

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 83598, 84971, and 85358

IN RE PARAMETRIC SOUND CORPORATION
SHAREHOLDERS' LITIGATION.

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Elizabeth A. Brown
Clerk of Supreme Court

PAMTP, LLC,

Appellant,

v.

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

Respondents.

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

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	Trial Exhibit 1052	16	AA 2818- AA 2862

AFFIRMATION

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

Respectfully submitted this 12th day of January, 2023.

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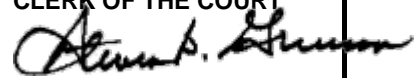
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CERTIFICATE OF SERVICE

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

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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

FRIDAY, AUGUST 20, 2021

BENCH TRIAL - DAY 5

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.
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RYAN MOORE, ESQ.

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

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 20, 2021, 8:59 A.M.**

2 * * * * *

3 THE COURT: All right. Now, who's my first witness
4 of the day?

5 MR. APTON: We're going to be calling Robert Kaplan,
6 Your Honor.

7 (Colloquy off the record.)

8 THE COURT: All right. Mr. Kaplan, is he --

9 THE COURT RECORDER: He's not there yet.

10 THE COURT: Mr. Kaplan is not there. Could somebody
11 call him and ask him. Maybe one of the people who --

12 MR. PEEK: I think he'll be there. I'm pretty sure.

13 THE COURT: It's time, Steve. It's not --

14 MR. PEEK: I asked him to link him up earlier before
15 he came back out.

16 MR. APTON: Your Honor, in the meantime, we
17 stipulated to some exhibits. Can we --

18 THE COURT: What exhibits have you stipulated to
19 today?

20 MR. APTON: And correct me if I'm wrong, you guys.
21 But we have Plaintiff's Exhibit --

22 MR. PEEK: Wait. Wait. Wait. Before we start.
23 Go ahead.

24 MR. APTON: Some of these might already be in
25 evidence. So I'm reading off the disclosure list.

1 THE COURT: Val is going.

2 MR. APTON: Okay.

3 THE COURT: So she's going to keep track.

4 MR. APTON: Steve, are you ready?

5 MR. PEEK: Yes, I am.

6 MR. APTON: 1, 5, 9, 58, 60, 67, 68 --

7 MR. PEEK: 113.

8 MR. APTON: -- 113, 121, 122, 123, 124, 259, 260,
9 276 -- I'm sorry. Not 276.

10 MR. PEEK: Well, 276 for Putterman, but, yes.

11 MR. APTON: 282, 286, 305, 306.

12 MR. PEEK: And there are two exhibits where we have
13 objection, Your Honor. They would be 250 and 340.

14 THE COURT: Okay.

15 MR. PEEK: As well as 133 and 278.

16 THE COURT: Okay.

17 MR. PEEK: So there are four.

18 THE COURT: So the exhibits that he read, as the ones
19 that you stipulated to, are those the right list? Did he add
20 any that shouldn't have been on it, understanding that there
21 are four that were objected to that he did not read?

22 MR. APTON: Well, Your Honor, there's some more.

23 Because, Steve, you're also talking about Putterman
24 too, yeah?

25 MR. PEEK: Yeah, we might as well do Putterman as

1 well at the same time.

2 THE COURT: Well, I just -- I need to -- before we
3 go, I hear no objection. Judge, he didn't screw it up. It's
4 okay.

5 MR. PEEK: Judge, he didn't screw it up. It's okay.

6 THE COURT: Those will be admitted.

7 (Plaintiff's Exhibit Number(s) 1, 5, 9, 58, 60, 67-68, 113,
8 121-124, 259-260, 276, 282, 286, 305-306 admitted.)

9 THE COURT: Okay. Next group.

10 MR. APTON: 17, 119, 120, 125, 276, 281, 288, 302.

11 THE COURT: Is that list accurate?

12 UNIDENTIFIED SPEAKER: He didn't screw it up, Your
13 Honor.

14 THE COURT: Okay.

15 MR. PEEK: We agree.

16 THE COURT: Okay. Mr. Hess, those were accurate?

17 MR. HESS: Yes, Your Honor.

18 THE COURT: They'll be admitted.

19 (Plaintiff's Exhibit Number(s) 17, 119, 120, 125, 276, 281,
20 288, 302 admitted.)

21 (Pause in the proceedings.)

22 MR. PEEK: Do you want to do Norris as well while
23 you're at it?

24 MR. APTON: I don't have that list in front of me
25 right now.

1 MR. PEEK: I do.

2 MR. APTON: Hold on. Hold on.

3 THE COURT: Mr. Peek --

4 MR. PEEK: So I want to make sure that --

5 MR. APTON: Hold on.

6 (Pause in the proceedings.)

7 MR. HESS: While we're waiting, we have not received
8 a disclosure today with respect to Monday. I just wanted to
9 confirm that it's still the assignors and perhaps Mr. Norris
10 and the plaintiffs.

11 MR. APTON: Yeah, the one that I served yesterday.

12 MR. HESS: Okay. So other than Mr. Norris being
13 potentially moved to Monday, that's it. Okay. I just wanted
14 to confirm.

15 (Colloquy off the record.)

16 MR. PEEK: I am ready for Norris.

17 THE COURT: Let's go on Norris's exhibits.

18 MR. APTON: Okay. 16 -- well, there is overlap. So
19 I'll read them:

20 16, 68, 113, 116, 122, 123, 177, 240, 259, 282 coma
21 284, 286, 288, 289, 293, 305, 306, 352, and 439.

22 THE COURT: Are those accurate?

23 MR. PEEK: Yes, Your Honor, he has read that
24 accurately, and now I guess we would do --

25 THE COURT: They'll be admitted.

1 (Plaintiff's Exhibit Number(s) 16, 68, 113, 116, 122, 123, 177,
2 240, 259, 282, 284, 286, 288, 289, 293, 305, 306, 352, 439
3 admitted.)

4 MR. PEEK: We will now do the plaintiffs' -- or
5 excuse me, the defendants' exhibits.

6 THE COURT: So there are some stipulated to?

7 MR. PEEK: Yes. Yes.

8 THE COURT: Lovely. Could you read the list.

9 MR. APTON: Wait, Steve. Let me just pull up the
10 list.

11 Sorry, Your Honor. Okay.

12 THE COURT: Mr. Peek, the numbers.

13 MR. PEEK: Your Honor, with an apology that some of
14 these may be duplicative already.

15 THE COURT: I know many of them are duplicates, and
16 some are already.

17 MR. PEEK: We'll figure that out down the road.

18 THE COURT: And Val is keeping track.

19 MR. PEEK: Yes, Your Honor.

20 THE COURT: Because she has a worksheet that is not
21 in two fonts.

22 MR. PEEK: For Mr. Kaplan, 520, 522, 535, 539, 542,
23 599, 603, 607, 615, 641, 647, 665, 676, 713, 724, 731, 732,
24 743, 747, 752, 754, 756, 757, 760, 829, 853, 863, 911, 931,
25 1052.

1 THE COURT: Are those accurate?

2 MR. APTON: No. I think one was added, Steve. Was
3 one 760? I didn't see that on my list.

4 MR. PEEK: Yes, and that was something that I had
5 added and you said was okay -- well, Mr. Ogilvie did.

6 MR. APTON: And there were --

7 THE COURT: So have we resolved --

8 MR. PEEK: There are others for other witnesses?

9 THE COURT: Wait. Have we resolved 760? Is 760
10 acceptable?

11 MR. APTON: Your Honor, I need one minute.

12 MR. PEEK: It's the same thing as --

13 THE COURT: Mr. Peek, hold on a second. He's
14 looking.

15 MR. APTON: There's a lot of e-mail correspondence on
16 this. So I'm just looking, Your Honor.

17 MR. PEEK: I'll represent to the Court and to counsel
18 it's just the added e-mail of the Craig-Hallum report.

19 MR. APTON: Right. But there were two or three that
20 we had objected to. I don't know if they're necessarily in
21 that list versus the other.

22 THE COURT: So with the exception of 760, they're all
23 admitted.

24 We're going to work on 760.

25 (Defense Exhibit Number(s) 520, 522, 535, 539, 542, 599, 603,

1 607, 615, 641, 647, 665, 676, 713, 724, 731, 732, 743, 747,
2 752, 754, 756, 757, 829, 853, 863, 911, 931, 1052 admitted.)

3 MR. PEEK: Because he doesn't have perhaps the other
4 list, Your Honor, Putterman and Norris, I'll wait to deal with
5 that later.

6 THE COURT: Do you have the list for Putterman and
7 Norris of defense exhibits and what's been agreed to?

8 (Pause in the proceedings.)

9 MR. APTON: The only two we objected to were 584 and
10 1054.

11 THE COURT: Okay.

12 MR. APTON: Steve, have you read those?

13 THE COURT: So, Mr. Peek, read everything except
14 those --

15 MR. PEEK: I did not read 584, and I did not read
16 1054 for Mr. Kaplan.

17 THE COURT: So could you read the others.

18 MR. PEEK: I can, Your Honor. Again --

19 THE COURT: Because I know before you said that --

20 MR. PEEK: -- as Mr. Apton pointed out, these may be
21 duplicative of what I've already read.

22 THE COURT: Absolutely.

23 MR. PEEK: For Mr. Putterman, 507, 521, 524, 529,
24 536, 539, 545, 546, 547, 561, 582, 588, 599, 610, 611, 634,
25 636, 641, 649, 655, 656, 657, 662, 665, 673, 676, 678, 681,

1 686, 687, 696.

2 That's it, Your Honor.

3 THE COURT: Is that accurate, Mr. Apton?

4 MR. APTON: Yes. Mr. Peek is --

5 THE COURT: Those will be admitted.

6 (Defense Exhibit Number(s) 507, 521, 524, 529, 536, 539, 545,
7 546, 547, 561, 582, 588, 599, 610, 611, 634, 636, 641, 649,
8 655, 656, 657, 662, 665, 673, 676, 678, 681, 686, 687, 696
9 admitted.)

10 THE COURT: Were there any others?

11 MR. PEEK: Yes, Your Honor, for Mr. --

12 THE COURT: Since I'm still soloing for the witness.

13 MR. PEEK: For Mr. Norris, 513, 516, 641, 684, 690,
14 720, 754, 823, 931.

15 That's it, Your Honor.

16 THE COURT: And is that accurate, Mr. Apton?

17 MR. APTON: Yes, it is, Your Honor.

18 THE COURT: Those will be admitted.

19 (Defense Exhibit Number(s) 513, 516, 641, 684, 690, 720, 754,
20 823, 931 admitted.)

21 THE COURT: Any more housekeeping matters we can deal
22 with while I wait for a witness?

23 MR. PEEK: Let me just step out, Your Honor, and just
24 see.

25 THE COURT: You can.

1 MR. PEEK: Well, they're all gone. So.

2 (Pause in the proceedings.)

3 THE COURT: Good morning, sir.

4 UNIDENTIFIED SPEAKER: There. I think we're in.

5 THE WITNESS: Thank you.

6 THE COURT: Sir, it's my understanding that you have
7 consented to be sworn over our video feed. Is that correct?

8 (No audible response.)

9 THE COURT: Sir, can you hear me?

10 MR. PEEK: Do you have your mute on, Bob?

11 THE WITNESS: No. I hear you. I didn't realize that
12 Her Honor was talking to me.

13 THE COURT: Yes. Mr. Kaplan, it's my understanding
14 you've agreed to be sworn over our video feed. Is that
15 accurate?

16 THE WITNESS: That's correct, Your Honor.

17 THE COURT: If you would raise your right hand so my
18 clerk and swear you then.

19 THE WITNESS: All right. Go ahead.

20 **ROBERT KAPLAN**

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

23 THE CLERK: Please state your name for the record.

24 THE WITNESS: It is Robert Kaplan.

25 THE COURT: And, sir, you're going to have to speak

1 up so we can hear you a little better. Maybe move closer to
2 your microphone.

3 THE WITNESS: All right.

4 THE COURT: And if you can't hear us for any reason,
5 let us know. The automatic camera --

6 THE WITNESS: I can hear you.

7 THE COURT: -- should pick up the lawyers when they
8 speak to you, but sometimes they won't be in the screen. So
9 please bear with us.

10 THE WITNESS: Yes.

11 THE COURT: All right. Mr. Apton, you're up.

12 DIRECT EXAMINATION

13 BY MR. APTON:

14 Q Mr. Kaplan, can you hear me?

15 A Yes, I can, sir.

16 Q Can you speak up.

17 A I am certainly trying to speak louder, but I thought
18 that I was speaking up from earlier. Is that sufficient?

19 Q If you can come a little bit closer maybe it will
20 help.

21 A All right. Let me (indiscernible).

22 Is that better?

23 Q That's a little better.

24 THE COURT: That's better. Thank you, sir.

25 / / /

1 BY MR. APTON:

2 Q Good morning, Mr. Kaplan. I'm Adam Apton. I
3 represent the plaintiff in this lawsuit. If you can't hear me,
4 just let me know. Okay?

5 A Yes, sir.

6 Q My first question for you is in your opinion would
7 you consider Potashner, Ken Potashner, to be a trustworthy
8 individual?

9 MR. PEEK: Objection, Your Honor.

10 THE COURT: Sustained.

11 He can't answer that question, Counsel. It's not
12 appropriate for a witness to give you that testimony.

13 MR. APTON: Your Honor, NRS 50.085 allows evidence of
14 character and conduct of a witness.

15 THE COURT: Uh-huh.

16 MR. APTON: The (indiscernible) evidence is the
17 trust --

18 THE COURT: The witness cannot tell me whether he is
19 credible, lying or trustworthy.

20 BY MR. APTON:

21 Q All right. Mr. Kaplan, we'll move on.

22 If you have -- do you have a binder of exhibits in
23 front of you?

24 A Yes, sir, I do.

25 Q Okay. If we can go to Exhibit 121, please.

1 A Okay.

2 Q And if you could go to the third page on that
3 exhibit.

4 A I also have them on my screen. May I put them up on
5 my screen?

6 THE COURT: You may, sir.

7 THE WITNESS: Okay. Let me just move this out of the
8 way.

9 (Pause in the proceedings.)

10 THE WITNESS: Will you give me that number again,
11 please, sir.

12 MR. APTON: Sure. 121.

13 THE WITNESS: 121.

14 121. It looks to be like an e-mail sent from Elwood
15 Norris to Putterman.

16 BY MR. APTON:

17 Q Mr. Kaplan, did Mr. Potashner ever ask you to resign
18 from the board of Parametric?

19 A Yes, sir, he did.

20 Q And when was that?

21 A Oh, on a number of occasions. I don't have the exact
22 dates, but I know that I responded indicating that I would not
23 resign. He had a number of attempts by him to get me to
24 resign. One he requested it in an e-mail, and since I refused,
25 and then he requested or he tried to get an age limit for the

1 board of directors, and that didn't work. And then he offered
2 me a consulting job if I would resign, which I felt that he was
3 trying to buy me off. So I refused that as well, and I stayed
4 on the board.

5 Q And so I appreciate that he tried to get you off the
6 board a number of times, but can you walk us through the
7 circumstances or the events that precipitated each of those
8 instances?

9 A Well, I didn't agree with him in many situations
10 regarding what he was trying to propose to the board. And I
11 was more a thorn in his side because I was asking a lot of
12 questions regarding his decisions and also his proposals to the
13 board. He wrote me an e-mail saying that he had difficulty
14 trying to run a company when he didn't have the support of the
15 entire board and that he didn't think that I should continue
16 on.

17 Q And if you can go into a bit more detail, because I'm
18 trying to find out what it was that you were objecting to that
19 led to these instances.

20 A I objected to payment of his bonus for the year 2012.
21 I objected to his having options on a company called HHI, which
22 was a wholly-owned subsidiary. I objected to him hiring a
23 couple of his friends to come into the company. There's a
24 number of instances to which I objected --

25 Q So on the bonus for 2012, did he receive that bonus?

1 A Did he?

2 Q Ultimately, yes?

3 A Yeah. I never received any bonus, but, yes, he did
4 receive a bonus.

5 Q And the HHI options, he received those as well;
6 right?

7 A He received those as well, which we later rescinded,
8 yes.

9 Q And in terms of hiring friends, whom are you
10 referring to?

11 A To John Todd and --

12 Q And --

13 A -- and I believe his name was S-a-m-e-n, I believe it
14 is. I can't pronounce his last name --

15 Q Sassan?

16 A -- but it was one of his --

17 Pardon me?

18 Q Sassan?

19 A Sassan, yes. Yes.

20 Q And would you consider Andy Wolfe as one of his
21 friends?

22 A Oh, Andy Wolfe was recommended by Mr. Potashner to be
23 a board member, and we had a dinner with Mr. Potashner and Andy
24 Wolfe. And Andy Wolfe certainly had the credentials and proved
25 to be a worthy candidate for the board. So yes, we brought him

1 onto the board.

2 Q Now, in terms of Mr. Todd, what were the
3 circumstances around his hiring?

4 A Well, Mr. Potashner initially wanted Mr. Todd to come
5 in senior management, and we didn't want the whole team when we
6 first hired Mr. Potashner, and then we also found out that
7 Mr. Todd was having -- there was an investigation by the SEC
8 regarding his behavior in the previous firm. I believe it was
9 called SONICblue, and so we felt that at that time it was not
10 appropriate until that matter was cleared up and cleared up
11 satisfactorily. So we did not allow him to bring Mr. Todd on.

12 And then when Mr. Potashner became the executive --
13 the managing director of company, the executive director, he
14 was in a position to hire whom we wanted to in the company, and
15 he did, first of all brought on Mr. Todd as a consultant and
16 then brought on Mr. Todd as a full-time if we after he told us
17 that the SEC situation was cleared up.

18 Q So would you agree that Mr. Potashner lied to you
19 about Mr. Todd's legal situation?

20 MR. PEEK: Objection, Your Honor.

21 THE COURT: You can't ask him if he lied. You can
22 ask him if he believes it was different information, but you
23 can't use the word lie.

24 BY MR. APTON:

25 Q Mr. Kaplan, do you think -- is it your opinion that

1 Mr. Potashner misrepresented the circumstances around
2 Mr. Todd's legal troubles with the SEC --

3 MR. PEEK: Objection, Your Honor.

4 BY MR. APTON:

5 Q -- when he was hired?

6 THE COURT: Counsel, you've got to rephrase your
7 question.

8 BY MR. APTON:

9 Q Mr. Kaplan, was Mr. Potashner honest with you?

10 THE COURT: Counsel, you've got to rephrase your
11 question.

12 BY MR. APTON:

13 Q Mr. Kaplan, how would you describe Mr. Potashner's
14 conduct surrounding Mr. Todd's hiring?

15 A Well, when we found out that he had been hired as a
16 consultant, we asked about the SEC investigation that we
17 thought was still ongoing, and we were told by Mr. Potashner
18 that it had all been settled amicably, and it was cleared up.
19 And that's all we were told, and so with that information,
20 well, all right, we could have Mr. Todd as a consultant to the
21 firm, which we did, although that was not voted on by the
22 board. That was a unilateral decision by Mr. Potashner.

23 Q And did you come to find out that the issues had not
24 been cleared up?

25 MR. PEEK: Objection. Foundation, Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: I did not find out until my deposition,
3 which was about, well, a year ago almost now. I did not
4 realize the extent to which the SEC had clamped down on
5 Mr. Todd because we believed at the time --

6 MR. PEEK: Objection, Your Honor. Relevance.

7 THE COURT: Overruled.

8 You can answer.

9 THE WITNESS: We believed at the time that what
10 Mr. Potashner had told us was the truth.

11 Q And at your deposition, did you come to find out that
12 Mr. Todd had received a judgment in connection with his SEC
13 matter?

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

15 THE WITNESS: Yes, I did find --

16 MR. PEEK: -- and --

17 THE COURT: Overruled.

18 You can answer.

19 MR. PEEK: Your Honor, we need to see the judgment.

20 THE COURT: Not necessarily.

21 MR. PEEK: Best evidence would be --

22 THE COURT: Not necessarily. Not necessarily,
23 Mr. Peek.

24 The witness can answer.

25 THE WITNESS: Yes, I did find out at the deposition

1 that there was a judgment handed down by the SEC in federal
2 court.

3 BY MR. APTON:

4 Q And, Mr. Kaplan, the exhibit marked as 250 in your
5 binder, is that that judgment?

6 A I need to get back to this. Just pull up 215,
7 please.

8 Q 2-5-0. 2-5-0.

9 MR. PEEK: Your Honor, before he even answers, let me
10 address that. The Proposed Exhibit 250 is not a certified copy
11 of any judgment, and a better -- best evidence would require it
12 to be a certified copy of any judgment.

13 THE COURT: I understand your position, Mr. Peek.
14 I'm going to have the witness identify it. The witness may not
15 be able to identify it and lay the foundation. Merely because
16 he saw in his deposition does not make it an admissible
17 document, but he can certainly look at it.

18 THE WITNESS: I do have it in front of me, Your
19 Honor.

20 THE COURT: Thank you, sir.

21 You can continue.

22 BY MR. APTON:

23 Q And, Mr. Kaplan, is this the judgment relating to
24 Mr. John Todd that we were discussing a few moments ago?

25 A Yes, it is.

1 MR. PEEK: Same objection, Your Honor.

2 THE COURT: Overruled.

3 BY MR. APTON:

4 Q And in the upper right-hand corner you see a stamp
5 from the clerk of the U.S. District Court, Southern District of
6 California; correct?

7 A That's correct.

8 Q Indicating that it was filed April 9, 2012; correct?

9 A That's correct.

10 Q And on the last page you'll see the signature of the
11 Honorable Robert Benitez, United States District Judge;
12 correct?

13 A That's correct.

14 MR. APTON: Your Honor, I move to admit as a public
15 record.

16 MR. PEEK: Your Honor, it has to be a certified copy,
17 as this Court well knows.

18 THE COURT: The objection is sustained.

19 MR. PEEK: Thank you.

20 THE COURT: There are too many issues with cutting
21 and pasting Judges' signatures on a document. Unfortunately
22 I've had to talk to the FBI about it.

23 MR. PEEK: Your Honor had a case where, as I recall,
24 your signature was forged.

25 THE COURT: Yeah.

1 MR. APTON: Your Honor, I believe I now recall that a
2 certification is only necessary if I were to be impeaching a
3 witness with it, but this is not impeaching a witness. It
4 relates to --

5 THE COURT: Well, but you want to admit it, Counsel.
6 You can ask the witness about it and how it impacted
7 him and whether he thought somebody should have told him about
8 it, but you don't necessarily need the document to ask those
9 questions.

10 I do need a certified copy. I'm probably
11 hypersensitive about it because, as Mr. Peek mentioned, there
12 have been occasions, more than one, where my signature has been
13 inappropriately applied to documents and used for nefarious
14 purposes. So...

15 MR. APTON: Understood.
16 BY MR. APTON:

17 Q Mr. Kaplan, this is dated April 9th, 2012.
18 Mr. Todd had been working at the company how long
19 after this judgment? When did -- strike that.

20 When did Mr. Todd joined the company?

21 A I'm sorry. I don't have that date in mind.

22 Q Okay. All right. Mr. Kaplan, if we can go to --
23 well, one more question. Is it your understanding, Mr. Kaplan,
24 that because of this judgment in front of you Mr. Todd was
25 unable to serve as a director or an officer of any public

1 company?

2 MR. PEEK: Objection, Your Honor. That now gets him
3 into reading from the document that's not into evidence.

4 THE COURT: Overruled. The witness can read from any
5 document whether it's in evidence or not. He just can't read
6 it to me.

7 MR. PEEK: And again, Your Honor, this is something
8 he didn't learn until 2019.

9 THE COURT: I'm aware of that, Mr. Peek, which is why
10 I am trying real hard to navigate this issue. He learned about
11 it in his depo. That doesn't make it an admissible document.

12 THE WITNESS: Am I to answer that, Your Honor?

13 THE COURT: You may.

14 THE WITNESS: Yes. From my reading of this document,
15 it indicates that Mr. Todd was not to be I think for 10 years a
16 director or officer of a publicly traded company.

17 BY MR. APTON:

18 Q Would it have been reasonable for Mr. Potashner to
19 have disclosed this to his codirectors given that he was
20 executive chairman?

21 A I certainly do.

22 Q But he didn't, did he?

23 A No, he did not.

24 Q Let's move on, Mr. Kaplan.

25 If we can go to Exhibit 259.

1 A 259.

2 Q As you're pulling it up, I'll tell you that you're
3 referring to the machinations and duality that Ken is trying to
4 pull on us to his own benefit.

5 A Yes, sir. I have it up.

6 Q And to what are you referring in that e-mail, if you
7 know?

8 A Uh --

9 Q Well, let me rephrase the question, Mr. Kaplan.
10 Are you referring to Mr. Potashner's efforts to
11 benefit from HHI through the course of the merger?

12 A I believe that this is the case, yes.

13 Q And how is he trying to do that exactly?

14 A Well, he was trying to piece himself into options on
15 HHI over and above what -- HHI was a wholly-owned subsidiary of
16 Parametrics, and I felt that his responsibility was to the
17 shareholders of Parametrics, but in the meantime, he was also
18 trying to get a piece of it for himself through options and for
19 John Todd.

20 Q And were his actions with respect to HHI for the
21 benefit of all Parametric shareholders or just himself and
22 Mr. Todd?

23 A Just for himself and Mr. Todd it was my impression.

24 Q If we can move to Exhibit 60, Mr. Kaplan.

25 A 60 -- 260?

1 Q No, 60, sir.

2 A 60. Okay. 60. "Requested Merger Documents"?

3 Q 60. And as -- I'll do what I did last time. As
4 you're pulling it up, you say in the e-mail that, We have been
5 left in the dark and have been -- and have had
6 misrepresentations presented to us.

