

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 83598, 84971, and 85358

IN RE PARAMETRIC SOUND CORPORATION
SHAREHOLDERS' LITIGATION.

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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.

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 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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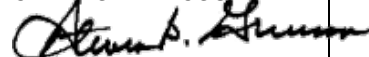
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CERTIFICATE OF SERVICE

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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CASE NO: A-20-815308-B
Department 13

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

PAMTP LLC,

Plaintiff,

v.

KENNETH POTASHNER, ELWOOD G.
NORRIS, SETH PUTTERMAN,
ROBERT KAPLAN, ANDREW WOLFE,
KENNETH FOX, JUERGEN STARK,
VTB HOLDINGS, INC., STRIPES f/k/a
STRIPES GROUP, LLC and SG VTB
HOLDINGS, LLC,

Defendants.

Case No.:

Dept. No.:

COMPLAINT

DEMAND FOR JURY TRIAL

(Business Court Requested Per EDCR 1.61)

**EXEMPT FROM ARBITRATION PER
NAR 3(A): AMOUNT IN CONTROVERSY
OVER \$50,000**

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...

...

I. INTRODUCTION

1. Plaintiff PAMTP LLC (“Plaintiff”) brings this action against Defendants for breaching fiduciary duties in connection with the merger between Parametric Sound Corporation (“Parametric” or the “Company”) and VTB Holdings, Inc. (“VTBH”) on January 15, 2014 (the “Merger”). The Defendants include certain members of Parametric’s Board of Directors at the time of the Merger (the “Board”): Stripes, formerly known at the time of the Merger as Stripes Group, LLC (“Stripes Group”), Kenneth Fox, Stripes Group’s founder and Managing General Partner during negotiations leading to the Merger, Juergen Stark, CEO and director at VTBH during negotiations leading to the Merger, and SG VTB Holdings, LLC (“SG VTB”).

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

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

4. As of November 28, 2017, the Turtle Beach’s stock closed at \$0.57 per share. In other words, each Parametric stockholder who held shares of as of that date lost over 96% of the value of his or her investment as a result of the Merger. This decline represents over \$100 million in destroyed market value between pre-Merger Parametric and the post-Merger entity.

1 5. Parametric's Board. The conflicted Parametric Board expropriated value from the
2 Company for its own benefit by conducting the reverse merger with VTBH at a knowingly inflated
3 value and then issuing millions of highly dilutive shares to Stripes Group and VTBH insiders,
4 improperly transferring control of the Company. The Parametric Board engineered a dilutive
5 transaction whereby it received economic benefits not shared with the public stockholders and
6 transferred control of the Company to Stripes Group and VTBH.

7 6. During the process leading up to the Merger and at the time the Company
8 announced the Merger, the Board members were conflicted, interested, and not independent. The
9 Merger was not approved by a majority of disinterested and independent directors. At the time of
10 the Board's Merger vote on August 2, 2013, the Board had six members. All of those six
11 individuals were conflicted and/or acted in self-interest when voting on the Merger.

12 7. The conflicted Parametric Board knowingly and excessively overvalued VTBH in
13 the Merger and knew that Parametric would be issuing millions of dilutive shares in the Merger
14 for an entity with a depressed value. This excessive overvaluation and subsequent issue of dilutive
15 shares was a result of bad faith indifference to and severely disloyal interest in the rights of
16 Parametric stockholders.

17 8. Evidence of VTBH's financial decline emerged shortly after the Merger. As
18 disclosed by the post-Merger Company the day after the Merger, VTBH's main lender, PNC Bank,
19 National Association ("PNC"), forced VTBH to restructure its credit facility at extremely
20 unfavorable terms in response to VTBH's worsening financial condition. VTBH also borrowed
21 an additional \$7 million from SG VTB (at a rate of 10% per annum until December 31, 2014 and
22 20% per annum for all periods thereafter) to pay down existing debt. The severity of VTBH's
23 financial condition preceding the Merger is illustrated by the fact that it missed its projected
24 EBITDA target for 2013 by **61%** (\$13.852 million actual compared to \$36 million estimated
25 midpoint).

26 9. As a result of the Merger, the Parametric Board handed Stripes Group control of
27 81% of the post-Merger Company. Meanwhile, Parametric shareholders, who owned a combined
28 100% of the Company before the Merger, were reduced to a minority 19% interest in the post-

1 Merger Company.

2 10. Kenneth Fox (“Fox”), Stripes Group’s founder and Managing General Partner
3 during negotiations leading to the Merger, Juergen Stark (“Stark”), CEO and director of VTBH
4 during negotiations leading to the Merger, Stripes Group, and SG VTB aided and abetted the
5 Parametric Board’s expropriation of equity. Fox, Stark, Stripes Group, and SG VTB knew that
6 VTBH had experienced significant financial decline in the months leading to the Merger and yet
7 relied on outdated and inflated projections in connection with the Merger.

8 11. This, and other evidence described below, shows that Fox, Stark, Stripes Group,
9 SG VTB, and VTBH knowingly participated in the Parametric Board’s actual fraud related to the
10 dilutive stock issuance to gain access to the public markets. Since the Merger, Stripes Group
11 insiders have used their control to usurp the Company’s publicly-traded status and extract tens of
12 millions of dollars for themselves, while the Company sinks.

13 12. Indeed, contemporaneously with the Merger, Stripes Group, Stark, and Fox caused
14 the Company to borrow money from them at exorbitant interest rates to pay down debt held by
15 VTBH from before the Merger. By January 15, 2014, the entirety of the term loan held by VTBH’s
16 main lender, PNC, which bore an interest rate of 5.50% to 6.50%, was replaced by notes held by
17 Stripes Group, Stark, Fox, and other insiders at interest rates three times greater. The only reason
18 why VTBH replaced its term loan debt with these notes at such an exorbitant interest rates was to
19 benefit the insiders at the expense of Parametric’s shareholders, including Plaintiff.

20 13. To ensure the success of their scheme, Fox and Stark did everything in their power
21 to convince key Parametric shareholders to vote in favor of the Merger. On several occasions prior
22 to the merger, Stark and other insiders at Stripes Group as well as Potashner met with members
23 of Plaintiff, including Adam Kahn and Robert Masterson. It was during these meetings that the
24 defendants convinced Plaintiff into voting for the Merger by falsely representing the strength of
25 VTBH and its prospects post-Merger. Without Plaintiff’s votes, the Merger very well may not
26 have succeeded.

27 14. Throughout the Merger process, Stripes Group, Stark, and Fox manipulated,
28 encouraged, and emboldened improper and selfish conduct by Parametric’s corporate fiduciaries.

1 Kenneth Potashner, Parametric's CEO ("Potashner") and the full Board knew of VTBH's
2 financial problems, but concealed the facts from Parametric stockholders and completed the deal
3 regardless.

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

13 **II. JURISDICTION AND VENUE**

14 16. Pursuant to the Constitution of the State of Nevada, Article 6, §6, this Court has
15 jurisdiction over all causes of action asserted herein.

16 17. This Court has jurisdiction over each defendant named herein because each
17 defendant is either a corporation that is incorporated in, conducts business in, and maintains
18 operations in this State, or is an individual who has sufficient minimum contacts with the State of
19 Nevada so as to render the exercise of jurisdiction by the Nevada courts permissible under
20 traditional notions of fair play and substantial justice.

21 18. Parametric was a public corporation incorporated under the laws of the state of
22 Nevada.

23 19. The Court has jurisdiction over Stripes, formerly known as Stripes Group, and SG
24 VTB because both entities maintain substantial, continuous and systematic contacts with Nevada
25 and the aiding and abetting cause of action against Stripes Group and SG VTB arises from Stripes
26 Group's and SG VTB's contacts with Nevada. Stripes Group and SG VTB purposefully availed
27 themselves of the protection of the laws of Nevada, purposefully established contacts with
28 Nevada, and affirmatively directed contact toward Nevada.

1 20. Similarly, the Court has jurisdiction over Fox and Stark because Fox, as control
2 person for Stripes Group and SG VTB, and Stark, as control person for VTBH, maintain
3 substantial, continuous and systematic contacts with Nevada and the aiding and abetting cause of
4 action against Fox and Stark arises from Stripes Group's, SG VTB's, and VTBH's contacts with
5 Nevada. Fox and Stark purposefully availed themselves of the protection of the laws of Nevada,
6 purposefully established contacts with Nevada, and affirmatively directed contact toward Nevada.

7 21. Stripes Group and SG VTB purposefully availed themselves the protection of
8 Nevada law and this action arises from their conduct targeting Nevada, including the following:

9 (i) through the Merger, Stripes and SG VTB gained control of a Nevada corporation and continue
10 to operate the Company as a Nevada corporation; (ii) Stripes Group and SG VTB selected,
11 negotiated for, and consummated the merger of a company they controlled, VTBH, and Parametic,
12 a Nevada corporation; (iii) Stripes Group and SG VTB were involved in negotiating and approving
13 nearly all material decisions concerning the Merger; and (iv) Fox, the founder, sole owner, and
14 Managing General Partner of Stripes Group and sole manager of SG VTB signed the Merger
15 Agreement, which was then filed with the Nevada Secretary of State to consummate the Merger.

16 22. Fox and Stark purposefully availed themselves the protection of Nevada law and
17 this action arises from their conduct targeting Nevada, including the following: (i) through the
18 Merger, Stripes and SG VTB, with Fox in control, gained control of a Nevada corporation and
19 continue to operate the Company as a Nevada corporation; (ii) Stripes Group and SG VTB, with
20 Fox in control, selected, negotiated for, and consummated the merger of a company they
21 controlled, VTBH, and Parametic, a Nevada corporation; (iii) Stripes Group and SG VTB were
22 involved in negotiating and approving nearly all material decisions concerning the Merger; (iv)
23 Fox, the founder, sole owner, and Managing General Partner of Stripes Group and sole manager
24 of SG VTB signed the Merger Agreement, which was then filed with the Nevada Secretary of
25 State to consummate the Merger; and (v) VTBH, with Stark in control, merged with a Nevada
26 corporation.

27 ...

28 ...

III. PARTIES AND RELEVANT NON-PARTIES

A. Plaintiff

23. Plaintiff is a limited liability company organized under the laws of the State of Delaware.

24. The following shareholders held Parametric common stock as of the date of the Merger:

- a. IceRose Capital Management, LLC;
- b. Robert Masterson;
- c. Richard T. Santulli;
- d. Marcia Patricof, on behalf of the Patricof Family LP, Marcia Patricof Revocable Living Trust, and the Jules Patricof Revocable Living Trust;
- e. Alan and Anne Goldberg;
- f. Barry L. Weisbord; and
- g. Ronald and Muriel Etkin.

25. The shareholders identified in the immediately preceding paragraph lawfully and validly assigned to Plaintiff their rights, titles and interests in any claims arising from their ownership of Parametric stock, including any and all claims arising from or related to the Merger against Parametric or any other entity or individual that could be liable for the acts and/or omissions alleged in the litigation entitled *In re Parametric Sound Corporation Shareholders' Litigation*, No. A-13-686890-B (Clark County, Nevada) (the "Class Action Litigation").

26. Plaintiff, when discussed herein, includes the aforementioned individual shareholders, when applicable.

B. Defendants

27. Defendant Kenneth Potashner (previously defined as "Potashner") was the Executive Chairman of Parametric's Board at the time of the Merger. He was appointed a director in December 2011 and Executive Chairman in March 2012. He essentially acted as Parametric's CEO.

...

1 28. Defendant Elwood G. Norris (“Norris”) was a member of Parametric’s Board at
2 the time of the Merger and is Parametric’s founder. He served as Parametric’s CEO and Chairman
3 of the Board since the Company’s incorporation on June 2, 2010, but resigned from these positions
4 concurrent with the appointment of Potashner as the Company’s Executive Chairman in March
5 2012. Norris remained with the Company post-Merger as its “Chief Scientist” at least through the
6 end of 2016.

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

9 30. Defendant Robert Kaplan (“Kaplan”) was a member of Parametric’s Board at the
10 time of the Merger. He was appointed a director in May 2011.

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

13 32. The Parametric Board members (other than Potashner) named above in ¶¶28-31
14 are sometimes collectively referred to herein as the “Outside Directors.”¹

15 33. The defendants named above in ¶¶27-31 are sometimes collectively referred to
16 herein as the “Individual Defendants.”

17 34. Defendant VTBH was a company that designed and marketed audio peripherals
18 for video game, personal computer, and mobile platforms. It was headquartered in Valhalla, New
19 York. It was majority owned by Stripes Group and SG VTB. VTBH is a wholly-owned subsidiary
20 of the post-Merger Company.

21 35. Defendant Stripes, known as Stripes Group LLC at the time of negotiations leading
22 to the Merger, is a private equity firm focused on internet, software, healthcare, IT and branded
23 consumer products businesses. Stripes Group is incorporated in Delaware and headquartered at
24 402 West 13th Street, New York, NY 10014.

25 _____
26
27 ¹ While Norris held the position of “President and Chief Scientist” and was thus a member of
28 Parametric’s management during the Merger process, he did not directly participate in Potashner’s
unilateral Merger negotiations with VTBH and Stripes, and is thus referenced as an “Outside
Director” for purposes of this Complaint.

1 36. Kenneth Fox (previously defined as “Fox”) is Stripes Group’s founder and served
2 as its Managing General Partner during the negotiations leading to the merger. Fox was also the
3 sole manager of SG VTB, which is the largest current stockholder of the Company (along with a
4 “control group” controlled by Fox and Stripes Group). Fox signed the Merger Agreement, which
5 effectuated the Merger described herein. Fox directly participated in the Merger process and
6 personally directed and controlled Stripes Group and VTBH principals throughout the Merger
7 process. Fox sat on the Turtle Beach board of directors after the Merger, stepping down on
8 November 15, 2018.

9 37. Defendant SG VTB is a Delaware LLC and is a wholly owned subsidiary of Stripes
10 Group. Fox is its sole manager. Stripes Group formed SG VTB in 2010 in order to acquire a
11 majority position in VTBH. SG VTB is an investment vehicle for Stripes Group.

12 38. Defendant Juergen Stark (previously defined as “Stark”) was CEO of VTBH
13 during negotiations leading to the Merger, and was named to that position by Stripes in September
14 2012. During negotiations leading to the Merger, Stripes demanded that Stark continue as CEO
15 of Turtle Beach post-Merger. Stark has served as Turtle Beach’s CEO since the Merger and
16 continues to serve as its CEO today. Stark also sits on the Company’s current board of directors,
17 and as of January 1, 2020 became Chairman of the board. Stark frequently interacted with
18 Potashner throughout the Merger process and was fully aware of, and encouraged, Potashner’s
19 misconduct as set forth herein.

20 **C. Relevant Non-Parties**

21 39. Turtle Beach is headquartered in San Diego, California and was incorporated in
22 the state of Nevada in 2010. The Company calls itself a “premier audio technology company with
23 expertise and experience in developing, commercializing and marketing innovative products
24 across a range of large addressable markets under the Turtle Beach® and HyperSound® brands.”
25 The Company’s stock is (as of the date of this filing) traded on NASDAQ Global Market under
26 the symbol HEAR.

27 40. James L. Honore (“Honore”) was a member of Parametric’s Board at the time of
28 the Merger. He was appointed a director in March 2012.

1 41. Ronald Doornick (“Doornick”) is an Operating Partner of Stripes Group and has
2 been a principal at Stripes Group since May 2006. Doornick was the Chairman of VTBH during
3 the sale process, and is now Board Chairman of the Company. Doornick is also part of the current
4 “control group,” which owns a majority of the Company’s outstanding shares. Doornick was
5 instrumental for Stripes Group in effectuating the Merger. Doornick served as the Chairman of
6 the Turtle Beach’s board of directors until stepping down on at the end of 2019.

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

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

12 44. John Todd (“Todd”) was a Parametric “consultant” during the sales process, was
13 hired by Potashner, and was directly involved (through Potashner) in the Merger. Like Potashner,
14 Todd was one of the few option holders in HyperSound Health, Inc. (“HHI”). Todd has been found
15 liable to the SEC for securities fraud. In 2012, the Southern District of California entered final
16 judgment after the Ninth Circuit found substantial evidence in the trial record to support a
17 unanimous 2007 jury verdict that found Todd unlawfully misrepresented a company’s financial
18 condition while CFO. In addition to monetary penalties, Todd was banned from acting as an
19 officer of any public company for a ten-year period. Likewise, the State of California has
20 prohibited Todd from operating a franchise within the state, because, given his history of fraud,
21 “the involvement of Todd in the sale or management of [a] franchise in this State would create
22 unreasonable risk to prospective franchisees.”²

23 ...

24 ...

25 ...

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27

28 ² www.dbo.ca.gov/ENF/pdf/b/BevMaxFranchising_SIS.pdf.

IV. ENCOURAGED BY STRIPES GROUP AND VTBH, THE PARAMETRIC BOARD ENGAGED IN DISLOYAL AND BAD FAITH CONDUCT DURING THE MERGER PROCESS³

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

46. On April 19, 2013, Potashner reached an agreement on the Merger with Stripes Group and VTBH without consulting the Outside Directors or conducting any real diligence or audit of VTBH’s finances. Potashner’s initial term sheet contemplated a reverse merger at a 78%/22% split, meaning that Parametric stockholders would receive 22% of the combined company after the Merger.⁵

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

48. Over the next two months, the Outside Directors continued to allow Potashner to negotiate the Merger with no real oversight, supervision or guidance. For example, from April 25, 2013 to June 25, 2013, the Board held just two telephone conferences, one lasting a mere 28 minutes and the other lasting just 45 minutes. The Outside Directors requested a copy of the draft-Merger Agreement for the first time on July 1, 2013. A quick review of Potashner’s draft caused

³ Citations herein refer to Bates stamp numbers from documents exchanged in discovery in the matter of *In re Parametric Sound Corporation Shareholders’ Litigation*, Lead Case No. A-13-686890-B, before the Honorable Elizabeth Gonzalez in the Eighth Judicial District Court for the State of Nevada, Clark County.

⁴ PAMT0033560-62.

⁵ PAMT0049600-07; PAMT0006093-103.

1 Outside Director Kaplan to state that: “I needed this as I feel we have been left in the dark and
2 have had misrepresentations presented to us.”⁶ During this time, Potashner conceded that the
3 Outside Directors also informed him that he was ““giving the company away.””⁷ Despite those
4 accusations, the Outside Directors did nothing to stop Potashner. Worse, they enabled him.

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

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

15 50. This conflict is better described in Potashner’s own words. Potashner confided to
16 Stark on July 11, 2013 that the “whole reason that I entered into the deal [with VTBH] in the first
17 place [was] [t]o build a multi-billion dollar HHI and benefit from it.”¹⁰ In the same email,
18 Potashner described his request for a secret post-close consulting agreement, writing: “I . . . said
19 in a gentlemen agreement to give me a consulting deal if I couldn’t talk you into keeping [HHI]
20 equal to what you think my stake was worth.”¹¹ Stripes was aware of Potashner’s confession.¹²

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

23 _____
24
25 ⁶ PAMT0061426.

26 ⁷ VTBH008868.

27 ⁸ <http://corp.turtlebeach.com/media-resources/releases/releases-detail/125/parametric-sound-corporation-reports-year-end-fiscal-2012-results>.

28 ⁹ VTBH005061; PAMTNV0113764.

¹⁰ PAMTNV0105035; VTBH009741.

¹¹ *Id.*

¹² VTBH017661.

1 As we established HHi my intention was to hire a new CEO for PAMT and
2 commit my full energies to developing HHi. I got BOD support, we hired
3 a search firm (swbi), and actually were interviewing CEO candidates on the
4 first day I met Juergen [Stark]. . . . My intent was to sell PAMT at the right
5 time and keep HHi as the foundation of a new company. . . . The problem
6 very simply is that [you] didn't sign up for buying part of the company, you
7 wanted it all.¹³

8 52. Stark considered it remarkable that he was even involved "in a discussion where 2
9 insiders somehow have a potential future ownership stake in [HHI] that is now driving the
10 dynamics of the [overall] deal . . . it's just crazy."¹⁴

11 53. In fact, when selecting the Merger form, Stark reported that Potashner "said he
12 liked the reverse merger option the best and is happy we are headed in that direction because it
13 'allows him to participate in the upside of commercial and health [HHI] which he feels is large.'"¹⁵
14 Notably, Fox responded that Potashner's self-interest was "[g]ood news."¹⁶

15 54. This conflict did not exist in a vacuum, as Potashner acted in furtherance of his
16 HHI-related objectives throughout the Merger process. In his first meetings with Stripes and
17 VTBH in March and April 2013, Potashner repeatedly expressed a desire to carve out HHI and
18 "make sure the potential value in health is enabled to occur."¹⁷

19 55. On July 1, 2013, the Parametric Board held a meeting to discuss Potashner's HHI-
20 related conflict. Just before the meeting, Potashner was caught lying to the Board about whether
21 he had reached an agreement with VTBH and Stripes Group regarding his HHI options.¹⁸
22 Potashner said an agreement was finalized, but Stark confirmed to the Outside Directors this was
23 false.¹⁹ During the July 1, 2013 meeting, the Board gave its first of three instructions to Potashner
24 that he "immediately cease all discussions with [Stripes Group and VTBH] regarding HHI and
25 HHI stock options to avoid any conflict of interest and attain clarity regarding the position of
26
27
28

¹³ VTBH000124.

¹⁴ PAMTNV0104290.

¹⁵ VTBH007727.

¹⁶ *Id.*

¹⁷ VTBH002990; VTBH006603.

¹⁸ PAMT0000160.

¹⁹ *Id.*

[Stripes Group and VTBH] on this issue.”²⁰

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

- Tuesday, July 2, 2013: The morning following the instruction to “immediately cease” HHI-related discussions, Potashner emails Stark and Doornick at 6:47 a.m. to justify his position on HHI and invite Doornick to discuss the matter at dinner the upcoming Sunday.²¹ Potashner and Stark also speak by phone that evening about HHI.²²
- Wednesday, July 3, 2013: Potashner writes Stark to propose that HHI option-holders (including Potashner) retain their interest in HHI, writing: “At a personal level I believe [retaining HHI] will be supported and avoid scenarios that I believe would put substantial risk and litigation exposures into the PAMT/VTB transaction.”²³ Stark knew this contact was improper, responding, “Shouldn’t I be discussing this with Seth [Putterman] and Jim [Barnes]?”²⁴ Despite that knowledge, Stark continues to discuss HHI with Potashner.

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

Regarding HHI related matters, the Board affirmed its prior direction to you to avoid all discussions with VTB/Juergen/Stripes regarding your HHI stock options since you have a conflict of interest. Because your stock options are interrelated with 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.²⁵

58. Potashner responded, “I understand your request relative [to] HHI negotiations and will comply.”²⁶ As one might expect, Potashner was lying. Potashner thereafter engaged in the following prohibited communications:

²⁰ *Id.*

²¹ PAMTNV0105781.

²² PAMT0033890.

²³ PAMTNV0105854.

²⁴ *Id.*

²⁵ PAMT0041051.

²⁶ PAMTNV0115321.

- Saturday, July 6, 2013: Potashner forwards Stark a proposal from Wolfe (not meant for Stark) providing that Potashner keep all of his HHI shares.²⁷ Potashner stated, “[a]s I mentioned, the bankers are running an analysis as well and I expect it to confirm this view.” Potashner concluded by asking Stark to keep the email confidential.²⁸
- Sunday, July 7, 2013: Potashner meets with Stark in person to discuss HHI-related issues.
- Tuesday, July 9, 2013: Potashner proposes to meet with Stark, Barnes, and HHI’s consulting doctors to discuss an HHI spin-out transaction.²⁹
- Thursday, July 11, 2013: Potashner and Stark discuss HHI valuation details over email, while Potashner continues to argue his position that HHI be retained as a subsidiary, describing HHI as a “cottage” in which Potashner wanted to “live” post- Merger.³⁰ Potashner forwards his “HHI as a cottage” email chain with Stark to colleagues at another company, bragging that it showed “[h]ow to harass the CEO of a company that is effectively buying you into an entity structure you require using parables.”³¹
- Saturday, July 13, 2013: Potashner invites Stark to discuss HHI issues “by phone today and then in person on Sunday.”³² Stark responds to confirm a meeting with Potashner regarding HHI the upcoming Wednesday.
- Sunday, July 14, 2013: Potashner and Stark discuss HHI in detail over email, where Potashner concludes by again explaining, “I am convinced we can’t solve [HHI issues] pre-deal because of litigation scenarios plus shareholder vote issue. I am convinced we can solve post deal.”³³
- Monday, July 15, 2013: Potashner emails Stark to negotiate a list of five “[c]oncessions made on HHI,” concluding, “hope you can be flexible and we get the deal done.”³⁴ Stark keeps Stripes and Doornick informed of Potashner’s improper communications.³⁵
- Wednesday, July 17, 2013: Potashner and Stark meet with Barnes and doctors working with HHI to discuss HHI-related issues. Following the meeting, Potashner emails Stark regarding the scope of HHI’s license.³⁶

²⁷ PAMTNV0105120.

²⁸ PAMTNV0105120.

²⁹ VTBH001503.

³⁰ PAMTNV0104270; PAMTNV0104315.

³¹ PAMTNV0104315.

³² PAMTNV0104228.

³³ PAMTNV0104263.

³⁴ PAMTNV0104268.

³⁵ VTBH013712.

³⁶ VTBH001516.

- Thursday, July 18, 2013: Potashner and Doornick discuss HHI by phone and, as a result, Potashner states that “I will make a proposal to my BOD on HHI Saturday.”³⁷

59. On Friday, July 19, 2013, Outside Director Norris emailed Potashner to reiterate the ban on HHI discussions:

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

Please start acting like you are working for PAMT, not yourself!³⁸

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

- Friday, July 19, 2013: In support of his ownership interest in HHI, Potashner emails Stark to describe an earlier “precedence” where executives at Maxwell Technologies (including Potashner) held interest in a subsidiary company.³⁹ The same day, Potashner, Stark, and others - with no Outside Directors present - conduct a conference call to discuss HHI-related issues. Stark writes Potashner, “geezus, I continue to be stunned that you don’t see the significant issues with HHI. [W]hat a gigantic mess. [R]on [Doomink] is 100% aligned with this view.”⁴⁰
- Saturday, July 20, 2013: Potashner writes Doornick, stating that “[a]s we established HHI, my intention was to hire a new CEO for PAMT and commit my full energies to developing HHI. My intent was to sell PAMT at the right time and keep HHI as the foundation of a new company.”⁴¹
- Sunday, July 21, 2013: Potashner asks Stark for a continued role with HHI post close, stating: “If I did a good job on HHI and we agreed that there was an options scenario for me there tied to downstream vesting..... By then I plan on having it worth \$100m.”⁴² Potashner emails Doomink the same day, writing: “Hi Ron[.] Requiring HHI options to be canceled unconditionally cancelled prior to the [Merger Agreement] signing, not at close, is an unreasonable request. You are telling us how we have to run our business even in the event

³⁷ VTBH002140.

³⁸ PAMTNV0112541.

³⁹ PAMTNV01 04836.

⁴⁰ PAMTNV01 04902.

⁴¹ PAMTNV0104837.

⁴² PAMTNV0104912.

we don't close the deal."⁴³ Potashner and Doornick hash out a deal on HHI over ensuing emails that day, with no one else copied.⁴⁴

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

Further, if the Board were to dissolve HHI, Mr. Potashner stated that he would call a special meeting of stockholders for the purpose of replacing the Board. Mr. Potashner informed the Board that he could obtain proxies for 40% of the Company's outstanding shares to effectuate such a replacement.⁴⁵

62. Following that meeting, Potashner confided to Wolfe and outlined his litigation plan against the Outside Directors if they did not comply: "All other choices we face (unilaterally cutting options, limiting license, firing people, etc.) will result in ...very aggressive claims against individuals and the company that I am convinced will not only blow up the [VTBH] deal but result in substantial corporate and personal legal exposures."⁴⁶

63. Potashner's threats caused the Company's founder and President, Norris, to threaten to disassociate from the Company, stating that "Potashner's proposed actions would be unacceptable to him and that he would not continue with the Company if the Board were replaced."⁴⁷

64. Over the next two days, Potashner laser-focused on Outside Director Putterman. On July 6, 2013, Potashner wrote to Putterman to describe Potashner's prior litigation against individual board members at SonicBlue where "we settled and I received a large check from the Company/BOD."⁴⁸ Potashner concluded his email with the not-so-veiled threat, "[w]ould not like

⁴³ VTBH012528.

⁴⁴ VTBH013436.

⁴⁵ PAMT0000164.

⁴⁶ PAMT0033294.

⁴⁷ PAMT0000164.

⁴⁸ PAMTNV0112643.

1 to ever have to go through that again.”⁴⁹ The next morning, Potashner informed Putterman by
2 email that cancelling HHI before the deal “will result in lawsuits.”⁵⁰ Potashner then picked up the
3 phone to call Putterman, threatening to call a shareholder meeting and “fire” the rest of the
4 Board.⁵¹ Two days later, Potashner again called Putterman to state that if the Board did not accept
5 his position, in Putterman’s words, “the lawsuit from John [Todd] if we do otherwise will be
6 devastating. . . .”⁵²

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

- 9 • A cash payment of \$250,000 in exchange for Todd’s agreement not to sue the Board;
- 10 • A continuation of Todd’s consulting agreements with HHI for another fifteen
- 11 months so that he would continue to receive additional cash and options; and
- 12 • An additional cash payment for Potashner, Barnes, and Todd “equal to nine-
- 13 months salary.”⁵³

14 66. At the same meeting, Potashner threatened that if his demands were not met, “Todd
15 would sue the Company and the [VTBH] merger transaction could be derailed in such [a] case.”⁵⁴
16 Interestingly, however, neither Potashner nor Todd had any legal right to demand payment in
17 exchange for cancellation of their HHI options. Their HHI 2013 Equity Incentive Plan provided
18 that in the event of a “change in control” or other merger by Parametric, the merger agreement
19 may provide for all HHI options “cancellation with or without consideration, in all cases without
20 the consent of the Participant [i.e., Potashner or Todd].”⁵⁵

21 67. The Outside Directors saw through Potashner’s threats, which he purportedly made
22 on Todd’s behalf. During this time, Kaplan confided to the other Outside Directors that
23 Potashner’s HHI options were issued because of false representations to the BoD. . . . And of

24
25 ⁴⁹ *Id.*

26 ⁵⁰ *Id.*

27 ⁵¹ PAMTNV0112625.

28 ⁵² PAMTNV0112558.

⁵³ PAMT0000171.

⁵⁴ *Id.*

⁵⁵ PAMT0000024.

