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.; STRIPES 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

APPELLANT'S APPENDIX – VOLUME 17 OF 24

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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.

McDonald Carano LLP

/s/ Jeff Silvestri

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CERTIFICATE OF SERVICE

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

/s/ *CaraMia Gerard*
An Employee of McDonald Carano LLP

From:	ken potashner <ken.potashner@gmail.com>
Sent:	Monday, April 8, 2013 10:51 PM
To:	Juergen Stark <juergen.stark@turtlebeach.com>
Subject:	company update press release

Also I wanted to mention that we will do a press release in the morning. Our shares have come under substantial pressure in the last couple days relative to the delay in me announcing licensing deals. We are a thinly traded company that has many major investors sitting with big gains and I can't afford for them to get nervous. Th erelease will be a reinforcement of our current position.

My team has also begun working on press releases relative to further expansion on McDonalds and on Softbank but I will only deploy if essential

From:	Juergen Stark <juergen.stark@turtlebeach.com>
To:	Karen Kenworthy <karen@stripesgroup.com>
CC:	Ken Fox <ken@stripesgroup.com>
Sent:	3/27/2013 5:23:46 PM
Subject:	Re: Update from Ken P (Parametric)
Attachments:	image002.jpg

OK, thanks for the update. I will do a bit of work on this later today or tomorrow morning and plan to call him tomorrow or Friday to get a bit more info pre-Monday.

On Wed, Mar 27, 2013 at 11:37 AM, Karen Kenworthy <karen@stripesgroup.com> wrote:

Juergen/Ken,

I just received a call from Ken P. at Parametric. He's receiving substantial pressure from one of his potential licensing partners to advance their discussion (but claims it would clearly not be in the interest of TB or Stripes for us to do so… I assume it's Sony).

He does not think he can stall the discussions further, so instead, he is going to tell them that he has retained banking support to assess strategic alternatives to lock all dialogues in place while we work on the TB/Stripes options.

I asked him what this means in terms of "shopping" the opportunity with other potential partners… he said, if TB/Stripes is interested post meeting on Monday, he is willing to give us contractual exclusivity for the time we need to work through the logistics and options.

For what it's worth, he said his top priority is to get something done with TB/Stripes, and thinks he would need to engage bankers anyways (to support the fiduciary requirement of the BOD) -- doing so now will at least give him a legitimate reason to stall other discussions.

I believe he wants to retain Houlihan. No bankers will attend our Monday meeting.

I think this sounds fine but let me know if you foresee any issues w this..

K

STRIPES GROUP

Karen (Lisson) Kenworthy

Stripes Group, LLC

402 West 13th Street, New York, NY 10014

w: 212.823.0725 m: 203.494.0147

Karen@stripesgroup.com

--

Juergen Stark
CEO

Turtle Beach Logo

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From: Ron Doornink <rdoornink@aol.com>
To: Juergen Stark <juergen.stark@turtlebeach.com>
Sent: 7/19/2013 1:23:39 AM
Subject: Re: Bone

Let's talk in the am

Sent from my phone

On Jul 18, 2013, at 8:19 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Like 80.5%? I think that would be similar to counting in all of the Series B from an adjustment standpoint and it doesn't help solve the Ken problem. My sense is the board has no issue wiping out the options...the issue is all with Ken (and John Todd). I think the most helpful compromise would be something like a set payment of $1m when FDA medical products have generated $50m in revenues. The numbers could be adjusted. That's future value so there is no signaling conflict on current HHI value. And an agreement that Ken will initially run the HHI sub (and get paid for it) until we hire somebody and then become an adviser with a specific role to advise on HHI build. Something like that. That differentiates Ken from John so we don't have to put John in the same position and throws Ken a bone that should help satisfy his unselfish passion :) to help build HHI.

On Thu, Jul 18, 2013 at 8:07 PM, Ron Doornink <rdoornink@aol.com> wrote:
What about throwing them a half point if they make the HHI issue go away?

Sent from my phone

--

Juergen Stark
CEO

Turtle

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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From: John Hanson <john.hanson@turtlebeach.com>
To: Chan, Tony <tony.chan@dechert.com>;Korman, Jonathan <jonathan.korman@dechert.com>
Sent: 12/19/2013 1:35:10 PM
Subject: Fwd: Covenant Discussion Update
Attachments: Covenant Forecast update 12-19vPNCFinal.xlsx; PNCLoanAgreementProposedAdjsvPNC.docx

Here is what I just sent.

JH

---------- Forwarded message ----------
From: **John Hanson** <john.hanson@turtlebeach.com>
Date: Thu, Dec 19, 2013 at 1:34 PM
Subject: Covenant Discussion Update
To: "keven.larkin@pnc.com" <keven.larkin@pnc.com>, "jeffrey.doherty@pnc.com" <jeffrey.doherty@pnc.com>, "lawrence.daly@pnc.com" <lawrence.daly@pnc.com>, "matthew.levering@pnc.com" <matthew.levering@pnc.com>, Juergen Stark <juergen.stark@turtlebeach.com>, Karen <karen@stripesgroup.com>, Bruce Murphy <bruce.murphy@turtlebeach.com>

Following our discussion yesterday we have worked back through the results bridges and identified a number of non-recurring and one-time items that impacted 2013 actual and projected results. In addition, we have identified a potential omission in the definition of Fixed Charge Taxes that has a negative impact on covenant results. Attached is a word document that describes these items and an excel file that shows proforma results and covenant performance adjusted for these items.

The impact on our projected covenant results is material.

I am finishing the liquidity analysis through June 2014 as requested and will be able to send that over today.

We would like you folks to review the attached materials and then we should have a call to answer any questions and determine a path forward.

If you need to reach me please call my mobile (847) 651-7248.

Thanks,

John

--

John Hanson
Chief Financial Officer

TURTLE BEACH

Turtle Beach, Inc.
john.hanson@turtlebeach.com
100 Summit Lake Dr. Suite 100
Valhalla, NY 10595
www.turtlebeach.com

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--

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Chief Financial Officer

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	A	B	C	D	E	F	G	H	I	J
1	**Voyetra Turtle Beach, Inc.**									
2	**Loan Covenant Analysis**									
3		[illegible]		[illegible]			[illegible]			
4		[illegible]		[illegible]	[illegible]		[illegible]	[illegible]		
5										
6	Adjusted EBITDA Trailing 12 Months	$ 27,006,970		$ 27,700,752	$ 32,989,254		$ 25,516,238	$ 33,727,510		
7	Fixed Charge Taxes	$ (3,091,374)		$ (592,194)	$ (2,601,824)		$ (685,804)	$ (3,806,088)		
8	EBITDA Less Fixed Charge Taxes	$ 23,915,596		$ 27,108,558	$ 30,387,430		$ 24,830,434	$ 29,921,422		
9										
10	Fixed Charges	$ 21,664,074		$ 21,346,000	$ 21,346,000		$ 21,036,625	$ 21,036,625		
11										
12	Term Loan (9/30 incl Pymt made after clsoe)	$ 20,000,000		$ 16,250,000	$ 16,250,000		$ 12,500,000	$ 12,500,000		
13	Revolving Loan	$ 30,185,543		$ 48,200,000	$ 48,200,000		$ 17,500,000	$ 17,500,000		
14	Debt Paydown			$ (11,000,000)	$ (1,000,000)		$ -	$ -		
15	VTB EU Guarantee			$ 1,500,000	$ 1,500,000		$ 1,500,000	$ 1,500,000		
16	Total Debt	$ 50,185,543		$ 54,950,000	$ 64,950,000		$ 31,500,000	$ 31,500,000		
17										
18	**Covenant Calculations**									
19										
20	Fixed Charge Coverage	1.10		1.27	1.42		1.18	1.42		
21		Pass		Pass	Pass		Pass	Pass		
22										
23	Total Indebtedness	1.86		1.98	1.97		1.23	0.93		
24		Pass		Pass	Pass		Pass	Pass		
25										
26	**Note:**	**Total Indebtedness covenant does not assume any actions to preserve cash and extend payables to reduct total Debt**								
27										
28	Assumed TBE line not included in indebtedness above			$ 5,000,000	$ 5,000,000		$ 2,500,000	$ 2,500,000		
29										
30										
31										
32	Fixed Charge Taxes									
33										
34	EBITDA Trailing 12 Months	$ 27,006,970		$ 22,192,121	$ 27,480,623		$ 22,232,940	$ 30,444,212		
35										
36										
37	Interest Expense	4,031,804		5,128,095	5,128,095		4,768,720	4,768,720		
38	Depreciation	3,781,726		4,381,815	4,381,815		4,535,665	4,535,665		
39	Amortization	2,735,090		922,653	922,653		922,653	922,653		
40	Transaction Expenses	2,629,033		4,507,033	4,507,033		4,507,033	4,507,033		
41	Stock Based Compensation	2,569,121		2,569,121	2,569,121		2,569,121	2,569,121		Proposed Change: see word document for details
42	Founder Earn-out Payment	3,125,000		3,125,000	3,125,000		3,125,000	3,125,000		Proposed Change: see word document for details
43	Total Fixed Charge Tax Deductions	18,871,774		20,633,717	20,633,717		20,428,192	20,428,192		
44										
45	Fixed Charge Taxable Income'	8,135,196		1,558,404	6,846,906		1,804,748	10,016,020		
46	Times 38%	3,091,374		592,194	2,601,824		685,804	3,806,088		
47										
48										
49	Fixed Charges									
50										
51	Principal	15,000,000		15,000,000	15,000,000		15,000,000	15,000,000		
52	Earn Out	3,125,000		3,125,000	3,125,000		3,125,000	3,125,000		
53	Cash Interest	3,539,074		3,221,000	3,221,000		2,911,625	2,911,625		
54		21,664,074		21,346,000	21,346,000		21,036,625	21,036,625		
55										
56										
57	Cash Interest - US	3,539,074		3,121,000	3,121,000		2,761,625	2,761,625		
58	Cash Interest - UK			100,000	100,000		150,000	150,000		
59	Total Cash Interest	3,539,074		3,221,000	3,221,000		2,911,625	2,911,625		
60										
61										
62										
63	EBITDA Trailing 12 Months	27,006,970		22,192,121	27,480,623		22,232,940	30,444,212		
64										
65	***Extraordinary, One Time, Non Recurring Items***									
66										
67	Aggressive Reduction Refurbished Inventory	1,400,000		1,400,000	1,400,000		1,050,000	1,050,000		Amounts reflected below in terms of impact
68	Lygo Inventory Acquired	904,105		1,032,105	1,032,105		774,079	774,079		on TTM Covenant calculations
69	Product Certification Catch-up	800,000		800,000	800,000		800,000	800,000		
70	PX3 MSRP Reduction	750,000		750,000	750,000		-	-		
71	Xbox360 Inventory Reduction Q1/Q2 2013	500,000		500,000	500,000		-	-		
72	Air freight Incremental Costs	437,021		437,021	437,021		63,391	63,391		
73	Xbox Stickering Program	129,167		258,335	258,335		258,335	258,335		
74	Severance and Transition Expenses	240,025		331,170	331,170		337,493	337,493		
75										
76										
77										
78	Total Adjustments	5,160,318		5,508,631	5,508,631		3,283,297	3,283,297		
79										
80	Adjusted EBITDA Trailing 12 Months	32,167,288		27,700,752	32,989,254		25,516,238	33,727,510		

	C	D	E	F	G	H	I	J	K	L	M	N	O
3						Q4 Forecast			FY 2013			Q1 Forecast	
4						LOW	HIGH		LOW	HIGH		Low	High
5	Net Sales					87,239,567	100,559,567		179,591,885	192,911,885		32,741,238	43,141,396
6	COGS					54,700,752	62,599,051		123,459,631	131,357,929		22,360,409	29,120,533
7	**GM**					**32,538,814**	**37,960,516**		**56,132,254**	**61,553,956**		**10,380,829**	**14,020,863**
8													
9	Marketing & Selling					7,845,835	7,979,035		29,629,182	29,762,382		7,112,954	7,861,686
10	Product Management					1,201,738	1,201,738		4,440,589	4,440,589		1,143,681	1,264,069
11	G&A					7,241,890	7,241,890		15,207,334	15,207,334		1,979,205	2,187,543
12	Total Operating Expenses					16,289,463	16,422,663		49,277,104	49,410,304		10,235,841	11,313,298
13													
14	**Operating Income**					**16,249,351**	**21,537,853**		**6,855,150**	**12,143,652**		**144,987**	**2,707,565**
15													
16	Other (Income) Expense, net:												
17	Interest Expense, net					1,292,969	1,292,969		5,128,095	5,128,095		1,070,927	1,070,927
18	Series B preferred dividend					250,818	250,818		995,832	995,832		243,378	243,378
19	Foreign Exchange (Gain) / Loss					-	-		255,976	255,976		388,619	388,619
20	Gain on bargain purchase from acquisition					-	-		-	-		-	-
21	Other Income/Expense					1,543,787	1,543,787		6,379,903	6,379,903		1,702,924	1,702,924
22													
23	Income berfore Income Taxes					14,705,564	19,994,066		475,247	5,763,749		(1,557,936)	1,004,641
24													
25	Income taxes					6,073,782	8,083,413		(1,112,473)	897,158		(0)	15,631
26													
27	**Net Income**					**8,631,782**	**11,910,654**		**1,587,720**	**4,866,591**		**(1,557,936)**	**989,010**
28													
29	Fixed Charges:												
30	Interest expense					1,292,969	1,292,969		5,128,095	5,128,095		1,070,927	1,070,927
31	Series B preferred dividend					250,818	250,818		995,832	995,832		243,378	243,378
32	Income Taxes					6,073,782	8,083,413		(1,112,473)	897,158		-	375,824
33	Depreciation					1,290,337	1,290,337		4,381,815	4,381,815		1,089,461	1,089,461
34	Amortization of intangibles					230,663	230,663		922,653	922,653		230,663	230,663
35	Transaction costs					2,220,000	2,220,000		4,507,033	4,507,033		-	-
36	Schedule C1 Items					-	-		867,417	867,417		83,417	83,417
37	Stock Compensation					2,995,255	2,995,255		4,914,030	4,914,030		979,347	979,347
38	Total					**14,353,823**	**16,363,454**		**20,604,401**	**22,614,032**		**3,697,193**	**4,073,017**
39													
40	**EBITDA**					**22,985,606**	**28,274,108**		**22,192,121**	**27,480,623**		**2,139,257**	**5,062,027**

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VTB Inc.
2013 Forecasted Performance and Covenant Measurement

The company has incurred a number of non-recurring or one-time costs/expenses relating to actions taken to position TB for the next generation console roll-out and prepare to operate as a public company. The Playstation 4 and Xbox One console roll-outs are significant events as it has been six years since the last console release (Playstation 3) and never in the history of console gaming has both Sony and Microsoft released new consoles in the same year. The new consoles were built to be entertainment centers and not just a gaming console. Both Sony and Microsoft held specifics about the new consoles until just before launch in November.

In addition, the company believes that two significant items were inadvertently left out of the list of items deducted from the calculation of "Fixed Charge Taxes in the amended loan agreement. Correcting for the two items and enabling adjustment of the EBITDA calculation, as permitted in the credit agreement, meaningfully changes the covenant calculations. Below is a detailed description of the various items and a recommendation.

Fixed Charge Tax Calculation: Items Missed in Definition

We believe that the following two items were inadvertently and erroneously excluded from the list of items deducted from the calculation of "Fixed Charge Taxes" in the amended credit agreement. Below is a detailed description of each item:

Stock Compensation Expense ***2013 Estimated Deduction*** ***$2,569,121***

The credit agreement does not specifically include stock compensation expense in the determination of fixed charge tax deductions. The company does get a tax deduction for stock compensation expense and it reduces the company's actual effective tax rate. In order to properly estimate the tax adjustment used in the fixed charge covenant calculation, these expenses should be included in the fixed charge tax deduction calculation.

Founder Earn-out Payment ***2013 Estimated Deduction*** ***$3,125,000***

In 2011 the company agreed to pay the former founders of TB a total of $9,375,000 in deferred compensation payments. The payments occur in July of 2012, 2013 and 2014. The company expensed the entire amount per GAAP accounting treatment in 2011. For tax purposes however the company was required to defer the expense for tax determination purposes (deferred taxes). IRS regulations only allow a deduction for deferred compensation expense based upon actual cash payments. For this reason the company did not get a tax deduction for any of the expense realized in 2011. The company is however getting a deduction for the determination of taxes due as the deferred compensation is paid in 2012, 2013 and 2014.

The credit agreement does not specifically include these founder earn-out payments in the list of items deducted from the calculation of Fixed Charge Taxes. The company is realizing a cash tax deduction for these payments as they are made and the company believes the fixed charge tax deduction should include this item. The fixed charges used in the covenant calculation include this amount at the gross amount $3,125,000, however this is not the net of tax amount the company actually pays. Excluding this item from the calculation understates the actual tax deductions and overstates taxable income.

The company believes these items should have been included in the Fixed Charge Taxes deduction calculation when the credit agreement was amended in August 2013 because they represent real tax deductions for the company and that their mission creates inconsistency and obvious error. We would propose that clauses (b)(iii) and (b)(viii) of "EBITDA" be included in clause (ii) of the definition of "Fixed Charge Taxes" to correct this inconsistency and obvious error so the Fixed Charge Taxes deduction calculation accurately represents the taxes owed by the company. Because this action is being taken to correct an inconsistency and obvious error, the change can be made pursuant to Section 14(a) of the Second Amendment

Non-recurring, One-time and Unusual Transactions: Items Realized in 2013

The company took a number of intentional and specific actions to prepare for the next generation Sony Playstation and Microsoft Xbox One consoles and to prepare to be a public company following the PAMT merger closing. These actions were appropriate in 2013 but delivered a one-time or non-recurring negative EBITDA impact in 2013. Below is a detailed description of these items:

Aggressive Reduction of Refurbished Product Inventory: ***2013 EBITDA Impact ($1,400,000)***

The company ended 2012 with refurbished inventory that was considered to be "older generation" and likely to experience declining demand due to the new console launch (November). The uncertainty of backward and forward compatibility for headsets with the new consoles created significant risk of sale for these "older generation" headsets. In addition, with the company becoming public through the merger the accounting requirement for reserves especially excess and obsolete inventory would increase significantly exposing the company to take reserves that as a private company TB could defer and possibly avoid. The leadership team made a conscious decision in early 2013 to aggressively sell off this "older generation" headset inventory to eliminate the risk of the new consoles making the headsets obsolete and avoid accounting reserves due to higher public company accounting standards.