7 A That's correct. I have it up. Yes, sir.

8 Q Are you referring to Ken Potashner negotiating the
9 merger and not disclosing certain information to you?

10 A Yes, I am.

11 Q And anything in particular that you can think of?

12 A Well, we had not seen the merger agreement that he
13 was negotiating himself with Turtle Beach, and I believe that
14 at this time he was still insisting upon keeping his options in
15 HHI.

16 Q And what about financial information from your
17 company as well as VTB Holdings? Did he share that with you?

18 A I don't know what he kept from Turtle Beach, but I do
19 know that Mr. Barnes, to whom I directed this e-mail, had been
20 exchanging information with -- to Turtle Beach regarding our
21 financial situation.

22 Q So are you saying, if possible, Mr. Potashner had
23 certain information about VTB Holdings and did not share it
24 with you?

25 MR. PEEK: Objection.

1 UNIDENTIFIED SPEAKER: Your Honor --

2 THE COURT: Overruled.

3 You can answer.

4 THE WITNESS: Am I saying it could be possible? Yes,
5 it could be possible.

6 BY MR. APTON:

7 Q If we could go to Exhibit 58, Mr. Kaplan.

8 A All right.

9 Q And I'll direct your attention to the second page of
10 58, because it's a fairly long e-mail.

11 A Yes.

12 Q And the second paragraph from the bottom, you say
13 that,

14 "Personally, I think this has gone on far
15 too long. We need to get on with the business
16 of running the business. What has been going
17 on since this VTB idea surfaced? Where are
18 licensing agreements? Where are sales?"

19 And then you referred to Epsilon, Amazon, the
20 Chinese, McDonald's, the Bear stores, Sony, Samsung.

21 A Yes, sir.

22 Q Was it your impression that Mr. Potashner had stopped
23 running the business as soon as VTB came on the scene?

24 A It's my impression that he certainly did not put the
25 emphasis -- excuse me, did not put the emphasis into the

1 licensing agreements that he was doing beforehand. His time
2 was now divided, I think, between the licensing and the merger
3 discussions.

4 Q And given Parametric's business at the time,
5 licensing was an important part of that; correct?

6 A That's correct.

7 Q You and Mr. Norris had impressive IP, and the
8 strategy was to license that IP to generate revenue while
9 having a capital-light business model; correct?

10 A That's correct.

11 Q And so the absence of licensing agreements would
12 severely hurt Parametric's business; correct?

13 MR. PEEK: Objection, Your Honor. Leading. This
14 witness is --

15 THE COURT: Overruled.

16 MR. PEEK: -- no longer a party.

17 THE COURT: He's an adverse witness, Mr. Peek.
18 You can answer, sir.

19 THE WITNESS: Okay. Would you please repeat the
20 question.

21 BY MR. APTON:

22 Q I'm trying to find out, the absence of licensing
23 agreements, given Parametric's business model, would have had a
24 detrimental effect on Parametric's valuation; correct?

25 A Yes.

1 Q And now on the last line of the e-mail, you are --
2 order second-to-last line, you say, We have been far too
3 passive in the past. It is good to have a strong leader, but
4 not a dictator. You're referring to Potashner as the dictator;
5 correct?

6 A Correct.

7 Q And if you can, what are some specific events that
8 led you to refer to him as a dictator in addition to what you
9 previously mentioned?

10 A I think his management style was one of authoritative
11 activity. I think that many times he came to the board meaning
12 with items that I can't recall any specific one, but it was
13 basically a *fait accompli*.

14 I'm sorry. I'm not able to draw a specific example
15 at this time. It was about 10 years ago.

16 Q I understand. You said a "*fait accompli*." That
17 means it was a done deal, no discussion; correct?

18 A Right.

19 Q And you said "authoritative." I think you also, in
20 some of your -- perhaps in your deposition testimony referred
21 to it as bullying. Do you remember that?

22 A Yes, I do.

23 Q And you would still agree with that characterization
24 today; correct?

25 A Yes, I do.

1 Q If we could go to Exhibit 113, Mr. Kaplan.

2 A Okay.

3 Q And I'll refer you to the second page of that
4 exhibit. You have an e-mail beginning, "Gentlemen, on July
5 22nd, 2013."

6 A Yes, I have it in front of me.

7 Q So there's a few portions of the e-mail that I want
8 to you refer you to.

9 Initially you say, "Let's admit we were talked into
10 and made a big error a few months ago."

11 You're referring to the HHI options then; correct?

12 A This is -- I'm sorry. I don't see where that is in
13 the e-mail.

14 Q Oh, okay. Let's -- all right. In the bottom
15 right-hand corner of the page --

16 A Yes.

17 Q -- you should see 113-002.

18 A I do, yes. Oh, wait. Okay.

19 Q And at the top of the page, it says, "On Monday,
20 July 22, 2013, at 8 --

21 A I have that, sir. Yes, I have that.

22 Q And I'm -- I'd like to ask you a question or two
23 about the e-mail directly underneath that starting with
24 "Gentlemen," and, Ending with, "the appropriate action would
25 be."

1 A Okay. May I just read that for a moment, please?

2 Q Absolutely.

3 A Yes, sir. I've gone through it.

4 BY MR. APTON:

5 Q And so the email refers to a big error and being
6 talked into granting the HHI options. Did Mr. Potashner make
7 certain statements to you when discussing the HHI options
8 initially that you later found out to be incorrect or untrue?

9 A Yes, sir, he did. Not jut to me, but to the board.

10 Q And --

11 A Members of the board.

12 Q Sorry. Go ahead if you can elaborate.

13 A Those statements were basically that Turtle Beach,
14 through their CEO, Juergen Stark, was not interested in HHI and
15 therefore it would not be part of the merger and that it would
16 still be part of Parametric, and that's when he explained that
17 he would want the options in HHI and run the company. But that
18 turned out not to be true because we found out that Turtle
19 Beach was very much interested in HHI -- in fact, insisted that
20 those options be canceled, or there would be no deal.

21 Q And the email -- you also indicate that "Ken is
22 totally conflicted, ignored his fiduciary responsibility to our
23 shareholders, and has been negotiating constantly for his own
24 self interest."

25 Do you see that?

1 A Yes, sir.

2 Q Now, you sent this email to Mr. Potashner; correct?

3 A I did. Well, I believe I did.

4 Q Yeah. On the -- I guess page 1 of this exhibit is
5 his response --

6 A Yes, I did.

7 Q Sorry, go ahead.

8 A I did send it to Mr. Potashner.

9 Q Now, this is one instance in which you're -- I'll say
10 calling him out on his fiduciary duties. Were there other
11 instances as well?

12 A I believe so. An example would be his insistence on
13 being paid part of his bonus. To me, a bonus is an incentive
14 to reach the finish line regarding the targets that we had set.
15 Mr. Potashner didn't come close to that. I think it was about
16 18 or 20 percent that he reached for the year, and he insisted
17 that he be paid whatever that figure was, 18 to 20 percent of
18 the bonus amount.

19 And that's when I said this is ridiculous. And
20 that's when he accused me of calling him a crook in the later
21 email. It's all part of the chain. I didn't call him a crook.
22 All I said is that, I'm very much against the issuance of your
23 bonus because you never reached the target that we had set, and
24 he was part of setting that target.

25 Q Now, are you referring to a 2012 bonus or 2013 bonus?

1 A I'm referring to the bonus in -- for 2012, as an
2 example where he and I had disagreements.

3 Q I'm sorry. Because the same thing happened in 2013;
4 correct?

5 A No, 2013 didn't become an issue because the bonuses
6 were accelerated when the merger had been voted on and
7 approved.

8 Q Because Mr. Potashner had a change and control
9 provision in his employment contract; right?

10 A That's correct.

11 Q So notwithstanding the fact that the performance
12 targets were not going to have been met in 2013, he still got
13 his bonus; correct?

14 A That's correct.

15 Q If we could go to 306, Mr. Kaplan.

16 A All right. Yes, sir, I have that up.

17 Q Now, you had mentioned before Mr. Wolfe and you said
18 Mr. Wolfe and Mr. Potashner had worked together at SONICblue, I
19 believe. Do you recall that?

20 A Yes.

21 Q And in this email on 306, you indicate that, "I don't
22 trust Andy Wolfe to represent us well with VTB about HHI."

23 Why did you say that?

24 A Because I felt that there were basically two camps in
25 the board of directors. There was Ken Potashner and Andy

1 Wolfe, and then there was -- on the other side there was Woody
2 Norris, Seth Putterman, Jimmy Honore and myself. And I felt
3 that Andy was too close in a personal relationship with Ken
4 Potashner to really do the job that I thought had to be done
5 and be very tough with Ken Potashner.

6 Q What type of personal relationship did they have?

7 A Well, I don't know the extent of the personal
8 relationship. I know that they were friends. I know they had
9 worked together in a previous company. I know that Andy was
10 suggested by Ken Potashner to be on the board, and I felt that
11 Andy really was representing Ken or Ken's side in many
12 situations.

13 Q And earlier in the email, a few lines above, you ask,
14 "Are we going to pass a resolution at tomorrow's BOD" -- board
15 of director meeting -- to get rid of John? Then when do we do
16 the job on Ken?"

17 Do you see that?

18 A Yes, sir.

19 Q Was there any point in time prior to the merger when
20 you came to pass a resolution in connection with John's
21 termination -- or Ken's, for that matter?

22 A We -- I'm sorry, you asked if there's any point when
23 we passed a resolution confirming --

24 Q Well, my question is did you pass a resolution to get
25 rid of John?

1 A No.

2 Q And did you ever pass a resolution to get rid of Ken
3 Potashner?

4 A No.

5 Q What would have happened had you proposed a
6 resolution to get rid of John?

7 A John had threatened us with a lawsuit.

8 MR. PEEK: Objection. Speculation, Your Honor.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: Thank you. John had threatened us
11 with -- or -- John had threatened us with a lawsuit regarding
12 his termination and it was when we were getting close to the
13 end of the negotiations with Turtle Beach, and my feeling was
14 that lawsuits would have fouled up or at least drawn out any
15 negotiations we had with Turtle Beach and that we should go
16 ahead with -- the priority for the sake of the shareholders, in
17 my mind, was let's get this merger done. So we did not pass a
18 resolution to get rid of John; John Todd.

19 BY MR. APTON:

20 Q Now, you hesitated initially when you said John
21 threatened you with a lawsuit. Was it John or Ken that
22 threatened you that John would bring a lawsuit?

23 A That's why I corrected myself and it was really Ken
24 who told us that John was planning a lawsuit. And that was
25 confirmed, at least we thought it was a confirmation, when John

1 presented us with some legal bills that he expected us to pay
2 because he consulted an attorney regarding his rights for the
3 options and his employment.

4 Q Now, what would have happened had you proposed a
5 resolution to get rid of Ken Potashner?

6 MR. PEEK: Objection. Speculation, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: That would have been a major explosion,
9 in my mind. And he, I felt, would have done his best to screw
10 up the merger, which would not have been in the best interest
11 of our shareholders. He took a very strong position, and I'm
12 sure that if we -- and he did have a termination clause that
13 was, I think, a year's salary or nine months salary. I forget
14 the exact details, but it was a very strong termination clause,
15 for cause or without cause. So that would have cost us a lot
16 of money and a lot of time if he did go ahead with lawsuits,
17 and I felt very certain that he would, so...

18 And I also felt one of the side benefits, not the
19 primary benefit but a side benefit of this merger was that we
20 would be rid of Ken Potashner, and Woody would have done it in
21 a more amicable way because he was going to go on the board of
22 Turtle Beach, and he'd be part of their team. So I was kicking
23 the can down the road regarding our problem and kicking it over
24 to the merger partners in a sense.

25 / / /

1 BY MR. APTON:

2 Q So between the two options, proceeding with the
3 merger, notwithstanding Ken Potashner, was in your opinion in
4 the better interest of the shareholders?

5 A Yes, sir, it was.

6 Q If we can move to Exhibit 286, please.

7 A 286. I have it up, sir.

8 Q Now, this email refers generally to what you were
9 just discussing. You talked about the HHI options being
10 issued, quote, "because of false statements to the BOD," board
11 of directors.

12 We already discussed that; correct?

13 A Yes.

14 Q And then you also reference Ken Potashner using J.T.,
15 John Todd, as a surrogate for getting as much as he can --

16 A Yes.

17 Q -- for his own HHI position. How did that unfold?

18 A How did him getting the options unfold?

19 Q No. I'm sorry. How did Ken use John Todd as a
20 surrogate for getting as much as he can for his own HHI
21 position?

22 A Well, my feeling was that John, although he never
23 faced the board when being hired or negotiation for these
24 options, was really a lieutenant for Ken Potashner. And Ken
25 would negotiate his options and obviously as the chairman or

1 the CEO of HHI, he should get at least as much as some
2 employee. And so it was a parallel that whatever John
3 Potashner (sic) could get, Ken would get as well.

4 Q And later in the email you use the term "blackmail,"
5 which I believe we just spoke about when discussing the two
6 options that you were confronted with. Is that accurate?

7 A Now, when you say two options, you're not confusing
8 these with the options of the company, but the options over the
9 merger or firing Ken?

10 Q Right.

11 A Okay. Yes, that's correct. Yes.

12 Q So let me ask you, just to be clear. When you use
13 the term "blackmail," what are you describing?

14 A Well, I guess I wasn't using the term in a technical
15 sense. I was using the term that we were being held up for
16 making decisions that Ken wanted to have made; that is, his
17 options, his bonus, et cetera. And under the threat of a
18 lawsuit, which would have delayed or canceled the merger, we
19 decided that this would be the easier way out, to go ahead with
20 the merger and just let the current situation, the tensions
21 just take care of themselves through the merger.

22 Q When you say held up, you mean held up as in like a
23 robbery at gunpoint; correct?

24 A No. The delay in time.

25 Q Oh, delay in time. If we could go to Exhibit 124,

1 please.

2 A Okay.

3 Q Now, as you pull it up, I'll tell you that in this
4 email you're discussing with Seth Putterman a payment to the
5 independent directors. Do you see that?

6 A Yes.

7 Q And so you're suggesting a \$50,000 bonus at this
8 point in time. This is July 28th, 2013. Correct?

9 A That is correct, sir.

10 Q And you reason it because Ken Potashner has been very
11 generous, quote, "for his people." And then you also refer to
12 the fact that the compensation would be important, given that
13 you had been legally exposed to a lot of the decisions he
14 forces upon us.

15 First, who are his people, again? Are you referring
16 to Mr. Wolfe and John Todd?

17 A Yes, I am.

18 Q And the legal exposure --

19 A Oh, excuse me. Excuse me, sir. I didn't include
20 Mr. Wolfe in that. I was referring to the other person, who
21 you mentioned earlier.

22 Q Sassan?

23 A I'm sorry. Sassan. Yes. Those were the people that
24 I was referring to there.

25 Q And in terms of the legal exposure, to what are you

1 referring?

2 A Well, as a member of the board of directors, we
3 certainly have a fiduciary responsibility to the shareholders,
4 which we were trying to uphold, and by allowing Ken what I
5 thought were extravagant compensation packages, we were -- we
6 would not be doing our best regarding the fiduciary situation,
7 and that was the legal exposure I'm referring to.

8 Q Now, in the email you refer to Ken Potashner's
9 options. Do you see that?

10 A Yes.

11 Q Now, you were on the audit committee and the
12 compensation committee of the board; correct?

13 A That's correct.

14 Q And in that capacity, what sort of additional
15 responsibilities did you have?

16 A Well, I certainly had the responsibility of
17 overseeing the auditors, relating to the auditors, overseeing
18 the chief financial officer and reviewing the statements, the
19 financial statements of the company and the audit committee and
20 the compensation committee. I felt that I was responsible for
21 having any reasonable compensation package associated with the
22 degree of effort and contribution of each of the executives.

23 Q Now, you mentioned the chief financial officer.
24 That's Mr. Barnes; correct?

25 A Yes, that's correct.

1 Q And did Mr. Barnes ever prepare materials for you to
2 review as a member of the audit and compensation committees?

3 A Yes, he did.

4 Q What sort of materials?

5 A Well, the financial statements I reviewed before they
6 went to the auditors and the adjustments that were made. And
7 then when the auditors came back with their suggested
8 corrected -- not corrected, but adjusted statements, I reviewed
9 those as well. And then when they went out in the proxy
10 statement, I reviewed those. And I reviewed the budget
11 projections that Mr. Barnes was making and presenting to the
12 public.

13 Q I've seen white papers. Did Mr. Barnes ever prepare
14 white papers for your review?

15 A I'm not sure that I understand what you mean by a
16 white paper?

17 Q If you could look at Exhibit 340, perhaps it would
18 refresh your recollection.

19 A 340. Let me pull that up. Yes, I have it up, sir.

20 Q Would this have been similar to one of the white
21 papers you may have seen on the audit committee or the
22 compensation committee?

23 A Yes.

24 Q Does this appear to be a white paper that was
25 generated by Mr. Barnes while he was CFO at the company?

1 A It does appear that way, yes.

2 MR. APTON: Your Honor, I'd move to admit
3 Exhibit 340.

4 MR. PEEK: Your Honor, he hasn't identified something
5 he's seen before today. He just said it looks similar to what
6 I've seen before.

7 THE COURT: Can you lay some additional foundation?
8 BY MR. APTON:

9 Q Now, Mr. Kaplan, in connection with Parametric's
10 year-end financials, there would have been a sufficient amount
11 of work to do, based on your role on the audit committee;
12 correct?

13 A Yes.

14 Q Okay. And would one of those items have been --
15 especially for year-end 2013, given the merger, would you have
16 had to have considered exit packages for executives?

17 A Yes.

18 Q Now, given that this is dated as of September 30,
19 2013, do you believe you've seen this before, Exhibit 340?

20 A I don't recall specifically seeing it, but I have a
21 feeling I probably have.

22 MR. APTON: Your Honor, move to admit 340.

23 MR. PEEK: I don't think he's yet identified it, Your
24 Honor, as something he's seen before today.

25 THE COURT: He needs to identify the specific

1 document, counsel.

2 BY MR. APTON:

3 Q Mr. Kaplan, we talked earlier about Mr. Potashner's
4 change in control position, or change in control provision in
5 his employment contract. That also related to stock options he
6 had; correct?

7 A That's correct.

8 Q And the stock options he had at the time had
9 performance targets; right?

10 A That's correct.

11 Q And I believe we said earlier that the performance
12 targets for 2013 had not been met; correct?

13 A That's correct.

14 Q In fact, Mr. Barnes -- strike that. In fact, it was
15 actually very unlikely that they were going to have been met
16 early in the year; correct?

17 A That's correct.

18 Q And so by consummating the merger, he was able
19 realize the benefit of those options, at least in terms of
20 vesting; correct?

21 A Yes, that's correct.

22 Q And are you aware what the strike price of those
23 options were?

24 A I think they were in the neighborhood, very close to
25 ten dollar, nine dollars and something.

1 Q And so, had the stock price been twenty dollars a
2 share post merger, those options would have been quite
3 valuable; correct?

4 A Yes, they would have been.

5 Q Let's move on to Exhibit 67, Mr. Kaplan.

6 A Okay.

7 Q And you're referring to the \$50,000 payment in this
8 email and you referenced it as a starting point; correct?

9 A I'm not quite there, sir.

10 Q Oh, my apologies.

11 A 67, you said. Okay, I have it up now, yes.

12 Q You referenced \$50,000 as a starting point. Yes?

13 A Yes.

14 Q And then towards the bottom you say that "Ken has
15 granted himself rather large bonuses."

16 Was board approval necessary for Ken's grant of
17 bonuses?

18 A It should have been, but I know that it never came
19 before the board.

20 Q And in your opinion, given everything that you went
21 through with Mr. Potashner, why was it that you wanted more
22 than \$50,000?

23 A Why is it that I wanted more?

24 Q Yes.

25 A I don't think I wanted more. My suggestion to the

1 board or discussions was that we each, the independent
2 directors, get a \$50,000 bonus. And the reason for that is I
3 put in a tremendous amount of time regarding this merger.

4 When the company first started out, I was invited on
5 the board, and it was \$1,000 a month. It was a very small
6 company struggling to get going, and that was fine. I was glad
7 to put in the work. But as it got bigger and got a lot of
8 funding, the stocks became worth something and the merger came
9 up, I was putting in many, many hours, and I didn't think that
10 \$1,000 a month was compensated. I was working far below the
11 minimum wage on this deal. And everybody else was getting
12 bonuses.

13 I felt that the independent directors should also get
14 a bonus.

15 Q Understood. And at the end of the email, or at the
16 bottom of the page, I should say, there's an email from
17 Mr. Putterman. It starts, "Bob!"

18 Do you see that?

19 A Yes, sir.

20 Q And now Mr. Putterman references something about
21 raising the 5 to 15 million. Was that a requirement that came
22 from VTB Holdings in order to close on the merger?

23 A I'm not seeing where that is. Mr. Putterman raised
24 that issue?

25 Q So on the bottom of the first page --

1 A Okay.

2 Q -- the lower right-hand corner.

3 A Page 1?

4 Q Uh-huh.

5 A Yes. 67- --

6 Q Yes. 67- --

7 A 001.

8 Q Correct. The bottom two lines of the page say, "Can
9 the bonus be made contingent on successfully raising the 5-15M,
10 million that we seek prior to closing, but that we need in any
11 event?"

12 A Yes, I see that.

13 Q Was that 5 to 15 million cash requirement imposed
14 upon you from VTB?

15 A Initially they wanted us to raise additional capital.
16 Turtle Beach, that was part of the early negotiation
17 agreements. I think that we had to raise at least 5 million
18 dollars. That didn't eventually happen because they were able
19 to raise money independent of that. So I'm not sure that I
20 understand your question. Can it be made contingent on
21 successfully raising the money? Sure, it could be.

22 Q My question, Mr. Kaplan, is actually whether
23 Mr. Potashner ever told you why VTB was asking you to raise
24 that money initially?

25 MR. HESS: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: The answer that I believe we got was
3 that Turtle Beach had paid them -- previous to any of the
4 merger discussions, paid themselves a very generous dividend of
5 \$10 million. And their major lender said, Before we will
6 approve the merger going through, you've got to replenish that
7 money in some way. And so they went out and they raised
8 \$10 million. And hence we were able to go ahead with the
9 merger.

10 BY MR. APTON:

11 Q Are you referring to PNC Bank?

12 A I believe that's the bank, yes.

13 Q And so PNC Bank -- well, strike that.

14 Okay. Mr. Kaplan, if we could go to Exhibit 123.

15 A Okay. Yes, I have it.

16 Q Now, this is August of 2013 and you write,

17 "Actually, his bonus is tied to company
18 performance, sales, licenses, et cetera, but
19 since he has been spending all his time on the
20 merger and not on getting us licenses for the
21 technology, he has negotiated that he get paid
22 his bonus anyway if the deal goes through."

23 Now, you're referring to Mr. Potashner there?

24 A Yes, sir.

25 Q And you're also referring to the fact that his change

1 in control provision would allow him to get paid upon
2 consummation of the merger; correct?

3 A That is correct.

4 Q If we could go to Exhibit 122, Mr. Kaplan.

5 A 122. Yes, I have it.

6 Q Now, earlier today you mentioned Ken appointing
7 himself to the board of the post merger company. Do you recall
8 that?

9 A Yes.

10 Q Now, down below on the first page, Mr. Putterman is
11 providing you with notes from a board of director meeting held
12 on Thursday -- what is that, the 24th of October, 2013. Do you
13 see those notes?

14 A The 27th of October? You said the 24th.

15 Q Right. So the notes are dated 10/27 and he's
16 referring to a board meeting that happened on the Thursday
17 prior, so I think it's October 24th he's referring to, if that
18 makes sense.

19 A I'm sorry, sir, I don't have any reference to
20 October 24th in the redacted copy that I'm looking at.

21 Q So the notes start off, "Sunday, 10/27/13."

22 A Yes.

23 Q And Mr. Putterman writes, "Here's what happened on
24 the phone call BOD" -- board of director -- "meeting on
25 Thursday, 9:00 a.m."

1 A All right. I see that's how you got to the 24th. I
2 have that, yes.

3 Q Okay. And Mr. Putterman's notes say.

4 "Ken brought up and apologized for having
5 issued a prior press release saying that he
6 had been chosen by the PAMT Board to be on the
7 VTB Board; whereas, in fact, such item had
8 never been voted on by the PAMT Board."

9 And in your email above that you say, "I confirm your
10 recollection of the discussion and agree with your synopsis in
11 your notes."

12 Do you still agree with that today?

13 A Yes.

14 Q And is that just another instance of Ken Potashner
15 doing as he pleased?

16 A Yes, it is.

17 Q If we could please go to Exhibit 282, Mr. Kaplan.

18 A 282. Yes, sir, I have it.

19 Q Mr. Putterman is emailing you and in his email he
20 says, "Woody." He's referring to Elwood Norris; correct?

21 A On 282?

22 Q Yes. 282.

23 A Oh, yes. "Woody just called me." Yes, okay.

24 Q "Woody just called me and said that we need to give
25 in on all matters or Ken will not do his best for the merger."

1 A Yes.

2 Q What happened after that?

3 A After that I believe we agreed to the bonus, which
4 was -- the change in control was legitimate. I believe we
5 agreed to the options and we -- when I say we, myself not
6 included, agreed to have him be a representative on the board
7 of directors of Turtle Beach.

8 Q Mr. Kaplan, there came a point in time during the
9 merger negotiations when you were presented with a fairness
10 opinion; correct?

11 A Yes.

12 Q Now, had the information that that fairness opinion
13 incorporated been incorrect, would you have still voted to
14 support the merger?