1 course Ken is using JT [John Todd] as a surrogate for getting as much as he can for his own HHI
2 position. . . . I believe JT is not really the problem. It is Ken pushing him and hiding behind JT's
3 coattails. . . . Yet, as it has been presented to us, we are being held hostage and being blackmailed
4 by this consultant. His strength is a lawsuit that could delay the merger.⁵⁶

5 68. Similarly, Norris wrote:

6 Since John [Todd] and Ken [Potashner] are threatening now, why should
7 we think they'll be easier after the deal? Juergen [Stark] is asking for a
8 lawsuit if he buys that. John and Ken will force TB to let them run HHI or
9 sue TB. That's the next shoe that'll drop. I guarantee it. I don't think they
10 connected that dot.⁵⁷

11 69. Despite recognizing the conflict, the Outside Directors caved and allowed
12 Potashner, Wolfe, and Barnes to call VTBH and convey Potashner's demands. The demands
13 included that VTBH not shut down or dismantle HHI for six months following the close of a
14 merger, pay cash payments to Potashner and Todd at 100% of 2013 bonus levels (whether or not
15 they earned such amounts), and agree not to restructure the HHI license agreement. In return,
16 Potashner and Todd would agree not to sue VTBH and Parametric (despite their lack of any legal
17 right to do so).⁵⁸

18 70. Potashner, Wolfe, and Barnes jointly made these demands to Turtle Beach on July
19 20, 2013. Notably, the Outside Directors asked Potashner to throw in a gift for themselves in the
20 same call. When reporting back to the Board, Potashner stated, "I also introduced [to Stark] the
21 concept of accelerating BOD options and there was no adverse reactions."⁵⁹ The next day,
22 Potashner also surreptitiously emailed and called Stark to discuss his position in HHI.⁶⁰

23 71. On July 21, 2013, Potashner wrote to Norris, stating: "In the event that the BOD
24 decides to cancel [my HHI options with no guarantee that the Merger will close,] please consider
25

26 ⁵⁶ PAMTNV0115292.

27 ⁵⁷ PAMT0033904.

28 ⁵⁸ PAMT0000171.

⁵⁹ PAMTNV0112539.

⁶⁰ PAMTNV0104912.

1 this my formal resignation for the company.”⁶¹ As noted above, however, Potashner worked out
2 a deal directly with Doornick, whereby VTBH promised that it would postpone any cancellation
3 of HHI. So Potashner followed up the next day after another development: “I am glad that Ron
4 Doornick, VTB Chairman has revised their position so our BOD doesn’t need to face the issue of
5 cancelling the options prior to DA [Merger Agreement signing]. I therefore will withdraw the
6 resignation threat and we don’t need to get everybody further worked up.”⁶²

7 72. The Parametric Board set another meeting to discuss the issue on July 23, 2013.
8 That morning, Wolfe indicated that Stark wanted HHI options to be cancelled. Rather than stand
9 up to Potashner, Wolfe acted as his mouthpiece, calling Stark’s request “unreasonable” and
10 stating, “I think this is the point where we say no.”⁶³ Wolfe’s solution—worked out in advance
11 with Potashner—was to pay Potashner a cash ransom. Wolfe proposed that “[w]e would approve
12 2013 bonuses for key personnel including ... Ken [Potashner], and John [Todd].”⁶⁴ When another
13 Outside Director indicated that Potashner’s options should indeed be canceled because “the
14 options are still wrong and not in the best interest of our shareholders,” Potashner wrote that any
15 proposal to cancel his options “would blow up the deal, result in a massive amount of lawsuits
16 and personal liability for the BOD, and is the worst thing for our shareholders.”⁶⁵

17 73. Pressured by Potashner’s threats, the Board again caved at the July 23rd meeting.
18 The Board agreed to pay Potashner and Barnes their full 2013 cash bonuses (whether entitled or
19 not), but deferred the final approval to a Compensation Committee meeting.⁶⁶ The Board also
20 agreed to pay Todd \$250,000 in exchange for an agreement not to sue Parametric (despite his lack
21 of legal right to do so).⁶⁷

22 ...

23
24
25 ⁶¹ PAMT0033914.

26 ⁶² PAMT0033915.

27 ⁶³ PAMTNV0112504.

28 ⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ PAMT00001 75; PAMTNV01 12625.

⁶⁷ PAMT00001 75; PAMTNV01 12625.

1 74. Stripes Group and VTBH continued to manipulate Potashner and lead him to
2 believe that he would continue with HHI post-close, despite the eventual cancellation of his
3 options. On July 21, 2013, Stripes Group agreed that it would not seek cancellation of Potashner's
4 HHI options before signing the Merger Agreement, but would defer the matter to address in the
5 Merger Agreement itself and postponed until the Merger's close.⁶⁸ On July 23, 2013, Stark
6 circulated a draft press release announcing the Merger, which contained the following line: "Ken
7 Potashner ... will continue a leadership role for Hypersound Health, Inc. ('HHI'), the
8 Company's health subsidiary, which continues to demonstrate extraordinary results for those with
9 hearing deficiencies."⁶⁹

10 75. While Stripes Group externally manipulated Potashner into believing he would
11 continue to have a role, Stripes Group internally planned to kick him out. On August 5, 2013, Fox
12 wrote regarding the Merger announcement press release: "My reaction to the press release is too
13 much Ken P. [H]e is going to have effectively no role going forward."⁷⁰ Stripes Group knew how
14 to manipulate Potashner, however, and kept that plan a secret until ousting him just months after
15 the Merger closed.

16 76. On January 10, 2014, less than a week before the close, Potashner learned that
17 VTBH's lenders were forcing it to dissolve HHI. Potashner panicked. Potashner asked his CFO
18 to cancel Merger-related payments (but they had already been sent) and wrote to Stark, "lets delay
19 the closing and renegotiate the [HHI] point."⁷¹ Potashner asked Stark to "[see if there is another
20 way to push on the bank."⁷² Potashner admitted that "[a]t a personal level and as a shareholder of
21 PAMT, I would not have supported the deal if I thought HHI was going to be dismantled."⁷³

22
23
24
25
26 ⁶⁸ VTBH013436
⁶⁹ PAMTNV0103786; VTBH008077
27 ⁷⁰ VTBH000822.
⁷¹ PAMTNV0086620.
28 ⁷² VTBH066656
⁷³ PAMTNV0086617

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

77. Potashner conspired with Stripes Group to illegally manipulate Parametric's stock price by suppressing it in advance of the Merger announcement. In Potashner's and Stripes Group's views, the 81/19 dilution ratio would look slightly better for stockholders if Parametric's stock price were lower upon announcement. In Potashner's words, Fox—the head of Stripes—personally expressed a “preference” that Potashner and Parametric “don't defend the stock in that premium on deal will look better.”⁷⁴ Potashner admitted that doing so was in breach of his fiduciary duties. During the process, he confirmed to VTBH that “[w]ithholding licensing deals and announcements is contrary to the responsibility that I have.”⁷⁵ Yet, Potashner continued to delay and suppress several favorable and material announcements keeping Parametric's stock price artificially low.

78. Potashner confirmed on March 27, 2013, in one of his first discussions with Stripes Group, that “I expressed to Karen [Kenworthy] that we collectively should not be overly concerned by the stock run up in that we have choices in terms of where we assign the valuation. We also have now accumulated unannounced wins that I plan on delaying announcements on for as long as possible.”⁷⁶

79. Just a week later, Potashner informed Stripes Group that his suppression of material information was against the advice of Parametric's outside securities counsel. On April 4, 2013, Potashner wrote to Kenworthy and Stark, stating: “Our corp counsel said we need to do an 8-k on the McD. If it weren't for our discussion I would do a full press release but I have deemed that it would be bad form. Taking one for the team.”⁷⁷ Potashner was referencing an agreement to place a Hypersound technology installation at McDonald's Disneyland restaurant, which represented a significant development in Parametric's efforts to commercialize and

⁷⁴PAMT0040595.

⁷⁵PAMTNV010627.

⁷⁶VTBH011084.

⁷⁷VTBH006261.

1 implement its audio technology. But rather than file an 8-K and inform stockholders of the positive
2 news, as company counsel recommended, Potashner concealed this material information.

3 80. Potashner admitted that delaying the positive announcements harmed Parametric.
4 On April 8, 2013, Potashner informed Stark that “[a]lso I wanted to mention that we will do a
5 press release in the morning. Our shares have come under substantial pressure in the last couple
6 days relative to the delay in me announcing licensing deals.”⁷⁸ Stark intervened, however, and
7 Parametric issued no such press release the next morning, nor did Parametric announce any
8 licensing deals at any point thereafter. Instead:

- 9 • On May 17, 2013, Potashner outlined for Stark his plan for a post-Merger-
10 Announcement press strategy: “I also have been stockpiling announcements
11 that we can roll out to solidify price if there is weakness. You and I can
12 strategize on whether we want to lay low or get more aggressive in terms of
13 supporting the stock.”⁷⁹
- 14 • The same day, John Todd wrote to Potashner: “As I understand they [Stripes
15 and VTBH] believe the stock will drop once we announce and that this will
16 make the deal less favorable than an IPO. . . . If they have announcements and
17 we have announcements [to release after the Merger] we can not only hold
18 price but significantly improve price.”⁸⁰

16 81. Parametric’s stock price declined significantly between May 28 and June 1, 2013.
17 Regarding the McDonald’s signage, on May 31, 2013, Potashner wrote to Stark: “I have ... an
18 announcement on our completion of Disneyland McD I am waiting to see if we are a go before
19 making decisions.”⁸¹ Potashner’s draft internal press release stated, in part, as follows:

20 The Company’s commercial business focuses on the ability to target
21 communication and create sound zones in various retail sites. The
22 Company completed the scheduled installation of HyperSound technology
23 at a McDonald’s Disneyland restaurant last week and continues to grow its
24 commercial product pipeline.⁸²

23 82. This language would have defended the stock and signaled to the markets that the

26 ⁷⁸ PAMTNV01 08985.

27 ⁷⁹ PAMT0040368.

28 ⁸⁰ PAMT0040339.

⁸¹ PAMT0040576.

⁸² PAMT0040591; PAMT0040592.

1 company was executing on its prior promises of commercialization. Indeed, Potashner would later
2 confirm the importance of McDonalds' selection of the HyperSound pilot by reporting to Stark
3 that it "led to McDonald's Channel selecting HyperSound as a premium audio solution for
4 McDonalds Channel restaurant installations." Potashner used this information to ask for a
5 restructured deal, writing to Stark: "[T]ell Ken Fox I want 75-25 deal based on this."⁸³ Potashner
6 confirmed that this specific information, if released, would constitute "powerful stuff" that "will
7 be an exclamation point on what we are doing," demonstrating Parametric's "great hand going
8 forward" if a deal wasn't reached.⁸⁴

9 83. Fox intervened and, through Stark, asked Potashner to keep the material
10 information from stockholders. As noted, Potashner followed up with a phone call to Stark on
11 June 2, 2013 and wrote: "Just spoke to Juergen [Stark] and his preference (and Ken [Fox's])
12 preference is that we don't defend the stock in that premium on deal will look better."⁸⁵
13 (Parenthesis in original.) Potashner complied with Fox's wishes and deleted the McDonald's
14 Disneyland reference from the final press release.⁸⁶ On June 5, 2013, Potashner confirmed to
15 Stark, "I will defer the release based on our discussion."⁸⁷ As a result, Parametric's stock price
16 continued to decline.

17 84. On July 17, 2013, Potashner ultimately confirmed to Stark that, as a result of the
18 suppression of announcements, "[s]tock is under tremendous pressure now."⁸⁸ Just before the
19 announcement of the Merger on August 5, 2013, Parametric's stock price remained under
20 pressure, which made a terrible deal look slightly better.

21 **C. At Stripes Group's Urging, Potashner and the Board Stalled and Undermined**
22 **Competing Corporate Opportunities**

23 85. Stripes Group principals (Fox, Doornick, and Kenworthy), along with Stark, also
24

25 ⁸³ VTBH013765.

26 ⁸⁴ PAMTNV0101694.

27 ⁸⁵ PAMT0040595.

28 ⁸⁶ See http://www.parametricsound.com/press_release_details.php?id=82.

⁸⁷ PAMTNV0106696; PAMT0040658.

⁸⁸ VTBH008077.

1 successfully encouraged Potashner to undermine the Company's potential corporate opportunities
2 during Merger negotiations. Potashner obliged. As a result, Potashner stalled discussions with
3 other licensing partners and potential acquirers as soon as Stripes Group and VTBH arrived on
4 the scene.

5 86. Potashner admitted that doing so was in breach of his fiduciary duties. Potashner
6 explained to VTBH that "Withholding licens[ing] deals ... is contrary to the responsibility that I
7 have." And during the process, Potashner wrote: "My stock is taking a beating due to me deferring
8 signing licensing deals I have intentionally constrained the progress [of Amazon attempting to
9 buy the Company]. I am still in a precarious situation delaying licenses that [would otherwise]
10 bring us economic value and valuation."⁸⁹

11 87. The first time they spoke, Stripes Group made it clear that Potashner should stall
12 other corporate opportunities. On March 12, 2013, Potashner wrote to Kenworthy, stating: "I may
13 need help on how to slow down one of the discussions we have underway. The time urgency is
14 that they are targeting a gaming accessory product for this Xmas and thinking in the 200-300k
15 unit range."⁹⁰ Potashner was referencing the SIIG/Optek deal described herein.

16 88. On March 27, 2013, Kenworthy reported directly to Fox that Potashner complained
17 "[h]e's receiving substantial pressure from one of his other potential licensing partners to advance
18 their discussion[s] (but claims it would clearly not be in the interest of [VTBH] or Stripes for us
19 to do so.... I assume it's Sony)."⁹¹ (Parentheses in original.) The very next day, March 28, 2013,
20 Potashner confirmed to Kenworthy that "I will suspend any licensing discussions with any parties
21 while we have our discussions with TB/Stripes."⁹² Kenworthy responded in approval.

22 89. On April 4, 2013, Potashner confirmed to Stark that he "will slow play" an active
23 and then-promising collaboration with Qualcomm.⁹³ The next day, Qualcomm stated that it
24

25
26 ⁸⁹ PAMT0039840; VTBH002189; VTBH001759; PAMTNV0106815.

27 ⁹⁰ PAMT0039368.

28 ⁹¹ VTBH005649.

⁹² PAMT0039561.

⁹³ PAMTNV0108760.

1 “would be interested in a potential licensing discussion” and “will get the NDA taken care of
2 today.”⁹⁴ Potashner did nothing for a week. On April 12, 2013, Potashner wrote to Stark that “it
3 makes sense for me to advance this discussion,” but Stark responded that “I would slow-roll a
4 bit.”⁹⁵

5 90. On April 7, 2013, Potashner confirmed to Stark that “I would be able to announce
6 the license [with VTBH] and buy additional time both with the parties that we have stalled I have
7 several things going on including defining a financing and the pressures of the license activities
8 we put on hold.”⁹⁶ Stark agreed, responding to Potashner that: “In fact I assumed you would
9 absolutely not want to announce any license deal since you’ve stalled all the other parties.”⁹⁷

10 91. Days later, Potashner admitted the harm caused by his stalling efforts. On April 9,
11 2013, Potashner wrote to Kenworthy and Stark: “My stock is taking a beating due to me deferring
12 signing licensing deals. Any ideas?”⁹⁸ On April 15, 2013, Potashner forwarded an email to Stark
13 from SIIG/Optek, explaining “[t]his is one of the license deals I have frozen. Very high royalty
14 rate 9% and China [is a] big market. If I signed and announced this deal our stock would be in the
15 20s.”⁹⁹

16 92. On April 19, 2013, Doornick reported to Fox, Kenworthy, and Stark, inter alia, and
17 confirmed that “[t]he Parametric guys ...face a lot of pressure from their potential licensing
18 partners (having put several deals on hold).”¹⁰⁰

19 93. During this time, capable buyers were interested in purchasing Parametric. On
20 April 12, 2013, Potashner described a conversation with an Amazon executive as follows: “He
21 declared Amazon is interested in buying the company. . . . He said they are familiar with our
22 technology and believe it will be highly relevant to future products Amazon plans on
23

24
25 ⁹⁴ PAMTNV0109178.

26 ⁹⁵ Id.

27 ⁹⁶ PAMT0039816.

28 ⁹⁷ Id.

⁹⁸ PAMT0039840.

⁹⁹ PAMTNV0108344.

¹⁰⁰ VTBH011638.

1 launching.”¹⁰¹ But on May 20, 2013, Potashner forwarded an Amazon email to Stark writing, “I
2 have intentionally constrained the progress here but I don’t believe I can further do so. Even
3 though you don’t see Amazon as viable I see it as a means of selling PAMT.”¹⁰²

4 94. On May 25, 2013, Potashner admitted to Stark that “[I] need to get on running my
5 business and getting shareholder value. Withholding license deals and announcements is contrary
6 to the responsibility that I have.”¹⁰³ Despite recognizing the problem, Potashner continued to
7 withhold licensing deals and positive announcements through the Merger.

8 95. Potashner again confirmed that delaying licenses was contrary to his fiduciary
9 duties. On June 2, 2013, Potashner explained to Stark that “I am still in a precarious situation
10 delaying licenses that do [otherwise] bring us economic value and valuation...I am not in a
11 position where I can sit back and let stock fall too far.”¹⁰⁴ Yet Potashner did just that because, as
12 noted, the very same day - June 2, 2013 - VTBH informed Potashner that it was Stripes Group’s
13 preference to avoid defending the stock because the “premium on deal will look better.”¹⁰⁵

14 96. The rest of the Parametric Board finally noticed Potashner’s improper stalling
15 efforts. On July 6, 2013, Kaplan wrote:

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

23 It is time for the BOD to step up and take charge! We have been far too
24 passive in the past. It is good to have a strong leader but not a dictator.¹⁰⁶

25 97. While Kaplan’s email demonstrated a brief glimpse of spirit, the next day, July 7,
26 2013, Kaplan embarked on his personal quest for an additional bonus in connection with the
27
28

¹⁰¹ PAMT0039865.

¹⁰² VTBH002189.

¹⁰³ VTBH00J759.

¹⁰⁴ PAMTNV0106815.

¹⁰⁵ PAMT0040595.

¹⁰⁶ PAMT0061365.

1 Merger (described below). After realizing the potential for personal benefit, Kaplan fell in line.
2 The Outside Directors, through Kaplan's email, were thus informed of Potashner's stalling efforts
3 and by their acquiescence, were complicit in the misconduct.

4 98. Ultimately, before the Board even voted on the Merger, Potashner gave VTBH and
5 Stripes Group "veto rights on all licenses," precluding the Company from entering into a superior
6 licensing agreement before giving control of the Company to Stripes Group.¹⁰⁷

7 **D. The Parametric Board Knew that VTBH's Balance Sheet Was Deteriorating**
8 **but Voted in Favor of the Unfair Merger Regardless**

9 99. Before voting on the Merger, Potashner and the Outside Directors knew that
10 VTBH's finances were in bad shape and that, as a result, Parametric would be issuing millions of
11 dilutive shares in exchange for an entity with negative value.

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

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

17 * * *

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

20 * * *

21 The biggest issue outstanding in my mind is an issue concerning \$12M of
22 debt that VTB has that was not disclosed to us at the time we negotiated
23 exchange rates...I believe this is indication that their balance sheet wasn't
24 as strong as they represented and we should get something as an offset.¹⁰⁸

25 101. VTBH's balance sheet did not thereafter improve. A month later, on July 31, 2013
26 (two days before the Parametric Board voted on the Merger), VTBH provided its second quarter
27 financials to Barnes, Parametric's CFO. Barnes promptly forwarded the numbers to Potashner

28 ¹⁰⁷ PAMT0060525.

¹⁰⁸ PAMTNV0105759.

1 writing, “FYI. Proxy may not be pretty. Going to have some selling to do.”¹⁰⁹

2 102. Notably, despite their awareness of Turtle Beach’s dire financial state and
3 previously undisclosed debt, Potashner and the Outside Directors did not negotiate anything “as
4 an offset,” did not renegotiate the exchange rates, and continued to pay no heed to the red flags
5 regarding Turtle Beach’s poor financial condition.

6 103. On August 2, 2013, the Board met and voted in favor of the Merger Agreement.
7 This August 2nd meeting took the form of a one-hour conference call. During that call, the
8 Outside Directors met Potashner’s cash demands and agreed to pay his 2013 bonus payments at
9 the maximum target rate of \$210,000.¹¹⁰ According to the Proxy, Potashner was entitled to receive
10 a “golden parachute” upon a change in control which would result in compensation of more than
11 \$2.8 million (including the \$210,000 bonus described above plus a cash payment of \$350,000 and
12 equity bonus in the form of accelerated vesting of stock options valued at nearly \$2.25 million.

13 104. As described in greater detail below, during the very meeting they were supposed
14 to be paying attention to a fairness opinion and assessing the fairness of the Merger for Parametric
15 stockholders, the Outside Directors spent their time emailing about their own personal payouts.
16 The Outside Directors knew that the Merger was potentially disastrous and knew that they would
17 be issuing highly dilutive equity, and thus control of the Company, for almost nothing in return.
18 But the Parametric Board was more concerned with getting paid.

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

23 We did get it but you should know that just barely. With the renegotiation
24 to 81-19 we were below one of the 3 metrics and when you aggregate the 3
25 metrics the deal is “barely fair.”
26

27
28 ¹⁰⁹ PAMT0057372.

¹¹⁰ PAMT0000I89.

1 The issue with this is that the document goes public and can make the vote
2 harder for the shareholders. I will need to do a good job selling the strategic
ramifications.¹¹¹

3 106. Potashner later lamented to Stark, “If we received 22% of the shares we wouldn’t
4 have been out of bounds on the fairness opinion.”¹¹² Nevertheless, the Board still approved the
5 Merger at the severely dilutive ratio of 80.9% to 19.1%.¹¹³

6 107. Parametric announced the Merger after the market closed on August 5, 2013. The
7 Company’s shares immediately tanked. Parametric’s stock closed at \$17.69 per share on August
8 5, 2013, and dropped to just \$14.08 per share by August 6, 2013—a 20% decline in shareholder
9 value. The drop would have even been more significant had Stripes and Potashner not suppressed
10 Parametric’s stock price in the preceding five months.

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

12 108. The Merger Agreement contained a provision requiring Parametric to contact
13 parties within 30 days of the signing of the Merger Agreement to secure a competing deal. The
14 go-shop commenced on August 5, 2013. During the go-shop, however, Potashner sabotaged other
15 potential bidders through delay and refusals, then referred them directly to Stark and Stripes
16 Group. Stark would then swat them away.

17 109. Potashner and Stark’s correspondence regarding the go-shop is illuminating. On
18 August 3, 2013, Potashner sent Stark a draft Merger announcement with the following reference
19 to the go-shop: “Parametric, with the assistance of an independent financial advisor, will actively
20 solicit alternative proposals during this period.”¹¹⁴ Stark responded right away to demand removal
21 of that sentence, writing, “You’re not looking for an alternative and neither are we.”¹¹⁵

22 110. Potashner responded minutes later to confirm that he would “soften” that language,
23 because:

24
25
26 ¹¹¹ PAMTNV0101203.

27 ¹¹² VTBH068943.

¹¹³ PAMTNV0101319.

¹¹⁴ VTBH008036.

28 ¹¹⁵ PAMT0056829.

We were not shopping the company, Just to [be] 100% transparent there were 2 others that we discussed but I put them on licensing track discussions and anticipate they will stay there - Amazon and Dolby. I have slowed both discussions to get our deal done but this will be a topic for you and I next week.¹¹⁶

111. On August 7, 2013, Potashner informed Stark that VTBH should not “invit[e] in/embolden one of the other companies that expressed interest in us” because “I like our deal. I don’t want to be an operating unit of Amazon.... You and I are totally aligned. I know the stock price doesn’t matter now for your or mine personal liquidity.”¹¹⁷

112. On August 12, 2013, one week into the go-shop period, Motorola Mobility’s Senior Vice President and General Counsel contacted Parametric to “re-engage” because “Motorola wanted to own [Parametric’s] IP.”¹¹⁸ Even though Motorola was on the “Go Shop Buyers List,” Potashner and Houlihan Lokey did not directly respond regarding this serious indication of interest, rather, Potashner leaked the contact to Stark and asked that VTBH respond.¹¹⁹ On August 15, 2013, Stark spoke directly with Motorola to hear that Motorola—a potential acquirer competing with Stark—purportedly was not interested.¹²⁰ Stark’s contact with Motorola, of course, was highly inappropriate and rife with conflict given the fact that Stark was employed at Motorola for nine years between 2003 and 2012 and served as its former Chief Operating Officer.

113. In addition, on August 13, 2013, Potashner thwarted Amazon by informing it that Parametric’s video gaming licenses were off limits (despite Amazon’s interest in purchasing Parametric as a whole).¹²¹

114. After the go-shop expired, Potashner confirmed to Stark that he had blocked competing bids. On November 19, 2013, Stark asked Potashner about a negative online article regarding the Merger. Stark quoted the following line in his email: “HL [Houlihan Lokey]

¹¹⁶ VTBH008036.

¹¹⁷ VTBH004040.

¹¹⁸ PAMT0060361.

¹¹⁹ PAMT0038812; PAMT0060361; PAMT0060361; PAMT0060541.

¹²⁰ PAMT0052416.

¹²¹ PAMT0041742.

1 contacted 13 parties with no interest and then 49 parties with no interest.”¹²² Stark asked
2 Potashner,”Can you provide the bullets to counter this please?”¹²³ What Stark did not realize—
3 nor did Potashner when he responded—was that the above quoted line was in fact summarizing
4 language from the Proxy itself.¹²⁴ Regarding the go-shop, after mentioning that 49 parties were
5 contacted, the Proxy stated: “None of these prospective buyers, or any other parties, expressed
6 interest in making an acquisition proposal for Parametric.”¹²⁵

7 115. Potashner responded with his “counter” to this language, writing to Stark: Dolby
8 and Amazon had interest. I will take you through the discussions when we are together. I put
9 boundaries that were very difficult in that I didn’t want an exit given that the \$ 150M valuation
10 although good for merger calculations was light in mind for an exit. I would not have let you take
11 us private either. Better to discuss face to face.¹²⁶

12 116. For context, a valuation for Parametric of \$150 million would have amounted to
13 above \$19.00 per share at the time of the Merger. On August 2, 2013, for example, Parametric’s
14 market capitalization existed at approximately \$135 million.¹²⁷ Yet Potashner egregiously “put
15 boundaries in place” to prevent \$150 million offers because he personally did not want them.

16 117. The go-shop also contained several structural problems. First, the Break-Up
17 License applied fully during the go-shop, which precluded bids (as discussed below). Second, the
18 five day business match-right provision also barred potential bidders by, according to Professor
19 Subramanian of Harvard Business School and Harvard School of Law, “allow[ing] Turtle Beach
20 to slow down, and potentially run out the clock on, a potential third-party bid,” resulting in an
21 “infeasible” timeframe for a competing bid. Third, Houlihan Lokey, a conflicted financial advisor,
22 was allowed to participate in the “solicitation” of other bidders in Potashner’s “go shop.” Like
23 Potashner and Stark, Houlihan Lokey had no incentive to actually find an alternate bidder during
24

25
26 ¹²² PAMTNV0090998.

27 ¹²³ Id.

28 ¹²⁴ VTBH048603.

¹²⁵ Proxy at 58.

¹²⁶ PAMTNV0090998.

¹²⁷ PAMTNV0101319.

the go-shop process, and every incentive not to. Houlihan Lokey's engagement fee had already been curtailed significantly when it was forced to rebate \$300,000 to pay for the Craig-Hallum fairness opinion fee after it was discovered that Houlihan Lokey had represented VTBH in its private sales process in 2011 and was thus conflicted.¹²⁸ Houlihan Lokey also sought a financing role from Stripes Group on the Merger itself.¹²⁹

V. THE STOCKHOLDER VOTE WAS BOTH UNINFORMED AND COERCIVE

A. Defendants Purposefully Submitted a Misleading Proxy to Parametric Stockholders

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

119. Defendants designed the Proxy in order to conceal material information from Parametric stockholders and cram through the disastrous Merger for their personal benefit. Unlike most mergers where a pure majority is required for approval, this Merger only required a majority approval of the votes cast at the special meeting. When Kenworthy asked how many non-insider votes were required, Potashner proudly explained, "I skewed the scenario so we don't need 50% of the vote. Just 50% of those in attendance or those who vote their proxy. This should help."¹³⁰

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

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

¹²⁸ Deposition Transcript of Daniel Hoverman ("Hoverman Tr.") at 110-11, 154, 213-20.

¹²⁹ Id.

¹³⁰ VTBH015502.

fact.

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

Our [Fairness Opinion/Proxy Projections] are a bit high and reflect what we believed would happen this year. I believe they were done in the Spring timeframe (May?) 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.¹³¹

122. On August 2, 2013, Craig-Hallum relied on these outdated projections to render its fairness opinion.¹³² Notably, the Fairness Opinion/Proxy Projections contained 2013 Adjusted EBITDA of \$40.6 million and 2013 net revenue of \$218 million for VTBH.¹³³ Less than a week later, Stark confirmed to Fox, Kenworthy, Doornick, and others that those numbers were inaccurate, and that VTBH's "best estimates right now" came to just \$32 million to \$40 million for 2013 EBITDA, and just \$190 million to \$215 million for 2013 net revenue, meaning the entire ranges provided by Stark fell below the corresponding values used in the Fairness Opinion/Proxy Projections.¹³⁴

123. VTBH's estimates for beyond 2013 were also wildly misleading. For 2014, VTBH's downside projection for revenue and EBITDA was \$247.8 million and \$49.9 million, which was below the Craig-Hallum fairness opinion figures of \$268.6 million and \$56.7 million, respectively. VTBH lowered these projections again in December 10, 2013, adjusting revenue and EBITDA to \$205.8 million and \$29.9 million, respectively.

124. In addition, although the Proxy forecasted \$100.4 million EBITDA for 2016,

¹³¹ VTBH093183.

¹³² PAMT0056986; Proxy at 74.

¹³³ *Id.*

¹³⁴ VTBH015820.

internally Stripes knew that “\$100m of EBITDA by 2016 is possible but requires upside scenarios to occur across all of our business segments and for us to become #3 player in high-end stereo/mobile headsets or for us to find new audio or gaming markets that can contribute \$20-\$40m of new EBITDA (=\$100 to \$200m of new revenue).” In other words, VTBH’s estimates were divorced from reality.

