

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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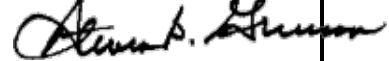
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CERTIFICATE OF SERVICE

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.

/s/ CaraMia Gerard
An Employee of McDonald Carano LLP



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE PARAMETRIC SOUND)
CORPORATION SHAREHOLDERS')
LITIGATION)

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

This Document Relates to:)

ALL ACTIONS)

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

MONDAY, AUGUST 16, 2021

BENCH TRIAL - DAY 1

APPEARANCES:

FOR PAMPT LLC:

GEORGE F. OGILVIE, III, ESQ.
ADAM M. APTON, ESQ.

FOR KENNETH POTASHNER,
NORRIS, PUTTERMAN,
KAPLAN, & WOLFE:

J. STEPHEN PEEK, ESQ.
ROBERT J. CASSITY, ESQ.
JOHN P. STIGI, III, ESQ.
ALEJANDRO E. MORENO, ESQ.

FOR VTB HOLDINGS, STRIPES
GROUP, SG VTB HOLDINGS,
KENNETH FOX & JUERGEN STARK:

RICHARD C. GORDON, ESQ.
DAVID A. KOTLER, ESQ.
JOSHUA D. N. HESS, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 16, 2021, 9:19 A.M.**

2 * * * * *

3 THE CLERK: Good morning, Mr. Peek. Do you remember
4 the last time we played that music for you?

5 MR. PEEK: Yes. Do I have that special spot as well?

6 THE COURT: I have no idea where they have you
7 sitting.

8 MR. PEEK: I actually was going to sit over there so
9 I can hear.

10 THE COURT: Do you want the headphones?

11 MR. PEEK: No, I'm good, Your Honor. I'm sorry.
12 What?

13 (Pause in the proceedings.)

14 THE COURT: This is a question directed to defense
15 counsel now that Mr. Peek is here. Have you all decided if you
16 are splitting the time up between your two parties, or are you
17 equally sharing the 40 hours that has been allocated to your
18 side?

19 (Pause in the proceedings.)

20 MR. PEEK: I think the answer is, Your Honor, we're
21 going to equally.

22 MR. HESS: Agree. Agree.

23 MR. PEEK: We're going to just get by with that.

24 THE COURT: You're going to manage?

25 MR. HESS: Yes.

JD Reporting, Inc.

1 MR. PEEK: Well, we have to, Your Honor.

2 THE COURT: I know. Jill and I are timekeepers, and
3 we're going to keep the time.

4 MR. PEEK: I am still hoping that, you know, in that
5 three weeks --

6 MR. HESS: Yeah, Your Honor, there's a lot of common
7 issues. So I think we're going to have 20 hours. So, you
8 know, it would be -- well, I'm sorry --

9 THE COURT: Well, the reason I'm asking is if you are
10 separating it I have to keep three lines of time. Otherwise, I
11 am only keeping two lines of time.

12 MR. HESS: No, two lines of time.

13 MR. STIGI: Make it easier.

14 MR. PEEK: You know, we'll kick them if they get
15 to --

16 MR. KOTLER: And we'll queue up the music
17 (indiscernible).

18 THE COURT: Yeah. It was a long, long time ago. The
19 fact that I remember that and no one else did is pretty funny.

20 So I have two exhibit lists that you guys have
21 delivered. Have you stipulated to the admission of any
22 exhibits?

23 MR. PEEK: We have not, Your Honor.

24 THE COURT: I'm looking at you, Mr. Ogilvie.

25 MR. OGILVIE: No.

1 THE COURT: You're kidding? Even in City Center you
2 stipulated to some exhibits.

3 Mr. Peek, are you able to stipulate to the admission
4 of any exhibits?

5 MR. PEEK: We likely will be, Your Honor, but things
6 got a little bit chaotic at the last with everybody and getting
7 disclosures and getting them there, but we'll get it done.

8 THE COURT: Mr. Gordon, did you stipulate to any
9 exhibits?

10 MR. GORDON: We did not. We were working with --

11 THE COURT: Okay. That was an agenda item number
12 one.

13 Agenda item number two, Mr. Ogilvie, you have
14 objected to Mr. Fox appearing by video. I read it. Under the
15 circumstances of COVID, I am going to let any witness who wants
16 to appear by video even if you want to cross-examine him really
17 well.

18 Anything else you want to tell me to try and
19 rephrase -- changed my mind?

20 MR. OGILVIE: No, Your Honor.

21 THE COURT: Okay.

22 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

23 THE COURT: So the objection is overruled.

24 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

25 THE COURT: Anything else before we start openings?

1 MR. PEEK: Yes, Your Honor. Four of the director
2 defendants have settled with the plaintiff.

3 THE COURT: That's nice.

4 MR. PEEK: We have settlement agreements out for
5 execution. We have a draft ready to be filed, a motion for a
6 good faith settlement, which we hope to file today as long as
7 we have signatures I think from everybody. I don't know what
8 the status is on everybody's side, but I think we're waiting on
9 getting signatures. We sent them by DocuSign to our four
10 settling defendants. Those are, Your Honor, for your purposes
11 Andy Wolfe, Seth Putterman, Robert Kaplan and Elwood Norris.

12 THE COURT: Okay. That doesn't really change what
13 we're doing though.

14 MR. PEEK: No, exactly, Your Honor. It does not
15 change what we're doing; however, I just want to at least
16 inform the Court.

17 THE COURT: I appreciate it.

18 MR. PEEK: That we have settled at least a part of
19 the case. But as you said, it probably does not change
20 completely. I think it gives us a little less -- a little more
21 time or less use of the time is my thinking.

22 THE COURT: Okay. Well, I look forward to receiving
23 the OST, and I'll get it set if there is no objection on two
24 days' notice.

25 MR. OGILVIE: That's fine, Your Honor.

1 THE COURT: Okay. So we'll hear it one morning
2 before we start.

3 MR. PEEK: Yeah, that's exactly what I anticipated,
4 Your Honor, is that given that everybody on the other side of
5 the V is here. So you have two days' notice, but maybe one-day
6 notice we can actually do it.

7 THE COURT: We'll see what time I get it. If I get
8 it in the morning, I'll set it on a whole day. If otherwise,
9 I'll set it two days.

10 MR. HESS: Yeah, well, we're hopeful, Your Honor.

11 THE COURT: It depends on how your drafters are
12 doing. Because the only people who can object are these people
13 on this side of the room.

14 MR. PEEK: Exactly, Your Honor. And they're a
15 participant in the negotiations and the resolution. So I don't
16 anticipate any objections anywhere along the line here. So it
17 should be easy.

18 As I said, we have -- the settlement agreement is
19 actually drafted final and out for execution.

20 THE COURT: That's lovely. I look forward to
21 receiving the order shortening time for the motion for good
22 faith settlement. I'll get it set.

23 MR. PEEK: Thank you, Your Honor.

24 THE COURT: Thank you for your hard work on that.

25 Now --

1 MR. PEEK: John's DG and Mr. Apton did it all, Your
2 Honor. I can't say that I take any credit at all.

3 THE COURT: Well, thank you. I know Mr. Peek was on
4 a beach somewhere. So I really appreciate you handling it.

5 Okay. So anything else before we start the timer?

6 (No audible response.)

7 THE COURT: Mr. Ogilvie, would you like to make an
8 opening statement?

9 MR. OGILVIE: Mr. Apton will be making the opening
10 statement.

11 THE COURT: And you can take your mask off and have a
12 sip of water or something and then put it on, but you got to
13 leave it on while you're speaking.

14 And Mr. Peek was supposed to wipe down before he let
15 you come up there. I did buy a big case of wipes to see if we
16 can get through the trial.

17 Steve, wipe down the lectern.

18 And I can't start counting time against him until
19 you've wiped it down.

20 (Pause in the proceedings.)

21 THE COURT: All right. Now, Mr. Apton.

22 MR. APTON: Thank you, Your Honor.

23 THE COURT: Uh-huh.

24 **OPENING STATEMENT FOR PAMTP LLC**

25 MR. APTON: Adam Apton on behalf of plaintiff

JD Reporting, Inc.

1 PAMTP LLC.

2 Your Honor, Parametric and VTB Holdings merged in
3 2014. Negotiations began in March of 2013. The deal was
4 announced in August of '13, and it finally closed January of
5 the following year. It was structured in the form of a reverse
6 merger, meaning that VTB Holdings merged into Parametric. And
7 in exchange, Parametric issued about 30 million shares to VTB
8 Holdings and its controlling shareholders. That includes
9 Stripes Group and Ken Fox.

10 But those 30 million shares had the effect of
11 diluting Parametric shareholders dramatically. There were
12 about 8 million shares outstanding at the time on a fully
13 diluted basis, and 30 million shares was almost three times
14 that amount.

15 What we're here today to do is suing for what we
16 allege were breaches of fiduciary duty committed by
17 Mr. Potashner, Parametric's executive chairman, and then aiding
18 and abetting of those breaches by Juergen Stark, VTB Holdings's
19 CEO and it's Stripes Group controlling shareholder, including
20 Mr. Fox.

21 How did we get here? When the merger was announced,
22 class-action litigation commenced almost immediately, within
23 days if I remember correctly. Your Honor is very familiar with
24 the trajectory of this case. It went back up and down and
25 lasted for several years. In late 2019, it finally settled.

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1 My clients, who owned 800,000 shares, a little bit
2 above that at the time of the merger, had questions about the
3 settlement. They wanted to know why, how come, whether there
4 was more money, what the percentage of the recovery was. So we
5 asked answers, and we got no information in response. So we
6 opted out and filed suit.

7 What we found out in discovery was pretty dramatic.
8 It turns out that Potashner, Parametric's executive chairman,
9 instead of representing the company and its shareholders was
10 actively negotiating for his own self-interest in an attempt to
11 use the merger to benefit himself.

12 And what's more, Stark and Fox, VTB's CEO and
13 controlling shareholder knew that he was breaching fiduciary
14 duties and egged him on throughout the entire time.

15 The evidence will show, and we have a lot of it --
16 for Potashner's examination, we have about a hundred exhibits
17 showing particular instances of this occurring.

18 The evidence will show that from day one Potashner
19 was entirely trained on using the merger to extract benefit for
20 himself in connection with Parametric's subsidiary HyperSound
21 Health, HHI. He wanted to spin it out for himself through the
22 merger or somehow become the president or managing director of
23 the subsidiary.

24 Potashner was aggressive in his intent to do this.
25 He threatened his board members. He used his power, his

1 control over the company to give concessions to VTB Holdings
2 and Stripes Group in an effort to curry favor from them, to
3 somehow leverage the control he had over Parametric in the
4 course of the merger to extract some benefit from them when it
5 was all said and done.

6 He delayed and concealed licensing deals. He buried
7 press releases that would have cast Parametric in a positive
8 light. He even granted a veto right to Stark, VTB Holdings's
9 CEO, on all license deals in order to, quote, "not lose the
10 deal." He gave an exclusive license as part of the breakup fee
11 in an effort to prevent any other companies from topping VTB
12 Holdings's bid during the breakup -- or the go-shop period.

13 When Fox and Stark asked him not to defend the stock
14 price in order to make the premium on the deal look better to
15 the market, he said okay, and he did just that.

16 His board members complained, but they never fired
17 him. They never removed him. The only thing they did was
18 complain to each other, and they tried to get him to stop
19 negotiating for himself by asking. That's it. Potashner
20 didn't listen. As he admitted, HHI was the whole reason he
21 entered into the deal in the first place.

22 Potashner's conduct was bad, but what makes it
23 reprehensible is that he knew VTB Holdings was in a state of
24 decline throughout this entire time. He sold out his
25 shareholders knowing while -- knowing that VTB Holdings, their

1 financial situation had deteriorated dramatically over the
2 course of 2013. He was having open discussions about his
3 quote, concerns about future financial expectations, quote,
4 financing challenges due to, quote, covenant issues, decreasing
5 EBITDA projections less than a week after the fairness opinion
6 was issued. Potashner was flat out telling Stark that his
7 numbers were, and excuse me, Your Honor, the numbers were
8 shitty. That's what he told Stark, and he wasn't sure how he
9 was going to sell the deal for the vote. We found out how he
10 did it. He lied to his shareholders.

11 Adam Kahn, on behalf of IceRose Capital Management,
12 whom the Court will hear from testimony today, was a 5 percent
13 shareholder at the time.

14 On December 12, 2013, two weeks before the merger
15 vote, he e-mailed Potashner. He said to Potashner, I'll vote
16 for the deal, assuming there's, quote, no impairment to me to
17 be holding the business postmerger. Or alternatively, if there
18 is an impairment, the deal should be recut for a greater share
19 going to current Parametric shareholders.

20 Potashner did not respond. In fact, the only thing
21 he did was reach out to Stark and complain about weak 2013
22 results. He even said Parametric was, quote, getting
23 19 percent of something not worth much.

24 So on one hand he's complaining to Stark about VTB's
25 weak financial holdings and the percentages in the merger. On

1 the other hand, his 5 percent shareholder was asking him
2 specifically for the information that he -- that Potashner was
3 hiding.

4 On January 3rd, after the merger vote, Adam Kahn
5 asked Potashner, Why is there a delay with the merger close?

6 Potashner told him, quote, It's an administrative
7 issue with the banks. That was absolutely false. PNC Bank,
8 VTB's main lender, was on the verge of placing the company into
9 default under the terms of its facility. It was not an
10 administrative issue.

11 Potashner's willingness to lie, Stark and Fox knowing
12 and egging them on during the whole thing, is why we're here.
13 And we're asking for damages.

14 The damages are \$12.49 per share. That represents
15 the dilution that my clients suffered in the course of the
16 merger. And it's a calculation that was obtained using a
17 reliable tried and true, discounted cash flow methodology.
18 We're also asking for punitive damages, one and a half times
19 the damages award.

20 Corporate officers have a duty. That duty is to be
21 honest and protect the interests of their shareholders. That
22 was not done here. In fact, it was the extreme opposite.

23 Punitive damages are used to hold people accountable
24 and send a message to others in the industry to let them know
25 what would happen if they were to violate the law again. And

1 that's why we think it's appropriate.

2 Your Honor, in closing, I just wanted to point out
3 one more e-mail from Potashner. Late in the process, he wrote
4 to his board members, quote, This board is the most
5 unprofessional, dysfunctional team I have ever worked with.
6 And the sooner we all distance ourselves the better. There is
7 most definitely a path where we all begin suing each other.
8 Potashner was absolutely right.

9 Your Honor, we ask that you find in favor of the
10 plaintiff and award the damages we've been seeking.

11 Thank you.

12 THE COURT: Thank you. Could you wipe down the
13 lectern, please.

14 MR. APTON: Yes.

15 THE COURT: Mr. Peek.

16 MR. PEEK: Thank you, Your Honor.

17 **OPENING STATEMENT FOR THE DIRECTOR DEFENDANTS**

18 MR. PEEK: Parametric was a start-up company wanting
19 to deliver novel audio solutions through its HyperSound
20 technology platform, which pioneered Parametric acoustic
21 technology for generating audible sound along with directional
22 ultrasonic column H sound laser.

23 Parametric's technology created a unique sound image
24 distinct from traditional audio systems. In 2013 it was a
25 publicly traded corporation listed on the NASDAQ. Its stock

1 had been up -- rising and falling during the last two years,
2 2012 through 2013, reaching lows in the dollar range and the
3 highs in the \$20 range.

4 It's meager revenues, measuring in just thousands,
5 came almost exclusively from digital signage and kiosk
6 products, not from its hypersonic -- HyperSound product. It
7 was recording historical losses and was projected at its then
8 current trajectory in 2013 to run out of cash by 2014.

9 Consequently, it began focusing on targeting its technology for
10 new uses in commercial markets and consumer markets where it
11 did not have any presence, such as the video gaming industry.

12 It was also at that time working on developing health
13 applications for its hypersonic -- for itself HyperSound with
14 persons with hearing loss through HyperSound Health Inc., or
15 we've called it HHI, a subsidiary of Parametric.

16 In March 2013 the board was composed of six members,
17 Elwood "Woody" Norris, the inventor of HyperSound, cofounder,
18 president and chief scientist of Parametric; Seth Putterman, a
19 professor of physics at UCLA, who also provided consulting
20 services on Parametric's HyperSound technology; Robert Kaplan,
21 a retired business executive with extensive experience in the
22 financial and retail sectors; Andrew Wolfe, Ph.D., a technology
23 and intellectual property consultant in the consumer
24 electronics, computer, and semiconductor industries; James
25 Honore, with -- about whom you've never heard -- an executive

1 with extensive experience in the entertainment, motion picture
2 primarily, industry; and then, of course, Mr. Potashner, an
3 experienced business executive who served as executive chairman
4 of the board beginning in spring of 2012.

5 I'm going to refer to all of them as director
6 defendants.

7 As part of Parametric's ongoing strategic planning
8 process, the Parametric board and executive officers regularly
9 reviewed and evaluated Parametric's strategic direction and
10 alternatives in light of the performance of its business and
11 operations and market, economic, competitive and other
12 conditions and developments. It was a small company with 10,
13 12 employees, versus Turtle Beach, which had over a hundred
14 employees.

15 THE COURT: And made really cool headphones.

16 MR. PEEK: Pardon?

17 THE COURT: Made really cool headphones.

18 MR. PEEK: Yes.

19 THE COURT: And kids used to want those.

20 MR. PEEK: Turtle Beach did, yes.

21 THE COURT: Yeah.

22 MR. PEEK: In pursuit of the strategic objectives of
23 March 21, 2013, Parametric entered into a nondisclosure
24 agreement with privately held VTB Holdings -- I'm going to
25 refer to them as Turtle Beach -- which was majority owned by

1 Stripes Group and SG VTB LLC.

2 Turtle Beach, as we know, designs, develops and
3 markets premium audio peripherals for video game, personal
4 computer and mobile platforms and is best known for its
5 acclaimed line of gaming headphones and headsets crafted for
6 console and PC gaming.

7 A transaction with Turtle Beach would help Parametric
8 break into that video gaming industry, a lucrative consumer
9 market in which it did not have any presence whatsoever, and
10 use its HyperSound technology.

11 Eventually the discussions involved the potential of
12 Turtle Beach acquiring all or part of Parametric. It started
13 out licensing and then became all or part of.

14 From March 21, at the time of the execution, to
15 August 2nd, 2013, a five-month period of time, Parametric and
16 its directors performed detailed due diligence; held robust
17 discussions about a merger with Turtle Beach, some of which had
18 significant tension, as you heard from Mr. Apton; and after
19 board approval of the merger, made detailed disclosures to
20 shareholders to lead to a fully informed shareholder vote.

21 And you will hear, Your Honor, from the first witness
22 about that fully informed disclosure made to the shareholders.

23 The evidence will show that Parametric engaged and
24 considered the advice of numerous competent and highly
25 qualified financial advisors, including Houlihan Lokey and

JD Reporting, Inc.

1 Craig-Hallum as well as its counsel Sheppard Mullin. Houlihan
2 Lokey made numerous presentations to the board regarding
3 Parametric's financial status, Turtle Beach's operations and
4 financial requirements and the rationale for the transaction.

5 Craig-Hallum reviewed the merger transaction, looked
6 at -- audited an unaudited financials for Parametric, audited
7 an unaudited financials for Turtle Beach, Q1 financials for
8 Turtle Beach, draft Q2 financial statements for Turtle Beach
9 for that 2013 period, and Turtle Beach financial projections,
10 to render its fairness opinion.

11 Parametric performed extensive due diligence and made
12 numerous due diligence requests to Turtle Beach through
13 Houlihan Lokey and Craig-Hallum.

14 At an August 2nd, 2013, board meeting, Craig-Hallum
15 rendered a fairness opinion in which he concluded that, quote,
16 a per share exchange ratio, end quote, contemplated by the
17 merger agreement is fair from a financial point of view to
18 Parametric.

19 Legal counsel made presentations to the board
20 regarding their fiduciary duties and other legal aspects of the
21 transaction.

22 The board reasonably considered and reasonably relied
23 upon the advice of its professionals and consultants regarding
24 the advisability of the proposed merger.

25 The advice and opinion provided by Houlihan Lokey,

JD Reporting, Inc.

1 Craig-Hallum, and Sheppard Mullin were only part of the factors
2 that the board considered when approving the merger.

3 The evidence will show that the board members
4 exercised their own independent business judgment and engaged
5 in robust discussions regarding the merger.

6 Specifically, the evidence will show that in the
7 five-month period, from March 2013 to August 2nd, 2013, when
8 they approved the merger, the board held no less than 15
9 meetings to discuss and weigh the terms, the benefits, and the
10 risks of the merger.

11 In addition, the evidence will demonstrate that
12 outside of their meetings, Parametric directors and officers
13 participated in negotiations with Turtle Beach representatives,
14 exchanged robust communications regarding terms of the merger,
15 and worked with financial and legal advisors for both
16 Parametric and Turtle Beach to evaluate and negotiate the deal.

17 These robust communications included often
18 contentious discussions of Potashner stock options and in HHI,
19 the subsidiary that had the healthcare technology.

20 Potashner continually stressed to Turtle Beach that
21 he wanted, as part of any deal, his stock options in HHI to
22 survive.

23 Turtle Beach, however, repeatedly stressed that HHI
24 stock options were a sticking point in the deal and that it
25 would not contemplate a merger in which HHI ownership issues

1 were not resolved.

2 The evidence will show that the Parametric directors
3 pushed back and refused to give Potashner what he wanted.

4 Ultimately, Your Honor, in order to make the deal and
5 the merger, Potashner agreed to give up his HHI stock options
6 for no compensation in order to effectuate the merger.

7 During this same time period, five months, the board
8 also considered and explored pursuit of other strategic,
9 licensing, and financing alternatives.

10 The board members will testify that after their
11 informed, detailed deliberations over this five-month period,
12 they believed the merger was in the best interests of the
13 company and its shareholders and that the potential benefits to
14 Parametric stockholders outweighed the risks and uncertainties
15 that it faced as a standalone company.

16 On August 5th, after the vote of the board,
17 Parametric publicly announced the merger and a 30-day go-shop
18 period, during which time -- that 30-day go-shop period --
19 Houlihan Lokey contacted 49 prospective buyers to solicit
20 acquisition proposals for Parametric and consider alternatives.
21 These include many of those same companies from the spring of
22 2013, who had also expressed an interest, Company A, Company B,
23 Company C. However, none of the 49 potential buyers expressed
24 interest in acquiring Parametric.

25 The merger closed, of course, on January 14th, after

1 a vote by Parametric's public shareholders approving the
2 merger.

3 Now, what is this claim about? The plaintiff brings
4 one claim against director defendants for equity expropriation
5 as part of their breach of fiduciary claim.

6 We know, because we all lived it for the last
7 eight years, that the Nevada Supreme Court in Parametric versus
8 Eighth Judicial District Court adopted the reasoning of two
9 Delaware cases regarding equity appropriations, the *Gentile v.*
10 *Rossette*, and the *Gatz v. Ponsoldt* cases.

11 Under *Gatz* and *Gentile*, an equity expropriation
12 exists -- claim exists where, one, a company has a controlling
13 shareholder or a controlling shareholder group prior to the
14 merger; two, the controlling shareholder or controlling
15 shareholder group uses its company -- uses its control to cause
16 the company to issue economic and voting power to -- to the
17 controlling shareholder group per inadequate consideration. In
18 other words, they expropriated the value from the other
19 shareholders.

20 In Parametric, our Nevada court -- Nevada Supreme
21 Court adopted that same test, holding that, quote, Equity
22 expropriation claims involving controlling shareholders' or
23 directors' expropriation of value from the company causing
24 other shareholders' equity to be diluted. An expropriation of
25 value from the company.

1 And what is expropriation, Your Honor? It comes from
2 the Latin ex, away from, and the Latin verb appropriare, take
3 as one's own.

4 The evidence will show in this trial that Parametric
5 had no controlling shareholder or controlling shareholder group
6 or controlling director prior to the merger, and/or that if
7 such existed, such fictional controlling group, person,
8 director, took away as their own the other shareholders' value
9 in the company. All shareholders, including the director
10 defendants, who owned shares or options were equally diluted
11 through the merger and received equal consideration.

12 Under applicable law, plaintiffs must prove that,
13 one, an individual premerger shareholder owned more than
14 50 percent of the voting power; two, an individual shareholder
15 exercised such formidable voting and managerial power that he,
16 as a practical matter, was no differently situated than if he
17 had majority voting control or had power, so potent, that
18 independent directors cannot freely exercise their judgment,
19 fearing retribution; three, a group of shareholders entered
20 into an actual agreement to act together prior to the merger or
21 its negotiations, let alone involved, quote, in a blood's pact
22 to act together.

23 The evidence, Your Honor, will establish that none of
24 the directors, even in combination, owned more than 50 percent
25 of premerger Parametric. Plaintiff has asserted -- and you

1 heard it here today, from Mr. Apton -- that Kenneth Potashner
2 actually controlled the board in approving the merger. The
3 evidence is to the contrary.

4 Throughout the merger negotiations, the other members
5 of the Parametric board pushed back against Potashner. And so,
6 therefore, the relationship between Potashner and the rest of
7 the Parametric board was not one of control, but one of
8 contention. In fact, the evidence, again, will show that the
9 other Parametric board members often acted contrary to what
10 they perceived as Potashner's personal interest, by causing the
11 board, among other things, to, A, cancel Potashner's option in
12 HHI, a subsidiary, for no consideration; reap up Potashner's
13 efforts to cause Kaplan to retire from his position as a
14 director of the premerger with Parametric; C, refuse
15 Potashner's request to remove Wolfe from Parametric's audit
16 committee; D, refuse Potashner's request to be allowed to sell
17 Parametric stock after the announcement of the merger; and E,
18 refuse Potashner's request to allow Parametric consultant, John
19 Todd to sell Parametric after the announcement of the merger.

20 Finally, plaintiff will also not be able to prove the
21 required element that the controlling shareholder or
22 controlling shareholder group used its control to cause the
23 company to issue economic and voting power to the controlling
24 shareholder or shareholder group for inadequate consideration.
25 They were equally treated, as with everybody.

1 The evidence will show that the Parametric board is
2 entitled to the protection of the business judgment rule in
3 voting to approve the merger.

4 We know that the directors of a Nevada corporation
5 are presumed to act in good faith, on an informed basis, and
6 with a view to the interests of the corporation. A director in
7 so exercising is entitled to rely on information, opinions, and
8 reports from, among others, one or more directors, officers, or
9 employees of the corporation, reasonably believed to be
10 reliable and competent in the matters prepared and presented.

11 Likewise, a director may rely on, quote, upon
12 information, opinions, and reports from counsel, public
13 accountants, financial advisors, evaluation advisors,
14 investment bankers, or other persons, as to matters reasonably
15 believed to be within the preparer's or presenter's
16 professional or expert competence -- Houlihan Lokey,
17 Craig-Hallum, Sheppard Mullin.

18 The director will only be liable based on an act or
19 failure to act unless, of course, the presumption afforded by
20 the business judgment rule has been rebutted and is proven that
21 the director's action or failure to act constituted a breach of
22 his fiduciary duty as a director, which involved intentional
23 misconduct, fraud, or knowing violation of law.

24 As we know from *Chur versus Eighth Judicial District*
25 *Court*, it supplies -- excuse me -- NRS 78.138, subpart 7 of

1 fraud, intentional misconduct, and knowing violation, supplies,
2 quote, the sole avenue to hold directors and officers
3 individually liable for damages arising from official conduct.

4 As previewed, Your Honor, the evidence will show that
5 the Parametric board did not breach their fiduciary duties. It
6 approved the merger in good faith after extensive due diligence
7 and deliberations, and a majority of the board reasonably
8 relied upon the advice, information, and opinions of other
9 directors, employees, and competent professionals, including
10 counsel and financial advisors, including Craig-Hallum and
11 Houlihan Lokey.

12 Moreover, the evidence will show that none of the
13 Parametric board members had any interest in the merger that
14 was not previously awarded to them, and none of the directors
15 received any compensation or payment from Turtle Beach or
16 affiliated persons or entities who were approving the merger.

17 To the contrary, Your Honor, as I've said, the
18 Parametric directors' interests in the merger were fully
19 aligned with the shareholders'. The evidence will further show
20 that the -- that Parametric disclosed all material facts in the
21 proxy and that the proxy provided the shareholders with a fair
22 summary of the transaction -- the Craig-Hallum Fairness Opinion
23 and Turtle Beach's financial status -- actual financial status.

24 So, Your Honor, the directors are also entitled to
25 conclusive deference to their judgment as to the consideration

1 received for issued stock, absent actual fraud under NRS 78.200
2 and 78.211.

3 Individual shareholders in this case must show actual
4 fraud in any direct equity dilution and equity expropriation
5 claim that they may have in order to overcome the statutory
6 deference afforded to them, and that must be a claim unique to
7 them and not for the benefit of all of the company. That's the
8 derivative claim that's been resolved, and we're not here to
9 talk about derivative claim.

10 But it will not be able to meet its burden on those
11 claims against the director defendants to prove equity
12 expropriation.

13 Although not really part of their equity
14 expropriation claim, plaintiffs allege that the director
15 defendants deceived shareholders through a false or misleading
16 proxy statement.

17 The evidence will show, however, that from
18 August 2nd, 2013, to January 15, 2014, Parametric and Turtle
19 Beach worked to consummate the merger, including providing
20 detailed disclosures to Parametric shareholders, so that the
21 shareholders were fully informed for a shareholder vote on the
22 merger. You'll see that first up this morning.

23 Even after approving the merger, the evidence will
24 show that the Parametric board continued to meet and work with
25 its legal and financial advisors to discuss the merger status

1 and requirements, such as financing, including financing for
2 both Parametric and Turtle Beach, and associated risks.

3 At the time of the merger, Parametric was owned
4 almost 20 percent by noninsider shareholders. As a result, the
5 Parametric directors needed and worked to get the majority
6 public shareholders to approve the merger.

7 The evidence will show that Josh Weisbord, Barry
8 Weisbord's son, and friends with many of those participating in
9 the plaintiff, held themselves out as an agent of the
10 shareholder members of the plaintiff, communicated with the
11 Parametric shareholders, and actively worked to encourage
12 shareholders to vote to approve the merger.