15 A If I knew at the time that the information in the
16 fairness opinion was not correct?

17 Q Yes.

18 A I would have certainly wanted it to be corrected
19 before I would consider voting either way.

20 Q If the -- now, the proxy statement came out several
21 months after the fairness opinion. Yes?

22 A Yes.

23 Q If the proxy statement -- strike that. If you knew
24 at the time that the proxy statement contained false
25 information, would you have let it go out to shareholders?

1 A It's a hypothetical, but I'd say if I knew that it
2 had false information, I certainly would not have let it go to
3 the shareholders.

4 MR. APTON: Thank you, Mr. Kaplan. I have no
5 questions right now. I reserve for redirect.

6 THE COURT: Thank you.

7 MR. APTON: Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Can you wipe down, please.

10 MR. APTON: Yes.

11 THE COURT: Sir, because of our COVID protocols, the
12 lawyers have to wipe down the lectern before they change. In a
13 moment, Mr. Peek is going to come up and ask you some
14 questions. Okay?

15 THE WITNESS: Thank you, Your Honor. Yes.

16 THE COURT: If you need a break, you just let me know
17 and we'll take a short break if you need one.

18 THE WITNESS: Okay. May I take a short break at this
19 point, and I'll be right back?

20 THE COURT: We can. Absolutely.

21 THE WITNESS: Thank you.

22 (Proceedings recessed at 10:17 a.m., until 10:24 a.m.)

23 THE COURT: Okay. Sir, are you ready?

24 MR. PEEK: Are you ready?

25 MR. KAPLAN: I am.

1 THE COURT: Mr. Kaplan, Mr. Peek's going to ask you
2 some questions now.

3 THE WITNESS: Fine. Thank you.

4 CROSS-EXAMINATION

5 BY MR. PEEK:

6 Q Mr. Kaplan, would you tell the Court a little bit
7 about yourself? First of all, where you went to school,
8 college particularly, and the things you did after school. And
9 I know that's a long history, but I know you can shorten it.

10 A Well, I went to the University of British Columbia
11 for undergraduate. I went to the Harvard Business School for
12 an MBA. And then I went to Michigan for a Ph.D. in business
13 economics. After that, I went into teaching and I was a
14 professor for 17 years.

15 Q Where?

16 A Well, at the University of Iowa and then at the
17 University of Vermont. I retired from the University of
18 Vermont and then I went to work for an investment banking firm.

19 Pardon me?

20 Q I hadn't asked a question. I've been waiting for you
21 to finish your history of employment.

22 A And the investment banking firm. And then I -- then
23 that firm stubbed its toe, and I decided that was a -- another
24 colleague of mine from the company. The firm was Drexel
25 Burnham Lambert. I was an economist there. And I went into

1 venture capital. I call it "adventure" capital because we did
2 primary angel financing, small businesses. And this is how I
3 got to know Mr. Barnes and Mr. Elwood. I had worked with them
4 on a couple of their deals.

5 And then in 1991, basically, I went into what I was
6 looking forward to as full mode retirement, but that didn't
7 work, and my children accused me of not failing in too many
8 things in life, but I sure failed in retirement.

9 And so here I am. I'm still doing a little bit of
10 consulting work. I'm still doing a lot of investments in the
11 market and doing -- playing golf and enjoying some skiing in
12 Sun Valley, Idaho.

13 Q And I assume when you taught, you taught business at
14 Vermont?

15 A That's correct. Yes.

16 Q And business -- so business has been your life work?

17 A It has. In my studies and in work. Yes.

18 Q You've served on other boards, have you not?

19 A Yes, sir. I have.

20 Q How many other -- on how many other boards have you
21 served?

22 A Five boards.

23 Q Yes. Boards of director.

24 A I says -- what? I'm sorry. Say that again, please.

25 Q On how many other boards of directors have you

1 served?

2 A Yes. Five.

3 Q You take your duties and obligations as a board
4 member very seriously, do you not?

5 A I certainly try to, sir. Yes.

6 Q And you try to act independent as well, do you not?

7 A That's correct.

8 Q And on the Parametric board, you were considered an
9 independent board member, were you not?

10 A Yes, sir.

11 Q And in fact, in order to be on the audit committee,
12 one has to be, under NASDAQ rules, an independent board member;
13 correct?

14 A That's correct.

15 Q And that's the same for the compensation committee?

16 A Yes, sir.

17 Q And when were you appointed to the board of directors
18 for Parametric?

19 A I think it was sometime either late 2010 or early
20 2011.

21 Q Okay. And you served continuously until the merger
22 actually took place on or about January 15th, 2014?

23 A That's correct.

24 Q And by the way, I understand from Mr. Stigi that you
25 are a former Rugby player for Canada?

1 A Yes, sir.

2 Q I hope you still don't do Rugby, do you?

3 A Not at my age.

4 Q And how old are you Mr. Kaplan?

5 A I'm 84.

6 Q So, Mr. Kaplan, I think that you talked about Jim
7 Barnes. Who was or who is Jim -- who was Jim Barnes during the
8 time that you were on the board of directors of Parametric?

9 A Jim Barnes was the Chief Financial Officer, the
10 Secretary of the company and Treasurer.

11 Q And how long had you known Mr. Barnes, if at all,
12 before you went on the board?

13 A I've known Mr. Barnes and Mr. Elwood from the mid-
14 1980s.

15 Q You say Mr. Elwood. Are you saying Mr. Norris, or
16 Woody, Woody Norris?

17 A Yes.

18 Q Okay. So I guess for almost 40 years you've known
19 Jim Barnes; correct?

20 A That's correct, sir.

21 Q And tell me what you know about Mr. Barnes, his
22 background, his capabilities and the like?

23 A Well, Mr. Barnes is a CPA. He was in practice with
24 two of the larger, at that time, the big six firms. And then
25 he went into a regional firm as a partner. And I met him when

1 he was with a regional firm called McDonald & Company in
2 Phoenix, Arizona. I found him to be very, very competent, a
3 serious individual. We became good friends. She shared a lot
4 of activities together. Our wives were friends. And we've
5 continued the friendship.

6 Q So I guess it would be fair to say you trusted Mr.
7 Barnes and his capabilities as a Chief Financial Officer of
8 Parametric?

9 A I certainly did, and I had a great deal of admiration
10 for his abilities and his integrity.

11 Q And as a director, an independent director, what
12 were -- what did you understand to be your duties and
13 responsibilities?

14 A Well, I was to -- as an independent director, I was
15 responsible for overseeing the -- the decisions made by the
16 corporation, at least on the -- on a -- on a larger scale, not
17 the micro decisions. I didn't want to be a micro manager. But
18 we oversaw, or we were supposed to have overseen the major
19 decisions, to set direction for the company, to set bonuses and
20 compensation, and to make sure that the company was -- was
21 being run in a proper manner. And by a proper manner, legally,
22 and ethically, and for the sake of the -- the shareholders. I
23 had the fiduciary responsibility to the shareholders. I was
24 elected by the shareholders to represent them to oversee the
25 running of the company.

1 Q Well, you were asked questions about the proxy
2 statement. Do you recall those, from Mr. Apton?

3 A Yes, sir.

4 Q Do you know who was involved in the drafting of the
5 proxy statement?

6 A For the most part, I believe it was a combination of
7 our legal counsel, the auditors, and Mr. Barnes.

8 Q So three people, Mr. Barnes, your auditors, and legal
9 counsel; is that correct?

10 A Yes. That's my best understanding of it.

11 Q And I think the financial information that was placed
12 within the proxy statement was that prepared by -- by
13 Mr. Barnes and the auditors?

14 A It would have been, yes.

15 Q You know how to read a financial statement, I would
16 take it, Mr. Kaplan? That may be a silly question, but I'm
17 going to have to ask. You know to read a financial statement?

18 A I consider myself being able to.

19 Q You can read a balance sheet and understand it?

20 A Yes.

21 Q And you can read income, profit and loss statements
22 as well?

23 A Yes, I can.

24 Q You know what a general ledger is?

25 A Yes, I do.

1 Q And these are all the things that Mr. Barnes did for
2 the -- with the company; correct?

3 A Yes. That's correct.

4 Q Did Mr. Barnes have a staff or was he kind of a solo
5 guy at Parametric?

6 A He was a solo. He -- he did not have a staff. We
7 kept the company very lean. It was just a fairly embryonic
8 company.

9 Q So he was a hands-on CFO when it came to balance
10 sheets, income and expense statements, things of that nature?

11 A He was. Yes.

12 Q And as you've said, you found him to be very
13 competent in his abilities as CFO, based on your long history
14 of -- knowledge of him, his CPA background and the like?

15 A Yes. That's correct.

16 Q And did Mr. Barnes from time to time prepare
17 projections about the -- about Parametric?

18 A Yes, he did.

19 Q Did you review those from time to time?

20 A I did.

21 Q And you understand and appreciate projections, do you
22 not?

23 A Yes, I do.

24 Q And you understand that projections aren't always
25 accurate because they are just that, they are projections?

1 A That's correct. Yes.

2 Q They are at least somebody's best understanding at
3 the time of what may take place with the operation of the
4 company?

5 A Absolutely correct.

6 Q You've talked a lot here about Mr. Potashner, but I
7 want to talk more about Bob Kaplan, and not Mr. Potashner.
8 You consider yourself very independent?

9 A Yes, I do.

10 Q You consider yourself to be somebody who makes up his
11 own mind?

12 A Yes, I do.

13 Q Somebody who, after review of all the information
14 presented to him by Jim Barnes, makes up his -- acts
15 independently?

16 A Yes.

17 Q And similarly, with respect to, and from advice of
18 counsel, you also listen to advice of counsel in making your
19 decision as well; correct?

20 A Oh, yes. I do.

21 Q And you don't consider yourself to be under control
22 of anybody on the Parametric board of directors. Would that be
23 correct, too?

24 A No, I -- I was not under the control of anyone.

25 Q And from time to time, I think you said you opposed

1 some of the actions of Mr. Potashner?

2 A Yes. That's true.

3 Q And you did that as an independent member of the
4 board; correct?

5 A Yes, sir.

6 Q And you were acting with respect to the merger, in
7 good faith and independent. Would that -- would that be
8 correct?

9 A That is correct.

10 Q And would you also consider that Putterman similarly
11 was independent?

12 A Yes, I do.

13 Q And did you also consider him to be exercising his
14 judgment about any merger in good faith and independently?

15 A Yes, sir.

16 Q Did you think that Mr. Putterman was under the
17 control of Mr. Potashner?

18 A Absolutely not.

19 Q And what about Jim Honore? We haven't heard a lot
20 about Jim Honore, but who is Jim Honore?

21 A Jim Honore came onto the board around the same time
22 as I did, a little later. And he previously -- his background
23 was that he was President of Sony Entertainment in America.
24 And he had an expertise in the marketing and in -- in the sound
25 industry to the -- his position with Sony.

1 As the board -- as time went by, Jim was -- I think
2 that he wasn't that active as a board member, although he
3 attended the meetings and he was always a part of it. But Jim,
4 I think, used to look to me (indiscernible) regarding what our
5 decisions were, and then he would digest that and come back
6 with his own opinion.

7 Q So you considered Mr. Honore also to be independent?

8 A Oh, yes. Yes.

9 Q Did you also consider him to not be under the control
10 of Mr. Potashner?

11 A I don't believe he was.

12 Q And do you, with respect to his actions, do you --
13 did you find them to be exercised in good faith and
14 independently, in the best interests of the shareholders?

15 A Yes, I do.

16 Q And let's talk a little bit about Elwood Norris. He
17 was the founder of the HyperSound technology; correct?

18 A That's correct.

19 Q And you know him also to be independent?

20 A Yes. Very much so.

21 Q When you say very much so, give me a little bit more
22 about what you mean by that.

23 A Well, at one point, Mr. Potashner threatened the
24 board, and he was going to call a meeting of the shareholders
25 and have us all kicked off because he felt he controlled

1 40 percent of the -- of the proxies, or of the shareholders.

2 And -- and that's when Mr. Norris said, you do that,
3 and I am resigning from the company. And obviously, he was a
4 the very key figure regarding the technology and he was the
5 President of the company. So at that point --

6 Q So every time Mr. Potashner would push the board of
7 directors, these four -- at least these four independent
8 members would push back?

9 A I'm sorry. I didn't hear all of your words.

10 Q So every time that Mr. Potashner would push on the
11 board, the -- I take it these four members that you've
12 described would always push back?

13 A Not always. Sometimes we agreed with the decision.
14 But if we didn't agree, we certainly would push back.

15 Q So I guess you would say this was a very robust
16 board?

17 A It was -- yes. That's a good term. I wouldn't have
18 used that, but a good way to describe it.

19 Q One where nobody was fearful of expressing their own
20 opinions about the actions of the company?

21 MR. APTON: Objection, leading.

22 THE COURT: Can you rephrase --

23 THE WITNESS: No, we were not.

24 THE COURT: -- your question, please.

25 THE WITNESS: I'm sorry, Your Honor. I didn't hear

1 you.

2 THE COURT: Mr. Peek's going to rephrase your
3 question.

4 BY MR. PEEK:

5 Q She said that my question was bad, and I need to ask
6 it better.

7 A Oh, okay.

8 Q So, I will. So, tell me, how would you describe the
9 board meetings in 2013 with respect to the merger as to how
10 each of the individual board members were acting and what they
11 would say and do?

12 A The term I would use, and it might be a little
13 exaggerated, but I'd say dysfunctional.

14 Q You would say what?

15 A Dysfunctional.

16 THE COURT: Dysfunctional.

17 BY MR. PEEK:

18 Q Dysfunctional. Okay. Aside from being
19 dysfunctional, were they active at least in expressing their
20 views?

21 A Yes, they were.

22 Q Was anybody shy about expressing their views?

23 A I know I wasn't, and I don't think the others were.

24 Q Well, did you form any impression that the other
25 members of the board of directors, Potash -- excuse me --

1 Putterman, Honore, yourself, and Norris, were under the control
2 of Mr. Potashner?

3 A No, not at all.

4 Q And in fact, it was the exact opposite, would you
5 say?

6 A We were all acting independently. We were not under
7 his control. I know definitely, I was not, and the impression
8 I have of the other directors is, is that they were not.

9 Q Now, you say that -- that you didn't agree with all
10 the management decisions. Would that be a fair statement?

11 A Yes.

12 Q Were there times when you and other members of the
13 board who were acting independently, perhaps agreed with
14 management decisions that you did not agree with?

15 A Yes.

16 Q For example, you opposed Mr. Potashner's options in
17 HHI when they were first granted in the -- early 2013, correct?

18 A That is correct.

19 Q And the other -- the other members of the board
20 outvoted you; is that right?

21 A Yes.

22 Q And they granted --

23 A Yes.

24 Q -- Mr. Potashner options, did they not?

25 A Yes, they did.

1 Q Now, on the competition committee, I would imagine
2 that you would've had something to do with the approval of
3 Mr. Potashner's employment agreement; would that be a fair
4 statement?

5 A Actually, I didn't. I -- that was pretty much
6 decided, and I wasn't a part of it.

7 Q Was it decided by the board or by Mr. Norris?

8 A I think it was a combination of Mr. Norris and
9 Mr. Barnes. I was opposed to hiring him in the beginning, and
10 I let that be known. Therefore, I wasn't included in the
11 negotiations with his contract. I thought it was excessive,
12 and I thought for a small company as we were, with no revenues,
13 it was -- it was out of line.

14 And then our investment bankers, who were responsible
15 for raising the money, the 5 -- the \$5 million that they did,
16 had their reputation on the line, and went to their clients to
17 raise the money, and they were in support of Mr. Potashner.

18 So they talked me into acquiescing because they felt
19 that this was -- and their -- this is their words; I'm
20 paraphrasing them, but they said that this is the man who can
21 take us well beyond the next level.

22 They said, if we get somebody else who will just take
23 us to the \$100 million range, we've then got to get somebody
24 else who is capable of going to the 200 million, and to the 300
25 million. But Mr. Potashner, they felt, was the person who

1 could take us to at least the \$300 million level, and they
2 convinced me that he would be the right person. So, since they
3 had their reputation and their clients' money on the line, I
4 went along with it.

5 Q So I think we've -- you've talked a little bit about
6 the fairness opinion. Do you remember the fairness opinion
7 with respect to -- well, before I go to the fairness opinion,
8 you've talked about a dispute with Mr. Potashner about the HHI
9 options. Do you recall that testimony you gave earlier today?

10 A Yes, sir.

11 Q And that dispute was resolved, was it not?

12 A Yes, it was.

13 Q And in that resolution of that dispute, Mr.
14 Potashner gave up his options; is that correct?

15 A That's -- that is correct.

16 Q And that was at the direction of the board of
17 directors making its good faith, independent judgment, correct?

18 MR. APTON: Objection, Your Honor, leading.

19 THE WITNESS: That's correct.

20 THE COURT: Can you rephrase your question, please?
21 You offered the answer. You got to ask it who, what, when,
22 where, why, how.

23 MR. PEEK: I'm a rookie, Your Honor.

24 THE COURT: Yeah, I know. You're out of practice is
25 what it is.

1 MR. PEEK: I haven't been here for a while.

2 THE COURT: It's really -- yeah.

3 MR. PEEK: Mr. --

4 THE COURT: Direct exam's hard.

5 BY MR. PEEK:

6 Q Again, that colloquy was I need to ask my question
7 better. So were there board actions taken with respect to the
8 HHI options granted to Mr. Potashner?

9 A Yes, there was.

10 Q And when did that occur?

11 A Specifically, I don't know, but I think it was
12 sometime in the fall of 2013.

13 Q Did you understand whether the mergers were -- excuse
14 me, whether the options were something that were perhaps a
15 negotiating point with Turtle Beach on the merger?

16 MR. APTON: Objection, leading, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: The options certainly were a
19 negotiating point. And we were told by Mr. Potashner that
20 Turtle Beach was not interested in HHI, and that's part of the
21 reason why the options got granted because we wanted to keep it
22 as an independent company then. But then it turned out that
23 that wasn't really the case. We found out that Turtle Beach
24 was very much interested in HHI, and there would be no deal
25 unless we had cleaned up the ownership of HHI. By that, I mean

1 canceling the options to both Mr. Todd and Mr. Potashner.

2 BY MR. PEEK:

3 Q And as a result of that condition of Turtle Beach,
4 what did you do?

5 A We canceled the options.

6 Q And were you canceling the -- why were you canceling
7 the options with respect to the merger?

8 A Because Turtle Beach, their CEO Juergen Stark,
9 indicated unless those options are gone, there's no deal.

10 Q And what did the no deal or deal have to do with the
11 decision to cancel options?

12 A Well, the decision wasn't -- he was not interested
13 in -- he was very interested in HHI as a wholly owned
14 subsidiary, not as a partially owned subsidiary, and he said
15 that they're very interested in HHI. I know that he was
16 enamored with the technology. He tried it on his father in a
17 nursing home, and his father said, I've never heard television
18 as clear as I'm hearing it now, and that's -- he reported that
19 back to us. So he was very much interested in the technology
20 and said, we want that company, and we don't want just part of
21 it.

22 Q And were you also interested in that the merger go
23 forward?

24 A That's right.

25 Q And in order to have the merger go forward, it needed

1 a cancellation of options?

2 A Yes, sir.

3 Q Now, before the merger was approved by the board, did
4 you receive a fairness opinion from a company called
5 Craig-Hallum?

6 A Yes, we did.

7 Q Do you know Craig-Hallum independent of this case?

8 A As a defendant?

9 Q Yeah, independent. In other words, had you known
10 them before this --

11 A Oh, yes. They were independent. I thought you said
12 defendant. No, independent. Yes.

13 Q Well, had you known them before they presented a --
14 known about them or of them before they gave a fairness opinion
15 to the board?

16 A I knew the name only. I did not know much about the
17 firm.

18 Q Okay. Do you know a firm by the name of Houlihan
19 Lokey?

20 A Yes, sir.

21 Q And what do you know about Houlihan Lokey, generally?

22 A Well, it's -- in the same regard, I knew about them,
23 but I didn't know much. I knew that they were investment
24 bankers, they acted as consultants, and that's about it. I
25 didn't know any of the personnel with the firm until we -- they

1 made their presentations to us. So basically, I just knew them
2 in name.

3 Q Did Houlihan Lokey play a role in the merger with
4 Turtle Beach?

5 A Yes, they did.

6 Q And what was their role?

7 A They gave us -- initially, they were -- they gave us
8 evaluations, they gave us fairness opinions, they did an
9 analysis, they tried to find a -- merger partners for us. I'm
10 trying to think of other things, but in the general sense, they
11 were our investment banker -- banking advisors.

12 Q And they were somebody upon whom you were relying to
13 provide you information about merger partners?

14 A It was somebody, yes.

15 Q I'm going to have you take a look at what has been
16 introduced in evidence here as Exhibit 754.

17 A 754. Okay. Yes, sir. I have it. It's their
18 presentation to the board of directors.

19 Q Correct. So do you -- do you recognize this as a
20 presentation to the board of directors by Craig-Hallum?

21 A Yes. That's correct.

22 Q And did -- when did that presentation occur, if you
23 can recall?

24 A Late summer of '13, 2013.

25 Q So if you'll look on the front page there, you'll see

1 the date August 2nd, 2013. Does that refresh your recollection
2 as to whether or not --

3 A Yes, it was --

4 Q -- it was on or about August 2nd that the
5 presentation occurred?

6 A That's correct. Yes, that's --

7 Q So now that your recollection is refreshed, did it
8 occur on or about August 2nd, 2013?

9 A I would say, yes.

10 Q Okay. So what was the purpose, as you understood it,
11 of having Craig-Hallum provide the board with their
12 presentation on or about August 2nd, 2013?

13 A Houlihan Lokey, which were our investment advisors,
14 our investment bankers, had previously served Turtle Beach in
15 that capacity, and it was suggested that we get another
16 investment banker to work with us because there's a possible
17 conflict, and that's how we went out and hired Craig-Hallum.

18 Q Well, aside from the why, what was the purpose? Why
19 did you need Craig-Hallum?

20 A Well, we wanted to make sure that what we were doing
21 made good financial sense to the investing community and to our
22 shareholders, and we wanted an outside opinion, and we got the
23 outside opinion from them.

24 Q And so, this Exhibit 754, is that the opinion that
25 Craig-Hallum gave to the board on or about August 2nd with

1 respect to a merger with Turtle Beach?

2 A Yes, it is.

3 Q So there are some financials contained there. Do you
4 see those? I'm now looking at Proposed Merger Summary -
5 Exchange Summary. Do you see that on page 7 of the
6 presentation?

7 A Page 7. Let me get that. I have page 7. Yes.

8 Q Yeah. And so there, the topic there is, Proposed
9 Merger Summary?

10 A Yes.

11 MR. PEEK: Would you bring that up?

12 THE COURT: We can't bring it up. Mr. Peek, we
13 can't. We've got to look --

14 MR. PEEK: No, no, you can -- I just want to make
15 sure the Court had it.

16 THE COURT: I have it.

17 MR. PEEK: Oh, okay. Sorry.

18 THE COURT: The clerk has them all.

19 MR. PEEK: Brian's got it done.

20 THE COURT: Keep going.

21 MR. PEEK: Brian's following me, in other words.

22 Okay.

23 THE COURT: No, keep going. The Clerk has it.

24 MR. PEEK: Okay.

25 / / /

1 BY MR. PEEK:

2 Q So looking on page 7, what do you understand this
3 summary to be where it says, Exchange Summary?

4 A Well, it basically is analyzing, in this case, what
5 the two companies would be worth in a merger, and what would
6 the -- be the combined companies' worth, and then what's the
7 percentage of each company in the combined valuation.

8 Q What --

9 A And they came up with 80.9 and 19.1.

10 Q Thank you. What do you understand the role that Mr.
11 Barnes played in providing financial information to Craig-
12 Hallum?

13 A I believe that he gave them the information from
14 Parametrics, and that he said --

15 Q Do you believe he was being accurate when he made the
16 presentations to Craig-Hallum or provided information?

17 A I believe that they were accurate to his best of the
18 knowledge at the time.

19 Q Now, turn to the next page, page 8.

20 A Yes.

21 Q Oh, by the way, just so that we can get clear, I just
22 want to make sure, do you understand that Beam here refers to
23 Parametric? Do you see the --

24 A Yes, sir, I do.

25 Q Okay.

1 A Yes.

2 Q So now, on the next page, there's a -- it falls under
3 the heading, Qualitative Factors. Do you see that?

4 A Yes.

5 Q Now, do you see there, there's a statement beginning,
6 "Prior to engaging." Do you see that?

7 A Yes.

8 Q And do you understand that, as stated here, that,
9 "Prior to engaging Houlihan Lokey, the
10 company had executed NDAs and held technology
11 licensing discussions with 31 companies,
12 including Bose Corporation, Ingram Micro, LG
13 Electronics, Motorola Mobility, Roland and
14 Texas Instruments, among others, but the
15 discussions had not resulted in any license
16 deals to date."

17 You saw that?

18 A Yeah, I saw that. Yes.

19 Q You understood that to be correct?

20 A Yes, I do.

21 Q And then it also goes on and says,

22 "Houlihan Lokey subsequently contacted
23 and held discussions with parties with regard
24 to potential interest in acquiring Beam,
25 including Amazon, Apple, DEI Holdings, Dolby

1 Laboratories, Google, Harman -- Harman
2 International Industries, Logitech, Microsoft,
3 Razer USA, Samsung Electronics, Sony
4 Corporation, Turtle Beach, Vizio, and VOXX
5 International."

6 Did you understand that that was, in fact, what
7 Houlihan Lokey had done prior to this presentation by Craig-
8 Hallum?

9 A I understand that to be the case. I have no idea the
10 extent of their discussions, but I understand that they had
11 contacted all of these firms.

12 Q Well, you understood that they were doing so in order
13 to see if any of these companies were interested in licensing
14 deals; correct?