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

126. Potashner knew as of August 8, 2013 that VTBH’s latest “best estimates” were below the corresponding values in the Fairness Opinion/Proxy Projections, but was determined to push the Merger through even if it meant standing by the inaccurate values. On August 8, 2013, Potashner told Stark to “be aware that the fairness opinion will become public with proxy so you don’t want to be pessimistic to the point you contradict the data you provided that was basis for that opinion.”¹³⁵

127. Potashner forwarded this email to Todd, at which point Todd responded:

The more I think about it I don’t know how you can go out with any numbers that are lower than fairness opinion unless there has been a material change in business. I think we are boxed in that 2013, 2014 first look must match fairness opinion. Otherwise you need to conclude fairness opinion was wrong.¹³⁶

128. On August 9, 2013, notwithstanding Potashner’s and Stark’s knowledge about VTBH’s deteriorating financial condition, the two executives gave a false and materially misleading portrayal of VTBH and what they anticipated from VTBH in terms of future earnings during Parametric’s third-quarter 2013 earnings conference call. During the call, Stark told investors that “[they] expect[ed] our 2013 revenues to be in the range of \$190 million to \$215

¹³⁵ PAMTNV0100953.

¹³⁶ *Id.*

million and our EBITDA to be in the range of \$32 million to \$40 million.” VTBH ultimately missed this target by **61%** (\$13.852 million actual compared to \$36 million estimated midpoint).

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

I recommend we take the long view, don’t get greedy and help us sail through the shareholder vote. Please note I didn’t try to renegotiate deal after you [VTBH] did a downward reforecast and then missed that reforecast.¹³⁷

130. VTBH continued its precipitous financial decline in September and October 2013. On October 7, 2013, Potashner explained to Stark that “Jim Barnes has been nervous for a bit that your Q2 numbers show you as losing money and having negative equity value.”¹³⁸ On October 14, 2013, Potashner wrote to Stark, “[t]he war is going to be getting shareholder support with deal terms that keep getting worse.”¹³⁹ Potashner also stated to Stark, “I have to do some damage control necessary to assure success with shareholder vote.”¹⁴⁰ Similarly, on October 18, 2013, Potashner told Stark that he has “been going over [numbers] with Jim [Barnes]. Shitty numbers. Money losing, negative equity, etc.”¹⁴¹

131. Despite VTBH’s deteriorating financial state, Defendants were determined to consummate the Merger, even if it meant defrauding Parametric stockholders. On October 25, 2013, Potashner informed Stark that “[i]nitial input is that changing the numbers might necessitate new fairness opinion. We are discussing implications of simply taking the numbers out of the proxy. Jim is leading this assessment and will [provide] more info later today.”¹⁴² On October 29, 2013, Potashner made the following revealing comment to Stark, Barnes and others:

As we discussed it is critical that the proxy leaves the tone of very positive financial numbers going forward. Even the actuals are weak for 13. Do you believe you accomplished this? This is the one key determinate of what the

¹³⁷ PAMTNV0099861.

¹³⁸ VTBH095533.

¹³⁹ PAMTNV0095569; PAMTNV0099861; PAMTNV0096468.

¹⁴⁰ PAMTNV0104228.

¹⁴¹ PAMTVNV0095570.

¹⁴² PAMTVNV0094986.

company will be valued at the day after the proxy and set the stage going forward.¹⁴³

132. Likewise, on October 31, 2013, Potashner explained to Stark that “there is a concern that given you brought down 2013 due to MSFT and CH [Craig-Hallum] may believe that [20]14 is off as well and thus fairness opinion exposed.”¹⁴⁴

133. On November 30, 2013, Potashner explained to Stark that “I think we (pamt) are under tremendous pressure in that the numbers keep getting softer, the apparent lack of controls, and the covenants exposures. The [‘]does this deal make sense[’] question is being asked.”¹⁴⁵ Later in the email chain Potashner stated that he has a “CFO who is very nervous and I am trying to get to the bottom of it.”¹⁴⁶

134. During this period, VTBH developed an updated set of projections that it would ultimately provide to its lender—PNC—to certify its compliance with certain debt covenants (the “Bank Projections”). On December 6, 2013, only three days after filing the Proxy, VTBH circulated a substantially final version of the Bank Projections.¹⁴⁷ VTBH ultimately sent the Bank Projections to PNC on December 19, 2013.¹⁴⁸

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

...

...

...

¹⁴³ PAMTNV0095423.

¹⁴⁴ VTBH089382.

¹⁴⁵ VTBH073092; PAMTNV0088385

¹⁴⁶ *Id.*

¹⁴⁷ VTBH02263.

¹⁴⁸ VTBH020031.

Set of Projections	2013 Net Revenue	2013 ADJUSTED EBITDA
Fairness Opinion/Proxy Projections	\$218 million	\$40.6 million ¹⁴⁹
Bank Projections Low-End	\$179.6 million	\$22.2 million
Bank Projections High-End	\$193 million	\$27.5 million ¹⁵⁰

136. In fact, in response to VTBH's rapidly deteriorating financial condition, PNC forced VTBH to restructure its credit facility with the bank. On January 16, 2014, the day after the Merger, the post-Merger Company filed a current report on Form 8-K disclosing the terms of the credit restructuring with PNC. In pertinent part, the current report stated that PNC had permitted VTBH to incur an additional \$7 million of subordinated debt and extend various repayment deadlines and credit limits in exchange for agreeing to strict and materially unfavorable leverage limits and capital requirements. PNC's restructuring of VTBH's credit facility qualified as a "VTBH Material Adverse Effect" under the terms of the Merger Agreement, yet Stark signed the Merger Agreement notwithstanding.¹⁵¹

137. The misleading summary of VTBH's expected financial results injected a material element of falsity into the Proxy, particularly given that 80% of the proffered Merger consideration—and thus Craig-Hallum's fairness opinion as presented in the Proxy—was based

¹⁴⁹ PAMT0056986; Proxy at 74.

¹⁵⁰ VTBH020033. As contained in the Bank Projections' calculation of EBITDA, which is consistent with, if not conservative relative to, the Proxy's description of Adjusted EBITDA for VTBH used in Craig-Hallum's fairness opinion: "EBITDA is calculated as net income (earnings), 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."

¹⁵¹ Pursuant to the Merger Agreement, a "VTBH Material Adverse Event" is defined in pertinent part as follows: "any change, state of facts, circumstance, event or effect that, individually or in the aggregate, is materially adverse to (A) the financial condition, properties, assets, liabilities, obligations (whether accrued, absolute, contingent or otherwise), businesses or results of operations of VTBH and the VTBH Subsidiaries, taken as a whole, and/or (B) the ability of VTBH to perform its obligations under this Agreement"

on inaccurately on inflated figures.

138. In sum, Defendants' internal communications indicate that they were aware that VTBH's projections in the Craig-Hallum fairness opinion and Proxy were false and/or materially misleading.

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

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

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

140. In addition to the misleading Proxy, Defendants structurally coerced Parametric stockholders into voting in favor of the Merger. The Merger Agreement contained a draconian "Break-Up License" provision, which prevented other bids and penalized Parametric stockholders in the event they voted against the Merger. If Parametric shareholders had voted against the Merger or Parametric otherwise accepted a better offer, Parametric would have been forced to provide VTBH with (1) an exclusive (even as to Parametric) worldwide license to Parametric's HyperSound technology in the "console audio products field" (i.e., gaming applications), and (2) a non-exclusive worldwide license to Parametric's HyperSound technology in the "computer audio products field." Parametric would have received a 6% royalty on net sales of such products, and 30% from any sublicenses that VTBH negotiated. The term of the Break-Up License was a

1 minimum of ten years, with a minimum royalty payment of \$2.0 million during the first five years
2 and \$1.0 million for each year after that (for a total minimum royalty payment of \$7.0 million). If
3 these minimum royalty payments were not made, Parametric had the right to convert the gaming
4 license to non-exclusive, but Parametric could not otherwise seek recourse from Turtle Beach for
5 any unpaid “minimum” royalties. The Merger Agreement also contained a highly unusual
6 combination of a five business day match-right provision and a 30-day “go-shop” provision.

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

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

11 142. Potashner licensed Parametric’s “crown jewel” intellectual property at less than
12 fair market value and under terms that did not reflect Parametric’s existing licensing strategy.
13 Parametric’s IP commanded higher royalties in other licensing agreements. In fact, all of
14 Parametric’s then-existing licensing agreements existed at a 15% royalty rate, much higher than
15 the paltry 6% rate contained in the Break-Up License. For example, Parametric signed a deal with
16 Epsilon to license HyperSound’s automotive applications for \$1 million for development of a new
17 device and a 15% royalty for revenue over \$6.67 million.¹⁵² Parametric also licensed
18 HyperSound’s health care application to its subsidiary HHI for 15% of revenue.¹⁵³ Given that the
19 latter was an interested transaction with Potashner, the Board cannot argue that 15% HHI royalty
20 was not made on fair terms.

21 143. Potashner confirmed these facts when he admitted to Stark that the Break-Up
22 License’s royalty, then at 5.5%, was “well below the other deals I am working on within the
23 licensing realm.”¹⁵⁴ Potashner also stated: “I am also willing to have a break up consideration that
24

25
26 ¹⁵² PAMT0007031.

27 ¹⁵³ Parametric Sound Corp., Quarterly Report (Form 10-Q), at 14 (May 2, 2013), available at:
28 http://www.sec.gov/Archives/edgar/data/1493761/000101968713001603/pamt_10q-033113.htm.

¹⁵⁴ 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.”¹⁵⁵

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

5 144. 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
7 follows:

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

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

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

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

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

22 (5) While the Break-Up Fee License Agreement and the Match Right/Go-
23 Shop Provision each have a deterrent effect on their own, it is my opinion
24 that the combined effect of these three provisions is highly likely to deter
25 other bidders. This conclusion becomes stronger to the extent that the
26 Break-Up Fee License Agreement was struck at less than fair market
27 value.¹⁵⁶

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

¹⁵⁵ *Id.*, PAMT0039756

¹⁵⁶ Subramanian Decl., ¶ 14.

[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 exercise the option and siphon value out of the company. Foreseeing this, shareholders may vote for the deal even if they believe it is below fair value.¹⁵⁷

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

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

147. Neither Potashner nor the rest of the Board asked their financial advisors, Houlihan Lokey and Craig-Hallum, to conduct a valuation of the Break-Up License or otherwise analyze its appropriateness as a deal term.¹⁵⁸ Craig-Hallum did not even know the provision existed.¹⁵⁹

148. Potashner and the Board did nothing to value the asset lockup, even though Parametric’s CFO recognized that “[a]n exclusive license has a major impact on valuation, etc. so that needs evaluation.”¹⁶⁰ In addition, Potashner did not take any real effort to consider the value of the Break-Up License to VTBH or any other potential buyer.¹⁶¹

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

149. Potashner negotiated all major terms of the Break-Up License without Outside Director involvement. Potashner and Stark first conceived the Break-Up License during their initial discussions in March 2013.¹⁶² By April 19, 2013, Stark and Potashner agreed on a term sheet that noted the Break-Up License “still needs discussion,” but specifically described an exclusive license for gaming, exclusive license for “PC audio,” and the same 6% royalty rate and 30% re-license royalty rate that ultimately appeared in the Merger Agreement.¹⁶³

¹⁵⁷ Subramanian Decl., ¶57.

¹⁵⁸ Deposition Transcript of David Wambeke (“Wambeke Tr.”) at 157-58; Deposition Transcript of Kenneth Potashner (“Potashner Tr.”) at 78.

¹⁵⁹ Wambeke Tr. at 157-58

¹⁶⁰ Potashner Depo. Ex. 4.

¹⁶¹ Potashner Tr. at 67-68.

¹⁶² Potashner Depo. Ex. 3; Potashner Depo. Ex. 5; PAMT0039748-49.

¹⁶³ PAMT0049600-07.

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

2 I am getting substantial push back from counsel on the exclusive license of
3 the element of the breakup 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
6 had presence in both sectors (i.e. Sony). We have BOD record that states
7 we would want near full market cap exclusive full consumer/gaming.

8 Therefore, the issuance of an exclusive gaming as breakup is deemed well
9 in excess of traditional breakup fees and thus BOD fiduciary issue.¹⁶⁴

10 151. 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
12 conference, the next day, April 25, 2013, Potashner requested and received approval for the Break-
13 Up License.¹⁶⁵

14 152. 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
18 fact Potashner—not Wolfe—who finalized the key terms of the Break-Up License. On June 19,
19 2013, Potashner unilaterally approved all of the key terms of the Break-Up License for inclusion
20 into the Merger Agreement.¹⁶⁶

21 153. 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
23 by Potashner on June 19, 2013 remained in the drafts circulated throughout July 2013 and made
24 their way into both the final Merger Agreement and the Break-Up License.¹⁶⁷ Wolfe only
25 participated in a single conference call with Turtle Beach and counsel on July 24, 2013, which
26 had already been pre-negotiated by Stark and Potashner “before we engage the lawyers

27 ¹⁶⁴ PAMT0040125; PAMTNV0108234; PAMT0070745-48.

28 ¹⁶⁵ PAMT0000122.

¹⁶⁶ PAMT0040772.

¹⁶⁷ See, e.g., PAMT0065129; PAMT0065220; PAMT0069830.

tomorrow.”¹⁶⁸

154. Potashner never ceded control to Wolfe on Break-Up License negotiations. As late as July 31, 2013, two days before the Board voted on the Merger, Stark attempted to re-trade on the prior 6% license deal and Potashner responded directly before even informing Wolfe.¹⁶⁹ By the time Wolfe found out that there were open issues on the Break-Up License, he deferred to Potashner and asked him to work it out directly with Stark.¹⁷⁰ Potashner then provided final comments and approval.¹⁷¹ Throughout negotiations, Wolfe did not offer a single substantive comment on any material Break-Up License term.

5. Potashner and Stark Met with Parametric Stockholders Individually and Lied to Them to Win Their Votes in Favor of the Merger

155. Following announcement of the Merger on August 5, 2013, Defendants engaged in a fraudulent push to win over Parametric shareholder approval. This campaign included meeting one-on-one with large Parametric shareholders with significant influence over the company’s outstanding, non-insider shares.

156. Defendants held the following meetings with Plaintiff:

- On September 11, 2013, Potashner had dinner with Robert Masterson in Del Mar, California.
- On September 18, 2013, Stark had dinner with Robert Masterson at Mille Fleur in Rancho Santa Fe, California.
- On November 2, 2013, Potashner met with Barry Weisbord in Pasadena, California.
- On November 7, 2013, Stark met with Adam Kahn.

157. During each of the above meetings, Potashner and Stark made the same false and materially misleading statements that ultimately appeared in the Proxy on December 3, 2013. This

¹⁶⁸ PAMT0057667.

¹⁶⁹ PAMT0057413.

¹⁷⁰ VTBH000527.

¹⁷¹ See, e.g., PAMT0066252; PAMT0066296; PAMT0066298.

1 included concealing the fact that VTBH was experiencing a significant financial decline and was
2 not worth as much as Defendants had been representing.

3 158. In the Proxy, Defendants represented that VTBH's net sales and EBITDA for 2013
4 was \$218 million and \$40.6 million, respectively. Just 60 days later, VTBH's net sales and
5 EBITDA had fallen to \$178,741,463 and \$14,932,368. These declines, which amounted to 18%
6 and 63%, were known and already occurring when Stark and Potashner met with Plaintiff on the
7 above-listed dates and fraudulently induced them to vote in favor of the Merger.

8 159. The Proxy also materially overstated VTBH's net sales and EBTIDA for 2014 and
9 2015. Indeed, within just 60 days of the Proxy, the post-Merger Company lowered its Proxy
10 projections for 2014 net sales and EBTIDA from \$268,600,000 (net sales) and \$56,700,000
11 (EBITDA) to \$209,100,000 (net sales) and \$21,879,708 (EBITDA), declines of 22% and 61%,
12 respectively.

13 160. Similarly, for 2015, within 60 days of the Proxy the post-Merger Company lowered
14 its Proxy projections for 2015 net revenue and EBTIDA from \$335,100,000 (net sales) and
15 \$82,800,000 (EBITDA) to \$232,716,000 (net sales) and \$27,960,184 (EBITDA), declines of 30%
16 and 66%, respectively.

17 **VI. PAMTP LLC WAS DAMAGED BASED ON THE EXCESSIVE**
18 **OVERVALUATION OF VTBH AND THE UNDERVALUATION OF**
19 **PARAMETRIC**

20 161. Before Potashner embarked on the value-destroying Merger process, Parametric
21 was a promising young tech company with a valuable intellectual property portfolio and that
22 expected full profitability in 2014. On March 18, 2013, Potashner remarked to a fellow Board
23 member that Parametric was "one of the biggest success stories on NASDAQ this year."¹⁷²
24 Potashner confirmed three days later that Parametric was "one of the best performing companies
25 in the country."¹⁷³ On March 25, 2013, the Company provided outlook for fiscal year 2013. The
26

27
28 ¹⁷² PAMTNV0113889.

¹⁷³ Id.

Company announced that it was expecting to be cash flow positive from operations for 2014 from its core digital signage and licensing business: “We have been able to advance strategic licensing discussions and we have achieved success on several recent digital signage pilot projects that we expect will translate to high volume customer orders late in 2013 and in 2014. As a result, we anticipate that we will be operating cash flow positive in 2014.” Around that time, however, Potashner began delaying Parametric’s business efforts and licensing activities, thus materially undermining the Company’s future business prospects.

162. As noted, Parametric’s stock closed at \$17.69 per share on August 5, 2013, and at the time the original complaint was filed, the same share of stock sat at less than \$1.00 per share. Defendants knew—but concealed—that they were causing Parametric to grossly overpay for VTBH’s assets.

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

163. When agreeing to the Merger, the 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 stockholders. Parametric shareholders were reduced from full majority ownership to less than a 20% ownership in a deteriorating financial entity. In the months leading to the Merger, VTBH repeatedly tripped its debt covenants with third-party lenders and defendants were forced to scramble in order to figure out how to finalize a transaction where 4/5 of the consideration was allocated to a distressed entity. As Potashner summarized on December 12, 2013, Parametric’s stock price had declined since the Merger because, inter alia, of the perception that “PAMT shareholders are getting 19% of something not worth much.”¹⁷⁴

164. As also described in greater detail above, all Defendants knew that VTBH’s performance was falling to levels well below the numbers presented to Craig-Hallum for its “fairness opinion” on the Merger. For example, regarding VTBH’s anticipated 2013 revenues and

¹⁷⁴ PAMTNV0088100.

1 cash flows, Defendants knew that the numbers used by Craig-Hallum were inaccurate, outdated,
2 and misleading. These problems of course flowed through the later years of VTBH's financial
3 projections, rendering the 2014-2016 figures used by Craig-Hallum for VTBH inflated and
4 misleading as well. As noted above, Potashner explained that Craig-Hallum's fairness opinion
5 resulted in an opinion of "barely fair." And that was with VTBH's inflated numbers. If Craig-
6 Hallum had utilized VTBH's real financial numbers during pendency of the Merger, the valuations
7 would have shifted entirely outside the range of fairness.

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

11 166. Following the Merger, Stark admitted to investors in private communications that
12 he and other VTBH insiders simply made up impossible numbers in order to steal value from
13 legacy Parametric shareholders and close the merger on their own terms. In particular, Stark at
14 different times admitted that "we just put those numbers out to get the deal done," that
15 "[HyperSound] hasn't hit their numbers either" (referring to VTBH's core product), "the company
16 had no infrastructure," and "those margins were never going to be repeated."

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

19 167. The Board approved the Merger based on Craig-Hallum's analysis that excluded
20 all licensing revenue for Parametric, even though Parametric's CFO admitted that "we fully
21 expect" a licensing revenue stream.¹⁷⁵ Digital signage and HHI were the only sources of revenue
22 included in the final projections.¹⁷⁶ In contrast, however, Parametric's March 2013 investor
23 presentation identified its "Licensing strategy" as a key "Capital Light Business Model" that
24 could generate "Recurring Revenue Streams."¹⁷⁷ The same presentation touted Parametric's

27 ¹⁷⁵PAMT0044589; PAMT0053793

28 ¹⁷⁶ PAMT0044589.

¹⁷⁷ PAMT0000313.

1 “Strong IP Portfolio” and explained that “Strong IP supports licensing for volume markets.”
2 Similarly, Parametric’s 2012 investor presentation touted “Gaming Consoles/Computers” as part
3 of its 2012-2013 “IP Strategy-Partner and License” and planned a lucrative entry into a \$68 billion
4 annual video gaming market.¹⁷⁸

5 168. The Board knew that the Company’s licensing activities were viable, but acted in
6 bad faith when it approved the Merger based on flawed financial projections with a material
7 omission. The Board also acted in bad faith when it consciously disregarded a known component
8 of Parametric’s standalone value by engaging and/or permitting Potashner to engage, in the
9 following activity: (a) Potashner sat on Optek Electronics’ offer to pay Parametric a 9% royalty
10 to “aggressive[ly] rollout” Hypersound technology in hundreds of thousands of Optek soundbars
11 and headphones destined for Costco Wholesale Corporation (“Costco”) shelves in time for the
12 2013 Christmas shopping season; (b) the Board approved the Merger based on Craig-Hallum
13 analysis the Board knew excluded potential Optek revenue; and (c) Potashner encouraged Turtle
14 Beach CEO Stark to negotiate with Optek for Turtle Beach’s benefit two weeks into the Go-Shop
15 process and months before shareholders voted on the Merger.¹⁷⁹

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

17 Craig-Hallum was using the fairness opinion, for which it was paid just \$200,000, as an
18 opportunity to pitch a more lucrative role in obtaining \$500,000 to \$700,000 in fees for additional
19 equity financing.¹⁸⁰ In March 2013, Craig-Hallum pitched for a role in an equity offering by
20 Parametric and, days after rendering the fairness opinion, Rick Hartfiel, Director of Investment
21 Banking at Craig-Hallum, recommended a \$10 million offering “at around a 15-20% discount to
22 market.”¹⁸¹ In fact, Craig-Hallum’s representative admitted at deposition that it was “pitching its
23 participation in [an] equity offering” during the August 2013 timeframe.¹⁸² There was no ethical
24

25
26 ¹⁷⁸ PAMT0053887.

27 ¹⁷⁹ PAMT0032661; PAMT0000006; PAMT0039019; PAMT0034497; PAMT0058676

28 ¹⁸⁰ PAMT0038785.

¹⁸¹ Wambeke Tr. at 122-23 and Ex. 2; PAMT0047470; PAMT0046980.

¹⁸² Wambeke Tr. at 118.

1 wall to separate the bankers involved in the fairness opinion and those individuals simultaneously
2 pitching the more lucrative work.¹⁸³

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

6 169. The Merger was not approved by a majority of disinterested and independent
7 directors. At the time of the Board's Merger vote on August 2, 2013, the Board had six members
8 (including Putterman who although at the time was identified as an independent director was in
9 fact not). All six of those individuals were conflicted and/or acted in self-interest when voting on
10 the Merger. Those conflicts are broken down as follows:

11 170. **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-
14 interest."¹⁸⁴

15 171. Potashner suffered from multiple conflicts in connection with the Merger. *First*,
16 Potashner was conflicted in light of his plan to use the Merger as a means to personally profit from
17 Parametric's hearing-related initiatives. Potashner saw great personal "liquidity" in HHI, later
18 admitting that "I believe over time the HHI component will be worth a billion."¹⁸⁵ In fact, at a
19 December 13, 2012 Board meeting, Potashner "outlined the longer-term plans for him to transition
20 more time to HHP' and that, as a result, Parametric itself would need a new CEO."¹⁸⁶

21 172. As noted above, Potashner admitted that the "whole reason that I entered into the
22 deal [with VTBH] in the first place [was] [t]o build a multi-billion dollar HHI and benefit from
23 it"¹⁸⁷ and that "[m]y intent was to sell PAMT at the right time and keep HHi as the foundation of
24

25
26 ¹⁸³ Wambeke Tr. at 119-20, 122-23, 125-26.

27 ¹⁸⁴ PAMTNV0112517.

¹⁸⁵ PAMT004036.

¹⁸⁶ PAMT0000006-07; PAMT00000062

28 ¹⁸⁷ PAMTNV0105035; VTBH009741

1 a new company.”¹⁸⁸ Potashner also requested a “gentlemen agreement” for a consulting deal.¹⁸⁹
2 And as noted above, even after the Parametric Board voted on the Merger, Stripes manipulated
3 Potashner into believing that he could monetize his role in HHI.¹⁹⁰

4 173. **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
6 severance payments and lockup agreements directly with Stark, including the day the Board voted
7 on the Merger.¹⁹¹ Indeed, another Parametric Board member confirmed on August 2, 2013, the
8 morning of the final Board vote on the Merger, that “since [Potashner] has been spending all his
9 time on this merger and not on getting us licenses for the technology, he has negotiated that he get
10 paid his bonus anyway-if the deal goes through.”¹⁹²

11 174. 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?”¹⁹³ 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
17 Parametric. For instance, we can see on page 77 [of the Proxy] that Kenneth
18 Potashner, the Chairman, will be entitled to over \$2.8 million of payments
19 that are triggered on a change of control. The proxy also reveals that he will
20 continue on with a board seat following the merger, which is likely to be a
21 cushy and lucrative endeavor for him.¹⁹⁴

22 175. **Third**, Potashner also negotiated for himself a continued seat on the Company’s
23 board after the Merger, which he believed would assist in his monetization of HHI. Potashner
24 even snuck also in a reference to his being named to that position to the Merger press release.
25 Stark reported on August 3, 2013, two days before the Merger was announced, that “Ken added a

26 ¹⁸⁸ VTBH000124.

27 ¹⁸⁹ Id.

28 ¹⁹⁰ See also PAMTNV0099274.

¹⁹¹ VTBH000111; VTBH006118; VTBH013231.

¹⁹² PAMTNV0115196.

¹⁹³ VTBH048603.

¹⁹⁴ Id.

sentence to the press release saying he was going to be on the combined company board.”¹⁹⁵ Potashner was forced to apologize three months later, at an October 24, 2013 Parametric Board meeting, for naming himself without Board approval.¹⁹⁶ In response, Putterman reasonably proposed a re-vote to name a different individual.¹⁹⁷ Potashner so coveted the post-Merger board seat that he responded to Putterman later that day: “[Your proposal] hits a nerve with me. It is unlikely that I can work with you in the future or support your involvement on anything I am affiliated with. More important you take on incredible personal liability if it can be demonstrated that you are participating in a plan to deceive our shareholders.”¹⁹⁸ Potashner was right on the latter point.

176. Potashner sought the outside director board seat to avoid the hours required by a chief executive officer. In Potashner’s own words, “[I am] not interested in being CEO...The whole point of me doing the deal was to not have to be a CEO.”¹⁹⁹

177. When Fox of Stripes Group learned that Potashner was named Parametric’s post-Merger board representative, he observed: “Interesting outcome I guess in the end he just cared more than all the directors and won the battle.”²⁰⁰

178. **Fourth**, Potashner was so determined to protect his own interests that he made a series of threats and misrepresentations to the Parametric Board throughout the Merger negotiations. Potashner repeatedly misrepresented and concealed information to the rest of the Parametric Board, defied the Board’s orders not to discuss certain issues with VTBH on several occasions, and threatened to displace the entire Board and sue them all if they did not cave to his personal compensation demands. Defendant and Parametric Board member Norris pleading with Potashner during Merger negotiations: “Please start acting like you are working for PAMT, not

¹⁹⁵ VTBH001587.

¹⁹⁶ PAMTNV0115179.

¹⁹⁷ Id.

¹⁹⁸ PAMTNV0112296.

¹⁹⁹ PAMTNV0086846.

²⁰⁰ VTBH016192

1 yourself!”²⁰¹ In sum, Potashner’s conduct is not the hallmark of a disinterested, independent
2 director acting with fidelity to corporate interest alone.

3 179. **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,
5 and related susceptibility to Potashner’s threats. Potashner recognized these conflicts and
6 pounced, threatening Norris that he would personally lose millions if Norris did not go along with
7 the planned Merger. On March 29, 2013, as Potashner was working out a deal with Stark,
8 Potashner emailed Norris privately to state that the Merger was in doubt and that “[i]f the bod
9 [Board of Directors] costs us this deal I will look for them all to resign or I will resign. The Bod
10 is on the verge of losing you at least \$10m personally.”²⁰² Norris was thus uniquely susceptible to
11 Potashner’s threats.

12 180. Norris was also conflicted when voting on the Merger because, at the same meeting
13 where he approved the deal, the Board—with Norris present—agreed to pay Norris his maximum
14 target bonus rate of \$81,000, even though the performance conditions had not yet been met.²⁰³

15 181. Moreover, Norris remained with the Company post-Merger as its “Chief Scientist”
16 at least through the end of 2016.²⁰⁴ Norris was aware of this incentive when he voted on the
17 Merger—by July 1, 2013, Potashner stated that a term of the then-current Merger Agreement
18 stated, “Woody Norris to have an employment contract with ‘Newco’” post-Merger.²⁰⁵

19 182. **Andrew Wolfe.** Wolfe was beholden to Potashner in light of their prior
20 relationship in threatening boards for personal compensation and Potashner’s continued improper
21 incentivizing of Wolfe to do Potashner’s bidding. Potashner, Wolfe, and Todd worked together,
22 respectively, as CEO, Chief Technology Officer (“CTO”), and Vice President of SonicBlue, Inc.
23 (“SonicBlue”). Potashner promoted Wolfe to CTO and Senior Vice President of Business
24

25
26 ²⁰¹ PAMTNV0112541.

²⁰² PAMT0033560.

²⁰³ PAMT0000189.

²⁰⁴ <http://hypersound.com/hypersound-expecting-european-growth-with-directional-audio-systems.php>.

²⁰⁵ PAMT0061388.

Development then procured company-issued loans for himself and Wolfe to purchase shares of a SonicBlue subsidiary, RioPort, Inc. (similar to HHI).

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

184. Wolfe was in Potashner's debt and Potashner continued this pattern by personally luring Wolfe to the Parametric Board in February 2012. When Potashner began angling for a post-Merger board seat with Turtle Beach, Potashner pushed for only two candidates—Potashner and Wolfe. Potashner did so repeatedly, including on April 23, 2013 (Wolfe identified by Stripes as post-close member "recommended by Ken Potashner"); July 1, 2013 (Potashner writes to Stark, "I will be the choice ... I will also recommend we add Andy Wolfe to BOD"); July 3, 2013 (Potashner writes to Stark regarding the post-Merger board, "I highly recommend myself and Andy Wolfe become the 2 from our side. Not one of the other directors is even remotely qualified."); and July 5, 2013 (Potashner to Stark, Wolfe "will be my recommendation for the 2ND BOD seat should PAMT go to 2").²⁰⁶ Wolfe currently remains on the post-Merger Turtle Beach board of directors.