13 The proxy statement, Your Honor, was submitted to the
14 SEC, in a 340-page definitive proxy statement, which included a
15 recitation of all of the meetings held by the share -- by the
16 directors, all of the actions that they took, all of the
17 meetings that they held with Houlihan Lokey and Craig-Hallum,
18 all of the meetings that they held with the Juergen Stark and
19 Kenneth Fox.

20 They contained that detailed description of the terms
21 of the merger and the background and consideration that went
22 into approval of the merger by the board. The proxy statement
23 itself contained a fair statement of the Craig-Hallum Fairness
24 Opinion and informed readers that the projections that
25 Craig-Hallum relied upon were currently only as of August 2nd,

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1 2013, With a prominent disclaimer that neither Parametric nor
2 Turtle Beach necessarily considered those projections to be
3 accurate predictions of future events.

4 The proxy statement also disclosed that Turtle Beach
5 expected to underperform, even the lower guidelines provided to
6 Parametric shareholders, and that it would be adjusting
7 projections downward, and disclosed numerous risks associated
8 with Turtle Beach, including related difficulties with
9 availability of components, and Turtle Beach's debt and
10 financing, and its problems with Xbox and PlayStation.

11 Further disclosed in the proxy statement were the
12 board members interests in Parametric and compensation received
13 by the board, if any, in the merger. And the board members
14 will testify that there was no material interests or potential
15 conflict of the merger that were not disclosed in the proxy and
16 that they received no additional consideration for the merger.

17 After a court hearing, on December 22nd, 2013, in
18 which this Court denied certain derivative shareholders'
19 efforts to enjoin the upcoming shareholder vote on the merger,
20 Parametric held a special meeting on December 27th and approved
21 the merger.

22 The evidence will show that neither the Parametric
23 directors, nor any combination of Parametric insiders, owned
24 sufficient shares in premerger Parametric to control the
25 outcome of the vote in favor of the merger. And several

1 directors held only unexercised options and were not entitled
2 and eligible to vote at all on those particular shares. The
3 voting shares considered consisted of majority noninsider
4 shares. As we've heard here, some 800,000 from these
5 plaintiffs, who approved the merger.

6 The merger was ultimately approved with approximately
7 95 percent of the shares voting in that election to approve the
8 transaction, including, as I said, all of the members of
9 plaintiff who voted at that meeting.

10 The transaction closed on January 14th, 2014, as
11 consideration for the merger. As we know, Parametric issued
12 millions of shares to Stripes and VTBH, the net effect being
13 that Stripes controlled approximately 80.9 percent of the
14 combined company.

15 That split was consistently the -- reasonably the
16 same from March 2013 all the way up to August. It did vary.
17 It varied from 78.22, to 81.19, to 80.20, to 79.21; ultimately,
18 it was 80.9 percent of the combined company.

19 Parametric shareholders, included the director
20 defendants who owned a combined hundred percent, were reduced
21 to the minority, 19.1 percent.

22 Yes. Directors received compensations as a result of
23 the change in control -- benefits that were already baked into
24 their agreement. They had been previously awarded to directors
25 under existing employment or other agreements.

1 The evidence will show that the board member's
2 interests were aligned with the public shareholders, including
3 the assignors. The evidence will show that each of the
4 shareholders held varying amounts of unvested stock options
5 that became fully vested upon a change in control, and they
6 lost.

7 There was a six-month lockup period of all of the
8 directors receiving options that prohibited them from
9 transferring their Parametric shares for six months after the
10 merger. The vesting of the unvested stock options and the
11 lockup period had the effect of aligning the director's
12 interests with those of the shareholders, and it would have
13 been contrary to the director's interests to agree to a change
14 in control that the directors believed would depress
15 Parametric's stock price long term.

16 They weren't acting in their own interests to depress
17 the stock, to lose money, from options that they had and had
18 vested on change in control.

19 The evidence will confirm that none of them had any
20 preexisting interest in Turtle Beach or received any additional
21 compensation or payments of consideration of any kind from
22 Turtle Beach or any affiliated person or entity.

23 Ultimately, as a result of the decline in the price
24 of Parametric's stock in the months and years after the merger,
25 the stock and options held by the directors became largely

1 worthless. They suffered the same personal financial loss in
2 equity value as did all public shareholders, including the
3 assignors.

4 We've talked, Your Honor, a number of times about
5 plaintiffs' standing, and I'm going to go over it again. This
6 case began as a shareholder derivative and class action of
7 Parametric shareholders in August 2013 regarding the merger and
8 its dilutive effect on Parametric shares.

9 That action settled. Plaintiff in this case is a
10 Delaware specially formed LLC for the purpose of asserting
11 claims in this present lawsuit after opting out of the class
12 action settlement. It seeks to assert those claims assigned to
13 it by individuals and entities who held Parametric stock on the
14 closing date of the merger.

15 However, plaintiff itself was not a holder of
16 Parametric stock on January 15th. The evidence will show that
17 the members of the plaintiff that held Parametric stock on the
18 date the merger closed, with the exception of one of the
19 members, sold all of their Parametric stock prior to assigning
20 their claim to plaintiff and did not own any stock when they
21 purported to assign their claims, and that they did not, when
22 they sold those shares, reserve any rights attendant to those
23 shares to sue at the time their stock was sold.

24 Standing is important here, Your Honor. Plaintiffs
25 have yet failed to produce sufficient evidence of standing. It

1 is their burden to establish and demonstrate that it has
2 standing to bring its claims. It will not be able to meet that
3 burden.

4 As they've outlined to you, Your Honor, in the *Urdan*
5 *v. WR Capital Partners* case, longstanding principles of
6 shareholder litigation dictate that, quote, dilution claims
7 with a direct or derivative arising from ownership are not
8 claims personal to the stockholder. They're personal to the
9 stock itself.

10 Accordingly, shareholders forfeit any right to pursue
11 such claims in litigation when they sell their stock, because
12 the right to assert such a claim passes to the purchaser of the
13 stock. We know that. We've looked at the class. And it
14 talked about transferees. Because when a purchaser acquires a
15 share of common stock, quote, he acquires all rights in that
16 security that the transfer had or had power to transfer.

17 The only way for a shareholder to sell the stock and
18 retain the right to assert a legal claim is to expressly
19 reserve the right to sue at the time the stock was sold.

20 The evidence will show that Parametric -- the
21 plaintiff was not a shareholder of Parametric and has no
22 attending standing to assert any claim.

23 The assignors could not assign any claim. They did
24 not have standing to -- to pursue at the time. Thus, they
25 could not assign any claim to plaintiff on April 2020, if they

1 sold their stock prior to April 2020, and failed to expressly
2 preserve their right to sue when these sales occurred.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Peek, if you could please
5 wipe down.

6 Mr. Hess.

7 MR. PEEK: These come in [indiscernible], Your Honor.

8 THE COURT: I don't know, Mr. Peek. I feel bad for
9 you guys to have to do it. But the ones the County provide
10 bleach your suits. So I went and got the better ones.

11 MR. PEEK: Yeah. I don't think I would want to be
12 pouring bleach on this, Your Honor, or even ingesting it into
13 my body, as some have suggested.

14 THE COURT: [Indiscernible.] You ready?

15 MR. PEEK: Yes, I am ready.

16 THE COURT: Okay.

17 **OPENING STATEMENT FOR THE DEFENSE**

18 MR. HESS: Good morning, Your Honor. I'm going to
19 start with what this case is not about.

20 It's not an appraisal case to determine the intrinsic
21 value of any company. It's not about the forecast of either
22 company and whether they ultimately panned out. And it's also
23 ultimately not about the financial performance of any of the
24 defendants.

25 Instead, as Mr. Peek described, this case is about

1 whether, in unanimously approving the merger between Parametric
2 Sound Corporation and VTB Holdings, which I'll refer to as
3 Turtle Beach.

4 The six directors of Parametric violated their
5 fiduciary duties by causing a controlling shareholder to
6 appropriate equity from Parametric's minority shareholders, and
7 whether any of my clients did anything more than negotiate
8 their side of the transaction, and instead sought to create or
9 exploit a conflict of interest among a majority of Parametric's
10 directors in approving any such position.

11 The evidence will confirm, not only as Mr. Peek
12 alluded to, that there was no equity appropriation by
13 controlling shareholder; but my clients did not create or
14 exploit any conflict of interest among any Parametric director
15 for any purpose.

16 Instead, the evidence will demonstrate that in 2013,
17 Parametric was a struggling startup company that needed quickly
18 to find a path to commercializing its HyperSound technology
19 even to keep operating and found an ideal partner to do just
20 that in Turtle Beach.

21 As Mr. Peek said, those companies engaged in lengthy
22 negotiations with and substantial due diligence on each other
23 from March to August 2013, that ultimately led to the merger
24 agreement.

25 The Court will not hear any evidence, however, that

1 these negotiations between Parametric and Turtle Beach were
2 anything other than at arms length.

3 There will be no evidence of side deals or special
4 payments between Turtle Beach or Stripes on the one hand and
5 any of Parametric's directors, including Mr. Potashner, upon
6 whom plaintiff has put particular focus.

7 And I know we've been at this a long time, but I'd
8 like to spend a little time introducing some of my clients.

9 THE COURT: Eight years.

10 MR. HESS: Eight years. You're right. Turtle Beach,
11 as you alluded to, makes cool headsets.

12 THE COURT: That's what my kids used to say.

13 MR. HESS: So do mine. Turtle Beach has been an
14 audio innovator for over 40 years. And in 2006 it introduced
15 the first audio-gaming headset, virtually creating the
16 category.

17 In 2012 to 2013, when the merger was being
18 negotiated, and for the eight, nine years since, Turtle Beach
19 has been the leading -- the dominant maker of audio headsets
20 for the video gaming market.

21 During the time of the merger negotiations, Turtle
22 Beach had approximately 53 percent of the U.S. dollar share of
23 the entire gaming headset market. It sold nine out of ten in
24 all of the top five bestselling gaming headsets and enjoyed
25 credibly high and positive brand recognition among key gaming

1 demographics. And that's still true today.

2 In 2013, its headsets were sold in over 27,000 stores
3 in 44 countries, including top retailers like Walmart, Target,
4 and Best Buy. In order to support such a broad retail
5 platform, Turtle Beach had built an extensive and sophisticated
6 international production supply chain and distribution network
7 for its products. But simply, Turtle Beach was not only a real
8 business, but a very successful one.

9 Indeed in the years leading up to the merger, Turtle
10 Beach was enjoying substantial growth, taking advantage of its
11 market share dominance and increased demand in gaming products.

12 For the full year before the merger began in 2012,
13 Turtle Beach had revenues of \$208.4 million, with EBITDA of
14 48.4 million. That is more than double the revenues it had for
15 just 2010, which was 90.5 million.

16 Beginning in the fall of 2012, Juergen Stark became
17 Turtle's -- Turtle Beach's CEO, taking over for the company's
18 founder. Stark was brought in to upgrade Turtle Beach's
19 executive management team by its majority shareholders. Stark
20 had previously been the chief operating operator of Motorola
21 Mobility, a \$9 billion mobile phone company that had recently
22 been sold to Google. He had substantial leadership experience
23 in the consumer electronics industry: Managing complex supply
24 chains, overseeing engineering and manufacturing development,
25 marketing, and distribution, for one of the world's largest

1 mobile phone makers.

2 As you've heard, Turtle Beach's majority shareholder
3 was Stripes. Stripes is a private equity firm that was founded
4 in 2008 by Kevin Fox and Ken Meriden (phonetic). Mr. Fox has
5 had a long and successful career as an entrepreneurial
6 investor.

7 Stripes focuses on investing in software and consumer
8 products companies that have compelling products, fanatical
9 customer bases, and are at in an inflection point in their
10 growth, meaning companies that need increased investment and
11 management improvements to level up and take full advantage of
12 their offerings.

13 Beyond simply investing money, Stripes has developed
14 a network of seasoned industry executives in the spaces where
15 it invests and provides executive talent placement and support,
16 building strong management teams. And you'll hear that
17 Stripes' philosophy is to recruit top executives to build these
18 strong management teams and let them manage the business.

19 Stripes has invested in over 54 companies, including
20 such well-known companies as Grubhub, Blue Apron, GoFundMe,
21 Stella and Chewy's, Art.com, and, of course, Turtle Beach.

22 Stripes invested in Turtle Beach in 2010 and are
23 heavily invested in expanding its distribution in partnership
24 with gaming makers. It brought in Ronald Doornink, an
25 operating partner, who is the former CEO of Activision, which

1 is the largest producer and distributor of gaming -- video
2 games, as Turtle Beach's executive chairman, and recruited
3 Stark.

4 During the first two years of Stripes' stewardship,
5 Turtle Beach enjoyed huge growth. Again, in the short span of
6 2010 to 2012, Turtle Beach's revenues doubled from 90 million
7 to 208 million.

8 By comparison, Parametric was a venture company with
9 no real operations or revenue, and in 2013 was looking for
10 either a large infusion of cash or an acquirement.

11 Parametric had no product for the technology
12 HyperSound that was still in its early stage and was not
13 developed enough for commercial use. As Mr. Peek alluded, they
14 had no history with any real revenues over its entire history.

15 And indeed in 2012, Parametric hosted less than
16 \$200,000 in gross revenue, as compared to over 200 million for
17 Turtle Beach, and lost \$2.6 million of EBITDA in 2012. It had
18 no significant licensing relationships despite nearly
19 three years of effort.

20 In other words, as you will hear and see throughout
21 the trial, Your Honor, Turtle Beach and Parametric were at
22 vastly different stages, and as a result had vastly different
23 histories of actual, measurable financial performance. On a
24 revenue basis alone, Turtle Beach was 10,000 times the size of
25 Parametric in 2013.

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1 And unlike Turtle Beach, Parametric had no products,
2 no ability to produce the products, no distribution network,
3 limited engineering and development resources and no
4 relationships with retailers. Plus, it was running out of
5 money.

6 By early 2013, Parametric only had \$3.8 million in
7 cash and a yearly burn rate of approximately 4 million, which
8 was expected to continue.

9 Accordingly in 2013, Parametric retained Houlihan
10 Lokey, either to secure new financing or find a strategic
11 partner.

12 You will hear testimony from Parametric's bankers at
13 Houlihan Lokey, Daniel Hoverman and Mark Dufilho, that raising
14 the needed capital for Parametric was very difficult, because
15 potential partners found HyperSound too unproven and potential
16 revenues too far out in time and speculative to justify large
17 investments.

18 And it was just at this time that they were
19 introduced to Turtle Beach. Turtle Beach was first introduced
20 to Parametric in February 2013 and received its first
21 demonstration of HyperSound on March 6th, 2013.

22 As Mr. Peek noted, originally he was only interested
23 in the license. But Mr. Stark was also interested in
24 diversifying Turtle Beach's business.

25 As Mr. Stark will explain, Turtle Beach's gaming

1 headset business was a very good one. But because headsets
2 plugged into someone else's product, primarily Microsoft's Xbox
3 or Sony's PlayStation gaming console, Turtle Beach was
4 dependent on what those companies did, and one of those things
5 was transitioning console generations.

6 The dominant console makers, Sony and Microsoft,
7 transitioned to next generations about every 7 to 8 years and
8 had never done so at the same time, until 2013.

9 And when a console transitions to a next generation,
10 Your Honor, what typically happens is gamers will stop buying
11 the old ones, as well as the peripherals, like headsets, that
12 go with them, and wait for the new models.

13 The typical result is that a transition will create
14 an immediate drop in demand and then recover with increased
15 demand as the new consoles get introduced and penetrate the
16 market. Importantly, there are a lot of variables that
17 surround console transitions that can substantially impact
18 peripheral makers like Turtle Beach, that are out of their
19 control, to which they don't have a lot of visibility.

20 For example, the console manufacturers don't provide
21 much notice as to when the new consoles will launch. They can
22 limit what's called backward and forward compatibility, meaning
23 they can allow old headphones to still work on the new consoles
24 or only limit it to new ones that are specifically designed for
25 it. They can alter the licensing agreement with various

1 manufacturers. And as you will hear, all of these significant
2 issues came into play between contract and close of this
3 merger.

4 In the spring of 2013, just as Turtle Beach and
5 Parametric were negotiating the outline of the sum deal, Turtle
6 Beach learned that both the Xbox and PlayStation consoles would
7 introduce new generations for the holiday season of 2013 --
8 again, the first time they had transitioned together. But
9 details remain murky about timing it, interoperability with
10 peripherals for both products, which created substantial
11 uncertainty for the whole gaming headset market -- all of which
12 were well understood by the marketplace.

13 But there were also positives. Turtle Beach was only
14 one of two headset makers who had a headset license for the
15 Xbox One. And the other one wasn't a significant player in the
16 gaming space, so Turtle Beach had reason for optimism ahead of
17 the transition that it would have a new Xbox One all to itself
18 when it launched.

19 You will hear testimony, however, that the dual
20 console transition and the rollout of the Xbox One, in
21 particular, was particularly disruptive and had far greater
22 impacts on 2013 results than could be predicted.

23 Namely, Microsoft announced in October of 2013 --
24 again that's several months after the merger was agreed to --
25 that Xbox One would launch without any headset compatibility --

1 and only forward compatibility when software and hardware
2 additions were rolled out sometime in early 2014. But when the
3 merger terms were negotiated, none of that was known.

4 Going back to mid-April 2013, Turtle Beach's thinking
5 about Parametric evolved from the licensing play to an
6 acquisition or merger. And on April 19th, it submitted a draft
7 nonbinding term sheet to Parametric or a proposed merger with
8 roughly an 80/20 ratio.

9 You'll hear that that ratio is the product, Your
10 Honor, of a few inputs. One, was Parametric's market cap,
11 which in this period was widely volatile. As Mr. Peek noted,
12 changed sometimes as much as 20 percent in a day. And was
13 presumed inflated because, one, Parametric had issued a press
14 release in March 2013 that it was engaged in a process for
15 strategic transaction.

16 And two, Parametric was a story stock pushed up by
17 press releases promoting future business opportunities, but, as
18 already described, with little actual numbers or business.

19 As Mr. Peek noted, its stock price went from the ones
20 to 20s, and during the period of time of the negotiation, when
21 Turtle Beach first was introduced to Parametric, stock was
22 about 10, and then it went up to 20 at the time they disclosed
23 that there was a strategic process.

24 You'll hear testimony that the parties took that
25 volatile leap into account when negotiating the ratio.

1 Another input was Turtle Beach's most recent full
2 year EBITDA for 2012.

3 And another important input was the opposition of
4 Stripes and other Turtle Beach board members to the acquisition
5 of Parametric.

6 As you will hear from numerous witnesses, Ken Fox,
7 the managing partner of Stripes, the majority owner of Turtle
8 Beach, was very reluctant about any acquisition or merger with
9 Parametric. Mr. Fox thought that Parametric was not a real
10 business and was too risky. He also thought its market cap, as
11 reflected in its stock price, was overly inflated and
12 unsupported by any actual business fundamentals.

13 He also thought it wasn't a good sign for Turtle
14 Beach to become a public company, particularly ahead of this
15 dual console transition that would create unprecedented
16 uncertainty in Turtle Beach's business, and which might be
17 difficult for capital markets to understand.

18 It took from April until June of 2013 to convince Fox
19 and Stripes ultimately to support the deal, but the condition
20 of that support was that its stake in Turtle Beach would not be
21 diluted by more than 20 percent.

22 Two of Turtle Beach's other directors, its founders,
23 were also opposed to the deal and remained opposed throughout.
24 Parametric knew of the internal dissent within Turtle Beach of
25 doing the deal, but wanted to salvage it. This led to a

1 unilateral series of carrot-and-stick negotiation approaches --
2 buy Parametric, the board assumed Turtle Beach would keep it
3 interested, to get it to a decision, try to close a deal.

4 It wasn't until June 9th that Turtle Beach overcame
5 its internal dissent over merger and provided Parametric with
6 revised terms -- 81/19 or 80/20 if Parametric was able to
7 contribute 5 million in equity to ensure it had adequate cash
8 to close. From that point, Turtle Beach and Parametric
9 reentered into an exclusivity agreement and began working on
10 drafts for the definitive agreement.

11 Nearly three weeks later, on June 26th, Turtle Beach
12 discovered, for the first time, during due diligence that a
13 Parametric subsidiary, HHI -- which you've now heard about a
14 number of times -- had issued options to several individuals,
15 including Mr. Potashner. And it was not fully owned by
16 Parametric.

17 As a result, Turtle Beach demanded those options be
18 terminated. June 26th -- that day is important because it's
19 months after negotiations started and weeks after the final
20 ratio was set.

21 Stark's position on the HHI was emphatic and
22 unwavering. The HHI options must be canceled, and Turtle Beach
23 must obtain 100 percent of Parametric. Every witness with
24 knowledge and every documented communication between Turtle
25 Beach and Parametric confirmed that this was and always was

1 Stark's and Turtle Beach's position.

2 To be sure, Parametric actually did not give in to
3 this demand immediately. Potashner was indeed particularly
4 adamant about keeping his options. But the evidence will show
5 that Turtle Beach walked away from the deal when Parametric and
6 Potashner's reticence to canceling the options persisted. And
7 in response to that, Mr. Potashner immediately conceded in
8 order to save the deal. Mr. Potashner paid nothing for those
9 options by Turtle Beach or Stripes or anyone else.

10 As a result, you will hear testimony from Mr.
11 Potashner and others that he lost these options, which he
12 valued greatly, only because of Turtle Beach's demands. In
13 other words, Mr. Potashner greatly disincentivised personal
14 from doing the merger, except that he thought it was a good
15 deal for Parametric.

16 Thus, there is not only an absence of evidence about
17 the exploitation of conflict of interest by my clients, but
18 considerable evidence of the absence of such efforts by my
19 clients.

20 As Mr. Peek noted, the parties eventually got to an
21 agreement in August 2013, and Parametric's board obtained a
22 fairness opinion from Craig-Hallum, an independent investment
23 bank, before approving the merger.

24 As you heard, both companies provided management
25 forecasts from June/July 2013 for that opinion.

1 And you'll hear plaintiff give a lot of criticism to
2 the Turtle Beach's forecast. But you won't hear a lot of
3 discussion about Parametric's forecast.

4 While Turtle Beach did indeed miss its forecast for
5 2013/2014, due to the dual console transitions, you will hear
6 that Parametric also missed its own forecast by a much wider
7 margin. And since the merger was based on a ratio, the
8 relevant movements mattered.

9 Parametric's CFO Jim Barnes will testify that
10 Parametric's forecast for the fairness opinion was aggressive
11 and assumed either \$50 million in funding for the completion of
12 a transaction and a successful launch of a HyperSound product
13 in 2014, and that it was launched early enough to generate
14 substantial sales.

15 But by September 2013, it's one month after the
16 merger was signed, the end of Parametric's fiscal year,
17 Parametric already knew these forecasts would be much missed by
18 a wide mark. By fall 2013, these misses and Parametric's lack
19 of a schedule or business plan to meet the top regional goals
20 were so acute to Turtle Beach, that if the deal was
21 negotiated -- renegotiated after the August contract signing,
22 Turtle Beach would have likely demanded more favorable terms
23 from Parametric -- not the other way around, or would have
24 simply walked away. You'll hear that Parametric worried about
25 this outcome as well if renegotiations were reopened.

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1 As I noted, 2013 was an unprecedentedly difficult
2 year to forecast for Turtle Beach because of the surprise of
3 the dual console transition and the Microsoft Xbox One
4 deferral. This indeed led to an approximately 18 percent
5 revenue decline, which while significant, was in line with
6 guidance being provided as the year progressed and the impact
7 of the transitions became clear.

8 Beyond the overall greater slow down than anticipated
9 was the extraordinary timing issues regarding Xbox One that
10 substantially impacted 2013. As mentioned before, Turtle Beach
11 assumed Xbox One would be a significant prize spot in 2013.
12 But it wasn't until late October, when Microsoft surprised
13 everyone by announcing no headset would work on it at launch
14 and would not work for some undetermined period until Q1 or Q2
15 2012. So all of the Xbox One related sales that Turtle Beach
16 predicted for the 2013 holiday was removed and shifted to 2014.
17 Given that Turtle Beach had predicted a very robust
18 contribution from Xbox One related sales, the shift to the
19 substantial and unpredicted impact was completely out of Turtle
20 Beach's control.

21 But just as important, all this was being disclosed
22 to the public, both in the proxy and other SEC filings and
23 public events with Parametric shareholders, between contract
24 and close in August Summer 2013. Indeed, Turtle Beach's sober
25 guidance about 2013 generated pessimism, not optimism, in the

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1 market about its expected performance.

2 Mr. Potashner and the signers' own representative,
3 Josh Weisbord urged Stark to put out any forecast number for
4 2014, because the market was already assuming the worst,
5 according to them, about Turtle Beach's business. But Turtle
6 Beach resisted putting up revised numbers for full year 2013
7 and 2014, like nearly every other company in their space, and
8 this was because all of the changes around the business at that
9 time, compounded by the fact that nearly half of all their
10 revenues and nearly all of their EBITDA comes in during the
11 holiday season. It would make any such forecast completely
12 unreliable at that time.

13 You will hear that Turtle Beach to this day does not
14 disclose next year forecasts before prior holiday sales are
15 known, and understood just for that reason.

16 So Turtle Beach preferred the conservative approach
17 of providing market trends in context, updated actual quarterly
18 results, and cautionary guidance.

19 Mr. Apton referred to PNC and dec evidence. It's a
20 bit of a red herring, and there's really only two things to
21 know about it: One was that it was disclosed in the proxy; the
22 other is that is a fixable issue and it was fixed.

23 The entire facility was replaced, refinanced, almost
24 immediately after close. Turtle Beach uses the same facility
25 today. They used it to invest heavily in the HyperSound

1 business.

2 You will also hear testimony about what happened to
3 HyperSound after the merger. Well, it was a significant
4 disappointment. Turtle Beach invested over \$30 million in it.
5 Hired engineers, top hearing aid executives to build out that
6 business, engaged in significant research and development,
7 built actual products, built distribution chains for it,
8 marketed it.

9 But HyperSound turned out to be far more fragile than
10 expected for commercial use. It required substantially more
11 development than expected and was difficult to make
12 cost-effective, and it never generated material revenue. Nor
13 could Turtle Beach find a buyer for it, even though it was now
14 incorporated and actual product.

15 Today, eight years later, Turtle Beach remains a
16 successful gaming headset business that continues to enjoy
17 nearly 50 percent market share dominance in its category and a
18 very profitable performance. But none of that success,
19 however, is attributable to HyperSound, none.

20 Thus, Parametric shareholders received 20 percent of
21 a business with a market capital of approximately \$440 million,
22 and Turtle Beach got a technology that ultimately wasn't worth
23 very much and cost it tens of millions of dollars.

24 Finally, you'll hear -- you heard plaintiff's damages
25 number. And that number is based entirely upon the report of

1 Mr. Atkins, their purported expert.

2 The problem with this -- these damages that are due
3 here, Your Honor, is one, as Mr. Peek alluded to, that you're
4 not provided a damage number for the value of equities
5 appropriated by control under Gentile, but it also suffers from
6 more fundamental issues.

7 Mr. Atkins ignored Parametric's contemporaneous
8 forecasts from around the close of the merger January 15, 2014,
9 and instead, used its aggressive forecasts from August 2013,
10 used for the fairness opinion, while at the same time, he used
11 Turtle Beach's forecast from a different day, February 2014 --
12 the downside forecast prepared for a lender six months after
13 the aggressive forecasts used for Parametric.

14 By engaging in this apples-to-orange comparison, he
15 ensured that Turtle Beach was punished for its financial
16 performance in late 2013, but ignored Parametric's
17 significantly worse underperformance during the same time.

18 Of course, Parametric had a forecast for the same
19 time as the Turtle Beach forecast he used. Indeed, they're
20 contained in the very same document he looked at for Turtle
21 Beach. But Atkins ignored those, and the fact that the
22 Parametric had failed to meet its August 2013 forecast and
23 revised those forecasts from 2014, from down from 23 million to
24 1.6 million for revenue.

25 Atkins then compounded this error by making his own

1 forecast for Parametric, adding tens of millions of dollars for
2 licensing revenues from numbers that were, quote, pulled from
3 the air, end quote, that were not created or relied upon or
4 even seen by Parametric management.

5 If you account for just those two errors alone,
6 removing those unsupported strongman license numbers and using
7 the same forecast from the same date and otherwise keep this
8 model the same, Atkins' own model will show that Turtle Beach
9 overpaid substantially for Parametric.

10 And even if you added in licensing revenue, that
11 Parametric's manager actually included in its forecast, which
12 Atkins also ignored, you'd still get a negative damages value.

13 So I return once again to the law and what plaintiff
14 needs to prove to support the claim it actually asserts. You
15 will not hear much evidence from plaintiffs about controlling
16 shareholders and equities appropriated from such shareholders,
17 nor will the Court hear evidence about actual collusion between
18 Turtle Beach or Stripes and any of the Parametric directors.

19 The plaintiff will be at pain to identify, much less
20 prove, any side deals that would have prompted the Parametric
21 directors to improperly give Turtle Beach or Stripes a deal
22 that was contrary to Parametric's interests.

23 The Court should ask itself throughout this
24 proceeding, Why would Parametric's directors not act in
25 Parametric's best interests? What motive would they have here?

1 And did my clients do anything beyond try to negotiate the best
2 deal they could?

3 That plaintiff thinks Parametric should've gotten a
4 better deal, doesn't constitute aiding and abetting of an
5 equity expropriation claim. That plaintiff believed Turtle
6 Beach should provide more specific guidance for 2014 does not
7 support that claim either.

8 In short, the evidence presented will not support the
9 aiding and abetting of an equity expropriation claim asserted
10 against the [indiscernible].