15 A That's right.

16 Q And when Craig-Hallum told you,

17 "With the exception of VTB, none of the
18 parties contacted by Houlihan Lokey, nor any
19 previously contacted by the company, expressed
20 any current interest in pursuing a potential
21 transaction with the company."

22 Did you understand that to be an accurate statement
23 by Houlihan Lokey?

24 A Yes, I do.

25 Q And then we see in the next page, there's what's

1 called a Beam Due Diligence Overview, and it goes on for, oh,
2 gosh, I think two pages. Do you see that? Pages 10 and 11.

3 A It goes on beyond that, I think, to 13 or -- yes.

4 Q Well, it's not only VTB due diligence, but also, the
5 VT -- excuse me, the Beam Due Diligence, but also, the VTB Due
6 Diligence Overview?

7 A That's correct, yes.

8 Q Did all of that due diligence provided to you by
9 Craig-Hallum when they made their presentation on August 2nd
10 help inform you as to whether or not this was a -- the
11 transaction with Turtle Beach was in the best interest of the
12 shareholders?

13 A Yes, it was.

14 Q Did you have an understanding that Craig-Hallum, when
15 they were making their presentation to you, was doing so in
16 good faith and independent?

17 A I certainly thought so, yes.

18 Q Now, with respect to Parametric in or about August
19 2nd, 2013, did it actually have a commercial -- a product that
20 had been commercialized by Parametric?

21 A By commercialized, you mean we had actual sales?

22 Q Right.

23 A No, it was not commercialized. It was still in the
24 beta testing stage. It was still being further developed.

25 Q I think I've heard the term it was a nascent company.

1 A Yes, that's a good -- the company was.

2 Q Yeah.

3 A I was speaking specifically of the product.

4 Q Now, even though Craig-Hallum was making a
5 presentation, did you make your own determination independent
6 of Craig-Hallum's presentation on or about August 2nd with
7 respect to approval of the merger?

8 A Yes, I did.

9 Q And what did you do, Mr. Kaplan?

10 A Well, I took it in two different avenues. One was a
11 qualitative analysis on how good a fit it might be and what
12 Turtle Beach could contribute to Parametrics regarding
13 management, regarding marketing, regarding R&D, regarding
14 production, regarding finances, et cetera.

15 And then I also did a quantitative analysis and
16 figured out, well, is this a fair ratio? They came up with
17 80.1 and 19 point -- excuse me, 19.1 and 80.9, and I did -- I
18 calculated my own figures and came up with a ratio of 17.4 is
19 what Parametric was worth relative to Turtle Beach. And so, if
20 they were offering to our shareholders -- excuse me. I got to
21 get rid of this.

22 Q You're probably getting the same Amber Alert.

23 A It's an Amber Alert I'm getting on the phone. I just
24 turned it off. I'm sorry --

25 Q It's all right.

1 A -- for the interruption.

2 THE COURT: It's okay, don't worry.

3 THE WITNESS: And my analysis indicated that
4 Parametric was worth 17.4 percent of the combined company, and
5 here, they were offering us 19.1. I felt -- I felt that, yes,
6 this is a good deal for Parametric shareholders, and I
7 certainly went along with the merger.

8 BY MR. PEEK:

9 Q Did you at this board meeting provide this
10 information that you have done, I guess, of your own analysis
11 to your other board members?

12 A No, I did not make it to the board members, but I did
13 make it on a private basis to some other members of the board.
14 For example, to Seth Putterman, I explained my analysis, and to
15 Woody, and also to Jim Barnes, and felt that, from my
16 perspective, from my analysis, that Parametric was getting
17 quite a fair deal for its shareholders.

18 Q Did you then believe, based upon your analysis, and
19 your discussions with others, and the presentation you heard,
20 that this was a -- in the best interest of the shareholders?

21 A Yes, I did.

22 Q And you were also advised, not only by Houlihan Lokey
23 and Craig-Hallum, but you were also advised by lawyers;
24 correct?

25 A That we -- that I was advised by lawyers?

1 Q You also had lawyers who were advising the board;
2 correct?

3 A That's correct, yes.

4 Q So you had Jim Barnes, your CFO, Houlihan Lokey, an
5 independent financial advisor, Craig-Hallum, and all -- and
6 lawyers, all advising you with respect to the merger.

7 Would that be a fair statement?

8 A Yes, that's fair.

9 Q And when you voted in favor of the merger, were you
10 exercising your good faith and independence?

11 MR. APTON: Objection, leading, Your Honor.

12 THE WITNESS: Absolutely.

13 THE COURT: Can you rephrase.

14 BY MR. PEEK:

15 Q Tell me what -- tell me, what was the basis --

16 A The basis for my feeling on the --

17 Q I think you've already established that you were
18 independent?

19 A Yes.

20 MR. APTON: Objection.

21 THE WITNESS: And I had --

22 THE COURT: Overruled.

23 THE WITNESS: And on the basis of my --

24 BY MR. PEEK:

25 Q Were you exercising independence when you voted on

1 the merger?

2 A Yes, I was. And on the basis of my independence, in
3 my independent analysis, other than Craig-Hallum and other
4 people, I felt it would be a good deal for our shareholders.

5 Q Did you vote in favor of the merger because you were
6 under the control of Ken Potashner?

7 MR. APTON: Objection.

8 THE WITNESS: Absolutely not.

9 MR. APTON: Leading.

10 THE COURT: Overruled.

11 BY MR. PEEK:

12 Q Did you rely on Ken Potashner at the time you --
13 information he provided you when you voted in favor of the
14 merger?

15 A No, I did not.

16 Q Let me have you take a look for a moment at
17 Exhibit 244. It's a rather lengthy document, but I'm going to
18 have you take a look anyway.

19 A Just -- 244, that's a plaintiff's document; right?

20 Q That's the plaintiff's document, yes. So it's a --

21 A Okay.

22 Q -- has a PX in front of it.

23 A Yes. It's a message, a PDF of the SEC Acceptance
24 Confirmation.

25 Q Yes.

1 A Okay. I have that up, sir.

2 Q Now, there are -- look at --

3 A It's --

4 Q It's at --

5 A Julio Dominguez? Is that correct?

6 Q It's PX --

7 A It's from a Julio Dominguez.

8 Q -- page 24-11. Do you see --

9 A 24-11?

10 Q Or, actually, it's actually page 2 of the merger, but
11 at the bottom of it would be 244-011.

12 A Dash 011. Okay. 06, 7, 08, 011. Yes, I have that.

13 Q And here, there's a -- this has a bold heading,
14 "Reasons for the Merger and Recommendations of the Parametric
15 Board."

16 Do you see that?

17 A Yes. Yes.

18 Q And take a moment to review some of those reasons,
19 then I'm going to ask you some questions about it.

20 A Okay. Okay. That continues onto the next page;
21 right?

22 Q Yes.

23 A Okay. All right. Yes. I've done that.

24 Q And were the reasons here many of the same reasons
25 that you had when you voted in favor of the merger on or about

1 August 2nd?

2 A Some of them, yes. There's some overlap. Some of
3 them, I didn't include, such as the termination agreement, the
4 payment of a million dollars, et cetera. And then it says, the
5 opinion of Craig-Hallum, et cetera. I -- I really didn't take
6 that into consideration either although I knew that they were
7 in favor of the merger.

8 Q And you didn't take --

9 A But this --

10 Q -- Craig-Hallum in consideration because you did your
11 own analysis; would that be fair?

12 A That's correct.

13 Q Okay. Did you object to any of these reasons for the
14 merger going into the proxy statement prepared by counsel, and
15 Jim Barnes, and the auditors?

16 A No, I did not.

17 Q Now, let me have you take a look if you would, and
18 this would be -- the bottom of the page 244-056 is where it
19 starts.

20 A 056? Okay. I'm just scrolling to that page.

21 Q Yeah. I want you actually to scroll through that
22 page and the following. It may take a moment because it's
23 rather lengthy.

24 A 056? That's --

25 Q It goes all the way up to at least page 58.

1 A Oh, to 058?

2 Q No, actually, 05 -- sorry. 05 -- 068.

3 A Oh, 205-8.

4 Q No, actually, 05 -- sorry -- 05-068. So it's about
5 pages.

6 A This is background to the merger.

7 Q It's a background of the merger. It's a recitation
8 of the various activities that took place leading up to the
9 merger.

10 A Okay. Yes. I actually have gone through this, but I
11 -- I -- unless you really want me to remember the specific
12 dates --

13 Q No, I'm not asking you to remember specific dates.

14 A -- I can't (indiscernible).

15 Q I'm not asking you is this a fair representation of
16 everything that the company did leading up to its decision to
17 vote in favor of a merger with Turtle Beach?

18 A Yes, it is.

19 Q And there were, as listed here, many meetings of the
20 boards of -- of the board of directors with Houlihan Lokey, or
21 with Turtle Beach. Do you see that?

22 A Yes.

23 Q And did you meet from time to time with Houlihan
24 Lokey prior to August 2nd, 2013?

25 A Yes.

1 Q Okay. And did Houlihan -- and was Houlihan Lokey
2 providing you with its assessment of a merger with Turtle
3 Beach?

4 A Yes, they were.

5 Q Did you understand they were also negotiating
6 directly with representatives of Turtle Beach?

7 A Yes.

8 Q Did you also understand that they were getting
9 information from Turtle Beach's accountant, McGladrey?

10 A I'm sure they were. But I -- I was not privy to any
11 of that.

12 Q Okay.

13 MR. PEEK: If I may have a moment, Your Honor.

14 THE COURT: You may.

15 (Pause in the proceedings.)

16 BY MR. PEEK:

17 Q Mr. Kaplan, to your understanding, at the time that
18 the merger was approved on or about August 2nd, did Mr.
19 Potashner hold any vested shares of stock in Parametric?

20 A I believe that he sold them before that date. He
21 sold 250,000 shares, I believe. No, 25,000 shares at
22 approximately \$10 each. The shares that he had options on, he
23 exercised the options, and then sold the shares in the
24 marketplace.

25 Q So but as of the merger, did he, to your knowledge,

1 have any shares at all in Parametric?

2 A He did not own any shares at all, no.

3 Q Who --

4 A He never did.

5 Q -- amongst the members of the board of directors
6 owned shares of stock?

7 A I know I definitely did. I initially put in \$50,000
8 seed money for the company. Jim Barnes, well, he wasn't on the
9 board. Woody Norris, did. And I'm not sure about Seth
10 Putterman. But I know those -- the two of us certainly owned
11 shares.

12 Q And Mr. Norris actually owned a significant block
13 of -- of shares, did he not?

14 A He did, yes. He had a lot of founder shares, and
15 technology -- shares that he got for forwarding the technology
16 into the company.

17 Q So would it be fair to say that Mr. Potashner was not
18 a controlling shareholder of Parametric on or about August 2nd?

19 A No, he was not.

20 Q And if anybody who had a large block of shares, that
21 would have been Mr. Norris, who you say exercised his own
22 independent judgment; is that right?

23 A That's correct.

24 MR. PEEK: That's all I have. Thank you very much,
25 Mr. Kaplan.

1 THE COURT: Can you wipe down, please?

2 MR. PEEK: I will, Your Honor.

3 THE COURT: Thank you.

4 MR. PEEK: As soon as I get my stuff off of here.

5 THE COURT: Sir, I have a question.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: You mentioned that your calculations were
8 that 17 percent was the appropriate ratio between the two
9 entities.

10 THE WITNESS: That's correct.

11 THE COURT: Can you give me a little more information
12 about how you came up with that calculation?

13 THE WITNESS: Yes. What I did is I took the -- the
14 average of the share price for the five days after the
15 announcement of the merger, which worked out to approximately
16 \$14 and change. And I multiplied that by 68 -- 6.8 million
17 shares that were outstanding, and came to a figure, I think it
18 was something like \$89 million, for the value -- the
19 capitalized value of the company.

20 And then because Turtle Beach was a private company,
21 I could not get any public valuation, so what I did is I
22 analyzed their financial statements and cash flow, which is
23 really considered the measure in most private equity
24 evaluations. I took their EBITDA, which is the representative
25 cash flow. And at that time, shares on NASDAQ were giving

1 valuation of about 10 times EBITDA to companies for the value
2 of their stock.

3 And that came out to about -- well, the EBITDA that I
4 used, I averaged, I didn't use -- I used the 2013, I believe it
5 was, and then -- no, 2012, which was \$40 million. 2013, I had
6 heard that the -- their business was not doing as well as they
7 had projected in the budget, and they had projected 56.5,
8 approximately, million dollars of EBITDA.

9 I didn't use that figure. What I did is I projected,
10 because their business was slowing down, I used the \$40 million
11 for those two years, basically, just averaged it. And I said,
12 that's as close as I can come as a fair approximation, gave
13 that valuation of 10 times, which was \$400 million. Added the
14 two numbers together, the \$89 million and the \$400 million, and
15 what percentage of the \$489 million does million represent?
16 Well, it's 17.4. And these are approximate figures. Give me
17 the liberty of one decimal point. And felt that the 17.4, in
18 my judgment, the best value I could come up -- the best
19 relative value I could come up with of the combined companies.

20 THE COURT: Thank you, sir.

21 Did you want to inquire?

22 THE WITNESS: Thank you.

23 CROSS-EXAMINATION

24 BY MR. RAPHEL:

25 Q Hello, Mr. Kaplan. Just briefly, my name is Brian

1 Raphael. I represent Turtle Beach, Stripes, as well as
2 Mr. Stark and Mr. Fox in this action.

3 Can you hear me okay?

4 A Yes. I do, sir.

5 Q Great. If at any point you can't hear me, please
6 just let me know.

7 I just have a few questions for you, Mr. Kaplan.
8 First off, are you familiar with a company called Epsilon?

9 A Yes.

10 Q And did -- sorry, did Parametric have some sort of
11 business relationship with Epsilon?

12 A Yes, they did. It never consummated, but they did
13 have an agreement regarding a licensing agreement with Epsilon.

14 Q And what happened to that licensing agreement?

15 A It basically evaporated. My impression was that
16 it -- there wasn't any substance to it from the beginning.
17 Epsilon was supposed to pay \$1 million purchase of technology,
18 plus a 15 percent royalty. Both the figures were way out of
19 line, in my mind, but that wasn't my business. If they were
20 willing to pay it, fine. Anyway, they never came around to
21 paying it and the deal fell apart.

22 Q And I believe you've referred to this deal as smoke
23 and mirrors before; do you recall that?

24 A Yes, I do.

25 Q And what do you mean by smoke and mirrors?

1 A It wasn't real. It was something that -- that really
2 didn't make economic sense, and I felt would never really go
3 ahead. And it was presented so that it was an illusion of --
4 of the real deal.

5 Q What about a company called SIIG Optic (phonetic)?
6 Are you familiar with them?

7 A Sig? Yes, that's -- that's a Chinese company, I
8 believe. And --

9 Q And --

10 A Pardon me?

11 Q I didn't mean to interrupt you. Please continue.

12 A That's S-I-I-G you're referring to?

13 Q Yes.

14 A Yeah. I believe that was a Chinese company that Ken
15 Potashner said that he had negotiated or was negotiating a deal
16 with, and that fell apart because we had less than a half a
17 million dollars in sales and they were a multi-billion dollar
18 outfit. So they really weren't interested in us.

19 Q Okay. Thank you. And then switching topics just for
20 a moment, there was some discussion about Mr. Barnes.

21 Mr. Kaplan, did you ever have any reason to believe
22 that Mr. Barnes was withholding information from you?

23 A No, I did not.

24 Q Okay. Thank you.

25 MR. RAPHEL: No further questions.

1 THE COURT: Thank you for wiping down.

2 MR. PEEK: For a rookie he's doing a good job, Your
3 Honor.

4 MR. RAPHEL: I've learned from watching.

5 THE COURT: All right. Mr. Apton.

6 Thank you again, Counsel. That was very well done.
7 I didn't have to even remind you.

8 MR. RAPHEL: Thank you.

9 THE WITNESS: You're getting them well trained, Your
10 Honor.

11 THE COURT: Well, we've got two more weeks. We'll
12 see how long it lasts.

13 MR. RAPHEL: Okay.

14 REDIRECT EXAMINATION

15 BY MR. APTON:

16 Q Hi Mr. Kaplan, again. How are you?

17 A Oh, I'm well. Thank you.

18 Q Mr. Peek asked you earlier, who was involved in
19 drafting the proxy statement and you said -- or he said Barnes,
20 the legal team and the auditors, and you said, yes.

21 Presumably, there were people from VTB who were
22 involved in drafting as well; correct?

23 MR. HESS: Objection.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: I don't know specifically. I -- you

1 said do I presume that they were involved. I would presume
2 that there was some involvement, yes.

3 BY MR. APTON:

4 Q And is it fair that you would also presume Ken
5 Potashner was involved in drafting the proxy statement?

6 A He wasn't involved in drafting it, but he was
7 probably involved in overseeing part of it.

8 Q Deciding what information went into it, and what
9 information stayed out of it?

10 A That would be part of his role, yes.

11 Q And same goes for the -- his counterpart on VTB -- at
12 VTB; correct?

13 A Yes. I would presume so.

14 Q Now, with respect to the proxy, if you have it in
15 front of you, if you could go to page 83.

16 A Could you give me --

17 Q It was --

18 A -- those numbers -- the page numbers again, please?

19 Q Yeah. Exhibit 244.

20 A Okay.

21 Q And then page 83.

22 A Page 83.

23 MR. PEEK: Is that 244-83?

24 MR. APTON: Yes.

25 MR. PEEK: Okay.

1 THE WITNESS: 083. I have it in front of me now,
2 sir.

3 BY MR. APTON:

4 Q There's a list of the projections. I believe on
5 page 83 is projections for VTB holdings, including revenue,
6 EBITDA for 2014, or '13, '14, '15 and '16; correct?

7 A For Turtle Beach Holdings. Yes.

8 Q So now those projections came from VTB Holdings;
9 correct?

10 A Yes. Yes, they would have. Yes. Yes. That's where
11 I said --

12 Q I --

13 A -- when they have the adjusted EBITDA, I said I used
14 the 40 million. Their next year was 56.7 million, which I
15 didn't use, because I know that their business was
16 deteriorating a bit. So I used the 40 million as the --

17 Q Were you --

18 A -- my -- as my best guess for what would happen in
19 the next year.

20 Q Were you aware that their business had already
21 deteriorated by this date, or the date of the proxy statement?

22 A Yes, I was. I believe I was.

23 Q Did you account for that in the calculation that you
24 performed, that you explained to Judge Gonzalez?

25 A Yes. That's what I just said. I did not use their

1 projection of 56.7 million for EBITDA. I used -- well, I used
2 \$16.7 million less.

3 Q You said 16.7?

4 A Yes. I used 40 million, and not 56.7 million.

5 Q Well, I'm sorry. What about for 2013? Do you see in
6 2013 they were projected 40.6 million EBITDA?

7 A 40 point -- 40.6. That's correct. That's what I
8 used.

9 Q Now, if -- if that number was not 40.6, but rather
10 let's say 20 million, would that have affected your
11 calculation?

12 A Yes, it would have. But I had no idea that it was
13 going to be 20 million.

14 Q What if it was 13 million?

15 A I'm sorry. Say that again?

16 Q If the number was not 40.6, but actually 13 million,
17 I assume that would have affected our calculation as well;
18 correct?

19 A It would -- it would have if I had that information,
20 but I didn't at the time.

21 Q If you needed to, could you quickly run your
22 calculation again, just subbing in that 13 million number, or
23 would it take too much time?

24 A Well, no, then it -- then the valuation -- the
25 relative valuations, if I use the same valuation for

1 Parametrics, which was 89 million, and 10 times 13 million is
2 130 million, you add them both together and that's -- well, I
3 don't have a pencil here, but let me -- I can do that. 219,
4 divide that by 89, that comes out to 40 percent. But I don't
5 think that's relevant, because I had none of that information
6 in front of me --

7 Q Exactly. You didn't, did you?

8 A -- to use.

9 Q And I'm -- I'm sorry. You said 40 percent?

10 A Yes.

11 Q So the -- if we were to adopt your calculation, the
12 exchange rate should have been 60/40; is that your testimony?

13 A No, that's not my testimony. My testimony in the
14 hypothetical that their -- their EBITDA was -- was 13 million,
15 which I -- I have difficulty going back to the time when I was
16 doing those calculations, believing that it would have dropped
17 that much.

18 And if I use -- plug in those figures, then yes, it's
19 a 40 percent. But that's not what I'm saying.

20 Q Well --

21 A I'm saying, just from the calculations, 40 percent
22 works out. You know, figures don't lie. But liars do figure.

23 Q Well, I'm just speaking hypothetically. So, because
24 I understand you did not have that number when you did this
25 calculation. So I'm not faulting you.

1 A You can give me any number. I can punch the numbers,
2 but that doesn't really tell me what I thought the fair
3 valuation was.

4 Q Why did you have trouble believing that the number
5 would drop down to 13? You just mentioned that.

6 A I said I had no idea that it would drop down to 13.

7 Q Oh.

8 A I said --

9 Q Well --

10 A -- in fact, I had trouble believing that it would
11 have dropped that much.

12 Q Right. And why is that?

13 A Well, I didn't think that their business had
14 deteriorated to that extent. I knew that business was soft
15 because of the delay of the Xbox and the Sony games. But I
16 mean, that much of a deterioration in EBITDA, I could not have
17 imagined it.

18 Q It would suggest that there was more going on than
19 just the console transition; you would agree?

20 A Well, I can't agree because I didn't know that
21 figure.

22 Q Fair enough. If I can move on, you -- Mr. Peek asked
23 you about Mr. Potashner's employment agreement and whether the
24 board --

25 A Yes.

1 Q -- approved it. You said --

2 A Yes.

3 Q -- well, I don't remember what you said. I think you
4 said that the board did not, and you -- you thought that
5 Mr. Barnes had. Is that right?

6 A No. I said that I did not agree with the employment
7 agreement, but the board did, and the investment bankers did.
8 I was not in favor of hiring Mr. Potashner in the first place.

9 Q Would you agree that Mr. Potashner negotiated his own
10 employment agreement?

11 A Of course. He negotiated with us. When I say us,
12 with the board, for the employment agreement.

13 Q But would you agree that he set the terms?

14 A The terms were by mutual agreement.

15 Q Mr. Kaplan, with respect to Houlihan Lokey, you had
16 testified earlier that they were Parametric's investment
17 bankers; correct?

18 A That's correct.

19 Q Are you aware of how that came to be?

20 A No. I know that they were introduced to us, but I
21 don't know why they were introduced to us. I think it was at
22 the suggestion of Turtle Beach, but I'm not sure.

23 Q Would it surprise you if I told you that Houlihan
24 Lokey was referred to Parametric by Ken Potashner's personal
25 wealth manager?

1 A Yes, I'd be surprised. I wasn't aware of that.

2 Q Would you have wanted to know that during this
3 process?

4 A I'm not sure I really needed to know that, because I
5 think they did a very credible job, and they were -- they
6 were -- my impression is they were working for us, us being
7 Parametrics, and the board of Parametric.

8 Q Now, Mr. Peek asked you about the fairness opinion,
9 some specific portions about it. He asked you that -- I guess
10 to confirm that Houlihan Lokey had reached out to other
11 potential acquirers; do you recall that?

12 A Yes, I do.

13 Q Are you aware that Mr. Potashner put boundaries in
14 place to prevent other acquirers from making offers?

15 A No, I was not aware of that.

16 Q Are you aware that Motorola wanted to buy
17 Parametric's IP?

18 A I know that they were interested. I don't know the
19 extent to which they wanted to buy it. I know that they were
20 interested in it.

21 Q Are you aware that Mr. Potashner told Motorola to
22 speak to Juergen Stark instead of dealing with them directly?

23 A No, I'm not aware of that.

24 Q Are you aware that --

25 A I do know that --

1 Q -- Mr. Potashner told Juergen Stark --

2 MR. PEEK: Were you finished, Mr. Kaplan?

3 THE COURT: Had you finished your answer, sir?

4 THE WITNESS: No, I was just going to add that I do
5 know that Juergen Stark had previously worked for Motorola in a
6 senior capacity, senior executive capacity. So that might be
7 because he knew the firm, that could have been why Ken
8 Potashner suggested they speak to Juergen Stark.

9 THE COURT: Okay. Keep going.

10 BY MR. APTON:

11 Q All right. Are you aware that Mr. Potashner told
12 Juergen Stark he was slow-playing licensing discussions?

13 A Well, I saw that in an -- in an e-mail later when the
14 chain of e-mails was circulated, when -- when the lawsuit
15 arose. But I wasn't aware of it at the time.

16 Q Mr. Kaplan, this question might be redundant, but if
17 you had the opportunity to, would you do any business with Ken
18 Potashner?

19 MR. PEEK: Objection, Your Honor.

20 THE COURT: Overruled. You can answer.

21 THE WITNESS: I would not do business with Ken
22 Potashner. And I think I expressed in an e-mail that I wrote
23 when I was under consideration as an independent board member,
24 going to Turtle Beach, I wrote an e-mail that said that I
25 withdraw my name, because I wasn't willing to serve on any --

1 on another board with Ken Potashner. That's -- that's in the
2 record.

3 Q Mr. Kaplan, thank you for your time today.

4 A Thank you, sir.

5 THE COURT: Anybody else have any additional
6 follow-up?

7 MR. PEEK: No questions, Your Honor.

8 MR. HESS: No questions, Your Honor.

9 THE COURT: Thank you, sir. We appreciate your time.
10 Have a very nice afternoon. Okay.

11 THE WITNESS: Thank you, Your Honor. It's been a
12 pleasure being in your courtroom, and I appreciate all that's
13 happened.