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

186. **Dr. Robert Kaplan.** Despite not participating in a single discussion with VTBH, Kaplan voted on the Merger while vying for a personal payment to "get even" with Potashner. Kaplan explained on July 28, 2013 that he should be personally paid because the independent directors "are legally exposed to a lot of the decisions he [Potashner] forces upon us."²⁰⁷

187. The day of the most significant vote in Parametric's corporate existence, Kaplan

²⁰⁶ PAMTNV0105448; VTBH013411; VTBH010857; VTBH004242; PAMTNV0105849.

²⁰⁷ PAMTNV0115287.

1 spent his time emailing about the personal bonus he felt the independent directors should receive.
2 The Parametric Board voted on the Merger at a 4 p.m. meeting on August 2, 2013. That morning,
3 Kaplan expressed surprise to Putterman that “Neither the vesting of our options nor the
4 compensation of the independent directors is mentioned in the [Merger Agreement].”²⁰⁸ So, one
5 hour before the meeting, Kaplan wrote to propose the following resolution:

6 “\$50,000 is to be paid to each of the independent directors as compensation
7 for their continuing efforts and activity in Corporate Development. This
8 money is to be paid immediately.” I mentioned this thought to you
previously and have discussed it with Seth [Putterman]. Since it should not
be tied to the merger, I have described it differently.²⁰⁹

9 188. At the meeting an hour later, a few minutes before the Board actually voted on the
10 Merger, the Board agreed to table the final decision on their bonuses: “The Board next discussed
11 potential cash bonuses for the directors based on their increased level of work related to the Merger
12 Agreement and other contemporaneous matters, but deferred any decision related thereto.”²¹⁰
13 After voting on the Merger, the Board adjourned at 5:00 p.m.²¹¹ Kaplan, however, still believed
14 he would receive a cash bonus. At 7:35 p.m. that evening, Kaplan continued in his personal quest
15 for a Merger-related bonus, upping the ante:

16 I used 50K as a starting point...My real suggestion is to have an average of
17 all the executive bonuses and that figure is what the IDs [Independent
18 Directors] should get. Ken has granted himself rather large bonuses. This
will get even with him, not that I want to get even, I really just want
equality.²¹²

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

24
25
26 ²⁰⁸ PAMTNV0115196.

27 ²⁰⁹ PAMT0072324.

28 ²¹⁰ PAMT0000189.

²¹¹ Id.

²¹² PAMT0072292.

options pre merger).”²¹³ As a result, the Board attempted to put a last-minute addition into the Merger schedules that each outside director receive a personal fee for the Merger.²¹⁴

190. These payments were material to Kaplan personally and, as demonstrated above, he was operating under the belief that he would receive the Merger-related bonus at the time he voted on the Merger. In fact, even in the Proxy released on December 3, 2013, Defendants kept the option open, stating that “in connection with the negotiation and execution of the merger agreement, Parametric may elect to pay a fee to each of the non-employee members of the Parametric Board, commensurate to the incremental time devoted by them apart from normal board of director service in 2013, related to review and analysis of strategic transactions and related matters.”²¹⁵

191. **Seth Putterman.** Like Kaplan, Putterman also voted on the Merger with the expectation of receiving a cash bonus. At 4:50 p.m. on August 2, 2013, during the very meeting while Putterman and the rest of the Board were voting on the Merger, Putterman agreed with Kaplan’s bonus request in general, but offered a different rationale: “Can the bonus be made contingent on successfully raising the 5-15M\$ that we seek prior to closing but that we need in any event!”²¹⁶ Putterman knew his proposed rationale had no merit—Putterman was not involved in obtaining the financing and conducted no actual work in doing so. Putterman did not contact any financing sources, did not engage in an independent discussion with the bankers, and did not perform any analysis on the financing documents.

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

²¹³ PAMT0033288

²¹⁴ VTBH001570.

²¹⁵ Proxy at 75.

²¹⁶ PAMT0072324.

payments “exceeded the \$120,000 compensation limit set forth in NASDAQ Marketplace Rule 5605(a)(2)(B) and therefore precludes Dr. Putterman from being deemed independent according to this rule.”²¹⁷ This meant that Parametric had been operating in violation of NASDAQ rules throughout the Merger process because half of its six-member Board was not independent (Potashner, Norris and Putterman). Consequently, on November 21, 2013, three months after voting on the Merger, Putterman tendered his resignation from the Parametric Board.

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

VIII. STRIPES GROUP SOUGHT TO EFFECTUATE THE MERGER FOR ITS OWN SELF-INTERESTED REASONS

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

194. Stripes Group pushed through the Merger in order to obtain liquidity for its failing investment in VTBH. Stripes Group intentionally did so in a way that harmed Parametric

²¹⁷ See <http://www.sec.gov/Archives/edgar/data/1493761/000101968713004399/parametric>

1 stockholders. As Potashner succinctly put it, “[I] have been going over [VTBH] financials in proxy
2 with Jim. Shitty numbers, money losing negative equity, etc. If Stripes was really interested in
3 doing an IPO next year they never should have replaced cash with debt layer. Anyway glad to
4 rescue your sorry ass and get you public.”²¹⁸

5 195. In 2013, Stripes Group—through SG VTB—was majority owner of VTBH. Given
6 VTBH’s rapidly deteriorating financial state, Stripes Group knew that it had to take VTBH public
7 to capitalize VTBH and gain liquidity for itself. But Stripes Group also knew it could not do so
8 by way of a traditional IPO. A traditional IPO would have subjected Stripes Group and VTBH to
9 intense financial scrutiny, which would have amounted to a test that VTBH could not pass. In fact,
10 in May 2013, Fox was specifically informed by the Global Head of Equity Sales at Barclays,
11 regarding a potential IPO for VTBH: “Right now, if you came to me and said we need to get an
12 offering done- I would say you can’t get it done.”²¹⁹

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

20 197. Potashner stated on several occasions that Stripes Group was using the Merger to
21 go public and all defendants understood this fact.²²⁰ For example, on September 5, 2013, while
22 discussing a closing condition PNC placed on the Merger, Potashner stated to Stark and Barnes:

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

26
27 ²¹⁸ PAMTNV0095569.

28 ²¹⁹ VTBH007665.

²²⁰ PAMT0041988; VTBH004981; PAMTNV0095553

1 what was silly was for stripes to allow PNC to dictate a term of a
2 requirement to raise \$5M as a closing condition at a time that I cant use my
3 shelf to do a 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.

4 When all the smoke settles Stripes will have 80% of something worth
5 \$400M if we are lucky instead of 80% of \$500M. \$80M paper loss. I know
6 we can argue day valuation doesnt matter but if it were me I write a \$5M
7 check to get the \$80M.

8 I know you are tired of this discussion but I am the one who is taking all
9 the calls from the pissed off investors.²²¹

10 198. After the Merger closed, Stripes Group engineered a series of post-close
11 transactions whereby SG VTB (Fox), Doornick, and Stark loaned money to the Company at
12 exorbitant interest rates, then forced the Company to issue stock to pay them back, with interest.²²²
13 Some of these were done just to close the merger Even Potashner labeled the 20% yield in year
14 two “way above market” in an email exchange with Stark.²²³

15 199. Importantly, all repayment came from public offerings and proceeds from a loan
16 drawn on the Company’s post-Merger credit facility- sources that were not available to Stripes
17 Group before the Merger. Stripes Group also repeatedly forced the Company to issue stock to
18 those same Stripes insiders at below-market prices, often purportedly in “consideration” for these
19 one-sided loans.

20 200. Former VTBH insiders took notice of this scheme. In February 2015, a VTBH
21 preferred stockholder, Dr. John Bonanno, filed a lawsuit in the Delaware Court of Chancery
22 against VTBH in order to force a redemption of Bonanno’s preferred stock as a result of the
23 Merger. In support for his allegation that Stripes Group and the Company had sufficient cash flow
24 to redeem Bonanno’s shares, Bonanno stated:

25
26 ²²¹PAMT0041988; VTBH004981; PAMTNV0095569.

27 ²²² Doornick’s transactions were executed through various trusts affiliated with Doornick,
28 including the Doornick Revocable Living Trust, the Ronald Doornick 2012 Irrevocable Trust, and
the Martha M. Doornick 2012 Irrevocable Trust. Doornick is co-trustee of the Doornick Revocable
Living Trust and is the beneficial owner of all shares held by that trust.

²²³ PAMTNV0104810.

[O]ver the course of the past year, [VTBHJ and Parametric, which report on a consolidated basis, have paid back to affiliates of Kenneth Fox more than \$17 million. In June 2014, Parametric used funds from a public offering to pay off subordinated notes issued by [VTB Holdings, Inc.] to SG VTB and affiliates, which included \$10 million outstanding principal plus related accrued interest that did not 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 debt and accrued interest with the proceeds of an additional loan drawn pursuant to the Credit Agreement.

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

- August 30, 2013: as a closing condition for the Merger, the Company issued \$10 million of subordinated notes (the "August 2013 Notes") to SG VTB,

Doornick and Stark that bore interest at a rate of (i) 10% per annum for the first year, and (ii) 20% per annum thereafter.²²⁴

- January 15, 2014: the Company issued a \$7 million subordinated note (the “January 2014 Note”) to SG VTB on substantially similar terms as the August 2013 Notes.
- April 24, 2014: the Company conducted a public offering and used more than \$10 million of the proceeds to pay back the outstanding principal and accrued interest of the August 2013 Notes to SG VTB, Doornick 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.
- April 23, 2015: the Company issued a \$5 million subordinated note (the “April 2015 Note”) to SG VTB on substantially similar terms as the August 2013 Notes.
- May 13, 2015: the Company issued \$3.8 million of subordinated notes (the “May 2014 Notes”) to SG VTB on substantially similar terms as the August 2013 Notes.
- June 17, 2015: the Company issued a \$3 million subordinated note (the “June 2015 Note”) to SG VTB that bore interest at a rate of (i) 10% per annum until September 17, 2015 (roughly three months after its issuance), and (ii) 20% per annum thereafter.
- July 8, 2015: SG VTB advanced the Company an additional \$6 million under the same terms as the June 2015 Note.
- July 22, 2015: the Company amended and restated each of the outstanding above-mentioned subordinated notes (the “Amended Notes”). The maturity date for the Amended Notes was extended to September 29, 2019, and the interest rate was amended so that the Amended Notes bore interest at a rate of LIBOR plus 10.5%. As purported “consideration” for accepting the terms of the Amended Notes, the Company issued warrants to purchase 1.7 million of the Company’s common stock at an exercise price of \$2.54 per share to SG VTB and Doornick.
- November 16, 2015: the Company issued \$2.5 million in a subordinated note (the “November 2015 Note”) to SG VTB that bore interest at a rate of 15% per annum until its maturity. As purported “consideration” for entering into the November 2015 Note, SG VTB received a Guaranty and Security Agreement that, inter alia, provided for a warrant to SG VTB to purchase roughly 1.4

²²⁴ Parametric’s December 3, 2013 Proxy informed Parametric stockholders that “the Stripes Group” received these notes

million shares of the Company's common stock at an exercise price of \$2.00 per share.

- February 2, 2016: the Company entered into an underwriting agreement relating to an underwritten public offering of 5,000,000 shares of common stock at a discounted price of \$1.00 per share. SG VTB purchased 800,000 shares, and Doornick purchased 500,000 shares in the public offering. In a concurrent private placement, the Company offered 1,700,000 shares of common stock at the same discounted price of \$1.00 per share to SG VTB only.

202. 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. This has remained true to the present day. Fox and Stark, in particular, have rewarded themselves handsomely over the years. Since the Merger, Stark has received over \$12 million in compensation, more than \$6 million of which has been in cash and the rest in equity. The following chart specifies the amount of compensation Stark was able to extract from the post-Merger company as a result of the fraud alleged herein:

2019	2018	2017	2016	2015	2014
\$2,197,200	\$4,928,950	\$1,256,514	\$1,329,178	\$1,508,344	\$820,196

203. Turtle Beach's CFO, John Hanson, also reaped outsized rewards as a result of the Merger. The following chart demonstrates the extent of his profit as a result of the fraud alleged herein:

2019	2018	2017	2016	2015	2014
\$992,043	\$948,417	\$607,908	\$595,499	\$581,644	\$2,822,653

204. Fox, for his part, has sold 3.7 million shares of Turtle Beach for proceeds of more than \$65 million. Meanwhile, Turtle Beach's stock price has declined consistently as the company continues to fall short of market expectations. Turtle Beach's stock traded for over \$55 per share at the start of 2014. By the end of 2019, Turtle Beach's stock was trading for under \$9 per share.

205. The following chart lists Fox's sales of Turtle Beach stock following the Merger:

Transaction	B/S	Amount	Price	Value
5/21/18	Sold	323,792	\$16.52	\$5,349,044
5/22/18	Sold	340,730	\$15.46	\$5,267,686
5/23/18	Sold	57,366	\$15.63	\$896,631
5/23/18	Sold	353,569	\$16.37	\$5,787,925
5/23/18	Sold	124,543	\$17.19	\$2,140,894
9/11/18	Sold	104,186	\$23.49	\$2,447,329
9/11/18	Sold	25,397	\$25.12	\$637,973
9/12/18	Sold	207,107	\$22.40	\$4,639,197
9/13/18	Sold	35,773	\$21.43	\$766,615
9/13/19	Sold	129,053	\$22.44	\$2,895,949
10/15/18	Sold	206,790	\$19.48	\$4,028,269
10/15/18	Sold	18,978	\$20.34	\$386,013
10/16/18	Sold	63,096	\$19.23	\$1,213,336
10/16/18	Sold	51,524	\$19.91	\$1,025,843
10/16/18	Sold	24,444	\$20.89	\$510,635
10/17/18	Sold	14,115	\$20.51	\$289,499
10/17/18	Sold	21,053	\$21.54	\$453,482
10/30/18	Sold	100,302	\$16.50	\$1,654,983
10/31/18	Sold	66,602	\$17.23	\$1,147,552
10/31/18	Sold	55,798	\$17.70	\$987,625
11/1/2018	Sold	47,459	\$18.18	\$862,805
11/1/2018	Sold	29,839	\$18.97	\$566,046
12/11/2018	Sold	91,600	\$17.62	\$1,613,992
12/12/2018	Sold	104,289	\$17.61	\$1,836,529
12/13/2018	Sold	81,579	\$16.57	\$1,351,764
12/13/2018	Sold	12,455	\$17.20	\$214,226
1/15/2019	Sold	59,816	\$15.87	\$949,280
1/16/2019	Sold	56,827	\$15.49	\$880,250
1/16/2019	Sold	5,597	\$16.14	\$90,336
1/17/2019	Sold	58,636	\$15.27	\$895,372
1/18/2019	Sold	499,600	\$16.55	\$8,268,380
1/18/2019	Sold	400	\$17.56	\$7,024
2/14/2019	Sold	111,100	\$18.26	\$2,028,686
2/15/2019	Sold	137,825	\$17.72	\$2,442,259
2/19/2019	Sold	53,239	\$17.07	\$908,790
2/26/2019	Sold	20,014	\$15.85	\$317,222
		3,694,493		\$65,759,438
		Shares	\$ Value	
		Sold	Sold	

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

206. 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 public filings that “Fox ... has voting and investment control over the securities held by SG VTB,” which includes a majority interest in VTBH and now Turtle Beach (through a “control group”).²²⁵ Moreover, according to Fox’s public filings: “SG VTB Holdings, LLC is wholly owned by SG Growth Partners I, LP. SGGP I, LLC is the general partner of SG Growth Partners I, LP. SGGP Holdings, LLC exercises investment discretion and control over securities held by SGGP I, LLC. Stripes Group, LLC, which is wholly owned by [Fox], exercises investment discretion and control over securities held by SGGP Holdings, LLC.”²²⁶ Given their affiliation and overlap in management, SG VTB’s actions can be attributed to Stripes Group.

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

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

²²⁵ <https://www.sec.gov/Archives/edgar/data/1493761/000119312517152072/d381010ddef14a.htm>.

²²⁶ <https://www.sec.gov/Archives/edgar/data/1493761/000118143114004004/xs1F345X03/rrd400192.xml>.

1 209. In committing the wrongful acts alleged herein, Stripes Group, SG VTB, VTBH
2 and the Parametric Board joined in the pursuit of a common course of conduct, and acted in concert
3 with and conspired with one another, in furtherance of their common plan or design. Each of the
4 defendants aided and abetted and rendered substantial assistance in the wrongs complained of
5 herein. In taking such action to substantially assist the commission of the wrongdoing complained
6 of herein, each defendant acted with knowledge of the primary wrongdoing, substantially assisted
7 the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and
8 furtherance of the wrongdoing.

9
10 **FIRST CAUSE OF ACTION**

11 **Breach of Fiduciary Duty (Equity Expropriation) – Individual Defendants**

12 210. Plaintiff repeats and realleges each and every allegation supporting the equity
13 expropriation claims as set forth herein.

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

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

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

217. 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.

Aiding and Abetting Breach of Fiduciary Duty (Equity Expropriation) – Fox, Stark, Stripes, SG VTB, and VTBH

221. Despite the unattractiveness of the dilutive Merger to Parametric public stockholders, the Parametric Board agreed that Stripes Group, SG VTB, and VTBH could acquire Parametric through a stock issuance that specifically diluted Parametric's stockholder base. Executives from Stripes Group, SG VTB, and VTBH knowingly induced the Parametric Board to

1 breach its fiduciary duties and, as a result, Stripes Group, SG VTB, and VTBH benefitted by
2 obtaining control of the Company and usurping its publicly traded status.

3 222. The Individual Defendants owed to Plaintiff certain fiduciary duties as fully set out
4 herein.

5 223. By committing the acts alleged herein, the Individual Defendants breached their
6 fiduciary duties owed to Plaintiff.

7 224. Fox, Stark, Stripes, SG VTB, and VTBH colluded in or aided and abetted the
8 Individual Defendants' breaches of fiduciary duties, and were active and knowing participants in
9 the Individual Defendants' breaches of fiduciary duties owed to Plaintiff.

10 **WHEREFORE**, Plaintiff demands judgment in its favor against Defendants as follows:

- 11 a) Declaring and decreeing that the Merger Agreement was unlawfully entered
12 into and that the Merger was consummated in breach of the fiduciary duties of
13 the Individual Defendants;
- 14 b) Awarding damages to Plaintiff sustained as a result of the misconduct set forth
15 above by each of the Defendants, jointly and severally, together with interest
16 thereon;
- 17 c) Determining and awarding Plaintiff exemplary damages in an amount
18 necessary to punish Stripes, Stark, Fox and Potashner and to make an example
19 of Stripes, Stark, Fox and Potashner to the corporate community, according to
20 proof at trial;
- 21 d) Awarding Plaintiff the costs of this action, including a reasonable allowance
22 for the fees and expenses of Plaintiff's attorneys and experts; and
- 23 e) Granting Plaintiff such further relief as the Court deems just and proper.

24 ...

25 ...

26 ...

27 ...

28 ...

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all applicable claims.

DATED this 20th day of May, 2020.

McDONALD CARANO LLP

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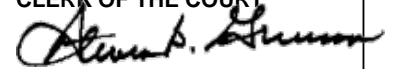
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND
CORPORATION SHAREHOLDERS'
LITIGATION

Case No.: A-13-686890-B

Dept. No.: XI

**ORDER DENYING DEFENDANTS'
MOTIONS TO DISMISS PLAINTIFF'S
COMPLAINT**

This Document Relates To:

ALL ACTIONS.

On August 10, 2020, the Court conducted an In Chambers hearing on (i) Motion to Dismiss on Behalf of Specially Appearing Defendants Stripes Group, LLC, SG VTB Holdings, LLC, Kenneth Fox, and Juergen Stark (the "Stripes Defendants") and (ii) Defendants' Motion to Dismiss for Failure to State a Claim (the "Director Defendants"). The Court, having reviewed the record and the briefs submitted in support of and in opposition to the motions to dismiss and being fully informed, the Court makes the following findings, conclusions of law and Order:

FACTUAL ALLEGATIONS

1. Plaintiff PAMTP LLC (“Plaintiff”) brings this case on behalf of several individuals and/or entities who “opted out” of the above-captioned class action litigation. Plaintiff’s Complaint lists the names of these individuals and/or entities and represents that they validly assigned their claims to Plaintiff for the purposes of this litigation. Complaint, ¶¶24, 25.

2. Plaintiff’s allegations arise from the January 15, 2014 merger between Parametric Sound Corporation (“Parametric”) and VTB Holdings, Inc. (“VTBH”). Immediately after close of the merger, Parametric issued dilutive shares to the Stripes Defendants and other insiders, the net effect being that the Stripes Defendants controlled approximately 81% of the combined company. Meanwhile, Parametric shareholders, who owned a combined 100% of Parametric before the merger, were reduced to a minority 19% interest. This post-merger structure was purportedly justified by the size and value of the VTBH assets that it was contributing to the merged entity. *Id.* at ¶163.

3. Plaintiff alleges that the Director Defendants approved the merger for self-interested reasons at a knowingly inflated value, endorsed a false and misleading proxy designed to manipulate Parametric stockholders into voting on the merger, and improperly transferred control of Parametric to the Stripes Defendants. *Id.* at ¶¶100-02, 118, 120-22.

4. Potashner, according to Plaintiff, saw the merger as a means to profit personally. *Id.* at ¶¶162-163. He controlled the merger negotiations with the Stripes Defendants and agreed to terms favorable for the Stripes Defendants at the expense of Parametric. *Id.* at ¶¶142, 143, 152. Even after the merger agreement had been signed, Potashner took steps to block competing bids. *Id.* at ¶¶112, 113.

5. Plaintiff alleges numerous facts to demonstrate Potashner’s control over Parametric prior to and during the merger, including the following:

- Potashner admitted that he himself “entered into the deal [with VTBH].” Complaint at ¶172.
- Potashner browbeat the Board to go along with the deal, or else he would replace the Board, threatening that he could obtain proxies for 40% of the Company’s outstanding shares to effectuate such a replacement. *Id.* at ¶61

- Potashner ironed out the terms of a deal on the Merger during March and April of 2013, seeking the assistance of a conflicted banker, and threatening the Outside Directors to go along with the Merger. *See id.* ¶45. The Outside Directors allowed Potashner to negotiate the Merger with no real oversight, supervision, or guidance. *Id.* at ¶48.
- In the two months prior to the Merger Agreement being executed, only Potashner, not any Outside Directors Up, was involved in a single discussion with Turtle Beach regarding the Break-Up License. *Id.* at ¶152.
- With respect to ensuring that the Merger would be completed, Potashner stalled discussions with other licensing partners and potential acquirers, including Amazon, as soon as Stripes Group and VTBH arrived on the scene. *Id.* at ¶85.
- Prior to the shareholder vote, Potashner met one-on-one with large Parametric shareholders with significant influence over the company's outstanding, non-insider shares in an effort to win their approval. *Id.* at ¶¶155-156.
- Potashner worked with Stripes Group to suppress Parametric's stock price by suppressing it in advance of the Merger announcement. *Id.* at ¶¶77-84.

6. Plaintiff also alleges that the Stripes Defendants knowingly and actively facilitated the breaches of fiduciary duty committed by the Director Defendants. Among other things, Plaintiff alleges that: the Stripes Defendants gained control of a Nevada corporation and continued to operate it as a Nevada corporation thereafter (*id.* at ¶37); the Stripes Defendants gained selected, negotiated for, and consummated the merger of a company they controlled, VTBH, and Parametric, a Nevada corporation (*id.* at ¶¶15, 36, 194-97); the Stripes Defendants were involved in negotiating and approving nearly all material decisions concerning the merger (*id.* at ¶¶34, 38, 41-42, 45-46, 206-09); the Stripes Defendants knowingly participated in the breaches of fiduciary duty by the Parametric Board (*id.* at ¶¶11, 50-51, 54, 56-58, 74-75, 77-78); since the merger, the Stripes Defendants have effectuated a series of post-close transactions governed, at least in part, by Nevada law (*id.* at ¶¶15, 198-202); Fox signed the merger agreement, which was then filed with the Nevada Secretary of State to consummate the merger (*id.* at ¶17).

7. Additionally, Plaintiff alleges that Stark and Potashner met with certain of Plaintiff's assignors to win over Parametric shareholder approval for the merger in September 2013 and November 2013. *Id.* at ¶¶155-56. During these meetings, which occurred in person at various locations in California, Plaintiff alleges that Stark and Potashner materially

1 misrepresented facts about the merger and the companies' respective financials. *Id.* at ¶157.

2 8. In connection with their involvement in the merger, Plaintiff asserts claims against
3 the Director Defendants for breach of fiduciary duty and the Stripes Defendants for aiding and
4 abetting breach of fiduciary duty. Plaintiff's complaint is substantively identical to the March 7,
5 2019 class action complaint except in two material respects: first, it names as additional defendants
6 Fox, VTBH's owner and/or controller, and Stark, VTBH's Chief Executive Officer; and second,
7 it alleges that defendants Stark and Potashner met personally with certain of Plaintiff's assignors
8 in advance of the merger to secure their support for it, as discussed above.

9 **PROCEDURAL HISTORY**

10 1. On May 20, 2020, Plaintiff filed the Complaint after being excluded from the class
11 action settlement by Order of the Court dated May 19, 2020.

12 2. On June 5, 2020, the Director Defendants together with the Stripes Defendants
13 moved to consolidate Plaintiff's action with the above-captioned class action. The Court granted
14 the motion on June 23, 2020.

15 3. On July 1, 2020, the Director Defendants filed their motion to dismiss, seeking
16 dismissal for failing to state a claim for relief because, under recent Delaware law, Plaintiff had
17 not adequately alleged the existence of a controlling stockholder or that the controlling stockholder
18 expropriated equity for its own benefit.

19 4. Also on July 1, 2020, the Stripes Defendants filed their motion to dismiss seeking
20 dismissal on the grounds that Plaintiff's claims were time-barred under the relevant statute of
21 limitations and that, alternatively, the Court lacked jurisdiction.

22 5. On July 22, 2020, Plaintiff filed its oppositions to the motions to dismiss.

23 6. The oppositions argued that Plaintiff alleged facts sufficient to state a claim for
24 relief for both breach of fiduciary duty and aiding and abetting. Plaintiff also argued in opposition
25 that the applicable statute of limitations had not yet expired by the time it filed its complaint,
26 which was on May 20, 2020, because the statute of limitations against the Fox and Stark did not
27 begin to run until the Court unsealed the class action complaint on March 7, 2018. Finally, Plaintiff
28 argued that the facts alleged in its Complaint allowed the Court to exercise jurisdiction over the

1 Stripes Defendants.

2 7. On August 6, 2020, the Director Defendants and the Stripes Defendants filed their
3 respective replies in further support of the motions to dismiss.

4 **CONCLUSIONS OF LAW**

5 1. On a motion to dismiss for failure to state a claim for relief, courts must construe
6 the pleading liberally and draw every fair inference in favor of plaintiff, and allegations in the
7 complaint must be accepted as true. Nev. R. Civ. P. 12(b)(5); *Brown v. Kellar*, 97 Nev. 582, 636
8 P.2d 874 (1981). Moreover, “Nevada is a notice-pleading jurisdiction and pleadings should be
9 liberally construed to allow issues that are fairly noticed to the adverse party.” *Nev. State Bank v.*
10 *Jamison Family P’Ship*, 106 Nev. 792, 801, 801 P.2d 1377, 1383 (1990).

11 2. “[T]he duty of loyalty requires the board and its directors to maintain, in good faith,
12 the corporation’s and its shareholders’ best interests over anyone else’s interests.” *Shoen v. SAC*
13 *Holding Corp.*, 122 Nev. 621,632, 137 P.3d 1171 (2006); NRS 78.138(1). In order to plead a non-
14 exculpated breach of fiduciary duty claim against a corporate director, plaintiffs must show that:
15 (1) the business judgment rule has been rebutted; (2) the director breached his or her fiduciary
16 duty; and (3) the director’s breach involved “intentional misconduct, fraud or a knowing violation
17 of law.” NRS 78.138(7); *Wynn Resorts. Ltd. v. Eighth Jud. Dist. Ct. of Nev.*, 399 P.3d 334, 342
18 (Nev. 2017); *EXX. Inc. v. Stabosz*. No. 10A627976, 2014 WL 10251999 (D. Nev. Feb. 10. 2014).

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

25 4. As this Court previously held when denying the Director Defendants’ motion to
26 dismiss the breach of fiduciary duty claim alleged in the class action, “Nevada looks to Delaware
27 law to determine the contours of an equity expropriation claim.” Order Denying Motion
28 Defendants’ Motion to Dismiss, March 27, 2018 (“MTD Order”), ¶27.

1 5. Delaware law allows equity expropriation claims where “(1) a stockholder having
2 majority or effective control causes a corporation to issue ‘excessive’ shares of its stock in
3 exchange for assets that have a lesser value; and (2) the exchange causes an increase in the
4 percentage of the outstanding shares owned by the controlling stockholder, and a decrease in the
5 share percentage owned by the minority shareholders.” *Gentile v. Rossette*, 906 A.2d 91, 100 (Del.
6 2006). Additionally, a stockholder may bring a direct claim challenging a dilutive stock issuance
7 where the ultimate transferee and beneficiary is not the party having effective control, but rather
8 a third party. *Gatz. v. Ponsoldt*, 925 A.2d 1265, 1281 (Del. 2007).

9 6. Here, Plaintiff adequately alleges a breach of fiduciary duty claim against the
10 Director Defendants for equity expropriation. In particular, the Complaint alleges that
11 Parametric’s Board of Directors excessively overvalued VTBH, knew that Parametric would be
12 issuing millions of dilutive shares in exchange for it, and that the foregoing was the result of a bad
13 faith indifference to the rights of Parametric stockholders. *See, e.g.*, Complaint at ¶¶100, 118, 130,
14 163. These allegations *inter alia* sufficiently demonstrate that: (i) the business judgment rule under
15 NRS 78.138(3) is rebutted because the Director Defendants acted in bad faith, on an uninformed basis,
16 and/or to further their own self-interests when approving the merger; (ii) each Director Defendant’s
17 actions or failures to act constituted a breach of his or her fiduciary duties as a director and/or officer;
18 and (iii) each Director Defendant engaged in a breach of fiduciary duty that involved non-exculpated
19 intentional misconduct and/or fraud.

20 7. The Director Defendants argue that Delaware law has changed materially since this
21 Court decided the motion to dismiss in the class action on March 27, 2018. The Delaware
22 Supreme Court in *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, 152 A.3d 1248 (Del. 2016),
23 on which the Director Defendants primarily rely, declined “the invitation to further expand the
24 universe of claims that can be asserted ‘dually’ to hold here that the extraction of solely economic
25 value from the minority” constitutes a direct claim. 152 A.3d at 1264. *El Paso* did not narrow the
26 extent of equity appropriation claims under Delaware law, but simply confirmed the existence of
27 equity expropriation claims as previously recognized in *Gentile*. The additional lower court
28

1 decisions cited by the Director Defendants do not hold differently. Delaware controlling precedent
2 regarding equity expropriation has not changed since this Court last addressed the issue.