11 Thank you.

12 THE COURT: Thank you, Mr. Hess.

13 Wipe it down, please.

14 MR. HESS: Yes.

15 THE COURT: Does anyone need a break before we go to
16 our first witness?

17 MR. APTON: Your Honor, could we take five?

18 THE COURT: If you can be back in five.

19 MR. APTON: Yeah. Thank you, Your Honor.

20 THE COURT: Since we have multiple counsel on each
21 side, if anybody needs to get up at any time and go anywhere,
22 you can. If you need to make a call, whatever, please feel
23 free to get up and move around. It will not bother me.

24 Five minutes.

25 (Proceedings recessed at 10:33 a.m., until 10:40 a.m.)

1 THE COURT: Are we ready? Our first witness.

2 MR. APTON: Thank you, Your Honor. We call Adam Kahn
3 on behalf of IceRose Capital Management.

4 THE COURT: Okay.

5 THE MARSHAL: Watch your step. If you can remain
6 standing, face the clerk and raise your right hand to be sworn.

7 **ADAM KAHN**

8 [having been called as a witness and being first duly sworn,
9 testified as follows:]

10 THE CLERK: Thank you. Please state and spell your
11 first and last name for the record.

12 THE WITNESS: Adam Kahn. A-d-a-m, K-a-h-n.

13 THE COURT: Sir, you can be seated. And since we're
14 all using masks, understand that you may get asked to rephrase
15 or repeat your questions, because sometimes it gets garbled
16 coming through the mask.

17 If you need counsel to repeat anything because you
18 can't hear them or understand them, you let them know. If you
19 need a break at anytime, you let me know. And then if you need
20 to go get your water or something, let me know and we'll get it
21 for you, if you need anything that you left back at your table;
22 okay?

23 THE WITNESS: Lovely.

24 THE COURT: All right. Please sit down.

25 MR. APTON: Your Honor, we have a binder of exhibits.

1 Is it okay to give it to the witness?

2 THE COURT: You can hand it to the witness.

3 MR. APTON: Okay.

4 THE COURT: I can't touch it, but...

5 DIRECT EXAMINATION

6 BY MR. APTON:

7 Q Good morning, Mr. Kahn. How are you doing today?

8 A I'm pretty good.

9 Q Okay. And can you please give me -- well, strike
10 that.

11 You're here on behalf of IceRose Capital Management
12 today; correct?

13 A Yes.

14 Q All right. And that is one of the assignors involved
15 in this action?

16 A Yes.

17 Q And the plaintiff is PAMTP LLC; correct?

18 A Yes.

19 Q Okay. Can you please give me just a brief overview
20 of your education.

21 A I attended the University of Pennsylvania, the
22 Wharton School, and graduated with a Bachelor of Science in
23 Economics.

24 Q And when was that?

25 A In 2005.

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1 Q And did you graduate with a specific focus or any
2 awards or anything like that?

3 A My concentrations were in finance and legal studies.
4 I did graduate cum laude and also was part of the Joseph
5 Wharton Scholar Program, which was for the top 10 percent of
6 Wharton students; and the Benjamin Franklin Scholar Program,
7 which was the university-wide honors and more deep academic
8 research program at the institution.

9 Q Thank you. And can you tell me what you did after
10 college in terms of employment.

11 A My first few jobs were at hedge funds -- first at
12 Citadel, then Plural, then Anchorage. My jobs ranged from
13 being an analyst doing equity special situations to being a
14 portfolio manager, managing a few hundred million of capital at
15 my discretion to at Anchorage helped build out their equity
16 and -- and risk infrastructure for equity and equity
17 investments.

18 Q Okay. And did you receive any special sort of
19 training at any of those funds you mentioned?

20 A Citadel had a six-month training program at the start
21 where they brought in their own instructors and made sure you
22 actually learned the -- kind of the plumbing of the business
23 and understood not just what you were supposed to do, but what
24 other groups did, how -- what you did related to everything
25 else at the firm.

1 Q What do you mean by plumbing of the business?

2 A One of the presentations I made to pretty much the
3 entire senior management team at Citadel, for instance, was
4 on -- we called it Life of a Trade. But what happened from the
5 time you executed in order to where the -- to how you financed
6 it, to where it ended up sitting, whether you financed at
7 (indiscernible) broker or a -- or through a Tri-Party Repo'd
8 through your own -- your own depository trust box or what have
9 you, and how, you know, we would identify -- or I identified
10 each player along the step. And so, you know, most people
11 don't know, if they sit there and execute a trade, what happens
12 after that. They just know what they do. They understand the
13 execution business.

14 And in fact, at the time, no one at Citadel even knew
15 what happened over the life. There was no documentation. So I
16 put that together. Or other parts of the training, they would
17 rotate you to different groups, and you would sit there and
18 learn the other business so you could see if there's any way,
19 when you got to your eventual home, to monetize across the
20 disciplines against -- across the different strategies at
21 Citadel.

22 Q Okay. And there came a point in time when you
23 created IceRose; correct?

24 A Correct.

25 Q And when was that?

1 A So IceRose was named after my grandparents, Bernice
2 and Rose, and it was a hedge fund I created in 2012 that
3 launched May 1st or June 1st of 2012.

4 Q Okay. Did IceRose have a special focus or purpose in
5 terms of --

6 A Yeah. So --

7 Q -- a business plan?

8 A -- all along the way my roles were always in special
9 situations. And that's a pretty meaningless term. But special
10 situations are corporate chain. So usually it's defined as
11 spinoff, carve-outs, postbankruptcies, any sort of hard
12 corporate change type catalyst. And IceRose was meant to be a
13 special situation data-neutral fund.

14 And data neutral, for simplicity, just means that
15 you're not supposed to have a correlated return to the market.
16 So the returns of the hedge fund were supposed to be entirely
17 independent of their returns of the market.

18 Q Okay. And there came a point in time when you
19 discovered Parametric; correct?

20 A Yes.

21 Q And when was that?

22 A So in the -- that was in the Spring of 2013.

23 Q Okay. Then how did that happen?

24 A I was chatting with my sales coverage at Oppenheimer
25 on some unrelated topic; I don't remember. And it was a

1 beautiful day outside, and he said that he was going to hear
2 this technology; there's going to be a technology demonstration
3 and asked me if I wanted to join him for the demonstration.

4 And I wanted to get out of the office and enjoy the
5 day, so I took a walk from my office on 34th and Madison to
6 wherever the demonstration was in Midtown, and I heard the
7 technology.

8 Q And that's Midtown Manhattan?

9 A Yes.

10 Q Okay. And is that where IceRose's offices were?

11 A Yes.

12 Q Okay. And so after the demonstration, what happened
13 next, in terms of your investment?

14 A Yeah. So around that time was when Parametric
15 happened to announce that they were pursuing the strategic
16 alternatives which is right up my wheelhouse, and I was
17 fascinated with the technology after the demonstration. So I
18 started doing what I would consider your standard due
19 diligence, meaning read every single 10-K, 10-Q, not
20 necessarily every word, but go through them in detail, go
21 through every of the last, at least, eight, likely many more
22 earnings transcripts, every presentation that they'd made over
23 the time.

24 This was different in the sense that this was kind of
25 a niche in technology that didn't have a tremendous operating

1 history, but there are plenty of companies like those out there
2 on the market. There are plenty today, with valuations, you
3 know, anywhere from a few million to many billion that don't
4 have any revenue.

5 And you look at 10M, you're -- the total addressable
6 market, you do other types of work. You talk to people that --
7 I talked to people that had a better understanding of
8 technology to make sure I wasn't fooled or -- or try and ensure
9 that it wasn't just me being silly and thinking it was this
10 great technology and other, what I would call standard due
11 diligence, which culminates in a one-pager which puts together
12 a basic model, that puts together management incentive, so I
13 know whether management is optimizing for EBITDA, for cash EPS,
14 for whatever metric, and other sort of specific information
15 relating to the stock, including insider trading history, and
16 all of the investments in the portfolio had that. And I liked
17 the situation, so I started accumulating shares.

18 Q Okay. When you saw the technology at this
19 demonstration, what did you actually see? What was the
20 technology?

21 A So, it's directional sound. And what that means is
22 you can take a speaker and you can choose where in this room
23 that sound is made. So if I had the speaker, you don't hear
24 the speaker, you don't hear anything until the transmittal hits
25 an object. So I can have the speaker in my hand here and make

1 it seem like it's playing off the Great Seal of the State of
2 Nevada. So you would think, if you didn't know better, that
3 the sound was actually emanating from the Great Seal. Well, in
4 fact, the sound is. But the original transmittal is emanating
5 from here.

6 And if you are directly in the line, then you feel
7 like it's playing in your head, which is a really cool feeling.
8 Or if it -- if you're in a field, like a larger area, they put
9 it a foot next to you, you don't hear a single thing.

10 Q Okay. And so how much did you actually invest?

11 A The investment grew over the summer, and post the
12 announcement of the merger, that ultimately I owned -- "I"
13 meaning IceRose owned 489,761 shares as of January 15th.

14 Q 2014?

15 A Correct.

16 Q Okay. And -- and so you made your initial investment
17 when again?

18 A Late spring, early summer of 2013.

19 Q So what did you do to follow the company after your
20 initial investment?

21 A I would have rapidly consumed any SEC or other press
22 releases, financial filings. I did more in terms of validating
23 the technology at the Legacy Parametric Company. And I had --
24 I met with Potashner. And then post the merger announcement I
25 had a phone call and a meeting with Juergen Stark, and other,

1 you know, standard due diligence. There's always things going
2 on like updating its correlations to different other securities
3 in my portfolio to the market and sort of just basic due
4 diligence in portfolio management.

5 Q Okay. Do you have a -- did you a Bloomberg feed at
6 the time?

7 A Yes.

8 Q So you received news about the company over
9 Bloomberg, too?

10 A Yes. And Bloomberg was my main source. I mean, my
11 life was basically on Bloomberg. You can use it to alert you
12 as soon as anything happens. It'll shoot to you immediately
13 all of the financials, filings, et cetera.

14 Q So there came a point in time when you found out that
15 Parametric was -- was merging; correct?

16 A Yes.

17 Q All right. And so how'd you find out about that and
18 when was it?

19 A So the day of the announcement on August 5th, I'm
20 sure I got a message alert right away. And there's other
21 indicators on Bloomberg that show you when things are
22 happening. And so I would have found out within seconds
23 likely, realistically, of the announcement that what happened
24 and start reading the press release.

25 Q And do you recall what the structure of the merger

1 was?

2 A Yeah. The structure was a reverse merger whereby
3 VTBH, Turtle Beach, whatever we're referring to it as, came
4 public, and was going to take 80.9 percent of the due in
5 (phonetic) shares of the -- of NewCo, and so the Legacy
6 Parametric holders would have 19.1 percent of NewCo.

7 Q And what is NewCo?

8 A NewCo just means the -- the postmerger entity.

9 Q Okay. Did you do any research into VTB Holdings at
10 that time or Turtle Beach?

11 A So at that point, my entire research process shifted
12 heavily to basically only researching VTBH, because in the
13 merger there was 81 percent or so of -- of the combined
14 company. So the fact that it's 81 percent of the value of the
15 new company being assigned to it, so it doesn't matter nearly
16 to the extent whatever your view of Parametric may or may not
17 be, the new company is going to be determined by the
18 performance of Turtle Beach.

19 Q And had you started researching Turtle Beach?

20 A Same way as Parametric. Going through every filing,
21 although there were a lot less pickings to be had for Turtle
22 Beach, doing due diligence on the industry, what's happening
23 related to it, talking to the principals involved, mainly
24 Juergen Stark, the CEO of Turtle Beach. That would be the gist
25 of it.

1 Q Okay. And did you receive a proxy statement at some
2 point?

3 A Yes. There was a -- I don't know the technical term
4 of what came out in early November, but there was the
5 preliminary proxy, and then I believe it was December 5th,
6 maybe December 3rd, the -- the full proxy came out.

7 MR. APTON: So, Your Honor, I'd like to move to admit
8 Exhibit 244, Plaintiff's Exhibit 244.

9 THE COURT: Any objection to 244?

10 MR. KOTLER: No objection, Your Honor.

11 THE COURT: It'll be admitted.

12 (Plaintiff's Exhibit Number(s) 244 admitted.)

13 BY MR. APTON:

14 Q So Mr. Kahn, Exhibit 244 is in a binder in front of
15 you and also on the screen.

16 Is this the proxy, the Definitive Proxy Statement --
17 or strike that.

18 Does Exhibit 244 contain the Definitive Proxy
19 Statement you were just referring to?

20 A It sure looks like it. Yes.

21 Q And you reviewed this Proxy Statement?

22 A Yes.

23 Q And --

24 MR. PEEK: Your Honor, this was not identified as one
25 of the exhibits he's going to be using. 244.

1 MR. APTON: I believe it was, Mr. Peek.

2 THE COURT: Okay.

3 MR. PEEK: Did that come later, after the fact, the
4 original disclosures?

5 MR. APTON: I don't have the disclosure in front of
6 me.

7 THE COURT: So, Mr. Peek, you know when you start
8 talking you buy the witness; right?

9 Okay. So he didn't talk. Somebody --

10 MR. PEEK: I -- I withdraw, Your Honor.

11 THE COURT: -- previously stipulated to the exhibits,
12 so hopefully we don't have a problem. Let's keep going.

13 BY MR. APTON:

14 Q Mr. Kahn, you mentioned some conversations you had
15 with the defendants about the merger; correct?

16 A Correct.

17 Q What were those conversations and when were they?

18 A So I spoke -- I met with Ken Potashner in the fall of
19 2013, and I honestly don't remember much of anything from that
20 meeting. And then I spoke with Juergen Stark on the phone in
21 November, and then -- no, I apologize. I met with Juergen
22 Stark in person on November -- or on November 5th or 7th, I
23 believe it was. And then I spoke with him about a week after
24 the proxy came out in December.

25 Q And what was the sum and substance of your

1 conversation with Mr. Stark?

2 A So obviously, the main issues were Turtle Beach's
3 financial performance, topics related to what was addressed in
4 the opening statements, and what the go-forward Turtle Beach
5 business would look like, as well as the -- the current
6 performance of the company.

7 So, you know, he -- the conversations were very
8 focused on margins and performance and operations of the
9 company and what the effects of what was going on, like that I
10 would call external issues relating to the consult cycle
11 transitions were.

12 Q Did Mr. Stark, with you -- sorry. Did Mr. Stark at a
13 time, share with you that VTB or Turtle Beach's financials or
14 earnings for 2013 had been declining?

15 A So as they had publically stated, he said that they
16 might, you know, be at the bottom end, or perhaps slightly
17 below the 32 million that was forecast for it. But, in fact,
18 as we know, this was end of December and the company did 13
19 million of EBITDA, which is not slightly below 32, but a world
20 apart, especially for a levered company that has debt in the
21 double digits.

22 And far more specifically, we talked about whether it
23 was an impairment to the business, and he assured me that quite
24 the opposite was the case. That the consult cycle would be to
25 greater growth, per the new consults, and that the revenue lost

1 in 2013, and the EBITDA loss in 2013 would all be recaptured in
2 2014, because it was just a temporary blip. And thus, the \$56
3 million of EBITDA projected by -- that was given in the proxy
4 for Turtle Beach's EBITDA likely represented a low number,
5 because all of the EBITDA lost from their original \$40 million
6 2013 projection would be recaptured in 2014.

7 Q Okay.

8 A And that, we also know -- now know to have been a
9 total lie, as they were projecting in December somewhere in the
10 20 millions of EBITDA for 2014, not the greater than 58 million
11 that had been explicitly stated to me.

12 MR. KOTLER: Your Honor, move --

13 MR. PEEK: Your Honor --

14 MR. KOTLER: -- move to strike the soliloquy.

15 THE COURT: Denied.

16 BY MR. APTON:

17 Q You mentioned the term impairment to the business.
18 Well, what -- can you explain what that is.

19 A So you had a -- a highly levered business with a lot
20 of debt. And we now know they -- that their PNC agreed with
21 this, although this was never disclosed, that was put into the
22 workout group for companies on the brink of bankruptcy, that
23 it's not a modest deterioration from 32, that is a total
24 annihilation of the business.

25 And impairment came from a few places. One for

1 instance is that the new negotiations with PNC prevented them
2 from investing capital in -- into -- they had to dissolve HHI,
3 and they also had much stricter abilities to invest for future
4 growth.

5 So not only was -- it impaired Turtle Beach, because
6 they -- the business had lost a substantial amount of -- of
7 leverage or ability to grow, but it also impaired the
8 go-forward value of what had been Legacy Parametric, because
9 they were prevented from investing in -- investing what was
10 required by the covenants that were imposed by PNC in that
11 negotiation.

12 MR. PEEK: Your Honor, I'm going to object to this
13 whole line of opinion testimony. This individual, while
14 percipient, has not been disclosed under the rule as offering
15 expert testimony, albeit in a percipient manner, he has not
16 been designated nor has he been disclosed.

17 THE COURT: Okay. Did you want to join?

18 MR. KOTLER: Yes.

19 MR. PEEK: He also -- right.

20 THE COURT: As an owner, he is able to testify
21 related to the investment that he owns. And I certainly
22 understand that you want to challenge the research and analysis
23 that he did as part of his acquisition and investigation, but
24 as an owner, he's able to testify to it.

25 I'm not relying upon this as an expert -- relying

1 upon him as an expert, but I am certainly going to listen to
2 him as an owner related to his investment background.

3 MR. PEEK: I understand the investment part, Your
4 Honor. But he's -- he's going well beyond that with opinion
5 testimony.

6 THE COURT: I understand your position. Overruled.
7 Keep going.

8 BY MR. APTON:

9 Q Mr. Kahn, in your line of work, it's important to
10 conduct thorough due diligence before you make an investment;
11 correct?

12 A Yes.

13 Q And you follow those investments through and through
14 until you're done with the investment; right?

15 A Yes.

16 Q And you spoke to the principals of Parametric and VTB
17 Holdings; yes?

18 A Yes.

19 Q So this is not based on your opinion, but actually
20 your recollection of what you learned and spoke about --

21 A I would say --

22 Q -- with (indiscernible) prior --

23 MR. PEEK: Objection. Leading, Your Honor.

24 THE WITNESS: -- I would say without a doubt --

25 THE COURT: Wait. Stop. Can you rephrase your

1 question, please.

2 BY MR. APTON:

3 Q The material that you were just discussing concerning
4 the companies, what was that based on?

5 A I would say there was not a single opinion that I
6 stated. I don't know what of anything I've said so far could
7 be an opinion. It is strict facts about what I knew at the
8 time and then facts about what I later learned.

9 Q Thank you. All right.

10 THE COURT: Okay. Some of us who are not economists,
11 those would be opinions, but that's okay. I am listening to
12 the testimony regardless of whether you think it's an opinion
13 or not.

14 Keep going.

15 MR. APTON: Thank you, Your Honor.

16 I'd like to move to admit Exhibit 376.

17 THE COURT: Any objection to 376?

18 MR. PEEK: No objection, Your Honor. He's on that
19 e-mail.

20 THE COURT: Okay. It will be admitted.

21 (Plaintiff's Exhibit Number(s) 376 admitted.)

22 BY MR. APTON:

23 Q All right. Mr. Kahn, can you tell me what
24 Exhibit 376 is generally.

25 A Yeah. It's a e-mail from -- well, there's -- there's

1 a few different pieces, but it's an e-mail exchange between Ken
2 Potashner, and -- and myself regarding whether I would like an
3 update, and it was clearly in regard to the eminent vote that
4 was occurring for the merger.

5 Q Thank you. So the bottom of the e-mail chain, which
6 would be on 376-2, that represents the first e-mail in the
7 chain; correct?

8 A 376-2?

9 Q Yes. In the lower right hand corner.

10 A Yes.

11 Q And what -- what is -- what is Ken asking you here,
12 Ken Potashner asking you here?

13 A If I want to -- if there's anything I need to speak
14 to in order to get an update. I mean, it's -- I think it --
15 the e-mail basically speaks for itself. "Would you like to get
16 an update? We would be fully available to you. Is there
17 anything you would like to speak with Ken or -- or I about?"

18 Q And the next day, you respond. And can you please
19 let me know what the purpose of your response here was on
20 December 13th, 2013?

21 A I don't recall specifically what conversation or what
22 the communication was with Josh. But clearly, I believe there
23 was some communication that Josh had made to me, or that had
24 occurred that prompted Ken to send me that e-mail. So I
25 addressed that saying, I don't want Josh as a go-between. If I

1 need something, I will take care of it myself. And I don't
2 want him involved, because I must have thought that he relayed
3 something that may have been purported to be on behalf of
4 IceRose, or in my thoughts, and I wanted to have full control
5 over my own thoughts for a variety of -- of reasons, not the
6 least of which was that I was a 13G filer in the stock,
7 meaning, I owned more than 5 percent. And so any action I took
8 with anyone else would be considered a group. So I was very
9 cautious to make sure that I did not work with anyone else or
10 have any shared views, or shared opinions, and kept what I
11 wanted to do to myself.

12 There obviously -- or -- or likely was volatility in
13 the name at that time. I was -- I don't remember the trading
14 in the middle of December 2013. But I said that the day-to-
15 day volatility isn't a bother to me. And then most
16 importantly, I write that I am a supporter of this deal,
17 presuming there has been no impairment to Turtle Beach's
18 business, meaning that the 2014 and go-forward expectations
19 hadn't been changed, and the -- the fairness opinion is -- was
20 not -- was no longer off.

21 Interestingly, there was already an impairment that
22 was concealed by the way the proxy was put together that
23 occurred in August of that year. So it was already false at
24 the time, ignoring the deterioration that had occurred in Q4 to
25 Turtle Beach.

1 Q Okay.

2 A But it was impossible for me to have known that. But
3 I laid out my thoughts on the deal and I said, at the top, that
4 I wouldn't mind a 15-minute phone call. So obviously, I didn't
5 have an extensive amount to discuss, but there were topics I
6 wanted to discuss, which would be -- it's 2014, and the
7 go-forward business of Turtle Beach, what you claim it to be.

8 Q And in the e-mail, you say, quote, "The deal was cut
9 at 80/20, and the fairness opinion was based off those
10 projections. My view is, if that there is impairment to Turtle
11 Beach's business, such that those projections are unlikely to
12 be met, the deal should be recut for a greater share going to
13 current PAMT holders."

14 That's right?

15 A Yes.

16 Q And what did Mr. Potashner say in response to you, if
17 anything?

18 A After that, a phone call was set up Juergen, and
19 Juergen expressed to me --

20 MR. PEEK: Objection. Nonresponsive, Your Honor.

21 THE COURT: Overruled.

22 MR. PEEK: He has to only say what --

23 THE COURT: Keep going, sir.

24 MR. PEEK: -- Mr. Potashner --

25 THE COURT: Mr. Peek, please. Thank you. Don't make

1 a speaking objection.

2 You may continue, sir.

3 THE WITNESS: I don't recall what Potashner said, but
4 the intent of it was to talk to Juergen. I had no interest in
5 talking to Ken Potashner. And I spoke to Juergen who assured
6 me that 2014 and forward was not impaired and, in fact, that
7 2014 was benefited by the harm in 2013, because the business
8 loss would be recaptured, and that's when he explicitly stated
9 that his view, if anything, was that it was low.

10 And, in fact, we know at that point in time, that he
11 was telling me that it was going to be 58 million-plus in
12 EBITDA, that they were internally projecting a number less than
13 half of that. And these are EBITDA numbers on a levered
14 company. So less than half of that, to me, implies a value
15 difference in the equity of 80 to 100 percent. And the
16 other -- yeah, that's -- that's basically it.

17 BY MR. APTON:

18 Q Okay. And further up the page, you e-mail -- excuse
19 me, let's see, you e-mail Mr. Potashner and you say,
20 "Everything's satisfactory. Sorry. I missed this e-mail.
21 When is the deal closing?"

22 What prompted you to send that e-mail?

23 A I don't remember exactly, but the deal should have
24 been -- I don't remember if it should have closed like on the
25 2nd, or December 31st, or the 3rd. But if everything were on

1 the up and up, the deal should have been concluded --

2 Q Shortly --

3 A -- at that point in time.

4 Q Shortly after the vote?

5 A Yes.

6 Q Okay. And what did Mr. Potashner say in response,
7 cc'ing Juergen Stark?

8 A He said, "The final step is administrative sign-offs
9 by VTB banking entity PNC. That the PNC has the syndicate of
10 several banks all requiring the sign-off. The process has now
11 commenced, the holiday has impacted the speed of this."

12 Q Okay. And did he mention anything to you outside of
13 this e-mail about covenant breaches?

14 A No.

15 Q Putting the loan to work out?

16 A No.

17 Q Any sort of restructuring?

18 A No.

19 Q And so let's see here, what happened after -- after
20 the merger?

21 A Well, the next major event was the capital raise that
22 occurred in the second half of April.

23 Q Okay. And -- and what was that capital raise?

24 MR. KOTLER: Objection, Your Honor. It's outside the
25 scope of the equity appropriation claim, and the Court has

1 already made rulings with regard --

2 THE COURT: Overruled.

3 Please don't make a speaking objection.

4 Keep going.

5 THE WITNESS: They issued approximately 4 million
6 shares at \$10 even though the stock had been trading at over
7 \$13 the previous day in order to repay themselves, so to speak.
8 So they had issued a lot of subordinated debt, both in August
9 and in December -- or sorry, January 15th, to the company, and
10 they -- they issued the debt despite the fact that it --
11 Juergen had said a week or two prior that they had no need
12 whatsoever for a capital raise, and based off of everything
13 that Juergen had told me, there should have been no need
14 whatsoever for a capital raise to occur.

15 BY MR. APTON:

16 Q All right. Let's fast forward a little bit,
17 Mr. Kahn. When did you first learn about the class action
18 lawsuit relating to this merger?

19 A Well, there's a class action lawsuit filed in
20 relation to almost every single merger as a matter of course.
21 Usually, there's several of them. So I've --

22 THE COURT: Yes. Okay. Keep going.

23 THE WITNESS: I -- I know -- it's hard for me to say
24 like when did I learn about the class action related to this
25 merger. Like if -- I'm sure I knew there was always ongoing

1 class actions related to the merger. I honestly didn't pay
2 much of any attention to the class action until 2009. Or
3 excuse me, sorry, 2019.

4 BY MR. APTON:

5 Q And why 2019?

6 A Well, they -- whether through Bloomberg or -- or
7 reading Turtle Beach's financials, I knew that it was coming to
8 a close, and there would be possible settlement options, and
9 you, as standard, can either, you know, everyone is part of the
10 class for the -- the deal, that all shareholders are part of
11 the class, and then you can either accept the terms or you can
12 opt out. And so I wanted to make a decision whether to accept
13 the terms or opt out. So I tracked down the -- the Complaint.
14 And if I can -- well, I was going say, if I can make one
15 suggestion to Nevada, it would be to please make your court
16 cases way easier to access. But --

17 THE COURT: You've got to pay to have access here.

18 THE WITNESS: Yeah.

19 THE COURT: Keep going.

20 BY MR. APTON:

21 Q So you found out --

22 A Yeah. I got the Complaint and read the Complaint.
23 And then shortly thereafter, I received a phone call from Barry
24 Weisbord, who indicated his desire to opt out of the class, and
25 that he either had retained or was thinking of retaining you,

1 and suggested I speak to you, and -- and that was the next
2 thing that I did.

3 Q Uh-huh. So did you do any research into the merits
4 of the settlement?

5 A I read the Complaint in detail. I read the whole
6 Complaint. And probably, although I can't recall, to be
7 honest, any other documents that have been posted related to
8 the Court case, and yeah. And then I saw a lot that I had no
9 idea about.

10 And so I did also some digging back into old
11 financials and statements from both Turtle Beach and Parametric
12 to confirm what my understanding was of it at the time, and how
13 it differed from the Complaint.

14 Q And that was the first time you read the complaint,
15 being 2019?

16 A Yes.

17 Q And so you opted out of the lawsuit; correct?

18 A Yes.

19 MR. APTON: I'm going to move to admit Exhibit 310.

20 THE COURT: Any objection to 310?

21 MR. KOTLER: Objection, Your Honor. It's not an
22 authentic original document.

23 THE COURT: Okay. Can you lay some foundation,
24 please.

25 / / /

1 BY MR. APTON:

2 Q Okay. Mr. Kahn, when did you opt out of the lawsuit
3 approximately?

4 A Well, the decision had to be made in March or April
5 of 2020, so I guess I technically opted out, I believe, then.
6 But the decision was made in the back half of 2019 to opt out
7 of -- of the litigation.

8 Q And, I as your attorney, did I send a letter to the
9 Claims Administrator opting out on your behalf?

10 A Yes.

11 Q Okay.

12 MR. APTON: I move to admit Exhibit 310 now.

13 THE COURT: Any --

14 MR. KOTLER: No, Your Honor. It's still -- I can --
15 I'd be happy to explain the issue with the document.

16 MR. APTON: That's not 310? Oh, yeah.

17 MR. KOTLER: It is 310.

18 MR. APTON: All right.

19 THE COURT: Okay. What is your specific objection?

20 MR. KOTLER: There is a page in this document,
21 particularly, it's Plaintiff 24, Mr. Kahn's signed waiver,
22 assigned this -- assignment of claim that had not been produced
23 to us in this form before.

24 THE COURT: Okay. So you have an issue related to
25 production, not the foundation?

1 MR. KOTLER: Well, this document has never been
2 produced in discovery whereas a different --

3 THE COURT: That's -- that's not a foundation issue.
4 That's an objection that it wasn't produced to you prior to the
5 litigation; is that correct?

6 MR. KOTLER: That is correct.

7 THE COURT: Okay. When did you produce it?

8 MR. APTON: We -- we did produce this, Your Honor.

9 THE COURT: When? I'm just asking a question.

10 MR. APTON: After Mr. Kahn's deposition, to you
11 directly, Mr. Kotler.

12 THE COURT: So, I need you to go find it. The timer
13 is on you. Go find it. Somebody's got to have a copy. Tell
14 me when it was disclosed or when it was produced by letter or
15 some other format, or e-mail. But our timer is running.

16 And sir, if you want to stand up, you're welcome to,
17 while he looks.

18 THE WITNESS: Thank you.

19 THE COURT: There's nothing you can do to help him.

20 (Pause in the proceedings.)