The company did not have established channels for the sale of refurbished inventory in early 2013 so the aggressive sale program was managed by Sohnen. For the full year 2013, the company expects to sell $7,200,000 refurbished inventory at a cost of $8,600,000. The company has realized over $1,000,000 of losses on the sale of refurbished product year to date September 28, 2013. Most recently the company has established additional channels for the sale of refurbished product including Gamestop and the internal web store and these channels are able to sell refurbished product at a small profit (0%-15%).

The company believes that this one-time aggressive inventory reduction program should be excluded from the calculation of covenant EBITDA as the negative impact was a one-time impact driven by the need to sell the product in the first half of the year before the company had established channels and ahead of the next generation console roll-out.

Lygo Inventory Acquired October 2012: ***2013 EBITDA Impact ($1,032,105)***

The company acquired Lygo in October 2012 and under GAAP purchase accounting rules, Lygo inventory was valued at fair market value which was the price the company had sold the product to Lygo at before the acquisition closed. The company sold product to Lygo with a 32% mark-up that included company overheads and a profit margin. At acquisition the company purchased this product back from Lygo at the same price that it was sold to Lygo.

At 12-31-12 the value of the mark-up in the inventory totaled $1,032,105. During 2013 TB EU has sold this product and recognized costs at the amount the company paid for the product at acquisition and the profit realized is $1,032,105 lower as this cost is higher than the company standard cost for the products. The loss of profit is a one-time item as all inventory provided to TB EU post transaction has been valued at the companies standard cost and reflects expected profit margin. The potential loss of this profit was not contemplated in the determination of covenants for the business.

Product Certifications Catch-up: ***2013 EBITDA Impact ($ 800,000)***

In early 2013, the company discovered that certain certifications (e.g. Prop 65) and certain country certifications for products had not been completed. The company engaged a third party to audit products to insure that proper certifications had been filed for all products. This becomes particularly important as the company moves forward with preparations to be public. The company has continued working with this third party and continues to invest in the certification process going forward. For the full year 2013 the company expects to pay the third party over $1.1M for certification work. The company estimates that of this total investment, approximately $800k is non-recurring and relates to catch-up compliance work. The annual run rate cost for these certifications is expected to be in the $300k range.

The company proposes that this non-recurring one-time item be excluded from the determination of EBITDA for covenant determination purposes.

PX3 MSRP Reduction ***2013 EBITDA Impact ($ 750,000)***

During 2012, Sony had been competing with our $149 PX3 product with their $99 wireless headset. The company had not taken any competitive action during 2012 despite the fact that the products had similar capabilities and PX3 sales began dropping as a result while channel and company inventory rose. The TB new management team decided in Q4 2012 to recognize the competitive product and appropriately reduced the price of PX3 to $99. This action was initiated in early Q2 2013. Because of the excess channel inventory build-up, there was an abnormal price protection impact. The impact of this action was an increase in customer credits for price protection totaling $750k in the first half of 2013. The impact does not represent the full year impact on the PX3 product. For this reason the company believes that the price protection action taken in the first half of the year is a non-recurring one-time impact.

While price reductions are a normal course of business as markets become more competitive, the drastic nature of this change combined with the lack of action for most of 2012 made this case an extraordinary event. The company proposes that this non-recurring one-time item be excluded from the determination of EBITDA for covenant determination purposes.

Xbox 360 Inventory Reduction Q1/Q2 2013: ***2013 EBITDA Impact ($500,000)***

The company made a conscious decision to reduce on-hand inventories of certain Xbox 360 headsets including Call of Duty ahead of the Xbox One console roll-out to mitigate any potential excess inventory issues. Microsoft was not clear to the market in regards to backward and forward compatibility and Xbox 360 accessory overall demand had declined and demand shifted to lower price options. The company executed a number of programs to reduce existing inventory and provided additional credits to retailers to move product out. The company only took this action in Q1/Q2 2013 due to the impending new console transition (November).

The company proposes that this non-recurring one-time item be excluded from the determination of EBITDA for covenant determination purposes.

Air Freight Incremental Costs ***2013 EBITDA Impact ($437,021)***

The company will utilize air freight from time to time to meet market demands for products. In the first quarter of 2013 the company was required to incur air freight in order to have rework done on the XP7 product that had defects when it arrived in the US. In addition, the company incurred air freight costs to ship upgraded products to the US to meet demand. The products that the company upgraded were the PX5 to the PX51 and the XP500 to the XP510. These air freight costs were required due to the unusually severe nature of the the manufacturer product defect and delays in upgraded product availability. The cost of the air freight for just these items totaled $437k in Q1 2013.

The company proposes that this non-recurring one-time item be excluded from the determination of EBITDA for covenant determination purposes.

Xbox Stickering Program ***2013 EBITDA Impact ($ 258,335)***
The company was required to add stickers to product in the field to denote compatibility with the Xbox One and Playstation 4. The late announcement around headset compatibility by Microsoft and Playstation caused the company to either complete stickering in the field or bring the products back in and repackage. The cost of stickering was the quickest and least costly solution. The cost of this stickering program was a one-time transaction as packaging has been modified to reflect console compatibility.

The company proposes that this non-recurring one-time item be excluded from the determination of EBITDA for covenant determination purposes.

Severance and Transition Expenses ***2013 EBITDA Impact ($331,170)***

In 2013 the company replaced the Chief Supply Chain Officer (CSCO)) to upgrade supply chain leadership. The company brought in one of the founders to assist transition to the new CSCO with a focus on the contract manufacturer relationships. The 2013 expense for severance and transition services totals $248,170.

In addition to the CSCO and CFO actions, the company paid $83,000 in payroll taxes in 2013 relating to the founder earn-out ($9,375,000 obligation negotiated in 2011) payment made in 2013. All of these expenses are non-recurring and one-time expenses.

The company proposes that this non-recurring one-time item be excluded from the determination of EBITDA for covenant determination purposes.

From: ken.potashner@gmail.com
To: juergen.stark@turtlebeach.com <juergen.stark@turtlebeach.com>;Juergen Stark <juergen.stark@turtlebeach.com>
Sent: 11/30/2013 7:00:41 PM
Subject: Re: update

Not looking to argue anything . I have a CFO who is very nervous and I am trying to get to the bottom of it

Sent from my iPhone

On Nov 30, 2013, at 2:56 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Huh? Numbers haven't changed other than Xbox delay. And add that $10m back and we are right in the guided range. Shall we do a relative comparison to Pamt? I could argue same on our side.

On Nov 30, 2013 5:53 PM, <ken.potashner@gmail.com> wrote:
Funny in that you were encouraging direct dialogue there

I think we (pamt) are under tremendous pressure in that the numbers keep getting softer, the apparent lack of controls, and the covenant exposures . The does this deal make sense question is being asked.

I still see all the strategic rationale but will need your help on a couple points
that we can discuss tmrw

This is getting scary .

Sent from my iPhone

On Nov 30, 2013, at 2:30 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Phase tell Jim to lay off! John just sent me a note. He's ready to kill him. I don't need Jim pressuring anybody. We are doing everything we can and will be done when we are done.

On Nov 30, 2013 5:27 PM, "Juergen Stark" <juergen.stark@turtlebeach.com> wrote:

Shareholder meeting is set and 7 days later than originally planned. Monday vs Tuesday makes no difference to that. Correct me if wrong. Let me know what action you would propose I take. 90 percent of work continues to be on our side and I have a team that has been working through every weekend for months and they continue. You guys have no idea how burned out everybody is (me included). By the way, have you improved the sections that got the negative comments in seeking alpha related to your stuff?

On Nov 30, 2013 5:20 PM, "ken potashner" <ken.potashner@gmail.com> wrote:
the magic of Monday is that each delay day costs us a ton of money in legal and other fees plus at some point(maybe this one) we get a day for day delay between filing and shareholder meeting which we already announced

On Sat, Nov 30, 2013 at 2:17 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Everybody working on it... all weekend. Nothing magic about Monday so I'm not going to pressure anybody more than they already are. Everybody is completely burned out on months of non-stop work.

On Nov 30, 2013 5:14 PM, "ken potashner" <ken.potashner@gmail.com> wrote:
nothing you need to do at this point but SM thought they would be working this weekend. Given that substantive changes are still going on I am hopeful we can still make the schedule

From:	Juergen Stark <juergen.stark@turtlebeach.com>
To:	CAMeAbty1_GXO7R1P3Aj1uAVne5MaLL8Ax_tSLh=N2xDygW46dA@mail.gmail.com <CAMeAbty1_GXO7R1P3Aj1uAVne5MaLL8Ax_tSLh=N2xDygW46dA@mail.gmail.com>;John Hanson <john.hanson@turtlebeach.com>
Sent:	10/25/2013 10:33:17 AM
Subject:	Re: FW: Parametric - Disclosure of Financial Projections in Merger Proxy

OK, let's discuss. I've also sent the document to Ken P since their numbers, no surprise, are way high. Our are a bit high and reflect what we believed would happen this year. I believe they were done in the Spring timeframe (May?) though and we had just come off of a very strong Q1 so there is good grounding for these. Since then, the market has clearly slowed much more than we expected. And even by August DA signing, I had adjusted the range down accordingly. I'm more concerned about anybody taking the PAMT numbers of $23 and $12m EBITDA and thinking there is a hope in hell of actually doing that next year. Particularly given the lack of progress at PAMT since August.

On Thu, Oct 24, 2013 at 10:24 PM, John Hanson <john.hanson@turtlebeach.com> wrote:
Will need your help here chief.

When you read the disclosure you will not like it so be warned. It is very negative. What is important is for you to look at the projections that were disclosed for the two companies. I was under the impression that you provided a range of results for 2013. This appears to be disclosing the projections in the fairness opinions. I have an email into Jeremy to ask why they are disclosing the projections form the fairness opinion and if this is a required disclosure or just one to protect the company going forward.

Happy reading.

John

---------- Forwarded message ----------
From: **Levy, Jeremy** <jeremy.levy@dechert.com>
Date: Thu, Oct 24, 2013 at 7:06 PM
Subject: FW: Parametric - Disclosure of Financial Projections in Merger Proxy
To: Bruce Murphy <bruce.murphy@turtlebeach.com>, "john.hanson@turtlebeach.com" <john.hanson@turtlebeach.com>, Michael Broderick <michael.broderick@connorgp.com>
Cc: "Chan, Tony" <tony.chan@dechert.com>, "Elder, William" <William.Elder@dechert.com>

Bruce/John/Michael,

Attached is a draft disclosure that Sheppard Mullin prepared relating to the financial projections VTB and PAMT exchanged during the negotiation of the merger agreement. The disclosure is designed to preempt a staff comment like one they received on a prior deal. Can you please take a look and let us know if you have any comments? Most of this is disclaimer language that we will mark up, but we are particularly interested in any comments you may have about the description of EBITDA and any additional key assumptions we should flag that could move the results significantly.

Please let me know if you have any questions or would like to discuss.

Thanks,

Jeremy I. Levy
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+1 215 655 2295 Fax
jeremy.levy@dechert.com
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From: Robert Wernli [mailto:RWernli@sheppardmullin.com]
Sent: Thursday, October 24, 2013 11:26 AM
To: Chan, Tony; Levy, Jeremy
Cc: John Hentrich
Subject: Parametric - Disclosure of Financial Projections in Merger Proxy
Importance: High

Tony, Jeremy and Bill –

To preempt likely Staff comments (and otherwise due to materiality), we intend to add the attached "Certain Financial Information" section in the merger proxy, which discloses a summary of the financial projections prepared by Parametric and Turtle Beach and presented to (and relied on by) Craig-Hallum.

Can you please review and provide comments to this section by the end of today, or by tomorrow at the latest?

Rob

Robert L. Wernli
858.720.8953 | Direct dial

858.523.6709 | Direct fax

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From: Juergen Stark <juergen.stark@turtlebeach.com>
Sent: Thursday, October 31, 2013 8:11 PM
To: Hoverman, Daniel <DHoverman@hl.com>
Cc: ken potashner <ken.potashner@gmail.com>; Dufilho, Mark <MDufilho@hl.com>; John Hanson <john.hanson@turtlebeach.com>; Karen Kenworthy <karen@stripesgroup.com>
Subject: Re: Forecasts

I'm happy to talk to CH

On Thu, Oct 31, 2013 at 8:09 PM, Hoverman, Daniel <DHoverman@hl.com> wrote:

Thanks Juergen. I think we ll likely need to get you on the phone with Craig Hallum tomorrow morning to walk through your thinking on 2014 and beyond. Let us know what time works for your schedule.

For 2013, can you give us the updated range? If there s a chance that we won t achieve at least $32 million in sales, what is the appropriate range for what we re likely to achieve? For reference, Craig Hallum had included $40.6 in EBITDA for 2013 in their opinion they ll clearly want to disclaim that number, but giving them (and the market) context around what we think is likely will be very helpful. Given the statements (both our estimate and the CH assumption) already on record, our fall back position here is to merely disclaim the earlier number and not provide updated guidance - I don t believe this will be a great result.

Appreciate that everyone is running on fumes here just want to make sure that we have everything buttoned up from a disclosure perspective (so we can get our financing done after the proxy is filed) and a consent perspective (so CH approves the disclosure around their opinion in the proxy).

Daniel S. Hoverman
Director

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917.671.7107 **Mobile**
DHoverman@HL.com

From: Juergen Stark [mailto:juergen.stark@turtlebeach.com]
Sent: Thursday, October 31, 2013 10:57 PM
To: Hoverman, Daniel
Cc: ken potashner; Dufilho, Mark; John Hanson; Karen Kenworthy
Subject: Re: Forecasts

Ummm, this is very late to request a new, multi-year forecast model and there is nobody who has any time to work on it. Everybody is focused on the proxy and running on fumes. We are working through a very detailed, ground up model for core headsets that uses industry data on console sales, installed based, by model, by geography, etc. and in the next few weeks, we will use that as a baseline for next year. November and December sales will be used to populate that with some key variables on current vs. new gen attach rates so that we have a reliable forecast for 2014 by January.

In terms of Craig Hallum fairness opinion, I think this is very easy. Our business will end up being modestly lower than forecast. The XBox One move is worth about $20 to 25m in revenue and $9-10m in EBITDA. So we will end up at the lower end of the guidance given with a chance of being below that. And the majority of the should move into next year depending on when Microsoft releases the hardware and software, which we don't know yet. Given that the fairness opinion is about a ratio between the two companies, please see Parametrics forecast vs. the numbers used in the fairness opinion.

On Thu, Oct 31, 2013 at 7:34 PM, Hoverman, Daniel <DHoverman@hl.com> wrote:

Juergen *

I just caught up with Ken. There seems to be a bit of confusion around the forecasts, so wanted to make sure the *ask* is clear. We need two things to fall into place before filing tomorrow: (a) disclosure of revised 2013 forecasts in the proxy, and (b) an internal model that supports the forecasts for the additional years considered by Craig Hallum. VTB only needs to publicly disclose the new 2013 forecasts. However, Craig-Hallum needs to craft very specific disclosure around the forecasts used for their opinion * for 2013, they need to direct people to the revised outlook section. I don*t believe they need additional disclosure for 2014 and afterwards, based on our assumption that 2013 sales are pushing to 14, and the years afterwards remain unchanged. However, Craig Hallum will need to diligence (or look at a revised model) the remainder of the forecast period to ensure they don*t need additional cautionary language in the proxy.

Consequently, the best path here is to get the forecast model around to all parties tonight, if possible. The second best path is to update 2013 for disclosure in the proxy, and then get on the phone tomorrow to walk CH through the best estimates for performance in 2014 and afterwards. There isn*t much time left to hit our proxy deadlines, but we*ll need to get one or the other done first thing tomorrow. Let us know how the current forecast model looks, and please send around if it*s in shape to be shared (even with the understanding that it*s a preliminary, best-guess estimate). If not, let us know when we can get you on the phone with CH to walk through the VTB best guess verbally.

Best,

Daniel

Daniel S. Hoverman
Director

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From: ken potashner <ken.potashner@gmail.com>
Sent: Wednesday, October 9, 2013 4:07 PM
To: Juergen Stark <juergen.stark@turtlebeach.com>
Subject: uSoft

Hi,
When will you be able to provide a revised Q4 forecast due to uSoft issue.

I also hope this doesnt blow up the financing term sheets in that it will be seen as a material event. I havent shared this with Jim Barnes on my side yet as I am trying to get my hands around it.

From:	Juergen Stark <juergen.stark@turtlebeach.com>
To:	Ron Doornink <rdoornink@aol.com>
Sent:	11/1/2013 11:30:34 AM
Subject:	Fwd: URGENT - Reconciliation
Attachments:	VTB and PAMT Model - downside 8_15_2013 updated for July August - RECONCILIATION.xlsx

See below to give you a sense of the sausage making that has me ready to blow my brains out. I will call on you this to let you know the gameplan as it impacts the proxy in an hour or 2.

---------- Forwarded message ----------
From: **Juergen Stark** <juergen.stark@turtlebeach.com>
Date: Thu, Oct 31, 2013 at 11:25 PM
Subject: URGENT - Reconciliation
To: Bruce Murphy <bruce.murphy@turtlebeach.com>, John Hanson <john.hanson@turtlebeach.com>

Bruce, you and John need to get on a call ASAP tomorrow morning. The numbers are different by millions of dollars in EBITA even from the actual results we used to provide EBITDA guidance and we can't figure out how/why. As a result, John is getting a full year EBITDA even at $195m net revenue that is much lower than $32m. That's a major problem. See the attached spreadsheet, columns AF-AI in the Downside Case. I've entered the numbers from the proxy next to the totals for 1H 2012 and 2013 (these are actuals from August, not forecasts or estimates). Here are the items to discuss and resolve:

2012 1H
Why are product costs so much higher in the reaudited? Revenues are $500k higher but product costs are $3.2m higher resulting in $2.7m lower gross margin.

Why are opex costs 1.1m higher than reaudited? It looks like some opex costs got moved to product costs in the reaudit but even if we moved all $1.1m from opex to product costs, we still end up with $1.6m lower operating income in the reaudited numbers vs. the spreadsheet.

2012 is important because maybe it will point to an issue with forecasting 2013.

2013 1H
Revenues are $1.1m lower in the spreadsheet then the reaudited.

Product costs are $2.8m higher in the reaudited numbers than the spreadsheet.

OpEx is $3m higher in the reaudited than the spreadsheet. If I assume $2.8m of higher product cost was a move from OpEx to product cost like 2012, then the OpEx would be almost $6m higher in the reaudited than the spreadsheet.

The result is a $4.6m lower Op Income in the reaudit than the spreadsheet. That is a massive difference that needs to be bridged.