14 THE COURT: Have a nice day.

15 THE WITNESS: Thank you.

16 THE COURT: It is 11:34. So rather than start the
17 next witness, we'll wait until 1:00 o'clock.

18 What is the plan with the next witness, same length?

19 MR. PEEK: Probably less, Your Honor. But I'll rely
20 on Mr. Apton.

21 THE COURT: Is it Mr. Putterman?

22 MR. APTON: For Mr. Putterman, yeah. Probably.

23 THE COURT: Is it Mr. Putterman?

24 MR. APTON: Yeah. It's Putterman.

25 THE COURT: Okay. Have we heard further from

1 Mr. Norris?

2 MR. PEEK: We have not, Your Honor. I apologize.

3 I've --

4 THE COURT: It's okay. I was looking at Mr. Cassity,
5 actually, not you.

6 MR. PEEK: I think he may available this afternoon,
7 Your Honor.

8 THE COURT: Maybe somebody can update us after lunch
9 as to what the options are for him.

10 MR. PEEK: Yeah. Because he -- he may be available.
11 We'll check at lunch, Your Honor.

12 MR. APTON: Your Honor, last night I told Mr. Peek
13 that we were fine pushing the -- Mr. Norris until Monday.

14 THE COURT: I understand. I'm not trying to force
15 him to be here. I'm just trying to make sure that we
16 accommodate whatever needs he has medically.

17 MR. PEEK: Okay.

18 THE COURT: Because I don't want to interfere with
19 somebody's treatment.

20 MR. PEEK: Thank you, Your Honor.

21 THE COURT: Anybody else?

22 MR. PEEK: Thank you.

23 (Proceedings recessed at 11:35 a.m., until 12:57)

24 (Pause in the proceedings.)

25 THE COURT: Good afternoon, sir. We're waiting for

1 one of the lawyers who hasn't gotten back yet. As soon as he's
2 here, we'll get started. Okay?

3 THE WITNESS: Thank you very much.

4 (Pause in the proceedings.)

5 THE CLERK: So, Mr. Putterman, it's my understanding
6 that you have agreed to be sworn over our video line; is that
7 correct?

8 THE WITNESS: That is correct, Your Honor.

9 THE COURT: If you would raise your right hand,
10 please.

11 **SETH PUTTERMAN**

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

14 THE CLERK: Please state your name for the record.

15 THE WITNESS: Seth Putterman.

16 THE COURT: Mr. Putterman, the attorneys in the
17 courtroom and I are all wearing masks. So it may at sometimes
18 be difficult to hear us. If for some reason you can't
19 understand us, let us know, and we will repeat ourselves.
20 Okay?

21 THE WITNESS: Understood. Thank you.

22 THE COURT: All right. Counsel, you may proceed.

23 MR. APTON: Thank you, Your Honor.

24 / / /

25 / / /

DIRECT EXAMINATION

BY MR. APTON:

Q Mr. Putterman, my name is Adam Apton. I represent the plaintiff in this case. Can you hear me okay?

A I can hear you so far. Thank you.

Q Good. And I can hear you as well. If you can't hear me, just let me know. All right?

A Yes.

Q You were on the board of Parametric, yes?

A Yes.

Q And at what point do you recall Parametric starting to consider merging with Turtle Beach?

A That would be about March of 2013.

Q Had Parametric spoken to anyone else about merging prior to that point?

A There were ongoing discussions of opportunities for licensing and perhaps mergers continuously.

Q Licensing was an important part of Parametric's business; correct?

A That was the hope. We were hoping to find the profitable licensing partner.

Q In terms of the business model for Parametric though, Parametric had a very strong IP; correct?

A Yes.

Q And so the way it was going to generate revenue was

1 to license that IP out to licensing partners; is that correct?

2 A That was an opportunity we were looking into.

3 Q And what steps had the company been taking at that
4 time to try to find licensing partners?

5 A The CEO of the company and -- would try to make
6 connections and find licensing partners. That was his main
7 responsibility.

8 Q And to whom are you referring when you say CEO?

9 A I'm referring to Ken Potashner.

10 Q How did you come to meet Ken Potashner?

11 A He was brought to the attention of the company around
12 2000 and -- 2012 by Woody Norris.

13 Q And do you recall having any first impression of
14 Mr. Potashner?

15 A Yes, definitely. He was an extremely well spoken,
16 intelligent person who projected conviction about his
17 enthusiasm for the product.

18 Q And how would you describe your relationship with him
19 at that point?

20 A Businesslike. Yeah.

21 Q But the relationship soured after that point;
22 correct?

23 A At some point after that it soured; correct.

24 Q So can you elaborate on that. What I'd like to know
25 is how and why and when.

1 A So Mr. -- you know Descartes said, I think, therefore
2 I am. And I came to realize over time that Mr. Potashner said
3 to himself I take, therefore I am. And he became a taker, and
4 he also wouldn't hesitate to make allegations or threats from
5 time to time in order to try to get more for himself.

6 Q Now, I had seen a number of e-mails in this case, and
7 I've seen correspondence between him and Bob Kaplan of -- would
8 you consider Bob Kaplan a friend of yours?

9 A Yes.

10 Q So dealing with Ken Potashner it must have been
11 difficult having him take from you and Bob Kaplan during the
12 merger negotiations. Is that a fair statement?

13 MR. CASSITY: Objection. Foundation.

14 THE COURT: Overruled.

15 THE WITNESS: Excuse me. Am I to try to answer that?

16 THE COURT: Yes, please.

17 THE WITNESS: Okay. Thank you.

18 It feels like there are a lot of assumptions in that
19 question to me. So I'm going to try to break it down.

20 Mr. Potashner was trying to get more for himself in
21 different ways. And we, the board of directors regarded it as
22 our duty to determine when what he was trying to take took, you
23 know, from the shareholders unfairly. And we were there to
24 protect the shareholders. It wasn't him taking from me and Bob
25 Kaplan. It was to protect the shareholders is how we took

1 actions in this matter.

2 BY MR. APTON:

3 Q I understand. Now, there's obviously an issue
4 related to HHI. Are you familiar with that acronym?

5 A Yes.

6 Q So can you describe whether or how HHI was an issue
7 of contention between you and Mr. Potashner.

8 A Yes. I need to back up a little bit first and say
9 that one of the great opportunities for this invention of Woody
10 Norris is that it could help people who were hard of hearing to
11 hear without having to put in hearing aids. One of the biggest
12 complaints in old folks' homes is I can't hear the television.
13 And this was a means of directing sound to people so they could
14 hear, even people who were hard of hearing. And so early on I
15 personally became very enthusiastic that this was a key
16 opportunity for the company.

17 And so I -- and then Mr. Potashner on his own and
18 perhaps buying into my enthusiasm wanted to pursue this
19 direction and wanted to form a subsidiary of Parametric Sound
20 called HHI. That would take over this health aspect of the
21 company as compared to a consumer aspect of the company, which
22 was the usual Parametric Sound, HHS -- HSS speakers.

23 And what happened was that a paper company was
24 formed. The structure of a paper company was formed, but in
25 order to protect the shareholders, this paper company had to

1 develop value before, on behalf of the shareholders, we would
2 put assets into that company, assets being the IP, the valuable
3 IP is Parametric Sound. And this became the source of the
4 dispute.

5 At that point, the shareholders and myself who was
6 involved -- the shareholders, I mean the board of directors on
7 behalf of the shareholders and myself who were involved were
8 against putting assets in there and diluting what the
9 shareholders owned into the subsidiary until some value was
10 demonstrated. And this led to some severe disputes with Ken
11 Potashner. And I should say that the Board of Directors took
12 control of the situation, and the Board of Directors prevented
13 assets from going into HHI.

14 And furthermore, when the merger became a core
15 opportunity for the company, as I can explain, and the merging
16 partner, Turtle Beach said, look, we want that HHI to go away,
17 there were again strong disputes again with Mr. Potashner. And
18 the board of directors forced that this -- even this paper
19 company, which never had any value because it never had any IP
20 put into it, it was always just an empty paper company, even
21 that was ended. There were numerous difficult discussions.
22 Ken Potashner was negotiating maybe we can have a high level
23 FDA license, which won't interfere with the commercial license,
24 and he was just told by the board of directors no, no, no. We
25 want this merger to take place because Turtle Beach is our best

1 opportunity to bring a product to market.

2 Q Are you suggesting that Ken Potashner did not want to
3 do the merger?

4 A He wanted to do the merger, but he was willing to
5 threaten the merger with -- at various times in order to try to
6 get something for himself.

7 Q Do you have a binder of documents in front of you,
8 Dr. Putterman?

9 A I have electronic folders, and I also have in front
10 of me the paper copy of my deposition.

11 Is there a document you'd like me to try to call up?

12 Q Yes, please. 281, please.

13 A 281. Thank you.

14 I'm sorry. I'm off screen pulling it up.

15 Q It's okay.

16 THE COURT: That's okay, sir.

17 THE WITNESS: Okay. Thank you, Your Honor.

18 Document 281, to be sure, is dated February 17, 2013,
19 from Ken Potashner to Seth Putterman.

20 BY MR. APTON:

21 Q And it says the subject line is HHI?

22 A Right.

23 Q And it says, "Regardless of the funding source, I
24 intend to follow through with you per our discussion relative
25 to your substantial involvement."

1 Is he referring to your support in developing the
2 subsidiary?

3 A I think this letter is that, as I mentioned, I was
4 very enthusiastic to develop and bring this to market.
5 Initially, when we were talking about the subsidiary in the
6 discussion phase, I was considering the possibility that I
7 would join the subsidiary. As I thought more about it, I felt
8 this wasn't fair to the shareholders of Parametric Sound, and I
9 could do more for them by helping to control the subsidiary
10 from the board of directors than to join it.

11 A little voice inside of me said, you know, maybe
12 you're entering a conflict of interest here, and so I then
13 backed out and did not join in any way the HHI projected
14 subsidiary, which as I said, never had any value.

15 Q Well, so did Mr. Potashner ever give you anything in
16 exchange for your support for the HHI subsidiary?

17 A No.

18 Q You had a consulting agreement with Parametric; did
19 you not?

20 A I had a consulting agreement with Parametric Sound.

21 Q And what were the terms of payment for that
22 consulting agreement?

23 A I received a \$3,000 a month to be generally available
24 and to carry on research.

25 In particular, there were two issues that were of a

1 scientific nature that fall into my area of expertise. I am a
2 physics professor at UCLA, and my specialty is sound. And, of
3 course, Woody Norris's invention is related to sound. And
4 there were two issues I can mention here. One was that Woody
5 Norris was using ultrasound, which is sound at frequencies
6 above hearing, so that you wouldn't hear it, in order to create
7 through nonlinear effects sound that you can hear.

8 But there is a problem. When the ultrasound is
9 strong enough to do that, the ultrasound can create what we
10 call subharmonics, which means lower frequencies. So if you
11 had 40 kilohertz of ultrasound, you could get a subharmonic at
12 20 kilohertz or even a second subharmonic at 10 kilohertz,
13 which then would be heard as a squeak. And we needed to
14 understand the science behind this so that we could develop
15 next generations of the product. And so I worked on that issue
16 in return for the consulting fee.

17 And then it came to pass that -- or it became
18 important that we understand there was lots of controversy
19 about the -- whether ultrasound at the levels being used were
20 safe. And I consulted and organized the existing literature to
21 become an expert on the safety or shall we say the health
22 issues of the ultrasound. And this became an issue of
23 discussion during the merger with Turtle Beach.

24 Q This consulting agreement ultimately caused you to
25 resign from Parametric's board; correct?

1 A I would say I did resign from Parametric's board in
2 November 2013, and it was not the consulting agreement. It was
3 the valuation of the stock options, which I had received. The
4 consulting agreement did not put me over the limit of the
5 official limit that independent directors should be receiving.
6 My understanding is that what put me over was the valuation of
7 the stock options.

8 Q When did you receive stock options?

9 A I don't know the dates. I was receiving stock
10 options from time to time.

11 Q If you could look at document 278, I believe that's
12 your resignation.

13 A Yes. Thank you. Yes. Thank you. Yeah.

14 Q So this is in November of 2013, and you referred
15 to --

16 A This is --

17 Q I'm sorry.

18 A No, no. I'm sorry. Please continue.

19 Q The last line -- oh, I'm sorry, the last line of the
20 e-mail on top says, "Ken, thanks also for telling me that
21 you've authorized Jim to send me the payment of 10,000 for
22 consulting services rendered early October."?

23 THE COURT: It's not admitted.

24 Was there an objection to it? You may have just
25 missed it, or we missed it when the recitation of numbers were

1 made.

2 MR. CASSITY: No objection, Your Honor.

3 THE COURT: Be admitted.

4 (Plaintiff's Exhibit Number(s) 278 admitted.)

5 THE COURT: Sorry.

6 Sorry, sir, we had to do an administrative thing real
7 quick.

8 BY MR. APTON:

9 Q So, Mr. Putterman, this e-mail references the \$10,000
10 payment for consulting services that Ken authorized upon your
11 resignation; correct?

12 A There was -- I don't think that was authorized upon
13 my resignation. There were consulting services that I was
14 rendering, and I -- my memory is that at some point the company
15 had put a hold on the payments because of financial
16 considerations, and I kept consulting. And then at some point
17 prior to the resignation, which is acknowledged in this letter,
18 I was sent those fees.

19 I don't think I -- I propose that this is not
20 connected for payment for the resignation.

21 Now, the first paragraph points out that the
22 resignation was due to the valuation of the stock options. And
23 furthermore, it points out I disagreed with the valuation of
24 the stock options. But this was ex post facto. I didn't know
25 that this mistake had happened.

1 Q Understood.

2 If we can, Dr. Putterman, I'd like to go to Tab 16.

3 A I'm sorry. I didn't hear where you wanted me to go.

4 Q 16, 1-6.

5 A 16. Document 16. Okay. Sorry. That's not -- I
6 have to -- this will take a moment to pull out.

7 MR. CASSITY: I don't believe this was disclosed for
8 this witness.

9 THE COURT: Hold on a second.

10 THE WITNESS: Maybe this wasn't disclosed.

11 THE COURT: We'll find out in just a second, sir.

12 Is it on your list, Counsel?

13 MR. APTON: I have to check, Your Honor.

14 THE COURT: Okay.

15 MR. APTON: If the witness has it though, then
16 presumably it was disclosed.

17 UNIDENTIFIED SPEAKER: No, he has all the exhibits,
18 Your Honor.

19 THE COURT: We'll see.

20 (Pause in the proceedings.)

21 THE WITNESS: Your Honor, I was able to find document
22 16, but it wasn't in my disclosure list.

23 THE COURT: Okay. So hold on a second, sir. We'll
24 wait and see if it's in anybody's disclosure list before we go
25 to it.

1 MR. MOORE: It's not in defendants', Your Honor.

2 MR. APTON: You know what, Your Honor, it's in
3 Mr. Norris' disclosure list. I would ask permission to use it
4 given that he's a recipient on the e-mail.

5 THE COURT: Denied. It's why we did the protocol.
6 Okay.

7 BY MR. APTON:

8 Q Dr. Putterman, at what point in time did a license
9 get put into place between the company and HHI?

10 A A license, never.

11 Q There was never any sort of agreement between HHI and
12 parametrically?

13 A For a license, no. To set up a shell company, which
14 would handle a possible license in the future, yes, but the
15 license was never granted by the board of directors.

16 Q If we could go to Exhibit 288, please.

17 A Yes. I have Exhibit 288. Should I take a moment to
18 read it?

19 Q Yes, please.

20 A Okay. Yes. Thank you. Please.

21 Q So in this e-mail, I believe you're communicating
22 with Mr. Norris, and you debate whether it's worth giving up
23 all the control if Parametric stock will be \$30 after the
24 merger. Is that a fair read?

25 A It's a fair read. I had -- that's a fair read.

1 Q So what control were you discussing giving up -- or I
2 should rephrase.

3 Are you talking about giving up control about
4 negotiating the merger?

5 A No. I was referring to giving up control over --
6 over the company -- over the company to -- this is after the
7 merger discussion started, and that the board of directors
8 would be giving up control over to Turtle Beach.

9 And I loved Woody's product, and the thought crossed
10 my mind of my enthusiasm for the product, and I was going about
11 my enthusiasm as to how valuable it was. And this reasoning --
12 this wasn't reasoning. You know, this was a thought crossing
13 my mind.

14 I wanted Woody's assurance. I wanted to hear his
15 opinion because Woody was a key person that I got advice from,
16 and I was raising here how much enthusiasm I had for his
17 product, asking him to say so what do you think we should -- I
18 was saying what do you think we should do?

19 And the key issue, which was my learning experience
20 here is that there's a big difference between having a great
21 idea for a product and bringing it to market, and
22 implementation. And Woody had this genius invention and
23 however it hadn't gone anywhere. And eventually what came to
24 pass is I realized the value of marketing. And that's why I
25 then became totally enthusiastic for the merger. Because

1 Turtle Beach could bring it to market.

2 Across the street from UCLA was a store Best Buy, and
3 when I heard about Turtle Beach and this and that, I said let
4 me go over to Best Buy and see what they have at the store.
5 What's their Turtle Beach display. And I went into the store,
6 and I had a eureka moment. And there in front of me was this
7 display 10 feet high of Turtle Beach products right there at
8 the entry to the store. And this is a major store for
9 appliances and for audio files. And I realized then that my
10 hopes for the price of Parametric Sound were wishful thinking
11 compared to the capability to bring something to market. And
12 this was a big influence in me in how I move forward. And so
13 this letter was at the earlier stage where I'm trying out my
14 ideas and thoughts to see what other people who I respect say.

15 Q Now, so you indicate in your e-mail that
16 Mr. Potashner thought that the value of Parametric's stock
17 would be \$30 after the merger. Did he explain why?

18 A I'm sure there were discussions on that. I can't
19 remember the precise thing.

20 Q Sure. Had the stock gone to \$30, what would that
21 have done to the value of the options you held?

22 A I guess if it went to \$30, I think I would have made
23 in the -- you know, a couple of hundred thousand dollars or
24 something like that. I would have to try to backtrack that,
25 but it would certainly be very nice.

1 Q If we could go to Exhibit 5 Mr.-- Dr. Putterman.
2 Excuse me.

3 A It's okay. Don't worry. You can call me mister.
4 Yes. This is minutes of a meeting. Yes. Please.

5 Q Do you recall at this meeting Mr. Potashner, and I'm
6 referring to the bottom of page 1, top of page 2, Mr. Potashner
7 telling the board that he had made, quote, Good progress
8 regarding the HHI stock option issues and that there were no
9 outstanding issues?

10 A I do remember -- I do remember those comments roughly
11 in this time frame. Yes.

12 Q But those comments were not true in this time frame;
13 correct? If you look at page --

14 A Correct.

15 Q -- 3, I think it features what you had to say about
16 that.

17 A He was -- I would say I disagreed with his
18 statements. Absolutely.

19 Q But his --

20 A The point is that Turtle Beach wanted him out of HHI,
21 and they wanted HHI out of the company, and they wanted a clean
22 slate when the merger happened. And --

23 Q It was more than that because at the top of page --

24 MR. CASSITY: Well, Your Honor, is he finished with
25 his answer?

1 MR. APTON: Oh. I --

2 BY MR. APTON:

3 Q Were you done, Dr. Putterman?

4 A Yes. Thank you, please. Yeah.

5 THE COURT: Okay. Keep going.

6 BY MR. APTON:

7 Q At the top of page 3, the board minutes reflect that
8 Mr. Potashner was going to become the CEO of HHI along with his
9 options. And then you indicate later on that there was no
10 agreement, notwithstanding suggestions to the contrary and
11 reports from Mr. Potashner or even in your agreement with
12 Turtle Beach. Correct?

13 A Yes. I -- the issue with HHI is that HHI was -- in
14 the process of being done away with, and I can't put the
15 precise timing, but it was clear that somewhere between here
16 and August it had to be done away with because August was the
17 vote on the merger, early August.

18 Q My point is, is it's apparent based on the minutes
19 that Mr. Potashner told you one thing when you said something
20 else was true. Did he ever do that in other instances?

21 A The answer is yes. I'm not prepared to give you a
22 list, but the answer is, of course, yes.

23 Q Do you remember the topics which that occurred to?

24 A I would have to -- when I think about that, there's
25 so much noise goes through my head because with Ken there was

1 this smart person who chose to surround himself with noise that
2 he created. And I just feel a resistance going into all that
3 noise. I -- there certainly were other instances. I just
4 don't know how to approach that question. I would really want
5 to, like, think about it for 10 minutes and see what comes out
6 of all of the noise.

7 Q We -- if you want to think about it, you can,
8 Dr. Putterman.

9 Let me venture a guess. Is John Todd part of that
10 noise?

11 A John Todd is certainly -- was certainly a problem,
12 yes, and that was a problem brought on by Ken Potashner.

13 Q What about payment of bonuses in 2012 for Ken
14 Potashner?

15 A So I don't remember. I know he received bonuses, and
16 we voted on these bonuses, but I don't remember the details of
17 the bonuses.

18 Q What about in 2013, compensation in 2013?

19 A There was compensation. He received compensation,
20 which I regarded as contractual for the, shall we say, closing
21 of the merger.

22 Q So not because he satisfied performance targets
23 though; correct?

24 A There was debate as to how much he satisfied the
25 performance criteria. And the board discussed it. These

1 matters were gone over. They were hot discussions. And in
2 some cases we paid compensation. In some cases we didn't.

3 Q Now, on page 4 of the minutes, the last full
4 paragraph right before Section 5.

5 A Yes.

6 Q Did the minutes state that,
7 "After full discussion, the board
8 determined that, one, Mr. Potashner should not
9 so negotiate and should be directed
10 immediately to cease any communications with
11 such individuals on the topic"?
12 Referring to HHI.

13 A Uh-huh.

14 Q Do you see that?

15 A Yes, I do.

16 Q So were there any exceptions so that mandate, or was
17 it a full bar against all communications by Potashner about HHI
18 with Turtle Beach?

19 A Yes, it was a full bar.

20 Q And in line with that, you and Mr. Wolfe were
21 appointed to negotiate the HHI issue with Turtle Beach;
22 correct?

23 A Correct.

24 Q So how was it that you and Andrew Wolfe were
25 appointed to that?

1 A Somebody's got to do the work.

2 Q And so who took over the negotiation, you or
3 Mr. Wolfe?

4 A I started it, and then -- but I was in touch with
5 Andy at all times, and Andy was in touch with me. I wish to
6 say here that Andy Wolfe was brought onto the board of
7 directors as a past associate of Ken Potashner. Ken Potashner
8 very much wanted to have Andy Wolfe on the board of directors,
9 and we were impressed with Andy and his competence and being
10 well spoken. And so Andy is on the board.

11 You would have been concerned that perhaps Andy would
12 have not been as forceful as he needed to be with Ken, but my
13 experience is that Andy was someone I could always approach,
14 and I could always work with him to deal with some difficult
15 problems with Ken Potashner.

16 I have complaints about Ken Potashner, but I don't
17 have complaints about Andy Wolfe.

18 Q Well, Mr. Potashner actually encouraged you to seek
19 Andy Wolfe's guidance on this issue, yes?

20 A I think he did, yeah. I think he would have
21 initially approved, but then he -- Andy did his job.

22 Q Do you have any knowledge as to whether Potashner was
23 instructing Andy on how to advance the negotiations?

24 A I think Potashner was trying to influence both of us
25 how to advance the negotiations. The point is that the dye was

1 cast, and the board of directors wasn't in favor of -- by board
2 of directors, I generally mean especially Woody Norris, myself
3 and Bob Kaplan -- were strongly in favor for making this merger
4 happen. And the dye was cast, and it was clear that Turtle
5 Beach wanted HHI away with, and that's what happened.

6 Q So after the board told Mr. Potashner not to discuss
7 HHI, he continued to do so though; correct?

8 A Yes. I've been informed of that during the -- I did
9 not know of that at that time. I've been informed of that
10 during the litigation.

11 Q Can you please turn to Tab 17, Dr. Putterman. And
12 let me know if this --

13 A That's the --
14 I'm sorry, sir?

15 Q I was going to ask you to look at this e-mail in
16 Number 17, and perhaps it might refresh your recollection as to
17 whether you knew about Mr. Potashner discussing HHI.

18 But in the middle of the page, there's an e-mail from
19 Juergen Stark to you and Jim Barnes?

20 A Uh-huh. Yes. Yes, I see that.

21 Q And who is Juergen Stark?

22 A Juergen is the CEO of Turtle Beach.

23 Q And as of July 3rd, he's alerting you that Potashner
24 is still discussing HHI with him; correct?

25 A That's right. And I -- that's correct.

1 Q So the fact that Mr. Stark is telling you means that
2 Mr. Stark is aware Potashner should not be discussing HHI;
3 correct?

4 A Yeah. Yeah, that's correct.

5 Q Did you or any of the other directors take steps
6 thereafter to stop Mr. Potashner from discussing HHI with
7 Mr. Stark?

8 A I believe we did, and I believe even after we took
9 further steps that I heard that there were further discussions.

10 Q And so did there come a point in time when you and
11 your other directors took some sort of formal action to remove
12 Ken Potashner from the board?

13 A No, we did not.

14 Q Did you hire counsel to try and remind him of his
15 fiduciary duties?

16 A I don't remember that. We did have a corporate
17 counsel, and I don't remember if there was such a discussion.

18 Q Did you take any formal action to try to stop
19 Potashner from continuing to discuss HHI despite his conflict
20 of interest?

21 A Well, the actions we took were to tell him not to do
22 it. And the main action we took was to eliminate HHI, and he
23 was -- we just forced that to come to an end, and that would be
24 the end of it.

25 Q The dissolution of HHI and the cancellation of the

1 options, that was, in fact, because Juergen Stark insisted upon
2 it; correct?