3 8. Alternatively, the Director Defendants contend that Plaintiff's equity expropriation
4 claim fails because it has not pleaded the existence of a controlling stockholder. The argument
5 misconstrues the legal standard of the claim. *Gentile* holds that a direct claim can exist where there
6 is a controlling stockholder or a stockholder with "effective control." *Gentile*, 906 A.2d at 99-
7 100. Effective control means domination by a minority stockholder through actual control of
8 corporate conduct. *See Kahn v. Lynch Commc'n Sys.*, 638 A.2d 1110, 1113-14 (Del.
9 1994) (holding that a minority stockholder must "*exercise[] control* over the business affairs of
10 the corporation" (emphasis in original) (citation omitted)). Regardless of whether or not a
11 controlling stockholder or a stockholder with "effective control" is required to state a claim for
12 equity expropriation, Plaintiff adequately alleges facts sufficient to demonstrate Potashner's
13 control over Parametric, as detailed above.

14 9. Finally, the Director Defendants argue that a claim for equity expropriation cannot
15 stand unless the controlling stockholder expropriates the equity for itself. The Delaware Supreme
16 Court in *Gatz v. Ponsoldt* held that the fiduciary need not receive "the benefits of the
17 expropriation" for the claim to stand, as such a requirement would disregard improperly "how the
18 law views the substance of what truly occurred or how the public shareholders' claims for redress
19 should be characterized." 925 A.2d at 1281.

20 10. Regarding the Stripes Defendants' motion to dismiss, because Plaintiff adequately
21 pleads a claim for breach of fiduciary duty, the allegations for aiding and abetting are likewise
22 sufficient to state a claim for relief. *See In re AMERCO Deriv. Litig.*, 127 Nev. 196, 225, 252 P.3d
23 681, 702 (2011) (listing elements of aiding and abetting claim).

24 11. In addition, the Stripes Defendants' statute of limitations arguments also fails.
25 "Dismissal on statute of limitations grounds is only appropriate 'when uncontroverted evidence
26 irrefutably demonstrates plaintiff discovered or should have discovered' the facts giving rise to
27 the cause of action." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998)
28 (quoting *Nevada Power Co. v. Monsanto Co.*, 955 F.2d 1304, 1307 (9th Cir. 1992)).

1 12. While the Stripes Defendants may disagree with Plaintiff's contention that the
2 statute of limitations against the Fox and Stark did not begin to run until the Court unsealed the
3 class action complaint on March 7, 2018, they have not put forward "uncontroverted evidence"
4 that "irrefutably demonstrates" otherwise. This was the Stripes Defendants' burden on the motion.
5 *See Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (internal quotations omitted). The various
6 class action complaints filed prior to the one unsealed on March 7, 2018 do not meet this standard.
7 Nor can Plaintiff be imputed with the knowledge of class counsel simply because Plaintiff's
8 assignors were purported members of the class; the record before the Court does not "irrefutably
9 demonstrate[]" that any information was exchanged between class counsel and these shareholders,
10 let alone the information necessary to trigger the statute of limitations against Fox and Stark.

11 13. Given that Plaintiff's aiding and abetting claims have a three-year statute of
12 limitations, this Court holds that they are timely because Plaintiff filed its complaint within three
13 years of March 7, 2018. *See In re AMERCO Derivative Litig.*, 127 Nev. at 228, 252 P.3d at 703
14 (statute of limitations "will not begin to run until the failure of the fiduciary is 'discovered, or
15 should have been discovered, by the injured party'" (quoting *Golden Nugget, Inc. v. Ham*, 95 Nev.
16 45, 48-49, 589 P.2d 173, 175 (1979))).

17 14. The Stripes Defendants' last argument for dismissal is based on lack of jurisdiction.
18 To defeat the motion, Plaintiff needed only make a *prima facie* showing of either general or
19 specific personal jurisdiction by "producing evidence that establishes a prima facie showing of
20 jurisdiction." *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 457, 282 P.3d 751, 754 (2012)
21 (citing *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993)).
22 Plaintiff has met its burden for the purposes of the motion, as the allegations discussed above give
23 rise to "a prima facie showing of jurisdiction." *Consipio*, 128 Nev. at 457, 282 P.3d at 754.

24 15. That Fox and Stark were not directors of Parametric at the time of the merger makes
25 no difference. As alleged, they were integral to the merger by *inter alia* controlling certain of
26 Parametric's operations and public statements prior to and during the merger process and, in the
27 case of Stark, personally securing votes in support of the merger from Plaintiff's assignors. These
28 facts suggest that it is "reasonable to require [the Stripes Defendants] to defend [Plaintiff's] suit."

1 *See Consipio*, 128 Nev. at 458, 282 P.3d at 755 (internal quotations, citations and alterations
2 omitted).

3 **ORDER**

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Motion to Dismiss
5 on Behalf of Specially Appearing Defendants Stripes Group, LLC, SG VTB Holdings, LLC,
6 Kenneth Fox, and Juergen Stark is **DENIED**.

7 **IT IS FURTHER ORDERED** that the Defendants' Motion to Dismiss for Failure to State
8 a Claim is **DENIED**.

9 **IT IS FURTHER ORDERED** that the Director Defendants and the Stripes Defendants
10 shall serve a responsive pleading to Plaintiff's complaint on or before fourteen (14) days from
11 entry of this Order.

12 DATED this 20th day of August, 2020.

13 
14 DISTRICT COURT JUDGE

15 Submitted By:

16 McDONALD CARANO LLP

Approved as to Form and Content:

SNELL & WILMER L.L.P.

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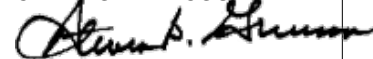
*Attorneys for Defendant VTB Holdings,
Inc. and Specially Appearing Defendants
Stripes Group, LLC, SG VTB Holdings,
LLC, Kenneth Fox, and Juergen Stark*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of McDonald Carano LLP and on the ____ day August, 2020, the foregoing **ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT** was electronically filed with the Clerk of the Court via this Court's electronic filing system and served on counsel electronically in accordance with the E-Service Master List.

/s/Jelena Jovanovic

An Employee of McDonald Carano LLP



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22 *Robert Kaplan, and Andrew Wolfe*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 **IN RE PARAMETRIC SOUND**
26 **CORPORATION SHAREHOLDERS'**
27 **LITIGATION.**

28 Lead Case No. A-13-686890-B
Consolidated Case No. A-20-815208-B

Dept. No. XI

CLASS ACTION

**DIRECTOR DEFENDANTS' ANSWER
TO COMPLAINT**

21 Defendants Kenneth Potashner, Elwood Norris, Seth Putterman, Robert Kaplan, and
22 Andrew Wolfe (the "Director Defendants") by and through their counsel of record, Holland &
23 Hart LLP, and Sheppard Mullin Richter & Hampton LLP, hereby respond to the allegations
24 contained in the Complaint ("Complaint") filed by plaintiff PAMTP LLC ("Plaintiff"), as
25 follows:

26 1. Paragraph 1 of the Complaint states a legal conclusion to which no response is
27 required. To the extent paragraph 1 is deemed to contain factual allegations, the Director
28

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

1 Defendants are without knowledge or information sufficient to form a belief as to the truth or
2 falsity of the allegations of paragraph 1 of the Complaint, and therefore deny the same.

3 2. Answering the allegations set forth in paragraph 2 of the Complaint, the Director
4 Defendants admit that the transaction at issue between Parametric Sound Corporation
5 (“Parametric”) and VTBH Holdings, Inc. (“VTBH”) was structured as a reverse merger. The
6 Director Defendants admit that, as a result of the merger, the former stockholders of VTBH
7 controlled approximately 81% of the stock in the post-merger Parametric with the pre-merger
8 Parametric stockholders retaining the remaining approximately 19% of the stock in the post-
9 merger Parametric. The Director Defendants admit that Parametric announced the merger on
10 August 5, 2013 and that the transaction closed on January 15, 2014. The Director Defendants
11 admit that, on May 27, 2014, Parametric changed its name to Turtle Beach Corporation (the
12 “Company”). The Director Defendants deny the remaining allegations set forth in paragraph 2
13 of the Complaint.

14 3. The Director Defendants deny each and every allegation set forth in paragraph 3
15 of the Complaint.

16 4. Answering the allegations set forth in paragraph 4 of the Complaint, the Director
17 Defendants admit that, on November 28, 2017, the Company’s stock price closed at \$0.57 per
18 share. The Director Defendants deny the remaining allegations set forth in paragraph 4 of the
19 Complaint.

20 5. The Director Defendants deny each and every allegation set forth in paragraph 5
21 of the Complaint.

22 6. Answering the allegations set forth in paragraph 6 of the Complaint, the Director
23 Defendants admit that, on August 2, 2013, the Company’s Board had six directors. The Director
24 Defendants deny the remaining allegations set forth in paragraph 6 of the Complaint.

25 7. The Director Defendants deny each and every allegation set forth in paragraph 7
26 of the Complaint.

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1 8. The Director Defendants are without knowledge or information sufficient to form
2 a belief as to the truth or falsity of the allegations in paragraph 8 of the Complaint, and therefore
3 deny the same.

4 9. The Director Defendants admit the allegations set forth in paragraph 9 of the
5 Complaint.

6 10. The Director Defendants are without knowledge or information sufficient to form
7 a belief as to the truth or falsity of the allegations in paragraph 10 of the Complaint, and
8 therefore deny the same.

9 11. The Director Defendants are without knowledge or information sufficient to form
10 a belief as to the truth or falsity of the allegations of paragraph 11 of the Complaint concerning
11 the intent and conduct of Ken Fox; Juergen Stark; Stripes Group, LLC (“Stripes Group”); SG
12 VTB Holdings, LLC (“SG VTB”) and VTBH. The remainder of paragraph 11 states legal
13 conclusions to which no response is required. To the extent the remainder of paragraph 11 is
14 deemed to contain factual allegations, the Director Defendants deny the same.

15 12. The Director Defendants are without knowledge or information sufficient to form
16 a belief as to the truth or falsity of the allegations in paragraph 12 of the Complaint, and
17 therefore deny the same.

18 13. The Director Defendants are without knowledge or information sufficient to form
19 a belief as to the truth or falsity of the allegations of paragraph 13 of the Complaint concerning
20 the intent and conduct of Fox, Stark and Stripes Group. The Director Defendants deny the
21 remaining allegations set forth in paragraph 13 of the Complaint.

22 14. The Director Defendants are without knowledge or information sufficient to form
23 a belief as to the truth or falsity of the allegations of paragraph 14 of the Complaint concerning
24 the conduct of Fox, Stark and Stripes Group. The Director Defendants deny the remaining
25 allegations set forth in paragraph 14 of the Complaint.

26 15. Paragraph 15 of the Complaint states a legal conclusion to which no response is
27 required. To the extent paragraph 15 is deemed to contain factual allegations, deny the
28 allegations pertaining to the intent or conduct of Parametric’s Board. The Director Defendants

1 are without knowledge or information sufficient to form a belief as to the truth or falsity of the
2 remaining allegations of paragraph 15 of the Complaint, and therefore deny the same.

3 16. Paragraph 16 of the Complaint states legal conclusions to which no response is
4 required. To the extent paragraph 16 is deemed to contain factual allegations, the Director
5 Defendants are without knowledge or information sufficient to form a belief as to the truth or
6 falsity of the remaining allegations of paragraph 16 of the Complaint, and therefore deny the
7 same.

8 17. Paragraph 17 of the Complaint states legal conclusions to which no response is
9 required. To the extent paragraph 17 is deemed to contain factual allegations, the Director
10 Defendants are without knowledge or information sufficient to form a belief as to the truth or
11 falsity of the remaining allegations of paragraph 17 of the Complaint, and therefore deny the
12 same.

13 18. The Director Defendants admit the allegations set forth in paragraph 18 of the
14 Complaint.

15 19. Paragraph 19 of the Complaint states legal conclusions to which no response is
16 required. To the extent paragraph 19 is deemed to contain factual allegations, the Director
17 Defendants are without knowledge or information sufficient to form a belief as to the truth or
18 falsity of the remaining allegations of paragraph 19 of the Complaint, and therefore deny the
19 same.

20 20. Paragraph 20 of the Complaint states legal conclusions to which no response is
21 required. To the extent paragraph 20 is deemed to contain factual allegations, the Director
22 Defendants are without knowledge or information sufficient to form a belief as to the truth or
23 falsity of the remaining allegations of paragraph 20 of the Complaint, and therefore deny the
24 same.

25 21. Paragraph 21 of the Complaint states legal conclusions to which no response is
26 required. To the extent paragraph 21 is deemed to contain factual allegations, the Director
27 Defendants are without knowledge or information sufficient to form a belief as to the truth or
28

1 falsity of the remaining allegations of paragraph 21 of the Complaint, and therefore deny the
2 same.

3 22. Paragraph 22 of the Complaint states legal conclusions to which no response is
4 required. To the extent paragraph 22 is deemed to contain factual allegations, the Director
5 Defendants are without knowledge or information sufficient to form a belief as to the truth or
6 falsity of the remaining allegations of paragraph 22 of the Complaint, and therefore deny the
7 same.

8 23. The Director Defendants are without knowledge or information sufficient to form
9 a belief as to the truth or falsity of the allegations in paragraph 23 of the Complaint, and
10 therefore deny the same.

11 24. The Director Defendants are without knowledge or information sufficient to form
12 a belief as to the truth or falsity of the allegations in paragraph 24 of the Complaint, and
13 therefore deny the same.

14 25. Paragraph 25 of the Complaint states legal conclusions to which no response is
15 required. To the extent paragraph 25 is deemed to contain factual allegations, the Director
16 Defendants are without knowledge or information sufficient to form a belief as to the truth or
17 falsity of the remaining allegations of paragraph 25 of the Complaint, and therefore deny the
18 same.

19 26. Paragraph 26 of the Complaint states a pleading definition to which no response is
20 required. To the extent paragraph 26 is deemed to contain factual allegations, the Director
21 Defendants deny the same.

22 27. The Director Defendants admit the allegations set forth in paragraph 27 of the
23 Complaint.

24 28. The Director Defendants admit the allegations set forth in paragraph 28 of the
25 Complaint.

26 29. The Director Defendants admit the allegations set forth in paragraph 29 of the
27 Complaint.

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1 30. The Director Defendants admit the allegations set forth in paragraph 30 of the
2 Complaint.

3 31. The Director Defendants admit the allegations set forth in paragraph 31 of the
4 Complaint.

5 32. Paragraph 32 of the Complaint states a pleading definition to which no response is
6 required. To the extent paragraph 32 is deemed to contain factual allegations, the Director
7 Defendants deny the same.

8 33. Paragraph 33 of the Complaint states a pleading definition to which no response is
9 required. To the extent paragraph 33 is deemed to contain factual allegations, the Director
10 Defendants deny the same.

11 34. The Director Defendants are without knowledge or information sufficient to form
12 a belief as to the truth or falsity of the allegations in paragraph 34 of the Complaint, and
13 therefore deny the same.

14 35. The Director Defendants are without knowledge or information sufficient to form
15 a belief as to the truth or falsity of the allegations in paragraph 35 of the Complaint, and
16 therefore deny the same.

17 36. Answering the allegations set forth in paragraph 36 of the Complaint, the Director
18 Defendants admit that Kenneth Fox signed the merger agreement between Parametric, Paris
19 Acquisition Corp. and the Company. The Director Defendants are without knowledge or infor-
20 mation sufficient to form a belief as to the truth or falsity of the remaining allegations of
21 paragraph 36 of the Complaint, and therefore deny the same.

22 37. The Director Defendants are without knowledge or information sufficient to form
23 a belief as to the truth or falsity of the allegations in paragraph 37 of the Complaint, and
24 therefore deny the same.

25 38. Answering the allegations set forth in paragraph 38 of the Complaint, the Director
26 Defendants admit that Stark is currently CEO of Turtle Beach, is a member of Turtle Beach's
27 Board of Directors, and interacted with Potashner during the merger process. The Director
28 Defendants are without knowledge or information sufficient to form a belief as to the truth or

1 falsity of the remaining allegations in paragraph 38 of the Complaint, and therefore deny the
2 same.

3 39. The Director Defendants are without knowledge or information sufficient to form
4 a belief as to the truth or falsity of the allegations in paragraph 39 of the Complaint, and
5 therefore deny the same.

6 40. The Director Defendants admit the allegations set forth in paragraph 40 of the
7 Complaint.

8 41. The Director Defendants are without knowledge or information sufficient to form
9 a belief as to the truth or falsity of the allegations in paragraph 41 of the Complaint, and
10 therefore deny the same.

11 42. The Director Defendants are without knowledge or information sufficient to form
12 a belief as to the truth or falsity of the allegations in paragraph 42 of the Complaint, and
13 therefore deny the same.

14 43. Answering the allegations set forth in paragraph 43 of the Complaint, the Director
15 Defendants admit that James Barnes was Parametric's Chief Financial Officer during the merger
16 process. The Director Defendants are without knowledge or information sufficient to form a
17 belief as to the truth or falsity of the remaining allegations in paragraph 43 of the Complaint, and
18 therefore deny the same.

19 44. Answering the allegations set forth in paragraph 44 of the Complaint, the Director
20 Defendants admit that John Todd was a consultant for Parametric. The Director Defendants are
21 without knowledge or information sufficient to form a belief as to the remaining allegations in
22 paragraph 44, and therefore deny the same.

23 45. Answering the allegations set forth in paragraph 45 of the Complaint, the Director
24 Defendants admit that, in or about March or April 2013, Potashner discussed possible deal terms
25 for a reverse merger between Parametric and VTBH. The Director Defendants admit that
26 Plaintiff quotes selected portions, out of context, of certain email correspondence of the Director
27 Defendants. The Director Defendants deny the remaining allegations set forth in paragraph 45 of
28 the Complaint.

1 46. The Director Defendants deny each and every allegation set forth in paragraph 46
2 of the Complaint.

3 47. The Director Defendants deny each and every allegation set forth in paragraph 47
4 of the Complaint.

5 48. Answering the allegations set forth in paragraph 48 of the Complaint, the Director
6 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
7 correspondence of the Director Defendants. The Director Defendants deny the remaining
8 allegations set forth in paragraph 48 of the Complaint.

9 49. Answering the allegations set forth in paragraph 49 of the Complaint, the Director
10 Defendants admit that Plaintiff quotes selected portions, out of context, of a website containing a
11 Parametric Sound Corporation press release dated November 28, 2012. The Director Defendants
12 admit that Potashner believed that HyperSound Health, Inc. had the potential to be valuable to
13 Parametric's stockholders. The Director Defendants deny the remaining allegations set forth in
14 paragraph 49 of the Complaint.

15 50. Answering the allegations set forth in paragraph 50 of the Complaint, the Director
16 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
17 correspondence between Potashner and Stark. The Director Defendants deny the remaining
18 allegations set forth in paragraph 50 of the Complaint.

19 51. Answering the allegations set forth in paragraph 51 of the Complaint, the Director
20 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
21 correspondence of the Director Defendants. The Director Defendants deny the remaining
22 allegations set forth in paragraph 51 of the Complaint.

23 52. Answering the allegations set forth in paragraph 52 of the Complaint, the Director
24 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
25 correspondence between Potashner and Stark. The Director Defendants are without knowledge
26 or information sufficient to form a belief as to the truth or falsity of the remaining allegations of
27 paragraph 52 of the Complaint, and therefore deny the same.

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1 53. The Director Defendants are without knowledge or information sufficient to form
2 a belief as to the truth or falsity of the allegations of paragraph 53 of the Complaint, and
3 therefore deny the same.

4 54. The Director Defendants deny each and every allegation set forth in paragraph 54
5 of the Complaint.

6 55. Answering the allegations set forth in paragraph 55 of the Complaint, the Director
7 Defendants admit that Plaintiff quotes selected portions, out of context, of certain minutes of a
8 special meeting of the Parametric Board of Directors. The Director Defendants deny the
9 remaining allegations set forth in paragraph 55 of the Complaint.

10 56. Answering the allegations set forth in paragraph 56 of the Complaint, the Director
11 Defendants admit that Plaintiff quotes selected portions, out of context, of certain minutes of a
12 special meeting of the Parametric Board of Directors and certain email correspondence between
13 Potashner and Stark. The Director Defendants are without knowledge or information sufficient
14 to form a belief as to the truth or falsity of the allegations concerning Stark's knowledge or
15 intent, and therefore deny the same. The Director Defendants deny the remaining allegations set
16 forth in paragraph 56 of the Complaint.

17 57. Answering the allegations set forth in paragraph 57 of the Complaint, the Director
18 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
19 correspondence of the Director Defendants. The Director Defendants deny the remaining
20 allegations set forth in paragraph 57 of the Complaint.

21 58. Answering the allegations set forth in paragraph 58 of the Complaint, the Director
22 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
23 correspondence of the Director Defendants and of certain email communications between
24 Potashner and Stark. The Director Defendants note that Plaintiff's excerpts from the July 6,
25 2013, July 14, 2013 and July 18, 2013 email correspondence (copied from an earlier complaint)
26 misquote the referenced documents, and therefore deny these allegations to the extent that they
27 inaccurately represent the original document(s). The Director Defendants deny the remaining
28 allegations set forth in paragraph 58 of the Complaint.

1 59. Answering the allegations set forth in paragraph 59 of the Complaint, the Director
2 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
3 correspondence of the Director Defendants. The Director Defendants deny the remaining
4 allegations set forth in paragraph 59 of the Complaint.

5 60. Answering the allegations set forth in paragraph 60 of the Complaint, the Director
6 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
7 correspondence of the Director Defendants. The Director Defendants deny the remaining
8 allegations set forth in paragraph 60 of the Complaint.

9 61. Answering the allegations set forth in paragraph 61 of the Complaint, the Director
10 Defendants admit that Plaintiff quotes selected portions, out of context, of certain minutes of a
11 special meeting of the Parametric Board of Directors. The Director Defendants deny the
12 remaining allegations set forth in paragraph 61 of the Complaint.

13 62. Answering the allegations set forth in paragraph 62 of the Complaint, the Director
14 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
15 correspondence of the Director Defendants. The Director Defendants deny the remaining
16 allegations set forth in paragraph 62 of the Complaint.

17 63. Answering the allegations set forth in paragraph 63 of the Complaint, the Director
18 Defendants admit that Plaintiff quotes selected portions, out of context, of certain minutes of a
19 special meeting of the Parametric Board of Directors. The Director Defendants deny the
20 remaining allegations set forth in paragraph 63 of the Complaint.

21 64. Answering the allegations set forth in paragraph 64 of the Complaint, the Director
22 Defendants admit that Plaintiff quotes selected portions, out of context, of certain July 6, 2013
23 and July 7, 2013 email correspondence of the Director Defendants. The Director Defendants
24 deny the remaining allegations set forth in paragraph 64 of the Complaint.

25 65. Answering the allegations set forth in paragraph 65 of the Complaint, the Director
26 Defendants admit that Plaintiff quotes selected portions, out of context, of certain minutes of a
27 special meeting of the Parametric Board of Directors. The Director Defendants deny the
28 remaining allegations set forth in paragraph 65 of the Complaint.

1 66. Answering the allegations set forth in paragraph 66 of the Complaint, the Director
2 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
3 correspondence of the Director Defendants. The remainder of paragraph 66 states a legal
4 conclusion to which no response is required. To the extent paragraph 66 is deemed to contain
5 factual allegations, the Director Defendants deny the same.

6 67. Answering the allegations set forth in paragraph 67 of the Complaint, the Director
7 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
8 correspondence of the Director Defendants. The Director Defendants note that Plaintiff's
9 excerpts from the July 24, 2013 email correspondence misquote the referenced document, and
10 therefore deny these allegations to the extent that they inaccurately represent the original
11 document. The Director Defendants deny the remaining allegations set forth in paragraph 67 of
12 the Complaint.

13 68. Answering the allegations set forth in paragraph 68 of the Complaint, the Director
14 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
15 correspondence of the Director Defendants. The Director Defendants deny the remaining
16 allegations set forth in paragraph 68 of the Complaint.

17 69. The Director Defendants deny each and every allegation set forth in paragraph 69
18 of the Complaint.

19 70. Answering the allegations set forth in paragraph 70 of the Complaint, the Director
20 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
21 correspondence of the Director Defendants. The Director Defendants deny the remaining
22 allegations set forth in paragraph 70 of the Complaint.

23 71. Answering the allegations set forth in paragraph 71 of the Complaint, the Director
24 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
25 correspondence of the Director Defendants. The Director Defendants note that Plaintiff's
26 excerpts from the July 22, 2013 email correspondence misquote the referenced document, and
27 therefore deny these allegations to the extent that they inaccurately represent the original
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1 document. The Director Defendants deny the remaining allegations set forth in paragraph 71 of
2 the Complaint.

3 72. Answering the allegations set forth in paragraph 72 of the Complaint, the Director
4 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
5 correspondence of the Director Defendants. The Director Defendants deny the remaining
6 allegations set forth in paragraph 72 of the Complaint.

7 73. Answering the allegations set forth in paragraph 73 of the Complaint, the Director
8 Defendants admit that the Board agreed to settle Todd's possible legal claims against Parametric
9 for a payment of \$250,000. The Director Defendants deny the remaining allegations set forth in
10 paragraph 73 of the Complaint.

11 74. The Director Defendants are without knowledge or information sufficient to form
12 a belief as to the truth or falsity of the allegations in paragraph 74 of the Complaint, and
13 therefore deny the same.

14 75. The Director Defendants are without knowledge or information sufficient to form
15 a belief as to the truth or falsity of the allegations in paragraph 75 of the Complaint, and
16 therefore deny the same.

17 76. The Director Defendants are without knowledge or information sufficient to form
18 a belief as to the truth or falsity of the allegations in paragraph 76 of the Complaint, and
19 therefore deny the same.

20 77. Answering the allegations set forth in paragraph 77 of the Complaint, the Director
21 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
22 correspondence between Potashner and Stark. The Director Defendants are without knowledge
23 or information sufficient to form a belief as to the truth or falsity of the allegations concerning
24 Stripes' views, and therefore deny the same. The Director Defendants deny the remaining
25 allegations set forth in paragraph 77 of the Complaint.

26 78. Answering the allegations set forth in paragraph 78 of the Complaint, the Director
27 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
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1 correspondence between Potashner and Stark. The Director Defendants deny the remaining
2 allegations set forth in paragraph 78 of the Complaint.

3 79. Answering the allegations set forth in paragraph 79 of the Complaint, the Director
4 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
5 correspondence between Potashner and Stark. The Director Defendants deny the remaining
6 allegations set forth in paragraph 79 of the Complaint.

7 80. Answering the allegations set forth in paragraph 80 of the Complaint, the Director
8 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
9 correspondence between Potashner and Stark, and between Potashner and Todd. The Director
10 Defendants deny the remaining allegations set forth in paragraph 80 of the Complaint.

11 81. Answering the allegations set forth in paragraph 81 of the Complaint, the Director
12 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
13 correspondence between Potashner and Stark, and a draft internal press release. The Director
14 Defendants deny the remaining allegations set forth in paragraph 81 of the Complaint.

15 82. Answering the allegations set forth in paragraph 82 of the Complaint, the Director
16 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
17 correspondence between Potashner and Stark. The remainder of paragraph 82 states a legal
18 conclusion to which no response is required. To the extent paragraph 82 is deemed to contain
19 factual allegations, the Director Defendants deny the same.

20 83. Answering the allegations set forth in paragraph 83 of the Complaint, the Director
21 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
22 correspondence of the Director Defendants. The Director Defendants note that Plaintiff's
23 excerpts from the June 2, 2013 email correspondence misquote the referenced document, and
24 therefore deny these allegations to the extent that they inaccurately represent the original
25 document. The Director Defendants are without knowledge or information sufficient to form a
26 belief as to the truth or falsity of the allegations concerning the alleged conduct of Fox and Stark,
27 and therefore deny the same. The Director Defendants deny the remaining allegations set forth
28 in paragraph 83 of the Complaint.

1 84. Answering the allegations set forth in paragraph 84 of the Complaint, the Director
2 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
3 correspondence between Potashner and Stark. The Director Defendants deny the remaining
4 allegations set forth in paragraph 84 of the Complaint.

5 85. The Director Defendants deny each and every allegation set forth in paragraph 85
6 of the Complaint.

7 86. Answering the allegations set forth in paragraph 86 of the Complaint, the Director
8 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
9 correspondence of between Potashner and Stark. The Director Defendants note that Plaintiff's
10 excerpts from the email correspondence between Potashner and Stark interpret the referenced
11 documents in bracketed additions, and therefore deny these allegations to the extent that they
12 inaccurately represent the original documents. The remainder of paragraph 86 states a legal
13 conclusion to which no response is required. To the extent paragraph 86 is deemed to contain
14 factual allegations, the Director Defendants deny the same.

15 87. Answering the allegations set forth in paragraph 87 of the Complaint, the Director
16 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
17 correspondence between Potashner and Karen Kenworthy. The Director Defendants deny the
18 remaining allegations set forth in paragraph 87 of the Complaint.

19 88. Answering the allegations set forth in paragraph 88 of the Complaint, the Director
20 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
21 correspondence between Potashner and Kenworthy. The Director Defendants note that
22 Plaintiff's excerpts from the March 28, 2013 email correspondence misquote the referenced
23 document, and therefore deny these allegations to the extent that they inaccurately represent the
24 original document. The Director Defendants are without knowledge or information sufficient to
25 form a belief as to the truth or falsity of the allegations concerning discussions between
26 Kenworthy and Fox, and therefore deny the same. The Director Defendants deny the remaining
27 allegations set forth in paragraph 88 of the Complaint.

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1 89. Answering the allegations set forth in paragraph 89 of the Complaint, the Director
2 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
3 correspondence between Potashner and Stark. The Director Defendants deny the remaining
4 allegations set forth in paragraph 89 of the Complaint.

5 90. Answering the allegations set forth in paragraph 90 of the Complaint, the Director
6 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
7 correspondence between Potashner and Stark. The Director Defendants are without knowledge
8 or information sufficient to form a belief as to the truth or falsity of the allegations concerning
9 Stark's state of mind, and therefore deny the same. The Director Defendants deny the remaining
10 allegations set forth in paragraph 90 of the Complaint.

11 91. Answering the allegations set forth in paragraph 91 of the Complaint, the Director
12 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
13 correspondence between Potashner, on the one hand, and Stark and Kenworthy, on the other.
14 The Director Defendants deny the remaining allegations set forth in paragraph 91 of the
15 Complaint.

16 92. The Director Defendants are without knowledge or information sufficient to form
17 a belief as to the truth or falsity of the allegations of paragraph 92 of the Complaint, and
18 therefore deny the same.