21 MR. PEEK: Your Honor, if I may as well, if we're
22 still on the record. The -- the other problem --

23 THE COURT: No, we can't make him do two things at
24 once, Mr. Peek, please.

25 MR. PEEK: Well, while he's looking --

1 THE COURT: No, we can't.

2 MR. PEEK: Okay.

3 THE COURT: He's looking.

4 MR. APTON: It's all right.

5 THE COURT: Don't distract him. I want to solve this
6 problem. If you had had another problem before I started
7 looking, it would be different.

8 (Pause in the proceedings.)

9 THE COURT: So you think you produced it in a form.
10 I need to see the form you presented it in, in case that I have
11 to compare the form you claim to have presented it in and the
12 claim that we are now offering it in, to see if there is a
13 substantial difference, or if the two documents appear to be
14 substantially similar. So, can you show them to me?

15 MR. KOTLER: If it would expedite things, Your Honor,
16 we can make that showing electronically, and I can illustrate
17 the point.

18 THE COURT: I just -- I would prefer plaintiff's
19 counsel to do it --

20 MR. KOTLER: Okay.

21 THE COURT: -- since you've raised the objection, and
22 he's the one --

23 MR. KOTLER: Okay.

24 THE COURT: -- who has to lay -- to address the issue
25 about production, because it's not really a foundation issue,

1 it's a production issue.

2 (Pause in the proceedings.)

3 MR. APTON: So, Your Honor, Karen's going to display
4 what was produced as ICEROSE-105 on March 10th, 2021.

5 THE COURT: Okay.

6 MR. KOTLER: Can we see the bottom of it?

7 UNIDENTIFIED SPEAKER: It's Mr. Kotler.

8 THE COURT: We're going to look at the whole
9 document. So if you could zoom out for me.

10 Okay. If we could go to the bottom. And it has a
11 Bates Number ICEROSE105 and a signature with a funky line three
12 lines up. Okay. And this is the form it was presented in?

13 MR. APTON: Yes. This -- this is what was --

14 THE COURT: And --

15 MR. APTON: -- disclosed. This is what was --

16 THE COURT: -- may I see the --

17 MR. APTON: -- exchanged.

18 THE COURT: -- page that is contained in 310, which I
19 believe has number Plaintiffs' 24 on it.

20 MR. APTON: 310 dash 24.

21 THE COURT: Sure looks the same to me.

22 MR. KOTLER: Now, what -- may I state the basis for
23 the objection, Your Honor?

24 THE COURT: Absolutely.

25 MR. KOTLER: Can I ask for our side to have the video

1 for one second, so I can demonstrate electronically?

2 THE COURT: Sure. We can release control.

3 MR. KOTLER: Pull up the PX1025. This was
4 Plaintiffs' Initial Rule 16.1 disclosure to us.

5 THE COURT: I don't want to look at the disclosure.
6 I want to look at the page that you say --

7 MR. KOTLER: Yeah. I'm --

8 THE COURT: -- you received. So if we could move --

9 MR. KOTLER: Yes. Okay.

10 THE COURT: -- there. Because right now, we're on
11 your dime.

12 MR. KOTLER: David, go to page Plaintiff 24. And if
13 you could -- so this is the page that was produced to the Court
14 and to us. It is unsigned.

15 THE COURT: I see that.

16 MR. KOTLER: And in the Plaintiffs' Exhibits, in
17 Plaintiffs' 310, with the same Bates Number, Plaintiff 24, is a
18 signed version of the assignment that has never been disclosed
19 to us. So at some point in time, the -- the plaintiff changed
20 the exhibit.

21 THE COURT: Your objection is overruled. The ICEROSE
22 document is identical to the document that is being proffered.
23 You are not denying you received the ICEROSE document.

24 MR. KOTLER: I am not.

25 THE COURT: The fact you may have received a

1 different version at an earlier time, does not preclude them
2 from using the document they produced to you.

3 Mr. Peek, you had an objection?

4 MR. PEEK: Yes, Your Honor. The --

5 THE COURT: Because I've switched the timer to the
6 defendants.

7 MR. PEEK: No. I understand, Your Honor. But let's
8 focus on whether or not this document with that signature was
9 sent with that letter --

10 THE COURT: Well, this is the witness who is --

11 MR. PEEK: -- so I --

12 THE COURT: -- going to tell me, Mr. Peek.

13 MR. PEEK: Okay. But, Your Honor, you have to lay a
14 foundation before it comes into admission.

15 THE COURT: I'm aware of that.

16 MR. PEEK: So they have to lay a foundation that this
17 document was attached to this letter, because there have been
18 so many copies produced in various times, in various exhibit
19 disclosures.

20 THE COURT: I understand your position.

21 MR. PEEK: So there has to be a foundation, Your
22 Honor, that this document -- that this letter, with this
23 signature, was attached to this letter, sent to the Claims
24 Administrator.

25 THE COURT: Okay. Anything else that you want to

1 say, Mr. Peek?

2 MR. PEEK: No.

3 THE COURT: All right.

4 MR. PEEK: But before it comes into evidence, Your
5 Honor.

6 THE COURT: I am aware of that, Mr. Peek.

7 Okay. There does not appear to be an issue related
8 to the production of the document. If you could link up the
9 entire letter with the witness's knowledge of the foundation
10 related to it.

11 So that's a ten-minute break that the defendants get
12 credit for, so there's minus ten over here.

13 Okay. Keep going.

14 BY MR. APTON:

15 Q All right. Mr. Kahn, Exhibit 310 is the letter that
16 was sent on behalf of you as well as the other signors to opt
17 out of the settlement; correct?

18 A Yes.

19 Q Okay. And you, in fact, assigned your claims to
20 PAMTP LLC; yes?

21 A Yes.

22 Q And is Exhibit 310-24 a true and accurate copy of
23 that assignment?

24 MR. KOTLER: Objection to form, Your Honor.

25 THE COURT: Overruled.

1 THE WITNESS: This is what I provided to you in order
2 to opt out of the claim.

3 BY MR. APTON:

4 Q And this assignment here, I quote it, says that,
5 "IceRose Capital Management" --

6 THE COURT: You can't read from it until it -- you
7 can't read from it until it's admitted.

8 MR. APTON: Oh, well, I move to admit --

9 THE COURT: There's still an objection on foundation.
10 You have missed at least two steps.

11 BY MR. APTON:

12 Q Mr. Kahn, this is a true and accurate copy of the opt
13 out letter that was sent to the Claims Administrator; correct?

14 MR. PEEK: Objection, Your Honor, leading. He needs
15 to ask the question as to what the witness knows --

16 THE COURT: Can you rephrase your question.

17 MR. PEEK: -- not what he's --

18 THE COURT: Mr. Peek, thank you. Mr. Peek, thank
19 you.

20 BY MR. APTON:

21 Q Mr. Kahn, is this the letter that was sent to the
22 Claims Administrator --

23 MR. PEEK: Same objection, Your Honor.

24 THE COURT: Mr. Kahn, what is this letter?

25 THE WITNESS: This letter is the letter that I

1 provided in order to opt out of the claim and to -- yeah, to
2 opt out of the -- the class action as was my understanding, my
3 right, pursuant to the class action settlement.

4 MR. APTON: Okay. May I move to admit Exhibit 310
5 now, Your Honor?

6 THE COURT: Sir, can you look at each page of the
7 letter and the attachments and let me know if each page is a
8 true and accurate copy of what you authorized your counsel to
9 send to the Claims Administrator, please.

10 MR. APTON: Your Honor, may I --

11 THE COURT: Hold on. He's going to answer my
12 question or he's not. I'm just trying to skip ahead.

13 MR. APTON: Thank you, Your Honor.

14 THE WITNESS: Each page, meaning everything within
15 Exhibit 310?

16 THE COURT: That is correct.

17 THE WITNESS: Thank you.

18 THE COURT: And it has at least 24 pages, so it may
19 take you a few minutes, and that's okay.

20 MR. PEEK: I'd like to go on voir dire, Your Honor,
21 if I may.

22 THE COURT: In a minute. Can I have my answer,
23 first.

24 MR. APTON: Your Honor, I -- I think --

25 THE COURT: Wait. Stop.

1 MR. APTON: Your Honor, I need to interject.

2 THE COURT: Stop.

3 THE WITNESS: Yes. This is what I believe to be the
4 package sent to the Claims Administrator to opt out, inform the
5 new entity to pull our claims, to pursue our opt out action
6 against Turtle Beach and the rest of the defendants.

7 THE COURT: So the letter and the assignment are both
8 part of 310. Is 310-24 a page that you signed?

9 THE WITNESS: That is, in fact, my signature, yes.

10 THE COURT: Did you sign it?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Mr. Peek, you wanted to do voir
13 dire?

14 MR. PEEK: Just -- just quickly, Your Honor.

15 THE COURT: You have to stand up.

16 MR. PEEK: I was, Your Honor.

17 THE COURT: Yeah. Right.

18 MR. PEEK: May I do it from here, Your Honor?

19 THE COURT: You can, if you keep --

20 MR. PEEK: Can Jill hear me?

21 THE COURT: -- your voice up.

22 THE COURT RECORDER: You're fine.

23 MR. PEEK: Yeah.

24 / / /

25 / / /

VOIR DIRE EXAMINATION

BY MR. PEEK:

Q Were these assignments attached to this letter when it was sent?

A I was not with -- Counsel --

Q I'm sorry. What?

A -- I was not physically with counsel when he sent the letter. I was in --

Q When was -- when was the first time you saw this letter?

THE COURT: Wait. You've got to let him finish.

MR. PEEK: I'm sorry.

THE COURT: Sir, could you finish?

THE WITNESS: I was informed that -- well, isn't this attorney-client --

THE COURT: It is. We don't want you to tell me what your lawyer told you.

BY MR. PEEK:

Q I don't want to know what your lawyer told you. I just want to know, when is the first time you saw this?

THE COURT: Which part of this?

BY MR. PEEK:

Q Any part of it. The -- this -- the part with the letter, page one and two, the letter.

A Prior to it being sent.

JD Reporting, Inc.

1 Q Yes.

2 A Yes.

3 Q When?

4 A I don't know.

5 Q So did you see it on or about April 22nd --

6 A I saw it likely --

7 Q -- before it was sent?

8 A -- before -- before that.

9 Q Okay. And when you saw it, were all these documents
10 attached to it, the -- all these assignments or not?

11 A I believe that he showed me everything that was being
12 submitted.

13 Q That's not what I asked you. Were they attached, yes
14 or no?

15 A I believe so.

16 Q Do you know?

17 A Do I -- there's 27 pages here. Do I have a specific
18 memory of --

19 Q Yes.

20 A -- every single page that was --

21 Q Yes.

22 A -- being sent? I can't tell you with 100 percent
23 certainty, but I believe it to be true.

24 Q Okay. So you believe that these assignments were
25 attached to the letter that your lawyer sent to the Parametric

1 settlement, Gilardi & Company, on or about April 22nd; is that
2 your belief?

3 A I believe so. But again, I did not physically sit
4 there with Adam when he sent the letter, and I was not cc'd on
5 any of it. I knew that this was going on, and I had been
6 provided everyone's claims. I've seen all of this as part of
7 my responsibility as a member -- as a managing member of the
8 LLC, in order to validate everyone's assignment and share
9 count. So, you know, I've seen all of these documents and I've
10 validated all of these documents. I don't know with
11 specificity if I saw 100 percent of them. But I believe I did,
12 prior to the letter being sent.

13 MR. APTON: Your Honor?

14 BY MR. PEEK:

15 Q You believe you did, but you don't know for certain.
16 And I -- and I think your lawyer maybe has some information on
17 that. Were these attached?

18 THE COURT: Hold on, Mr. Peek. You don't get to ask
19 the lawyers questions.

20 MR. PEEK: Maybe the lawyer will tell us whether they
21 were attached.

22 THE COURT: Wait. Mr. -- wait --

23 MR. APTON: Well, the objection is changing, frankly.

24 THE COURT: Wait. Guys. Stop.

25 MR. APTON: Sorry.

1 THE COURT: Mr. Peek, you asked for voir dire on this
2 exhibit.

3 MR. PEEK: I -- I've --

4 THE COURT: That's what I'm letting you do. Are you
5 done with your voir dire?

6 MR. PEEK: One more question.

7 THE COURT: All right.

8 BY MR. PEEK:

9 Q We have unsigned copies of this. When did you sign
10 it?

11 A Prior to the date.

12 MR. PEEK: Thank you.

13 THE COURT: Are you done with your voir dire?

14 MR. PEEK: I am done, Your Honor.

15 THE COURT: All right. Would you like to ask some
16 more questions?

17 MR. APTON: Your Honor, I've lost track. Is
18 Exhibit 310 in evidence?

19 THE COURT: It is not.

20 MR. APTON: Okay.

21 THE COURT: There is an objection. I just allowed
22 voir dire related to the objection. It's now your turn to try
23 and rehabilitate the foundation on the exhibit since now I have
24 a problem.

25 MR. APTON: Your Honor, the first -- I'm sorry.

1 CONTINUED DIRECT EXAMINATION

2 BY MR. APTON:

3 Q Mr. Kahn, the first two pages of Exhibit 310
4 represent the opt-out letter sent to the claims administrator;
5 correct?

6 A Yes.

7 Q Please tell me what the next pages are, up until --
8 the next two pages are.

9 A The formation of the LLC. The certificate they're
10 on. And then the operating agreement for PAMPT, LLC.

11 Q And attached to the operating agreement to PAMPT, LLC
12 is what?

13 A The acknowledgment and certification by every party
14 represented by -- or that's a member of the LLC to join the
15 LLC. And then following that you have the -- a page that shows
16 the percentage interest at the time or what was believed at
17 that time, and then the assignment of claims by each of the
18 individuals.

19 Q So regardless of whether the -- all these documents
20 were sent with the opt-out letter in the first two pages, the
21 remainder of the documents are as they purport to be, as you've
22 described them; correct?

23 A Yes.

24 MR. KOTLER: Objection.

25 THE COURT: The objection is sustained. The document

1 is not admitted. You may have to break the document up into
2 multiple parts because the document, which is the letter to the
3 claims administrator, may not have had the enclosures that are
4 attached to it. So I am not admitting it as it is.

5 MR. APTON: Your Honor, may I break them up now?

6 THE COURT: How are you going to do that? They've
7 got to be submitted electronically.

8 MR. APTON: Is it possible to take a break?

9 THE COURT: We're going to take a break for lunch in
10 11 minutes.

11 MR. APTON: Okay.

12 THE COURT: But, no, not before then.

13 MR. APTON: Okay.

14 BY MR. APTON:

15 Q So, Mr. Kahn, you assigned your claim to the LLC;
16 correct?

17 A Yes.

18 Q And that was a claim on behalf of how many shares?

19 A 489,761.

20 Q And with respect to the LLC, when was that created?

21 A The LLC was created on April 22nd.

22 Q And what was your -- what is your role in the LLC?

23 A My role is -- of the two managing members, my role
24 was to make sure everyone's share count and assignment were
25 accurate. In fact, there were two that weren't, mine being the

1 worst offender and we subsequently adjusted when we had the
2 correct amounts of the shares. And then my other role is to
3 help oversee the strategy and to make sure that the case is
4 pursuing what I believe, to the best of my ability, to be the
5 interest of the plaintiffs.

6 Q And did you review each of the assignments from the
7 assigners?

8 A I did.

9 Q And did you review the brokerage statements from each
10 of the assigners, reflecting their ownership in Parametric
11 stock?

12 A I did.

13 Q And what did those brokerage statements tell you?

14 MR. PEEK: Objection. Hearsay, Your Honor.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: The brokerage statements all show --
17 they're all January statements, other than Robert Masterson's,
18 whose statement -- it's a quarterly statement ending March
19 31st, but the basic principle is the same. Each one showed the
20 holdings as of either January 31st, or March 31st in the case
21 of Masterson. And the trading history for each of the
22 individuals so you could quite fairly simply go back to
23 January 15th and see the number of shares held as of that date.

24 MR. APTON: All right. I'd like to move to admit
25 Exhibit 245.

1 THE COURT: Any objection to 245?

2 MR. KOTLER: Yes.

3 THE COURT: Okay. Is it a foundation objection?

4 MR. KOTLER: Yes.

5 THE COURT: Thank you.

6 Can you lay some additional foundation.

7 BY MR. APTON:

8 Q You just a moment ago said you received brokerage
9 statements from each of the assigners; correct?

10 A Yes.

11 Q Okay. Did you receive a brokerage statement from the
12 Etkins?

13 A Yes.

14 MR. APTON: Okay. Move to admit Exhibit 345 -- or
15 245. Excuse me.

16 MR. KOTLER: I still have an objection.

17 THE COURT: Me, too. Sustained. I don't have an
18 objection, I have a concern. But, okay, just because he
19 received it doesn't mean I admit it.

20 BY MR. APTON:

21 Q Did you receive it from the Etkins?

22 A Yes.

23 Q Okay. And the brokerage statement you received from
24 the Etkins, when did you receive it?

25 A I can't recall the specific date, but I received it

1 in 2020, doing the work on validating the LLC that we had
2 formed.

3 Q And does Exhibit 245 contain the brokerage statement
4 that you received from the Etkins?

5 A Yes.

6 MR. APTON: I move to admit Exhibit 245.

7 THE COURT: You still haven't solved the problem,
8 counsel.

9 MR. APTON: Your Honor, may I speak with my counsel
10 for one moment?

11 THE COURT: You may. I'm not going to turn off the
12 timer, but talk to Mr. Ogilvie.

13 BY MR. APTON:

14 Q Mr. Kahn, in your capacity as a member manager of the
15 LLC, you received these brokerage statements from the
16 assigners; correct?

17 A Yes. I needed to in order to validate the ownership
18 interest in the LLC.

19 Q And you reviewed each one that you did receive from
20 the assigners?

21 A I thoroughly reviewed and checked each one, yes.

22 MR. APTON: Your Honor, these are brokerage
23 statements that Mr. Kahn reviewed and received in connection --

24 THE COURT: I understand that, Counsel. That doesn't
25 mean they were true and accurate when they were given to him,

1 which is one of the things you have to hit, and you haven't hit
2 that one yet.

3 MR. APTON: Thank you, Your Honor. One moment, Your
4 Honor.

5 Your Honor, would it be possible to move to admit
6 them subject to laying a foundation from the other side?

7 THE COURT: No. No, Counsel, I'm not going to
8 provisionally admit them without that foundational requirement.
9 You can talk to the witness all you want about the document as
10 long as you don't read it. I'm happy to listen to why he
11 looked at it, why he thought it was reliable, what he did as a
12 result of that, but I'm not going to admit the document based
13 on the testimony I've heard so far.

14 MR. APTON: Okay, Your Honor.

15 BY MR. APTON:

16 Q In terms of the -- I'm just trying to -- you received
17 a brokerage statement concerning your holdings in Parametric
18 stock?

19 A Yes.

20 Q And that was from Morgan Stanley; correct?

21 A Yes.

22 Q And is Exhibit 410 the brokerage statement that you
23 received from Morgan Stanley?

24 A I wouldn't personally call it a brokerage statement,
25 but it is a statement that shows all of the account activity at

1 IceRose in January and it shows the shareholding of IceRose
2 Capital Management as of the merger date.

3 Q And except for the redactions, is this a true and
4 accurate copy of your brokerage statement, as I called it, from
5 Morgan Stanley for that time period?

6 A Yes.

7 MR. APTON: Your Honor, may I move to admit
8 Exhibit 410?

9 THE COURT: Any objection to 410?

10 MR. PEEK: These don't show ownership. They just
11 show back and forth sales. So it's relevance.

12 THE COURT: Mr. Peek, if you'd like to voir dire the
13 witness, you can. But he has testified it is from his account;
14 it shows the transaction history; and it's true and accurate.

15 MR. PEEK: I'll just do it on cross-examination, Your
16 Honor.

17 THE COURT: All right. It's admitted.
18 (Plaintiff's Exhibit Number(s) 410 admitted.)

19 MR. PEEK: So we can move along and have lunch.

20 THE COURT: Yep.

21 MR. APTON: I'm sorry. That was admitted, Your
22 Honor?

23 THE COURT: Yes.

24 MR. APTON: Thank you.

25 / / /

1 BY MR. APTON:

2 Q Mr. Kahn, you held these shares in your brokerage
3 account; correct?

4 A Brokerage account, it's not the word I'd choose,
5 again, but, yes, I held this account at Morgan Stanley in a
6 Morgan Stanley account of IceRose. I mean, this was the
7 account that was held at Morgan Stanley, yes.

8 Q And when you say you held shares, what exactly does
9 that mean?

10 A Well, I had a -- so to speak when you own shares you
11 have a security entitlement. You don't directly own them, but
12 you have a right to the economic returns, and I had control
13 over the shares.

14 Q And so, who was it that actually held shares for the
15 vote?

16 A Most likely Morgan Stanley. Well, who held shares
17 for the vote?

18 Q Well, you -- yes.

19 A I'm sorry. For the vote the shares, presuming they
20 were not in a merchant account, meaning they were held for
21 cash, it would have been me. And I made sure that I had them
22 in a cash account for the vote so that I could vote 100 percent
23 of my shareholdings.

24 Q And in terms of Morgan Stanley, what did they hold on
25 your behalf?

1 A Morgan Stanley held -- was the holder of the
2 actual -- holder of the 489,761.

3 Q So, Mr. Kahn, going back a little bit, in your
4 capacity as member manager, you said you checked to see that
5 everyone's interests comported with their broker statements;
6 correct?

7 A Yes.

8 Q And how many shares did the Etkins have on
9 January 15, 2014?

10 A 7,000.

11 MR. PEEK: Objection, Your Honor. Again, it's just a
12 back door trying to get into that exhibit.

13 THE COURT: The objection is sustained.

14 There may be another way to get it, but this isn't
15 the way.

16 BY MR. APTON:

17 Q Mr. Kahn, if I could direct your attention to
18 Exhibit 310 again, specifically --

19 THE COURT: Proposed Exhibit 310.

20 MR. APTON: Yes, Your Honor.

21 MR. PEEK: Just a moment, Your Honor, while I get to
22 310. That's the same letter that we talked about?

23 THE COURT: The one that you objected to, and I said
24 it had to be broken up.

25 MR. PEEK: Yeah.

1 BY MR. APTON:

2 Q Mr. Kahn, how did you go about checking everyone's or
3 making sure everyone's interest in the LLC was as it should be
4 in regards to the brokerage statements?

5 THE COURT: And, sir, don't tell me anything about
6 numbers, just the process that you followed, please.

7 THE WITNESS: The process was to take the last
8 position that was given as a quantity. In the case of everyone
9 but Masterson I explained it was a January 31st number, and
10 Masterson's statement was a quarterly statement so it was a
11 March 31st number.

12 And the process was to take that share count and
13 review the entire transaction history between the merger and
14 the date at which I had it and figure out through simple
15 addition and subtraction the number of shares that were held as
16 of January 15th.

17 MR. APTON: Your Honor, subject to us breaking up
18 Exhibit 310, may we break now?

19 THE COURT: We can break for lunch.

20 MR. APTON: Thank you, Your Honor.

21 THE COURT: My plan is to only give you numbers on
22 how much time you use once a day, so hopefully that will work
23 out.

24 MR. APTON: Thank you, Your Honor.

25 THE COURT: Because Jill and I are going to have to

1 cross-reference to make sure we're on the same page and nobody
2 screwed up.

3 (Proceedings recessed from 11:46 a.m., until 12:59 p.m.)

4 THE COURT: Good afternoon. Are we ready to resume?

5 Sir, I'd like to remind you you're still under oath.

6 BY MR. APTON:

7 Q Thank you, Mr. Kahn. If you could please turn to
8 Exhibit 310-20. Are you there, Mr. Kahn?

9 A Yes.

10 Q Is this a true and accurate copy of the assignment
11 you received from Ms. Etkin?

12 A Yes.

13 MR. PEEK: I understand the effort to try to get this
14 in, but this is still a hearsay document. He doesn't have that
15 foundational knowledge; observed or signed in front of him.

16 THE COURT: He's -- Wait, Mr. Peek. He just asked
17 him if this was a true and accurate copy of the assignment he
18 signed. That would be something that --

19 MR. PEEK: That she signed. Somebody else signed.

20 THE COURT: Well, but they're both signing. Right?

21 MR. PEEK: This is by somebody else named Muriel
22 Etkin.

23 THE COURT: Well, at some point in time I will have
24 to address the -- what appears to be an exhibit issue, but I'm
25 not there yet. I have a foundation that's trying to be laid.

1 I don't know if it's going to happen or not. We'll see.

2 MR. APTON: Thank you, Your Honor.

3 BY MR. APTON:

4 Q And the next page is 310-21. Is this a true and
5 accurate copy of the assignment of claim you received from
6 Ronald Etkin?

7 A Yes.

8 Q And on the next page, is that a true and accurate
9 copy of the assignment you received from Alan Goldberg?

10 A Yes.

11 Q And on the next page, is that a true and accurate
12 copy of the assignment you received from Anne Goldberg?

13 A Yes.

14 Q And the next page is your assignment of claim;
15 correct?

16 A Yes.

17 Q And you, on behalf of IceRose, signed this
18 assignment; correct?

19 A Yes.

20 Q And the page after that, is that the assignment you
21 received from Robert Masterson?

22 A Yes.

23 Q And the next page is the assignment you received from
24 Marcia Patricof; correct?

25 A Yes.

1 Q And last -- the second to last, the next one is the
2 assignment you received from Richard Santulli; yes?

3 A Yes.

4 Q And the last page, 310-28, is that the assignment of
5 claim you received from Barry Weisbord?

6 A Yes.

7 THE COURT: Other than the one you signed, did you
8 sign any of those assignments?

9 THE WITNESS: No.

10 THE COURT: Okay.

11 MR. PEEK: I didn't hear your question, Your Honor.

12 THE COURT: Other than the one he signed, did he sign
13 any of the other assignments?

14 BY MR. APTON:

15 Q Mr. Kahn, can you please go to Exhibit 245.

16 A I'm there.

17 Q 245-1 and 241-2, is this a true and accurate copy of
18 the brokerage statement you received from the Etkins?

19 A Yes.

20 Q Can you please go to Exhibit 246. And 246-1 to
21 246-7, is this a true and accurate copy of the brokerage
22 statement you received from the Goldbergs, Alan and Anne?

23 A Yes.

24 THE COURT: Is that Alan Goldberg who used to be a
25 judge in Chicago or some other Alan Goldberg?

1 MR. APTON: It's a different Alan Goldberg, Your
2 Honor.

3 THE COURT: Okay, thank you. I didn't want to have
4 to go through disclosures in the middle of trial, but sometimes
5 it happens.

6 MR. APTON: Oh, okay.

7 BY MR. APTON:

8 Q Exhibit 251, Mr. Kahn.

9 A Yes.

10 Q Is this a true and accurate copy of the Morgan
11 Stanley account statement you received from Robert Masterson?

12 A Robert Masterson had two statements. There's the
13 Morgan Stanley statement and the Oppenheimer statement behind
14 it. They are true and accurate statements of his two separate
15 brokerage accounts, I believe. Yes.

16 Q And could you please go to Exhibit 309.

17 A Yep.

18 Q And are these true and accurate statements -- true
19 and accurate copies of the account statements you received from
20 Marcia Patricof?

21 A Yes.

22 Q And they're Bates stamped Patricof 1 through Patricof
23 24; correct?

24 A There are at least three, I believe three separate
25 brokerage statements where they had shares in three different

1 accounts and this is a true and accurate copy of those
2 statements.

3 Q And Exhibit 311, please.

4 A Yes.

5 Q Is this a true and accurate copy of the account
6 statement you received from Mr. Santulli?

7 A Yes.

8 MR. APTON: Okay. Thank you, Mr. Kahn. No further
9 questions.

10 THE COURT: Cross-examination.

11 (Pause in the proceedings.)

12 CROSS-EXAMINATION

13 BY MR. KOTLER:

14 Q Good afternoon, Mr. Kahn. You are a sophisticated
15 investor; correct?

16 A Sure.

17 Q Back in 2013 when you first became interested in a
18 position in Parametric, you were also a sophisticated investor;
19 correct?

20 A I believe I was. Yes.

21 Q The IceRose fund that owned the Parametric shares
22 that you bought, that's a hedge fund; right?

23 A Yes.

24 Q And that was true back in 2013 when you first
25 invested in Parametric; correct?

JD Reporting, Inc.

1 A Yes.

2 Q As the advisor to the IceRose hedge fund, you
3 understood that you owed a fiduciary duty to the fund's
4 investors; correct?

5 A Yes.

6 Q And that includes being knowledgeable about the risks
7 of the investments that you were making on their behalf;
8 correct?

9 A To the best of my ability, yes.

10 Q And that was true back in 2013 when you bought into
11 Parametric; correct?

12 A Yes.

13 Q And you told us earlier you got interested in
14 Parametric back in the spring of 2013; right?

15 A Yes.

16 Q And you did your due diligence; correct?

17 A Yes.

18 Q And you came to the conclusion that investing in
19 Parametric would be more speculative than the typical
20 investment that IceRose made at the time; correct?

21 A Yes.

22 Q And that was because Parametric's value was based off
23 of the development and future performance of the HyperSound
24 technology, in part; correct?

25 A In part. There would be many reasons why it would be

1 more speculative.

2 Q That was one of them; correct?

3 A Yes.

4 Q And you came to a conclusion about the speculative
5 nature of investing in Parametric based on your review of the
6 publicly available information, such as the SEC filings and the
7 earnings call transcripts; right?

8 A And other due diligence that I did, but that would be
9 in the public domain, yes.

10 Q And you read all those materials in detail. That's
11 what you told us earlier; correct?

12 A Yes.

13 Q So you knew from the public materials that you had
14 read in detail that Parametric was not generating any sort of
15 significant amount of revenues; correct?

16 A That it was a nascent IP company that had
17 intellectual [inaudible] and was on the cusp of beginning
18 monetization. Correct.