3 A Correct.

4 Q So had he not done so, it would be possible that Ken
5 Potashner might still actually have his HHI options, yes?

6 A Let me -- that feels a bit hypothetical to me. Let
7 me please ask you to rephrase that.

8 The HHI -- if the merger with Turtle Beach had never
9 happened, then the HHI, as an empty paper company might still
10 exist today without any value because it would have no patents
11 or licensing inside it.

12 Q So my question was actually a bit more narrow, and
13 the point I was trying to make was it was actually Juergen
14 Stark who insisted and canceled the options, not the board
15 necessarily. Is that fair?

16 A I would say that Juergen Stark, as part of the
17 negotiations for the merger, said the merger was off unless
18 Parametric Sound cleaned up the situation with HHI, which meant
19 to eliminate it. And then this was -- this was indeed
20 eliminated by Parametric Sound on its own.

21 Q At the insistence of Mr. Stark; agreed?

22 A It was -- it was at the insistence of the -- at the
23 conditions of Mr. Stark and at the insistence of the board of
24 directors which wanted independently to have this merger.

25 Q If we could turn to Tab 67, Dr. Putterman.

1 A That's from Robert -- Kaplan, Robert.

2 Q Yes. And in this --

3 A Yes.

4 Q Excuse me. On the second page, there's an e-mail
5 from Bob where he is suggesting language for a proposed
6 resolution?

7 A Uh-huh.

8 Q For a \$50,000 payment to the independent directors.
9 Do you see that?

10 A Yes.

11 Q And in response?

12 A Uh-huh.

13 Q You say,

14 "I am uncomfortable that if the deals
15 fall through the board of directors still gets
16 a bonus. Can the bonus be made contingent on
17 successfully raising the 5 to 15 million that
18 we seek prior to closing, but that we need in
19 any event?"

20 A Yes, this is correct.

21 Q Go ahead.

22 A No, please. I'm waiting for your question.

23 Q Did you have any understanding as to why Bob thought
24 it would be a \$50,000 payment would be deserving -- deserved?

25 A Yes. We were working almost every day in connection

1 with the merger. There were lots of issues. There was a lot
2 or of work during the go shop period, and it took a lot of
3 time, and Bob Kaplan especially did tremendous work analyzing
4 financials independently. He and Jim Barnes were the key
5 people I relied on in determining the financial aspects of the
6 merger, and they were up on everything. So I think a \$50,000
7 bonus could have been reasonable.

8 Q And Bob, in his later e-mail, he says, "I used 50,000
9 as a starting point."

10 So like were you and Bob interested in a greater
11 payment?

12 A Well, as you can see from -- I think he was
13 interested perhaps in justifying a bigger payment. There was
14 an issue of how our payment would be consistent with what Jim
15 Barnes received because Jim Barnes was the Number 1 hero in the
16 company, well after Woody Norris. And Jim Barnes, you know,
17 we'd have to boost Jim's Barnes in order to justify a bonus for
18 us if we wanted to be consistent. So I think these were some
19 of the issues that were being discussed.

20 In the end, certainly with Bob Kaplan and myself,
21 nothing happened regarding the bonus because I -- it just felt
22 uncomfortable to me to take it. It just didn't feel that very
23 fair to the shareholders in this case, at least where it was
24 going to us. So I just raised the issue of how we would feel
25 comfortable about it. And then it just went away. There was

1 no pushback.

2 Q Do you have any understanding as to whether Ken
3 Potashner thought a special committee should have been formed
4 to evaluate this \$50,000 payment?

5 A I don't remember that. I don't remember that. I
6 would think that would have been the right way to do it would
7 be to have a special compensation committee to look into that.

8 Q There was no special committee for the HHI options
9 granted to Potashner, was there?

10 A Right. There were separate committees. I don't
11 remember what -- I mean, HHI was formed on paper and had no
12 value. I don't remember what the different committees did.

13 Q Okay. But was a special committee formed to evaluate
14 strictly that issue? Specifically whether Ken Potashner should
15 get options in HHI?

16 A I believe so.

17 Q There was?

18 A Well, I -- I say I don't have a clear memory of it.
19 As you say it, I think there was a group of people, but I
20 should back off on that. I don't have a clear memory.

21 Q Okay. Because I have never seen anything to that
22 effect. So if there was, I'd be interested in hearing about
23 it.

24 A Well, you know, when a group of people sit around a
25 table, I call it a committee, and we did bring in someone to

1 give us an official evaluation of what the value would be under
2 certain circumstances of HHI for the purpose of having the
3 options, and I call that a committee meeting. But it wasn't a
4 special committee, as you would call it.

5 Q Did Mr. Potashner ever share with you what he thought
6 the value of HHI was?

7 A I can't remember.

8 Q Does 1 billion with a B sound correct?

9 A I wouldn't be surprised if he gave numbers in that
10 category.

11 Again, I feel it's very important to say that there's
12 a huge difference between net present value and actually
13 executing and bringing something to market.

14 Q The e-mail in Exhibit 67, at the very bottom you
15 reference a 5- to 15 million that needed to be raised. Was
16 that a capital requirement being imposed by VTB for Turtle
17 Beach?

18 A So my understanding is that in order to close the
19 merger there was a capital requirement with a lower bound to
20 5 million, and this was an important part of the activities in
21 order to effect the merger.

22 Q Are you aware of the origination of that capital
23 requirement?

24 A I don't remember it.

25 Q Was it because of the VTB or Turtle Beach had paid a

1 dividend the year prior and needed to put more money on its
2 books.

3 UNIDENTIFIED SPEAKER: Objection.

4 THE WITNESS: I don't -- I don't know that. I relied
5 on Bob Kaplan and Jim Barnes for their opinions on that to look
6 into those financial issues.

7 BY MR. APTON:

8 Q All right. Can we please go to Number 122,
9 Dr. Putterman.

10 A Thank you. Yes.

11 Q At the bottom of the e-mail you have notes from a
12 board meeting that I believe occurred on October 24th; is
13 that right?

14 A Well, let me -- yes. You're referring to the
15 sentence which begins, "Ken brought up and apologized for
16 having issued a prior press release saying that he has been
17 chosen."

18 Right.

19 Q For this --

20 A Correct. So there you go. Yeah.

21 Q So Mr. Potashner appointed himself without permission
22 to the board of the new company; correct?

23 A He announced that he was on the board, yes.

24 Q And you, understandably, said, hey, hold on. Can we
25 talk about this. Can we put a revote -- or a vote on it; is

1 that right?

2 A Yeah. Yes.

3 Q And what did Ken say in response? Do you remember?

4 A Well, you know -- Uh-huh.

5 Am I okay to answer?

6 Q Yes.

7 THE COURT: Yes.

8 MR. APTON: Sorry, Your Honor.

9 THE WITNESS: Thank you.

10 You're asking for like a consecutive -- the
11 discussions with Ken aren't consecutive with one thing to the
12 next. There's just lots of noise, and I can dig into the noise
13 and tell you his, you know, his responses that he would
14 threaten to sue us. He might have at this time said to me, if
15 you don't do what I want here I'll never work with you again in
16 the future. It was very childish. It's like kids in the
17 playground saying if you don't do this I'm not going to be your
18 friend anymore. And there was all this type of noise coming
19 from Ken, and he wanted it very much, and would make these sort
20 of childish bullying threats all the time. And that happened.

21 BY MR. APTON:

22 Q Understood.

23 So given that this involved though a merger with two
24 large companies, the stakes were higher than the scenario you
25 described on the playground. You had two companies --

1 A Oh, no. Well, I mean, that he would never work with
2 me again in my career, that's not such high-stakes.

3 THE COURT: Thank you. We needed that laugh, sir.
4 We appreciate that.

5 Physics professor and comedian.

6 BY MR. APTON:

7 Q Okay. Dr. Putterman, let's go to 282, please. So
8 where I was going with it was that he insisted, and based on
9 your e-mail to Bob Kaplan, you suggested that you, quote, give
10 in on all matters, or Ken will not do his best for the merger.
11 What precipitated that, and what happened afterwards?

12 A I think as the CEO of Parametric Sound he had the
13 capability to, you know, make problems with the merger. He
14 certainly had the capability to interfere with the vote among
15 the shareholders, and so that was -- that was -- you know,
16 that's not a nice situation.

17 I can't -- what we did basically was to ignore this
18 noise and say what do we need to do as a board of directors to
19 get the merger, and let's ignore this noise. We need to bring
20 the product to market, and what we're going to do is just to --
21 like we were two thirds of the Senate and two thirds of the
22 House together, we were just going to run it without a majority
23 vote on the board and make the merger happen, do away with HHI
24 and take the necessary step to raise the funds, organize the go
25 shop. I mean, that -- you're seeing responses here to an

1 unpleasant atmosphere, but we had a clear way of acting.

2 Q So Mr. Kaplan described the scenario as if you went
3 forward with the merger you could push Ken off to the new
4 company and just be done with it. Is that a fair assessment?

5 A So I would like to respond to that. There's more to
6 it, but there's certainly some truth in what you're saying.
7 Ken did receive a majority, but not a unanimous vote to be the
8 person -- a person who would represent Parametric Sound on the
9 board of directors of Turtle Beach, and there was a -- I
10 didn't -- I was happy to -- not happy to. I went along with
11 that for two reasons. One is continuity. For the
12 shareholders, it's thought of as good optics to have the
13 continuity that the CEO is going to be in the front lines of
14 the new company so he can carry forward the integrated
15 knowledge of where we were and where we were going or want to
16 go.

17 There was another key point which made this
18 compromise feel acceptable to me, and none of these were easy.
19 They took a lot of thinking and lots of discussions on all
20 these matters.

21 It was I heard from Jim Barnes that Turtle Beach knew
22 all about Ken and knew what he was up to. And as soon as he
23 was on the board of directors, they would organize a transition
24 period where (video interference) to, and we were (video
25 interference) pushing him over there. I didn't see -- am I

1 coming through?

2 Q Yeah --

3 THE COURT: Not well. We lost you there for a
4 minute.

5 THE WITNESS: Okay. Thank you. Okay. I'm sorry.

6 THE COURT: If you could repeat your last answer for
7 us.

8 THE WITNESS: Yes. Yes.

9 THE COURT: They knew what he was all about.

10 THE WITNESS: Yeah. So the issue was I got a notice
11 there was a network issue. I don't know what happened.

12 So the issue with Ken Potashner being on to the board
13 of directors of Turtle Beach, to me had two components -- well,
14 maybe three.

15 One was that he -- it was good optics to the
16 shareholders to see that someone with knowledge, intimate
17 knowledge of Parametric Sound, which he did have, was going to
18 be on the board of directors of the new company.

19 Secondly, I heard from Jim Barnes, who was in very
20 close contact with Turtle Beach, that, you know, Turtle Beach
21 knows all about Ken. They know what he's up to. They know
22 where he's going, and he might be on the board, but they are
23 going to figure out how to keep him under control and clip his
24 wings.

25 So putting that together -- and there were many

1 discussions about this -- I felt it was a smooth thing to do in
2 purpose of the merger.

3 Q I understand. So in August of 2013, there was a
4 board meeting, and Craig-Hallum presented. And you guys had a
5 vote on whether the deal should go forward. Do you remember
6 that?

7 A Yes. I actually do remember it. Craig-Hallum I
8 think put on a slide show for us.

9 Q Uh-huh. And in making your decision whether to go
10 forward with the merger, did you rely on the numbers in the
11 Craig-Hallum presentation?

12 A So I relied in part on those numbers. I relied in
13 part on Bob Kaplan coming up independently with his own
14 estimate which was consistent. I relied especially on my
15 personal investigation at Best Buy to see the incredible
16 ability of this company to get to market, and I relied on the
17 fact that Juergen Stark was a former director at Motorola.

18 Q If the numbers in the Craig-Hallum opinion had been
19 different, specifically if the value of VTB or Turtle Beach had
20 been significantly less, would you have still gone forward with
21 the merger?

22 A Well, if it had been significantly less, then
23 something would have shown up with Jim Barnes and/or Bob
24 Kaplan, and this would have raise an alarm. As it was, Bob
25 Kaplan came up with 17 percent versus 19 percent. So even

1 though it's probably within a range of error of course, but
2 things looked okay to me.

3 I don't know how to hypothetically say if this
4 changes and that changes, what would I do.

5 Q The proxy came out in December of 2013. Do you
6 remember that?

7 A Correct.

8 Q And the numbers in the proxy reflected the numbers
9 that were in the Craig-Hallum presentation; right?

10 A I don't know. I didn't check the proxy against the
11 Craig-Hallum presentation. I more relied on Bob Kaplan and Jim
12 Barnes to give me their opinions on the proxy.

13 Q Do you have any understanding or did you have any
14 understanding that Turtle Beach had deteriorated between the
15 fairness opinion and the proxy statement?

16 A No.

17 Q Would you have expected Ken Potashner to be aware of
18 that if it occurred?

19 MR. MOORE: Objection. Speculation, Your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: That's a -- I feel uncomfortable. I
22 don't know what I say. If he knew that that had happened, I
23 would expect him to tell us.

24 BY MR. APTON:

25 Q Knowing Ken Potashner, are you surprised that he did

1 not tell you?

2 A I can't --

3 UNIDENTIFIED SPEAKER: Objection.

4 THE WITNESS: I would hope -- not.

5 UNIDENTIFIED SPEAKER: -- foundation.

6 THE COURT: Overruled.

7 You can answer.

8 BY MR. APTON:

9 Q Dr. Putterman, can you repeat the answer. We had
10 some talking here. We couldn't hear you.

11 A Yeah. Yeah. I might have used the wrong word. I
12 say I should have -- I should've said I hope he would've told
13 us.

14 Q What did you say?

15 A I said I expected he would tell us.

16 Q All right.

17 A Because I was thinking in terms of duty.

18 MR. APTON: Well. Thank you, Dr. Putterman.

19 No further questions. I reserve for redirect.

20 UNIDENTIFIED SPEAKER: Counsel. Adam.

21 MR. APTON: Oh. Wait. Excuse me.

22 THE COURT: Okay. I won't write your time down yet.

23 BY MR. APTON:

24 Q Dr. Putterman, sorry. Just one quick question.

25 If you could go to Tab 5.

1 A Yes. This is again minutes of a meeting?

2 Q Correct. And the first paragraph, I asked you about
3 a license agreement between HHI and Parametric, and you said
4 that there was none. Does this -- the last sentence in that
5 first paragraph refresh your recollection as to whether there
6 was one, specifically implemented in May of 2013.

7 UNIDENTIFIED SPEAKER: I'm sorry. Where are we
8 looking?

9 THE WITNESS: Where are you?

10 MR. APTON: Page 5-4.

11 THE WITNESS: 5?

12 BY MR. APTON:

13 Q Do you see the top paragraph on page 4 in Exhibit 5?

14 A Okay. Let me read from the read through the top
15 paragraph. "The potential amount of the license agreement --
16 of the potential amendment."

17 Yeah. Yeah. Everything looks potential to me.
18 There were discussions of all kinds of things.

19 Q But Dr. --

20 A I guess I -- I maintain there was no IP license put
21 into HHI.

22 Q The last sentence reads -- well, actually it's all
23 one sentence. I'll have to read it, Dr. Putterman. Okay.
24 This is important:

25 "With respect to a potential amendment of

1 the license agreement to HHI, e.g., to make a
2 nonexclusive, Mr. Hendrick (phonetic) next
3 reviewed the chronology of the HHI stock
4 option grants noting that the options for the
5 two directors were granted in February 2013,
6 and the options for Mistern Potashner and Todd
7 were granted in March of '13. In each case,
8 prior to the time the company and HHI had
9 entered into a license agreement (which was
10 implemented in May 2013)."

11 So there was, in fact, a license agreement between
12 HHI and the company; correct?

13 A I guess that that's what this says. That's not my
14 memory. It was --

15 Q Perhaps if you go back one more page to page 3.

16 A Uh-huh.

17 Q And the fourth bullet point,

18 "The CEO of merger partner" --

19 That's Turtle Beach.

20 -- "questioned the structure of HHI
21 noting that the company financed and developed
22 the technology exclusively licensed to HHI and
23 that HHI has no product."

24 So that's your notes from the conversation you had
25 with Juergen Stark; correct?

1 A Yeah.

2 Q All right. So you have no reason to doubt the
3 validity of what's in the board minutes, do you?

4 A No. No.

5 MR. APTON: Okay. Thank you, Dr. Putterman.

6 THE COURT: Could you wipe down, please.

7 MR. APTON: Yes, Your Honor.

8 THE COURT: Mr. Cassity, as soon as I get
9 disinfected, I'll let you start.

10 MR. CASSITY: Thank you, Your Honor.

11 THE COURT: Give us just a minute, sir. We have to
12 wipe down to comply with our COVID protocols here.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Mr. Cassity, you're up.

15 MR. CASSITY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. CASSITY:

18 Q Good afternoon, Dr. Putterman.

19 A Huh?

20 Q Can you hear me okay?

21 A Yes. Thank you.

22 Q I want to back up a little bit, Dr. Putterman. Can
23 you tell us a little bit about your educational background,
24 please.

25 A Yes. I was born and raised in the Brooklyn public

1 school system and I got my Bachelor's Degree from Cal Tech and
2 I earned a PhD from the Rockefeller Institute in New York, and
3 now I'm a Professor of Physics at UCLA.

4 Q And how long have you been at UCLA?

5 A I'm sorry?

6 Q How long have you been a professor at UCLA?

7 A For 50 years.

8 Q For 50 years?

9 A Yes.

10 Q All right. And do you hold any positions with the
11 Acoustical Society of America?

12 A Yeah. I'm a fellow of the Acoustical Society of
13 America.

14 Q Okay. And what about the American Physical Society?

15 A I'm a fellow of the American Physical Society.

16 Q And you --

17 A If I could add?

18 Q Yes.

19 A More important, I'm the president of a charitable
20 foundation to advance the frontiers of physics.

21 Q Thank you.

22 A It's called the Julian Schwinger Foundation.

23 Q And you've also served as the Director of the Julian
24 Schwinger Foundation; is that also correct?

25 A Yeah, I'm the president.

1 Q Okay. How were you introduced to Parametric?

2 A That's an interesting story. I teach undergraduate
3 acoustics at UCLA and one semester while I was teaching
4 undergraduate acoustics there was an article in the New York
5 Times magazine about the unusual use of sound waves by Elwood
6 Norris. And so I read this article to show it to my class and
7 because I was showing them how, you know, the topics that I'm
8 teaching them as undergraduates at UCLA are in the news.

9 And so I discussed it and pointed out some mistake
10 that was in the article regarding the applications of
11 acoustics, and lo and behold one of the people, one of the
12 students in the class was a producer who was re-training as a
13 physicist. And she called up Woody and said, My professor
14 spoke about your work. And he said, There's a mistake in the
15 New York Times. And Woody says, I have to talk to the class.
16 I have to set them straight.

17 And so this student comes to me and says, you know,
18 he wants to talk to the class. And I said, oh, that's great;
19 we'll bring him up; this will be a great day for the students.
20 So Woody Norris came up to UCLA to give a lecture on his
21 products and acoustics and his life, to give a motivational
22 lecture to my class, and it was probably the greatest day of
23 their undergraduate years and led to us, Woody and me, becoming
24 great friends. And eventually I got involved with his
25 inventions and joined his company.

1 Q Okay. And you joined Parametric as a -- did you join
2 as a director?

3 A No. I joined initially just for fun and then as a
4 consultant, but I pretty soon after that became a director.

5 Q Okay. And do you recall when that was that you
6 became a director?

7 A Yes.

8 Q When was that?

9 A I'm sorry? When?

10 Q When did you become a director of Parametric?

11 A So we met in 2011. This would be sometime, I think,
12 in 2012, early 2012.

13 Q Does May 2011 ring a bell as to when you joined as a
14 director?

15 A Oh, that's when I was a director? Okay. It was I
16 thought somewhere around or just before that was when I started
17 being involved more with his company. But I would say May 2011
18 could be right, yeah.

19 Q And you've mentioned with Mr. Apton that you also
20 served as a consultant for Parametric; is that correct?

21 A Yes.

22 Q Okay. And can you tell us generally what you did as
23 a consultant for Parametric?

24 A I evaluated the physical properties of the intense
25 ultrasound fields he was dealing with and determined what

1 frequencies to operate at and determined how the device was
2 working and what the impediments were to building a better
3 device. I was generally on call for all the many issues that
4 come up in trying to implement the ultrasonic systems.

5 Q Okay. And did you have a consulting agreement with
6 Parametric?

7 A No. There's a director's disclosure, but I never had
8 a consulting agreement. I never had a written agreement with
9 Parametric.

10 Q Okay. But you were compensated for your consulting
11 services, I believe you testified?

12 A Yeah. So I was at their will.

13 Q Okay. And did you receive compensation as a board
14 member?

15 A Yes.

16 Q Did you receive any additional compensation for your
17 participation in the Turtle Beach merger negotiations and
18 agreement?

19 A I don't recall what compensation. There might have
20 been some compensation there. I don't recall what it was, but
21 not the \$50,000 that was brought up.

22 Q But you can't tell us here today any compensation
23 that you received as a director, other than your director fees,
24 for participating in the merger negotiations?

25 A Well, I did receive stock options.

1 Q So you received stock options as a director?

2 A I believe so, yes. I believe we received some stock
3 options as a director.

4 Q Okay. Did you receive any undisclosed financial or
5 other interests in Parametric with respect to your work for
6 Parametric? Was there anything that was undisclosed --

7 A No. No.

8 Q -- to shareholders or to Turtle Beach?

9 A No.

10 Q Okay. And you spoke in your direct examination about
11 HHI. Do you recall that?

12 A Yes.

13 Q And can you tell us why HHI was formed in the first
14 place?

15 A HHI was formed because there was an interest in
16 having an opportunity to have a subsidiary which would be
17 separate for purpose of developing a health product.

18 Q And at some point the board determined to grant
19 Mr. Potashner some options in HHI; is that correct?

20 A Yes.

21 Q And I'd like you to turn to Exhibit 522.

22 A What number did you want? 522?

23 Q 522.

24 A One second. Yes. Independent Directors Audit
25 Committee.

1 Q And I'm going to direct your attention to the middle
2 of the first page under "Purpose." And the second paragraph
3 down says, "The firm of Pearl Meyer & Partners was engaged to
4 review the equity compensation of Mr. Potashner --

5 A Yes.

6 Q -- in relation to consideration of granting Mr.
7 Potashner an option grant of 5 percent of HHI, pursuant to the
8 HHI 2013 Stock Option Plan."

9 Do you see that?

10 A Yeah.

11 Q So did Parametric engage this consultant to advice it
12 with respect to the HHI options?

13 A I don't know if -- I know that these discussions took
14 place, but I don't have a clear -- I don't have a clear memory
15 of this particular company.

16 Q Okay. Does reading these board minutes refresh your
17 recollection as to whether that actually occurred?

18 A Yeah, definitely.

19 Q Okay. And if I could direct your attention to page 3
20 of the document. Do you recall you testified in response to
21 Mr. Apton's question that there was no special committee that
22 was formed? Do you recall that?

23 A Yeah.

24 Q Do you recall who approved the HHI options grant to
25 Mr. Potashner?

1 A I would guess that would have to be approved by the
2 board of directors.

3 Q Okay. And if you read the top sentence of page 3, it
4 says, "After further discussion it was unanimously resolved by
5 the independent directors that they approve the following
6 option grant to Mr. Potashner."

7 A Okay. "That they recommend that the board of
8 directors ratifies." Yeah. Yeah.

9 Q Yeah. So do you recall who recommended the -- does
10 that refresh your recollection as to who recommended the award
11 of the HHI options?

12 A I mean, according to the minutes, the board of
13 directors -- well, it was recommended by this independent
14 directors and audit committee and then it went over to the
15 board of directors.

16 Q Okay. So it was recommended by the independent
17 directors and then ratified by the full board; is that correct?

18 A Yes.

19 Q Okay. And there were conditions as well to those
20 stock options; is that right?

21 A That was the key. Yeah.

22 Q Okay. And those conditions are set out in the
23 paragraph 2 below, the chart; is that right?

24 A Yes. Yeah. And those conditions were never met.

25 Q And that was going to be the next question. So the

1 conditions for the vesting of the stock options, did they
2 ever -- did any of those conditions ever get satisfied?

3 A No.

4 Q Okay.

5 A I'm sorry, I was looking at my documents.

6 Q No problem. You testified with Mr. Apton that the
7 HHI options became a topic of discussion during the merger
8 negotiations. Do you recall that?

9 A Yes.

10 Q And you were appointed, along with Mr. Wolfe, as
11 individuals who would negotiate with Turtle Beach with respect
12 to those options; is that right?

13 A Yes.

14 Q Did you have discussions with Juergen Stark in that
15 regard?

16 A I -- the answer is yes. Yeah.

17 Q Okay. And you had -- that was discussed in a number
18 of board meetings; is that correct?

19 A Yes.

20 Q And it was an issue that lasted a number of board
21 meetings?

22 A Oh, yes.

23 Q And I think you talked with Mr. Apton about some of
24 the points that were discussed. Did Juergen Stark ever have
25 authority to dictate to the Board of Directors how it would

1 resolve the issue of the HHI options?

2 A Well, you used the word dictate. I would say we're
3 in negotiations with Turtle Beach and Juergen Stark had his
4 conditions and one of the conditions was that he wanted the HHI
5 to be cleaned up and not even exist on paper. And so he -- we
6 had to deal with that condition. It wasn't dictated in the
7 sense that you must do this and you must merge. It was a
8 condition which, you know, we could have refused the condition
9 and it would be end of the merger.

10 Q And that was something -- the board considered his
11 condition, but who ultimately made the decision with respect to
12 the HHI options?