19 93. Answering the allegations set forth in paragraph 93 of the Complaint, the Director
20 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email corres-
21 pondence of the Director Defendants. The Director Defendants deny the remaining allegations
22 set forth in paragraph 93 of the Complaint.

23 94. Answering the allegations set forth in paragraph 94 of the Complaint, the Director
24 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
25 correspondence of the Director Defendants and of certain email communications between
26 Potashner and Stark. The Director Defendants deny the remaining allegations set forth in
27 paragraph 94 of the Complaint.

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1 95. Answering the allegations set forth in paragraph 95 of the Complaint, the Director
2 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
3 correspondence of the Director Defendants. The Director Defendants deny the remaining
4 allegations set forth in paragraph 95 of the Complaint.

5 96. Answering the allegations set forth in paragraph 96 of the Complaint, the Director
6 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
7 correspondence of the Director Defendants. The Director Defendants deny the remaining
8 allegations set forth in paragraph 96 of the Complaint.

9 97. Paragraph 97 of the Complaint states a legal conclusion to which no response is
10 required. To the extent paragraph 97 is deemed to contain factual allegations, the Director
11 Defendants deny the same.

12 98. Answering the allegations set forth in paragraph 98 of the Complaint, the Director
13 Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
14 correspondence between Potashner and Stark. The remainder of paragraph 98 states a legal
15 conclusion to which no response is required. To the extent paragraph 98 is deemed to contain
16 factual allegations, the Director Defendants are without knowledge or information sufficient to
17 form a belief as to the truth or falsity of the remaining allegations, and therefore deny the same.

18 99. The Director Defendants deny each and every allegation set forth in paragraph 99
19 of the Complaint.

20 100. Answering the allegations set forth in paragraph 100 of the Complaint, the
21 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
22 correspondence of the Director Defendants. The Director Defendants note that Plaintiff's
23 excerpts from the June 29, 2013 email correspondence misquote the referenced document, and
24 therefore deny these allegations to the extent that they inaccurately represent the original
25 document. The Director Defendants deny the remaining allegations set forth in paragraph 100 of
26 the Complaint.

27 101. Answering the allegations set forth in paragraph 101 of the Complaint, the
28 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email

1 correspondence of the Director Defendants. The Director Defendants are without knowledge or
2 information sufficient to form a belief as to the truth or falsity of the remaining allegations of
3 paragraph 101 of the Complaint, and therefore deny the same.

4 102. The Director Defendants deny each and every allegation set forth in paragraph
5 102 of the Complaint.

6 103. Answering the allegations set forth in paragraph 103 of the Complaint, the
7 Director Defendants admit that, after the Board's vote on the merger agreement between
8 Parametric and VTBH, Parametric's independent Compensation Committee approved full cash
9 bonus compensation for Potashner under a previously agreed-upon cash bonus compensation
10 plan for 2013. In addition, the Director Defendants admit that Potashner was entitled to certain
11 compensation as result of the merger. The Director Defendants deny the remaining allegations
12 set forth in paragraph 103 of the Complaint.

13 104. The Director Defendants deny each and every allegation set forth in paragraph
14 104 of the Complaint.

15 105. Answering the allegations set forth in paragraph 105 of the Complaint, the
16 Director Defendants admit that Craig-Hallum provided a fairness opinion to the Board. The
17 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
18 correspondence between Potashner and Stark. The Director Defendants deny the remaining
19 allegations set forth in paragraph 105 of the Complaint.

20 106. Answering the allegations set forth in paragraph 106 of the Complaint, the
21 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
22 correspondence between Potashner and Stark. The Director Defendants admit that, as a result of
23 the merger, the former stockholders of VTBH acquired approximately 80.9% of the stock in the
24 post-merger Parametric with the pre-merger Parametric stockholders retaining the remaining
25 approximately 19.1%. The Director Defendants deny the remaining allegations set forth in
26 paragraph 106 of the Complaint.

27 107. Answering the allegations set forth in paragraph 107 of the Complaint, the
28 Director Defendants admit that Parametric announced the merger on August 5, 2013 and that

1 Parametric's stock price closed at \$17.69 on August 5, 2013. The Director Defendants deny the
2 remaining allegations set forth in paragraph 107 of the Complaint.

3 108. Answering the allegations set forth in paragraph 108 of the Complaint, the
4 Director Defendants admit that it describes certain terms of the Merger Agreement. The Director
5 Defendants deny the remaining allegations set forth in paragraph 108 of the Complaint.

6 109. Answering the allegations set forth in paragraph 109 of the Complaint, the
7 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
8 correspondence between Potashner and Stark. The Director Defendants deny the remaining
9 allegations set forth in paragraph 109 of the Complaint.

10 110. Answering the allegations set forth in paragraph 110 of the Complaint, the
11 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
12 correspondence between Potashner and Stark. The Director Defendants deny the remaining
13 allegations set forth in paragraph 110 of the Complaint.

14 111. Answering the allegations set forth in paragraph 111 of the Complaint, the
15 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
16 correspondence between Potashner and Stark. The Director Defendants deny the remaining
17 allegations set forth in paragraph 111 of the Complaint.

18 112. Answering the allegations set forth in paragraph 112 of the Complaint, the
19 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
20 correspondence of between Potashner and Houlihan Lokey, and between Potashner and Stark.
21 The Director Defendants are without knowledge or information sufficient to form a belief as to
22 the truth or falsity of the allegations concerning Stark's alleged employment history at, or
23 contacts with, Motorola and therefore deny the same. The Director Defendants deny the
24 remaining allegations set forth in paragraph 112 of the Complaint.

25 113. The Director Defendants deny each and every allegation set forth in paragraph
26 113 of the Complaint.

27 114. Answering the allegations set forth in paragraph 114 of the Complaint, the
28 Director Defendants admit that Plaintiff quotes selected portions, out of context, of a Preliminary

1 Proxy Statement. The Director Defendants admit that Plaintiff quotes selected portions, out of
2 context, of certain email correspondence between Potashner and Stark. The Director Defendants
3 note that Plaintiff's excerpts from the November 19, 2013 email correspondence misquote the
4 referenced document, and therefore deny these allegations to the extent that they inaccurately
5 represent the original document. The Director Defendants deny the remaining allegations set
6 forth in paragraph 114 of the Complaint.

7 115. Answering the allegations set forth in paragraph 115 of the Complaint, the
8 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
9 correspondence of between Potashner and Stark. The Director Defendants deny the remaining
10 allegations set forth in paragraph 115 of the Complaint.

11 116. The Director Defendants deny each and every allegation set forth in paragraph
12 116 of the Complaint.

13 117. The Director Defendants deny each and every allegation set forth in paragraph
14 117 of the Complaint.

15 118. The Director Defendants deny each and every allegation set forth in paragraph
16 118 of the Complaint.

17 119. Answering the allegations set forth in paragraph 119 of the Complaint, the
18 Director Defendants admit that the Proxy required approval of the Merger Agreement by a
19 majority of votes cast at the Special Meeting. The Director Defendants admit that Plaintiff
20 quotes selected portions, out of context, of certain email correspondence of between Potashner
21 and Kenworthy. The Director Defendants deny the remaining allegations set forth in paragraph
22 119 of the Complaint.

23 120. The Director Defendants deny each and every allegation set forth in paragraph
24 120 of the Complaint.

25 121. The Director Defendants are without knowledge or information sufficient to form
26 a belief as to the truth or falsity of the allegations set forth in paragraph 121 of the Complaint,
27 and therefore deny the same.

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1 122. Answering the allegations set forth in paragraph 122 of the Complaint, the
2 Director Defendants admit that Plaintiff quotes selected portions, out of context, of the Proxy.
3 The Director Defendants are without knowledge or information sufficient to form a belief as to
4 the truth or falsity of the remaining allegations set forth in paragraph 122 of the Complaint, and
5 therefore deny the same.

6 123. The Director Defendants are without knowledge or information sufficient to form
7 a belief as to the truth or falsity of the allegations set forth in paragraph 123 of the Complaint,
8 and therefore deny the same.

9 124. Answering the allegations set forth in paragraph 124 of the Complaint, the
10 Director Defendants admit that the Proxy contained a projection of Turtle Beach's 2016 adjusted
11 EBITDA of \$100.4 million. The Director Defendants are without knowledge or information
12 sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in
13 paragraph 124 of the Complaint, and therefore deny the same.

14 125. The Director Defendants deny each and every allegation set forth in paragraph
15 125 of the Complaint.

16 126. Answering the allegations set forth in paragraph 126 of the Complaint, the
17 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
18 correspondence between Potashner and Stark. The Director Defendants deny the remaining
19 allegations set forth in paragraph 126 of the Complaint.

20 127. Answering the allegations set forth in paragraph 127 of the Complaint, the
21 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
22 correspondence between Potashner and Todd. The Director Defendants deny the remaining
23 allegations set forth in paragraph 127 of the Complaint.

24 128. The Director Defendants are without knowledge or information sufficient to form
25 a belief as to the truth or falsity of the allegations of paragraph 128 of the Complaint concerning
26 the conduct and statements of Stark. The Director Defendants deny the remaining allegations set
27 forth in paragraph 128 of the Complaint.

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1 129. Answering the allegations set forth in paragraph 129 of the Complaint, the
2 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
3 correspondence between Potashner, on the one hand, and Stark and Kenworthy, on the other.
4 The Director Defendants deny the remaining allegations set forth in paragraph 129 of the
5 Complaint.

6 130. Answering the allegations set forth in paragraph 130 of the Complaint, the
7 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
8 correspondence between Potashner and Stark. The Director Defendants deny the remaining
9 allegations set forth in paragraph 130 of the Complaint.

10 131. Answering the allegations set forth in paragraph 131 of the Complaint, the
11 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
12 correspondence between Potashner, on the one hand, and Stark and James Barnes, on the other.
13 The Director Defendants note that Plaintiff's excerpts from the October 29, 2013 email
14 correspondence misquote the referenced document, and therefore deny these allegations to the
15 extent that they inaccurately represent the original document. The Director Defendants deny the
16 remaining allegations set forth in paragraph 131 of the Complaint.

17 132. Answering the allegations set forth in paragraph 132 of the Complaint, the
18 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
19 correspondence between Potashner and Stark.

20 133. Answering the allegations set forth in paragraph 133 of the Complaint, the
21 Director Defendants admit that Plaintiff quote selected portions, out of context, of certain email
22 correspondence between Potashner and Stark. The Director Defendants deny the remaining
23 allegations set forth in paragraph 133 of the Complaint.

24 134. The Director Defendants are without knowledge or information sufficient to form
25 a belief as to the truth or falsity of the allegations set forth in paragraph 134 of the Complaint,
26 and therefore deny the same.

27 135. Answering the allegations set forth in paragraph 135 of the Complaint, the
28 Director Defendants admit that the Proxy included projections of Turtle Beach's 2013 net sales

1 of \$218 million and 2013 adjusted EBITDA of \$40.6 million. The Director Defendants are
2 without knowledge or information sufficient to form a belief as to the truth or falsity of the
3 allegations set forth in paragraph 135 of the Complaint, and therefore deny the same.

4 136. The Director Defendants are without knowledge or information sufficient to form
5 a belief as to the truth or falsity of the allegations set forth in paragraph 136 of the Complaint,
6 and therefore deny the same.

7 137. The Director Defendants are without knowledge or information sufficient to form
8 a belief as to the truth or falsity of the allegations set forth in paragraph 137 of the Complaint,
9 and therefore deny the same.

10 138. The Director Defendants deny each and every allegation set forth in paragraph
11 138 of the Complaint.

12 139. Answering the allegations set forth in paragraph 139 of the Complaint, the
13 Director Defendants admit that the Board did not request that Houlihan Lokey or Craig-Hallum
14 conduct a valuation of the Break-Up License Agreement. The Director Defendants admit that
15 the Board did not consider any revenue from SIIG-Optek, or otherwise, when it voted on the
16 merger because Parametric had not received any revenues as a result of its licensing efforts. The
17 Director Defendants deny the remaining allegation set forth in paragraph 139 of the Complaint.

18 140. Answering the allegations set forth in paragraph 140 of the Complaint, the
19 Director Defendants admit that it states an out of context summary of certain terms of the Break-
20 Up License Agreement between Parametric and VTBH and a summary of certain terms of the
21 “go-shop” and “matching rights” clauses in the Merger Agreement. The Director Defendant
22 deny the remaining allegations set forth in paragraph 140 of the Complaint.

23 141. Paragraph 141 of the Complaint states a legal conclusion to which no response is
24 required. To the extent paragraph 141 is deemed to contain factual allegations, the Director
25 Defendants are without knowledge or information sufficient to form a belief as to the truth or
26 falsity of the remaining allegations of paragraph 141 of the Complaint, and therefore deny the
27 same.

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1 142. The Director Defendants deny each and every allegation set forth in paragraph
2 142 of the Complaint.

3 143. Answering the allegations set forth in paragraph 143 of the Complaint, the
4 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
5 correspondence of the Director Defendants. The Director Defendants deny the remaining
6 allegations set forth in paragraph 143 of the Complaint.

7 144. The Director Defendants are without knowledge or information sufficient to form
8 a belief as to the truth or falsity of the allegations set forth in paragraph 144 of the Complaint,
9 and therefore deny the same.

10 145. Paragraph 145 of the Complaint states a legal conclusion to which no response is
11 required. To the extent paragraph 145 is deemed to contain factual allegations, the Director
12 Defendants are without knowledge or information sufficient to form a belief as to the truth or
13 falsity of the remaining allegations of paragraph 145 of the Complaint, and therefore deny the
14 same.

15 146. Answering the allegations set forth in paragraph 146 of the Complaint, the
16 Director Defendants admit that Parametric stockholders voted in favor of the merger. The
17 Director Defendants deny the remaining allegations set forth in paragraph 146 of the Complaint.

18 147. The Director Defendants are without knowledge or information sufficient to form
19 a belief as to the truth or falsity of the allegations of paragraph 147 of the Complaint concerning
20 Craig-Hallum's knowledge. The Director Defendants deny the remaining allegations set forth in
21 paragraph 147 of the Complaint.

22 148. Answering the allegations set forth in paragraph 148 of the Complaint, the
23 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
24 correspondence between Barnes and Potashner. The Director Defendants deny the remaining
25 allegations set forth in paragraph 148 of the Complaint.

26 149. Answering the allegations set forth in paragraph 149 of the Complaint, the
27 Director Defendants admit that, in March and April 2013, Potashner and Stark discussed the
28

1 terms of a possible license agreement between Parametric and VTBH. The Director Defendants
2 deny the remaining allegations set forth in paragraph 149 of the Complaint.

3 150. Answering the allegations set forth in paragraph 150 of the Complaint, the
4 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
5 correspondence between Potashner and Stark. The Director Defendants deny the remaining
6 allegations set forth in paragraph 150 of the Complaint.

7 151. The Director Defendants deny each and every allegation set forth in paragraph
8 151 of the Complaint.

9 152. The Director Defendants deny each and every allegation set forth in paragraph
10 152 of the Complaint.

11 153. The Director Defendants deny each and every allegation set forth in paragraph
12 153 of the Complaint.

13 154. The Director Defendants deny each and every allegation set forth in paragraph
14 154 of the Complaint.

15 155. Paragraph 155 of the Complaint states a legal conclusion to which no response is
16 required. To the extent paragraph 155 is deemed to contain factual allegations, the Director
17 Defendants deny the same.

18 156. Answering the allegations set forth in paragraph 156 of the Complaint, the
19 Director Defendants are without knowledge or information sufficient to form a belief as to the
20 truth or falsity of the allegations in paragraph 156 of the Complaint, and therefore deny the same,
21 except that Potashner admits he interacted with members of the Weisbord family at a public
22 event held in November of 2013.

23 157. The Director Defendants are without knowledge or information sufficient to form
24 a belief as to the truth or falsity of the allegations of paragraph 157 of the Complaint concerning
25 the intent and conduct of Stark. The Director Defendants deny the remaining allegations set
26 forth in paragraph 157 of the Complaint.

27 158. Answering the allegations set forth in paragraph 158 of the Complaint, the
28 Director Defendants admit that the Proxy contained Turtle Beach projections of 2013 net sales

1 and adjusted EBITDA of \$218 million and \$40.6 million, respectively. The Director Defendants
2 are without knowledge or information sufficient to form a belief as to the truth or falsity of the
3 allegations concerning VTBH's net sales and EBITDA after the publication of the Proxy, and
4 therefore deny the same. The Director Defendants deny the remaining allegations set forth in
5 paragraph 158 of the Complaint.

6 159. Paragraph 159 of the Complaint states a legal conclusion to which no response is
7 required. To the extent paragraph 159 is deemed to contain factual allegations, the Director
8 Defendants are without knowledge or information sufficient to form a belief as to the truth or
9 falsity of the remaining allegations of paragraph 159 of the Complaint, and therefore deny the
10 same.

11 160. Answering the allegations set forth in paragraph 160 of the Complaint, the
12 Director Defendants admit that the Proxy contained Turtle Beach projections of 2015 net sales
13 and adjusted EBITDA of \$335.1 million and \$82.8 million, respectively. The Director
14 Defendants are without knowledge or information sufficient to form a belief as to the truth or
15 falsity of the remaining allegations of paragraph 160 of the Complaint, and therefore deny the
16 same.

17 161. Answering the allegations set forth in paragraph 161 of the Complaint, the
18 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
19 correspondence of the Director Defendants. The Director Defendants deny the remaining
20 allegations set forth in paragraph 161 of the Complaint.

21 162. Answering the allegations set forth in paragraph 162 of the Complaint, the
22 Director Defendants admit that Parametric's stock closed at \$17.69 per share on August 5, 2013.
23 The Director Defendants deny the remaining allegation set forth in paragraph 162 of the
24 Complaint.

25 163. Answering the allegations set forth in paragraph 163 of the Complaint, the
26 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
27 correspondence between Potashner and Stark. The Director Defendants deny the remaining
28 allegations set forth in paragraph 163 of the Complaint.

1 164. The Directors Defendants are without knowledge or information sufficient to
2 form a belief as to the truth or falsity of the allegations set forth in paragraph 164 of the
3 Complaint concerning VTBH's anticipated revenues and cash flows and the figures supporting
4 Craig-Hallum's fairness opinion, and therefore deny the same. The Director Defendants deny
5 the remaining allegations set forth in paragraph 164 of the Complaint.

6 165. Answering the allegations set forth in paragraph 165 of the Complaint, the
7 Director Defendants admit that Craig-Hallum gave a fairness opinion that concluded the Per
8 Share Exchange Ratio was fair. The Director Defendants deny the remaining allegations set
9 forth in paragraph 165 of the Complaint.

10 166. The Director Defendants are without knowledge or information sufficient to form
11 a belief as to the truth or falsity of the allegations in paragraph 166 of the Complaint, and
12 therefore deny the same.

13 167. Answering the allegations set forth in paragraph 167 of the Complaint, the
14 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain
15 Parametric presentations and certain email correspondence of Barnes. The Director Defendants
16 deny the remaining allegations set forth in paragraph 167 of the Complaint.

17 168. Answering the allegations set forth in paragraph 168 of the Complaint, the
18 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
19 correspondence of the Director Defendants. The Director Defendants are without knowledge or
20 information sufficient to form a belief as to the truth or falsity of the allegations set forth in
21 paragraph 168 of the Complaint concerning Craig-Hallum's alleged conflicts, and therefore deny
22 the same.¹ The remainder of paragraph 168 states a legal conclusion to which no response is
23 required. To the extent paragraph 168 is deemed to contain factual allegations, the Director
24 Defendants deny the same.

25 169. Answering the allegations set forth in paragraph 169 of the Complaint, the
26 Director Defendants admit that, at the time of the Board's merger vote, Parametric's Board had
27 six members. The remainder of paragraph 169 states a legal conclusion to which no response is

28 ¹ Below Paragraph 168 of the Complaint is an unnumbered paragraph alleging purported conflicts affecting Craig-Hallum. The Director Defendants respond to these allegations as part of their response to Paragraph 168.

1 required. To the extent paragraph 169 is deemed to contain factual allegations, the Director
2 Defendants deny the same.

3 170. The Director Defendants deny each and every allegation set forth in paragraph
4 170 of the Complaint.

5 171. Answering the allegations set forth in paragraph 171 of the Complaint, the
6 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
7 correspondence between Potashner and Stark and of certain minutes of a regular meeting of the
8 Board. The remainder of paragraph 171 states a legal conclusion to which no response is
9 required. To the extent paragraph 171 is deemed to contain factual allegations, the Director
10 Defendants deny the same.

11 172. Answering the allegations set forth in paragraph 172 of the Complaint, the
12 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
13 correspondence between Potashner and Stark. The Director Defendants note that Plaintiff's
14 excerpts from the July 11, 2013 email correspondence misquote the referenced document, and
15 therefore deny these allegations to the extent that they inaccurately represent the original
16 document. The Director Defendants deny the remaining allegations set forth in paragraph 172 of
17 the Complaint.

18 173. Answering the allegations set forth in paragraph 173 of the Complaint, the
19 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
20 correspondence of the Director Defendants. The Director Defendants deny the remaining
21 allegations set forth in paragraph 173 of the Complaint.

22 174. The Director Defendants are without knowledge or information sufficient to form
23 a belief as to the truth or falsity of the allegations of paragraph 174 of the Complaint, and
24 therefore deny the same.

25 175. Answering the allegations set forth in paragraph 175 of the Complaint, the
26 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
27 correspondence of the Director Defendants. The Director Defendants deny the remaining
28 allegations set forth in paragraph 175 of the Complaint.

1 176. Answering the allegations set forth in paragraph 176 of the Complaint, the
2 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
3 correspondence of the Director Defendants. The Director Defendants deny the remaining
4 allegations set forth in paragraph 176 of the Complaint.

5 177. The Director Defendants are without knowledge or information sufficient to form
6 a belief as to the truth or falsity of the allegations of paragraph 177 of the Complaint, and
7 therefore deny the same.

8 178. Answering the allegations set forth in paragraph 178 of the Complaint, the
9 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
10 correspondence between Norris and Potashner. The remainder of paragraph 178 of the
11 Complaint states a legal conclusion to which no response is required. To the extent paragraph
12 178 is deemed to contain factual allegations, the Director Defendants deny the same.

13 179. Answering the allegations set forth in paragraph 179 of the Complaint, the
14 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
15 correspondence of the Director Defendants and minutes of a regular meeting of the Board. The
16 remainder of paragraph 179 states a legal conclusion to which no response is required. To the
17 extent paragraph 179 is deemed to contain factual allegations, the Director Defendants deny the
18 same.

19 180. Paragraph 180 of the Complaint states a legal conclusion to which no response is
20 required. To the extent paragraph 180 is deemed to contain factual allegations, the Director
21 Defendants deny the same.

22 181. Answering the allegations set forth in paragraph 181 of the Complaint, the
23 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
24 correspondence of the Director Defendants and minutes of a regular meeting of Parametric's
25 Board. The remainder of paragraph 181 states a legal conclusion to which no response is
26 required. To the extent paragraph 181 is deemed to contain factual allegations, the Director
27 Defendants deny the same.

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1 182. Answering the allegations set forth in paragraph 182 of the Complaint, the
2 Director Defendants admit that Potashner, Wolfe, and Todd worked together at Sonic Blue, Inc.
3 The Director Defendants deny the remaining allegation set forth in paragraph 182 of the
4 Complaint.

5 183. The Director Defendants deny each and every allegation set forth in paragraph
6 183 of the Complaint.

7 184. Answering the allegations set forth in paragraph 184 of the Complaint, the
8 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
9 correspondence of the Director Defendants. The Director Defendants note that Plaintiff's
10 excerpts from the July 1, 2013 and July 3, 2013 email correspondence misquote the referenced
11 documents, and therefore deny these allegations to the extent that they inaccurately represent the
12 original documents. The Director Defendants deny the remaining allegations set forth in
13 paragraph 184 of the Complaint.

14 185. The Director Defendants deny each and every allegation set forth in paragraph
15 185 of the Complaint.

16 186. Answering the allegations set forth in paragraph 186 of the Complaint, the
17 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
18 correspondence of the Director Defendants. The Director Defendants deny the remaining
19 allegations set forth in paragraph 186 of the Complaint.

20 187. Answering the allegations set forth in paragraph 187 of the Complaint, the
21 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
22 correspondence of the Director Defendants. The Director Defendants note that Plaintiff's
23 excerpts from the August 2, 2013 email correspondence misquote the referenced document, and
24 therefore deny these allegations to the extent that they inaccurately represent the original
25 document. The Director Defendants deny the remaining allegations set forth in paragraph 187 of
26 the Complaint.

27 188. Answering the allegations set forth in paragraph 188 of the Complaint, the
28 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email

1 correspondence of the Director Defendants and a special joint meeting of the Board and the
2 Compensation Committee. The Director Defendants deny the remaining allegations set forth in
3 paragraph 188 of the Complaint.

4 189. Answering the allegations set forth in paragraph 189 of the Complaint, the
5 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
6 correspondence of the Director Defendants. The Director Defendants deny the remaining
7 allegations set forth in paragraph 189 of the Complaint.

8 190. Answering the allegations set forth in paragraph 190 of the Complaint, the
9 Director Defendants admit that Plaintiff quotes selected portions, out of context, of the
10 shareholder Proxy. The Director Defendants deny the remaining allegations set forth in
11 paragraph 190 of the Complaint.

12 191. Answering the allegations set forth in paragraph 191 of the Complaint, the
13 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
14 correspondence of the Director Defendants. The Director Defendants deny the remaining
15 allegations set forth in paragraph 191 of the Complaint.

16 192. Answering the allegations set forth in paragraph 192 of the Complaint, the
17 Director Defendants admit that Putterman had an oral consulting agreement with Parametric and
18 that he resigned from the Board prior to the stockholders' vote on the merger. The Director
19 Defendants deny the remaining allegations set forth in paragraph 192 of the Complaint.

20 193. Paragraph 193 states a legal conclusion to which no response is required. To the
21 extent paragraph 193 is deemed to contain factual allegations, the Director Defendants deny the
22 same.

23 194. Answering the allegations set forth in paragraph 194 of the Complaint, the
24 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
25 correspondence between Potashner and Stark. The Director Defendants are without knowledge
26 or information sufficient to form a belief as to the truth or falsity of the remaining allegations of
27 paragraph 194 of the Complaint, and therefore deny the same.

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1 195. The Director Defendants are without knowledge or information sufficient to form
2 a belief as to the truth or falsity of the allegations of paragraph 195 of the Complaint, and
3 therefore deny the same.

4 196. The Director Defendants are without knowledge or information sufficient to form
5 a belief as to the truth or falsity of the allegations of paragraph 196 of the Complaint, and
6 therefore deny the same.

7 197. Answering the allegations set forth in paragraph 197 of the Complaint, the
8 Director Defendants admit that Plaintiff quotes selected portions, out of context, of certain email
9 correspondence between Potashner and Stark. The Director Defendants note that Plaintiff's
10 excerpts from the September 5, 2013 email correspondence misquote the referenced document,
11 and therefore deny these allegations to the extent that they inaccurately represent the original
12 document. The Director Defendants deny the remaining allegations set forth in paragraph 197 of
13 the Complaint.

14 198. The Directors Defendants are without knowledge or information sufficient to
15 form a belief as to the truth or falsity of the allegations of paragraph 198 of the Complaint
16 concerning Stripes' actions. The Director Defendants deny the remaining allegations of
17 paragraph 198.

18 199. The Director Defendants are without knowledge or information sufficient to form
19 a belief as to the truth or falsity of the allegations of paragraph 199 of the Complaint, and
20 therefore deny the same.

21 200. The Director Defendants are without knowledge or information sufficient to form
22 a belief as to the truth or falsity of the allegations of paragraph 200 of the Complaint, and
23 therefore deny the same.

24 201. The Director Defendants are without knowledge or information sufficient to form
25 a belief as to the truth or falsity of the allegations of paragraph 201 of the Complaint, and
26 therefore deny the same.

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1 202. The Director Defendants are without knowledge or information sufficient to form
2 a belief as to the truth or falsity of the allegations of paragraph 202 of the Complaint, and
3 therefore deny the same.

4 203. The Director Defendants are without knowledge or information sufficient to form
5 a belief as to the truth or falsity of the allegations of paragraph 203 of the Complaint, and
6 therefore deny the same.

7 204. The Director Defendants are without knowledge or information sufficient to form
8 a belief as to the truth or falsity of the allegations of paragraph 204 of the Complaint, and
9 therefore deny the same.

10 205. The Director Defendants are without knowledge or information sufficient to form
11 a belief as to the truth or falsity of the allegations of paragraph 205 of the Complaint, and
12 therefore deny the same.

13 206. The Director Defendants are without knowledge or information sufficient to form
14 a belief as to the truth or falsity of the allegations of paragraph 206 of the Complaint, and
15 therefore deny the same.

16 207. The Director Defendants are without knowledge or information sufficient to form
17 a belief as to the truth or falsity of the allegations of paragraph 207 of the Complaint, and
18 therefore deny the same.

19 208. Paragraph 208 of the Complaint states a legal conclusion to which no response is
20 required. To the extent paragraph 208 is deemed to contain factual allegations, the Director
21 Defendants are without knowledge or information sufficient to form a belief as to the truth or
22 falsity of the remaining allegations of paragraph 208, and therefore deny the same.

23 209. Paragraph 209 of the Complaint states a legal conclusion to which no response is
24 required. To the extent paragraph 209 is deemed to contain factual allegations, the Director
25 Defendants deny the same.

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FIRST CAUSE OF ACTION

Breach of Fiduciary Duty (Equity Expropriation)—Individual Defendants

210. Answering paragraph 210 of the Complaint, the Director Defendants incorporate their responses to paragraphs 1 through 209 as though set forth fully herein.

211. The Director Defendants deny each and every allegation set forth in paragraph 211 of the Complaint.

212. The Director Defendants deny each and every allegation set forth in paragraph 212 of the Complaint.

213. The Director Defendants deny each and every allegation set forth in paragraph 213 of the Complaint.

214. The Director Defendants deny each and every allegation set forth in paragraph 214 of the Complaint.

215. The Director Defendants deny each and every allegation set forth in paragraph 215 of the Complaint.

216. The Director Defendants deny each and every allegation set forth in paragraph 216 of the Complaint.

217. The Director Defendants deny each and every allegation set forth in paragraph 217 of the Complaint.

SECOND CAUSE OF ACTION

Aiding and Abetting Breach of Fiduciary Duty (Equity Expropriation)—Fox, Stark, Stripes, SG VTB and VTBH

218. Answering paragraph 218 of the Complaint, the Director Defendants incorporate their responses to paragraphs 1 through 217 as though set forth fully herein.