19 Q Right. So you knew that they weren't generating any
20 real revenues at the time; right?

21 A They were generating nominal revenues. I don't know
22 what real -- they had not a large amount of revenue.

23 Q In the thousands of dollars, not the millions of
24 dollars; correct?

25 A Yes.

1 Q And you also knew that its stock price was trading at
2 a high multiple of the actual revenues that the company was
3 generating; right?

4 A Companies like that don't trade on a revenue multiple
5 so, I mean, by definition, yes. If they have low revenue, then
6 the multiple of that to a stock price would be high, but
7 there's plenty of companies that don't have any revenue that
8 trade at an infinite revenue multiple.

9 Q Okay. So Parametric was pretty close to what you
10 just described, they had really small revenues and they were
11 trading at a high multiple. Fair?

12 A When you say high multiple, are you talking about to
13 the current state of their revenues?

14 Q Yes.

15 A Yes. It is mathematically true, yes.

16 Q But given all this, you started buying Parametric
17 shares on behalf of IceRose anyway; right?

18 A Yes.

19 Q By the time of the merger, your speculative
20 investment in Parametric was IceRose's largest position, I
21 believe. Isn't that right?

22 A Correct.

23 Q And I think the number which you have committed to
24 memory was as of the merger 489,761 shares?

25 A Correct.

1 Q Now, as a sophisticated investor at the time of the
2 merger, with these fiduciary duties to IceRose's investors, you
3 knew that you had a choice of voting IceRose's shares either in
4 favor of the merger, against the merger or abstaining; right?

5 A And I did abstain until I spoke with Juergen.

6 Q You new the choice you had --

7 A Correct.

8 Q -- right? And if you were not sold on the merger,
9 such as because you thought the ratio was unfair or you were
10 worried about Turtle Beach's financials, you certainly could
11 have voted no or abstained; correct?

12 A Which I did until I was sold on the merger by
13 Juergen. Yes, that is what happened.

14 Q I know you're a smart guy and a Penn graduate, so if
15 you don't understand my question, just let me know. But
16 otherwise, if you can, just try and answer my question. Is
17 that fair?

18 A I believe I am just answering your question.

19 Q Okay. But you didn't vote no and you didn't abstain.
20 You voted yes on behalf of all 489,761 IceRose shares in favor
21 of the merger; correct?

22 A Yes.

23 Q You shared some opinions earlier about the proxy that
24 Parametric issued, and as a sophisticated investor I take it
25 this wasn't the first proxy that you had read in detail; right?

1 A Correct.

2 Q And you read this one in detail; correct?

3 A Correct.

4 Q And you read it in detail before you voted in favor
5 of the merger?

6 A Correct.

7 Q All right. Let's take a look at the proxy.

8 MR. KOTLER: Can we pull up DX-916, please.

9 THE COURT: No. Oh, yeah, we admitted that, right?
10 It's 244?

11 MR. PEEK: It was admitted as 244, Your Honor. It's
12 the same.

13 MR. KOTLER: Yeah, DX-916 is the defendants' version
14 of the proxy, which is formatted a little nicer, so I'm going
15 to pull it up and then ask --

16 THE COURT: Okay. Well, you're going to have to
17 alert me when you're switching from one that's admitted to one
18 that's not admitted. So, okay.

19 MR. KOTLER: I apologize, Your Honor. At this
20 point --

21 THE COURT: Since you guys didn't stipulate to
22 anything.

23 MR. KOTLER: We would move -- seek admission of
24 DX-916, which is the proxy.

25 THE COURT: Denied. We already have one version in

1 the record. We're not putting two in. That's why you're
2 supposed to stipulate, so I don't have multiples.

3 MR. KOTLER: Okay.

4 MR. PEEK: Your Honor, respectfully, that's going to
5 be a challenge for all of us because all of our preparation was
6 based upon the page numbers in 916.

7 THE COURT: Well, I'm sorry.

8 MR. PEEK: There's been no testimony from 244 at all.
9 It was just marked.

10 THE COURT: I'm really sorry, Mr. Peek, because I
11 would have assumed that counsel would have gotten together and
12 agreed upon a stipulated set of exhibits that were common so
13 that I wouldn't have duplicates. I have already admitted 244,
14 which was the one that was offered. I understand you may have
15 a difference of opinion related to the numbering on the bottom
16 of the pages, but as you can see it says 1 of 340 on it. So
17 I'm sure we can cross-reference between 244's 1 of 340 and
18 DX-916's 1 of 340.

19 MR. PEEK: It makes it -- Your Honor, respectfully,
20 it just makes it --

21 THE COURT: No, Mr. Peek, it doesn't. I understand
22 what you're saying, and I appreciate it, but there is a step
23 that apparently got missed, and I'm not going to have two of
24 them in my record.

25 Keep going, Counsel. We'll refer to 244.

1 MR. KOTLER: Okay.

2 BY MR. KOTLER:

3 Q Since you read the proxy in detail, Mr. Kahn, you
4 know that it contained descriptions about Turtle Beach's
5 business, including the risks to that business; correct?

6 A Yes.

7 Q I'm going to direct you to page 32.

8 A Of the proxy?

9 Q Of the proxy, yeah. So it's at page 244-40.

10 A Okay.

11 Q The second entry about three-quarters of the way
12 down, there's language which says, and I will read it for you:

13 "Many features of Turtle Beach's products
14 are not protected by patents, and as a
15 consequence, Turtle Beach may not have the
16 legal right to prevent others from reverse
17 engineering or otherwise copying and using
18 these features in competitive products."

19 Did I read that correctly?

20 A I don't see it yet on the page.

21 THE COURT: It's blown up on the screen if you want
22 to see it there.

23 THE WITNESS: Oh, okay.

24 THE COURT: Or it was a minute ago.

25 MR. KOTLER: It will be.

1 MR. PEEK: Respectfully, we have a much better copy
2 of it in 9--

3 THE COURT: Isn't that nice, Mr. Peek?

4 MR. PEEK: Yeah. We have a much better copy.

5 THE WITNESS: Yes, I see it.

6 BY MR. KOTLER:

7 Q You don't have any basis to dispute that statement;
8 do you?

9 A It's a risk factor. Something that may happen in the
10 future.

11 Q And you don't have any basis to call that statement a
12 lie; do you?

13 A Correct.

14 Q Okay. I'm going to direct you to page 47 of the
15 proxy.

16 A Okay.

17 Q There is a heading there called, Background of the
18 Merger. Do you see that?

19 A Yes.

20 Q And since you are familiar with proxies, you
21 understand that proxy statements contain a detailed description
22 of all of the facts and events leading up to the transaction;
23 right?

24 A Well, I would say that they are supposed to contain a
25 detail of the facts and events, but through discovery and this

1 litigation I've learned that this is not, in fact, a true and
2 complete history of the events that occurred in this
3 transaction.

4 Q All right. Well, let's talk about that. Let's look
5 at the following page, 48, the very first paragraph.

6 COURT RECORDER: Judge, can you give me one second?

7 THE COURT: Yes. Hold on a second. We're getting
8 background noise from somebody. All right. Let's keep going.

9 BY MR. KOTLER:

10 Q The very first paragraph at the top of 55, it says --
11 sorry, page 48. Excuse me.

12 "From April 1st, 2013 to April 22nd,
13 2013, representatives of Houlihan Lokey
14 contacted and held varying levels of
15 discussions with a total of 13 parties other
16 than Turtle Beach regarding a transaction
17 involving Parametric. During this time
18 period, all such parties advised
19 representatives of Houlihan Lokey that they
20 were not interested in pursuing an acquisition
21 of Parametric."

22 Did I read that correctly?

23 A I believe so.

24 Q You don't have any basis to dispute that statement;
25 do you?

1 A I have a basis to believe it might not be credible
2 given that I know that Potashner intentionally was hurting the
3 price of Turtle Beach during this -- of Parametric during this
4 period in order to better consummate the transaction. And the
5 lengthy history of Potashner's actions, including other board
6 members telling him he has no idea what fiduciary means among
7 other things, and that a CEO can very easily sabotage -- or,
8 sorry, an executive chairman in this case -- any process they
9 want.

10 So based on Potashner's pattern of behavior,
11 honestly, I have no idea whether this is accurate or not or
12 whether it's only accurate because Potashner intervened in a
13 way that made the other parties not interested in pursuing an
14 acquisition.

15 Q You understand you're under oath today; right?

16 A A hundred percent.

17 Q Okay. Good. So under oath, as you sit here in this
18 courtroom today, do you have any basis to say that the
19 statement that during the period from April 1st to April 22nd,
20 2013, when these 13 parties were contacted, all such parties
21 advised representatives of Houlihan Lokey that they were not
22 interested in pursuing an acquisition of Parametric. Yes or
23 no?

24 A Can you repeat the question.

25 Q Sure. Do you have any basis to sit here today and

1 say that the statement that during the period between
2 April 1st, 2013 and April 22nd, 2013, the 13 parties advised
3 representatives of Houlihan Lokey that they were not interested
4 in pursuing an acquisition of Parametric is a lie? Yes or no?

5 A I would need a lot more context. I have as much
6 basis to believe it's true as to believe it's a lie.

7 Q You have no basis, as you sit here today, to say that
8 that statement is a lie; correct?

9 A I have a lot of basis to say that it's a lie.

10 Q So which of the 13 parties --

11 A Well, I guess the intent of the paragraph is that
12 these 13 parties had a fair shake and weren't interested. The
13 word-for-word I have no reason to believe isn't true. But what
14 the paragraph is conveying is that there were 13 people that
15 gave it a fair shake and those 13 people passed. And I have
16 very significant reason to believe that that could not be true;
17 yeah.

18 Q Who are the 13 people that were contacted?

19 A I have no idea.

20 Q Which of the 13 people do you believe was not given a
21 fair shake?

22 A So I can give you an example, not from here, but that
23 would highlight what I believe the issue would be.

24 Q Can you answer my question?

25 THE COURT: Sir, I don't -- Wait. Wait. Sir, I only

1 care about what happened here. I don't care about others.

2 THE WITNESS: I don't know who the 13 people were.

3 THE COURT: Okay. All right.

4 BY MR. KOTLER:

5 Q Okay. Go down to the bottom of that same page.

6 There's a paragraph that begins, "From April 12th, 2013." Do
7 you see that?

8 A Yes.

9 Q "From April 12th, 2013 to April 30th, 2013,
10 Parametric and Turtle Beach began conducting due diligence on
11 each other."

12 Do you have any basis to dispute that statement?

13 A No.

14 Q Good. The next sentence,

15 "Representatives of Parametric, Turtle
16 Beach, Houlihan Lokey, Sheppard Mullin,
17 counsel to Parametric, Dechert, counsel to
18 Turtle Beach, and McGladrey, Turtle Beach's
19 auditor, provided numerous information
20 requests, organized and provided information
21 and documentation in response to such
22 requests, and corresponded and held numerous
23 telephonic meetings with respect thereto."

24 Any basis to dispute that statement?

25 A No.

1 Q Let's go over to the next page, please. At the very
2 bottom there is a bullet underneath a reference to April 22nd,
3 2013. Do you see that? The bullet that begins with Houlihan
4 Lokey. Are you with me?

5 A Yes.

6 Q Okay. So it's referencing a discussion that occurred
7 at a telephonic meeting of the Parametric Board on April 22nd,
8 2013. And the proxy states,

9 "Houlihan Lokey presented regarding
10 business and financial considerations related
11 to the proposed transaction, including an
12 overview of and comments regarding Turtle
13 Beach and its business, the historical
14 financial performance of Parametric and Turtle
15 Beach, a discussion of strategic rationale and
16 possible opportunities for growth that such a
17 transaction could offer Parametric, an
18 overview of the April 21st term sheet,
19 illustrative valuation information, key items
20 for the Parametric Board to consider and a
21 summary of the exclusivity terms."

22 You don't have any basis to call that statement a
23 lie; do you?

24 A I actually do. We found out later that historical
25 Turtle Beach's financials were not accurate. So I have no

1 basis to believe that they didn't present what they thought
2 were the accurate financials for 2012 Turtle Beach, but I have
3 reason to believe that they were not, in fact, accurate
4 financials of Turtle Beach.

5 Q You don't know what was presented at this board
6 meeting; do you? You don't know what Turtle Beach financials
7 were presented; do you?

8 A I know that the numbers that were shown initially
9 were not the accurate numbers. But I think it would be far
10 more likely than not that the numbers shown here would be the
11 numbers that were presented initially. But, no, I was not
12 attending that board meeting.

13 Q Okay.

14 A So your question was, do I have any basis? Do I know
15 it's false? No. But do I have a basis to believe it might be
16 false? Yes.

17 Q Okay, fair enough. You weren't at the board meeting
18 and you don't know what numbers Houlihan Lokey presented to the
19 Parametric Board; correct?

20 A Correct.

21 Q Okay. Let's go over to page 52. About
22 three-quarters of the way down there's an item on June 25th.
23 "On June 25th, 2013, a meeting of the Parametric Board was held
24 with its financial and legal advisors."

25 Is that one false?

1 A The full paragraph?

2 Q No, just the sentence. Do you think the meeting
3 didn't happen on that day?

4 A I have no reason to believe it didn't.

5 Q Good.

6 "At the meeting, the Parametric discussed
7 with representatives of Sheppard Mullin and
8 Houlihan Lokey the general status of merger
9 agreement negotiations with Turtle Beach and
10 related issues, including tax issues,
11 financing issues surrounding the merger, the
12 post-merger ownership ratio, termination
13 issues, a proposed go-shop provision and other
14 transaction items."

15 Do you think that discussion didn't happen?

16 A I would assume it did.

17 Q All right. Continuing on.

18 "Representatives of Houlihan Lokey
19 presented to the Parametric Board regarding
20 the status of its business and financial due
21 diligence of Turtle Beach."

22 Do you believe that Houlihan Lokey did not in fact
23 make such a presentation?

24 A I'm sure they did make such a presentation.

25 Q "Representatives of Houlihan Lokey and Craig-Hallum

1 discussed with the Parametric Board future planned meetings
2 with Turtle Beach and McGladrey regarding Turtle Beach business
3 and financial due diligence matters."

4 Do you believe that that discussion did not occur?

5 A I'm sorry, it's a little tricky. Do I -- I believe
6 that discussion occurred.

7 Q Thank you.

8 "The Parametric Board discussed licensing
9 initiatives and the impact of the merger
10 discussions thereon."

11 Do you have any reason to dispute that that
12 discussion occurred?

13 A Based on what the actual merger agreement was, I
14 would say they didn't do a thorough job discussing it, but I
15 have no reason to believe that they didn't discuss it.

16 Q Thank you. Same page at the bottom, on June 26th.
17 Do you see that entry there?

18 "On June 26th, 2013, representatives of
19 Dechert communicated to representatives of
20 Sheppard Mullin that Turtle Beach would
21 require termination of the HHI stock
22 options" --
23 Which is defined elsewhere.

24 -- "and/or an amendment of the HHI
25 license agreement between Parametric and HHI,

1 a wholly-owned subsidiary of Parametric, prior
2 to signing a definitive merger agreement."

3 Do you have any reason to dispute that the
4 representatives of Dechert did not so communicate to the
5 representatives of Sheppard Mullin on June 26th, 2013?

6 A I have no reason to dispute that.

7 Q The next page. So we're on page 53 of the proxy.
8 Halfway down or about a third of the way down, the first on
9 July 1st, 2013 entry. "On July 1st, 2013, Mr. Putterman" --
10 You know he's a director of Parametric; correct?

11 A I do.

12 Q " -- held a telephonic meeting with Mr. Barnes."
13 You know Mr. Barnes is the CFO or was the CFO of
14 Parametric; correct?

15 A Yes.

16 Q " -- and Mr. Stark at Turtle Beach's San Diego
17 offices, at which various HHI-related matters were discussed,
18 including the structure and rationale for HHI, the financing to
19 date of HHI by Parametric and the ownership of HHI's
20 intellectual property."

21 Do you have any reason to believe that that
22 discussion between those people did not occur on that date?

23 A So this is where it gets a little tricky. Because
24 while that may be true and the preceding paragraphs that you
25 read that I said were true, what happens is you are conveying

1 through this history of the merger that that are the material
2 events that occurred and that Dechert asked Potashner to step
3 away.

4 There was this conversation on the 1st; Potashner is
5 away. But, in fact, we know that even though Parametric's
6 board told Potashner to step away on the 1st, he was
7 communicating with Juergen basically every single day
8 thereafter, aggressively arguing for various things relating to
9 HHI. And he totally ignored the board's wishes. And we also
10 know that Juergen and Potashner --

11 MR. PEEK: Objection. Hearsay, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: We also know from documents that
14 Juergen and Potashner were in discussions via text message
15 related to HHI, substantive text messages that someone else --
16 or, sorry, I think it was Juergen and Andrew Wolfe were in
17 discussions over HHI, which was communicated to Potashner.
18 These text messages show that Potashner was still very much
19 involved in the HHI-related matters.

20 So the paragraphs you read are true as a stand-alone,
21 present this context that the HHI transaction was done at arm's
22 length from Potashner when the evidence clearly shows that that
23 wasn't the case and that Potashner was still very much involved
24 and focused on HHI and his compensation resultively (phonetic).
25 / / /

1 BY MR. KOTLER:

2 Q You understand the English language; correct?

3 MR. APTON: Objection.

4 THE COURT: Sustained.

5 MR. KOTLER: Okay.

6 BY MR. KOTLER:

7 Q My question was very simple, okay. My question was
8 very simple.

9 Do you have a basis to say that the statement that
10 this discussion occurred on this date between those people did
11 not happen, yes or no?

12 A But your question relates to the background of the
13 merger section of the proxy, and the background of the merger
14 section of the proxy is supposed to tell you the important
15 events that happened. And if you say that A happened when B
16 also happened and B is far more material, to say that A
17 happened, A may be true, but it's not creating a true and
18 accurate picture of the background of the merger. So these
19 specific paragraphs may be accurate, but, to me, it presents a
20 very false picture of the background of the merger.

21 So, yes, your statement may technically be true, but
22 its context or the whole truth, so to speak, it is not true.

23 Q You've been very involved in following this
24 litigation; correct?

25 A Yes.

1 Q You reviewed the complaint that Mr. Apton filed
2 before it was filed; correct?

3 A Yes.

4 Q You have been following closely all of the Court
5 rulings; correct?

6 A Yes.

7 Q So you know that there is not one single claim in
8 this case that has to do with whether or not the background of
9 the merger or the proxy is misleading. You know that; right?

10 A I don't think that that's, like, relevant. Why would
11 we say the proxy is misleading? If the other things we say
12 happened, then by definition the proxy is misleading. So we
13 don't technically call the proxy misleading. But if you look
14 at the arguments we make, then if those are true, which they
15 are and there are documents that are indisputable that say they
16 are true, then by definition the proxy is misleading. So, no,
17 we never say the proxy is misleading, but we do say from
18 July 1st to July 15th that Potashner was in contact with Stark
19 about HHI X number of times. And that does in fact make the
20 proxy misleading.

21 Q All right. Well, looking back at the proxy that you
22 agree is not alleged to be misleading in your complaint, it
23 says in that same entry --

24 THE COURT: So, Counsel, you remember that most of
25 the time proxies are alleged to be misleading before the merger

1 is finalized. When somebody is here on injunctive relief and
2 asking me to make them change the proxy statement --

3 MR. KOTLER: I do know that.

4 THE COURT: Okay. Because in this case we're, what,
5 seven years past by the time the complaint gets filed?

6 MR. KOTLER: I agree with that, all that, Your Honor.

7 THE COURT: Okay. All right.

8 MR. KOTLER: I do agree with that.

9 THE COURT: Let's keep going.

10 BY MR. KOTLER:

11 Q In that same entry, the same July 1st entry,

12 "Mr. Stark reiterated Turtle Beach's
13 position that either the HHI stock options
14 would have to be terminated prior to signing a
15 definitive merger agreement or that HHI would
16 have to be dissolved prior to signing a
17 definitive merger agreement."

18 Do you have any basis to say that it is a lie that
19 Mr. Stark made that statement on July 1st, 2013?

20 A No, but I do know that Potashner in response asked
21 for a gentleman's agreement where he would be compensated if
22 that in fact were true, despite the fact that the HHI options
23 agreement had no change of control and could have been
24 terminated at any time by the Parametric Board. So he had no
25 rights or he didn't give up anything, Potashner didn't give up

1 anything, and in fact he did ask for something in exchange for
2 this.

3 Q Well, good thing you bring up the ask. Let's go over
4 to the next page. The bottom of page 54 of the proxy. "On
5 July 21st, 2013."

6 Do you see that? Are you with me? The very bottom
7 of the page.

8 A Yes.

9 Q "On July 21st, 2013, Mr. Wolfe, Mr. Potashner,
10 Mr. Barnes and Mr. Stark held a telephonic meeting at which
11 Mr. Stark stated that the proposals from Mr. Potashner and the
12 consultant" -- who I believe is this Mr. Todd -- "regarding HHI
13 stock options were unacceptable and that Turtle Beach would not
14 continue negotiating the merger agreement until HHI ownership
15 issues were resolved."

16 Is that statement a lie? Did that conversation not
17 happen?

18 A Well, that's where, I believe, Potashner asked for
19 the gentleman's agreement for compensation for agreeing to
20 that.

21 Q All I'm asking is did this conversation as described
22 in the proxy --

23 A I have no reason to believe it's a lie.

24 Q -- did it not happen; yes or no?

25 THE COURT: Only one of you can talk at a time, so

1 please let each other finish.

2 THE WITNESS: I have no reason to believe it's not
3 true.

4 THE COURT: Thank you.

5 BY MR. KOTLER:

6 Q You're aware that the proxy also contains disclosures
7 about the projections Craig-Hallum relied upon when preparing
8 its fairness opinion; right?

9 A Yes. So, for example, if we speak to those
10 projections --

11 Q My question was just whether you're aware of the
12 projections. I'll ask you about them, okay? My question was
13 just are you aware, yes or no, that the proxy contains a
14 disclosure about projections?

15 A Yes.

16 Q Thank you. If you go to page 73 of the proxy. In
17 the first paragraph under "Certain Financial Information" it
18 says,

19 "In the course of the discussions
20 described under Background of the Merger, the
21 management of Parametric prepared and provided
22 to Turtle Beach internal financial projections
23 for the fiscal years ending September 30th,
24 2013 through September 30th, 2017."

25 Let me stop there. Do you have any reason to dispute

1 that Parametric management prepared and provided its internal
2 financial projections for those years to Turtle Beach?

3 A Yes.

4 Q They did not -- so it's your testimony under oath
5 that they did not provide those projections to Turtle Beach?

6 A No. It is my testimony under oath that they prepared
7 the financial projections specifically for Parametric, but that
8 there were other financial projections floating around Turtle
9 Beach that weren't the same and actually worse. And so to say
10 internal financial projections, they didn't provide all of the
11 internal financial projections. And if you look at the basis
12 for which those internal financial projections were made --

13 Q I didn't ask you about the basis.

14 THE COURT: Sir, please don't interrupt him.

15 THE WITNESS: Well, I need to say what the basis --

16 THE COURT: Wait. Can you let me talk for a minute?

17 THE WITNESS: I apologize.

18 THE COURT: So when he's answering, you may not like
19 the answer he's giving. There's no jury here. I'm going to
20 let him finish.

21 MR. KOTLER: Okay.

22 THE COURT: So, sir, finish your answer.

23 MR. KOTLER: I apologize, Your Honor.

24 THE COURT: And then if you need to follow up, that's
25 fine.

1 THE WITNESS: I'm sorry I got a little distracted. I
2 didn't mean to be rude to the judge. Can we go back to the
3 question then?

4 MR. KOTLER: Sure.

5 BY MR. KOTLER:

6 Q Well, you were about to tell -- I'll give you the
7 easy question, all right. You were about to tell me how
8 Parametric's projections that the proxy describes as being
9 provided to Turtle Beach were not actually provided to Turtle
10 Beach. So what were you going to say?

11 A That's not what I was going to say. But if you look
12 at the basis for the projections that were handed over, they
13 just assume like this straight line growth and various margins
14 that were very, like, I don't know, I would call them novice.
15 Although they were reasonable, they were different than the
16 more detailed internal financial projections that Turtle Beach
17 had that they were not sharing with Parametric.

18 Q I just want to understand your question (sic). So
19 you said that the Parametric projections that Parametric
20 prepared and handed over to Turtle Beach, those were the
21 novice --

22 A Oh, sorry, sorry. I read this wrong. I need to
23 retract my prior two answers. I was reading it as the
24 management of Turtle Beach prepared.

25 Q Okay.

1 A So I apologize for that. I --

2 Q Do you want me to back up and ask you a separate
3 question about Parametric? And then I'll ask you about Turtle
4 Beach, I promise you, okay?

5 A Uh-huh.

6 Q So the Parametric portion, do you have any reason to
7 dispute that Parametric management prepared and provided to
8 Turtle Beach internal financial projections for Parametric for
9 the years listed in the proxy, September --

10 A I do not.

11 Q Thank you. Okay. Now, on the Turtle Beach side, the
12 proxy says, "Management of Turtle Beach prepared and provided
13 to Parametric internal financial projections for the fiscal
14 years ending December 31, 2013 through December 31, 2016."

15 Do you have any reason to dispute that Turtle Beach
16 management did not prepare those projections, yes or no?

17 A No.

18 Q Do you have any reason to dispute that Turtle Beach
19 did not provide to Parametric the internal financial
20 projections that it prepared?

21 A When you say "the," yes, because they did have
22 several different internal financial projections. A internal
23 financial projection, no.

24 Q Such -- the proxy goes on to state, "Such projections
25 were also furnished to the Parametric Board."

1 Do you have any reason to dispute that the Parametric
2 Board didn't receive these financial projections?

3 A I do not.

4 Q They were also "furnished to Houlihan Lokey and
5 Craig-Hallum in connection with the Parametric Board's
6 consideration of the merger and Craig-Hallum's fairness opinion
7 analysis."

8 Do you have any reason to dispute that that happened?

9 A I do not.

10 Q The next paragraph. The proxy states, "Parametric
11 and Turtle Beach do not usually publicly disclose internal
12 financial projections of the type referenced above."

13 Do you have any reason to dispute that statement?

14 A I do not.

15 Q And it continues, "And even though such internal
16 financial projections are being disclosed in this section, they
17 were not prepared with a view toward public disclosure."

18 Any reason to dispute that portion?

19 A Yes.

20 Q So was it Parametric that prepared the financial
21 projections with a view towards public disclosure or was it
22 Turtle Beach?

23 A I am unsure of Parametric, but I do know that Turtle
24 Beach had several times, and I'm not one hundred percent
25 certain in this instance, designed the projections in order to

1 consummate the merger, in which case it would not be solely for
2 internal work.

3 Q All right, continuing on.

4 "Such internal financial projections were
5 based on numerous variables and assumptions
6 that are inherently uncertain and may be
7 beyond the control of management, including,
8 without limitation, factors related to general
9 economic and competitive conditions."

10 Is that statement a lie?

11 A No.

12 Q It continues on. "Accordingly, actual results could
13 vary significantly from those set forth in the internal
14 financial projections reproduced in this section below."

15 Is that statement a lie?

16 A It is not, but there's more context that would be
17 relevant to that statement that would shed light on the issue.

18 Q Okay. Continuing on.

19 "The internal financial projections were
20 prepared by the management of Parametric and
21 Turtle Beach in good faith and on a reasonable
22 basis based on the best information available
23 to them at the time of their preparation. The
24 internal financial projections, however, are
25 not actual results and should not be relied

1 upon as being necessarily indicative of actual
2 future results, and readers of this proxy
3 statement are cautioned not to place undue
4 reliance on this information."

5 You were a reader of this proxy statement; correct?

6 A Right.

7 Q So you would have been cautioned not to place undue
8 reliance on the projection information; correct?

9 A As you don't place undue reliance on any. However,
10 as the proxy also makes clear, the numbers in 2013 were
11 supposed to be far less uncertain than numbers beyond 2013. I
12 can read that section of the proxy for you if you'd like.

13 And at the time that the projections were made, the
14 company was already fully aware of all of the issues pertaining
15 to the -- pertaining to the console transition. And so for the
16 company to go miss it from the 40 to whatever it ended up
17 being, 1113, is way beyond the scope of what I would call a
18 good faith miss.

19 Q Just to be clear, when you are -- all these views you
20 have about what Turtle Beach missed and how the projections
21 weren't accurate, these come from your review of the discovery
22 materials and the complaint that was filed in this lawsuit;
23 correct?

24 A Yes.

25 Q Okay. Thank you. If you go to --

1 A I'm sorry. They may also have come from the
2 complaint that I read in 2019. I do not know if that's true or
3 not, but that would be an additional place that they may have
4 come from.

5 Q Fair enough.

6 THE COURT: And that's the original class action
7 complaint?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Thank you.

10 BY MR. KOTLER:

11 Q If you go to page 73 of the proxy, at the bottom it
12 lists "Parametric's Internal Financial Projections."

13 Do you see that?

14 A Yes.

15 Q You now know that Parametric came nowhere near its
16 total revenue projection of 1.0 million for fiscal year 2013;
17 correct? Since you studied the discovery, you know that;
18 right?

19 A Yes.

20 Q Okay. And you now know, since you're an expert on
21 the discovery, that Mr. Barnes viewed these projections as
22 aggressive; right?

23 A I would not say that I'm an expert on the discovery.
24 I certainly didn't read it all, but I did read a fair amount of
25 it.

1 I would also say that, while aggressive, we know that
2 Ken was being chastised by the rest of the board members for
3 not focusing at all on the business for which he was supposed
4 to be making sales due to the work he was doing on behalf --
5 work with the VTBH, with Stripes, and so he was not doing the
6 work to generate the revenue, and that further he sabotaged and
7 slow-rolled possible revenue-generating activities in order to
8 consummate the merger.

9 Q You know, since you perused the discovery with quite
10 fervor, that the \$23 million fiscal year 2014 projection was a
11 lot lower by the time of the merger. You know that; right?

12 A Right. But we're talking about a nascent technology
13 company that can have numbers anywhere.

14 Q You know that by the time of the merger that a
15 projection for fiscal year 2014 revenues was less than
16 \$2 million, not 23.1. You know that; right?