13 A It was the Board of Directors.

14 Q And ultimately did Mr. Potashner support the
15 cancellation of the HHI options?

16 A The merger went through and I think this was a key
17 part of making it happen.

18 Q And during the course of those discussions, did you
19 confront Mr. Potashner directly on the issue of the HHI
20 options?

21 A This happened.

22 Q Now, while this HHI option issue was being addressed,
23 did that hold up the rest of the merger negotiations that had
24 been ongoing?

25 A It was all done in parallel.

1 Q Okay. So the board was proceeding with -- you know,
2 toward a merger, notwithstanding the fact that the HHI option
3 issue was going forward?

4 A (No audible response).

5 Q Did you believe that the HHI options were worth a
6 billion dollars or that the company, HHI, was worth a billion
7 dollars at any time in this process?

8 A So, early on, as I said, I've had my own epiphanies
9 in this. I had my own learning experience being on the Board
10 of Directors and being in the front lines of a merger and
11 acquisition. And initially I thought there was a billion
12 dollars, very, very early on, because I evaluated the
13 difficulty in hearing of a community, a huge community of
14 people living in old folks' homes. And I thought if we sell
15 each one of these \$1,000 for a speaker for their TV and so on
16 and so forth, you'd have a billion dollar company.

17 And then my learning shifted, that there's a lot more
18 in making money than rolling numbers on a page. In my
19 learning, I came to learn that bringing a product to market is
20 really the big deal. And so I would say maybe I thought it was
21 a billion somewhere in 2012, and worth very, very little or
22 much less when we -- as ourselves without the merger.

23 Q Thank you. And you had discussions with
24 Mr. Potashner early on about the possibility of you joining the
25 HHI board. Do you recall that discussion?

1 A That was at the very, very initial stages. Yeah.

2 Q Okay. And Mr. Potashner raised that as an issue,
3 that he wanted you to join the HHI board?

4 A He wanted me to join the HHI board, yes.

5 Q Okay. And did you comply with Mr. Potashner's wishes
6 to resign from the Parametric board and join the HHI board?

7 A I did not comply.

8 Q And I just want to go back. You talked about your
9 consulting arrangement. Did the consulting agreement or
10 arrangement that you had with the company, did that predate any
11 of the merger discussions with Turtle Beach?

12 A Yes.

13 Q Okay. And you spoke earlier in your testimony about
14 Mr. Potashner perhaps having a desire to take something from
15 the shareholders. Could you explain what you meant by that,
16 what it was that he was -- you felt that he might be willing to
17 take from shareholders?

18 A Well, if he could set up a subsidiary in which he had
19 options and the subsidiary had value -- which I maintain the
20 subsidiary had zero value -- and then he could take some of
21 that value, you would be shifting value from what the
22 shareholders controlled to whatever percentage of the
23 subsidiary he was taking. And this is why we put conditions on
24 giving the subsidiary any value and the conditions -- you know,
25 if those conditions were met, then we might be able to revisit

1 the possibility that he had already added value to the
2 subsidiary, which then would be justified for the shareholders
3 above the subsidiary.

4 Q All right. So when you were talking about taking
5 something away from shareholders, you were referring to wanting
6 an interest in HHI; is that right?

7 A For instance, yes.

8 Q Okay. You're not referring to him wanting to take
9 away something from shareholders in connection with the merger?

10 A No.

11 Q Okay.

12 A No.

13 Q And you're not referring to taking anything away from
14 any other shareholders; is that right?

15 A What do you mean by any other shareholders?

16 Q Not looking to take anything away from any minority
17 shareholders for himself?

18 A No.

19 Q That wasn't what you were referring to in your
20 comment about taking something away?

21 A Yeah.

22 Q Is that right?

23 A That's right.

24 Q Okay. And again, the HHI issue was resolved by the
25 termination of those options; is that right?

1 A The HHI issue was resolved by just reducing it to
2 zero.

3 Q Okay. Now, you talked about your consulting fees
4 that you received. Did you approve the merger transaction in
5 this case, the merger with Turtle Beach?

6 A I voted for the merger with Turtle Beach.

7 Q Okay. Did you vote in favor of the merger because of
8 consulting fees that you had earned in connection with the
9 company?

10 A No. I'd like to add a point there. After the merger
11 went through, I organized a clinical study at UCLA to look
12 at -- try to figure out how these Parametric Sound Speakers are
13 good for people who are hard of hearing. And during -- and the
14 clinical study was approved. We could have run a clinical
15 study at UCLA in my lab. Plus having some financial problems
16 and they said we can't pay any more for your consulting fees or
17 the doctors' fees or anything like that. I tried to get
18 everyone to continue on with the clinical study without payment
19 because I felt the science was so compelling and valuable. And
20 so there are things to me much more -- much more important than
21 the consulting fee.

22 Q Thank you. Now, I want to turn, direct your --
23 excuse me. I want to turn your attention to the board meeting
24 that occurred in August of 2013 where the board voted on the
25 merger. And I think you recalled -- you know, the discussion

1 with counsel about hearing the Craig-Hallum opinion. Do you
2 recall that?

3 A Yes.

4 Q Okay. Was the Craig-Hallum fairness opinion
5 something that you considered as you were considering approving
6 or not approving the merger?

7 A The Craig-Hallum opinion was very -- it was very
8 important, yes. It was something we could rely on.

9 Q Did you agree that the per share exchange ratio, at
10 least as it was presented to you during the Craig-Hallum
11 opinion, was fair from a financial perspective?

12 A I did not do my own independent financial analysis.
13 As I said, my independent -- I relied on Jim Barnes and Bob
14 Kaplan for that. And what I brought to the table was the fact
15 I was very impressed with the CTO at Turtle Beach and impressed
16 with their ability to bring a product to market.

17 Q Okay. Did members of the board -- you know, was
18 there a discussion about the fairness opinion during that
19 meeting?

20 A Of course. Yes.

21 Q Did people ask questions and got answers to those
22 questions?

23 A Yes.

24 Q Okay. Do you believe that you exercised your own
25 independent business judgment when you approved the merger?

1 A I do.

2 Q You wanted this merger to happen?

3 A I very much wanted the merger to happen.

4 Q Did you believe at the time that the merger was in
5 the best interest of the company?

6 A Yes.

7 Q And in the best interest of the shareholders?

8 A Yes.

9 Q Was your decision to approve the merger influenced in
10 any way by your own personal financial interest?

11 A No.

12 Q Was your decision influenced in any way by Kenneth
13 Potashner?

14 A No.

15 Q Did you rely on anything Mr. Potashner said to you
16 about the merger when you voted to approve it?

17 A No, I did not. Don't forget, early on he brought the
18 merger to the table back in March somewhere, earlier in the
19 year, and certainly he brought a legitimate merger to the
20 table. But when it came time to vote on the merger, I was not
21 counting or relying on his information.

22 Q Okay. Would you have voted in favor of the merger
23 regardless of whether Mr. Potashner wanted it to happen?

24 A Correct.

25 Q So you reached your decision to vote independently of

1 Mr. Potashner?

2 A Yes.

3 Q Did the board receive legal advice from attorneys in
4 connection with the merger?

5 A Definitely. There was a corporate -- corporate
6 counsel was on the phone for regular board of directors
7 meetings that we had almost daily.

8 Q And did you receive advice from financial advisors to
9 help you as a board member evaluate the merits of the merger?

10 A Yes.

11 Q And who -- what firms did you receive financial
12 advice from?

13 A Frank at Craig-Hallum.

14 Q Craig-Hallum. What about Houlihan Lokey?

15 A Houlihan Lokey was involved. I don't remember
16 relying on their analysis. They were more involved in the
17 go-shop issue.

18 Q And were they present in board meetings throughout
19 2013 as the board was considering the merger?

20 A They were present at a number of board meetings. I
21 certainly don't remember Houlihan Lokey saying, you know, watch
22 out for this or watch out for that or there's a problem here.
23 There were no warnings that I remember.

24 Q Okay. Now, prior to Parametric, did you have any
25 business relationship with Mr. Potashner?

1 A No.

2 Q Did you know Mr. Potashner before you joined
3 Parametric?

4 A No.

5 Q Did you ever enter into any agreements with
6 Mr. Potashner that you would vote your shares in accordance
7 with his wishes?

8 A No.

9 Q Did Mr. Potashner have any right to exercise control
10 over how you voted as a board member?

11 A Absolutely not.

12 Q And I think you said he had no influence over your
13 decision to approve the merger?

14 A Correct.

15 Q Did you ever enter into any agreements with any of
16 the other directors or officers of Parametric to vote your
17 shares in a certain way?

18 A No.

19 Q Or to vote as a board member in a certain way?

20 A No.

21 Q Okay. At some point did Mr. Potashner seek to have
22 Mr. Kaplan removed from the board?

23 A Yes, he did.

24 Q What do you recall about that exchange and
25 interaction?

1 A Well, it was unpleasant. Mr. Potashner thought that
2 Bob Kaplan was too independent and it created a nasty
3 situation, and he then verbally criticized Mr. Kaplan and tried
4 to get him to resign and tried to get him voted off the board.
5 And the board of directors said -- we voted against -- we
6 didn't -- you know, we resisted, prevented that situation from
7 happening.

8 Q Okay. So you disagreed with Mr. Potashner's position
9 to have Mr. Kaplan removed?

10 A We completely disagreed and we stood our ground, yes.

11 Q Okay. You talked about what you described as
12 childish bullying threats. Did you capitulate to those demands
13 that Mr. Potashner made when he was acting childish and
14 bullying?

15 A No.

16 Q Did you approve the merger transaction for the
17 purpose of no longer doing business with Mr. Potashner?

18 A Well, that wasn't the reason to approve it, but that
19 might be viewed as a benefit.

20 Q But that was not the reason or even a primary
21 consideration that you had in approving the merger; is that
22 right?

23 A Yeah.

24 Q And counsel talked with you briefly about the proxy
25 that was issued in December of 2012 -- or 2013. When did you

1 leave the board?

2 A I left the board somewhere close to November 20th of
3 2013. And I believe the proxy was issued in December of 2013.

4 Q All right. So you were not on the board of directors
5 at the time the proxy was issued; is that correct?

6 A That's correct.

7 Q Okay. And you recall a discussion with counsel about
8 the possibility of a bonus, a \$50,000 bonus for independent
9 directors?

10 A Uh-huh. Yeah.

11 Q How was that issue resolved?

12 A Well, it sort of -- it sort of evaporated. It
13 didn't -- you know, it just -- I said, what are we going to do?
14 Is there something we can do for this that's a little extra?
15 And then it went nowhere and there was no push back. It just
16 sort of evaporated.

17 Q Would a \$50,000 bonus have changed your mind with
18 respect to the merits of the merger?

19 A No. I've got to say something here. I was once
20 approached by *60 Minutes* to be the expert scientist on a
21 segment they were doing on some discovery -- technological
22 discovery in Israel, that if it was true would be worth a
23 trillion dollars, relating to nuclear fusion. And I was
24 actually negotiating with the producer, Hornblower, that, you
25 know, I would get a fee, perhaps, of about \$50,000 to be the

1 commentator on the show.

2 And I told my wife and she said, They're going to
3 figure out some way to make you look like a fool and hurt your
4 reputation. And my wife says, Your reputation, I've calculated
5 it out, it's worth over a million. And so I didn't do it. I
6 mean, my reputation is my identity. That's why -- you know, my
7 independence is my identity. It doesn't go for anything.

8 Q So you were vastly under-compensated for your work in
9 connection with this merger. Is that your belief?

10 A Yeah. Yeah.

11 MR. CASSITY: Okay. Your Honor, just a moment. No
12 further questions, Your Honor.

13 THE COURT: Can you wipe down, please.

14 MR. MOORE: No further questions from us, Your Honor.

15 THE COURT: You have none?

16 MR. MOORE: No, Your Honor.

17 THE COURT: Any redirect?

18 MR. APTON: Yeah, Your Honor, just a few questions.

19 THE COURT: Just a minute, sir. We have a couple
20 more questions.

21 THE WITNESS: Okay. Thank you. I'm here, Your
22 Honor.

23 THE COURT: Mr. Apton, you're up.

24

25 THE COURT: Any redirect?

1 MR. APTON: Yeah. Your Honor, a few questions.

2 THE COURT: Just a minute, sir. We have a couple
3 more questions.

4 THE WITNESS: Okay. Thank you. I'm here, Your
5 Honor.

6 THE COURT: Mr. Apton, you're up.

7 REDIRECT EXAMINATION

8 BY MR. APTON:

9 Q Dr. Putterman, just a few more questions. So we were
10 discussing the license agreement between HHI and the company
11 when we last spoke. Do you recall that?

12 A Yes. I recall that.

13 Q And assuming that the license was put into place in
14 May of 2013 --

15 A Uh-huh.

16 Q -- why would that have been done if merger
17 negotiations had started two months prior in March?

18 A Well, those were merger discussions. I don't know
19 how to place the timeframe of the developments at HHI into the
20 time frame of how serious the merger had become. There was a
21 lot -- as I said before, there was a lot moving on in parallel.

22 Q And Ken Potashner was in some role involved in the
23 placement of that license at that point in time; correct?

24 A He would be involved in anything dealing with HHI.

25 Q Would you be surprised if it was intentional on Ken

1 Potashner's part to put that license in place while
2 negotiation -- while negotiating this merger?

3 A I mean, I can see various strategies, especially from
4 the perspective of what can he get for himself.

5 Q I think in your deposition you described him as a
6 smart bully; is that right?

7 A His style is -- he's a smart person and his style is
8 to try to be a bully.

9 Q Mr. -- Dr. Putterman, can we go to Tab 119, please?

10 A One second. Yes. This is July 2nd.

11 Q If you could go to page 2. So this is an e-mail
12 chain and I want to start at the beginning. And the beginning
13 is --

14 A Okay.

15 Q -- the first e-mail. You're familiar, I believe.

16 A Yeah.

17 Q And it starts off with Ken Potashner telling you some
18 sort of story about some lawsuit, whose involved in it,
19 SonicBlue.

20 A Uh-huh. Yeah.

21 Q He also notes that he would not like to ever have to
22 go through that again.

23 A Right. That's a clear attempt at a threat.

24 Q And right above that, you then say, "Ken, I plan to
25 discuss Scenario 1 with Juergen. I think you said to do it,

1 but please say if otherwise. Seth."

2 Is that in regards to the HHI discussions?

3 A I don't remember.

4 Q Well, if you go one more e-mail up, he responds, "No
5 changes to license should occur." And then he notes, "Doing it
6 prematurely will result in lawsuits."

7 Does that refresh your recollection as to whether
8 he's talking about HHI?

9 A It doesn't -- I don't know who's -- I assume who --
10 who was that e-mail -- oh, it's from Ken. Yes, I see it. It's
11 standard -- it's -- it's just standard talk from Ken. And
12 let's go up.

13 Q Your e-mail -- yeah, are we moving up in the chain?

14 A Yeah. Please.

15 Q So on page 1 now, excuse me, you say, "I wonder if
16 waiting until the deal closes involves a conflict of interest."
17 And Ken Potashner assures you, "Of course not."

18 He then also asks you, "Did you call Juergen? As I
19 mentioned Andy in dialogue and in the same time zone, so
20 hopefully you synced up with him if you did. Andy has
21 negotiated a hundred deals. And although brilliant, you're a
22 deal neophyte. Please take advantage of Andy's wisdom."

23 So he's --

24 A Okay. Well --

25 Q -- encouraging you to defer to Andy. Would you

1 agree?

2 A He's definitely -- Ken Potashner had much greater
3 trust and hope for Andy's behavior than me. He regarded me as
4 too independent. And he regarded Andy as someone he might be
5 able to influence more strongly. And this is -- this is what
6 he's saying here. Furthermore, Andy did have more experience
7 than me. I was -- I was a deal neophyte. That's in a sense
8 correct. And I was (indiscernible) if I could reiterate there,
9 that Andy, when push came to shove, was independent and from my
10 experience, acted with integrity.

11 Q Well, Bob Kaplan would not have agreed with that,
12 would he?

13 MR. MOORE: Objection, Your Honor.

14 THE COURT: Overruled.

15 If you know.

16 THE WITNESS: Okay.

17 BY MR. APTON:

18 Q Do you recall a conversation in which Bob Kaplan told
19 Andy he was soft pedaling the HHI issue?

20 A No, I don't. I don't recall that discussion. You
21 know, to -- I don't recall that discussion. Yeah.

22 Q Okay. You mentioned the study with the -- Woody's
23 device at your lab.

24 A Yes.

25 Q And I think you said it got cut off because of

1 funding. Was that in 2014?

2 A Yes.

3 Q When exactly was that in 2014?

4 A Oh.

5 Q Name the month. That's fine.

6 A Yeah. I -- it took me months to get the --
7 three months, six months. Gee, I would have thought the goal
8 for the study, the approval by the Institutional Review Board
9 for the study must have been somewhere like the summer of 2014.

10 Q And it was cut off for funding reasons?

11 A It was cut off for funding reasons. I mean, so I was
12 told.

13 Q By whom?

14 A I believe it came from Juergen. Juergen Stark.

15 Q Did he share with you the source of the funding
16 problems at Turtle Beach?

17 A No.

18 Q Are you aware that after the merger they dissolved
19 HHI entirely?

20 A As you say it, that brings back a memory. I don't
21 remember the details on that. They -- they -- my understanding
22 is their plan was that HHI and all -- everything under control
23 of Turtle Beach.

24 Q Now, you just earlier, with the other lawyer, you
25 were testifying that -- or testifying that you would not have

1 relied on Ken Potashner at the time of the merger. Do you
2 remember that?

3 A Yes.

4 Q And why was that?

5 A Because his signal to noise ratio had gotten very
6 low. And there was -- he looks out for himself, he -- it -- he
7 was -- he was doing his I'd --

8 Q Shtick?

9 A I can't -- I mean, it's all the things I've been
10 talking about.

11 Q I'm going to bring you into the noise for a little
12 bit; okay? I need you to go to Tab 302.

13 A Okay. Yeah. Is it the handwritten notes that you're
14 asking about?

15 MR. APTON: Bob?

16 MR. CASSITY: Yeah. No objection. We stipulated,
17 Your Honor.

18 MR. APTON: Oh. Great.

19 THE COURT: It'll be admitted.

20 (Plaintiff's Exhibit Number(s) 302 admitted.)

21 THE COURT: Thank you.

22 BY MR. APTON:

23 Q So, Dr. Putterman, I just want to go through a few of
24 them with you; okay?

25 On page 1, you have notes from a phone call that took

1 place on June 29th, 2013.

2 A Yeah.

3 Q "Ken said that unless Turtle Beach respected the HHI
4 subsidiary and is part of HHI, he would walk away from the
5 deal. I reminded him that he is wearing two hats, and then
6 said, I would recommend to the board that they nix the deal."

7 Is this an instance -- or can you describe what was
8 going on in this particular conversation?

9 A Well, this is a -- my contemporaneous notes on
10 discussion with Ken that I felt I should make because it dealt
11 with our concern that he was, you know, recklessly pushing
12 ahead with a conflict of interest. And -- or at least it felt
13 that way to me. And so -- and he was making a threat and I
14 wanted to document the threat, that he would -- unless he could
15 get something, he was going to do something which I thought
16 would hurt the shareholders of the company.

17 Q Is --

18 A I felt it was in tremendous value to the shareholders
19 to have this merger happen. And Ken was threatening to hurt
20 the shareholders unless he got his way.

21 Q Page 3 are some additional notes. In the middle of
22 the page, these appear to be from June 26th, so three days
23 prior. "E-mail," I think that's John Hentrich, "which is when
24 we learned that HHI is a key item."

25 Is this referring to the e-mail that the board

1 received from Juergen's lawyers?

2 A Well, it's a June 26th e-mail, which is when we
3 learned that HHI is a key factor. I would just take that at
4 face value. HHI is a key item relating to the merger. I don't
5 know what more to make of that. We knew that.

6 Q Underneath that, it says, "Ken is not" -- or, "Ken
7 not representing shareholders."

8 A Right.

9 Q Can you help me read the next few words?

10 A Maybe, "Ken lost representations," and I don't know
11 what I was saying there, but I read at the bottom, "Woody is
12 independent." I'm sorry, I don't -- I can't read you those
13 words. But Ken's not -- but it's very clear, "Ken is not
14 representing the best interests of the shareholders, but Woody
15 is perfectly independent."

16 Q And on page 4, I think you emphasized Woody's
17 independence; right?

18 A Yes, sir. You bet.

19 Q And on page 5, let's see, this is -- I don't know
20 what date this is. Can you tell what date this is?

21 A No. No.

22 Q But it seems to say, you're nervous about financing
23 three weeks out, a dozen discussions, HHI, rights of minority
24 owners, went through HHI extensively.

25 Can you read the bit at the bottom about Juergen?

1 A Yeah. "Juergen didn't understand licensing side of
2 HHI, how to calculate the royalties," but I don't know the
3 date. Yeah.

4 Q Okay. And if you could go to page 8.

5 A Uh-huh.

6 Q You write, "Ken says that no conflict of interest" --

7 A Yeah.

8 Q I can't read there -- it's kind of tricky.

9 A Because he wants -- because he expects -- or,
10 "because HHI will be extremely valuable."

11 Q So he says there's no conflict of interest because
12 HHI is going to be valuable?

13 A Because he thought it was extremely valuable, yeah.
14 I mean, he has no conflict of interest because -- because it's
15 all -- it's all for -- for him. And so -- correct. And of
16 course Juergen said it's a showstopper. I mean, this is -- I
17 mean, the bottom line is nothing ever happened with the HHI,
18 it -- it became a (indiscernible) that we created, and then we
19 had to take apart. And there was lots of arguing about it, but
20 it never -- it never went anywhere.

21 Q If you could just go to one more page, the -- page 9.

22 A Yeah.

23 Q At the top, you say, "Ken wants to run HHI."

24 A Yeah.

25 Q And underneath, you say, "I said that Ken has a

1 massive conflict of interest and that" --

2 A Yeah.

3 Q -- "he needs to be dealt with." So, I understand
4 what you just said, that nothing ever came of HHI. But you
5 would agree that it certainly influenced his conduct during
6 these merger negotiations, yes?

7 A You know, that's -- let me -- let me look through the
8 noise again. As you say it, I'm tempted -- I was initially
9 tempted to agree. But when I look through the noise with this,
10 there's a chance that he realized that the company had to have
11 this merger anyhow. And he was -- he looks at an activity as
12 an opportunity to take something for himself. But if he
13 couldn't get something for himself, it wasn't, you know, that
14 the activity might still go ahead.

15 And so it's not -- it's what you put first and
16 second, and all the activity going on was a chance for him to
17 try to take more and demand more. But I don't know. I still
18 think, under it all, he wanted the merger to happen and that's
19 why we were able to pull this off, and to do away with HHI
20 completely, and keep Bob Kaplan on the board, and keep Andy
21 Wolfe on the audit committee.

22 MR. APTON: Thank you, Dr. Putterman.

23 THE WITNESS: Thank you.

24 THE COURT: Anyone have any additional questions for
25 Dr. Putterman?

1 MR. CASSITY: No, Your Honor.

2 UNIDENTIFIED SPEAKER: No, Your Honor.

3 THE COURT: Dr. Putterman, thank you for helping us
4 have a cheerful afternoon. Have a lovely evening. Thank you
5 again for your time.

6 THE WITNESS: Thank you, Your Honor.

7 (Colloquy off the record.)

8 THE COURT: All right. I do not have anything else,
9 to the best of my knowledge. No, I have one Motion to Stay in
10 one of my receivership cases, but it won't take very long, so I
11 should be ready at 9:00 o'clock.

12 MR. STIGI: Very good. Thank you, Your Honor.

13 THE COURT: Hold on a minute. Let me give you
14 your -- where you are on money -- not money, time.

15 (Pause in the proceedings.)

16 THE COURT: Okay. 151 for the plaintiffs today, and
17 for the defendants. Does anybody need a running total, or are
18 you guys all okay with your own totals?

19 MR. STIGI: If you have a running total handy, we'll
20 take it, but we can do the --

21 THE COURT: Well, I have a --

22 MR. STIGI: -- math on our notes from yesterday.

23 THE COURT: I have a calculator. I show the
24 plaintiffs have used 690 this week.

25 MR. APTON: I'm sorry?

1 THE COURT: 690. Defendants, 912. Is that close to
2 what you got, Mr. Ogilvie?

3 MR. OGILVIE: Yes. Yes, Your Honor.

4 THE COURT: All right.

5 MR. STIGI: Yes. Thank you.

6 THE COURT: I guess we'll see you on Monday. If you
7 reach any other stipulations, let me know, and we'll put them
8 on the record first thing in the morning. Get me the order,
9 Mr. Cassity, on the good faith settlement.

10 MR. CASSITY: Yes, Your Honor.

11 THE COURT: And you all have a lovely weekend. Be
12 safe. For those of you traveling, travel safely.

13 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

14 MR. STIGI: You, too.

15 MR. APTON: Thank you, Your Honor.

16 (Proceedings recessed for the evening at 3:01 p.m.)