2013 Full Year
2012 Cost of Sales as a % of Gross Revenues were 47% for the year and 46% average in Q4. **Why is the Q4 average for 2013 projected to be 42% in the spreadsheet?**

That spreadsheet produces the $32m EBITDA off of $199m net revenue that we used to create the downside guidance. The 4% difference between the Q4 average of 46% in 2012 and the projected 2013 Q4 of 42% is worth $5m. That is a huge difference so I'm hoping there is an extremely good reason for the 42% 2013 assumption.

--

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From:	John Hanson <john.hanson@turtlebeach.com>
To:	Juergen Stark
CC:	Karen Kenworthy
Sent:	1/2/2014 1:08:40 PM
Subject:	Re: Bank call

I liked the email back to Jeff. It is true, give us a break.

Karen, is this your experience with PNC.

jh

On Thu, Jan 2, 2014 at 1:07 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:
Very good, will add

On Thu, Jan 2, 2014 at 10:06 AM, John Hanson <john.hanson@turtlebeach.com> wrote:
Some items to add:

The company made a $1.750M early term loan payment on 12-31-13 ahead of any agreed amendment to position for the full repayment of the term loan in Q1 14
The company paid both the term loan and revolver down by $10.2M on 12-31-13
I think you need to say that neither Sony nor Microsoft disclosed the the backward or forward compatibility of the new consoles until October and had a bigger impact on the accessory market in total than anyone had estimated. While we declined it was half of what industry analysts projected
The proper course for the business was to continue preparing for the new consoles so the company could benefit from the roll-outs which are growing 2X the analysts estimates
The company did not nor could have estimated the impact of being a public company on results back in August when the the 2nd amendment was signed. The 3rd advisors had not reported any adjustments or issues back to the team. It was not until October as we moved to completing the proxy that this information became available. We did negotiate the amendment based upon all the information we had at the time.

I will keep thinking. This just off the top of my head.

JH

On Thu, Jan 2, 2014 at 12:51 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:
I will lead off with following commentary. Please comment.

- We are unfortunately needing to amend the loan agreement to accommodate the recent economics and the timing is urgent given the pending close of the Parametric deal.

- Since the July presentation, there have been several unexpected developments which have affected even our downside scenario. Keep in mind, this is probably the most difficult year in the past 8 years for anybody to forecast this business given the dual console transitions.
1) MSFT launched XB1 without any headsets
2) Core business somewhat softer than expected even in the downside case

3) Multiple accounting and financial transparency issues:
 - Even audited numbers have been adjusted by millions of dollars
 - Stock compensation and other similar public company items not considered
 - Weakness in tracking and planning for refurbs
 - Weakness in tracking and forecasting COGS
 - Surprises on OpEx due to expensed vs. capitalized costs
*This is why we not only have a new CFO but new controller and new financial planner. There were far more issues and surprises that I ever would have guessed there could be.

- Despite this, overall business is going well in terms of fundamentals although there is still high degree of volatility
* 60% share in November, MSFT license, other licenses
* 2x the expected sales of new consoles
- And PAMT deal is ready to close which will provide significant benefit of access to public capital

- To accommodate this, Stripes is ready to put in $7m and we have a set of amendments that provide for complete payoff of Term loan by Q1 so that the facility moves to a straight ABL. We also already started on the process to replace the entire facility outright.

--

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From: Juergen Stark <juergen.stark@turtlebeach.com>
To: Ron Doornink <ronalddoornink@gmail.com>;Ken Fox <ken@stripesgroup.com>;Karen Kenworthy <karen@stripesgroup.com>
Sent: 3/25/2014 10:11:22 AM
Subject: Document for this morning's call
Attachments: Post BOD Revised Financial Plan DRAFT.pptx

--

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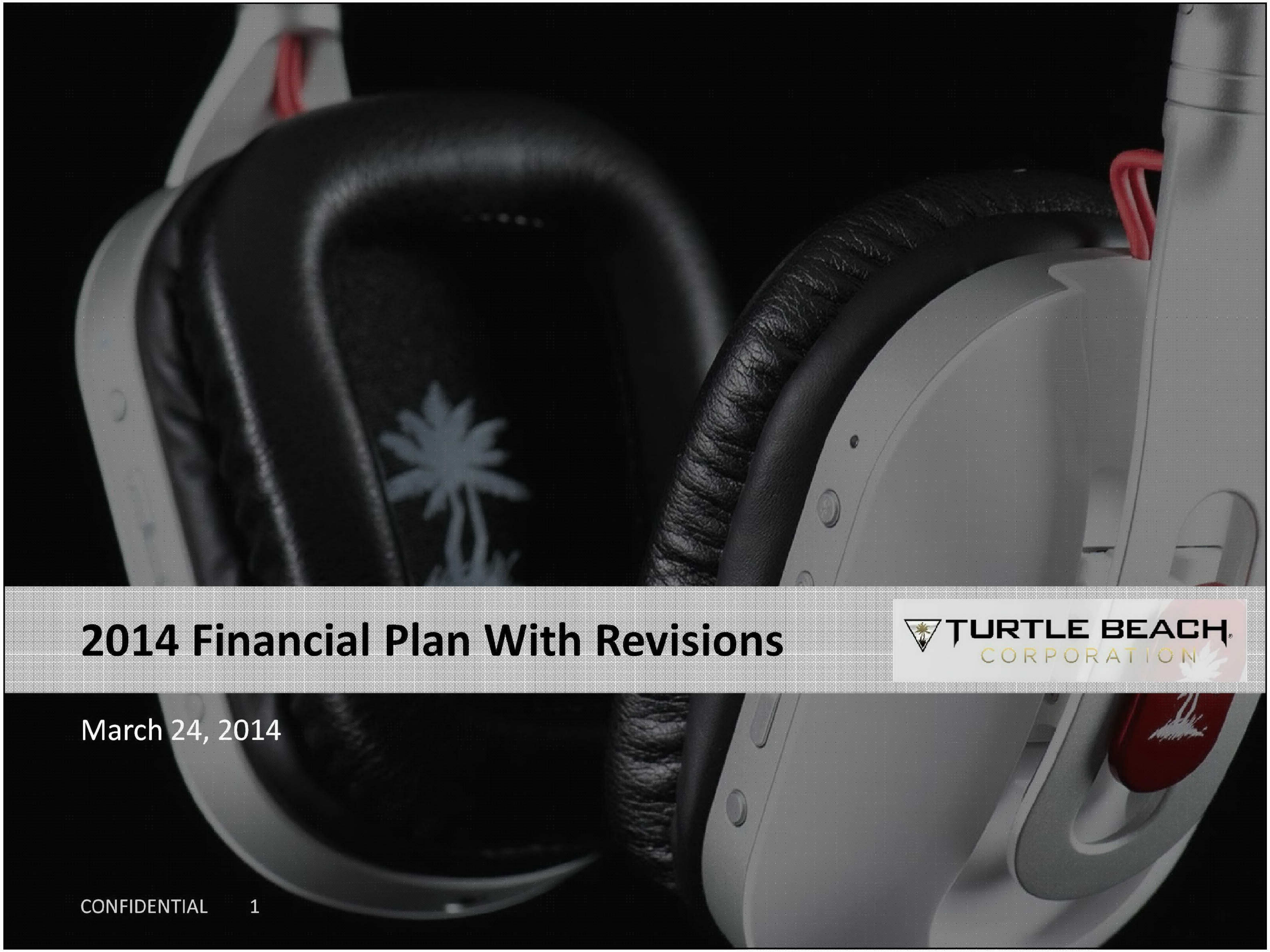

STRIPES_0073407

339 - 002

AA 3078

2014 Plan Key Assumptions

- Revenue build up from product management and sales at the product and customer level
- Product costs built up by product and customer to reflect current DCM (revenue less product costs) performance
- Assume modest improvement in other cost of sales items
- Operating Expenses;
  - 3% salary increase for all employees effective April 1
  - Management bonus assumed at 100% payout
  - 2013 headcount additions impact on 2014
  - 20 staff additions in 2014 and ending headcount of 163
  - Marketing expenses reduced $4m from 2013 level
- Capital actions assumed; ABL replaced in March and $50 million equity raise closes in March. Term loan, subordinated debt and Preferred Series B all repaid

TURTLE BEACH CORPORATION

339 - 003

2014 Plan - Straight Rollup

Including Allocations to Hypersound* (last three columns)

	VTBH FY 2013 Actual	PAMT FY 2013 Actual	VTBH FY 2014 PLAN	PAMT FY 2014 PLAN	Consolidated FY 2014 PLAN	VTBH - Allocated FY 2014 PLAN	PAMT - Allocated FY 2014 PLAN	Consolidated FY 2014 PLAN
	-	-	-	-	-	-	-	-
Revenues								
Gross Revenue	210,953	563	260,000	4,000	264,000	260,000	4,000	264,000
Credits	(32,283)	-	(37,000)	-	(37,000)	(37,000)	-	(37,000)
Revenue, net	**178,669**	**563**	**223,000**	**4,000**	**227,000**	**223,000**	**4,000**	**227,000**
Cost of Sales								
Product Costs	106,481	292	121,450	2,053	123,503	121,450	2,053	123,503
Freight in	8,477	-	9,275	-	9,275	9,275	-	9,275
Freight Out	3,691	-	4,580	-	4,580	4,580	-	4,580
Royalties	2,887	-	13,075	-	13,075	13,075	-	13,075
Operations	3,726	-	4,094	-	4,094	3,630	464	4,094
Warehouse	3,157	-	3,560	-	3,560	3,560	-	3,560
Total Cost of Sales	**128,418**	**292**	**156,034**	**2,053**	**158,087**	**155,570**	**2,517**	**158,087**
Gross Profit	**50,252**	**271**	**66,966**	**1,947**	**68,913**	**67,430**	**1,483**	**68,913**
% of Revenue	***28.1%***	***48.1%***	***30.0%***	***48.7%***	***30.4%***	***30.2%***	***37.1%***	***30.4%***
Operating Expenses								
Marketing	19,485	881	15,000	918	15,918	12,750	3,168	15,918
Sales	5,847	502	6,217	1,069	7,286	5,595	1,691	7,286
Sales Commissions	999	-	1,740	-	1,740	1,740	-	1,740
General and Administrative	5,596	2,846	9,670	1,927	11,597	8,462	3,136	11,597
Product Development	4,480	1,346	5,839	2,033	7,872	4,963	2,909	7,872
Total Operating Expenses	**36,407**	**5,576**	**38,466**	**5,947**	**44,413**	**33,510**	**10,904**	**44,413**
EBITDA	**13,844**	**(5,305)**	**28,500**	**(4,000)**	**24,500**	**33,921**	**(9,421)**	**24,500**
% of Revenue	***7.7%***	***-942.5%***	***12.8%***	***-100.0%***	***10.8%***	***15.2%***	***-235.5%***	***10.8%***

* Allocation from core to HyperSound: 15% of marketing, 10% of Sales, 15% of Product Development, 12.5% of G&A

TURTLE BEACH
CORPORATION

339 - 004

STRIPES_0073409

AA 3080

2014 Financial Summary

Net revenues up 25% YoY reflecting rebound in gaming and a few million dollars of revenue from HyperSound

- Net revenues go from $178m in 2013 to $223m in core headset business
- Note that if market assumes $15m of deferred Xbox 1 revenue moved from 2013 to 2014, then 2013 becomes $193m and 2014 becomes $208m equivalent reflecting 8% growth

Headset and consolidated business at 30% gross margins, up from 28% in 2013

OpEx up $7.9m driven by Public Company increase, HyperSound, and lower Marketing

- Marketing spend reduced $4m YoY (and budget will be set for $1m less)
- Non-commission Sales spend up $1.5m primarily driven by HyperSound investment
- Product Development spend up $3.4m primarily driven by HyperSound investment
- G&A up $6m, $3m from public company spend and $3m from HyperSound

Consolidated EBITDA of $24.5m, 11% of revenue vs. $9m in 2013

- Reflects $9.5m net investment in HyperSound
- Core Headset business is at $33.9m EBITDA, 15% of revenue (including some allocation to HS)

2014 Risks and Opportunities

Risks and Opportunities (items which could go both directions)

- 10% on headset revenues = $26m gross revenue, $22m net revenue, $7-8m EBITDA
- $2-3m on HyperSound revenues = $2-3m net revenues, $1-2m EBITDA
- $1-2m on Credits = $1-2m EBITDA
- 1-2% on Gross Margin = $2-4m on EBITDA

Totals: $11 to 16m in EBITDA

Mitigation Opportunities Team Is Pursuing (not built into plan)

- Manage marketing spend to $14m or better vs. $15m = $1-2m EBITDA
- Fully capture planned supply chain savings = $2-3m EBITDA
- Capture additional emerging market opportunities including licensing = $1m EBITDA
- Reduction in G&A = $1-2m EBITDA

Totals: $5 to 8m

Net risk if all downsides hit net of above Mitigations: $6-8m

2014 Operating Plan and Guidance Recommendation

Recommended Plan and Guidance

- Round Operating Plan based on straight rollup: $225m net revenue, $24m EBITDA
- Set Guidance at $210 to 230m net revenue, $20 to $25m EBITDA

Alternate More Conservative Plan and Guidance

- Haircut Operating Plan by $15m revenue: $210m net revenue, $20m EBITDA
- Set Guidance at $200 to $220m net revenue, $17 to $22m EBITDA
- Note this lower alternative would indicate core headset business is flat YoY when XB1 deferral is calculated in

Key External Communication Points

- Revenues up strongly reflecting post-console transition rebound; attach rates on new and old generation consoles are not yet fully established so it will take a few more quarters to get more stable ability to estimate topline
- Guided revenue range includes a "few million dollars" of HyperSound reflecting early stage of commercialization of that exciting technology; commercial sales are beginning to ramp and we are in full development of product for hearing impaired for 2015
- Gross margins at 30% consistent with our goal to be in the 30's on margins; we hope to improve this further as the business scales, product mix fully fills in on headsets for new generation consoles, and HyperSound becomes larger portion of revenues
- OpEx spending up a few million dollars YoY reflecting investment in commercialization of HyperSound and added costs for being a public company
- Guided EBITDA range reflects roughly $10m of net investment in HyperSound which we feel is well warranted given the prospects for that technology across commercial, healthcare and consumer segments
- Net of the HyperSound investments, core headset business is at 14-16% EBITDA margin, consistent with our long term goal to have EBITDA margins in the mid teens

Analysts Estimates

	2013	2014	2015	2016
Needham				
TB Revenue	$ 185.3	$ 232.0	$ 310.3	$ 382.4
PAMT Revenue	$ 1.1	$ 10.2	$ 33.3	$ 50.0
Total Revenue	$ 186.4	$ 242.2	$ 343.6	$ 432.4
EBITDA	$ 9.5	$ 37.4	$ 65.8	$ 97.3
Lake Street				
TB Revenue	$ 180.4	$ 236.8	$ 319.7	$ 402.9
PAMT Revenue	$ 1.0	$ 7.0	$ 25.0	$ 40.0
Total Revenue	$ 181.4	$ 243.8	$ 344.7	$ 442.9
EBITDA	$ 13.5	$ 40.8	$ 66.9	$ 94.6
Operating Plan – Straight Rollup				
TB Revenue	$ 178.7	$ 223.0		
PAMT Revenue	$ -	$ 4.0		
Total Revenue	$ 178.7	$ 227.0	$ -	$ -
EBITDA	$ 15.0	$ 24.5		

Based on two sell-side analysts. Average rating is Buy with a $21.50 price target.

TURTLE BEACH CORPORATION

339 - 008

From: Juergen Stark <juergen.stark@turtlebeach.com>
To: RDoornink@aol.com <RDoornink@aol.com>
Sent: 8/7/2013 7:07:02 AM
Subject: Re: SOLUTION

To be more clear, better to have single low numbers or range? Range would be 180 to 195 and 30 to 35 for example.

On Aug 7, 2013 11:42 AM, "Juergen Stark" <juergen.stark@turtlebeach.com> wrote:

This is good. We could also range both? I won't be near computer so we can loop in Karen and have her modify and send out.

On Aug 7, 2013 11:22 AM, <RDoornink@aol.com> wrote:
Hi Juergen:

Sorry about the constant interruptions! I looked over the comments you sent over and think that we should consider a third option: giving specific 2013 guidance. Anything else will just lead to more misinterpretation and confusion. Activision has been doing this for many years (and is very careful to note that actuals may deviate materially for many reasons).

I modified your document to add this option and pasted it in at the bottom of this email. It does not go as deep as Activision in terms of giving out numbers, but I think its enough for now to stick with revenues and ebitda. Eventually, we'll want to put out some more key modeling inputs like our tax rate, share count, etc. Here's a quick link to Activision's guidance model:

http://files.shareholder.com/downloads/ACTI/2624450948x0x681427/14f9a07b-cff3-49e0-a90c-ee7f8594392b/Q2_2013_Slides.pdf

Please let me know what you think.

Ron

3) Specific numbers for 2012 and specific 2013 guidance with context

We've been asked repeatedly about TB margins and there has been speculation about what companies might be good comparables for us so we wanted to provide some additional flavor.

As I mentioned on the merger call, we provide headsets, many of which contain sophisticated advanced technology. These are not stereo headphones…wires, speakers, and plastic. Our consumers are gamers who understand tech specs and value the capabilities we put into our products. And we because of the quality of our products, we have a very strong market position with roughly 50% share in the US. As a result, we produced approximately $48m of EBITDA in 2012. This is an EBITDA margin that is roughly 23%, considerably higher than most other CE companies.

In 2012, we also grew revenues over 20% from 2011.

Looking ahead to 2013, it is very important that you understand the industry context for this year. Both XBOX and Playstation have announced launches of new consoles during the holidays. As a result, the entire gaming sector is going through a normal cycle of contraction prior to these new console releases. In fact, the industry already started this cycle in 2012 with gaming hardware and software being down XX to YY%. The fact that we grew despite this was largely driven by significant new one-time distribution gains including the purchase of one of our European distributors. The industry-wide contraction is rational as consumers will tend to spend less on new consoles, console software, and gaming accessories in anticipation of the new consoles. Prior console transitions have resulted in renewed growth of the gaming category after the transition and industry analysts expect that to *occur this time as well. There are excellent public gaming industry leaders like our partner Activision that can provide good context on the expected financial impact of the transition in 2013.*

As to Turtle Beach, we are expecting 2013 revenues of $180 Million with EBITDA of $30 Million. These expectations are consistent with the impact of the console transition other companies in the gaming space are projecting and we expect the company to resume growing the top and bottom line as the new cycle takes off.

In a message dated 8/7/2013 4:36:39 A.M. Eastern Daylight Time, juergen.stark@turtlebeach.com writes:
We've had this discussion multiple times. We will not disclose 2012 EBITDA without providing industry console transition context on 2013. Otherwise, we produce hyped expectations for 2013 which will kill us later. Therefore, we have three choices: do nothing, provide some directional information, or provide more specific information but with industry context.