219. The Director Defendants are not named as defendants in Plaintiff's Second Cause of Action and therefore do not respond to Paragraph 219 of the Complaint.

220. The Director Defendants are not named as defendants in Plaintiff's Second Cause of Action and therefore do not respond to Paragraph 220 of the Complaint.

///

222. The Director Defendants are not named as defendants in Plaintiff's Second Cause of Action and therefore do not respond to Paragraph 222 of the Complaint.

223. The Director Defendants are not named as defendants in Plaintiff's Second Cause of Action and therefore do not respond to Paragraph 223 of the Complaint.

7 224. The Director Defendants are not named as defendants in Plaintiff's Second Cause
8 of Action and therefore do not respond to Paragraph 224 of the Complaint.

GENERAL DENIAL

10 The Director Defendants deny each and every allegation of the Complaint not specifically
11 admitted herein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

14 The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

16 Plaintiff lacks standing to pursue its first cause of action in the Complaint because that
17 cause of action is derivative and Plaintiff has failed to sufficiently plead demand futility.

Third Affirmative Defense

19 Plaintiff lacks standing to pursue its first cause of action in the Complaint because that
20 cause of action is derivative and Plaintiff has failed to comply with the requirements of Nev. R.
21 Civ. P. 23.1, including the particularity requirement.

Fourth Affirmative Defense

23 Plaintiff's first cause of action in the Complaint is barred by the principles of estoppel,
24 waiver, laches and/or unclean hands.

Fifth Affirmative Defense

26 Plaintiff's first cause of action in the Complaint is barred by the business judgment rule.

27 || *///*

28 |||

1 **Sixth Affirmative Defense**

2 Plaintiff's first cause of action in the Complaint is by the exculpatory provisions of NRS
3 78.138(7).

4 **Seventh Affirmative Defense**

5 Plaintiff's first cause of action in the Complaint is barred by the operation of NRS
6 78.139(1).

7 **Eighth Affirmative Defense**

8 Plaintiff has suffered no damages.

9 **Ninth Affirmative Defense**

10 Plaintiff's first cause of action in the Complaint is barred by the doctrine of *res*
11 *judicata*/claim preclusion.

12 **Tenth Affirmative Defense**

13 This action is barred by the applicable statutes of limitations.

14 **ADDITIONAL AFFIRMATIVE DEFENSES**

15 The Director Defendants presently have insufficient knowledge or information upon
16 which to form a belief as to whether they may have additional, as yet unstated, affirmative
17 defenses. The Director Defendants reserve their right to assert additional affirmative defenses.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, having fully answered Plaintiff's Complaint, the Director Defendants
20 pray for the following relief:

- 21 1. That Plaintiff take nothing by virtue of their Complaint;
22 2. That the Complaint be dismissed with prejudice;
23 3. That the Director Defendants be awarded their reasonable attorneys' fees and
24 costs, including any investigation and/or expert costs; and

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4. Such other and further relief as the Court may deem just and proper under the circumstances.

DATED this 3rd day of September, 2020.

/s/ Robert J. Cassity, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of September, 2020, a true and correct copy of the foregoing **DIRECTOR DEFENDANTS' ANSWER TO COMPLAINT** was served by the following method(s):

X Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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Juergen Stark*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND
CORPORATION SHAREHOLDERS'
LITIGATION

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

This Document Related To:
ALL ACTIONS

**ANSWER TO PLAINTIFF PAMTP LLC'S
COMPLAINT**

Specially Appearing Defendants Stripes Group, LLC, SG VTB Holdings, LLC (collectively, with Stripes Group LLC, "Stripes"), Juergen Stark ("Stark"), and Kenneth Fox ("Fox") and Defendant VTB Holdings, Inc. ("VTBH") (collectively, "Non-Director Defendants") submit their Answer to Plaintiff PAMTP LLC's Complaint, filed May 20, 2020, as follows.

ANSWER

1. Non-Director Defendants admit that this matter has been pleaded as a direct claim for breach of fiduciary duty by PAMTP LLC ("Plaintiff") against Parametric Sound Corporation's ("Parametric" or "PAMT") Board of Directors (the "Board" or the "Parametric Board") at the time of the Merger (defined below), and aiding and abetting claims against the Non-Director Defendants.

1 Non-Director Defendants further admit that Fox was a founder and Managing General Partner for
2 Stripes Group and that Stark was the CEO and a director of VTBH when the Merger was negotiated.
3 To the extent any further response is required, the allegations are denied.

4 2. Non-Director Defendants admit that the transaction was structured as a reverse
5 merger in which an approximately 81% interest in Parametric was sold to VTBH shareholders in
6 consideration for the transfer of VTBH to Parametric. Non-Director Defendants further admit that
7 the transaction was announced on August 5, 2013 and closed on January 15, 2014. Non-Director
8 Defendants further admit that Parametric Sound Corporation changed its name to Turtle Beach
9 Corporation on May 27, 2014. To the extent any further response is required, the allegations are
10 denied.

11 3. Non-Director Defendants state that Parametric's historical stock price on any given
12 date is a matter of public record and speaks for itself. Plaintiffs' characterization of that stock price
13 is denied. To the extent any further response is required, the allegations are denied.

14 4. Non-Director Defendants state that Parametric's historical stock price on any given
15 date is a matter of public record and speaks for itself. Plaintiffs' characterization of that stock price
16 is denied. To the extent any further response is required, the allegations are denied.

17 5. Denied.

18 6. Non-Director Defendants admit that Parametric's Board included six members on
19 August 2, 2013. The other allegations in this paragraph are denied.

20 7. Denied.

21 8. Non-Director Defendants admit that VTBH restructured its credit facility at the
22 same time that it was negotiating the Merger. Non-Director Defendants admit that VTBH disclosed
23 it had borrowed \$7 million from SG VTB. Non-Director Defendants admit that both VTBH and
24 Parametric prepared multiple financial projections while negotiating the Merger and neither
25 company ultimately reached early EBITDA targets. To the extent any further response is required,
26 the allegations are denied.

27 9. Non-Director Defendants admit that Parametric's pre-Merger shareholders owned
28 100% of Parametric before the Merger and 19% of the larger, post-Merger entity after the Merger.

1 Non-Director Defendants admit that 81% of the post-Merger company was owned by former
2 shareholders of VTBH but deny that Stripes Group individually held 81% of the post-Merger
3 company. To the extent any further response is required, the allegations are denied.

4 10. Non-Director Defendants admit that Fox was Stripes Group's founder and
5 Managing General Partner during negotiations leading to the Merger. Non-Director Defendants
6 admit that Juergen Stark was the CEO and a director of VTBH during negotiations leading to the
7 Merger. The other allegations in this paragraph are denied.

8 11. To the extent that this paragraph purports to make legal conclusions, rather than
9 factual allegations, no response is required. To the extent any further response is required, the
10 allegations are denied.

11 12. Denied.

12 13. Non-Director Defendants admit that Stark met with Adam Kahn and Robert
13 Masterson about the Merger. Non-Director Defendants deny that that Fox ever met with such
14 individuals. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
15 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
16 extent that this paragraph purports to make legal conclusions, rather than factual allegations, no
17 response is required. To the extent any further response is required, the allegations are denied.

18 14. Non-Director Defendants deny the allegations to the extent they relate to their
19 purported conduct. Non-Director Defendants lack sufficient knowledge to admit or deny
20 allegations regarding the knowledge or conduct by anyone other than the Non-Director Defendants.
21 To the extent any further response is required, the allegations are denied.

22 15. Denied.

23 16. This paragraph consists of only legal conclusions, rather than factual allegations, for
24 which no response is required. To the extent any further response is required, the allegations are
25 denied.

26 17. Non-Director Defendants deny that Stripes, Fox, and Stark are "incorporated in,
27 conducts business in, and maintain operations in the State, or is an individual who has sufficient
28 minimum contacts with the State, or is an individual who has sufficient minimum contacts with the

1 State of Nevada.” Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent that this paragraph purports to make legal conclusions, rather than factual allegations, no
4 response is required. To the extent any further response is required, the allegations are denied.

5 18. Non-Director Defendants admit that Parametric was a public corporation
6 incorporated in Nevada.

7 19. Non-Director Defendants deny that Stripes Group and SG VTB have any
8 substantial, continuous and systematic contacts with Nevada. To the extent that this paragraph
9 purports to make legal conclusions, rather than factual allegations, no response is required. To the
10 extent any further response is required, the allegations are denied.

11 20. Non-Director Defendants deny that Fox and Stark have any substantial, continuous
12 and systematic contacts with Nevada. To the extent that this paragraph purports to make legal
13 conclusions, rather than factual allegations, no response is required. To the extent any further
14 response is required, the allegations are denied.

15 21. Non-Director Defendants admit that the former shareholders of VTBH acquired
16 control of Parametric as a result of the Merger, that representatives of Stripes Group were involved
17 in negotiating the Merger, that Parametric continued to be operated as a Nevada company following
18 the Merger, and that Fox signed the Merger Agreement, which Parametric filed with the Nevada
19 Secretary of State. Non-Director Defendants deny that Plaintiffs claims arise from any conduct
20 that actually occurred in Nevada. To the extent that this paragraph purports to make legal
21 conclusions, rather than factual allegations, no response is required. To the extent any further
22 response is required, the allegations are denied.

23 22. Non-Director Defendants admit that the former shareholders of VTBH acquired
24 control of Parametric as a result of the Merger, that representatives of Stripes Group were involved
25 in negotiating the Merger, that Parametric continued to be operated as a Nevada company following
26 the Merger, and that Fox signed the Merger Agreement, which Parametric filed with the Nevada
27 Secretary of State. Non-Director Defendants deny that Plaintiffs claims arise from any conduct
28 that actually occurred in Nevada. To the extent that this paragraph purports to make legal

1 conclusions, rather than factual allegations, no response is required. To the extent any further
2 response is required, the allegations are denied.

3 23. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent any further response is required, the allegations are denied.

6 24. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
7 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
8 extent any further response is required, the allegations are denied.

9 25. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
10 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
11 extent any further response is required, the allegations are denied.

12 26. This paragraph merely defines a term and is not an allegation of fact for which any
13 response is required.

14 27. Non-Director Defendants lack sufficient knowledge to admit or deny whether
15 Potashner “essentially acted as Parametric’s CEO.” All other allegations are admitted.

16 28. Admitted

17 29. Admitted

18 30. Admitted

19 31. Admitted

20 32. This paragraph merely defines a term and is not an allegation of fact for which any
21 response is required.

22 33. This paragraph merely defines a term and is not an allegation of fact for which any
23 response is required.

24 34. Non-Director Defendants admit that VTBH was a company that designed and
25 marketed audio peripherals for video game, personal computer, and mobile platforms and that
26 VTBH was headquartered in Valhalla, New York. To the extent that this paragraph purports to
27 make legal conclusions, rather than factual allegations, no response is required. To the extent any
28 further response is required, the allegations are denied.

1 35. Admitted.

2 36. Non-Director Defendants admit that Fox is one of the founders of Stripes Group and
3 is its Managing General Partner. Non-Director Defendants admit that Fox is also the manager of
4 SG VTB. Non-Director Defendants admit that SG VTB was the largest individual shareholder of
5 Turtle Beach following the Merger. Non-Director Defendants admit that Fox had some
6 involvement in the Merger as a director of VTBH. Non-Director Defendants admit that Fox was a
7 director of Turtle Beach. To the extent any further response is required, the allegations are denied.

8 37. Admitted.

9 38. Non-Director Defendants admit that Stark has been the CEO of VTBH since
10 September 2012. Non-Director Defendants admit that Stark has been the CEO of Turtle Beach
11 since January 15, 2014. Non-Director Defendants admit that Stark is currently the Chairman of
12 Turtle Beach's Board of Directors. Non-Director Defendants admit that Stark negotiated with
13 Potashner during the Merger process. To the extent any further response is required, the allegations
14 are denied.

15 39. Admitted.

16 40. Admitted

17 41. Non-Director Defendants admit that Doornink was an Operating Partner of Stripes
18 Group but deny that he is still a principle of Stripes Group. Non-Director Defendants admit that
19 Doornink was the Chairman of VTBH during the sale process and served as Chairman of the Board
20 for Turtle Beach until the end of 2019. Non-Director Defendants admit that Doornink was party to
21 a shareholders' agreement with other shareholders of Turtle Beach by which members of that
22 agreement collectively held an interest in Turtle Beach. Non-Director Defendants admit that
23 Doornink had some involvement in the Merger as a director of VTBH. To the extent any further
24 response is required, the allegations are denied.

25 42. Non-Director Defendants admit that Kenworthy is a partner at Stripes Group and
26 has been with Stripes since 2006. To the extent any further response is required, the allegations are
27 denied.

28

1 43. Non-Director Defendants admit that Barnes was the CFO of Parametric before the
2 Merger and no longer held that position after the Merger. To the extent any further response is
3 required, the allegations are denied.

4 44. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
5 regarding the knowledge or conduct of Mr. Todd. To the extent any further response is required,
6 the allegations are denied.

7 45. Non-Director Defendants admit that Doornink, Kenworthy, and Stark spoke with
8 Potashner in March and April 2013 to discuss potential transactions. Non-Director Defendants lack
9 sufficient knowledge to admit or deny allegations regarding the knowledge or conduct by anyone
10 other than the Non-Director Defendants. To the extent this paragraph quotes from, refers to or
11 characterizes certain documents produced in this litigation, the Court is referred to those documents
12 for a complete and accurate statement of their contents. To the extent any further response is
13 required, the allegations are denied.

14 46. Non-Director Defendants admit that on or around April 19, 2013, representatives of
15 VTBH and Parametric discussed terms of a potential transaction in which Parametric's shareholders
16 would retain ownership of approximately 20% of the combined company. Non-Director
17 Defendants lack sufficient knowledge to admit or deny allegations regarding the knowledge or
18 conduct by anyone other than the Non-Director Defendants. To the extent this paragraph quotes
19 from, refers to or characterizes certain documents produced in this litigation, the Court is referred
20 to those documents for a complete and accurate statement of their contents. To the extent any
21 further response is required, the allegations are denied.

22 47. Non-Director Defendants admit that the pre-Merger Parametric shareholders
23 collectively owned 19% of the Parametric after the Merger. To the extent any further response is
24 required, the allegations are denied.

25 48. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
26 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
27 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
28

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 49. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
6 litigation, the Court is referred to those documents for a complete and accurate statement of their
7 contents. To the extent any further response is required, the allegations are denied.

8 50. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
9 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
10 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
11 litigation, the Court is referred to those documents for a complete and accurate statement of their
12 contents. To the extent any further response is required, the allegations are denied.

13 51. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
14 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
15 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
16 litigation, the Court is referred to those documents for a complete and accurate statement of their
17 contents. To the extent any further response is required, the allegations are denied.

18 52. To the extent this paragraph quotes from, refers to or characterizes certain
19 documents produced in this litigation, the Court is referred to those documents for a complete and
20 accurate statement of their contents. To the extent any further response is required, the allegations
21 are denied.

22 53. To the extent this paragraph quotes from, refers to or characterizes certain
23 documents produced in this litigation, the Court is referred to those documents for a complete and
24 accurate statement of their contents. To the extent any further response is required, the allegations
25 are denied.

26 54. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
27 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
28 extent this paragraph quotes from, refers to or characterizes certain documents produced in this

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 55. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
6 litigation, the Court is referred to those documents for a complete and accurate statement of their
7 contents. To the extent any further response is required, the allegations are denied.

8 56. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
9 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
10 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
11 litigation, the Court is referred to those documents for a complete and accurate statement of their
12 contents. Non-Director Defendants admit Stark and Doornink spoke with Potashner on July 2 and
13 3, 2013. To the extent any further response is required, the allegations are denied.

14 57. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
15 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
16 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
17 litigation, the Court is referred to those documents for a complete and accurate statement of their
18 contents. To the extent any further response is required, the allegations are denied.

19 58. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
20 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
21 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
22 litigation, the Court is referred to those documents for a complete and accurate statement of their
23 contents. To the extent any further response is required, the allegations are denied.

24 59. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
25 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
26 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
27 litigation, the Court is referred to those documents for a complete and accurate statement of their
28 contents. To the extent any further response is required, the allegations are denied.

1 60. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
4 litigation, the Court is referred to those documents for a complete and accurate statement of their
5 contents. Non-Director Defendants admit Stark and spoke with Potashner on July 19 and 21, 2013.
6 Non-Director Defendants admit that Doornink and Potashner spoke on July 20 2013. To the extent
7 any further response is required, the allegations are denied.

8 61. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
9 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
10 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
11 litigation, the Court is referred to those documents for a complete and accurate statement of their
12 contents. To the extent any further response is required, the allegations are denied.

13 62. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
14 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
15 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
16 litigation, the Court is referred to those documents for a complete and accurate statement of their
17 contents. To the extent any further response is required, the allegations are denied.

18 63. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
19 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
20 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
21 litigation, the Court is referred to those documents for a complete and accurate statement of their
22 contents. To the extent any further response is required, the allegations are denied.

23 64. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
24 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
25 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
26 litigation, the Court is referred to those documents for a complete and accurate statement of their
27 contents. To the extent any further response is required, the allegations are denied.
28

1 65. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
4 litigation, the Court is referred to those documents for a complete and accurate statement of their
5 contents. To the extent any further response is required, the allegations are denied.

6 66. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
7 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
8 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
9 litigation, the Court is referred to those documents for a complete and accurate statement of their
10 contents. To the extent any further response is required, the allegations are denied.

11 67. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
12 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
13 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
14 litigation, the Court is referred to those documents for a complete and accurate statement of their
15 contents. To the extent any further response is required, the allegations are denied.

16 68. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
17 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
18 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
19 litigation, the Court is referred to those documents for a complete and accurate statement of their
20 contents. To the extent any further response is required, the allegations are denied.

21 69. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
22 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
23 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
24 litigation, the Court is referred to those documents for a complete and accurate statement of their
25 contents. To the extent any further response is required, the allegations are denied.

26 70. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
27 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
28 extent this paragraph quotes from, refers to or characterizes certain documents produced in this

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. Non-Director Defendants further note that “Turtle Beach,” which refers to Turtle Beach
3 Corporation (Am. Compl. 2), did not exist on July 20, 2013. To the extent any further response is
4 required, the allegations are denied.

5 71. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
6 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
7 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
8 litigation, the Court is referred to those documents for a complete and accurate statement of their
9 contents. To the extent any further response is required, the allegations are denied.

10 72. Non-Director Defendants admit that Stark wanted Potashner’s interest in HHI to be
11 cancelled. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
12 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
13 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
14 litigation, the Court is referred to those documents for a complete and accurate statement of their
15 contents. To the extent any further response is required, the allegations are denied.

16 73. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
17 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
18 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
19 litigation, the Court is referred to those documents for a complete and accurate statement of their
20 contents. To the extent any further response is required, the allegations are denied.

21 74. Non-Director Defendants admit that they did not require Potashner’s HHI options
22 to be cancelled before signing the Merger Agreement so long as they were cancelled before the
23 Merger could close. Non-Director Defendants lack sufficient knowledge to admit or deny
24 allegations regarding the knowledge or conduct by anyone other than the Non-Director Defendants.
25 To the extent this paragraph quotes from, refers to or characterizes certain documents produced in
26 this litigation, the Court is referred to those documents for a complete and accurate statement of
27 their contents. To the extent any further response is required, the allegations are denied.
28

1 75. To the extent this paragraph quotes from, refers to or characterizes certain
2 documents produced in this litigation, the Court is referred to those documents for a complete and
3 accurate statement of their contents. To the extent any further response is required, the allegations
4 are denied.

5 76. Non-Director Defendants admit that Parametric dissolved HHI before the Merger
6 closed. Non-Director Defendants lack sufficient knowledge to admit or deny allegations regarding
7 the knowledge or conduct by anyone other than the Non-Director Defendants. To the extent this
8 paragraph quotes from, refers to or characterizes certain documents produced in this litigation, the
9 Court is referred to those documents for a complete and accurate statement of their contents. To
10 the extent any further response is required, the allegations are denied.

11 77. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
12 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
13 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
14 litigation, the Court is referred to those documents for a complete and accurate statement of their
15 contents. To the extent any further response is required, the allegations are denied.

16 78. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
17 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
18 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
19 litigation, the Court is referred to those documents for a complete and accurate statement of their
20 contents. To the extent any further response is required, the allegations are denied.

21 79. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
22 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
23 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
24 litigation, the Court is referred to those documents for a complete and accurate statement of their
25 contents. To the extent any further response is required, the allegations are denied.

26 80. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
27 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
28 extent this paragraph quotes from, refers to or characterizes certain documents produced in this

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 81. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
6 litigation, the Court is referred to those documents for a complete and accurate statement of their
7 contents. Non-Director Defendants state that Parametric's historical stock price on any given date
8 is a matter of public record and speaks for itself. Plaintiffs' characterization of that stock price is
9 denied. To the extent any further response is required, the allegations are denied.

10 82. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
11 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
12 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
13 litigation, the Court is referred to those documents for a complete and accurate statement of their
14 contents. To the extent any further response is required, the allegations are denied.

15 83. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
16 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
17 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
18 litigation, the Court is referred to those documents for a complete and accurate statement of their
19 contents. To the extent any further response is required, the allegations are denied.

20 84. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
21 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
22 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
23 litigation, the Court is referred to those documents for a complete and accurate statement of their
24 contents. Non-Director Defendants state that Parametric's historical stock price on any given date
25 is a matter of public record and speaks for itself. Plaintiffs' characterization of that stock price is
26 denied. To the extent any further response is required, the allegations are denied.

27

28

1 85. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent any further response is required, the allegations are denied.

4 86. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
5 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
6 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
7 litigation, the Court is referred to those documents for a complete and accurate statement of their
8 contents. To the extent any further response is required, the allegations are denied.

9 87. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
10 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
11 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
12 litigation, the Court is referred to those documents for a complete and accurate statement of their
13 contents. To the extent any further response is required, the allegations are denied.

14 88. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
15 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
16 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
17 litigation, the Court is referred to those documents for a complete and accurate statement of their
18 contents. To the extent any further response is required, the allegations are denied.

19 89. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
20 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
21 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
22 litigation, the Court is referred to those documents for a complete and accurate statement of their
23 contents. To the extent any further response is required, the allegations are denied.

24 90. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
25 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
26 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
27 litigation, the Court is referred to those documents for a complete and accurate statement of their
28 contents. To the extent any further response is required, the allegations are denied.

1 91. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
4 litigation, the Court is referred to those documents for a complete and accurate statement of their
5 contents. To the extent any further response is required, the allegations are denied.

6 92. To the extent this paragraph quotes from, refers to or characterizes certain
7 documents produced in this litigation, the Court is referred to those documents for a complete and
8 accurate statement of their contents. To the extent any further response is required, the allegations
9 are denied.

10 93. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
11 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
12 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
13 litigation, the Court is referred to those documents for a complete and accurate statement of their
14 contents. To the extent any further response is required, the allegations are denied.

15 94. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
16 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
17 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
18 litigation, the Court is referred to those documents for a complete and accurate statement of their
19 contents. To the extent any further response is required, the allegations are denied.

20 95. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
21 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
22 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
23 litigation, the Court is referred to those documents for a complete and accurate statement of their
24 contents. To the extent any further response is required, the allegations are denied.

25 96. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
26 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
27 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
28

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 97. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
6 litigation, the Court is referred to those documents for a complete and accurate statement of their
7 contents. To the extent any further response is required, the allegations are denied.

8 98. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
9 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
10 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
11 litigation, the Court is referred to those documents for a complete and accurate statement of their
12 contents. To the extent any further response is required, the allegations are denied.

13 99. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
14 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
15 extent any further response is required, the allegations are denied.

16 100. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
17 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
18 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
19 litigation, the Court is referred to those documents for a complete and accurate statement of their
20 contents. To the extent any further response is required, the allegations are denied.

21 101. Non-Director Defendants admit that VTBH provided its second quarter financials
22 to the Parametric Board before the Parametric Board voted on the Merger. Non-Director
23 Defendants lack sufficient knowledge to admit or deny allegations regarding the knowledge or
24 conduct by anyone other than the Non-Director Defendants. To the extent this paragraph quotes
25 from, refers to or characterizes certain documents produced in this litigation, the Court is referred
26 to those documents for a complete and accurate statement of their contents. To the extent any
27 further response is required, the allegations are denied.

28

1 102. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent any further response is required, the allegations are denied.

4 103. Non-Director Defendants admit that the Proxy accurately describes the
5 compensation that Potashner expected to receive in any change of control, regardless of which
6 person or entity acquired control of Parametric. Non-Director Defendants lack sufficient
7 knowledge to admit or deny allegations regarding the knowledge or conduct by anyone other than
8 the Non-Director Defendants. To the extent this paragraph quotes from, refers to or characterizes
9 certain documents produced in this litigation, the Court is referred to those documents for a
10 complete and accurate statement of their contents. To the extent any further response is required,
11 the allegations are denied.

12 104. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
13 regarding the knowledge or conduct by anyone other than the Non-Director Defendants.

14 105. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
15 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
16 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
17 litigation, the Court is referred to those documents for a complete and accurate statement of their
18 contents. To the extent any further response is required, the allegations are denied.

19 106. Non-Director Defendants admit that the Merger was approved at a ratio of 80.9% to
20 19.1%. Non-Director Defendants lack sufficient knowledge to admit or deny allegations regarding
21 the knowledge or conduct by anyone other than the Non-Director Defendants. To the extent this
22 paragraph quotes from, refers to or characterizes certain documents produced in this litigation, the
23 Court is referred to those documents for a complete and accurate statement of their contents. To
24 the extent any further response is required, the allegations are denied.

25 107. Non-Director Defendants admit that the Merger was announced after the market
26 closed on August 5, 2013. Non-Director Defendants state that Parametric's historical stock price
27 on any given date is a matter of public record and speaks for itself. Plaintiffs' characterization of
28 that stock price is denied. To the extent any further response is required, the allegations are denied.

1 108. Non-Director Defendants admit that the Merger Agreement contained a “go-shop”
2 provision requiring Parametric to contact other parties within 30 days, beginning August 5, 2013.
3 All other allegations are denied.

4 109. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
5 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
6 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
7 litigation, the Court is referred to those documents for a complete and accurate statement of their
8 contents. To the extent any further response is required, the allegations are denied.

9 110. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
10 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
11 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
12 litigation, the Court is referred to those documents for a complete and accurate statement of their
13 contents. To the extent any further response is required, the allegations are denied.

14 111. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
15 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
16 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
17 litigation, the Court is referred to those documents for a complete and accurate statement of their
18 contents. To the extent any further response is required, the allegations are denied.

19 112. Non-Director Defendants admit that Stark was the Chief Operating Office for
20 Motorola from 2003 through 2012 but deny Plaintiff’s characterization of that role and Plaintiff’s
21 characterization of Stark’s subsequent role with VTBH. Non-Director Defendants lack sufficient
22 knowledge to admit or deny allegations regarding the knowledge or conduct by anyone other than
23 the Non-Director Defendants. To the extent this paragraph quotes from, refers to or characterizes
24 certain documents produced in this litigation, the Court is referred to those documents for a
25 complete and accurate statement of their contents. To the extent any further response is required,
26 the allegations are denied.

27 113. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
28 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the

1 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
2 litigation, the Court is referred to those documents for a complete and accurate statement of their
3 contents. To the extent any further response is required, the allegations are denied.

4 114. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
5 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
6 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
7 litigation, the Court is referred to those documents for a complete and accurate statement of their
8 contents. To the extent any further response is required, the allegations are denied.

9 115. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
10 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
11 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
12 litigation, the Court is referred to those documents for a complete and accurate statement of their
13 contents. To the extent any further response is required, the allegations are denied.

14 116. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
15 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
16 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
17 litigation, the Court is referred to those documents for a complete and accurate statement of their
18 contents. Non-Director Defendants state that Parametric's historical stock price on any given date
19 is a matter of public record and speaks for itself. Plaintiffs' characterization of that stock price is
20 denied. To the extent any further response is required, the allegations are denied.

21 117. Non-Director Defendants admit that the Merger Agreement provided for a break-up
22 licensing agreement and a five-day business match right provision. Non-Director Defendants admit
23 that Houlihan Lokey was involved in soliciting other potential bidders. Non-Director Defendants
24 lack sufficient knowledge to admit or deny allegations regarding the knowledge or conduct by
25 anyone other than the Non-Director Defendants. To the extent this paragraph quotes from, refers
26 to or characterizes certain documents produced in this litigation, the Court is referred to those
27 documents for a complete and accurate statement of their contents. Non-Director Defendants state
28 that Parametric's historical stock price on any given date is a matter of public record and speaks for

1 itself. Plaintiffs' characterization of that stock price is denied. To the extent any further response
2 is required, the allegations are denied.

3 118. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent any further response is required, the allegations are denied.

6 119. Non-Director Defendants deny any implication that they had had an obligation or
7 ability to prepare the Proxy or issue it to Parametric shareholders. Non-Director Defendants admit
8 that the Merger, which was overwhelmingly approved by approximately 95% of the voted shares,
9 required only a majority for approval. Non-Director Defendants lack sufficient knowledge to admit
10 or deny allegations regarding the knowledge or conduct by anyone other than the Non-Director
11 Defendants. To the extent this paragraph quotes from, refers to or characterizes certain documents
12 produced in this litigation, the Court is referred to those documents for a complete and accurate
13 statement of their contents. To the extent any further response is required, the allegations are
14 denied.

15 120. Defendants deny any implication that they had had an obligation or ability to prepare
16 the Proxy or issue it to Parametric shareholders. Non-Director Defendants lack sufficient
17 knowledge to admit or deny allegations regarding the knowledge or conduct by anyone other than
18 the Non-Director Defendants. To the extent any further response is required, the allegations are
19 denied.

20 121. Non-Director Defendants admit that the projections referred to as "Fairness
21 Opinion/Proxy Projections" were prepared in spring 2013 but deny Plaintiff's characterization of
22 those projections. To the extent this paragraph quotes from, refers to or characterizes certain
23 documents produced in this litigation, the Court is referred to those documents for a complete and
24 accurate statement of their contents. To the extent any further response is required, the allegations
25 are denied.

26 122. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
27 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
28 extent this paragraph quotes from, refers to or characterizes certain documents produced in this

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 123. VTBH admits that it, like Parametric, prepared multiple projections throughout
4 2013 and that each were accurate at the time they were made. Those projections are accurately
5 reflected in public disclosures and discovery produced in this matter. To the extent this paragraph
6 quotes from, refers to or characterizes certain documents produced in this litigation, the Court is
7 referred to those documents for a complete and accurate statement of their contents. To the extent
8 any further response is required, the allegations are denied.

