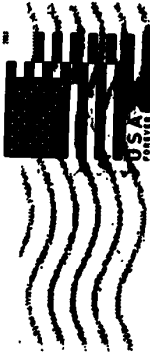




Elizabeth Questberry

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Parametric Sound Corp.  
Shareholders' Litigation  
c/o Bilardi & Co PLLC  
3301 Kerner Blvd.  
San Rafael, CA 94901

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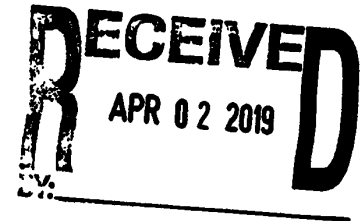
PAO-EXCL00006

[REDACTED]

[REDACTED]

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[REDACTED]



## Exclusion Cover Page

**Case Name:** Parametric Sound Corporation

**Case Code:** PAO

**Exclusion Deadline:** April, 1, 2019 (Postmark Date)

**Name of Person Filing Exclusion:** Gail M Buchanan  
Scottrade Inc Cust FBO

From:  
Scotttrade Inc. Cust. FBO Gail Buchanan

To:  
In re Parametric Sound Corporation Shareholders' Litigation EXCLUSIONS  
c/o Gilardi & Co. LLC  
3301 Kerner Blvd.  
San Rafael, CA 94901

March 29, 2019

To whom it may concern:

Please accept my request to be EXCLUDED from the class action lawsuit:

In re Parametric Sound Corporation Shareholder's Litigation,  
Lead Case No. A-13-686890-B

Thank you,

*Gail M. Buchanan*

Gail M. Buchanan

Gail M. Buchanan



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In re Parametric Sound Corporation Shareholders' Litigation  
EXCLUSIONS % Gilardi & Co. LLC

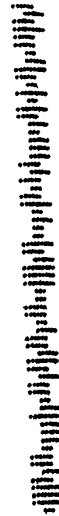
3301 Kerner Blvd.  
San Rafael, CA 94901

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# Exclusion Cover Page

Case Name: Parametric Sound Corporation Shareholders' Litigation

Case Code: P3S

Exclusion Deadline: May 4, 2020 (Received Date)

Name of Person Filing Exclusion:

P3S-EXCL00001: IceRose Capital Management, LLC

P3S-EXCL00002: Robert Masterson

P3S-EXCL00003: Richard T. Santulli

P3S-EXCL00004: Marcia Patricof

P3S-EXCL00005: Alan and Anne Goldberg

P3S-EXCL00006: Barry L. Weisbord

P3S-EXCL00007: Ronald and Muriel Etkin

# LEVI&KORSINSKY LLP

55 Broadway, 10th Floor  
New York, New York 10006  
T: 212-363-7500  
F: 212-363-7171  
www.zlk.com

---

Adam Apton  
aapton@zlk.com

April 22, 2020

**VIA FIRST-CLASS MAIL &  
ELECTRONIC MAIL**

Parametric Settlement  
c/o Gilardi & Co. LLC  
Claims Administrator  
EXCLUSIONS  
3301 Kerner Blvd.  
San Rafael, CA 94901  
E: info@parametricshareholderlitigation.com

Re: *In re Parametric Sound Corporation Shareholders' Litigation*  
Lead Case No. A-13-686890-B

Dear Sir/Madam:

I represent the following class members in connection with the above-referenced litigation: IceRose Capital Management, LLC; Robert Masterson; Richard T. Santulli; Marcia Patricof; Alan and Anne Goldberg; Barry L. Weisbord; and Ronald and Muriel Etkin. These class members request exclusion from the Class in the Parametric Settlement.<sup>1</sup>

These class members held the following amounts of shares of Parametric common stock as of January 15, 2014:

Class Member	Shares
IceRose Capital Management, LLC	362,496
Robert Masterson	154,000
Richard T. Santulli	85,000
Marcia Patricof	47,500
Alan and Anne Goldberg	10,250
Barry L. Weisbord	5,000
Ronald and Muriel Etkin	7,000

These shareholders have assigned their interests in claims arising from the ownership of Parametric common stock to an entity created for the purposes of opting out of the above-

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<sup>1</sup> Unless otherwise stated, all terms have the meanings given to them in the Notice of Proposed Settlement of Class and Derivative Action dated January 17, 2020.



Page 2 of 2  
April 22, 2020

referenced litigation and pursuing claims independently. Accordingly, that entity, PAMTP LLC, also excludes itself from the Class in the Parametric Settlement.

Please advise immediately if any additional information is necessary in connection with the foregoing. Any attempt to communicate with these class members and/or PAMTP LLC should be directed towards the undersigned.

Sincerely,

Levi & Korsinsky, LLP

By:

A handwritten signature in black ink, appearing to read "Adam Apton", is written over a horizontal line.

Adam M. Apton

cc: (via email)  
David Knotts  
John P. Stigi III  
Joshua D. N. Hess

AA 0202

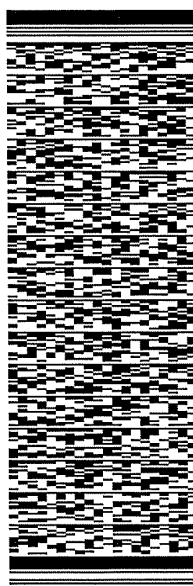
ORIGIN ID: ZRZA (202) 524-4290  
ADAM M. APTON, ESQ.  
LEVI & KORSINSKY, LLP  
1101 30TH ST. NW  
SUITE 115  
WASHINGTON, DC 20007  
UNITED STATES US

SHIP DATE: 22APR20  
ACTWGT: 1.00 LB  
CAD: 102713240INET4220  
BILL SENDER

TO CLAIMS ADMINISTRATOR; EXCLUSIONS  
GILARDI & CO. LLC.  
3301 KERNER BLVD.

SAN RAFAEL CA 94901  
(202) 524-4290  
REF: PARAMETRIC  
PO. DEPT.

56B,J/7B3A/FE4A



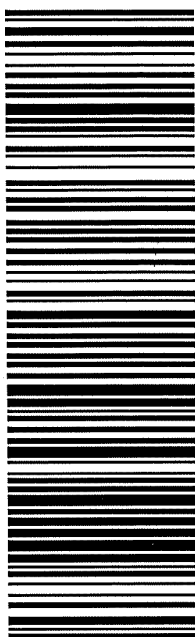
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APR 23 2020

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