To save some time, I've laid out very specific examples in the attached document as well as reiterated the facts for 2012 and expectations for 2013. Please see that document.

It will be hard for me to join calls in the middle of the day UK time today. I would ask that you guys discuss (with both iBank and counsel groups participating) and come up with a proposed plan/solution and let me know what the recommendation is. I would ask that Karen be on the calls as well since she is very familiar with the entire context.

And then we can have a short call with me to discuss the solution.

On Wed, Aug 7, 2013 at 5:49 AM, ken potashner <ken.potashner@gmail.com> wrote:
as an aside the number will come out later ..lets accelerate it and gain the upper hand....

On Tue, Aug 6, 2013 at 9:38 PM, ken potashner <ken.potashner@gmail.com> wrote:
I believe in the same fashion that we stated $205M we should state the $50M ebit number. It is an actual . It is truth.

Anything short of that will lend itself to negative speculation and set the stage for a repeat of what happened to our market value today. It is also setting the stage for creating challenges in gaining shareholder support.

I know there are concerns about future financial expectations, console shift effect etc,etc We will have ample time to set the models correct and sell the strategic benefits of the deal as the proxy gets completed. We will gain analyst support as well as key shareholder support.

I believe we have a narrow time window to rectify the mistake we made by allowing people to speculate wildly in the wrong direction about TB profitability.

My personal research(with appropriate assistance) has led me to the conclusion that there are no legal or regulatory reasons why we couldn't do this

We need to fix this now. Please contemplate among yourselves and lets make a rapid decision at the scheduled call tomorrow morning.

--

Juergen Stark
CEO

http://www

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From:	Karen Kenworthy <karen@stripesgroup.com>
To:	John Hanson
CC:	Juergen Stark (Juergen.stark@turtlebeach.com)
Sent:	12/10/2013 3:01:14 PM
Subject:	RE: status update for Q1 2014?
Attachments:	VTB 2013 - 2015 Down Model with PNC mod_6.29.2013.xlsx

EBITDA went down from downside model we last provided for them for q1 2014 (provided $5.2M)

From: John Hanson [mailto:john.hanson@turtlebeach.com]
Sent: Tuesday, December 10, 2013 2:51 PM
To: Karen Kenworthy
Cc: Juergen Stark (Juergen.stark@turtlebeach.com)
Subject: Re: status update for Q1 2014?

Karen:

Here is our range of outcome for Q1 2014:

Revenue, net	$37M - $44M Contingent on the number of PMD's we can ship
EBITDA	$1.5M- $3.5M
Leverage	1.2 assuming a 3-31-14 total debt (excluding subordinated) at $30.0M
Fixed Charge	1.05 calculated on bank agreement terms

As you can see we are substantially better than Q4.

Let me know if you need additional color and I am now head down on a detailed model for Q4 13 through 2014.

Thanks,
John

On Tue, Dec 10, 2013 at 1:13 PM, Karen Kenworthy <karen@stripesgroup.com> wrote:
I need to leave for the airport at 3 – would like to call pnc before that if possible. John, per our conversation, can you send me range for Q1 2014? I will say you are following up with financials.

STRIPES GROUP
Karen (Lisson) Kenworthy
Stripes Group
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John Hanson
Chief Financial Officer

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	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	**VTB, Inc**															
2	**Loan Modification**															
3	**6/29/2013**		**PNC**												**PNC**	
4		**Model**	**Proposed Mod**		**(Millions)**				**Modeled**		**PNC Mod**	**Revolver**	**PNC Mod**	**Modeled**	**Limit**	**Modeled**
5		**Downside**	**Calculation**	**Minimum**	**Cushion**			**Leverage**	**Leverage**		**Revolver Limit**	**Modeled**	**Clean Up Min**	**Clean Up Min**	**CAPEX**	**CAPEX**
6																
7	Jun-13	0.98	1.08	Waived												
8	Sep-13	1.00	1.06	1.00	$ 1.8			2.0	1.5		$ 27.5	$ 28.0			$ 10.0	
9	Dec-13	1.03	1.11	1.00	$ 3.5			2.0	1.4						$ 10.0	$ 6.5
10	Mar-14	1.20	1.17	1.00	$ 5.6			2.0	0.7				$ 15.0	$ 13.0	$ 10.0	
11	Jun-14	1.38	1.33	1.15	$ 6.1			2.0	0.5						$ 10.0	
12	Sep-14	1.47	1.43	1.15	$ 9.5			2.0	0.6						$ 10.0	
13	Dec-14	1.57	1.53	1.35	$ 6.5			2.0	0.8						$ 10.0	$ 8.5
14																
15	Proposed Changes															
16		**Calculation - Excl**			**(Millions)**											
17		**earnout from tax calc**			**Cushion**											
18																
19																
20	Jun-13															
21	Sep-13	1.10			$ 3.0											
22	Dec-13	1.16			$ 4.6											
23	Mar-14	1.22			$ 6.7											
24	Jun-14	1.38			$ 7.3											
25	Sep-14	1.51			$ 10.7											
26	Dec-14	1.58			$ 7.7											

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	A	B	Q	R	S	T	U	V	W
3									
4			**Actual**	**Actual**	**Actual**	**Actual**	**Actual**	**Forecast**	**Forecast**
5			**1/26/2013**	**2/23/2013**	**3/30/2013**	**4/26/2013**	**5/25/2013**	**6/29/2013**	**7/27/2013**
6	**Income Statement**								
7									
8	**Sales & Revenues:**								
9	Gross Revenue		$ 10,107,705	$ 9,867,101	$ 15,334,513	$ 9,142,228	$ 9,710,625	$ 10,634,018	$ 12,990,695
10									
11	Credits		(1,627,373)	(1,981,406)	(2,762,637)	(2,460,852)	(1,692,904)	(2,134,442)	(1,942,710)
12	**Net Revenue**		**8,480,332**	**7,885,695**	**12,571,876**	**6,681,376**	**8,017,721**	**8,499,576**	**11,047,985**
13									
14	**Cost of Sales:**								
15	Hardware and Software		4,297,939	4,684,744	6,998,609	4,858,504	4,060,051	5,124,496	6,203,570
16	Freight in		349,847	180,033	947,172	478,068	215,774	479,123	636,282
17	Royalties		220,914	(57,446)	145,604	(90,478)	164,191	72,624	94,231
18	Operations		456,289	454,543	256,132	454,438	271,731	429,362	419,311
19									
20	**Total Cost of Sales**		**5,324,989**	**5,261,873**	**8,347,517**	**5,700,532**	**4,711,747**	**6,105,605**	**7,353,394**
21	**Gross Profit**		**3,155,343**	**2,623,821**	**4,224,360**	**980,843**	**3,305,974**	**2,393,971**	**3,694,591**
22								28%	33%
23	**Operating Expenses:**								
24	Marketing		1,228,864	701,766	1,301,592	863,109	1,145,090	3,005,737	763,850
25	Sales		571,702	507,983	947,524	455,401	617,794	591,241	537,901
26									
27	General and Administrative		664,564	663,791	572,868	379,977	366,536	545,295	500,584
28	Engineering and R & D		218,609	255,505	341,508	409,148	393,365	396,681	334,494
29	**Total Operating Expenses**		**2,683,739**	**2,129,045**	**3,163,492**	**2,107,635**	**2,522,785**	**4,538,953**	**2,136,829**
30	**EBITDA**		**471,604**	**494,777**	**1,060,868**	**(1,126,791)**	**783,189**	**(2,144,982)**	**1,557,762**
31								-25%	14%
32	Transaction Expenses		0	0	0	0	332,709	100,000	
33	Depreciation/Amortization Expense		427,665	427,615	279,543	406,421	383,359	358,715	359,753
34	Net Interest Expense		337,772	339,542	190,311	311,892	149,809	250,938	269,271
35	Loan Mod Fees							377,500	0
36	Fixed Asset Disposal		0	0	0	0			
37	Stock Based Comp		0	0	0	0			
38	Bargain Purchase							0	0
39	Exchange Rate Fluctuation		395,073	230,886	254,393	64,796	(122,668)	0	0
40	Foreign Tax		(142,368)	5,191	43,779	0	(326,912)	(1,010)	102,181
41	Income taxes		(74,902)	112,568	263,404	(556,033)	284,451	(1,013,479)	211,057
42	**Net Income**		**$ (471,636)**	**$ (621,025)**	**$ 29,437**	**$ (1,353,867)**	**$ 82,441**	**$ (2,217,645)**	**$ 615,501**
43									
44									
45									
46	**Balance Sheet**		**Actual**	**Actual**	**Actual**	**Actual**	**Actual**	**Forecast**	**Forecast**
47	**Assets**		**1/26/2013**	**2/23/2013**	**3/30/2013**	**4/26/2013**	**5/25/2013**	**6/29/2013**	**7/27/2013**
48	**Current Assets:**								
49	Cash		$ 6,859,697	$ 1,485,853	$ 2,083,498	$ 1,596,641	$ 4,307,469	$ 3,621,330	$ 4,784,291
50	Accounts Receivable		53,463,802	30,781,209	24,110,394	21,991,775	21,879,870	20,444,315	19,547,561
51	Inventory		36,257,884	36,746,702	35,968,499	40,441,458	40,156,539	42,058,211	45,360,725
52	Prepaid and Other		981,751	1,033,516	2,314,405	2,470,764	3,234,282	856,377	856,373
53	Deferred Taxes		3,434,033	3,434,033	3,434,033	3,434,033	3,434,033	3,434,033	3,434,033
54	**Total Current Assets**		**100,997,168**	**73,481,314**	**67,910,829**	**69,934,672**	**73,012,193**	**70,414,266**	**73,982,983**
55	Property, Plant & Equipment - Net		7,273,835	7,079,786	6,814,108	7,177,776	7,910,572	8,670,894	9,730,178
56	Intangible Assets/Goodwill		4,954,793	4,954,793	4,954,793	4,954,793	4,954,793	4,954,793	4,954,793
57	Deposits & Other Assets		21,361	21,361	21,361	94,430	94,430	94,430	94,430
58	**Total Assets**		**113,247,156**	**85,537,254**	**79,701,091**	**82,161,671**	**85,971,988**	**84,134,383**	**88,762,384**
59									
60	**Liabilities and Equity**								
61	**Current Liabilities:**								
62	Accounts Payable		22,561,073	23,077,675	19,502,064	20,079,385	19,765,139	21,908,658	21,710,102
63	Accrued Compensation and Benefits		987,320	987,320	987,320	987,320	576,585	576,585	576,585
64	Accrued Expenses		1,785,721	1,785,721	1,785,721	1,785,721	964,814	964,814	964,814
65	Curr & LT Deferred Income Taxes		6,006,989	5,401,510	(2,138,480)	(2,901,354)	(2,627,590)	(3,641,069)	(3,430,012)
66	Current Portion of Notes Payable		15,000,000	15,000,000	15,000,000	15,000,000	15,000,000	15,000,000	15,000,000
67	Deferred Rent		275,420	275,420	275,420	275,420	275,420	275,420	275,420
68	Working Capital Line		27,000,000	0	9,000,000	13,000,000	18,000,000	21,000,000	25,000,000
69	**Total Current Liabilities**		**73,616,524**	**46,527,646**	**44,412,046**	**48,226,492**	**51,954,368**	**56,084,409**	**60,096,909**
70									
71	Deferred Income Tax		2,898,783	2,898,783	2,898,783	2,898,783	2,898,783	2,898,783	2,898,783

425 - 005

	A	X	Y	Z	AA	AB	AC	AD	AE
3									
4		**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Consolidated**		**Forecast 2014**
5		**8/24/2013**	**9/28/2013**	**10/26/2013**	**11/23/2013**	**12/31/2013**	**YTD 2013**	**2013 %**	**Jan**
6	**Income Statement**								
7									
8	**Sales & Revenues:**								
9	Gross Revenue	$ 10,039,392	$ 20,649,749	$ 43,726,701	$ 41,139,727	$ 39,975,807	$ 233,318,261	117.7%	$ 12,634,631
10									
11	Credits	(1,382,652)	(2,115,900)	(4,966,353)	(5,700,048)	(6,276,976)	(35,044,252)	-17.7%	(1,617,711)
12	**Net Revenue**	**8,656,739**	**18,533,849**	**38,760,348**	**35,439,680**	**33,698,831**	**198,274,009**	**100.0%**	**11,016,920**
13									
14	**Cost of Sales:**								
15	Hardware and Software	4,925,939	10,647,786	19,038,753	16,737,453	16,113,444	103,691,287	52.3%	5,506,734
16	Freight in	459,487	918,008	1,925,519	1,922,172	2,013,216	10,524,701	5.3%	437,309
17	Royalties	75,100	933,625	2,548,723	1,262,220	1,222,569	6,591,878	3.3%	366,272
18	Operations	397,446	554,639	577,297	590,175	791,819	5,653,182	2.9%	570,362
19									
20	**Total Cost of Sales**	**5,857,973**	**13,054,058**	**24,090,293**	**20,512,021**	**20,141,048**	**126,461,048**	63.8%	**6,880,676**
21	**Gross Profit**	**2,798,767**	**5,479,791**	**14,670,055**	**14,927,659**	**13,557,784**	**71,812,960**	36.2%	**4,136,244**
22		32%	30%	38%	42%	40%	36%		38%
23	**Operating Expenses:**								
24	Marketing	933,711	1,032,287	1,783,392	2,591,919	2,013,346	17,364,664	8.8%	1,259,585
25	Sales	558,088	1,030,822	1,241,810	1,289,857	1,525,317	9,875,440	5.0%	585,995
26								0.0%	-
27	General and Administrative	499,727	552,231	512,838	510,980	558,564	6,327,955	3.2%	681,178
28	Engineering and R & D	333,397	402,280	350,178	347,799	410,385	4,193,349	2.1%	224,074
29	**Total Operating Expenses**	**2,324,923**	**3,017,620**	**3,888,218**	**4,740,555**	**4,507,612**	**37,761,407**	**19.0%**	**2,750,833**
30	**EBITDA**	**473,843**	**2,462,171**	**10,781,837**	**10,187,104**	**9,050,172**	**34,051,553**	**17.2%**	**1,385,411**
31		5%	13%	28%	29%	27%	17.2%		13%
32	Transaction Expenses			0	0	0	432,709	0.2%	0
33	Depreciation/Amortization Expense	360,791	361,829	380,923	400,016	419,110	4,565,740	2.3%	427,665
34	Net Interest Expense	283,021	282,500	310,000	351,250	288,229	3,364,533	1.7%	288,229
35	Loan Mod Fees	0	525,000	0	0	0	902,500	0.5%	
36	Fixed Asset Disposal						0	0.0%	0
37	Stock Based Comp						0	0.0%	0
38	Bargain Purchase	0	0	0	0	0	0	0.0%	0
39	Exchange Rate Fluctuation	0	0	0	0	0	822,480	0.4%	0
40	Foreign Tax	857	57,987	197,582	364,930	280,560	582,778	0.3%	(177,960)
41	Income taxes	(48,294)	589,788	3,444,962	2,972,278	1,572,539	7,758,337	3.9%	432,376
42	**Net Income**	**$ (122,532)**	**$ 645,068**	**$ 6,448,371**	**$ 6,098,630**	**$ 6,489,734**	**$ 15,622,477**	**7.9%**	**$ 415,101**
43									
44									
45									
46	**Balance Sheet**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**			**Forecast 2014**
47	**Assets**	**8/24/2013**	**9/28/2013**	**10/26/2013**	**11/23/2013**	**12/31/2013**			**Jan**
48	**Current Assets:**								
49	Cash	$ 2,644,735	$ 9,872,880	$ 2,129,751	$ 2,022,189	$ 1,984,358			$ 2,883,662
50	Accounts Receivable	19,704,724	29,456,471	55,384,391	71,726,694	66,833,894			55,894,689
51	Inventory	50,636,565	45,425,399	49,446,398	47,771,372	35,908,368			36,403,962
52	Prepaid and Other	1,153,071	1,283,140	1,030,567	1,705,763	1,705,763			1,705,763
53	Deferred Taxes	3,434,033	3,434,033	3,434,033	3,434,033	3,434,033			3,434,033
54	**Total Current Assets**	**77,573,127**	**89,471,922**	**111,425,140**	**126,660,051**	**109,866,416**			**100,322,109**
55	Property, Plant & Equipment - Net	10,288,423	9,987,298	10,017,078	9,927,765	9,619,359			9,900,027
56	Intangible Assets/Goodwill	4,954,793	4,954,793	4,954,793	4,954,793	4,954,793			4,954,793
57	Deposits & Other Assets	94,430	94,430	94,430	94,430	94,430			94,430
58	**Total Assets**	**92,910,773**	**104,508,442**	**126,491,441**	**141,637,039**	**124,534,998**			**115,271,359**
59									
60	**Liabilities and Equity**								
61	**Current Liabilities:**								
62	Accounts Payable	26,154,317	40,267,131	46,356,798	43,431,489	32,573,617			22,462,501
63	Accrued Compensation and Benefits	576,585	576,585	576,585	576,585	576,585			576,585
64	Accrued Expenses	964,814	964,814	964,814	964,814	964,814			964,814
65	Curr & LT Deferred Income Taxes	(3,478,307)	(2,888,519)	556,442	3,528,720	4,544,817			4,977,194
66	Current Portion of Notes Payable	15,000,000	15,000,000	15,000,000	15,000,000	15,000,000			15,000,000
67	Deferred Rent	275,420	275,420	275,420	275,420	275,420			275,420
68	Working Capital Line	28,000,000	28,000,000	34,000,000	43,000,000	33,000,000			33,000,000
69	**Total Current Liabilities**	**67,492,830**	**82,195,431**	**97,730,060**	**106,777,028**	**86,935,253**			**77,256,514**
70									
71	Deferred Income Tax	2,898,783	2,898,783	2,898,783	2,898,783	2,898,783			2,898,783