9 124. VTBH admits that it, like Parametric, prepared multiple projections throughout
10 2013 and that each were accurate at the time they were made. Those projections are accurately
11 reflected in public disclosures and discovery produced in this matter. To the extent this paragraph
12 quotes from, refers to or characterizes certain documents produced in this litigation, the Court is
13 referred to those documents for a complete and accurate statement of their contents. To the extent
14 any further response is required, the allegations are denied.

15 125. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
16 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
17 extent any further response is required, the allegations are denied.

18 126. Non-Director Defendants admit that they provided revised financial estimates to
19 Parametric before the Merger was approved. Non-Director Defendants lack sufficient knowledge
20 to admit or deny allegations regarding the knowledge or conduct by anyone other than the Non-
21 Director Defendants. To the extent this paragraph quotes from, refers to or characterizes certain
22 documents produced in this litigation, the Court is referred to those documents for a complete and
23 accurate statement of their contents. To the extent any further response is required, the allegations
24 are denied.

25 127. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
26 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
27 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
28

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 128. Non-Director Defendants admit that Potashner had full knowledge of VTBH's
4 financial condition on August 9, 2013. Non-Director Defendants admit that actual performance for
5 VTBH and Parametric was lower than Stark believed it would be in August 2013. Non-Director
6 Defendants lack sufficient knowledge to admit or deny allegations regarding the knowledge or
7 conduct by anyone other than the Non-Director Defendants. To the extent this paragraph quotes
8 from, refers to or characterizes certain documents produced in this litigation, the Court is referred
9 to those documents for a complete and accurate statement of their contents. To the extent any
10 further response is required, the allegations are denied.

11 129. Non-Director Defendants admit that they provided revised financial estimates to
12 Parametric before the Merger was approved. Non-Director Defendants lack sufficient knowledge
13 to admit or deny allegations regarding the knowledge or conduct by anyone other than the Non-
14 Director Defendants. To the extent this paragraph quotes from, refers to or characterizes certain
15 documents produced in this litigation, the Court is referred to those documents for a complete and
16 accurate statement of their contents. To the extent any further response is required, the allegations
17 are denied.

18 130. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
19 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
20 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
21 litigation, the Court is referred to those documents for a complete and accurate statement of their
22 contents. To the extent any further response is required, the allegations are denied.

23 131. Non-Director Defendants deny any implication that they had had an obligation or
24 ability to prepare the Proxy or issue it to Parametric shareholders. Non-Director Defendants lack
25 sufficient knowledge to admit or deny allegations regarding the knowledge or conduct by anyone
26 other than the Non-Director Defendants. To the extent this paragraph quotes from, refers to or
27 characterizes certain documents produced in this litigation, the Court is referred to those documents
28

1 for a complete and accurate statement of their contents. To the extent any further response is
2 required, the allegations are denied.

3 132. Non-Director Defendants admit that they provided revised financial estimates to
4 Parametric before the Merger was approved. Non-Director Defendants lack sufficient knowledge
5 to admit or deny allegations regarding the knowledge or conduct by anyone other than the Non-
6 Director Defendants. To the extent this paragraph quotes from, refers to or characterizes certain
7 documents produced in this litigation, the Court is referred to those documents for a complete and
8 accurate statement of their contents. To the extent any further response is required, the allegations
9 are denied.

10 133. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
11 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
12 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
13 litigation, the Court is referred to those documents for a complete and accurate statement of their
14 contents. To the extent any further response is required, the allegations are denied.

15 134. Non-Director Defendants admit that VTBH prepared the “Bank Projections” and
16 sent them to PNC and Parametric before the Merger was approved. To the extent this paragraph
17 quotes from, refers to or characterizes certain documents produced in this litigation, the Court is
18 referred to those documents for a complete and accurate statement of their contents. To the extent
19 any further response is required, the allegations are denied.

20 135. Non-Director Defendants admit that VTBH prepared the “Bank Projections” and
21 sent them to PNC and Parametric before the Merger was approved. To the extent this paragraph
22 quotes from, refers to or characterizes certain documents produced in this litigation, the Court is
23 referred to those documents for a complete and accurate statement of their contents. To the extent
24 any further response is required, the allegations are denied.

25 136. Non-Director Defendants admit that VTBH restructured its credit facility at the
26 same time that it was negotiating the Merger, which it disclosed to Parametric, and that Stark signed
27 the Merger Agreement. To the extent this paragraph quotes from, refers to or characterizes certain
28 documents produced in this litigation, the Court is referred to those documents for a complete and

1 accurate statement of their contents. To the extent any further response is required, the allegations
2 are denied.

3 137. Non-Director Defendants deny any implication that they had had an obligation or
4 ability to prepare the Proxy or issue it to Parametric shareholders. Non-Director Defendants lack
5 sufficient knowledge to admit or deny allegations regarding the knowledge or conduct by anyone
6 other than the Non-Director Defendants. To the extent any further response is required, the
7 allegations are denied.

8 138. Non-Director Defendants admit that they provided updated financial projections to
9 Parametric at various times. Non-Director Defendants deny any implication that they had had an
10 obligation or ability to prepare the Proxy or issue it to Parametric shareholders. To the extent this
11 paragraph quotes from, refers to or characterizes certain documents produced in this litigation, the
12 Court is referred to those documents for a complete and accurate statement of their contents. To
13 the extent any further response is required, the allegations are denied.

14 139. Non-Director Defendants deny any implication that they had had an obligation or
15 ability to prepare the Proxy or issue it to Parametric shareholders. Non-Director Defendants lack
16 sufficient knowledge to admit or deny allegations regarding the knowledge or conduct by anyone
17 other than the Non-Director Defendants. To the extent any further response is required, the
18 allegations are denied.

19 140. Non-Director Defendants admit that the Merger Agreement included a “Break-Up
20 License” provision that would have provided VTBH with certain exclusive and non-exclusive
21 licenses in the event that the Merger were not completed. The Merger Agreement also included a
22 five-day business match provision. Non-Director Defendants deny any implication that they had
23 had an obligation or ability to prepare the Proxy or issue it to Parametric shareholders. Non-
24 Director Defendants lack sufficient knowledge to admit or deny allegations regarding the
25 knowledge or conduct by anyone other than the Non-Director Defendants. To the extent this
26 paragraph quotes from, refers to or characterizes certain documents produced in this litigation, the
27 Court is referred to those documents for a complete and accurate statement of their contents. To
28 the extent any further response is required, the allegations are denied.

1 141. Denied.

2 142. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
3 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
4 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
5 litigation, the Court is referred to those documents for a complete and accurate statement of their
6 contents. To the extent any further response is required, the allegations are denied.

7 143. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
8 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
9 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
10 litigation, the Court is referred to those documents for a complete and accurate statement of their
11 contents. To the extent any further response is required, the allegations are denied.

12 144. This paragraph states only the conclusions of a purported expert hired by previous
13 plaintiffs in this matter who are no longer parties. It contains no independent factual allegations
14 for which any response is required. To the extent that any further response is required, Non-
15 Director Defendants deny Professor Subramanian's self-serving conclusions.

16 145. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
17 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
18 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
19 litigation, the Court is referred to those documents for a complete and accurate statement of their
20 contents. To the extent any further response is required, the allegations are denied. This paragraph
21 also states conclusions of a purported expert hired by previous plaintiffs in this matter who are no
22 longer parties. These conclusions are not independent factual allegations for which any response
23 is required. To the extent that any further response is required, Non-Director Defendants deny
24 Professor Subramanian's self-serving conclusions.

25 146. Denied.

26 147. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
27 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
28 extent this paragraph cites a deposition that occurred earlier in this matter, Non-Director Defendants

1 admit that this deposition occurred but deny Plaintiff's characterization of the testimony. To the
2 extent any further response is required, the allegations are denied.

3 148. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
6 litigation, the Court is referred to those documents for a complete and accurate statement of their
7 contents. To the extent this paragraph cites a deposition that occurred earlier in this matter, Non-
8 Director Defendants admit that this deposition occurred by deny Plaintiff's characterization of the
9 testimony. To the extent any further response is required, the allegations are denied.

10 149. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
11 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
12 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
13 litigation, the Court is referred to those documents for a complete and accurate statement of their
14 contents. To the extent any further response is required, the allegations are denied.

15 150. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
16 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
17 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
18 litigation, the Court is referred to those documents for a complete and accurate statement of their
19 contents. To the extent any further response is required, the allegations are denied.

20 151. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
21 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
22 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
23 litigation, the Court is referred to those documents for a complete and accurate statement of their
24 contents. To the extent any further response is required, the allegations are denied.

25 152. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
26 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
27 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
28

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 153. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
4 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
5 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
6 litigation, the Court is referred to those documents for a complete and accurate statement of their
7 contents. To the extent any further response is required, the allegations are denied.

8 154. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
9 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
10 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
11 litigation, the Court is referred to those documents for a complete and accurate statement of their
12 contents. To the extent any further response is required, the allegations are denied.

13 155. Non-Director Defendants admit that they advocated in favor of the Merger and
14 sought to accurately inform Parametric shareholders about the benefits of the Merger. Non-
15 Director Defendants admit that Stark met with certain Parametric shareholders. Non-Director
16 Defendants lack sufficient knowledge to admit or deny allegations regarding the knowledge or
17 conduct by anyone other than the Non-Director Defendants. To the extent any further response is
18 required, the allegations are denied.

19 156. Non-Director Defendants admit that Stark met with Robert Masterson on or around
20 September 18, 2013 and met with Adam Kahn on or around November 7, 2013. Non-Director
21 Defendants lack sufficient knowledge to admit or deny allegations regarding the knowledge or
22 conduct by anyone other than the Non-Director Defendants. To the extent any further response is
23 required, the allegations are denied.

24 157. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
25 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
26 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
27 litigation, the Court is referred to those documents for a complete and accurate statement of their
28 contents. To the extent any further response is required, the allegations are denied.

1 158. Non-Director Defendants admit that the Proxy included financial forecasts for
2 VTBH and Parametric that, as disclosed, were accurate as of the date when the Merger Agreement
3 was signed. Non-Director Defendants further admit that both VTBH and Parametric's actual
4 financial performance later in 2013 was lower than had been forecasted earlier in the year. To the
5 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
6 litigation, the Court is referred to those documents for a complete and accurate statement of their
7 contents. To the extent any further response is required, the allegations are denied.

8 159. Non-Director Defendants admit that the Proxy included financial forecasts for
9 VTBH and Parametric that, as disclosed, were accurate as of the date when the Merger Agreement
10 was signed. Non-Director Defendants further admit that both VTBH and Parametric's actual
11 financial performance later in 2013 was lower than had been forecasted earlier in the year. To the
12 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
13 litigation, the Court is referred to those documents for a complete and accurate statement of their
14 contents. To the extent any further response is required, the allegations are denied.

15 160. Non-Director Defendants admit that the Proxy included financial forecasts for
16 VTBH and Parametric that, as disclosed, were accurate as of the date when the Merger Agreement
17 was signed. Non-Director Defendants further admit that both VTBH and Parametric's actual
18 financial performance later in 2013 was lower than had been forecasted earlier in the year. To the
19 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
20 litigation, the Court is referred to those documents for a complete and accurate statement of their
21 contents. To the extent any further response is required, the allegations are denied.

22 161. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
23 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
24 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
25 litigation, the Court is referred to those documents for a complete and accurate statement of their
26 contents. To the extent any further response is required, the allegations are denied.

27 162. Non-Director Defendants deny any implication that they had had an obligation or
28 ability to disclose information directly to Parametric shareholders. Non-Director Defendants lack

1 sufficient knowledge to admit or deny allegations regarding the knowledge or conduct by anyone
2 other than the Non-Director Defendants. Non-Director Defendants state that Parametric's historical
3 stock price on any given date is a matter of public record and speaks for itself. Plaintiffs'
4 characterization of that stock price is denied.

5 163. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
6 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
7 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
8 litigation, the Court is referred to those documents for a complete and accurate statement of their
9 contents. To the extent any further response is required, the allegations are denied.

10 164. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
11 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
12 extent any further response is required, the allegations are denied.

13 165. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
14 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
15 extent any further response is required, the allegations are denied.

16 166. Denied.

17 167. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
18 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
19 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
20 litigation, the Court is referred to those documents for a complete and accurate statement of their
21 contents. To the extent any further response is required, the allegations are denied.

22 168. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
23 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
24 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
25 litigation, the Court is referred to those documents for a complete and accurate statement of their
26 contents. To the extent any further response is required, the allegations are denied.

27 [Un-numbered Paragraph] Non-Director Defendants lack sufficient knowledge to admit
28 or deny allegations regarding the knowledge or conduct by anyone other than the Non-Director

1 Defendants. To the extent this paragraph quotes from, refers to or characterizes certain documents
2 produced in this litigation, the Court is referred to those documents for a complete and accurate
3 statement of their contents. To the extent this paragraph cites a deposition that occurred earlier in
4 this matter, Non-Director Defendants admit that this deposition occurred by deny Plaintiff's
5 characterization of the testimony. To the extent any further response is required, the allegations
6 are denied.

7 169. Denied.

8 170. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
9 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
10 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
11 litigation, the Court is referred to those documents for a complete and accurate statement of their
12 contents. To the extent any further response is required, the allegations are denied.

13 171. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
14 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
15 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
16 litigation, the Court is referred to those documents for a complete and accurate statement of their
17 contents. To the extent any further response is required, the allegations are denied.

18 172. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
19 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
20 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
21 litigation, the Court is referred to those documents for a complete and accurate statement of their
22 contents. To the extent any further response is required, the allegations are denied.

23 173. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
24 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
25 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
26 litigation, the Court is referred to those documents for a complete and accurate statement of their
27 contents. To the extent any further response is required, the allegations are denied.
28

1 174. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
4 litigation, the Court is referred to those documents for a complete and accurate statement of their
5 contents. To the extent any further response is required, the allegations are denied.

6 175. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
7 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
8 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
9 litigation, the Court is referred to those documents for a complete and accurate statement of their
10 contents. To the extent any further response is required, the allegations are denied.

11 176. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
12 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
13 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
14 litigation, the Court is referred to those documents for a complete and accurate statement of their
15 contents. To the extent any further response is required, the allegations are denied.

16 177. Non-Director Defendants admit that this document was produced but Non-Director
17 Defendants state that this document speaks for itself and deny Plaintiffs' characterization of this
18 document. To the extent any further response is required, the allegations are denied.

19 178. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
20 regarding the knowledge or conduct by anyone other than the Non-Director Defendants.

21 179. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
22 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
23 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
24 litigation, the Court is referred to those documents for a complete and accurate statement of their
25 contents. To the extent any further response is required, the allegations are denied.

26 180. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
27 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
28 extent this paragraph quotes from, refers to or characterizes certain documents produced in this

1 litigation, the Court is referred to those documents for a complete and accurate statement of their
2 contents. To the extent any further response is required, the allegations are denied.

3 181. Non-Director Defendants admit that Norris was the Company's Chief Scientist
4 through the end of 2016. Non-Director Defendants lack sufficient knowledge to admit or deny
5 allegations regarding the knowledge or conduct by anyone other than the Non-Director Defendants.
6 To the extent this paragraph quotes from, refers to or characterizes certain documents produced in
7 this litigation, the Court is referred to those documents for a complete and accurate statement of
8 their contents. To the extent any further response is required, the allegations are denied.

9 182. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
10 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
11 extent any further response is required, the allegations are denied.

12 183. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
13 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
14 extent any further response is required, the allegations are denied.

15 184. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
16 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
17 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
18 litigation, the Court is referred to those documents for a complete and accurate statement of their
19 contents. To the extent any further response is required, the allegations are denied.

20 185. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
21 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
22 extent any further response is required, the allegations are denied.

23 186. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
24 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
25 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
26 litigation, the Court is referred to those documents for a complete and accurate statement of their
27 contents. To the extent any further response is required, the allegations are denied.
28

1 187. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
4 litigation, the Court is referred to those documents for a complete and accurate statement of their
5 contents. To the extent any further response is required, the allegations are denied.

6 188. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
7 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
8 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
9 litigation, the Court is referred to those documents for a complete and accurate statement of their
10 contents. To the extent any further response is required, the allegations are denied.

11 189. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
12 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
13 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
14 litigation, the Court is referred to those documents for a complete and accurate statement of their
15 contents. To the extent any further response is required, the allegations are denied.

16 190. Non-Director Defendants deny any implication that they had had an obligation or
17 ability to prepare the Proxy or issue it to Parametric shareholders. Non-Director Defendants lack
18 sufficient knowledge to admit or deny allegations regarding the knowledge or conduct by anyone
19 other than the Non-Director Defendants. To the extent this paragraph quotes from, refers to or
20 characterizes certain documents produced in this litigation, the Court is referred to those documents
21 for a complete and accurate statement of their contents. To the extent any further response is
22 required, the allegations are denied.

23 191. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
24 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
25 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
26 litigation, the Court is referred to those documents for a complete and accurate statement of their
27 contents. To the extent any further response is required, the allegations are denied.

28

1 192. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
2 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
3 extent any further response is required, the allegations are denied.

4 193. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
5 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
6 extent any further response is required, the allegations are denied.

7 194. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
8 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
9 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
10 litigation, the Court is referred to those documents for a complete and accurate statement of their
11 contents. To the extent any further response is required, the allegations are denied.

12 195. Non-Director Defendants admit that Stripes Group—through SG VTB—was a
13 majority owner of VTBH in 2013. To the extent this paragraph quotes from, refers to or
14 characterizes certain documents produced in this litigation, the Court is referred to those documents
15 for a complete and accurate statement of their contents. To the extent any further response is
16 required, the allegations are denied.

17 196. Non-Director Defendants admit that VTBH was merged with Paris, which was
18 owned by Parametric, in a reverse merger. Non-Director Defendants admit that this transaction
19 provided them access to the public markets. All other allegations are denied.

20 197. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
21 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
22 extent this paragraph quotes from, refers to or characterizes certain documents produced in this
23 litigation, the Court is referred to those documents for a complete and accurate statement of their
24 contents. To the extent any further response is required, the allegations are denied.

25 198. Non-Director Defendants admit that Fox, Doornink, and Stark made loans to the
26 Company after the Merger. Non-Director Defendants lack sufficient knowledge to admit or deny
27 allegations regarding the knowledge or conduct by anyone other than the Non-Director Defendants.
28 To the extent this paragraph quotes from, refers to or characterizes certain documents produced in

1 this litigation, the Court is referred to those documents for a complete and accurate statement of
2 their contents. To the extent any further response is required, the allegations are denied.

3 199. Denied.

4 200. This paragraph addresses allegations made by a single VTBH preferred stockholder
5 in an unrelated lawsuit filed in Delaware, which was dismissed with prejudice. Non-Director
6 Defendants admit that Dr. Bonanno made these allegations, but deny Plaintiff's characterization of
7 this separate lawsuit, which had no relevance to the claims asserted here. To the extent any further
8 response is required, the allegations are denied.

9 201. Non-Director Defendants admit that Fox, Doornink, and Stark made loans to the
10 Company that are referred to in this paragraph and that the Company but deny the repayment
11 amounts stated in this paragraph. All other allegations are denied.

12 202. Non-Director Defendants admit that Stark's compensation as the CEO of a public
13 company is a matter of public record and the Court is referred to that record for a complete and
14 accurate statement of his compensation. All other allegations in this paragraph are denied.

15 203. Non-Director Defendants admit that Hanson's compensation as the CFO of a public
16 company is a matter of public record and the Court is referred to that record for a complete and
17 accurate statement of his compensation. Non-Director Defendant deny that Plaintiff has alleged
18 any wrongdoing by Hanson. All other allegations in this paragraph are denied.

19 204. Non-Director Defendants admit that Fox's sale of Turtle Beach stock and the Turtle
20 Beach stock price are matters of public record and the Court is referred to that record for a complete
21 and accurate statement of such facts. To the extent any further response is required, the allegations
22 are denied.

23 205. Non-Director Defendants admit that Fox's sale of Turtle Beach stock and the Turtle
24 Beach stock price are matters of public record and the Court is referred to that record for a complete
25 and accurate statement of such facts. To the extent any further response is required, the allegations
26 are denied.

27 206. Non-Director Defendants admit that Fox is the founder and Managing General
28 Partner of Stripes Group. Non-Director Defendants admit that Fox was the sole manager of SG

VTB and, as a result, has voting and investment control over the securities it holds. Non-Director Defendants admit that SG VTB Holdings, LLC was wholly owned by SG Growth Partners I, LP, that SGGP I, LLC is the general partner of SG Growth Partners I, LP, that SGGP Holdings, LLC exercises investment discretion and control over securities held by SGGP I, LLC. Non-Director Defendants admit that Stripes Group, LLC exercised investment discretion and control over securities held by SGGP Holdings, LLC. To the extent this paragraph quotes from, refers to or characterizes certain documents produced in this litigation, the Court is referred to those documents for a complete and accurate statement of their contents. To the extent the paragraph includes legal conclusions, no response is required. To the extent any further response is required, the allegations are denied.

207. Non-Director Defendants admit that this statement appears in a ruling from the Delaware Court of Chancery in a case that has now been dismissed with prejudice in VTBH's favor. Non-Director Defendants deny that this statement is accurate and deny Plaintiffs' characterization of the statement. To the extent this paragraph quotes from, refers to or characterizes that ruling, the Court is referred to it for a complete and accurate statement of its contents. To the extent any further response is required, the allegations are denied.

208. To the extent that this paragraph purports to make legal conclusions, rather than factual allegations, no response is required. To the extent any further response is required, the allegations are denied.

209. Denied.

210. This paragraph does not contain any factual allegation for which any response is required. Non-Director Defendants incorporate each of the responses to Plaintiffs' allegations that are set forth above.

211. Denied.

212. Denied.

213. Denied.

214. Denied.

215. Denied.

1 216. Denied.

2 217. Denied.

3 218. This paragraph does not contain any factual allegation for which any response is
4 required. Non-Director Defendants incorporate each of the responses to Plaintiffs' allegations that
5 are set forth above.

6 219. Denied.

7 220. Denied.

8 221. Denied.

9 222. Non-Director Defendants lack sufficient knowledge to admit or deny allegations
10 regarding the knowledge or conduct by anyone other than the Non-Director Defendants. To the
11 extent that this paragraph purports to make legal conclusions, rather than factual allegations, no
12 response is required. To the extent any further response is required, the allegations are denied.

13 223. Denied.

14 224. Denied.

15 **AFFIRMATIVE DEFENSES**

16 Without assuming any burden they would not otherwise bear, the Non-Directors Defendants
17 further assert the separate and distinct affirmative defenses stated below to each and every claim
18 and cause of action in the Complaint.

19 **FIRST AFFIRMATIVE DEFENSE**

20 Stripes Group, SG VTB LLC, Fox, and Stark are not subject to personal jurisdiction in
21 Nevada.

22 **SECOND AFFIRMATIVE DEFENSE**

23 The sole claim or cause of action asserted against the Non-Director Defendants fails to state
24 a claim upon which relief may be granted.

25 **THIRD AFFIRMATIVE DEFENSE**

26 Plaintiff's claims against Stripes Group, SG VTB LLC, Fox, and Stark are barred by the
27 applicable statutes of limitations.
28

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiff's alleged damages, if any, are speculative, and thus are not recoverable.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims against the Corporate Defendants are barred, in whole or in part, by laches,
5 equitable estoppel, waiver, or other related equitable doctrines.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 Plaintiff's claims are barred by the business judgment rule, as set forth in NRS § 78.138(3).

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiff has waived its right to contest the lawfulness of the Merger to the extent that it
10 asserts claims assigned to it by individuals who voted in favor of the Merger.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff has failed to mitigate their alleged damages.

13 **NINTH AFFIRMATIVE DEFENSE**

14 The Non-Director Defendants cannot be held liable for the actions of their subsidiaries.

15 **TENTH AFFIRMATIVE DEFENSE**

16 The Non-Director Defendants reserve the right to modify, clarify, amend, or supplement
17 these affirmative defenses, as may be appropriate at a later time.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 The Non-Director Defendants reserve the right to incorporate and/or adopt any affirmative
20 defense asserted by any other Defendant.

21 **PRAAYER**

22 WHEREFORE, the Non-Director Defendants pray as follows:

- 23 1. Plaintiff takes nothing by reason of the Complaint and judgment be entered in favor
24 of the Non-Director Defendants;
- 25 2. Plaintiff's prayer for compensatory damages, interest, expenses, attorney's fees and
26 costs, as well as equitable relief be denied;
- 27 3. Non-Director Defendants be awarded their cost and attorney's fees incurred herein;
28 and

1 4. For such other and further relief as the Court deems just and proper.

2
3 Dated: September 3, 2020

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5 By: /s/ Richard C. Gordon

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CERTIFICATE OF SERVICE

As an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing
ANSWER TO PLAINTIFF PAMTP LLC'S COMPLAINT on the 3rd day of September
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14 **EIGHTH JUDICIAL DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 IN RE PARAMETRIC SOUND
17 CORPORATION SHAREHOLDERS'
18 LITIGATION

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

21 This Document Related To:
22 ALL ACTIONS

23 **ORDER GRANTING PLAINTIFF'S**
24 **MOTION AGAINST DEFENDANTS**
25 **KENNETH POTASHNER, JUERGEN**
26 **STARK, AND VTB HOLDINGS, INC.**
27 **SETTING EVIDENTIARY HEARING RE**
28 **SPOILIATION SANCTIONS**

On May 7, 2021, the Court conducted an in-chambers hearing on Plaintiff's Motion for Sanctions against Defendants Kenneth Potashner, Juergen Stark, and VTB Holdings, Inc. for Willful Spoliation of Evidence ("Motion"), which sought an order from this Court awarding evidentiary sanctions in favor of Plaintiff as a result of Defendants' alleged willful spoliation of evidence. Having reviewed the record, the briefs in support and opposition, and being fully informed, the Court **GRANTS** the Motion and makes the following findings and conclusions of law:

BACKGROUND

1
2 1. This case arises from Parametric Sound Corporation’s merger with VTB Holdings,
3 Inc. The merger was announced on August 5, 2013 and closed on January 15, 2014. At that time,
4 Defendant Kenneth Potashner served as Parametric’s Executive Chairman and Defendant Juergen
5 Stark served as VTB Holdings’ Chief Executive Officer.

6 2. Plaintiff filed the present Motion on March 4, 2021. In its supporting papers,
7 Plaintiff argued that Potashner, Stark, and VTB Holdings were under a duty to preserve relevant
8 evidence, including in particular electronically stored information (“ESI”) related to the merger in
9 the form of text messages and e-mails. Plaintiff argued further that these defendants received
10 litigation hold and preservation directives from counsel on or around August 9 and 14, 2013 and
11 again on October 14, 2013. Plaintiff also argued that, despite their obligations and directives to
12 preserve relevant evidence, these defendants intentionally destroyed relevant ESI.

13 3. Defendants opposed the Motion on March 18, 2021. Potashner argued that he took
14 reasonable steps to identify, collect, and produce potentially relevant ESI and that any failure on
15 his part to preserve evidence was not intentional or willful. Potashner argued further that any
16 evidence that may have been destroyed was not prejudicial to Plaintiff because it was subsequently
17 produced by third-parties, captured by the extensive email record or was not material to the
18 litigation. Potashner further argued that Plaintiff (and his predecessors) never met and conferred
19 about the purported email discrepancies and only raised their desire to obtain text messages in
20 November of 2018, which was many years after Potashner had replaced his personal cellphone that
21 would have contained text messages exchanged during the 2013 merger negotiations. In addition
22 to raising these arguments, Stark and VTB Holdings also argued that Stark did not use text
23 messaging as a means of having substantive communications related to the merger and was not
24 obligated to preserve text messages on his personal cell phone because he was not a named
25 defendant when he replaced his cell phone and his cell phone did not belong to VTB Holdings.

26 4. Plaintiff filed a reply in further support of the Motion on April 2, 2021. In its reply,
27 Plaintiff reiterated that Potashner and Stark controlled the day-to-day operations of their respective
28 companies and were integral in the merger negotiations. Plaintiff also argued that the discovery

1 record showed they communicated frequently with each other and that other defendants, such as
2 Woody Norris, confirmed that they discussed merger-related issues via text messages. Plaintiff
3 argued further that the highly relevant nature of Potashner's and Stark's communications strongly
4 suggested that the missing communications were of at least equal relevance in the overall litigation.

5 5. Being fully briefed, the Motion is ripe for decision.

6 CONCLUSIONS OF LAW

7 1. Under NRCP 37(e), upon a finding that the party responsible for the loss of
8 electronically stored information acted with the intent to deprive another party of the information's
9 use in the litigation, the court may presume that the lost information was unfavorable to the party.
10 Under Nevada state common law, a rebuttable presumption that the destroyed evidence was adverse
11 is appropriate when evidence is destroyed willfully. *Bass-Davis v. Davis*, 122 Nev. 442, 450, 134
12 P.3d 103 (2006).

13 2. Defendants Potashner, Stark, and VTB Holdings had a duty to preserve ESI related
14 to Parametric and the merger, including text messages, emails, and laptop files. This Court
15 determines that potentially relevant ESI may have been lost, despite this preservation obligation.

16 3. The facts and circumstances surrounding the Defendants' failure to preserve
17 potentially relevant ESI will be addressed at an evidentiary hearing on June 18, 2021, where this
18 Court will determine an appropriate evidentiary sanction based on the factors enumerated in *Young*
19 *v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), which include but are not
20 limited to the following:

- 21 a. The degree of willfulness of the offending party;
- 22 b. The extent to which the non-offending party would be prejudiced by a lesser
23 sanction;
- 24 c. The severity of the sanction relative to the severity of the discovery abuse;
- 25 d. Whether any evidence has been irreparably lost;
- 26 e. The feasibility and fairness of alternative, less severe sanctions;
- 27 f. The policy favoring adjudication on the merits; and
- 28 g. The need to deter both the parties and future litigants from similar abuses.

1 **ORDER**

2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion is
3 **GRANTED** without determining the specific evidentiary sanction to be imposed; and

4 **IT IS FURTHER ORDERED** the Court will hold an evidentiary hearing on June 18, 2021.
5 The purpose of the hearing will be to evaluate the factors enumerated in *Young v. Johnny Ribeiro*
6 *Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), to determine the appropriate evidentiary sanction.
7 Plaintiff and Defendants may call witnesses and present evidence. Each side will be allotted three
8 (3) hours.

9 Dated this 18th day of May, 2021.

Dated this 18th day of May, 2021

10 
11 DISTRICT COURT JUDGE

12 Submitted By:

13 SNELL & WILMER L.L.P.

E7B DC3 2944 8167
Elizabeth Gonzalez
District Court Judge

14 By: /s/ Richard C. Gordon

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Kearney IRRV Trust, Plaintiff(s) | CASE NO: A-13-686890-B
7 vs. | DEPT. NO. Department 11
8 Kenneth Potashner, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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