17 A None of the investments that would need to have been
18 made in order for the company to have achieved that 2014 number
19 were made, and as a result at least in part of Potashner
20 refusing to do it and slow-rolling all of the license deals.
21 So based on the actions that he did in the context of the
22 merger, it was impossible for them to hit those numbers.

23 Q You know the projection for fiscal year 2014 by the
24 merger was less than \$2 million in revenue, yes or no?

25 A I believe you, but I don't know that.

1 Q If you go to page 74, towards the bottom there's a
2 thing in bold. Do you see that?

3 A Yes.

4 Q "You should not regard the inclusion of these
5 projections in this proxy statement as an indication that
6 Parametric, Turtle Beach or any of their respective affiliates,
7 advisors or other representatives considered or consider the
8 projections to be necessarily predictive of actual future
9 events."

10 Do you see that?

11 A Yes.

12 Q And since you are a careful reader and a
13 sophisticated investor, you understood that at the time that
14 you read the proxy and voted for the merger; correct?

15 A Here's where --

16 Q Yes or no?

17 A Well, no, I can't answer that question with a yes or
18 no because you are assuming that the numbers in the proxy
19 weren't known to be false at the time that the proxy was
20 released. And, in fact, we knew -- we could have known and
21 Turtle Beach certainly knew at the time of the proxy in early
22 August that the numbers couldn't be true. And nothing in here
23 indicates that the numbers are already wildly above, and so
24 there's nothing that says -- there's no projection related
25 to -- you know, it's like a risk factor. It's supposed to be

1 something that may happen in the future. If something has
2 already happened and you know it to be false, that's very
3 different than saying, well, this may or may not happen.

4 Q Simple question. You read this at the time that you
5 voted. You knew this at the time you voted for the merger; yes
6 or no?

7 A I mean, I likely read the sentence, yes.

8 Q Thank you. Let's go over to page 128 of the proxy,
9 please. I'm sorry, 127 at the bottom. I apologize. Do you
10 see there's a heading called "Seasonality"? Are you with me?

11 A Yes.

12 Q "Turtle Beach's revenues, operating profit and
13 operating cash flows are affected by the seasonality of its
14 business, with sales of console gaming headsets having
15 historically been weighted towards the holiday period in the
16 fourth quarter."

17 You knew that at the time that you voted in favor of
18 the merger; correct?

19 A Yes.

20 Q "In past years, more than 50 percent of Turtle
21 Beach's revenues have been generated from September through
22 December."

23 So you knew that as well at the time you voted for
24 the merger; correct?

25 A Yes.

1 Q The next sentence,

2 "Although Turtle Beach expects to
3 experience a similar concentration of revenue
4 in 2013, the percentage of annual sales
5 concentrated in the equivalent period in 2014
6 may be reduced if the launch of gaming
7 consoles in November 2013 drives demand for
8 gaming headsets into the first half of 2014."

9 So you knew that at the time of the merger; correct?

10 A That last sentence is confusing to me because "a
11 similar concentration of revenue in 2013," and it says, "drives
12 demand for gaming headsets into the first half of 2014."

13 So is it saying that -- if it's saying that sales may
14 go from Q4 of 2013 into the first half of 2014, that is -- I
15 believe that to be true, and that is what Juergen told me on
16 the phone in December. See, it's comparing 2014 to a potential
17 2013 that hasn't occurred. So it's a confusing sentence to me.

18 Q Fair enough. I'm actually not going to disagree with
19 you on that. But I have one that I think is a little clearer.
20 I'm going to ask you to flip back to page 26 of the proxy.

21 MR. PEEK: What page?

22 MR. KOTLER: Page 26.

23 BY MR. KOTLER:

24 Q There is -- under that first full heading about
25 "Turtle Beach must make significant expenditures," there's a

1 paragraph that begins, "In addition." And it states, "In
2 addition, Turtle Beach's Xbox One headsets require Xbox One
3 console-specific components and software to function."

4 That's a true statement, isn't it?

5 A Yes.

6 Q "If the required components are not produced in
7 sufficient quantities or the required software is not released,
8 Turtle Beach's ability to sell headsets for the Xbox One would
9 be reduced or eliminated and Turtle Beach's business and
10 financial results could suffer."

11 You're okay with that one, too, aren't you?

12 A Yes. But what I am not okay with is saying that that
13 is the reason why Turtle Beach's projections missed so badly
14 compared to what was in the fairness opinion because we know
15 that in August when there were covenant violations at the end
16 of June and they refinanced the subordinated debt in August of
17 2013, that there were already material issues with the rate and
18 progress of Turtle Beach's financials, and this is talking
19 about something that may hurt in the future. But before that
20 and unrelated to the console transition, which is disclosed
21 nowhere, we know that they were already well behind on their
22 projections.

23 Q Just to be clear, neither Mr. Apton nor I have asked
24 for your view in reading the discovery, your opinion as to why
25 Turtle Beach missed its projections in 2013.

1 Do you recall hearing that question from anybody in
2 this courtroom today?

3 A I am familiar with the context of these statements
4 and the intent of what the statement or what the statement
5 implies. And if I don't believe that this statement is
6 implying a factual thing, then I am going to point that out.

7 Q So you now know what was intended by this statement?
8 Is that your testimony?

9 A I have a belief.

10 Q Ahh. Okay.

11 A I did not say I know.

12 Q Okay. I take it, given your beliefs and your study
13 of the discovery materials that you have conducted a thorough
14 review as to Turtle Beach's business in 2014 and the causes and
15 effects of its financial performance; right?

16 A I have not done that much beyond the first few months
17 of 2014.

18 Q Oh. But you're convinced that the revenue shift
19 issue was why Turtle Beach suffered poor financial performance
20 in 2014?

21 A No. What I am convinced of is information that was
22 knowable at the time. I am not concerned about the fact that
23 they missed projections. In fact, that's the reason I didn't
24 originally plan on suing or doing anything about the companies.
25 I thought that they were just incompetent and that they did not

1 act in bad faith.

2 But what I do now know is that in December of 2013
3 the EBITDA projections internally for 2014 were lowered below
4 30 million while they were being communicated to me at over
5 60 million and were 58 million in the proxy.

6 Additionally, what you read to me in terms of if this
7 happens in 2013 it might push into 2014 again implies that if
8 there's a miss in 2013, 2014 will be better. However, in
9 December of 2013 Turtle Beach's management was already
10 internally projecting and telling PNC that the EBITDA number
11 would be below 30.

12 So this isn't a question in my mind of what
13 transpired during 2014. This is a question of what was normal
14 at the time in December before the merger closed, and that is
15 what I am focused on.

16 Q Okay. Well, let's talk about something else that's
17 knowable. You have told the Court several times today that
18 IceRose owned 489,761 shares of Parametric common stock at the
19 time of the merger; right?

20 A Yes.

21 Q You're sure about that number; right?

22 A Yes.

23 Q By the way, with a position that size, was IceRose a
24 controlling shareholder of Parametric at the time of the
25 merger?

1 A No.

2 Q You would agree that for someone to be a controlling
3 shareholder at the time of the merger a person would have to
4 have at least owned a larger number of voting shares than the
5 5 percent that IceRose owned?

6 A I would certainly not agree to that.

7 Q No? You could be -- you aren't a controller at
8 5 percent, but someone could own less than 5 percent and be a
9 controlling shareholder? Is that your testimony?

10 A My testimony is that there is a lot that goes into
11 control of a stock. Will people do what you want? Can you
12 dictate what happens at the company, even if it's not in the
13 company's best interest? Can you slow down, speed up the
14 release of products? Can you make things that happen that
15 increase/decrease the stock price? Do you have the ability to
16 control other people's votes through various either direct or
17 indirect means? A controlling shareholder is someone that can
18 exercise control over the company.

19 Q You would --

20 A It's, I think, fairly straightforward.

21 Q I apologize for interrupting you, sir. Were you
22 done?

23 A Sure.

24 Q I didn't mean to interrupt you. Would you agree with
25 me that a controlling shareholder has to own at least one

1 voting share or not?

2 A Well, they would not be a shareholder if they did not
3 own -- so, yes, I would agree with you that a controlling
4 shareholder must own at least one share.

5 Q Good. Now, IceRose has not always been truthful
6 about the number of shares that are owned at the time of the
7 merger; right?

8 A I think that's a little offensive. I was wrong,
9 obviously, when I put the shares. So to say not truthful
10 states I was lying. I was wrong in my initial disclosure so it
11 was inaccurate. But to say I wasn't truthful -- no, I
12 definitely intended and I wasn't trying to harm myself by
13 suggesting I own less shares than I actually owned. There
14 would be no reason for me to do that.

15 Q Well, you were wrong --

16 A Correct.

17 Q -- to be fair, or not truthful, to use my words, on
18 more than one occasion about the number of shares; right?

19 A I don't know.

20 Q Okay.

21 A I thought there was a certain number of shares, and I
22 had reason to believe that it was the share count. And then
23 when I did the real due diligence and finally got the
24 statements, which wasn't easy, I realized I was wrong about my
25 historic understanding of 13Gs.

1 I can explain how I got to the number I got to. It
2 was the number that was taken from the public filing of the
3 13G. And by 2019 I had been in the business for a few years,
4 and I had conflated in my head 13Ds and 13Gs, and I thought
5 that I couldn't transact in the stock, and so I thought that
6 the number in the SEC filing was the accurate number. But, in
7 fact, I was able and I did transact in the stock, and so when I
8 got the Morgan Stanley statements and it was clear that the
9 number was wrong, I immediately told counsel, like, hey, I
10 screwed up, I gave you the wrong number of shares. That did
11 happen, yes.

12 Q Just to be clear, in the operating agreement itself
13 it does not list as IceRose Capital Management shareholdings
14 489,761 shares?

15 A In the operating -- well, in the current operating
16 agreement it does.

17 Q Hold on. We'll get there. In the operating
18 agreement that was produced in this lawsuit, which I examined
19 you on in your deposition, it lists 362,496 shares for IceRose
20 Capital Management; correct?

21 A I don't have it in front of me, but I do remember in
22 the deposition where I explained to you that in fact it was the
23 incorrect number and how I got there and what the correct
24 number was.

25 Q We'll pull it up for you. Can we pull up the --

1 THE COURT: Has the deposition been provided to you,
2 Val?

3 We have to publish it. This is Nevada. We have very
4 archaic rules.

5 MR. KOTLER: I wasn't going to use the deposition
6 yet, but I was going to show him a document. But I do
7 appreciate that.

8 THE COURT: Okay. Is there a document that's been
9 admitted that you can show him?

10 MR. KOTLER: I was going to seek the admission of a
11 document.

12 THE COURT: Well, we need the number first.

13 MR. KOTLER: Yes. Actually, let me confirm for a
14 second.

15 I'd like to call up DX1025, which is a publicly filed
16 document.

17 THE COURT: No. Is there any objection to DX25?

18 MR. KOTLER: 1025.

19 THE COURT: DX1025.

20 MR. APTON: No objection.

21 THE COURT: It will be admitted.

22 (Plaintiff's Exhibit Number(s) DX1025 admitted.)

23 THE COURT: Now you can pull it up.

24 MR. KOTLER: Thank you, Your Honor.

25 / / /

1 BY MR. KOTLER:

2 Q You've seen this document before, Mr. Kahn; right?

3 A I don't know.

4 Q Okay.

5 A I'd have to see more of the document.

6 Q Fair enough. Well, I'm going to direct you to the
7 first page of it. It says Plaintiff PMT, LLC. You know what
8 PAMT LLC is; right?

9 A PAMTP? Yes. That one.

10 A I do know what that one is, yes.

11 Q Right. That's the entity for which you are the
12 managing member; correct? One of them?

13 A Yes.

14 Q And it says, "Initial Rule 16.1 Disclosure
15 Statement." And it was electronically filed with this court --
16 or, sorry, electronically served November 2nd, 2020.

17 Do you believe that in your capacity as managing
18 member of PAMTP LLC and a keen observer of this litigation that
19 you reviewed this document at or about the time of its service
20 in this case?

21 A I honestly don't know. There are many, many
22 documents filed in this case.

23 Q Okay.

24 A I did not thoroughly read all of them. I'm one man.

25 Q Okay. I am going to turn you to -- we're going to go

1 to page -- we'll go to Plaintiff 5, please. And you'll see in
2 the second paragraph that this document provides that PAMT, LLC
3 was formed on April 8th, 2020. Do you see that?

4 A It says PAMTP. Yes.

5 Q Okay, good. And that's consistent with your
6 understanding as to when that LLC was formed?

7 A Yes.

8 Q And you understand that the operating agreement
9 governs the rights and responsibilities of you and your fellow
10 assigners; correct?

11 A Yes.

12 Q And if you look at page Plaintiff's 6, you will see
13 that the business purpose of this LLC is -- includes litigation
14 prosecution of a lawsuit commonly known as an opt-out claim
15 related to the class action. Do you see that?

16 A Yes.

17 Q And that's consistent with your understanding;
18 correct?

19 A Yes.

20 Q There was no reason for you to be anything but
21 completely accurate and truthful about how many PAMT shares
22 IceRose held on the date of the merger for the purposes of this
23 operating agreement; correct?

24 A I believed that I was at the time. I can say again
25 that I was wrong and I know why I had my false belief. And as

1 soon as I realized it, I corrected it.

2 Q Well, hold on. Hold on. You told us earlier that
3 you were the one whose job it was to validate the number of
4 shares that everybody held; right?

5 A And part of that process was me figuring out that I
6 was wrong.

7 Q But you took that job seriously; right?

8 A Yes.

9 Q You understood it was important to get that
10 information correct; right?

11 A Yes.

12 Q Now if we go over to -- go over to page Plaintiff 12,
13 which will come up on the screen. That's your signature there?

14 A Yes.

15 Q It doesn't have a signed date. Do you have -- can
16 you tell us under oath what day you signed this thing?

17 A I cannot. But it was in early April, I would be very
18 certain. Early April 2020 I signed this.

19 Q What makes you so certain?

20 A It was formed around then and that's just how almost
21 one hundred percent of document signing works. You sign prior
22 to the completion. So I'm almost certain and that's when this
23 was going on. Maybe it was in late March, but I would have
24 signed before the formation and that's when it makes sense.
25 And we were still working on the LLC, the setup, so I'm fairly

1 certain that this was signed close to but before April 8th,
2 2020.

3 Q And the number of shares there, that's 362,496, right
4 next to your signature there. Do you see that?

5 A Yes.

6 Q Now, if you go over to Plaintiff 18, we've got
7 ourselves a little handy-dandy chart of each of the assigners
8 and the number of shares that they are signing, which it was
9 your job to validate and make sure those numbers were correct.
10 Do you see that?

11 A That happened after the formation of the LLC.

12 Q Oh, it was after the formation of the LLC?

13 A That I went through and validated the -- I did not go
14 through Masterson, Santulli and Patricof. I did not go through
15 those documents in the brokerage detail until after. In fact,
16 I knew that they owned shares, but I didn't have in my
17 possession the information to tell you what the share count had
18 turned out was on April 8th, 2020. I didn't have the ability
19 on that date. I thought I did. I was wrong. I didn't even
20 have the ability on April 8th, 2020 to know what my share count
21 was on January 15th.

22 Q So you were -- when did you do this validation, this
23 auditing of everybody's shares? When did that happen?

24 A I don't remember precisely, but when I finally got my
25 statements from Morgan Stanley and saw that my number was

1 wrong, I was like, oh, and I went through everyone's
2 statements. And then it looked -- everyone except for one
3 where there's an issue, and then I again validated them like a
4 month or two ago.

5 Q So it wasn't until a month or two ago that you
6 figured out that the operating agreement that you signed had --
7 was off by 127,000 shares for you?

8 A That's not what I said.

9 Q Okay.

10 A I said I validated them the second time then.

11 Q Oh, I'm sorry. I missed that. When was the first
12 time?

13 A It was many months ago.

14 Q When?

15 A At least several months ago. These were -- I
16 don't -- if I tell you January or March, there's nothing I have
17 in context of other events to tell you exactly when.

18 Q Okay. Well, I realize time is frozen over the last
19 couple years. Can you give me a year?

20 A I believe it was 2020, but...

21 Q Okay. Well, so sometime in 2020 in the course of
22 taking your job seriously as the validator, you discovered that
23 the number of IceRose Capital Management shares that you listed
24 was off by 127,000. Is that fair?

25 A Yes. I believe that's true.

1 Q And what you did then is you immediately raced out
2 and amended the operating agreement to correct that number and
3 make sure that it was accurate for purposes of this lawsuit;
4 didn't you?

5 A What I immediately did was notify the counsel of the
6 error and the other members, including the CEO and other
7 managing members of the LLC to let them know that I had screwed
8 up, and we agreed on a path to move forward.

9 Q So sometime in 2020 you realized that you had screwed
10 up on the number of shares, and nonetheless in November of 2020
11 this operating agreement gets produced with the screwed-up
12 number of shares. Is that what happened?

13 A No. I said that I believe it was in 2020 and it took
14 some time to get -- like, to even get that statement from
15 Morgan Stanley was a couple month process. And so there were a
16 lot of moving parts that occurred over time. And I knew that
17 the number was wrong before I knew what the correct number was,
18 and I don't remember the exact cadence because I had -- to me,
19 I had screwed up.

20 I was up front about it immediately, and it just was
21 what it was. It was something that needed to be corrected.
22 There was no -- in my mind, once everyone was properly informed
23 that I had screwed up -- rush to make the change that day.
24 Maybe you will argue that there was. I don't know. But this
25 wasn't -- I screwed up, and I shouldn't have. I admit it, but

1 it wasn't this huge -- you know, to me, this was just something
2 that happened. It was just not a big focus of mine.

3 Q So it was just something that happened that you were
4 off by 127,000 shares. That's your testimony, just something
5 that happened?

6 A It was unfortunate. I mean, I am much better off
7 with the 489,000. I was not pleased with myself for being
8 wrong and also for misremembering the rules of 13Gs and 13Ds.
9 I don't like when I make mistakes. Clearly, I made a mistake
10 here, and, yeah, it happened. I don't know what else to say
11 about it.

12 Q You remember that you were deposed in this case;
13 correct?

14 A Yes.

15 Q In fact, I took your deposition. You remember that?

16 A Yes. It was by Zoom. March 10th, I believe was the
17 date.

18 Does that sound about right to you?

19 A Yes.

20 Q And you remember during your deposition I raised this
21 issue with you about the screw-up in the number of shares and
22 as of that time the screw-up had not been fixed. You remember
23 that; right?

24 A I do not remember if the screw-up was fixed or not.
25 I do remember that I was 100 percent aware. And I believe,

1 because there's one explanation for it, I would very much
2 likely give you the exact same explanation in the deposition
3 that I'm giving you now because it's the accurate explanation
4 of what happened. I don't know the date that it was amended
5 and I don't remember whether or not it was amended prior to
6 that meeting. I do, again, know that the share count was wrong
7 and I believe I told you at the deposition, walked through both
8 why I was wrong and also how to get to the 489,761 number.

9 Q In fact, the LLC agreement has never been amended and
10 provided to the defendants in this case with the correct
11 number; has it?

12 A I don't control what is and what isn't presented to
13 the defendants. I have no basis to say it was or it wasn't
14 presented to the defendants. I talked to Adam. There's
15 documents going back constantly.

16 Q I'm not asking -- I don't want to ask about your
17 conversations with Mr. Apton. So if you remember --

18 A I do not know whether or not it was provided to you.
19 I don't.

20 Q Did you sign an amended LLC agreement on behalf of
21 IceRose with the correct number of shares at any point in time
22 from April of 2020 until this day while you're sitting here in
23 this witness stand?

24 A Yes.

25 Q You signed an amended LLC agreement with the correct

1 number of shares?

2 A I'm 99.9 percent certain I did. I don't remember
3 actually doing it, but we amended it to reflect the true number
4 of shares. I remember, like, the discussion and it happening,
5 but I don't remember actually signing it, but I believe that I
6 did.

7 Q When do you believe that happened?

8 A Months ago.

9 Q Months ago? Okay.

10 A I don't know.

11 MR. KOTLER: Now I'm going to ask to unseal the
12 deposition and publish it, please.

13 THE COURT: Do you have his deposition now?

14 THE CLERK: Do we know which box it's in?

15 (Pause in proceedings.)

16 THE COURT: Are they in alphabetical order or some
17 other order in the boxes?

18 MR. APTON: They're in alphabetical order.

19 THE COURT: Alphabetical order?

20 MR. APTON: Yes, ma'am.

21 THE COURT: Okay. And there's only five of them;
22 right? Five boxes of depos?

23 MR. PEEK: Your Honor, may she come and help?

24 THE COURT: No.

25 MR. PEEK: All right.

1 THE COURT: I got to have social distancing and masks
2 and all this other stuff. Although I am letting you drink.

3 (Pause in proceedings.)

4 THE COURT: There's only one volume; right?

5 MR. APTON: Yes, Your Honor.

6 THE COURT: Great. You're opening the hermetically
7 sealed envelope.

8 Sir, in a minute they're going to stamp the words
9 Published on it, and then somebody's going to hand it to you.
10 In Nevada we still follow a very old-fashioned procedure where
11 the original deposition comes in a sealed envelope, and then
12 before we could use it in court, the clerk has to publish it.
13 When he refers you to a particular page in the deposition, you
14 can look before and after to give yourself context, if you'd
15 like. Sometimes they will also show you the transcript or
16 portions of it on the video. You can ask them to stop or go
17 forward if they do that.

18 But Ramsey's going to bring it to you in just a
19 second. It is the only time we will hand you paper, because
20 it's an original. We've only got one.

21 THE WITNESS: Thank you.

22 THE COURT: The deposition has been published.

23 MR. KOTLER: Thank you, Your Honor.

24 BY MR. KOTLER:

25 Q You mentioned before, Mr. Kahn, do you remember that

1 I took your deposition?

2 A Yes.

3 Q And you understood you were under oath at that time?

4 A As I am now.

5 Q Right. I'm going to direct you to page 77 in your
6 deposition, line 3 through 5.

7 MR. KOTLER: Making sure that you have what I'm about
8 to read.

9 MR. APTON: No, I don't. The pages, please?

10 MR. KOTLER: 77, 3 through 5. And I'm going to read
11 you something.

12 MR. APTON: 77?

13 MR. KOTLER: Yes.

14 MR. APTON: What line?

15 MR. KOTLER: 3 through 5.

16 (Pause in proceedings.)

17 MR. KOTLER: May I proceed, Your Honor?

18 THE COURT: You may.

19 BY MR. KOTLER:

20 Q On page 77, line 3.

21 Question, "Do you have any intention to amend the LLC
22 agreement and put the right number in there?"

23 Answer, "Yes."

24 Did I read that correctly?

25 A Yes.

1 Q Thank you. Close your deposition.

2 THE COURT: Keep it just in case we go back to it.

3 BY MR. KOTLER:

4 Q You would agree with me that the LLC, PAMTP, does not
5 have the ability to assert rights with respect to shares of
6 stock that IceRose did not assign to PAMTP; correct?

7 A That's a legal conclusion that I have no interest in
8 commenting on.

9 Q At this stage -- strike that.
10 Back in April of 2020, when you did this assignment,
11 did IceRose own any other stock other than -- other than Turtle
12 Beach?

13 A In 2020?

14 Q Yes.

15 A In IceRose's possession, where their stocks are, then
16 Turtle Beach?

17 Q Yes.

18 A Yes.

19 Q Did -- do you understand that the LLC, PAMTP, is
20 acting on behalf of IceRose Holdings with those other stocks?

21 A No.

22 Q Okay.

23 A And at that point in time, it didn't own the shares
24 of -- that number of shares of Turtle Beach either.

25 Q Those were down by then; right?

1 A Some amount of them were.

2 Q We'll get to that. Mr. Apton covered with you his
3 April 22nd, 2020, letter in which he exercised IceRose's right
4 to opt out of the class-action lawsuit; you remember that
5 discussion earlier?

6 A Yes.

7 Q So when -- and I can pull it up if you'd like, but
8 you'll recall that letter also showed the 362,000 shares that
9 were being opted out by IceRose; right?

10 A I believe that's what it said, yes.

11 Q And to your knowledge, there has never been anything
12 that you've seen that has been filed with anybody to correct
13 that number of shares that was opted out of the class-action
14 lawsuit; correct?

15 A I mean, I communicated that I wanted to opt out all
16 the shares. So to the extent that wasn't all the shares, but I
17 didn't see anything -- can you repeat the question, please?

18 Q Sure. Since you actively follow litigation, have you
19 seen anything that has been filed with anybody, any court, any
20 claims administrator, correcting what you claim is the error or
21 the screw-up as to the number of the IceRose shares that opted
22 out of the class-action lawsuit?

23 A Yes.

24 Q Yet you're aware of a letter that was filed
25 correcting the number of shares?

1 A No, your question wasn't a letter, your question was
2 there a filing in court or elsewhere that corrected the number
3 of shares, and I am aware of filings in court that corrected
4 the number of shares.

5 Q Well, let's look at -- let's go back to Plaintiff's
6 Exhibit 310.

7 So you understand that there are certain exhibits
8 that -- the plaintiff, you, Parametric, PAMT LLC, has offered
9 to be put into evidence in this case; right? You understand
10 that?

11 A Yes.

12 Q Okay. And PAMTP310 lists right there on the first
13 page the number of IceRose Capital Management shares as
14 362,496, doesn't it?

15 A It is indisputable that as of April 22nd, that is the
16 number of shares I owned and that I believe that I'd owned and
17 that that's what the communication said, yes. Never disputed
18 that.

19 Q And that LLC agreement that we spend so much time
20 talking about, which PAMTP provided as a potential trial
21 exhibit in this court; right? When you look over at page --
22 Plaintiff -- there it is -- Plaintiff 18, we've got that same
23 handy-dandy chart. How many shares does it say for IceRose
24 Capital Management on your copy?

25 A Any -- it's just getting very repetitive. Any

1 document --

2 Q It is.

3 A -- that comes from March, where I believe the -- or
4 April, where I thought -- where I was wrong on the number of
5 shares will show the wrong number of shares that I originally
6 provided.

7 Q Including the trial exhibits that the plaintiff put
8 in just a couple of days ago; right?

9 A Well, in the documents that have been dated later,
10 where we knew the number and have been filed with the court, I
11 think -- I admit that I made an error. So any document from
12 this time period that shows the number will show the incorrect
13 number.

14 Q Including the amended LLC operating agreement that
15 has never been provided in this case? There's not a --

16 A The amended LLC operating agreement --

17 THE COURT: One at a time, please.

18 THE WITNESS: -- shows the correct number of shares.
19 I do not know whether it has been provided to you or not.

20 BY MR. KOTLER:

21 Q Yeah, well, I tell you it hasn't. Let's talk about
22 your fellow signers. Going to -- you were asked some questions
23 about Mr. and Mrs. Etkin and their brokerage statement.

24 A Yes.

25 MR. PEEK: It's not in evidence.

1 MR. KOTLER: Understood.

2 BY MR. KOTLER:

3 Q You ever met them in person?

4 A I have not.

5 Q Could you pick them out of a lineup?

6 A I could not.

7 Q So you didn't know them back in January 2014;
8 correct?

9 A I believe it would -- it's possible I met them in
10 person, but it's very unlikely. I have no knowledge of meeting
11 them in person.

12 Q And you didn't have anything to do with their
13 purchase of Parametric stock prior to the merger; correct?

14 A Yes.

15 Q Correct, you did not?

16 A Correct.

17 Q And you didn't have anything to do -- other than
18 saying that you received their brokerage statements at some
19 later point in time, you didn't have anything to do with their
20 brokerage accounts, did you?

21 A Correct.

22 Q So you don't have any way of knowing if the brokerage
23 statements that you said were true and accurate copies are
24 accurate or complete forgeries, do you?

25 A I think that's a little silly, honestly. I think you

1 could say that about 100 percent of the documents in the case,
2 basically, I have seen many documents and brokerage statements,
3 it looks authentic to me. There's no reason to say they'd lie
4 or to believe anything to the contrary. You could literally
5 say that about any document that I didn't personally make.

6 Q Right. I agree with you on that. So how many of Mr.
7 and -- how many shares of -- that Mr. and Mrs. Etkin are listed
8 as owning back in January -- January 15th, how many of those
9 they still own today?

10 A I believe that they had said that they don't own any,
11 but I'm not certain, and I did not diligence that matter.

12 Q And you don't know if they sold, when they sold, or
13 how much they sold; right?

14 A Correct.

15 Q You don't know how they sold their shares or to whom
16 they sold their shares?

17 A I doubt they know to whom they sold their shares.

18 Q So you have no idea, when they sold their shares,
19 they entered into an agreement with any subsequent purchaser of
20 those shares in which the Etkins reserved any of the rights
21 they had with respect to those shares; right? You don't know
22 that.

23 A I do know that, because there, to my knowledge, have
24 not been any over-the-counter transactions in Parametric Sound
25 since then. And they never actually owned the certificates,

1 they just had the security -- it's called the security
2 entitlement. And when you buy yourself securities as I'd say
3 99.99999 percent of transactions in public securities occur,
4 then the rights -- there's nothing related to the transferring
5 of rights to a different party when you buy or sell. No one
6 knows who they're buying or selling stock from. It's not even
7 traceable in a lot of instances.

8 Q Right. My question was just a little different, but
9 very simple. You have no idea if when they sold their shares
10 they entered into an agreement with any subsequent purchaser in
11 which they reserved any of the rights they had with respect to
12 the shares, yes or no?

13 A I have an idea. And the idea is that that is a silly
14 question. And that they did not transfer the shares with any
15 sort of right. Like, the question, the way you're asking it,
16 doesn't even make any sense as a general way that the stock
17 market and securities work.

18 Q So for all you know, they sold their January -- the
19 shares that they held as of the date of the merger, they sold
20 them into the open market, not strings attached; right?

21 A That's how transactions occur.

22 Q Cool. Mr. and Mrs. Goldberg, you ever met them in
23 person?

24 A I do not believe so.

25 Q You didn't have anything to do with their purchase of

1 the Parametric shares that they claim to have held as of the
2 date of the merger; correct?