	A	AF	AG	AH	AI	AJ	AK	AL	AM
3									
4		Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014
5		Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
6	**Income Statement**								
7									
8	**Sales & Revenues:**								
9	Gross Revenue	$ 12,333,876	$ 19,168,142	$ 12,799,119	$ 13,594,875	$ 14,887,625	$ 16,238,369	$ 12,549,239	$ 25,812,186
10									
11	Credits	(1,579,203)	(2,454,248)	(1,638,772)	(1,740,659)	(1,906,180)	(2,079,126)	(1,606,778)	(3,304,938)
12	**Net Revenue**	**10,754,673**	**16,713,893**	**11,160,347**	**11,854,216**	**12,981,445**	**14,159,242**	**10,942,461**	**22,507,248**
13									
14	**Cost of Sales:**								
15	Hardware and Software	6,002,328	8,966,968	6,971,953	5,826,173	7,353,652	7,948,325	6,311,360	13,642,476
16	Freight in	225,041	1,183,965	669,296	302,084	670,773	795,352	574,358	1,147,509
17	Royalties	357,553	555,675	371,040	394,109	431,585	470,742	363,796	748,283
18	Operations	568,179	320,164	636,214	380,423	601,106	524,138	496,808	693,299
19									
20	**Total Cost of Sales**	**7,153,101**	**11,026,773**	**8,648,502**	**6,902,789**	**9,057,116**	**9,738,557**	**7,746,322**	**16,231,567**
21	**Gross Profit**	**3,601,571**	**5,687,121**	**2,511,844**	**4,951,427**	**3,924,329**	**4,420,685**	**3,196,139**	**6,275,681**
22		33%	34%	23%	42%	30%	31%	29%	28%
23	**Operating Expenses:**								
24	Marketing	719,310	1,334,132	884,687	1,173,717	3,080,881	782,946	957,054	1,058,094
25	Sales	520,682	971,212	466,786	633,239	606,022	551,348	572,040	1,056,593
26		-	-	-	-	-	-	-	-
27	General and Administrative	680,386	587,190	389,477	375,699	558,927	513,098	512,220	566,037
28	Engineering and R & D	261,892	350,045	419,376	403,199	406,598	342,856	341,732	412,337
29	**Total Operating Expenses**	**2,182,271**	**3,242,579**	**2,160,326**	**2,585,855**	**4,652,427**	**2,190,249**	**2,383,047**	**3,093,061**
30	**EBITDA**	**1,419,301**	**2,444,542**	**351,518**	**2,365,572**	**(728,098)**	**2,230,436**	**813,092**	**3,182,620**
31		13%	15%	3%	20%	-6%	16%	7%	14%
32	Transaction Expenses	0	0	0	0	0	0	0	0
33	Depreciation/Amortization Expense	427,665	427,665	427,665	427,665	427,665	427,665	427,665	427,665
34	Net Interest Expense	196,563	179,375	179,375	179,375	162,188	162,188	162,188	190,833
35	Loan Mod Fees								
36	Fixed Asset Disposal	0	0	0	0	0	0	0	0
37	Stock Based Comp	0	0	0	0	0	0	0	0
38	Bargain Purchase	0	0	0	0	0	0	0	0
39	Exchange Rate Fluctuation	0	0	0	0	0	0	0	0
40	Foreign Tax	6,489	54,724	0	(457,677)	(1,415)	127,727	1,072	72,484
41	Income taxes	295,639	643,527	(97,098)	1,125,919	(499,407)	495,695	83,760	901,883
42	**Net Income**	**$ 492,945**	**$ 1,139,251**	**$ (158,423)**	**$ 1,090,290**	**$ (817,129)**	**$ 1,017,161**	**$ 138,409**	**$ 1,589,756**
43									
44									
45									
46	**Balance Sheet**	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014	Forecast 2014
47	**Assets**	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
48	**Current Assets:**								
49	Cash	$ 12,567,370	$ 1,618,085	$ (2,720,212)	$ 4,144,146	$ 1,359,469	$ 653,797	$ 997,315	$ 5,653,920
50	Accounts Receivable	27,214,490	34,335,708	34,842,800	28,768,203	27,733,154	27,140,687	25,101,704	36,237,186
51	Inventory	39,368,602	37,373,587	36,227,807	37,755,286	38,349,959	36,712,994	44,044,110	52,843,565
52	Prepaid and Other	1,705,763	1,705,763	1,705,763	1,705,763	1,705,763	1,705,763	1,705,763	1,705,763
53	Deferred Taxes	3,434,033	3,434,033	3,434,033	3,434,033	3,434,033	3,434,033	3,434,033	3,434,033
54	**Total Current Assets**	**84,290,259**	**78,467,177**	**73,490,192**	**75,807,431**	**72,582,378**	**69,647,275**	**75,282,926**	**99,874,466**
55	Property, Plant & Equipment - Net	10,180,695	10,461,364	10,742,032	11,022,700	11,303,369	11,584,037	11,864,705	12,145,374
56	Intangible Assets/Goodwill	4,954,793	4,954,793	4,954,793	4,954,793	4,954,793	4,954,793	4,954,793	4,954,793
57	Deposits & Other Assets	94,430	94,430	94,430	94,430	94,430	94,430	94,430	94,430
58	**Total Assets**	**99,520,177**	**93,977,763**	**89,281,447**	**91,879,355**	**88,934,970**	**86,280,534**	**92,196,854**	**117,069,063**
59									
60	**Liabilities and Equity**								
61	**Current Liabilities:**								
62	Accounts Payable	25,922,735	26,892,360	23,751,565	24,133,264	26,255,416	25,213,124	30,907,275	47,037,845
63	Accrued Compensation and Benefits	576,585	576,585	576,585	576,585	576,585	576,585	576,585	576,585
64	Accrued Expenses	964,814	964,814	964,814	964,814	964,814	964,814	964,814	964,814
65	Curr & LT Deferred Income Taxes	5,272,832	1,371,542	(25,556)	1,100,363	600,956	1,096,651	1,180,411	2,082,293
66	Current Portion of Notes Payable	15,000,000	12,500,000	12,500,000	12,500,000	8,750,000	8,750,000	8,750,000	5,000,000
67	Deferred Rent	275,420	275,420	275,420	275,420	275,420	275,420	275,420	275,420
68	Working Capital Line	13,000,000	13,000,000	13,000,000	13,000,000	13,000,000	13,000,000	13,000,000	23,000,000
69	**Total Current Liabilities**	**61,012,386**	**55,580,721**	**51,042,828**	**52,550,446**	**50,423,191**	**49,876,594**	**55,654,505**	**78,936,958**
70									
71	Deferred Income Tax	2,898,783	2,898,783	2,898,783	2,898,783	2,898,783	2,898,783	2,898,783	2,898,783

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	A	AN	AO	AP	AQ	AR	BH	BI	BJ	BK	BL	BM
3												
4		Forecast 2014	Forecast 2014	Forecast 2014	Forecast							
5		Oct	Nov	Dec	YTD 2014	2014 %		q1	q2	q3	q3	total
6	**Income Statement**											
7												
8	**Sales & Revenues:**											
9	Gross Revenue	$ 50,285,706	$ 47,310,686	$ 45,972,178	$ 283,586,633	114.7%		$ 26,481,599	$ 33,640,593	$ 51,307,012	$ 127,537,173	$ 238,966,376
10								$ -	$ -	$ -	$ -	$ -
11	Credits	(6,438,476)	(6,057,560)	(5,886,181)	(36,309,833)	-14.7%		$ (4,044,642)	$ (4,125,712)	$ (6,668,544)	$ (15,757,851)	$ (30,596,750)
12	**Net Revenue**	**43,847,231**	**41,253,126**	**40,085,998**	**247,276,800**	**100.0%**		$ 22,436,957	$ 29,514,880	$ 44,638,468	$ 111,779,321	$ 208,369,626
13								$ -	$ -	$ -	$ -	$ -
14	**Cost of Sales:**							$ -	$ -	$ -	$ -	$ -
15	Hardware and Software	22,441,930	19,729,273	18,993,722	129,694,892	52.4%		$ 12,090,610	$ 15,676,413	$ 25,398,544	$ 59,363,133	$ 112,528,700
16	Freight in	2,214,347	2,210,498	2,315,199	12,745,730	5.2%		$ 1,087,244	$ 1,304,250	$ 1,062,050	$ 4,441,458	$ 7,895,003
17	Royalties	1,457,758	1,371,514	1,332,711	8,221,039	3.3%		$ 334,477	$ 374,506	$ 577,318	$ 2,728,287	$ 4,014,588
18	Operations	663,892	678,701	910,592	7,043,879	2.8%		$ 831,610	$ 850,817	$ 811,051	$ 1,704,862	$ 4,198,339
19								$ -	$ -	$ -	$ -	$ -
20	**Total Cost of Sales**	**26,777,927**	**23,989,986**	**23,552,223**	**157,705,540**	63.8%		$ 14,343,941	$ 18,205,986	$ 27,848,962	$ 68,237,740	$ 128,636,630
21	**Gross Profit**	**17,069,304**	**17,263,140**	**16,533,775**	**89,571,260**	36.2%		$ 8,093,015	$ 11,308,894	$ 16,789,505	$ 43,541,581	$ 79,732,996
22		39%	42%	41%	36%			$ -	$ -	$ -	$ -	$ -
23	**Operating Expenses:**							$ -	$ -	$ -	$ -	$ -
24	Marketing	1,827,977	2,656,717	2,063,680	17,798,780	7.2%		$ 2,020,250	$ 3,760,791	$ 4,524,059	$ 12,599,062	$ 22,904,162
25	Sales	1,272,855	1,322,104	1,563,450	10,122,326	-		$ 1,074,858	$ 191,094	$ -	$ (1,265,952)	$ -
26		-	-	-				$ -	$ -	$ -	$ -	$ -
27	General and Administrative	525,659	523,754	572,528	6,486,154	2.6%		$ 1,019,022	$ 1,183,315	$ 1,476,217	$ 2,781,983	$ 6,460,538
28	Engineering and R & D	358,933	356,494	420,645	4,298,183	1.7%		$ 411,350	$ 433,759	$ 535,040	$ 596,804	$ 1,976,952
29	**Total Operating Expenses**	**3,985,424**	**4,859,069**	**4,620,302**	**38,705,442**	**15.7%**		$ 4,520,265	$ 5,568,959	$ 6,535,316	$ 14,711,897	$ 31,336,437
30	**EBITDA**	**13,083,880**	**12,404,072**	**11,913,472**	**50,865,818**	**20.6%**		$ 3,572,751	$ 5,739,935	$ 10,254,189	$ 28,829,684	$ 48,396,559
31		30%	30%	30%	21%			$ -	$ -	$ -	$ -	$ -
32	Transaction Expenses	0	0	0	0	0.0%		$ -	$ -	$ -	$ 1	$ 1
33	Depreciation/Amortization Expense	427,665	427,665	427,665	5,131,980	2.1%		$ 351,817	$ 359,723	$ 1,054,347	$ 1,836,093	$ 3,601,980
34	Net Interest Expense	213,750	255,000	237,813	2,406,875	1.0%		$ 366,422	$ 402,912	$ 678,176	$ 1,412,699	$ 2,860,209
35	Loan Mod Fees											
36	Fixed Asset Disposal	0	0	0	0	0.0%		$ -	$ -	$ -	$ -	$ -
37	Stock Based Comp	0	0	0	0	0.0%		$ -	$ -	$ -	$ 241,462	$ 241,462
38	Bargain Purchase	0	0	0	0	0.0%		$ -	$ -	$ -	$ (2,456,524)	$ (2,456,524)
39	Exchange Rate Fluctuation	0	0	0	0	0.0%		$ -	$ -	$ -	$ (5,970)	$ (5,970)
40	Foreign Tax	227,219	419,670	322,644	594,976	0.2%		$ -	$ -	$ -	$ -	$ -
41	Income taxes	4,500,917	4,034,465	3,951,594	15,869,269	6.4%		$ 821,159	$ 2,518,208	$ 3,155,982	$ 9,836,884	$ 16,332,232
42	**Net Income**	**$ 7,714,328**	**$ 7,267,272**	**$ 6,973,757**	**$ 26,862,717**	**10.9%**		$ 2,028,139	$ 2,459,092	$ 5,365,684	$ 17,965,039	$ 27,817,955
43												
44												
45												
46	**Balance Sheet**	Forecast 2014	Forecast 2014	Forecast 2014								
47	**Assets**	Oct	Nov	Dec								
48	**Current Assets:**											
49	Cash	$ 1,270,657	$ (166,809)	$ (808,111)								
50	Accounts Receivable	66,354,479	85,100,357	82,694,776								
51	Inventory	50,130,907	49,395,356	44,401,634								
52	Prepaid and Other	1,705,763	1,705,763	1,705,763								
53	Deferred Taxes	3,434,033	3,434,033	3,434,033								
54	**Total Current Assets**	**122,895,840**	**139,468,700**	**131,428,096**								
55	Property, Plant & Equipment - Net	12,426,042	12,706,710	12,987,379								
56	Intangible Assets/Goodwill	4,954,793	4,954,793	4,954,793								
57	Deposits & Other Assets	94,430	94,430	94,430								
58	**Total Assets**	**140,371,105**	**157,224,633**	**149,464,697**								
59												
60	**Liabilities and Equity**											
61	**Current Liabilities:**											
62	Accounts Payable	53,124,642	49,676,434	39,741,147								
63	Accrued Compensation and Benefits	576,585	576,585	576,585								
64	Accrued Expenses	964,814	964,814	964,814								
65	Curr & LT Deferred Income Taxes	6,583,210	10,617,675	9,569,269								
66	Current Portion of Notes Payable	5,000,000	5,000,000	1,250,000								
67	Deferred Rent	275,420	275,420	275,420								
68	Working Capital Line	28,000,000	37,000,000	37,000,000								
69	**Total Current Liabilities**	**94,524,672**	**104,110,928**	**89,377,236**								
70												
71	Deferred Income Tax	2,898,783	2,898,783	2,898,783								

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AA 3095

	A	BN	BO	BP	BQ	BR	BS	BT	BU	BV	BW
3											
4											
5		q1	q2	q3	q3	total		Trailing			
6	**Income Statement**										
7											
8	**Sales & Revenues:**										
9	Gross Revenue	$ 35,309,319	$ 29,486,870	$ 43,679,836	$ 124,842,236	$ 233,318,261		$ 247,794,096	$ 243,640,374	$ 236,013,198	$ 233,318,261
10		$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
11	Credits	$ (6,371,416)	$ (6,288,197)	$ (5,441,262)	$ (16,943,376)	$ (35,044,252)		$ (32,923,524)	$ (35,086,009)	$ (33,858,727)	$ (35,044,252)
12	**Net Revenue**	$ 28,937,903	$ 23,198,673	$ 38,238,573	$ 107,898,859	$ 198,274,009		$ 214,870,572	$ 208,554,365	$ 202,154,471	$ 198,274,009
13		$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
14	**Cost of Sales:**	$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
15	Hardware and Software	$ 15,981,291	$ 14,043,051	$ 21,777,296	$ 51,889,650	$ 103,691,287		$ 116,419,381	$ 114,786,019	$ 111,164,771	$ 103,691,287
16	Freight in	$ 1,477,052	$ 1,172,966	$ 2,013,776	$ 5,860,907	$ 10,524,701		$ 8,284,810	$ 8,153,526	$ 9,105,252	$ 10,524,701
17	Royalties	$ 309,072	$ 146,337	$ 1,102,956	$ 5,033,513	$ 6,591,878		$ 3,989,183	$ 3,761,013	$ 4,286,652	$ 6,591,878
18	Operations	$ 1,166,964	$ 1,155,531	$ 1,371,396	$ 1,959,291	$ 5,653,182		$ 4,533,693	$ 4,838,408	$ 5,398,753	$ 5,653,182
19		$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
20	**Total Cost of Sales**	$ 18,934,379	$ 16,517,884	$ 26,265,424	$ 64,743,361	$ 126,461,048		$ 133,227,068	$ 131,538,966	$ 129,955,427	$ 126,461,048
21	**Gross Profit**	$ 10,003,524	$ 6,680,789	$ 11,973,149	$ 43,155,498	$ 71,812,960		$ 81,643,505	$ 77,015,399	$ 72,199,043	$ 71,812,960
22		$ -	$ 0	$ 1	$ 1	$ 2		$ -	$ 0	$ 1	$ 2
23	**Operating Expenses:**	$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
24	Marketing	$ 3,232,222	$ 5,013,937	$ 2,729,848	$ 6,388,657	$ 17,364,664		$ 24,116,134	$ 25,369,280	$ 23,575,069	$ 17,364,664
25	Sales	$ 2,027,209	$ 1,664,436	$ 2,126,812	$ 4,056,984	$ 9,875,440		$ 952,351	$ 2,425,692	$ 4,552,504	$ 9,875,440
26		$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
27	General and Administrative	$ 1,901,224	$ 1,291,808	$ 1,552,541	$ 1,582,382	$ 6,327,955		$ 7,342,739	$ 7,451,232	$ 7,527,557	$ 6,327,955
28	Engineering and R & D	$ 815,622	$ 1,199,193	$ 1,070,171	$ 1,108,363	$ 4,193,349		$ 2,381,224	$ 3,146,658	$ 3,681,790	$ 4,193,349
29	**Total Operating Expenses**	$ 7,976,276	$ 9,169,373	$ 7,479,373	$ 13,136,385	$ 37,761,407		$ 34,792,449	$ 38,392,863	$ 39,336,919	$ 37,761,407
30	**EBITDA**	$ 2,027,248	$ (2,488,584)	$ 4,493,776	$ 30,019,113	$ 34,051,553		$ 46,851,056	$ 38,622,537	$ 32,862,124	$ 34,051,553
31		$ -	$ (0)	$ 0	$ 1	$ 1		$ -	$ (0)	$ 0	$ 1
32	Transaction Expenses	$ -	$ 432,709	$ -	$ -	$ 432,709		$ 1	$ 432,710	$ 432,710	$ 432,709
33	Depreciation/Amortization Expense	$ 1,134,824	$ 1,148,494	$ 1,082,373	$ 1,200,049	$ 4,565,740		$ 4,384,987	$ 5,173,758	$ 5,201,784	$ 4,565,740
34	Net Interest Expense	$ 867,624	$ 712,638	$ 834,792	$ 949,479	$ 3,364,533		$ 3,361,411	$ 3,671,137	$ 3,827,753	$ 3,364,533
35	Loan Mod Fees										
36	Fixed Asset Disposal	$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
37	Stock Based Comp	$ -	$ -	$ -	$ -	$ -		$ 241,462	$ 241,462	$ 241,462	$ -
38	Bargain Purchase	$ -	$ -	$ -	$ -	$ -		$ (2,456,524)	$ (2,456,524)	$ (2,456,524)	$ -
39	Exchange Rate Fluctuation	$ 880,352	$ (57,872)	$ -	$ -	$ 822,480		$ 874,382	$ 816,510	$ 816,510	$ 822,480
40	Foreign Tax	$ (93,398)	$ (327,922)	$ 161,025	$ 843,072	$ 582,778		$ (93,398)	$ (421,320)	$ (260,295)	$ 582,778
41	Income taxes	$ 301,070	$ (1,285,061)	$ 752,550	$ 7,989,779	$ 7,758,337		$ 15,812,143	$ 12,008,874	$ 9,605,443	$ 7,758,337
42	**Net Income**	$ (1,063,223)	$ (3,489,071)	$ 1,138,037	$ 19,036,734	$ 15,622,477		$ 24,726,593	$ 18,778,429	$ 14,550,782	$ 15,622,477
43											
44											
45											
46	**Balance Sheet**										
47	**Assets**										
48	**Current Assets:**										
49	Cash										
50	Accounts Receivable										
51	Inventory										
52	Prepaid and Other										
53	Deferred Taxes										
54	**Total Current Assets**										
55	Property, Plant & Equipment - Net										
56	Intangible Assets/Goodwill										
57	Deposits & Other Assets										
58	**Total Assets**										
59											
60	**Liabilities and Equity**										
61	**Current Liabilities:**										
62	Accounts Payable										
63	Accrued Compensation and Benefits										
64	Accrued Expenses										
65	Curr & LT Deferred Income Taxes										
66	Current Portion of Notes Payable										
67	Deferred Rent										
68	Working Capital Line										
69	**Total Current Liabilities**										
70											
71	Deferred Income Tax										