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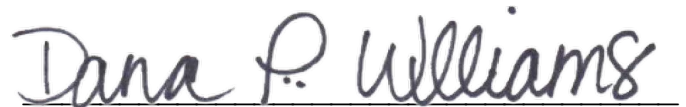
CERTIFICATION

I DO HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY TRANSCRIBED
THE AUDIO/VIDEO PROCEEDINGS IN THE ABOVE-ENTITLED CASE TO THE
BEST OF MY ABILITY.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL
SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

08/20/2021

DATE

<p>BY MR. APTON: [42] 16/13 17/1 17/20 18/16 21/24 22/4 22/8 22/12 24/3 24/22 25/3 26/16 27/17 30/6 31/21 34/4 38/19 40/1 45/8 46/2 50/10 93/15 94/3 95/3 101/10 105/2 108/2 110/20 114/8 116/7 120/2 120/6 131/7 132/21 133/6 137/24 138/8 138/23 139/12 162/8 165/17 167/22</p> <p>BY MR. CASSITY: [1] 141/17</p> <p>BY MR. PEEK: [11] 55/5 66/4 66/17 70/5 71/2 76/1 81/8 82/14 82/24 83/11 87/16</p> <p>BY MR. RAPHEL: [1] 90/24</p> <p>MR. APTON: [66] 7/5 7/16 7/20 7/24 8/2 8/4 8/6 8/8 8/11 8/22 9/10 9/24 10/2 10/5 10/11 10/18 11/9 12/2 12/6 12/11 12/15 12/19 13/9 13/12 14/4 14/17 17/13 17/16 18/12 25/14 26/1 26/15 45/2 45/22 54/4 54/7 54/10 65/21 69/18 70/16 82/11 82/20 83/7 83/9 94/24 102/22 102/24 103/12 104/23 115/13 115/15 116/2 120/1 132/8 138/18 138/21 139/10 141/5 141/7 161/18 162/1 167/15 167/18 171/22 172/25 173/15</p> <p>MR. CASSITY: [10] 107/13 114/2 115/7 119/24 141/10 141/15 161/11 167/16 172/1 173/10</p> <p>MR. HESS: [6] 9/17 10/7 10/12 49/25 93/23 102/8</p> <p>MR. 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withholding [1] 92/22 within [2] 60/12 137/1 without [7] 39/15 108/11 126/10 131/21 133/22 151/22 154/18 witness [21] 7/3 14/12 14/22 15/21 17/12 17/14 17/18 23/24 24/14 24/14 26/3 26/3 26/6 27/4 31/14 31/17 102/17 102/18 104/12 115/8 115/15 witnesses [2] 2/3 12/8 wives [1] 59/4 WOLFE [19] 1/18 20/20 20/22 20/24 20/24 36/17 36/18 36/22 37/1 42/16 42/20 122/20 122/24 123/3 123/6 123/8 123/17 149/10 171/21 Wolfe's [1] 123/19 won't [4] 16/8 109/23 138/22 172/10 wonder [1] 164/15 Woody [23] 37/1 39/20 52/20 52/23 52/24 58/16 58/16 81/15 88/9 106/12 108/9 112/3 112/4 117/15 117/22 124/2 128/16 143/13 143/15 143/20 143/23
W wage [1] 48/11 wait [11] 7/22 7/22 7/22 11/9 12/9 13/4 14/22 33/18 102/17 115/24 138/21 waiting [5] 10/7 55/20 103/25 127/22 164/16 walk [2] 19/6 168/4 want [30] 9/22 10/4 21/5 26/5 33/7 34/17 59/17 62/7 71/20 71/20 75/14 76/22 85/21 86/11 90/21 103/18 109/16 109/25 110/2 121/4 121/7 132/15 134/15 141/22 146/22 152/8 154/22 154/23 163/12 167/23 wanted [38] 10/8 10/13 21/4 21/14 41/16 47/21 47/23 47/25 49/15 53/18 70/21 74/20 74/22 100/2 100/16 100/19 108/18 108/19 110/4 115/3 117/14 117/14 119/20 119/21 119/21 123/8 124/5 126/24 128/18 132/19 150/4 152/3 152/4 156/2 156/3 156/23 168/14 171/18 wanting [2] 153/5 153/8 wants [3] 143/18 170/9 170/23 warnings [1] 157/23 was [526] wasn't [26] 41/14 64/2 66/23 68/6 68/10 70/23 71/12 88/8 91/16 91/19 92/1 94/6 100/1 101/15 101/25 107/24 111/8 115/10 115/22 117/12 124/1 130/3 150/6 153/19 159/18 171/13 watch [2] 157/21 157/22 watching [1] 93/4 waves [1] 143/5 way [22] 18/8 39/21 41/19 45/1 50/7 53/19				AA 2799

<p>W</p> <p>Woody... [2] 169/11 169/14</p> <p>Woody's [4] 117/9 117/14 165/22 169/16</p> <p>word [3] 21/23 138/11 150/2</p> <p>words [6] 65/9 68/19 72/9 75/21 169/9 169/13</p> <p>work [19] 12/24 19/1 45/11 48/7 55/18 56/7 56/10 56/16 56/17 74/16 123/1 123/14 128/2 128/3 132/15 133/1 143/14 146/5 161/8</p> <p>worked [6] 36/18 37/9 56/3 89/15 101/5 112/15</p> <p>working [5] 26/18 48/10 100/6 127/25 145/2</p> <p>works [1] 97/22</p> <p>worksheet [1] 11/20</p> <p>worry [2] 81/2 119/3</p> <p>worth [11] 48/8 76/5 76/6 80/19 81/4 116/22 151/5 151/6 151/21 160/22 161/5</p> <p>worthy [1] 20/25</p> <p>would [197]</p> <p>would've [2] 68/2 138/12</p> <p>wouldn't [4] 65/17 107/4 112/6 130/9</p> <p>write [3] 50/16 138/22 170/6</p> <p>writes [1] 51/23</p> <p>written [1] 145/8</p> <p>wrong [2] 7/20 138/11</p> <p>wrote [3] 19/13 101/22 101/24</p>	<p>168/2 170/1 170/3 170/7 170/13 170/22 170/24 171/2</p> <p>year [10] 19/20 23/3 35/16 45/10 45/15 46/16 95/14 95/19 131/1 156/19</p> <p>year's [1] 39/13</p> <p>year-end [2] 45/10 45/15</p> <p>years [8] 27/15 32/15 55/14 58/18 90/11 142/7 142/8 143/23</p> <p>yes [309]</p> <p>yesterday [2] 10/11 172/22</p> <p>yet [4] 7/9 45/23 104/1 138/22</p> <p>York [3] 142/2 143/4 143/15</p> <p>you [828]</p> <p>you'd [2] 110/11 151/16</p> <p>you'll [3] 25/10 73/25 73/25</p> <p>you're [35] 8/23 9/23 15/25 16/11 28/2 28/2 29/4 32/4 33/11 35/9 41/7 42/4 42/7 47/7 50/23 50/25 69/24 80/22 92/12 93/9 111/12 116/21 131/14 132/10 133/25 134/6 141/14 153/8 153/13 161/23 162/6 163/15 164/21 167/13 169/22</p> <p>you've [17] 15/14 22/6 22/10 45/19 50/6 56/18 58/18 61/12 62/6 65/11 69/5 69/8 82/17 91/22 113/21 142/23 144/19</p> <p>your [220]</p> <p>yours [1] 107/8</p> <p>yourself [5] 55/7 62/8 62/10 62/21 67/1</p>			
<p>X</p> <p>Xbox [1] 98/15</p> <p>XI [1] 1/6</p>				
<p>Y</p> <p>yeah [70] 8/24 8/25 10/11 20/3 25/25 35/4 69/24 70/2 72/9 75/8 77/18 80/2 85/21 92/14 94/19 102/22 102/24 103/10 106/20 113/13 120/4 123/20 125/4 125/4 131/20 132/2 135/2 135/10 138/11 138/11 139/17 139/17 141/1 142/12 142/25 144/18 145/12 147/10 147/18 147/23 148/8 148/8 148/9 148/21 148/24 149/16 152/1 153/21 159/23 160/10 161/10 161/10 161/18 162/1 163/16 163/20 164/13 164/14 165/21 166/6 167/13 167/16</p>	<p>Z</p> <p>zero [2] 152/20 154/2</p> <p>zone [1] 164/19</p>			AA 2800

To: Jim Barnes[jimbarnes@cox.net]
From: Elwood Norris
Sent: Thur 7/4/2013 5:43:26 PM
Subject: Fwd: HHI

Jim,
Given the fact the third part of the following email (5:02am) is from Ken to Juergen I doubt he's not still negotiating on HHI.
Am I wrong?

Sent from my iPhone

Begin forwarded message:

> From: James Barnes <jbarnes@parametricsound.com>
> Date: July 3, 2013, 10:50:57 AM PDT
> To: Elwood Norris <enorris@parametricsound.com>
> Subject: FW: HHI
>
>
>
> From: Juergen Stark <juergen.stark@turtlebeach.com>
> Date: Wednesday, July 3, 2013 8:01 AM
> To: James Barnes <jbarnes@parametricsound.com>, Seth Putterman
<puherman@ritva.physics.ucla.edu>
> Subject: Fwd: HHI
>
> Forwarding to you guys so there is no confusion or miscommunication internally there. Ken and I spoke last night about HHI and I told him I would give some possible solutions a bit of thought today. I asked a few framing questions largely focused on how to resolve the Dr's situation in a fair way. There was no proposal of any sort from me. Nor is it my place to make a proposal. This is something PAMT needs to resolve. That said, I will try to be helpful with some ideas, particularly on how to make sure Dr. Mehta and Sara remain on board, motivated, etc. Also, I will let Ken know that I assume it makes sense for me to discuss HHI topics with the two of you rather than with Ken given your board's resolution to have HHI related discussions go through you.
>
> ----- Forwarded message -----
> From: Juergen Stark <juergen.stark@turtlebeach.com>
> Date: Wed, Jul 3, 2013 at 7:33 AM
> Subject: Re: HHI
> To: ken potashner <ken.potashner@gmail.com>
>
>
> Ken, thanks. Just to be clear, the FDA point was just a question in regard to the audiologists...there was no specific proposal about limiting the license. I was just trying to understand the potential levers.
>
>
> On Wed, Jul 3, 2013 at 5:02 AM, ken potashner <ken.potashner@gmail.com> wrote:
>> Hi Juergen
>>
>> My BOD member Andy Wolfe(who will be my recommendation for the 2ND BOD seat should PAMT go to 2) gave me some guidance based on internal PAMT BOD discussions prior to my discussion with you on HHI last night.
>>
>> Your proposal that you are discussing with Ron will entail having PAMT use some of its option pool(at no cost to you) to induce HHI stakeholders to narrow the IP license such that it can participate solely in

the FDA arena ,allowing PAMT sole rights to operate in the consumer personal sound amplification sector. The royalty fees will stay the same. In addition language will be pursued to enable buyout rights or convert rights to PAMT at FMV for PAMT

>>

>> If indeed you are able to gain support for your proposal then I will try to gain support at PAMT using Andy Wolfe as a catalysts. At a personal level I believe it will be supported and avoid scenarios that I believe would put substantial risk and litigation exposures into the PAMT/VTB transaction. I will not discuss this with the HHI stakeholders until you give me your concurrence.

>>

>>

>> regards

>> Ken

>

>

>

> --

>

> Juergen Stark

> CEO

>

> Turtle Beach, Inc.

> juergen.stark@turtlebeach.com

> 100 Summit Lake Drive, Suite 100

> Valhalla, NY 10595

> +1 914-358-8807

> www.turtlebeach.com

>

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>

>

>

>

>

> --

>

> Juergen Stark

> CEO

>

> Turtle Beach, Inc.

> juergen.stark@turtlebeach.com

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> +1 914-358-8807

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sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

>
>

From: Kaplan Robert <bobkaplan007@gmail.com>
Subject: options
Date: July 6, 2013 10:16:09 AM MDT
To: Norris Woody <ENorris@parametricssound.com>, Jim Barnes <jbarnes@parametricssound.com>, James Honore <jameslhonore@gmail.com>, Seth Putterman <puherman@ritva.physics.ucla.edu>, Andrew Wolfe <awolfe@awolfe.org>
Bcc: Kaplan Robert <rmkaplan@cox.net>

Gentlemen;

I have gone through the "dilution" analysis of Andy, John T, Jim B, and my own. It was an interesting exercise but the conclusion is that none of this matters. Nor does the analysis that Ken has requested from our investment bankers. What really matters is that if we want to get the merger with VTB done - the HHI subsidiary must be owned 100% by PAMT before the merger with no options outstanding for others to buy a piece in the future. That is what Juergen has emphatically indicated and here we are dancing all around the issue. It is clear to me what has to be done, and done before the merger. This is one of our strong points in the saga.

Andy indicates that our dilution in HHI is the result of our merger with VTB. It will also be the result of the exercise of the 16% options (merger or not). VTB does not want to face that dilution when they assume ownership of PAMT and its subsidiary along with the inherent problems associated with partial ownership of a subsidiary.

We have given Ken until Monday to come with an offer to trade back in his options (I presume this will include John T's as well). The Doctors we should deal with separately. There's is a different situation.

As Andy pointed out in his analysis, the best estimate of the fair value of the options should be as calculated by the Black-

Scholes model. This will be difficult to calculate because of the unknowns of many of the variables but we can make some reasonable assumptions to arrive at a value.

That number should be our starting point and then after that it is all negotiation. This is one of our weak points in the saga. However if we are not able to come to a reasonable conclusion, we still have some nuclear options available - and that is our trump card!

The longer this goes on the more difficult it becomes and the messier.

Personally I think this has gone on far too long. We need to get on with the business of running the business. What has been going on since this VTB idea surfaced? Where are our licensing agreements, where are sales (incremental improvement due to David), Epsilon, Amazon, The Chinese, McDonalds, The Bear stores(still in beta mode), Sony, Samsung, etc.?

AND WE HAVE SURE BURNED THROUGH A HELL OF A LOT OF MONEY. The only real forward movement has been the technology! And this is not because of the executive suite - it is because of Woody's love of inventing and that we had the money to support him.

It is time for the BOD to step up and take charge! We have been far too passive in the past.

It is good to have a strong leader but not a dictator.

From: Kaplan Robert <bobkaplan007@gmail.com>
Subject: Re: Requested merger documents
Date: July 1, 2013 8:28:16 PM MDT
To: James Barnes <jbarnes@parametricsound.com>

Jim, Thanx. I needed this as I feel we have been left in the dark and have had misrepresentations presented to us. Thank goodness you have stepped up to the task.
Hope you are doing well.
Regards, Bob.

On Jul 1, 2013, at 7:55 PM, James Barnes
<jbarnes@parametricsound.com
<<mailto:jbarnes@parametricsound.com>>> wrote:
Gentlemen,

As a result of the request from one director for this information, I am sending to all that do not have the documents. Normally directors would not review merger agreements until the issues list had been narrowed. But each group has their own approach and while not customary it is not abnormal to see this level of detail at this stage.

This version of the merger agreement is our counsels return of the very first draft. We expect another turn late tonite from VTB indicating substantial changes and hopefully a significant narrowing of open items.

The 6.14.13 issues list was counsel's first list. Many items resolved, not applicable or no longer open but provided to you at your request.

The VTB-issues-v2 document was the higher level issues Ken reviewed with Juergen on June 24th and his annotations re same.

I have also enclosed the 81/19 and 80/20 share issuance computations for your information.

Jim Barnes

<Paris - Merger Agreement - Redline.doc><Project Paris - Issues
List re 6.14.13 Merger Agreement Draft.doc><PAMT-VTB-issues-
v2.docx><VTBH-PAMTmerger-20.xlsx><VTBH-PAMTmerger-
19.xlsx>

From: Elwood Norris <elwoodnorris@cox.net>
Sent: Friday, July 19, 2013 8:17 AM
To: Kaplan Robert <bobkaplan007@gmail.com>; John Hentrich <JHentrich@sheppardmullin.com>; Seth Putterman <puherman@ritva.physics.ucla.edu>
Subject: FW: TB

Guys,

I sent the following to Ken and Andy this morning.

Woody

From: Elwood Norris <elwoodnorris@cox.net>
Date: Friday, July 19, 2013 8:06 AM
To: ken potashner <ken.potashner@gmail.com>
Cc: Andrew Wolfe <awolfe@awolfe.org>
Subject: TB

Ken,

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

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

Woody

From: puherman@ritva.physics.ucla.edu
Sent: Thursday, April 11, 2013 9:33 AM
To: Elwood Norris <elwoodnorris@cox.net>
Subject: Re: Brian - Anaheim Meeting

It was bought out by hp?

S

Sent via BlackBerry by AT&T

-----Original Message-----

From: Elwood Norris <elwoodnorris@cox.net>

Date: Thu, 11 Apr 2013 08:07:36

To: <puherman@ritva.physics.ucla.edu>

Subject: Re: Brian - Anaheim Meeting

Seth,

How did HHI go from nothing to a billion between when Ken got his options and now? I don't get it.

Woody

On 4/10/13 9:02 PM, "puherman@ritva.physics.ucla.edu" <puherman@ritva.physics.ucla.edu> wrote:

>Woody

>Can we chat about this

>S

>Sent via BlackBerry by AT&T

>

>-----Original Message-----

>From: puherman@ritva.physics.ucla.edu

>Date: Thu, 11 Apr 2013 03:35:42

>To: Ken<ken.potashner@gmail.com>

>Reply-To: puherman@ritva.physics.ucla.edu

>Subject: Re: Brian - Anaheim Meeting

>

>Ken

>I assume you are quoting your best estimate of what hhi should eventually

>be worth.

>Seth

>Sent via BlackBerry by AT&T

>

>-----Original Message-----

>From: Ken <ken.potashner@gmail.com>

>Date: Wed, 10 Apr 2013 19:35:07

>To: Seth Putterman<puherman@ritva.physics.ucla.edu>

>Subject: Re: Brian - Anaheim Meeting

>
>We can discuss but I am not putting any costs in HHI until it gets
>funded. I also would not consider giving him .75% of HHI which I believe
>to be worth \$7.5M . I will do PAMT options only.
>
>Sent from my iPad
>
>On Apr 10, 2013, at 7:21 PM, Seth Putterman
><puherman@ritva.physics.ucla.edu> wrote:
>
>> Thanks ken:
>> What about Brian being 50% parent and 50% HHI. He is quite gung ho for
>>the Health apps.
>> Seth
>>
>> ----- Original Message -----
>> From: "Ken" <ken.potashner@gmail.com>
>> To: "Seth Putterman" <puherman@ritva.physics.ucla.edu>
>> Sent: Tuesday, April 9, 2013 4:13:41 PM
>> Subject: Fwd: Brian - Anaheim Meeting
>>
>>
>> Consistent with your thoughts on the exposure of too much resting on
>>Woody I would plan on Brian working in PAMT not HHI. HHI licenses ip
>>from Pamt we won't be developing ip there.
>>
>> Sent from my iPad
>>
>> Begin forwarded message:
>>
>>
>>
>>
>> From: Brian Kappus <kappus@gmail.com >
>> Date: April 9, 2013, 2:32:16 PM PDT
>> To: ken potashner <ken.potashner@gmail.com >
>> Subject: Re: Brian - Anaheim Meeting
>>
>>
>>
>>
>> Hi Ken --
>>
>>
>> I'm very happy to move forward!
>>
>>
>> I'm very interested in equity of the health company. That, more than
>>salary, will be a huge motivator. I also feel that a small number of
>>options in Parametric is appropriate as I assume I will be spending some
>>of my time working there.
>>
>>
>> To put numbers down, I was hoping for the following:

>>
>>
>>
>> \$125k/yr salary
>> 0.75% equity share in the health company
>> 5,000 option shares of PAMT
>>
>>
>> For the next ~1.5 months I would like to work ~40-60% time or full time
>> if we can work out experimental space at UCLA.
>>
>>
>> Hope to hear from you soon,
>> -Brian
>>
>>
>>
>> On Tue, Apr 9, 2013 at 10:32 AM, ken potashner <
>> ken.potashner@gmail.com > wrote:
>>
>>
>>
>>
>>
>>
>> Hi Brian,
>>
>> i enjoyed meeting you and as I mentioned previously you have a lot of
>> support from our technical experts. I would like to move forward with
>> structuring an offer of employment. Can you provide me what ever
>> information you are comfortable with relative to compensation history
>> and expectations.
>>
>> Also as I mentioned we are exploring a strategic option but I would
>> anticipate that me strengthening our team would be seen as positive for
>> all parties. As we progress i can give you the visibility to what we are
>> looking at and you will be in a position to have all the data to make a
>> good decision.
>>
>> regards
>> Ken
>>
>>
>>
>>
>>
>>
>> On Wed, Apr 3, 2013 at 4:17 PM, Brian Kappus <kappus@gmail.com >
>> wrote:
>>
>>
>>
>> Thank you. I'll be there. See you tomorrow.
>>

>>
>> -Brian
>>
>>
>>
>> On Wed, Apr 3, 2013 at 3:16 PM, Sassan Chakamian < sassanc@gmail.com >
>> wrote:
>>
>>
>>
>>
>>
>>
>> Hi Brian,
>>
>>
>>
>> For tomorrow's meeting we have booked a room at Anaheim Hilton. I
>> don't know the room number at this time but once I check in tomorrow I
>> will email you the room number.
>>
>>
>>
>> Hilton Anaheim
>>
>> 777 W Convention Way | Anaheim | CA | United States 92802
>>
>> T: 1-714-750-4321 |
>>
>>
>>
>> See you tomorrow at 1:00pm.
>>
>>
>>
>> Sassan
>>
>> 858-344-8595
>>
>>
>>
>>
>>
>>
>>
>>
>>
>>
>>
>>
>> From: Ken [mailto: ken.potashner@gmail.com]
>>
>> Sent: Wednesday, April 3, 2013 11:05 AM
>>
>> To: Brian Kappus; Sassan
>>

>> Cc: Seth Putterman
>>
>> Subject: Re: Brian
>>
>>
>>
>> Hi Brian,
>>
>>
>>
>> Confirmed for tomorrow. Meeting will be in Anaheim at 1pm and will have
>>Sassan send you the specific location. We are meeting with a Morgan
>>Stanley medical instrumentation analyst as well and it would be
>>beneficial for you to experience that. Plan on being with us for 2
>>hours.
>>
>>
>>
>> Regards
>>
>> Ken
>>
>>
>>
>>
>>
>>
>>
>> Sent from my iPad
>>
>>
>>
>> On Apr 3, 2013, at 9:04 AM, Brian Kappus <kappus@gmail.com> wrote:
>>
>> Hi Ken --
>>
>>
>>
>> I just wanted to confirm our meeting for tomorrow. Do you have a
>>time/place in mind?
>>
>>
>>
>> Thanks,
>>
>> -Brian
>>
>>
>>
>> On Sat, Mar 23, 2013 at 4:59 PM, Brian Kappus <kappus@gmail.com>
>>wrote:
>>
>> Ken --
>>
>>

>>
>> Sounds great. Apr 4 it is.
>>
>>
>>
>> -B
>>
>>
>>
>> From: ken potashner <ken.potashner@gmail.com >
>>
>> Sent: March 23, 2013 1:12 PM
>>
>>
>>
>> To: Brian Kappus <kappus@gmail.com >
>>
>> Subject: Re: Brian
>>
>>
>>
>> Hi Brian,
>>
>>
>>
>> There is a strong likelihood that I will be in Anaheim on Apr 4 which
>>
>> can be more convenient for you then coming to SD. This schedule should
>>
>> firm up in the next few days. Lets circle the 4th and meet either
>>
>> there or in Sd if it doesnt come to pass
>>
>>
>>
>> On Fri, Mar 22, 2013 at 4:36 PM, Brian Kappus <kappus@gmail.com >
>>wrote:
>>
>>> Hi Ken,
>>
>>
>>> Sounds good! I'm available Monday through Thursday (Apr 1-4). Which
>>>day
>>
>>> works best for you?
>>
>>
>>> -Brian
>>
>>
>>> From: ken potashner <ken.potashner@gmail.com >
>>
>>> Sent: March 22, 2013 5:09 AM
>>
>>> To: Brian Kappus <kappus@gmail.com >

>>
>>> Subject: Re: Brian
>>
>>
>>> Hi Brian,
>>
>>
>>> I was simply going to meet you in that I was in LA. Lets target a
>>
>>> visit for you to Poway when you get back. Our financing plans are on
>>
>>> schedule as I mentioned to you.
>>
>>
>>> regards
>>
>>> Ken
>>
>>
>>> On Thu, Mar 21, 2013 at 4:18 PM, Brian Kappus <kappus@gmail.com>
>>>wrote:
>>
>>>> Hi Ken --
>>
>>
>>>> I am out of town next week but will certainly be available by phone.
>>
>>
>>>> -Brian
>>
>>
>>>> On Thu, Mar 21, 2013 at 3:04 PM, Seth Putterman
>>
>>>> <puherman@ritva.physics.ucla.edu> wrote:
>>
>>
>>
>>
>>>> ----- Forwarded Message -----
>>
>>>> From: "ken potashner" <ken.potashner@gmail.com>
>>
>>>> To: "Seth Putterman" <puherman@ritva.physics.ucla.edu>
>>
>>>> Sent: Thursday, March 21, 2013 2:39:44 PM
>>
>>>> Subject: Brian
>>
>>
>>>> Is he around tues afternoon?
>>
>>
>>
>>

>>
>>

Message

From: Kaplan Robert [bobkaplan007@gmail.com]
Sent: 8/1/2013 1:46:57 AM
To: Woody Norris [ENorris@parametricssound.com]
Subject: JT et al

Hi Woody:

We just spoke and I am glad the merger is going ahead but I am disappointed that JT accepted the offer.

I still feel we should have fired him a long time ago - right when KP said he would resign if we did. That was our chance and we missed it. I really wanted us to fire the guy and then force KP to make good on his treat.

Regarding the comment by JT that we have treated him badly - I think we have treated him more than nicely. All he knows is what KP has been telling him. JT is just a surrogate for KP. He has been the one coaching JT and has used him to prod and try to intimidate us at his (KP) convenience. I go back even to KP's treat to kick me off the BoD and he said that I insulted JT regarding bonuses to such an extent that he was ready to quit. Too bad he didn't. That was just KP using his puppet to try and intimidate us further.

Boy has this experience cost us a lot of money! We have been sucked dry by these parasites.

I look forward to this thing closing and then we can move on.

Have a good evening.

Bob.