3 A Correct.

4 Q You have no idea if Mr. or Mrs. Goldberg still own
5 today any of the shares they held as of the date of the merger;
6 correct?

7 A I believe, from -- that I am the only person that
8 owned any shares. Although I did not ask for any documentation
9 and I did not diligence that matter for anyone else. But I
10 believe that no one beside myself still own shares.

11 Q Okay. We'll get to yours, but that's helpful.

12 THE COURT: So at the time the LLC was created, you
13 believe you were the only one of those who opted out who still
14 held shares?

15 THE WITNESS: As of the beginning of this year, when
16 the issue was brought to my attention, I believe I was the only
17 one that still owned shares.

18 THE COURT: So in 2021?

19 THE WITNESS: Correct.

20 THE COURT: Okay. Thank you.

21 BY MR. KOTLER:

22 Q And same question for the Goldbergs as it was for the
23 Etkins. For all you know, they sold all of their -- the shares
24 that they held as of the date of the merger into the open
25 market with no strings attached. In fact, that's how you

1 expect they did it?

2 A Yes, I expect, as I'm sure anyone in this room who
3 has transacted stock in a public company has done, and wasn't
4 doing it from a insider primary share insurance, that they sold
5 the shares on -- bought or sold on the open market, whether
6 through a known counterparty or dark pool or other, where the
7 counterparty isn't even known.

8 Q For Mr. Masterson -- you ever met him?

9 A I believe I've met him once.

10 Q Did you know him back in January 2014, as of the time
11 of the merger?

12 A I'm not sure. It's like I don't know if I met him.
13 I spoke with him. I did -- I don't believe I knew him at the
14 time of the merger, but I'm also not certain of that.

15 Q Did you have anything to do with his purchase of the
16 premerger Parametric shares --

17 A I do not.

18 Q -- that you couldn't sell? Did you have anything to
19 do with his brokerage accounts in which he claims to have held
20 those shares as of the date of the merger?

21 A No, I did not.

22 Q Do you know if Mr. -- I take it -- strike that.
23 Based on what you said before, it's your understanding that
24 Mr. Masterson still does not own any of his per-merger
25 Parametric shares; correct?

1 A Correct.

2 Q And you don't know when he sold, how he sold, other
3 than that, you would expect it was into the open market, no
4 strings attached, fair?

5 A Well, you keep saying no strings attached. Like, I
6 don't know what you mean by that little extra. But I believe
7 he sold it to the open market. That's how I would believe that
8 he would have sold it, yes.

9 Q Okay. What I mean is that when he sold into the open
10 market, he did not enter into an agreement with any subsequent
11 purchaser of that stock in which he reserved any of the rights
12 that he had with respect to those per-merger Parametric shares?

13 A I can tell you that I've been -- I was in the hedge
14 fund industry, I've been trading stock since I was 13, and have
15 been in the hedge fund industry not in -- well, really --
16 for -- but was for 15 years, and I've never once seen a public
17 market transaction with the strings you're suggesting. It has
18 never once occurred.

19 Q Okay. Mr. and Mrs. Patricof, you know them?

20 A I do not.

21 Q Oh. So I take it you did not have anything to do
22 with the -- their purchase of premerger Parametric stock?

23 A Correct.

24 Q And you did not have anything to do with their
25 brokerage accounts?

1 A Correct.

2 Q And you have said you believe they no longer own
3 their premerger Parametric shares?

4 A I believe that. Correct.

5 Q And you have no idea how they sold and when they
6 sold?

7 A Correct.

8 Q And as with the others, you would expect they sold
9 into -- they sold all of their premerger shares into the open
10 market without entering into the agreement that I keep asking
11 you about?

12 A I'd love to see one of these so-called agreements
13 that actually exists out there, so I know what you're even
14 referring to. It's not a way that security -- public
15 securities are transacted, but --

16 Q Well, all I'm asking is you're not aware that Mr. and
17 Mrs. Patricof entered into one of these agreements when they
18 sold their premerger shares; correct?

19 A I'm not aware.

20 Q Okay. Mr. Santulli, do you know him?

21 A I believe I've spoken with him.

22 Q Did you know him back in January 2014, prior to the
23 merger?

24 A Doubtful.

25 Q So I take it you didn't have anything to do with his

1 purchase of shares?

2 A Correct.

3 Q And you didn't have anything to do with his brokerage
4 accounts in which he claims to have held those shares?

5 A Correct.

6 Q You would expect that he no longer owns any of those
7 premerger Parametric shares today; correct?

8 A Correct.

9 Q And you don't know anything about the details of when
10 or how he sold or to whom he sold the shares; correct?

11 A Correct.

12 Q And as with the others, you would expect that he sold
13 it into the open market without one of these agreements that
14 you've never heard of?

15 A Correct.

16 Q Mr. Barry Weisbord, here in the courtroom today. Did
17 you know him before you had that conversation with him in the
18 fall of 2019 that you mentioned earlier?

19 A Yes.

20 Q Did you know him back in premerger, 2013, 2014?

21 A I don't believe so.

22 Q You do or don't?

23 A I do not believe so.

24 Q Okay. So I take it you did not have anything to do
25 with Mr. Weisbord's purchase of his premerger Parametric

1 shares?

2 A Correct.

3 Q And you would expect he no longer owns any of those
4 shares; correct?

5 A I believe that to be true.

6 Q And you don't know when he sold or how he sold, other
7 than you would expect it was into the open market without one
8 of those agreements; correct?

9 A Correct.

10 Q And you also know Mr. Weisbord's son, Joshua, who's
11 also here in the courtroom today; correct?

12 A Yes.

13 Q Mr. Apton showed you a document today where you wrote
14 about Mr. Weisbord; do you recall discussing that document
15 earlier today? I believe it was PX376.

16 A I'm not sure of the number, but I am -- I do recall
17 the document you're discussing, yes.

18 Q Okay. We'll pull that one up. I believe that one is
19 in.

20 THE COURT: What exhibit number?

21 MR. KOTLER: PX376, Your Honor.

22 THE COURT: Okay. Keep going.

23 BY MR. KOTLER:

24 Q You did not care in the slightest about what Josh
25 Weisbord thought about IceRose's investment in Parametric;

1 correct?

2 A Correct.

3 Q You didn't consider Josh Weisbord a particularly
4 relevant figure to you, did you?

5 A I didn't -- I would not have card in the slightest
6 what -- maybe I could think of one or two people, what
7 virtually anyone would have thought about what I was doing.

8 Q Including Mr. Weisbord?

9 A Including Mr. Weisbord.

10 Q In fact, conversations with Josh Weisbord about
11 Parametric had no meaning to you; correct?

12 A Yes.

13 Q Because Josh Weisbord was entirely irrelevant to you
14 in your investment in Parametric; correct?

15 A At the time, I knew of Josh as just a sales guy at
16 Oppenheimer at, I guess, there might be a little, I don't know,
17 not nice to brokers and on the high horse. But their job is
18 just -- is -- in the hedge fund business, simply put, you do
19 not care what the sales guys at the investment banks think
20 about this or that.

21 Q In the time since the merger in January of 2014,
22 IceRose has sold a whole lot of Parametric shares; correct?

23 A Yes.

24 MR. KOTLER: I'm done with that exhibit. Thank you.

25 / / /

1 BY MR. KOTLER:

2 Q And I suspect this is true. When IceRose sold all
3 their shares and sold them into the open market; correct?

4 A They were not -- yeah, they were negotiated
5 transactions. Yes.

6 Q So as with all the other signers, you have no idea --
7 well, strike that.

8 Do you know to whom IceRose sold any of the shares it
9 held as of the time of the merger?

10 A No.

11 Q And, I take it, IceRose did not enter into any
12 agreement with any subsequent purchaser of its pre-Parametric
13 shares when it sold any of them after the merger; correct?

14 A That is correct.

15 MR. KOTLER: I'm going to call up DX1037, which was
16 admitted earlier.

17 THE COURT: 1037. It's not admitted.

18 MR. KOTLER: I'm sorry, I apologize.

19 THE COURT: So far I've only admitted one defense
20 exhibit.

21 MR. KOTLER: Oh.

22 THE COURT: So.

23 MR. KOTLER: I'd like to introduce DX1037.

24 THE COURT: Any objection to 1037?

25 MR. APTON: It's already been admitted as 410.

1 THE COURT: So it's 410?

2 MR. PEEK: It is, Your Honor.

3 THE COURT: Great.

4 MR. KOTLER: 410 is a portion of DX1037, but it's not
5 all of it.

6 THE COURT: Darn. How big is 1037?

7 MR. KOTLER: It is 376 pages.

8 THE COURT: Yeah, you're going to have to break it
9 down.

10 MR. KOTLER: Okay.

11 BY MR. KOTLER:

12 Q We talked a lot about the amount of shares that
13 IceRose claims to have held on the merger date. It's your
14 understanding that, subsequent to the merger date, IceRose sold
15 all 489,671 or 362,000 shares, whatever the right number is, it
16 sold all of those shares; correct?

17 A I'm sorry?

18 Q After the merger dates, okay, with me?

19 A Yeah.

20 Q January 15th, 2014.

21 A I thought you said before the merger.

22 Q No, after.

23 A Okay. I got it.

24 Q Okay? So I'll go with your number --

25 A Okay.

1 Q -- make it easy, 489,671 shares sitting in the Morgan
2 Stanley account on behalf of IceRose as of the merger date; you
3 with me?

4 A Yeah.

5 Q At some point after the merger date and before you
6 opted out from the lawsuit, IceRose sold all 489,671 of those
7 shares; correct?

8 A No.

9 Q No? Sure about that?

10 A I am sure that IceRose still owned shares. And,
11 typically, you use LIFO for the shares. So that would suggest
12 that no, I did not sell all 489,761.

13 Q It's your testimony that is typical to use LIFO and
14 not FIFO with regard to accounting for share transactions and
15 in a brokerage account; is that your testimony?

16 A It's my testimony that that's what I'm more familiar
17 with for this type of transaction.

18 Q Okay.

19 A But I'm not an expert in the accounting treatment
20 of -- and tax treatment of securities. That's not where I have
21 expertise. If you -- I could be convinced that that is
22 incorrect, but that's what I believe to be true, yes.

23 Q So you -- and you don't know how Morgan Stanley
24 accounted for the shares?

25 A Well, to be fair, the shares are mostly sold at

1 interactive brokers.

2 Q Okay.

3 A But I am not certain how it was counted, and I'm not
4 certain if, for instance, in a lot of accounting places, you
5 can use different treatment for book and for tax. So it could
6 be, in fact, that there -- one was done one way and one was
7 done another way. I'm not sure whether, from a book
8 perspective, if it was LIFO or FIFO, from a tax perspective
9 whether it was LIFO or FIFO, whether it's a different method or
10 whether it was a combination of the methods for different
11 aspects of the treatment.

12 Q Do you have any reason to dispute that between the
13 merger date on January 15th and the end of 2014, there were
14 sale transactions in excess of the 489,761 Parametric shares
15 that IceRose owned on the date of the merger?

16 A I don't remember the trading history to that degree.
17 So --

18 Q It would be in the broker statement; right?

19 A Well, it's not in this brokerage statement.

20 Q No, I understand. But if we were to look at the
21 brokerage statement that showed the trading history for
22 post-merger through the end of '24, you'd be able to count up
23 with me the number of shares that IceRose sold and --

24 A It just makes sense to me, because of the tax
25 position of the fun going forward, that LIFO would have been

1 the better method to use. And that's why it would have been
2 selected. But I don't know what was used and I don't know the
3 number of shares that are sold in 2014.

4 Q Okay. And I'm not going to argue with you about FIFO
5 or LIFO. But I am going to say if we wanted to know the
6 number, the best way to do it would be to go through the
7 brokerage statement. And we can just add up the number and if
8 it's more than 489,000, then it's more than 489,000; correct?

9 A Well, if we -- if you -- if the number adds to more
10 than 489,000, yes, that is more than 489,000.

11 Q Good.

12 A Is it correct that I sold all the shares? No.
13 That's why it may or may not be true. That gets back to the
14 other conversation.

15 Q I understand. I'm not going to argue with you about
16 LIFO or FIFO. We'll leave that for somebody else. Well, I'm
17 going to argue with you one degree.

18 If it is FIFO, just hypothetically, then -- and the
19 brokerage statement shows that by the end of 2014, IceRose had
20 sold way more than the 489,000 shares that it owned at the time
21 of the merger, then all of the shares at the time of the merger
22 were gone; correct?

23 A I think that you may only be referring to the Morgan
24 Stanley, which would have shown the transfer and their
25 interactive brokers. And you might be thinking that all the

1 shares were sold --

2 Q Okay.

3 A -- when, in fact, that is not the case. They were
4 just transferred to interactive brokers. But I don't -- if
5 you --

6 I need to repeat the question -- you to repeat the
7 question to answer it.

8 Q I will try.

9 A Okay.

10 Q I will try. It was a unclear cue. IceRose lost a
11 good deal of money on its speculative investment in Parametric;
12 correct?

13 A Well, the investment should have been less
14 speculative post-merger, which is when the money was lost. So
15 I would not say it's correct that IceRose lost money in its
16 speculative investment in Parametric. In fact, I probably made
17 money on that speculative investment -- or IceRose probably
18 made money on the speculated investment in Parametric.

19 Q You told us earlier that when you invested in
20 Parametric it was a speculative investment. You want to change
21 that now?

22 A No. But post-merger, it was a different sort of
23 situation. It ended up being speculative, but I wouldn't have
24 described the position I held when I lost the money as a
25 speculative position. There was a true statement that it --

1 when I invested in 2013, prior to the merger, it was a
2 speculative investment. Yes.

3 Q Okay. So you invested money at the time it was a
4 speculative investment. And at some later point in time, you
5 lost a lot of money.

6 A I invested some amount of money when it was a
7 speculative investment. It should -- you know, what does
8 speculative mean? Not much. But if the -- when the merger was
9 announced that the deal was happening, it should have de-risked
10 at least the speculative nature of it and more shares were
11 purchased then. So I wouldn't -- it's not cut and dry.

12 Q In fact, the amount of money that IceRose lost on its
13 investment in Parametric, whether you stick with speculative or
14 not, was one of the main reasons that you had to shut down the
15 IceRose hedge fund; correct?

16 A I didn't have to shut it down. In fact, it still
17 exists to this day. So I certainly didn't have to shut it
18 down. It was one of the reasons I chose to unwind and -- I
19 don't have employees. It's not what I do day to day. So it
20 is, yes, in part, definitely, the fact that I lost a
21 significant (indiscernible) IceRose, of which I was the largest
22 investor. I lost a significant amount of money. Parametric
23 certainly contributed to my decision to unwind the day-to-day
24 operations of IceRose.

25 Q In the months after the merger, we've touched on this

1 a little bit earlier, although Parametric, now Turtle Beach's,
2 stock price was dropping, you still believed in the company.
3 You just thought it was being mismanaged. Right?

4 A Correct.

5 Q And you thought that the answer to Turtle Beach's
6 mismanagement problems was for them to bring you onto the
7 Turtle Beach board and come to the rescue; right?

8 A No, it's not for me to bring on. I wanted likely
9 someone else. I offered myself for someone else. I never said
10 it had to be me, and I figured, one, I had no idea if I could
11 or wanted to do it in terms of the restrictions around other
12 trading; and two, that if I -- who was in confrontation with
13 Juergen also said me or someone else, it was more likely that
14 someone else, and they actually get the real -- that's -- I
15 wanted someone on there, for sure.

16 Q True or false, you suggested to Juergen Stark that
17 you would agree to the associated trading restrictions and be a
18 Turtle Beach board member?

19 A I don't recall. It would at least surprise me if I
20 did, and I know I said that I was interested in me or someone
21 else joining the board. If you have a document that says that,
22 I'm sure that I did say it. I don't recall whether I
23 specifically said that.

24 Q That's funny, I do.

25 MR. KOTLER: DX949.

1 MR. APTON: One second.

2 THE COURT: 1049?

3 MR. KOTLER: 949.

4 THE COURT: 949. Thank you.

5 MR. APTON: 949?

6 MR. KOTLER: Yes.

7 MR. APTON: No objection.

8 THE COURT: Be admitted.

9 (Defense Exhibit Number(s) 949 admitted.)

10 BY MR. KOTLER:

11 Q Turn to -- it's an e-mail exchange. We're going to
12 go to the very first e-mail, which is at the -- on the second
13 page. Monday, April 28th, 2014, at 9:36, where it says, "Adam
14 Kahn wrote."

15 Second paragraph, you wrote, "Time to put another
16 outside board member on the board with public market
17 experience. I'd agree to the associated restrictions and do
18 it, or I could provide you with several good choices."

19 You meant that you when you wrote that to Juergen
20 Stark; correct?

21 A This was in 2013 and I'm sure I --

22 Q 2014.

23 A I apologize, in 2014. I'm sure I would have had to
24 have done more due diligence and I wasn't saying it as a
25 definitive. But it looks clear and yeah, sure, I was saying I

1 would do it, but, also, I could provide other people.

2 Q Right. When you wrote this, you meant what you
3 wrote; that's all I'm asking you.

4 A Very -- I believe --

5 Q Okay.

6 A I usually mean what I write.

7 Q Okay. Well, good. Next e-mail, Juergen Stark
8 responds to you, and he didn't take you up on your invitation
9 to join the board. In fact, he didn't even ask you for a
10 recommendation as to who you thought would like to be added to
11 the board; correct?

12 A In that e-mail, that is correct.

13 Q Okay. And then above that, you respond. And in the
14 second paragraph, you tell him that you have retained advisors
15 and legal counsel in hopes of making a fully financed all-cash
16 offer for the company in the immediate future. You meant that
17 when you wrote that to Juergen Stark; correct?

18 A I'd say that that was not -- I was definitely
19 thinking about it. I forgot about this until you showed it to
20 me at the deposition and it went away quickly. So this wasn't
21 a material or a lengthy thing. I moved on from this quickly.
22 But I was certainly thinking about it, and I certainly wanted
23 to cajole Juergen and the board into adding an independent
24 advisor. And I certainly hired a (indiscernible) counsel that
25 I had discussions with about this topic.

1 Q I'm just trying -- you just told us before if you
2 write something, that you believe it to be true. So when you
3 wrote, "I plan to bid \$12 and more than a 35 percent premium to
4 last for the shares," was that true when you wrote it?

5 A It's -- I mean, it was likely true. I don't remember
6 exactly. But it wasn't, like, I was definitely considering it.
7 And as I told you, my real intent, which was -- at the time,
8 the thing I recall is trying to get the company to -- what I
9 thought was incompetence, and turned out it was fraud, but I
10 was trying to get the company to stop or at least have what I
11 thought was adult oversight, and I was willing to take measures
12 to try and effectuate that. And this would be a measure to try
13 and effectuate that.

14 Q This was a bluff?

15 A It wasn't.

16 Q It was a bluff.

17 A I'd hired Kirkland and Ellis and we discussed this in
18 detail. So I wouldn't say it was a bluff. I would also say
19 it's not 100 percent, like, this was definitely happening or
20 definitely in the plans. I don't actually -- I didn't remember
21 this happening until you showed me this document, which did
22 trigger memories of the discussions and related with Kirkland.
23 But I would -- it's somewhere -- I think maybe I described it
24 previously as somewhere between a bluff -- in between a bluff
25 and directly accurate.

1 Q So when it comes to communicating with Juergen Stark,
2 some of the things you write are true and some are bluffs; is
3 that fair?

4 A It's fair to say that at this point in time, in
5 April, my intent was to get adult supervision at the company,
6 and it would be e-mails. And what I was doing was directed
7 toward that end. But it's -- I did have legal counsel where we
8 very thoroughly did discuss a potential -- purchase the
9 company. It's not like there's no truth in here. And Kirkland
10 and Ellis was more than qualified, the people I was working
11 with were all more than qualified to offer that advice, and it
12 was discussed.

13 Q This statement where you wrote, "I plan to bid \$12 or
14 more," that wasn't completely true, was it?

15 A I didn't have a specific plan. But I don't -- I
16 can't tell you on April 28th, 2014, whether I planned to do
17 that or not.

18 Q Okay. And, in fact, you ended up not making this
19 plan offer that you bluffed in this e-mail; correct?

20 A You just asked a question with something I disputed.
21 So it's -- I'm not going to say correct, the bluff e-mail, when
22 I told it wasn't a bluff. So it -- it just seems like a little
23 bit much.

24 Q I'll ask you a better question. That's fair. You
25 never made a \$12 --

1 A Correct.

2 Q -- or more bid; correct?

3 A Correct.

4 MR. KOTLER: DX950 will be next.

5 THE COURT: 950?

6 MR. KOTLER: 950, yes.

7 THE COURT: Thank you. Hold on a minute. Any
8 objection?

9 MR. APTON: No objection, Your Honor.

10 THE COURT: Be admitted.

11 (Defense Exhibit Number(s) 950 admitted.)

12 BY MR. KOTLER:

13 Q So instead of after your offer to join the Turtle
14 Beach board was rejected, and after you thought about, but
15 didn't follow through on your plan to make the all-cash offer
16 for the company, it looks like nine days later, you accuse Mr.
17 Stark and Turtle Beach's CFO of violating Nevada law and being
18 willfully deceitful; right?

19 A That does indeed what it looks like, yes.

20 Q Okay. So that -- let's look at your May 7th e-mail.
21 When you wrote this, you -- was this one of the ones you meant
22 or was this one of the bluffs?

23 A This was in relation to the secondary offering, and
24 I'm fairly certain that I believe this to be true. But I'm --
25 don't recall my mindset --

1 Q Well, it --

2 A -- on May 7th.

3 Q Okay. If, in the course of testimony today, you get
4 some recollection as to whether this is one of the true ones or
5 one of the bluff ones, just let me know, okay?

6 A So you keep referring to the bluff, when all of these
7 actions that came in this time period all have the same intent,
8 which was to get adult supervision at the company. And I
9 wanted to maximize the value of investment and this was what I
10 believed at the time was to get -- to pressure the company into
11 doing the right thing.

12 Q So you'll say what you think you need to say in order
13 to get to the result that you think you want to get to; right?
14 That's what you were doing here.

15 A I believed that this was true. I already told you
16 that I believed --

17 Q Right.

18 A -- that the e-mail was true. So I don't know what
19 you mean, Say what you need to say? I wouldn't make things up
20 or have people rely on false -- there's nothing in here that
21 anyone -- none of these have any group reliance by the people.
22 I'm not causing or leading anyone astray about what's happening
23 or anything relevant. I'm pressuring them.

24 But I could -- there's a certain playbook that's used
25 in special situation activist situations. And these are part

1 of that. But I -- there's -- this is -- I could tell you
2 why -- you said this, like, that Juergen told me in December
3 that business was going to be better and recapture. And then
4 two weeks before they did the secondary, which they very much
5 needed to do, they -- Juergen said they had no need for it.
6 And, in fact, we know they had the need for it before the
7 merger even closed because it was discussed in November and
8 December of 2013. I don't believe I knew that at this time
9 when I wrote the e-mail. But it was discussed in November and
10 December of 2013 that they were going to have to do the massive
11 (indiscernible) in the March/April time period.

12 And so Juergen's statement was categorically false.

13 Q All right. Just to be clear, what we're talking
14 about here is the equity raise that Turtle Beach did in April
15 of 2014. So three months after the merger; correct?

16 A Yes, this has nothing to do with the merger. I'm
17 just talking about statements that were made prior to the
18 merger.

19 Q Okay. Go over to the second page, please. I'm going
20 to show you something at the bottom of the page.

21 So even after you've just finished accusing Mr. Stark
22 and Mr. Hansen of secure -- of statutory violations and
23 willfully deceit comments, at the very bottom there, you write,
24 "I must impress upon you the need for myself or a mutually
25 agreeable third party to be appointed to the board."

1 So you were so concerned with their statutory
2 violations and willful deceit that you were looking to join the
3 board?

4 A I was concerned by the way they were managing of the
5 company, because I still, at that time, thought they were
6 acting in good and didn't need to do the equity raise, because
7 I was relying on the statements. And so, yeah, I thought that
8 they lied about not doing the equity raise and then doing it.
9 But that's very different than continuous bad-faith actions.
10 And in the market, it isn't uncommon for companies to say that
11 they don't need to do an equity raise, and then subsequently do
12 one.

13 However, it is usually true that they don't need to
14 do the equity raise, but they choose to do it when they
15 subsequently do it.

16 Q All right. Let's go back up to the first page of
17 your e-mail here. You then forwarded it to a Ken Fox at
18 Stripes Group; you see that?

19 A Yes.

20 Q And you know -- you now know Ken Fox to be very
21 senior person with Stripes who was part of the --

22 A I believe at this point in time, he was the chairman
23 of Turtle Beach.

24 Q Okay. Of Turtle Beach?

25 A Yes.

1 Q Or BTBH, what --

2 A Well, that's a public company now. So --

3 Q Right. And you hadn't spoken to Mr. Fox before;
4 right? You wrote that in your e-mail. But you thought as part
5 of your playbook, that you should forward your e-mail to him
6 and make him aware of your allegations against MR. Stark and
7 Mr. Hansen; right?

8 A Yeah, I had no idea his involvement or what he knew
9 or didn't know and what have you.

10 Q But, again, as part of what you just described as the
11 activist playbook, you thought it was a good idea to take your
12 e-mail, forward it to the chairman of Turtle Beach, and then
13 write,

14 "Before I'm forced to escalate the
15 situation and directly involved parties that I
16 imagine neither of us would like to, I'd like
17 to ensure you are aware of an e-mail I sent to
18 Juergen this afternoon."
19 You wrote that; correct?

20 A Yes.

21 Q And you meant that when you wrote it; correct?

22 A Not -- I mean, I --

23 Q No?

24 A I don't know if I would -- I don't think I was ever
25 really planning on escalating the situation. But I'm -- not

1 that I wanted the -- it to change, that I wanted the change to
2 occur.

3 Q Is that part of the playbook, to say things but not
4 really mean them? Like this to Mr. Fox, the chairman of Turtle
5 Beach?

6 A Is it part of the playbook to say that there -- it's
7 going to escalate when things -- yeah, because there's --
8 you're -- there's a course of action that isn't occurring and
9 you need to apply pressure. I don't know -- I'm pretty
10 positive I wasn't planning on actually suing the company, but I
11 don't remember my precise state of mind on May 7 of 2014.

12 Q Okay. But despite your playbook and your threats,
13 you never ended up being asked to join the Turtle Beach board,
14 did you?

15 A I never really -- I don't know if I wanted to.
16 Before I moved on, I was offered by your colleague, Josh, as a
17 (indiscernible) for there to be a third party added to the
18 Turtle Beach board. And I decided to just move on from the
19 situation entirely and didn't pursue it. But there were
20 negotiations between lawyers happening, and there was that
21 progress. It was definitely possible that I would have
22 achieved the aims, had I continued on this path.

23 Q Well, speaking of lawyers, DX951.

24 MR. KOTLER: 951.

25 THE WITNESS: Again, I don't know --

1 MR. KOTLER: Any objection? It's a yes or no.
2 You've got an objection? Just tell me.

3 MR. APTON: Could we see a foundation first?

4 THE COURT: That's an objection.

5 MR. APTON: Thank you.

6 THE COURT: Okay. So can you lay some foundation,
7 please.

8 MR. KOTLER: Most certainly.

9 THE COURT: Lovely.

10 BY MR. KOTLER:

11 Q Mr. Kahn, during the 2014 period we're discussing,
12 IceRose retained the Kirkland and Ellis Law Firm; correct?

13 A Correct.

14 Q A fellow named Jay Lefkowitz; correct?

15 A Yes.

16 Q And you authorized Mr. Lefkowitz to engage in
17 discussions and correspondence regarding the issues following
18 the equity raise that we just discussed; correct?

19 A And they did attempt to get adult supervision on the
20 board. Correct.

21 Q Yes. And you understand that Mr. Lefkowitz, in fact,
22 did prepare and send out correspondence on behalf of IceRose
23 with respect to Parametric and Turtle Beach; correct?

24 A Yes.

25 MR. KOTLER: Again, I'll seek the admission of DX951.

1 THE COURT: You haven't laid a foundation yet.

2 MR. KOTLER: Put it up (indiscernible).

3 THE COURT: Mr. Peek might be able to tell you --

4 MR. KOTLER: Yes, I got it. I heard him.

5 THE COURT: See the old guys in the room?

6 MR. KOTLER: Yeah.

7 THE COURT: Yeah, okay.

8 MR. KOTLER: Yes. Adult supervision. I'd like to
9 show the witness DX951.

10 THE COURT: You can't. Because in order to pop it up
11 on the screen, I have to --

12 MR. KOTLER: Okay.

13 THE COURT: -- do something else.

14 MR. KOTLER: You have a hard copy?

15 MR. APTON: Yep. Thank you.

16 THE COURT: Thank you. You can approach.

17 MR. KOTLER: Thank you, Your Honor.

18 THE COURT: Does anybody object to the witness being
19 handed a piece of paper by opposing counsel?

20 MR. APTON: No, Your Honor.

21 THE COURT: All right.

22 BY MR. KOTLER:

23 Q Mr. Kahn, do you recognize DX951?

24 A I believe you showed it to me at the deposition. I
25 haven't thought or seen it before that.

1 Q Does it appear to be -- I'm sorry, I didn't mean to
2 you step on your answer.

3 A It looks to be accurate.

4 Q Does it appear to be a true and accurate copy of a
5 letter that was sent by Jay Lefkowitz of Kirkland and Ellis to
6 Joshua Hess of Deckert on May 14th, 2014, regarding Parametric
7 Sound Corp., Turtle Beach, documents must be preserved?

8 A I have no reason to believe otherwise.

9 MR. KOTLER: At this time I move for the admission of
10 DX951.

11 THE COURT: Any objection?

12 MR. APTON: No. Thank you, Judge.

13 THE COURT: Be admitted.

14 (Defense Exhibit Number(s) 951 admitted.)