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	A	B	Q	R	S	T	U	V	W
72	Notes Payable		26,250,000	26,250,000	22,500,000	22,500,000	22,500,000	18,750,000	18,750,000
73	Sub Debt			0	0	0	0	0	0
74	Transaction Related		6,250,000	6,250,000	6,250,000	6,250,000	6,250,000	6,250,000	6,250,000
75			0	0	0	0	0	0	0
76	**Total Liabilities**		**109,015,307**	**81,926,429**	**76,060,829**	**79,875,275**	**83,603,151**	**83,983,192**	**87,995,692**
77	**Stockholders' Equity:**								
78	Preferred Stock - Series A		0	0	0	0	0	0	0
79	Preferred Stock - Series B		0	0	0	0	0	0	0
80	Common Stock		1	1	1	1	1	1	1
81	Paid in Capital		(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)
82	Retained Earnings		68,317,359	67,696,335	67,725,772	66,371,905	66,454,346	64,236,701	64,852,202
83	**Total Stockholders' Equity**		**4,231,850**	**3,610,825**	**3,640,263**	**2,286,395**	**2,368,836**	**151,191**	**766,692**
84	**Total Liabilities & Stockholders' Equity**		**$ 113,247,157**	**$ 85,537,254**	**$ 79,701,092**	**$ 82,161,671**	**$ 85,971,988**	**$ 84,134,383**	**$ 88,762,384**
85									
86			(0)	(0)	(0)	(0)	0	(0)	(0)
87									
88									
89	**Summary Statement of Cash Flows**		**Actual**	**Actual**	**Actual**	**Actual**	**Actual**	**Forecast**	**Forecast**
90			**1/26/2013**	**2/23/2013**	**3/30/2013**	**4/26/2013**	**5/25/2013**	**6/29/2013**	**7/27/2013**
91									
92	Net Income		$ (471,636)	$ (621,025)	$ 29,437	$ (1,353,867)	$ 82,441	$ (2,217,645)	$ 615,501
93									
94	Depreciation and Amortization		427,665	427,615	279,543	406,421	383,359	358,715	359,753
95									
96	Accounts Receivable		17,100,413	22,682,593	6,670,816	2,118,619	111,905	1,435,555	896,754
97	Inventories		962,513	(488,818)	778,203	(4,472,959)	284,919	(1,901,672)	(3,302,514)
98	Accounts Payable		(11,374,162)	516,601	(3,575,611)	577,321	(314,246)	2,143,519	(198,557)
99	Taxes Payable		(74,274)	(605,479)	(7,539,989)	(762,875)	273,764	(1,013,479)	211,057
100	Other Prepaids and Accruals		1,072,938	(51,765)	(1,280,889)	(156,359)	(1,995,161)	2,377,905	4
101	Financing Fees		0	0	0	0	0	0	0
102	Deposits		0	0	0	(73,069)	0	0	0
103	Stock Based Comp								
104									
105	**Operating Cash Flow**		**7,643,458**	**21,859,722**	**(4,638,489)**	**(3,716,769)**	**(1,173,019)**	**1,182,898**	**(1,418,002)**
106									
107									
108									
109	Machinery Equipment and Software		(2,624)	(121,237)	(13,865)	(26,012)	2,730	(60,703)	(60,703)
110	Advertising Displays/Kiosks		0	(112,329)	0	(652,000)	(1,038,000)	(1,058,333)	(1,358,333)
111	Tooling Costs		0	0	0	(92,076)	(80,884)	0	0
112	Leasehold Improvements								
113	Convention Booth								
114	Investment in Subsidiary								
115	**Purchase of Property and Equipment**		**(2,624)**	**(233,566)**	**(13,865)**	**(770,088)**	**(1,116,154)**	**(1,119,037)**	**(1,419,037)**
116									
117	Long Term Debt		0	0	(3,750,000)	0		(3,750,000)	
118	Working Capital Line of credit		(6,000,000)	(27,000,000)	9,000,000	4,000,000	5,000,000	3,000,000	4,000,000
119	Transaction Related								
120	Sub Debt								
121	Series B								
122	Common Stock/Dividend								
123									
124									
125	**Financing Cash Flow**		**(6,000,000)**	**(27,000,000)**	**5,250,000**	**4,000,000**	**5,000,000**	**(750,000)**	**4,000,000**
126									
127	Net Cash Flows		1,640,834	(5,373,844)	597,645	(486,857)	2,710,827	(686,138)	1,162,961
128	Beginning Cash		5,218,863	6,859,697	1,485,853	2,083,498	1,596,641	4,307,469	3,621,330
129	**Ending Cash**		**$ 6,859,697**	**$ 1,485,853**	**$ 2,083,498**	**$ 1,596,641**	**$ 4,307,469**	**$ 3,621,330**	**$ 4,784,291**
130									
131			-	-	-	-	(0.44)	-	-
132									
133	EBITDA		$ 471,604	$ 494,777	$ 1,060,868	$ (1,126,791)	$ 783,189	$ (2,144,982)	$ 1,557,762
134	Trailing 12 EBITDA		$ 47,686,806	$ 47,519,487	$ 46,851,056	$ 43,186,380	$ 42,564,018	$ 38,622,537	$ 38,029,999
135	Capex		$ (2,624)	$ (233,566)	$ (13,865)	$ (770,088)	$ (1,116,154)	$ (1,119,037)	$ (1,419,037)
136	Trailing 12 CAPEX		$ (5,948,399)	$ (5,357,608)	$ (5,252,324)	$ (5,787,935)	$ (6,201,263)	$ (6,040,835)	$ (5,896,811)
137	Lygo proforma, acq. Expenses, fa disposal				$ 1,111,067			$ 395,431	
138	Capital Infusion								
139	EBITDA Less CAPEX		$ 41,738,408	$ 42,161,879	$ 42,709,799	$ 37,398,445	$ 36,362,755	$ 32,977,133	$ 32,133,188
140									

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	A	X	Y	Z	AA	AB	AC	AD	AE
72	Notes Payable	18,750,000	5,000,000	5,000,000	5,000,000	1,250,000			1,250,000
73	Sub Debt	0	10,000,000	10,000,000	10,000,000	10,000,000			10,000,000
74	Transaction Related	3,125,000	3,125,000	3,125,000	3,125,000	3,125,000			3,125,000
75		0	0	0	0	0			0
76	**Total Liabilities**	**92,266,613**	**103,219,214**	**118,753,843**	**127,800,811**	**104,209,036**			**94,530,297**
77	**Stockholders' Equity:**								
78	Preferred Stock - Series A	0	0	0	0	0			0
79	Preferred Stock - Series B	0	0	0	0	0			0
80	Common Stock	1	1	1	1	1			1
81	Paid in Capital	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)			(64,085,510)
82	Retained Earnings	64,729,670	65,374,737	71,823,108	77,921,738	84,411,472			84,826,572
83	**Total Stockholders' Equity**	**644,160**	**1,289,228**	**7,737,599**	**13,836,228**	**20,325,962**			**20,741,063**
84	**Total Liabilities & Stockholders' Equity**	**$ 92,910,773**	**$ 104,508,442**	**$ 126,491,442**	**$ 141,637,040**	**$ 124,534,998**			**$ 115,271,359**
85									
86		(0)	(0)	(0)	(0)	(0)			(0)
87									
88									
89	**Summary Statement of Cash Flows**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Consolidated**		**Forecast 2014**
90		**8/24/2013**	**9/28/2013**	**10/26/2013**	**11/23/2013**	**12/31/2013**	**YTD 2013**		**Jan**
91									
92	Net Income	$ (122,532)	$ 645,068	$ 6,448,371	$ 6,098,630	$ 6,489,734	$ 15,622,477		$ 415,101
93									
94	Depreciation and Amortization	360,791	361,829	380,923	400,016	419,110	4,565,740		427,665
95									
96	Accounts Receivable	(157,163)	(9,751,747)	(25,927,920)	(16,342,303)	4,892,800	3,730,321		10,939,205
97	Inventories	(5,275,840)	5,211,166	(4,020,999)	1,675,026	11,863,004	1,312,030		(495,594)
98	Accounts Payable	4,444,216	14,112,814	6,089,667	(2,925,310)	(10,857,872)	(1,361,618)		(10,111,116)
99	Taxes Payable	(48,294)	589,788	3,444,962	2,972,278	1,016,097	(1,536,446)		432,376
100	Other Prepaids and Accruals	(296,697)	(130,069)	252,572	(675,196)		(882,718)		0
101	Financing Fees	0	0	0	0	0	0		0
102	Deposits	0	0	0	0	0	(73,069)		0
103	Stock Based Comp								
104									
105	**Operating Cash Flow**	**(1,095,520)**	**11,038,848**	**(13,332,425)**	**(8,796,859)**	**13,822,872**	**21,376,716**		**1,607,637**
106									
107									
108									
109	Machinery Equipment and Software	(60,703)	(60,703)	(60,703)	(60,703)	(60,703)	(585,932)		(41,667)
110	Advertising Displays/Kiosks	(858,333)					(5,077,329)		(500,000)
111	Tooling Costs	0	0	(350,000)	(250,000)	(50,000)	(822,960)		(166,667)
112	Leasehold Improvements						0		
113	Convention Booth						0		
114	Investment in Subsidiary						0		
115	**Purchase of Property and Equipment**	**(919,037)**	**(60,703)**	**(410,703)**	**(310,703)**	**(110,703)**	**(6,486,221)**		**(708,333)**
116									
117	Long Term Debt		(13,750,000)			(3,750,000)	(25,000,000)		
118	Working Capital Line of credit	3,000,000		6,000,000	9,000,000	(10,000,000)	0		
119	Transaction Related	(3,125,000)					(3,125,000)		
120	Sub Debt		10,000,000				10,000,000		
121	Series B						0		
122	Common Stock/Dividend						0		
123							0		
124									
125	**Financing Cash Flow**	**(125,000)**	**(3,750,000)**	**6,000,000**	**9,000,000**	**(13,750,000)**	**(18,125,000)**		**0**
126									
127	Net Cash Flows	(2,139,556)	7,228,145	(7,743,129)	(107,562)	(37,831)	(3,234,505)		899,304
128	Beginning Cash	4,784,291	2,644,735	9,872,880	2,129,751	2,022,189	5,218,863		1,984,358
129	**Ending Cash**	**$ 2,644,735**	**$ 9,872,880**	**$ 2,129,751**	**$ 2,022,189**	**$ 1,984,358**	**$ 1,984,358**		**$ 2,883,662**
130									
131		-	-	-	-	-			-
132									
133	EBITDA	$ 473,843	$ 2,462,171	$ 10,781,837	$ 10,187,104	$ 9,050,172	$ 34,051,553		$ 1,385,411
134	Trailing 12 EBITDA	$ 36,774,973	$ 32,862,124	$ 32,110,439	$ 32,635,743	$ 34,051,553			$ 34,965,361
135	Capex	$ (919,037)					$ (5,593,408)		
136	Trailing 12 CAPEX	$ (6,344,418)							$ 2,624
137	Lygo proforma, acq. Expenses, fa disposal								
138	Capital Infusion								$ -
139	EBITDA Less CAPEX	$ 30,430,555	$ 32,862,124	$ 32,110,439	$ 32,635,743	$ 34,051,553			$ 34,967,985
140									

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	A	AF	AG	AH	AI	AJ	AK	AL	AM
72	Notes Payable	1,250,000		0	0				
73	Sub Debt	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
74	Transaction Related	3,125,000	3,125,000	3,125,000	3,125,000	3,125,000	0	0	0
75		0	0	0	0	0	0	0	0
76	**Total Liabilities**	**78,286,169**	**71,604,504**	**67,066,611**	**68,574,229**	**66,446,974**	**62,775,377**	**68,553,288**	**91,835,741**
77	**Stockholders' Equity:**								
78	Preferred Stock - Series A	0	0	0	0	0	0	0	0
79	Preferred Stock - Series B	0	0	0	0	0	0	0	0
80	Common Stock	1	1	1	1	1	1	1	1
81	Paid in Capital	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)	(64,085,510)
82	Retained Earnings	85,319,517	86,458,769	86,300,345	87,390,635	86,573,506	87,590,667	87,729,076	89,318,832
83	**Total Stockholders' Equity**	**21,234,008**	**22,373,259**	**22,214,836**	**23,305,126**	**22,487,996**	**23,505,158**	**23,643,566**	**25,233,322**
84	**Total Liabilities & Stockholders' Equity**	**$ 99,520,177**	**$ 93,977,763**	**$ 89,281,447**	**$ 91,879,355**	**$ 88,934,970**	**$ 86,280,535**	**$ 92,196,854**	**$ 117,069,063**
85									
86		(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
87									
88									
89	**Summary Statement of Cash Flows**	**Forecast 2014**	**Forecast 2014**	**Forecast 2014**	**Forecast 2014**	**Forecast 2014**	**Forecast 2014**	**Forecast 2014**	**Forecast 2014**
90		**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**
91									
92	Net Income	$ 492,945	$ 1,139,251	$ (158,423)	$ 1,090,290	$ (817,129)	$ 1,017,161	$ 138,409	$ 1,589,756
93									
94	Depreciation and Amortization	427,665	427,665	427,665	427,665	427,665	427,665	427,665	427,665
95									
96	Accounts Receivable	28,680,199	(7,121,217)	(507,093)	6,074,597	1,035,049	592,467	2,038,983	(11,135,482)
97	Inventories	(2,964,640)	1,995,015	1,145,780	(1,527,478)	(594,673)	1,636,965	(7,331,116)	(8,799,454)
98	Accounts Payable	3,460,234	969,625	(3,140,795)	381,699	2,122,152	(1,042,292)	5,694,151	16,130,571
99	Taxes Payable	295,639	(3,901,290)	(1,397,098)	1,125,919	(499,407)	495,695	83,760	901,883
100	Other Prepaids and Accruals	0	0	0	0	0	0	0	0
101	Financing Fees	0	0	0	0	0	0	0	0
102	Deposits	0	0	0	0	0	0	0	0
103	Stock Based Comp								
104									
105	**Operating Cash Flow**	**30,392,041**	**(6,490,951)**	**(3,629,964)**	**7,572,691**	**1,673,656**	**3,127,662**	**1,051,852**	**(885,062)**
106									
107									
108									
109	Machinery Equipment and Software	(41,667)	(41,667)	(41,667)	(41,667)	(41,667)	(41,667)	(41,667)	(41,667)
110	Advertising Displays/Kiosks	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)	(500,000)
111	Tooling Costs	(166,667)	(166,667)	(166,667)	(166,667)	(166,667)	(166,667)	(166,667)	(166,667)
112	Leasehold Improvements								
113	Convention Booth								
114	Investment in Subsidiary								
115	**Purchase of Property and Equipment**	**(708,333)**	**(708,333)**	**(708,333)**	**(708,333)**	**(708,333)**	**(708,333)**	**(708,333)**	**(708,333)**
116									
117	Long Term Debt		(3,750,000)			(3,750,000)			(3,750,000)
118	Working Capital Line of credit	(20,000,000)							10,000,000
119	Transaction Related						(3,125,000)		
120	Sub Debt								
121	Series B								
122	Common Stock/Dividend								
123									
124									
125	**Financing Cash Flow**	**(20,000,000)**	**(3,750,000)**	**0**	**0**	**(3,750,000)**	**(3,125,000)**	**0**	**6,250,000**
126									
127	Net Cash Flows	9,683,708	(10,949,284)	(4,338,298)	6,864,358	(2,784,677)	(705,672)	343,518	4,656,604
128	Beginning Cash	2,883,662	12,567,370	1,618,085	(2,720,212)	4,144,146	1,359,469	653,797	997,315
129	**Ending Cash**	**$ 12,567,370**	**$ 1,618,085**	**$ (2,720,212)**	**$ 4,144,146**	**$ 1,359,469**	**$ 653,797**	**$ 997,315**	**$ 5,653,920**
130									
131		-	-	-	-	-	-	-	-
132									
133	EBITDA	$ 1,419,301	$ 2,444,542	$ 351,518	$ 2,365,572	$ (728,098)	$ 2,230,436	$ 813,092	$ 3,182,620
134	Trailing 12 EBITDA	$ 35,889,885	$ 37,273,559	$ 38,751,868	$ 40,334,252	$ 41,751,135	$ 42,423,809	$ 42,763,058	$ 43,483,507
135	Capex								
136	Trailing 12 CAPEX	$ 236,190	$ 250,056	$ 1,020,144	$ 2,136,298	$ 3,255,335	$ 4,674,371	$ 5,593,408	$ 5,593,408
137	Lygo proforma, acq. Expenses, fa disposal								
138	Capital Infusion	$ -	$ -						
139	EBITDA Less CAPEX	$ 36,126,075	$ 37,523,614	$ 39,772,012	$ 42,470,550	$ 45,006,470	$ 47,098,180	$ 48,356,466	$ 49,076,915
140									

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	A	AN	AO	AP	AQ	AR	BH	BI	BJ	BK	BL	BM
72	Notes Payable											
73	Sub Debt	10,000,000	10,000,000	10,000,000								
74	Transaction Related	0	0	0								
75		0	0	0								
76	**Total Liabilities**	**107,423,455**	**117,009,711**	**102,276,019**								
77	**Stockholders' Equity:**											
78	Preferred Stock - Series A	0	0	0								
79	Preferred Stock - Series B	0	0	0								
80	Common Stock	1	1	1								
81	Paid in Capital	(64,085,510)	(64,085,510)	(64,085,510)								
82	Retained Earnings	97,033,160	104,300,432	111,274,188								
83	**Total Stockholders' Equity**	**32,947,650**	**40,214,922**	**47,188,679**								
84	**Total Liabilities & Stockholders' Equity**	**$ 140,371,105**	**$ 157,224,633**	**$ 149,464,697**								
85												
86		(0)	(0)	(0)								
87												
88												
89	**Summary Statement of Cash Flows**	**Forecast 2014**	**Forecast 2014**	**Forecast 2014**	**Consolidated**							
90		**Oct**	**Nov**	**Dec**	**YTD 2013**							
91												
92	Net Income	$ 7,714,328	$ 7,267,272	$ 6,973,757	$ 26,862,717							
93												
94	Depreciation and Amortization	427,665	427,665	427,665	5,131,980							
95												
96	Accounts Receivable	(30,117,294)	(18,745,878)	2,405,581	(15,860,882)							
97	Inventories	2,712,658	735,551	4,993,722	(8,493,266)							
98	Accounts Payable	6,086,797	(3,448,209)	(9,935,287)	7,167,530							
99	Taxes Payable	4,500,917	4,034,465	(1,048,406)	5,024,452							
100	Other Prepaids and Accruals	0	0	0	0							
101	Financing Fees	0	0	0	0							
102	Deposits	0	0	0	0							
103	Stock Based Comp											
104												
105	**Operating Cash Flow**	**(8,674,929)**	**(9,729,133)**	**3,817,032**	**19,832,531**							
106												
107												
108												
109	Machinery Equipment and Software	(41,667)	(41,667)	(41,667)	(500,000)							
110	Advertising Displays/Kiosks	(500,000)	(500,000)	(500,000)	(6,000,000)							
111	Tooling Costs	(166,667)	(166,667)	(166,667)	(2,000,000)							
112	Leasehold Improvements				0							
113	Convention Booth				0							
114	Investment in Subsidiary				0							
115	**Purchase of Property and Equipment**	**(708,333)**	**(708,333)**	**(708,333)**	**(8,500,000)**							
116												
117	Long Term Debt			(3,750,000)	(15,000,000)							
118	Working Capital Line of credit	5,000,000	9,000,000		4,000,000							
119	Transaction Related				(3,125,000)							
120	Sub Debt				0							
121	Series B				0							
122	Common Stock/Dividend				0							
123					0							
124												
125	**Financing Cash Flow**	**5,000,000**	**9,000,000**	**(3,750,000)**	**(14,125,000)**							
126												
127	Net Cash Flows	(4,383,262)	(1,437,467)	(641,301)	(2,792,469)							
128	Beginning Cash	5,653,920	1,270,657	(166,809)	1,984,358							
129	**Ending Cash**	**$ 1,270,657**	**$ (166,809)**	**$ (808,111)**	**$ (808,111)**							
130												
131		-	-	-								
132												
133	EBITDA	$ 13,083,880	$ 12,404,072	$ 11,913,472	$ 50,865,818							
134	Trailing 12 EBITDA	$ 45,785,550	$ 48,002,517	$ 50,865,818								
135	Capex				$ -							
136	Trailing 12 CAPEX	$ 5,593,408	$ 5,593,408	$ 5,593,408								
137	Lygo proforma, acq. Expenses, fa disposal											
138	Capital Infusion											
139	EBITDA Less CAPEX	$ 51,378,958	$ 53,595,925	$ 56,459,226								
140												

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AA 3100

	A	BN	BO	BP	BQ	BR	BS	BT	BU	BV	BW
72	Notes Payable										
73	Sub Debt										
74	Transaction Related										
75											
76	**Total Liabilities**										
77	**Stockholders' Equity:**										
78	Preferred Stock - Series A										
79	Preferred Stock - Series B										
80	Common Stock										
81	Paid in Capital										
82	Retained Earnings										
83	**Total Stockholders' Equity**										
84	**Total Liabilities & Stockholders' Equity**										
85											
86											
87											
88											
89	**Summary Statement of Cash Flows**										
90											
91											
92	Net Income										
93											
94	Depreciation and Amortization										
95											
96	Accounts Receivable										
97	Inventories										
98	Accounts Payable										
99	Taxes Payable										
100	Other Prepaids and Accruals										
101	Financing Fees										
102	Deposits										
103	Stock Based Comp										
104											
105	**Operating Cash Flow**										
106											
107											
108											
109	Machinery Equipment and Software										
110	Advertising Displays/Kiosks										
111	Tooling Costs										
112	Leasehold Improvements										
113	Convention Booth										
114	Investment in Subsidiary										
115	**Purchase of Property and Equipment**										
116											
117	Long Term Debt										
118	Working Capital Line of credit										
119	Transaction Related										
120	Sub Debt										
121	Series B										
122	Common Stock/Dividend										
123											
124											
125	**Financing Cash Flow**										
126											
127	Net Cash Flows										
128	Beginning Cash										
129	**Ending Cash**										
130											
131											
132											
133	EBITDA										
134	Trailing 12 EBITDA										
135	Capex										
136	Trailing 12 CAPEX										
137	Lygo proforma, acq. Expenses, fa disposal										
138	Capital Infusion										
139	EBITDA Less CAPEX										
140											

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	A	B	Q	R	S	T	U	V	W
141	Fixed Charges								
142	Interest Expense		$ 337,772	$ 339,542	$ 190,311	$ 311,892	$ 149,809	$ 250,938	$ 269,271
143	Annualized Interest (Sept Interest from close, thereafter annualized) <A>		$ 4,053,259	$ 4,074,498	$ 3,880,032	$ 3,742,699	$ 1,797,708	$ 3,990,615	$ 3,231,250
144	Cash Taxes		$ -	$ -	$ 7,725,400	$ 1,000,000	$ -	$ -	$ -
145	Taxes 38% trailing EBT		$ 16,749,166	$ 16,749,166	$ 15,142,552	$ 13,766,738	$ 13,341,904	$ 11,539,074	$ 11,203,671
146	Permitted Earn Out Payments (annual) <C>								
147	Annualized Principle Payments <D>		$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000
148	Total Fixed Charges <A + B + C + D>		$ 35,802,425	$ 35,823,664	$ 34,022,584	$ 32,509,437	$ 30,139,612	$ 30,529,689	$ 29,434,921
149									
150	Ratio		1.17	1.18	1.26	1.15	1.21	1.08	1.09
151	Minimum								
152									
153									
154	Borrowing Base Analysis								
155	Accounts Receivable (net of foreign)		49,611,214	27,924,161	23,602,195	21,070,208	21,139,496	23,101,116	23,386,698
156	Eligibility Assumption		67.70%	67.70%	67.70%	67.70%	67.70%	67.70%	67.70%
157	Eligible AR Estimate		33,586,792	18,904,657	15,978,686	14,264,531	14,311,439	15,639,456	15,832,795
158	Advance Rate		85%	85%	85%	85%	85%	85%	85%
159			28,548,773	16,068,959	13,581,883	12,124,851	12,164,723	13,293,537	13,457,875
160									
161									
162	Total Inventory (No International)		31,049,495	31,215,663	30,342,237	33,761,116	36,943,297	35,329,053	32,072,507
163	Core (75% of Total Inventory)		20,330,505	20,532,258	19,972,058	22,202,704	24,514,210	23,453,605	19,874,589
164	In Transit		2,956,616	2,879,489	2,784,620	3,118,133	3,193,263	3,043,185	4,179,791
165	Non Core (25% of Total Inventory)		7,762,374	7,803,916	7,585,559	8,440,279	9,235,824	8,832,263	8,018,127
166									
167	In Transit (2.5M Cap)		60.00%	60.00%	60.00%	60.00%	60.00%	60.00%	60.00%
168	Total Inventory Availability		12,198,303	12,319,355	11,983,235	13,321,623	14,708,526	14,072,163	11,924,753
169	In Transit (2.5M Cap)		1,773,970	1,727,694	1,670,772	1,870,880	1,915,958	1,825,911	2,500,000
170	Total Availability		13,972,273	14,047,048	13,654,007	15,192,502	16,624,484	15,898,074	14,424,753
171									
172	Total Availability		42,521,046	30,116,007	27,235,889	27,317,354	28,789,206	29,191,611	27,882,629
173									
174									
175	Advanced		27,000,000	-	9,000,000	13,000,000	18,000,000	21,000,000	25,000,000
176	Net Availability		15,521,046	30,116,007	18,235,889	14,317,353	10,789,206	8,191,611	2,882,628
177	Cash		6,859,697	1,485,853	2,083,498	1,596,641	4,307,469	3,621,330	4,784,291
178	Net Availability		22,380,743	31,601,860	20,319,387	15,913,995	15,096,675	11,812,941	7,666,920
179									
180									
181	Total Leverage Ratio								
182	Total Debt		68,250,000	41,250,000	46,500,000	50,500,000	55,500,000	54,750,000	58,750,000
183	EBITDA		47,686,806	47,519,487	46,851,056	43,186,380	42,564,018	38,622,537	38,029,999
184	Ratio		1.43	0.87	0.99	1.17	1.30	1.42	1.54
185									
186									
187	EbT		(688,906)	(503,266)	336,620	(1,909,900)	39,980	(3,232,134)	928,739
188	Trailing		42,547,145	41,599,435	40,445,337	36,228,259	35,110,273	30,365,984	29,483,346
189	Taxes 38%		16,167,915	15,807,785	15,369,228	13,766,738	13,341,904	11,539,074	11,203,671
190									
191									
324	Trailing EBT		42,547,145	41,599,435	40,445,337	36,228,259	35,110,273	30,365,984	29,483,346
325	Less earnout		(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)
326	Adjusted trailing		39,422,145	38,474,435	37,320,337	33,103,259	31,985,273	27,240,984	26,358,346
327	Taxes 38%		$ 14,980,415	$ 14,620,285	$ 14,181,728	$ 12,579,238	$ 12,154,404	$ 10,351,574	$ 10,016,171
328									
329	Request adjustmnet for 3.125M earn out payment								
330									
331									
332									
333	Cushion								
334	Cushion with earn out exclusion								
335									
336									
337	Fee PNC							200,000	
338	Fee Banks							177,500	
339								377,500	

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	A	X	Y	Z	AA	AB	AC	AD	AE
141	Fixed Charges								
142	Interest Expense	$ 283,021	$ 282,500	$ 310,000	$ 351,250	$ 288,229	$ 3,364,533		$ 288,229
143	Annualized Interest (Sept Interest from close, thereafter annualized) <A>	$ 3,396,250	$ 3,827,753	4,137,753	4,118,238	3,364,533			$ 3,314,991
144	Cash Taxes	$ -	$ -	$ -	$ -	$ 3,000,000	$ 11,725,400		$ -
145	Taxes 38% trailing EBT	$ 10,777,785	$ 9,080,453	$ 8,826,718	$ 9,034,127	$ 9,106,165			$ 9,622,366
146	Permitted Earn Out Payments (annual) <C>	$ 3,125,000	$ 3,125,000	$ 3,125,000	$ 3,125,000	$ 3,125,000			$ 3,125,000
147	Annualized Principle Payments <D>	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000			$ 15,000,000
148	Total Fixed Charges <A + B + C + D>	$ 32,299,035	$ 31,033,206	$ 31,089,471	$ 31,277,365	$ 30,595,698			$ 31,062,356
149									
150	Ratio	0.94	1.06	1.03	1.04	1.11			1.13
151	Minimum		1.00			1.00			1.00
152									
153									
154	Borrowing Base Analysis								
155	Accounts Receivable (net of foreign)	22,750,626	35,077,866	62,462,736	71,163,212	75,202,979			55,894,689
156	Eligibility Assumption	67.70%	67.70%	67.70%	67.70%	67.70%			67.70%
157	Eligible AR Estimate	15,402,174	23,747,716	42,287,272	48,177,494	50,912,417			37,840,704
158	Advance Rate	85%	85%	85%	85%	85%			85%
159		13,091,848	20,185,558	35,944,181	40,950,870	43,275,554			32,164,599
160									
161									
162	Total Inventory (No International)	44,401,651	48,358,242	50,441,501	48,788,810	35,059,625			36,403,962
163	Core (75% of Total Inventory)	28,405,333	30,345,130	32,556,553	32,858,887	23,446,633			24,802,971
164	In Transit	4,895,905	5,923,551	5,274,573	3,732,721	2,848,085			2,500,000
165	Non Core (25% of Total Inventory)	11,100,413	12,089,561	12,610,375	12,197,202	8,764,906			9,100,990
166									
167	In Transit (2.5M Cap)	60.00%	60.00%	65.00%	65.00%	65.00%			60.00%
168	Total Inventory Availability	17,043,200	18,207,078	21,161,759	21,358,276	15,240,312			14,881,783
169	In Transit (2.5M Cap)	2,500,000	2,500,000	3,428,472	2,426,268	1,851,256			1,500,000
170	Total Availability	19,543,200	20,707,078	24,590,232	23,784,545	17,091,567			16,381,783
171									
172	Total Availability	32,635,048	40,892,637	60,534,413	64,735,415	60,367,121			48,546,382
173									
174									
175	Advanced	28,000,000	28,000,000	34,000,000	43,000,000	33,000,000			33,000,000
176	Net Availability	4,635,048	12,892,636	26,534,413	21,735,415	27,367,121			15,546,381
177	Cash	2,644,735	9,872,880	2,129,751	2,022,189	1,984,358			2,883,662
178	Net Availability	7,279,782	22,765,516	28,664,164	23,757,604	29,351,479			18,430,043
179									
180									
181	Total Leverage Ratio								
182	Total Debt	61,750,000	48,000,000	54,000,000	63,000,000	49,250,000			49,250,000
183	EBITDA	36,774,973	32,862,124	32,110,439	32,635,743	34,051,553			34,965,361
184	Ratio	1.68	1.46	1.68	1.93	1.45			1.41
185									
186									
187	EbT	(169,969)	1,292,842	10,090,914	9,435,838	8,342,833	23,963,592		669,517
188	Trailing	28,362,593	23,895,930	23,228,205	23,774,020	23,963,591	23,963,592		25,322,015
189	Taxes 38%	10,777,785	9,080,453	8,826,718	9,034,127	9,106,165			9,622,366
190									
191									
324	Trailing EBT	28,362,593	23,895,930	23,228,205	23,774,020	23,963,591	23,963,592		25,322,015
325	Less earnout	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)		(3,125,000)
326	Adjusted trailing	25,237,593	20,770,930	20,103,205	20,649,020	20,838,591	20,838,592		22,197,015
327	Taxes 38%	$ 9,590,285	$ 7,892,953	$ 7,639,218	$ 7,846,627	$ 7,918,665	$ 7,918,665		$ 8,434,866
328									
329	Request adjustmnet for 3.125M earn out payment		$ 29,845,706	$ 29,901,971	$ 30,089,865	$ 29,408,198	$ 7,918,665		$ 29,874,856
330			$ 32,862,124	$ 32,110,439	$ 32,635,743	$ 34,051,553	$ -		$ 34,967,985
331			1.10	1.07	1.08	1.16	-		1.17
332									
333	Cushion		$ 1,828,918.37	$ 32,110,438.52	$ 32,635,742.62	$ 3,455,855.41			$ 3,905,628.55
334	Cushion with earn out exclusion		$ 3,016,418	$ 33,297,939	$ 33,823,243	$ 4,643,355			$ 5,093,129
335									
336									
337	Fee PNC		300,000						
338	Fee Banks		225,000						
339			525,000						

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	A	AF	AG	AH	AI	AJ	AK	AL	AM
141	Fixed Charges								
142	Interest Expense	$ 196,563	$ 179,375	$ 179,375	$ 179,375	$ 162,188	$ 162,188	$ 162,188	$ 190,833
143	Annualized Interest (Sept Interest from close, thereafter annualized) <A>	$ 3,172,012	$ 3,161,076	$ 3,028,559	$ 3,058,125	$ 2,969,375	$ 2,862,292	$ 2,741,458	$ 2,649,792
144	Cash Taxes	$ -	$ 4,544,817	$ 1,300,000	$ -	$ -	$ -	$ -	$ -
145	Taxes 38% trailing EBT	$ 10,115,734	$ 10,686,069	$ 11,314,733	$ 11,967,783	$ 12,695,173	$ 12,965,673	$ 13,115,093	$ 13,598,179
146	Permitted Earn Out Payments (annual) <C>	$ 3,125,000	$ 3,125,000	$ 3,125,000	$ 3,125,000	$ 3,125,000	$ 3,125,000	$ 3,125,000	$ 3,125,000
147	Annualized Principle Payments <D>	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 15,000,000
148	Total Fixed Charges <A + B + C + D>	$ 31,412,746	$ 31,972,145	$ 32,468,292	$ 33,150,908	$ 33,789,548	$ 33,952,965	$ 33,981,551	$ 34,372,971
149									
150	Ratio	1.15	1.17	1.22	1.28	1.33	1.39	1.42	1.43
151	Minimum	1.00	1.00	1.15	1.15	1.15	1.15	1.15	1.15
152						$ 0			
153									
154	Borrowing Base Analysis								
155	Accounts Receivable (net of foreign)	27,214,490	34,335,708	34,842,800	28,768,203	27,733,154	27,140,687	25,101,704	36,237,186
156	Eligibility Assumption	67.70%	67.70%	67.70%	67.70%	67.70%	67.70%	67.70%	67.70%
157	Eligible AR Estimate	18,424,210	23,245,274	23,588,576	19,476,074	18,775,345	18,374,245	16,993,853	24,532,575
158	Advance Rate	85%	85%	85%	85%	85%	85%	85%	85%
159		15,660,579	19,758,483	20,050,289	16,554,663	15,959,044	15,618,108	14,444,775	20,852,688
160									
161									
162	Total Inventory (No International)	39,368,602	37,373,587	36,227,807	37,755,286	38,349,959	36,712,994	44,044,110	52,843,565
163	Core (75% of Total Inventory)	27,026,452	25,530,190	24,670,856	25,816,464	26,262,469	25,034,745	30,533,083	37,132,673
164	In Transit	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000
165	Non Core (25% of Total Inventory)	9,842,151	9,343,397	9,056,952	9,438,821	9,587,490	9,178,248	11,011,028	13,210,891
166									
167	In Transit (2.5M Cap)	60.00%	60.00%	60.00%	60.00%	60.00%	60.00%	60.00%	60.00%
168	Total Inventory Availability	16,215,871	15,318,114	14,802,513	15,489,879	15,757,482	15,020,847	18,319,850	22,279,604
169	In Transit (2.5M Cap)	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
170	Total Availability	17,715,871	16,818,114	16,302,513	16,989,879	17,257,482	16,520,847	19,819,850	23,779,604
171									
172	Total Availability	33,376,450	36,576,597	36,352,803	33,544,541	33,216,525	32,138,956	34,264,625	44,632,293
173									
174									
175	Advanced	13,000,000	13,000,000	13,000,000	13,000,000	13,000,000	13,000,000	13,000,000	23,000,000
176	Net Availability	20,376,449	23,576,597	23,352,802	20,544,541	20,216,525	19,138,955	21,264,625	21,632,292
177	Cash	12,567,370	1,618,085	(2,720,212)	4,144,146	1,359,469	653,797	997,315	5,653,920
178	Net Availability	32,943,819	25,194,682	20,632,590	24,688,687	21,575,994	19,792,752	22,261,940	27,286,212
179									
180									
181	Total Leverage Ratio								
182	Total Debt	29,250,000	25,500,000	25,500,000	25,500,000	21,750,000	21,750,000	21,750,000	28,000,000
183	EBITDA	35,889,885	37,273,559	38,751,868	40,334,252	41,751,135	42,423,809	42,763,058	43,483,507
184	Ratio	0.81	0.68	0.66	0.63	0.52	0.51	0.51	0.64
185									
186									
187	EbT	795,073	1,837,502	(255,522)	1,758,532	(1,317,951)	1,640,583	223,240	2,564,122
188	Trailing	26,620,353	28,121,235	29,775,613	31,494,165	33,408,349	34,120,193	34,513,402	35,784,682
189	Taxes 38%	10,115,734	10,686,069	11,314,733	11,967,783	12,695,173	12,965,673	13,115,093	13,598,179
190									
191									
324	Trailing EBT	26,620,353	28,121,235	29,775,613	31,494,165	33,408,349	34,120,193	34,513,402	35,784,682
325	Less earnout	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)	(3,125,000)
326	Adjusted trailing	23,495,353	24,996,235	26,650,613	28,369,165	30,283,349	30,995,193	31,388,402	32,659,682
327	Taxes 38%	$ 8,928,234	$ 9,498,569	$ 10,127,233	$ 10,780,283	$ 11,507,673	$ 11,778,173	$ 11,927,593	$ 12,410,679
328									
329	Request adjustmnet for 3.125M earn out payment	$ 30,225,246	$ 30,784,645	$ 31,280,792	$ 31,963,408	$ 32,602,048	$ 32,765,465	$ 32,794,051	$ 33,185,471
330		$ 36,126,075	$ 37,523,614	$ 39,772,012	$ 42,470,550	$ 45,006,470	$ 47,098,180	$ 48,356,466	$ 49,076,915
331		1.20	1.22	1.27	1.33	1.38	1.44	1.47	1.48
332									
333	Cushion	$ 4,713,329.25	$ 5,551,469.70	$ 2,433,476.74	$ 4,347,005.76	$ 6,148,490.45	$ 8,052,270.08	$ 9,277,682.23	$ 9,547,998.83
334	Cushion with earn out exclusion	$ 5,900,829	$ 6,738,970	$ 3,620,977	$ 5,534,506	$ 7,335,990	$ 9,239,770	$ 10,465,182	$ 10,735,499
335									
336									
337	Fee PNC								
338	Fee Banks								
339									