15 BY MR. KOTLER:

16 Q In the first paragraph of the letter, you see that
17 Mr. Lefkowitz wrote that he was writing on behalf of IceRose
18 Capital Management. You understood that IceRose had retained
19 Mr. Lefkowitz in the Kirkwood and Ellis firm at that time?

20 A Correct.

21 Q In the second paragraph, Mr. Lefkowitz wrote.

22 "IceRose has raised serious questions
23 regarding whether the board of directors of
24 Parametric acted in accordance with his
25 fiduciary duty with, among other things" --

1 And then down at D.

2 -- "the merger with Turtle Beach, which
3 closed on January 15th, 2014."

4 "The merger," you see that?

5 A I see that.

6 Q And you understood that Mr. Lefkowitz had conveyed
7 those words on behalf of IceRose as of this date; correct?

8 A I understand that, yes.

9 Q And, in fact, you're sure that you were involved or
10 aware of the sending of this document; correct? Before it went
11 out?

12 A Very much likely. I would hope that I saw this
13 document before it went out.

14 Q And, in fact, you -- strike that. This was not the
15 last letter that you had Mr. Lefkowitz send to Mr. Hess, was
16 it?

17 A I have no idea.

18 MR. KOTLER: DX952.

19 THE COURT: Any objection to 952? Do you want 951,
20 the hard copy, back?

21 MR. KOTLER: Yes, I will take that back. May I
22 approach, Your Honor?

23 THE COURT: You may.

24 MR. APTON: No objection.

25 THE COURT: Be admitted.

1 (Defense Exhibit Number(s) 952 admitted.)

2 BY MR. KOTLER:

3 Q DX952 is another letter on behalf of IceRose from
4 Mr. Lefkowitz; correct?

5 A I have no reason to not believe that.

6 Q Now, unlike your last letter, this letter didn't --
7 or prior correspondence, this letter didn't just threaten the
8 lawsuit, it actually attached the draft complaint; isn't that
9 right?

10 A I didn't -- do recall seeing that in discovery, yes.

11 Q Okay. Well, let's go to the second page of the
12 letter. You see right at the bottom, "Absent a prompt amicable
13 resolution, we intend to file the attached complaint."

14 Did I read that correctly?

15 A You did.

16 Q The amicable resolution that you had in mind at this
17 point was still to add new directors to the board, potentially
18 including yourself?

19 A I don't remember if it -- potentially included myself
20 or not. But yes.

21 Q All right. Let's go over to the draft complaint,
22 which is on page 3 of 63 of the documents.

23 According to the draft complaint that was prepared on
24 behalf of IceRose, IceRose Capital Management would have been
25 the plaintiff; do you see that?

1 A Yes.

2 Q So this was going to be IceRose's lawsuit against all
3 of those folks listed underneath the V; right?

4 A Right. There was never an intent to file the
5 lawsuit, but yes.

6 Q Let's go back to the last -- second page of the
7 document, the letter.

8 Absent a prompt amicable resolution, we intend to
9 file the attached complaint.

10 Is that not true?

11 A That is not true. Yes, that is definitely not true.
12 I mean, he wrote it. That is true that he wrote it. But, I
13 guess you could say the same thing about Jay that you said
14 about me. And they -- we were offered a board set for at
15 least -- I forgot the specifics of it. But the last I recall,
16 they were offered to add -- offering to add an independent
17 third party to the board and it was our turn to respond, and we
18 jus stopped.

19 So to me that's not intending to file an attached
20 complaint. Progress was being made and we walked away. It's
21 not an intent to file an attached complaint.

22 Q Fair to say that you reviewed this letter and the
23 draft complaint before it was sent out on August 11th, 2014?

24 A Yeah. Yes.

25 Q And when you reviewed this draft complaint, you

1 believed its allegations to be true and accurate to the best of
2 your knowledge at the time; correct?

3 A Well, I was focused on the secondary offering, as you
4 can see from all the other complaints. And the self-dealing
5 and the math, which I believe are what this referred to mean.
6 There was a materially adverse (indiscernible) the merger
7 shouldn't, then, have closed. I believe those things to be
8 true at the time. I mean, they were objectively true at the
9 time, based on publicly available information.

10 Q According to the complaint that was drafted and that
11 you reviewed before it went out the door, it was, "Complaint
12 for breach of fiduciary duty and aiding and abetting breach of
13 fiduciary duty."

14 Did I read that correctly?

15 A I believe -- yeah, that's what it says.

16 Q And listed among the defendants are Juergen Stark;
17 right?

18 A Right.

19 Q The same Juergen Stark who is a defendant in the
20 lawsuit that we're here for today; correct?

21 A Correct.

22 Q And Kenneth A. Fox, the same Kenneth A. Fox who was a
23 defendant in the lawsuit that we're here for today; correct?

24 A Correct.

25 Q And the Stripes Group, the same Stripes Group that is

1 a defendant in the lawsuit that we're here for today?

2 A Yes.

3 Q So based on this draft complaint and the letter that
4 you authorized and reviewed, as of August 11th, 2014, IceRose
5 had come to the belief that Mr. Stark and Mr. Fox and Stripes
6 Group had aided and abetted in some breach of fiduciary duty in
7 connection with the merger; correct?

8 A I have no idea if that's true, and I would have to
9 review the complaint to see if there -- the allegations against
10 them had anything to do with the merger or they had to do with
11 the other claims in the complaint. I'm not familiar enough to
12 say that that is true or not true.

13 Q Fair enough. So even after Turtle Beach refused your
14 request to be put on the board or to have adult supervision, as
15 you describe it, even after you accuse their senior leadership
16 of violating Nevada law and being willfully deceitful, and even
17 after you threatened, but actually didn't mean to threaten,
18 Turtle Beach's CEO for breach of fiduciary duty, I presume you
19 sold off whatever shares of Turtle Beach that IceRose still
20 held; right?

21 A So I -- the threat of the breach was, obviously, not
22 in relation to the merger. I told him that I thought he did it
23 with respect to the equity offer. And, no, because I -- until
24 further actions in 2016, didn't believe that the management was
25 acting in bad faith, that they were acting contrary to the

1 interests of the shareholders. And there was a ton of
2 information that I wasn't aware of until 2019 related to what I
3 would consider to be bad actors.

4 And at the time, I -- you know, I wasn't pleased and
5 I thought they were doing a piss-poor job, but I really thought
6 it was incompetence.

7 Q In fact, you were so disturbed after sending this
8 draft complaint, that less than three weeks later, you went on
9 a buying spree of Turtle Beach stock; isn't that right?

10 A I don't recall. But every stock has a value. And as
11 I've told you previously, that there -- I didn't believe them
12 to be bad-faith actors, even if they made a claim that wasn't
13 true. And that there still could have inherent value in the
14 securities. Obviously, if I bought the stock, and I'm sure
15 you're right on this, that I believe the stock to be
16 undervalued. But I was still relying on what I now know to be
17 completely false misrepresentations from Juergen Stark.

18 Q You recall in this lawsuit that IceRose ultimately
19 produced its brokerage statements, not just in the piece that
20 was in the plaintiffs' exhibit, but for all of its purchases
21 and sales after --

22 A I recall that my counsel asked for them and said that
23 they were needed for the lawsuit.

24 Q Okay.

25 A Again, I'm not -- there's so much, I don't know what

1 was produced, what wasn't produced.

2 Q So if I were to tell you that between September 3rd,
3 2014, and September 15th -- or September 16th, 2014, IceRose
4 went out and bought 167,000 shares of Turtle Beach stock during
5 that period, just less than three weeks after you had
6 threatened to sue them for aiding and abetting breach of
7 fiduciary duty. Any reason to disagree with that?

8 A So I think that that kind of speaks to the fact that
9 I didn't strongly believe in the case, and at that time, the
10 stock may have been a dollar, I have no idea. So I don't
11 recall where I was trading in that period of time in 2016. So
12 it's not like buying 167,000 when the stock was at 20. And I
13 think that just speaks to my view that the issues at Turtle
14 Beach, which were wrong, were -- at least the vast majority of
15 them, were due to incompetence.

16 Q So all of those words that we just talked about in
17 our tour through 2014, you didn't really believe any of that,
18 even though you were communicating with Juergen Stark and
19 having lawyers write letters and forwarding to --

20 A What do you mean, didn't believe any of that? There
21 was a Mac; right? But there's -- things happened. And if they
22 weren't aware of it, they needed to do something on the last
23 day, because business had actually fallen apart that week,
24 which was what I was informed and told. Then, that to me is a
25 forgivable sin. And I can value a security and if it's

1 undervalued, I can purchase that security.

2 Q 167,000 of those securities in a two-week period
3 right after you finished threatening everybody and their uncle
4 with lawsuit sand violations and willful deceit; correct?

5 A I'd have to see the timeframe. And it also may have
6 been because I knew I was getting restricted starting sometime
7 in late 2014 in the security, and I wanted to increase the
8 purchase into that restriction. I don't remember the price of
9 the security in that window in 2016 or other aspects, but it
10 wasn't, like, I can tell you everything I subsequently learned
11 that changed my view, if you would like me to.

12 Q Well, I think we've heard that.

13 A No, you haven't.

14 MR. KOTLER: May I have 30 seconds, Your Honor?

15 THE COURT: You can. Apparently Mr. Hess is in
16 charge.

17 MR. KOTLER: Yes, that's obvious.

18 MR. HESS: Hardly the case, Your Honor.

19 MR. KOTLER: I don't have any further questions at
20 this time, Your Honor.

21 THE COURT: All right. Is this a good time for our
22 afternoon break?

23 We went two hours and two minutes, by the way.

24 (Proceedings recessed at 3:08 p.m., until 3:11 p.m.)

25 (Pause in the proceedings)

1 THE COURT: All right. Mr. Peek, are you ready to
2 go?

3 MR. PEEK: Not yet, Your Honor, but I will be.

4 THE COURT: You've got to wipe down.

5 (Pause in the proceedings)

6 THE COURT: Are you ready now?

7 MR. PEEK: I am, Your Honor.

8 THE COURT: All right.

9 THE WITNESS: Can I quickly get a water?

10 THE COURT: Yep. Hold on. I'm not starting your
11 time yet because the witness wants to go grab a water. So that
12 doesn't count against you.

13 MR. PEEK: I'm used to these clocks on me, Your
14 Honor.

15 THE COURT: I know. I know you are.

16 Okay. Let's go.

17 CROSS-EXAMINATION

18 BY MR. PEEK:

19 Q Mr. Kahn, I want to actually go back to that exhibit,
20 which is 952, which is the draft complaint. And you said you
21 didn't think it had anything to do with the merger?

22 A I don't believe I said that. I said he's questioning
23 what's relating to the fiduciary claims about Stark and Fox and
24 that I didn't recall that those claims -- because the merger
25 was not depressive, as you can see. I don't think the merger

1 is mentioned anywhere in the top several paragraphs of this
2 letter. Whether those claims against them had anything to do
3 with the merger or not, and --

4 Q Well, let's just -- let me just have you take a look,
5 then, at some of the allegations of your lawyer -- by the way,
6 did you review this complaint before he sent it off?

7 A I would be very surprised if I didn't.

8 Q And so when your lawyer said, "We intend to file the
9 attached complaint," was that just not truthful?

10 A That was not truthful. That's correct.

11 Q So your lawyer was lying for you?

12 A I mean, I --

13 Q Did you tell him to lie for you? Did you --

14 A The objective --

15 Q -- tell him to say --

16 THE COURT: Wait. Wait. One at a time, please. Let
17 Mr. Peek finish, and then he'll do you the same courtesy.

18 BY MR. PEEK:

19 Q Did you tell him to lie and say we intended to file a
20 complaint, knowing that you did not?

21 MR. APTON: Objection. Attorney-client privilege,
22 Your Honor.

23 THE COURT: Sustained.

24 We don't want to know what your lawyer told you or
25 what you told your lawyer.

1 BY MR. PEEK:

2 Q But in any event, you had no intent to file the
3 complaint; is that correct?

4 A I don't know if I had zero, but the plan was never --
5 I've never previously filed suit against a company. I've never
6 been involved and I have no desire to --

7 Q Didn't ask you all those questions. I just asked --

8 A I'm just answering the question --

9 Q -- do you intend to file the complaint? Yes or no.

10 A You're asking a question about my state of mind in
11 2013. The best way I can answer that, because I don't know my
12 specific -- sorry, in 2014. I don't know my specific state of
13 mind, but I do know that historically, I --

14 Q I don't want to know historically. I just want to
15 know --

16 THE COURT: Mr. Peek, you've got to let him finish
17 his answers.

18 BY MR. PEEK:

19 Q -- whether at that time you intend -- that's a yes or
20 no, or I don't know.

21 THE COURT: Sir, were you done with your answer?

22 THE WITNESS: I was not done.

23 THE COURT: Okay. Could you finish your answer,
24 please.

25 THE WITNESS: There is a lot of reasons you don't

1 want to go into litigation. I would avoid almost anything -- I
2 know that at that point in time, there was nothing that
3 suggested to me that I wanted to go forward with the process
4 of --

5 BY MR. PEEK:

6 Q So you don't want to go into litigation, but you want
7 to threaten litigation. Is that your style of negotiation,
8 then?

9 A I have never otherwise threatened litigation in --
10 with a complaint against anyone, to my knowledge. So that
11 would not be my style. I don't even know if it was my idea or
12 the idea of the counsel. And to do so, it could not even have
13 been my strategy. I don't remember.

14 Yeah. Could you repeat the question again?

15 Q I'm sorry it's difficult. You hired this lawyer to
16 represent you and do the actions that you directed him to take;
17 correct?

18 A The counsel was hired in order for us to pursue what
19 I thought would be value-maximizing for the equity position,
20 and suing the company isn't particularly value-maximizing for
21 that equity position. I'm sure that there were discussions on
22 strategy that I had with Kirkland that I know I'm not supposed
23 to talk about and, fortunately, also don't recall.

24 Q Well, you can talk about it if you want. You just
25 have a right not to, but you can talk about it if you want.

1 Nobody's restricting you from talking about it. You have a
2 protection, but if you want to talk about it, you can.

3 THE COURT: You are the one who may waive the
4 privilege.

5 MR. PEEK: Correct.

6 THE WITNESS: Okay.

7 THE COURT: You may make --

8 MR. PEEK: If you want to talk about --

9 THE COURT: -- an intelligent decision to waive it if
10 you decide to. You might want to talk to your lawyer before
11 you make that decision.

12 THE WITNESS: Okay.

13 THE COURT: So it's up to you.

14 BY MR. PEEK:

15 Q In any event, it's somebody's negotiating style --
16 whether it's yours or the lawyer -- to send a threatening
17 letter and attach to that letter a draft complaint that you say
18 we intend to file it without an amicable solution.

19 A To me, when you say it's someone's style, if someone
20 does something once, does that make it their style? This
21 happened. This is in evidence. I have never otherwise done
22 this. So to say it's my style, I would not say it's my style.
23 It occurred. I believe this document is valid.

24 Q As we look through those emails, beginning with
25 949 -- 950, 940 -- 949, 950, 951, and 952, all those

1 correspondence with Juergen and then later with the lawyer,
2 they're all rather threatening, are they not? If you don't do
3 this, then I will do that.

4 A They were -- so you're saying it was my style in this
5 instance to do this? I'm saying it didn't happen in any other
6 case.

7 Q It happened in this case. So we at least know -- I
8 don't care about your other cases. I'm just talking about this
9 case. In this case, what we saw through your emails,
10 Exhibits 949, 950, the letters of 950 and '51, you're
11 threatening them, If you don't do something for me, I will take
12 this other action against you. You said that, didn't you?

13 A I would not say that because, in my mind, appointing
14 an independent director, which was the endgame, wasn't for me.
15 It was for the interest of all Turtle Beach shareholders, which
16 also would have benefited me as a Turtle Beach shareholder.
17 But I wasn't doing it for personal benefit.

18 Q So you say in your complaint that you currently own
19 1 million shares of Turtle Beach; correct?

20 A I don't have the complaint in front of me.

21 Q You have it in front of you. It's just Exhibit 952.

22 THE COURT: You can move it to another page, if you'd
23 like him to page through it.

24 BY MR. PEEK:

25 Q If you'd like to look at page 4 --

1 THE COURT: Or they can blow it up for you.

2 BY MR. PEEK:

3 Q -- of the complaint, on page 4 of that exhibit.

4 A How do I do that?

5 THE COURT: You just ask them nicely.

6 MR. PEEK: Would you turn to page 4 for me, please,
7 Ryan, so that the witness and I can both see the 1 million
8 shares.

9 THE COURT: Once you're on the screen, you can blow
10 it up as large as you want or move it before or after, if you'd
11 like to see other parts.

12 THE WITNESS: Okay. I imagine that that was after,
13 yes.

14 BY MR. PEEK:

15 Q You provided that information to your lawyer and put
16 it in the complaint; correct?

17 A Yes.

18 Q And then moving on to the next page, you also talk
19 about the merger, do you not, on paragraph 8, paragraph 9,
20 paragraph 10? Do you see that?

21 A Yeah, that's -- I believe those are factual
22 statements about what happened in that period of time around
23 the merger.

24 Q And you also say in paragraph 11 that Parametric was
25 a financially distressed company; correct?

1 A Can you unblow it up so I can read the rest of the
2 sentence, please.

3 Q Well, I'm just going with the one sentence. I took
4 the sentence by itself.

5 A Right, but it's -- I need to see the context.

6 Q Okay.

7 THE COURT: And I told him he's allowed to see the
8 context. So do you want to see above or the next paragraph or
9 above it?

10 THE WITNESS: So can you repeat the question, please.
11 BY MR. PEEK:

12 Q You at least alleged, because you believe this, that
13 in March 2013, Parametric was a financially distressed company.

14 A I believe that -- well, what's financially
15 distressed? Turtle Beach was a financially distressed company
16 as much as Parametric was, but I don't recall whether I went
17 line by line of the complaint and believed or didn't believe
18 any of the statements. In the, I guess, draft of --

19 Q You said this at least in the complaint; correct?

20 A I'm sorry?

21 THE COURT: Mr. Peek, you have to let him finish his
22 answer.

23 MR. PEEK: Well, Your Honor --

24 THE COURT: I know.

25 MR. PEEK: -- when he starts answering the questions,

1 it would be a lot easier for me --

2 MR. PEEK: Mr. Peek.

3 MR. PEEK: -- but he's not answering the questions --

4 THE COURT: Mr. Peek.

5 MR. PEEK: -- and you know that.

6 THE COURT: Please, do not interrupt the witness.

7 THE WITNESS: It's a draft complaint that wasn't
8 filed. It does, in fact, say complaint right there. It was
9 never filed. So in my mind, that's not -- it's not a complaint
10 until filed. I'm not a lawyer. Maybe it is a complaint in
11 draft form. It was something sent to them, sent, as we've seen
12 here, from Lefkowitz to, I believe, Josh Hess.

13 BY MR. PEEK:

14 Q Let me know when you're done, so I can ask the next
15 question.

16 A I'm done.

17 Q Okay. And then in your next sentence, you say,
18 "Desperate to find the capital to keep itself afloat,
19 Parametric entered into negotiations with VDP -- VTB."

20 Did you believe, as is stated here, that
21 Parametric -- at least your lawyer is saying that -- was
22 desperate to find capital needed to keep itself afloat?

23 A No.

24 Q You didn't believe that?

25 A I don't -- I don't --

1 Q So that was a lie when you wrote -- when your lawyer
2 wrote this on your behalf?

3 A On the behalf of -- a draft complaint on the behalf
4 of IceRose?

5 Q Was it a lie when your lawyer wrote this, and he sent
6 it to, what, Josh Hess? Yeah, sent it to Josh, the lawyer
7 sitting over here.

8 A I mean, it's like one of those statements that's
9 wishy-washy. They needed capital desperate. Like, that seems
10 like a loaded word. I don't know if they were desperate. They
11 needed capital to keep themselves afloat. Lots of companies
12 that even have over \$100 billion market caps continually need
13 influxes of capital to keep themselves afloat. It doesn't
14 suggest there's an issue with the equity, per se. There are
15 many large cash-burning entities that constantly need access to
16 capital markets in order to keep themselves afloat.

17 Q Well, he goes on and said because they were desperate
18 to find -- to find the capital to keep afloat, it entered into
19 negotiations with VTB. Is that a truthful statement as well,
20 that whole phrase?

21 A I mean, it depends on the --

22 Q Sorry?

23 A -- meaning of the word "desperate." I don't know if
24 "desperate" -- if I agree with that word or not, but it's true
25 that they were in search of capital and did strategic

1 alternatives, and as part of that, they entered into
2 negotiations with VTB.

3 Q At least it's the words that your lawyer used when he
4 sent the draft of the complaint to this lawyer over here, Josh
5 Hess; correct?

6 A It appears to be so, yes.

7 Q And I guess you're telling us that before this
8 complaint was even drafted and forwarded to Mr. Hess, you
9 didn't review either it or the letter sent with it; is that
10 your testimony, Mr. Kahn?

11 A This is just amazing to me because there are so many
12 more obvious falsehoods in the opening statements by you and
13 your co-counsels, that you would sit here and go after this one
14 line of a draft complaint that was never introduced in a court
15 and I have no rational reflection of from 2013 and ask me about
16 it. I guess, yes.

17 Q So I guess now you're just accusing me now of making
18 this statement because you didn't like my opening statement and
19 the facts that we will present from that witness chair and from
20 those documents in this repository; is that -- is that what
21 you're saying now?

22 A If you'd like, I can tell you -- well, it's not
23 factual about parts of your opening statement and why I know
24 them to be false.

25 Q Well, you and I will get to that, and so will the

1 Court get to that, and the Court will ultimately make that
2 decision as to whether or not the statements were or were not
3 false.

4 What we do know, at least, is in August of 2014, your
5 lawyer writes that Parametric was desperate to find capital and
6 sought out VTB for a merger. We know those -- that fact;
7 correct? And you're saying that's a lie?

8 A I'm saying I don't know if the word "desperate" is
9 right or not, but the rest of it is accurate. It wouldn't be
10 the whole truth, but it's truthful.

11 Q Okay. Got part of it then.

12 Then going on in your complaint, it still talks about
13 the merger on paragraph 12, the next page, paragraph 13,
14 paragraph 14, all talking about the merger; right?

15 A And so the complaint was about the soft dealing
16 relating to the debt which was required for the close of the
17 merger. That's my understanding of the complaint. I never
18 denied -- you know, I was never -- said -- the complaint -- the
19 merger, I believe, was all Kirkland that introduced the stuff,
20 but it talks about the merger, and I did think that the soft
21 dealing was, you know, an issue. And it was apparent that the
22 PNT Credit Agreement should have been in that when the deal
23 closed, but, yes. Those -- that -- those things you
24 highlighted, indeed, include the word "merger."

25 Q That's all I asked was a simple question: Does it

1 refer to the merger?

2 Now, you reviewed this complaint before it was filed,
3 didn't you?

4 A The complaint was --

5 Q Or before it was sent?

6 A -- never filed.

7 Q You reviewed it before it was sent; correct?

8 A I mean, there were a few iterations. I may have just
9 approved the final one without a final review, but I either
10 reviewed this draft complaint or a substantially similar draft
11 complaint, yes.

12 Q Well, it's fair to say that you reviewed this letter
13 and this draft complaint before it was sent out on August 11th;
14 correct?

15 A I believe I just answered that question. There are
16 several drafts. I may have given them final approval without
17 reading the final draft, but I either reviewed this or
18 something substantially similar to this.

19 Q So may I have his deposition. Again, I believe you
20 have it, and it's already been opened and published.

21 Let me refer you to page 25 of your deposition, lines
22 19 through 25, and then the follow one, pages [sic] 1
23 through 3. Do you have those -- do you have that?

24 THE COURT: Sir, please remember you can look before
25 or after to give yourself context, and we also have a copy that

1 is showing up on the screen, if you want to look at that as
2 well.

3 BY MR. PEEK:

4 Q I'll go ahead and let you read whatever you want,
5 both before and after, until I ask the question and whether
6 this question was asked and this answer given of you.

7 A Okay.

8 Q You ready?

9 A Yes.

10 Q So was this question asked of you, Fair --

11 Question: "Fair to say that you had reviewed the
12 letter and the draft complaint before it was sent out on
13 August 11, 2014?"

14 And you answered: "Sure."

15 A Yep.

16 Q Question: "So it also fair to say that when you
17 reviewed the complaint, just as you reviewed the actual
18 complaint in this case, when you reviewed the draft, you
19 believe that the allegations in there were accurate to the best
20 of your knowledge at the time?"

21 Answer: "Yes."

22 You -- those questions were asked, and those answers
23 were given by you in your deposition when you were under oath;
24 correct?

25 A Yes. I'd like to add that --

1 Q Nobody's asked you to add anything.

2 A Okay.

3 THE COURT: Your counsel will make a note to follow
4 up in this area when it is his turn for redirect. Right?

5 MR. APTON: Yes.

6 BY MR. PEEK:

7 Q Now, the other thing that Mr. Kotler asked you was
8 whether, three weeks later, after making this -- after your
9 lawyer made this threat that you reviewed before it was sent,
10 you bought another 167,000 shares over a period of two weeks,
11 from September 3rd until September 16th.

12 Do you remember that question?

13 A Yes.

14 Q And that's, in fact, what you did do; correct?

15 A I have no reason -- I don't remember specifically
16 doing that, but I'm sure it's accurate.

17 Q You're sure it's accurate. Okay.

18 A I have no reason to doubt it.

19 Q Okay. So you went from 1,024,423 shares to
20 1 million-almost-300,000 shares after making this threat;
21 right?

22 A I don't know if there was any trading in the
23 three-week period that wasn't discussed, so I don't know if
24 that's correct or not. But it's directionally right, yes.

25 Q My math is correct?

1 A Well, but there's a three-week window that's missing,
2 and I have no idea if I transacted --

3 Q Well --

4 A -- because you said --

5 Q Why don't we do this --

6 A -- the period started three weeks after --

7 Q Let me --

8 A -- the complaint was sent.

9 Q -- have you take a look at Exhibit 1037.

10 THE COURT: Proposed.

11 MR. PEEK: Your Honor, I'm going to ask him to
12 identify it first, and then I'm going to ask him if he
13 recognizes it as his brokerage statements for the period 2014.
14 And I'm going to ask him specific questions in that area after
15 August 11th when the letter was sent and in that two-week
16 period of September.

17 BY MR. PEEK:

18 Q So is that your brokerage statement for this period
19 of time?

20 A I don't see anything.

21 THE COURT: Do you have it in your book there?

22 MR. PEEK: I can show him a hard copy, Your Honor.

23 THE COURT: You'll have to do that then.

24 MR. PEEK: This is DX-1037.

25 May I approach the witness, Your Honor?

1 THE COURT: You may.

2 MR. PEEK: Thank you.

3 THE WITNESS: Do you have a page number?

4 THE COURT: He wants you to look through the whole
5 thing and tell him if those look like your brokerage
6 statements.

7 BY MR. PEEK:

8 Q All I care about is whether or not it's your
9 brokerage statement for the period of time in 2014.

10 THE COURT: Thank you for helping Mr. Peek.

11 UNIDENTIFIED SPEAKER: You're welcome, Your Honor.

12 THE WITNESS: It looks like it. But in order to be a
13 hundred percent certain, it would take us an eternity.

14 THE COURT: Well, you need to take what time you feel
15 to be able to accurately answer Mr. Peek's question.

16 MR. PEEK: Either that or counsel can stipulate to
17 it. Either way.

18 THE WITNESS: It looks accurate to me.

19 MR. PEEK: I would offer it, Your Honor.

20 THE COURT: Any objection?

21 MR. APTON: This is -- Steve, you're representing
22 this is what?

23 MR. PEEK: DX-1037.

24 MR. APTON: And brokerage statements for what period
25 of time? It includes outside of 2014.

1 MR. PEEK: It goes, actually, all the way up to '21.

2 THE COURT: Any objection?

3 MR. APTON: Your Honor, this was previously raised.
4 So the first 97 pages or so are already entered as Exhibit 410.

5 THE COURT: Thank you. I already handled this,
6 Mr. Peek, and said I wasn't going to admit it because it was
7 admitted as 410. We will have to separate out those pages --

8 MR. PEEK: I'll do that, Your Honor.

9 THE COURT: -- that are not part of 410.
10 Unfortunately, because we are using electronic exhibits, that
11 gives us a different issue. But, yeah.

12 MR. PEEK: So what do you want me to do, Your Honor?
13 I mean, I can tell you what the page numbers are for 410.

14 THE COURT: I am not in charge of reformatting
15 electronic exhibits. That's not my job.

16 MR. PEEK: No. No, I understand that, but I want to
17 get this introduced.

18 THE COURT: I can't introduce it as 1037 because it
19 includes 410. So what I'm trying to suggest to you is we need
20 a new number. IT has told me I'm not supposed to use A, so I
21 have to use a new number at the end of your series.

22 Mr. Cassidy is on it; I can tell. So he's trying to get it
23 reformatted for the next in order for the defendants.

24 Look how good he is.

25 If you want the witness to look at the paper version

1 and answer the questions based on a Bates number on the bottom
2 of the page --

3 MR. PEEK: That's what I'm going to do.

4 THE COURT: -- that will make your record much --

5 MR. PEEK: That's what I'm going to do, Your Honor.

6 THE COURT: -- clearer at some point in time.

7 BY MR. PEEK:

8 Q So let me have you take a look at -- in that exhibit,
9 you'll see page 101 of 376, is where I want you to start.

10 A Okay.

11 Q But if you want to look before that in whatever your
12 lawyer can show you, that's up to you. But I want you to look
13 for this period of time of September 3rd. I believe it's up
14 until September 16th, which ends on page 107. Those are all
15 purchases by you, are they not, of Turtle Beach stock?

16 A Correct.

17 Q And I'm not going to ask you to do the math. I can
18 do the math later. But in any event, you agreed with me that
19 you -- that I -- my representation that you bought about
20 167,000 shares of stock from Turtle Beach in that period of
21 time is accurate; correct?

22 A Which period?

23 Q September 3rd through September 16th.

24 A Okay.

25 THE COURT: So does it look accurate to you, sir?