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	A	AN	AO	AP	AQ	AR	BH	BI	BJ	BK	BL	BM
141	Fixed Charges											
142	Interest Expense	$ 213,750	$ 255,000	$ 237,813	$ 2,406,875							
143	Annualized Interest (Sept Interest from close, thereafter annualized) <A>	$ 2,553,542	$ 2,457,292	$ 2,406,875								
144	Cash Taxes	$ -	$ -	$ 5,000,000	$ 10,844,817							
145	Taxes 38% trailing EBT	$ 14,491,768	$ 15,360,284	$ 16,464,246								
146	Permitted Earn Out Payments (annual) <C>	$ 3,125,000	$ 3,125,000	$ 3,125,000								
147	Annualized Principle Payments <D>	$ 15,000,000	$ 15,000,000	$ 15,000,000								
148	Total Fixed Charges <A + B + C + D>	$ 35,170,310	$ 35,942,576	$ 36,996,121								
149												
150	Ratio	1.46	1.49	1.53								
151	Minimum	1.35	1.35	1.35								
152												
153												
154	Borrowing Base Analysis											
155	Accounts Receivable (net of foreign)	66,354,479	85,100,357	82,694,776								
156	Eligibility Assumption	67.70%	67.70%	67.70%								
157	Eligible AR Estimate	44,921,982	57,612,942	55,984,363								
158	Advance Rate	85%	85%	85%								
159		38,183,685	48,971,000	47,586,709								
160												
161												
162	Total Inventory (No International)	50,130,907	49,395,356	44,401,634								
163	Core (75% of Total Inventory)	35,098,180	34,546,517	30,801,226								
164	In Transit	2,500,000	2,500,000	2,500,000								
165	Non Core (25% of Total Inventory)	12,532,727	12,348,839	11,100,409								
166												
167	In Transit (2.5M Cap)	65.00%	65.00%	65.00%								
168	Total Inventory Availability	22,813,817	22,455,236	20,020,797								
169	In Transit (2.5M Cap)	1,625,000	1,625,000	1,625,000								
170	Total Availability	24,438,817	24,080,236	21,645,797								
171												
172	Total Availability	62,622,502	73,051,236	69,232,505								
173												
174												
175	Advanced	28,000,000	37,000,000	37,000,000								
176	Net Availability	34,622,502	36,051,236	32,232,505								
177	Cash	1,270,657	(166,809)	(808,111)								
178	Net Availability	35,893,159	35,884,427	31,424,394								
179												
180												
181	Total Leverage Ratio											
182	Total Debt	33,000,000	42,000,000	38,250,000								
183	EBITDA	45,785,550	48,002,517	50,865,818								
184	Ratio	0.72	0.87	0.75								
185												
186												
187	EbT	12,442,465	11,721,407	11,247,995	43,326,963							
188	Trailing	38,136,232	40,421,801	43,326,963	43,326,963							
189	Taxes 38%	14,491,768	15,360,284	16,464,246								
190												
191												
324	Trailing EBT	38,136,232	40,421,801	43,326,963								
325	Less earnout	(3,125,000)	(3,125,000)	(3,125,000)								
326	Adjusted trailing	35,011,232	37,296,801	40,201,963								
327	Taxes 38%	$ 13,304,268	$ 14,172,784	$ 15,276,746								
328												
329	Request adjustmnet for 3.125M earn out payment	$ 33,982,810	$ 34,755,076	$ 35,808,621								
330		$ 51,378,958	$ 53,595,925	$ 56,459,226								
331		1.51	1.54	1.58								
332												
333	Cushion	$ 3,899,039.51	$ 5,073,447.73	$ 6,514,462.52								
334	Cushion with earn out exclusion	$ 5,086,540	$ 6,260,948	$ 7,701,963								
335												
336												
337	Fee PNC											
338	Fee Banks											
339												

	A	BN	BO	BP	BQ	BR	BS	BT	BU	BV	BW
141	Fixed Charges										
142	Interest Expense										
143	Annualized Interest (Sept Interest from close, thereafter annualized) <A>										
144	Cash Taxes										
145	Taxes 38% trailing EBT										
146	Permitted Earn Out Payments (annual) <C>										
147	Annualized Principle Payments <D>										
148	Total Fixed Charges <A + B + C + D>										
149											
150	Ratio										
151	Minimum										
152											
153											
154	Borrowing Base Analysis										
155	Accounts Receivable (net of foreign)										
156	Eligibility Assumption										
157	Eligible AR Estimate										
158	Advance Rate										
159											
160											
161											
162	Total Inventory (No International)										
163	Core (75% of Total Inventory)										
164	In Transit										
165	Non Core (25% of Total Inventory)										
166											
167	In Transit (2.5M Cap)										
168	Total Inventory Availability										
169	In Transit (2.5M Cap)										
170	Total Availability										
171											
172	Total Availability										
173											
174											
175	Advanced										
176	Net Availability										
177	Cash										
178	Net Availability										
179											
180											
181	Total Leverage Ratio										
182	Total Debt										
183	EBITDA										
184	Ratio										
185											
186											
187	EbT										
188	Trailing										
189	Taxes 38%										
190											
191											
324	Trailing EBT										
325	Less earnout										
326	Adjusted trailing										
327	Taxes 38%										
328											
329	Request adjustmnet for 3.125M earn out payment										
330											
331											
332											
333	Cushion										
334	Cushion with earn out exclusion										
335											
336											
337	Fee PNC										
338	Fee Banks										
339											

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
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IN RE PARAMETRIC SOUND CORPORATION SHAREHOLDERS' LITIGATION This Document Relates to: ALL ACTIONS	CASE NO. A-13-686890-B DEPT NO. XI **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

MONDAY, AUGUST 23, 2021

BENCH TRIAL - DAY 6 - VOLUME II

APPEARANCES:

FOR PAMPT LLC:	GEORGE F. OGILVIE, III, ESQ. ADAM M. APTON, ESQ.
FOR KENNETH POTASHNER, NORRIS, PUTTERMAN, KAPLAN, & WOLFE:	J. STEPHEN PEEK, ESQ. JOHN P. STIGI, III, ESQ. ALEJANDRO E. MORENO, ESQ.
FOR VTB HOLDINGS, STRIPES GROUP, SG VTB HOLDINGS, KENNETH FOX & JUERGEN STARK:	RICHARD C. GORDON, ESQ. DAVID A. KOTLER, ESQ. JOSHUA D. N. HESS, ESQ. RYAN MOORE, ESQ.

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

I N D E X

W I T N E S S E S

E X H I B I T S

LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 16, 2021, 12:51 A.M.

*** * * * ***

(Pause in the proceedings.)

THE COURT: Good afternoon, sir. It's my understanding that you have consented to be sworn over our video line; is that correct?

MR. SANTULLI: Excuse me?

THE COURT: It's my understanding you've agreed to be sworn over our video line; is that correct?

MR. SANTULLI: That is correct.

THE COURT: Raise your right hand, please.

RICHARD T. SANTULLI

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

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Richard T. Santulli.

THE COURT: All right. Mr. Ogilvie, you may proceed.

MR. OGILVIE: Thank you.

THE COURT: And, sir, if you can't understand us, ask us to repeat. And if you need a break at any time, let us know. We've all still got masks on here, so you may have a little trouble hearing us.

THE WITNESS: Okay. Thank you.

/ / /

DIRECT EXAMINATION

BY MR. OGILVIE:

Q Good afternoon, Mr. Santulli. Can you hear me okay?

A Yes, I can.

Q Good. Are you familiar with a publicly traded corporation known as Parametric Sound Corporation?

A Yes, I am.

Q Did you ever own shares of Parametric Sound Corporation?

A Yes, I did.

Q Do you have a brokerage account at Oppenheimer?

A Now? No. Not that I'm aware of, no.

Q Have you ever had a brokerage account at Oppenheimer?

A Yes, I did.

Q Okay. Did you have a brokerage account at Oppenheimer in January 2014?

A Yes, I did.

Q Did you hold your Parametric shares in your account at Oppenheimer?

A Initially, yes.

Q Let me direct your attention to -- do you have a batch of exhibits in front of you?

A Yes, I do.

Q Okay. Could you turn to Exhibit 311, 3-1-1.

A Okay. Got it.

Q Okay. Exhibit 311 is a four-page document; do you recognize this document?

A Yes.

Q What is this document?

A Excuse me?

Q What is Exhibit 311?

A It's the Oppenheimer account that was sent to me in '14, first quarter of 2014.

Q Okay. Is this a true and correct copy of the statement of account, of your account at Oppenheimer for the period January 1, 2014, through March 31, 2014?

A Yes, it is.

MR. OGILVIE: Your Honor, I'd move for admission of Exhibit 311.

MR. KOTLER: Objection. Completeness.

THE COURT: You have some other exhibits?

MR. KOTLER: I do, Your Honor. 1042 is the full brokerage statement, and 1077 is the portion that would go along with 311.

THE COURT: Any objection to 1042 and 1077?

MR. OGILVIE: No, Your Honor.

THE COURT: Be admitted, 311, 1042, 1077.

(Plaintiff's Exhibit Number(s) 311 admitted.)

(Defense Exhibit Number(s) 1042 and 1077 admitted.)

MR. OGILVIE: Thank you.

BY MR. OGILVIE:

Q Mr. Santulli, directing your attention to page 2 of the second page of Exhibit 311.

A Okay.

Q It's entitled, Portfolio Holdings. Again, in the upper right-hand corner, it says, "Period Ending March 31st, 2014." Correct?

A Correct.

Q And under the equities section, there's a reference to Parametric Sound Corporation?

A Yes.

Q And the quantity is -- it reflects 80,494 shares; is that correct?

A That is correct.

Q Do you know how many shares you held in Parametric Sound Corporation on January 15th, 2014?

A 85,000.

Q 85,000. So this -- as I said, this -- page 2 of Exhibit 311, reflects 80,494 shares. Can you turn to the next page, page 3 of Exhibit 311.

A Uh-huh. Yes.

Q There's transactions, there's two transactions at the top of the page; can you explain those transactions?

A I sold, on 3/24 and 3/26, you know, roughly 2,006, and then 2,500 shares of Parametrics.

Q Okay. So how do you arrive at your testimony of holding 85,000 shares on January 15th, 2014?

A Well, if you add back the 4,506 to the 80,494, that's 85,000.

Q Okay. So for a period ending March 11th -- or March 31st, 2014, as page 2 of 311 -- Exhibit 311 reflects, you've held 80,494 shares at -- on that date, again, March 31st, 2014, and then adding back the two sales that you conducted on March 24th and March 25th, 2014, of 2,006 shares and 2,500 shares, you arrive at a total of 85,000 shares that you held in your Oppenheimer account of Parametric Sound Corporation on January 15th, 2014; is that correct?

A That's correct.

Q Let me direct your attention to Exhibit 475; do you have that in front of you?

A Yes, I do. Let me get it. I have it.

Q Okay. Specifically, if you can turn to page 4, that's 475-004.

A Yes.

Q This page -- or these -- this set of pages is entitled, "Limited Liability Company Operating Agreement for PAMTP LLC, a Multiple Member Managed Limited Liability Company."

Do you see that?

A Yes, I do.

Q Are you familiar with PAMTP LLC?
A Yes, I am.
Q What is PAMTP LLC?
A A limited liability company that we set up.
Q When you say we set up, who are you referring to?
A That, basically, had been set up by -- actually, Barry Weisbord, actually, was the one who basically started it -- or that he didn't start it; he was one that brought it to my attention.
Q Okay. Are you a member of PAMTP LLC?
A Yes, I am.
Q Let me direct your attention to page 12 of Exhibit 475. That's 475-012.
A That's correct. Got it.
Q Okay. In the middle of the page, there is a signature block, and to the right it says, "Printed Name, Richard T. Santulli, Shares 85,000."
Do you see where I'm at?
A Yes, I am.
Q Immediately to the left of that, there's a signature; do you recognize that signature?
A It's my signature.
Q Okay. And above that it says, "Signed this 15th Day of April 2020."
Did you sign this page?

And, again, I should identify it, it's called Certification of Members, page 12 of Exhibit 475, on or about April 15th, 2020?

A Yes.

Q Let me direct your attention to, going back four pages, page 16.

A Going back four pages? Going forward? Okay.

Q Yeah, forward. Forward four pages. I'm sorry.

A Okay. Got it.

Q Page 16 of Exhibit 475, Exhibit A has got a table and entitled, "PAMPT LLC Ownership."

Do you see that?

A Yes, I do.

Q At line 3, it says, Richard T. Santulli, and it identifies 85,000 shares on 1/15/14.

Is that -- do you see that?

A Yes, I do.

Q And that -- is that your stock ownership of Parametric Sound Corporation as of January 15th, 2014?

A Yes, it is. Yes, it was.

Q Do you still own the shares?

A No.

Q Did there come a time that it came to your attention that some of the stockholdings of members of PAMTP LLC were originally misidentified?

A Not that I -- no, not that I'm aware.

Q You're not aware of any discrepancies between what's reflected on page 16 of Exhibit 475 and the actual ownership?

A No. I'm just aware of what I have.

Q Just aware of your own 85,000 shares?

A That's correct.

Q Did you -- were you contacted by Barry Weisbord regarding an amended operating agreement in 2021?

A You mean to opt out, you mean?

Q No, no. We were talking about Exhibit 475, which is the operating agreement for --

A Oh, I'm sorry.

Q -- PAMTP LLC; correct?

A Yes.

Q And did you have a conversation in 2021 with Barry Weisbord about signing an amended operating agreement?

A I'm sorry, yes. Uh-huh.

Q And then did you sign that amended operating agreement?

A I believe I did, yes.

Q Okay. And when would that have been?

A I have no idea. Whenever he asked me to sign it, I signed it.

Q Okay. Were they have been in the last six --

A This is the -- basically is -- excuse me?

Q Would it have been in the last six months?

A I guess so. I mean, this has been a nuisance for me. So to be honest with you, I mean, if he, basically, asked me to sign it, I signed it.

Q I understand. Sir, directing your attention to page 25 of Exhibit 475. That's 475-025.

A Okay. I got it.

Q Up in the first paragraph, the first blank says, Richard T. Santulli.

Do you see that?

A Yes.

Q Down at the bottom right-hand corner, there's a signature. Do you recognize that signature?

A It's me.

Q And it says, "Signed this 15th day of April, 2020; did you sign this Assignment of Claim on or about April 15th, 2020"?

A Yes, I did.

Q And is this the document by which you transferred all of your right, title, and interest in claims against Parametric in this litigation to PAMTP LLC?

A Yes, I did.

Q Is this the document by which you did that?

A Yes.

Q Thank you, Mr. Santulli.

MR. OGILVIE: Your Honor, I'll pass the witness.
THE COURT: Cross-examination?
MR. KOTLER: Yes, Your Honor.
THE COURT: Mr. Ogilvie, can you wipe down, please.
MR. OGILVIE: Yep.
THE COURT: Sir, as part of our COVID protocols, counsel have to wipe down the lectern. As soon as they finish wiping it down, we'll switch and you'll have some more questions asked of you.
THE WITNESS: Okay.
THE COURT: Mr. Kotler, you're up.
MR. KOTLER: Thank you.

CROSS-EXAMINATION

BY MR. KOTLER:
Q Good afternoon, Mr. Santulli. My name is David Kotler. We met for your deposition back in March.
A Hi.
Q So I'm sure the reason that you find this a nuisance is that you get to see me again. I apologize for that.
A I don't think I saw you last time, I didn't know how to work Zoom. As you can tell by -- can see why I was late getting on. I couldn't work this either, so.
Q Yeah, that sounds familiar.
A Uh-huh.
Q If you can't hear me, just let me know and I'll try

and speak up.

I believe you told us during your deposition that you were involved with NetJets; that was a company that you launched back when?

A I bought Executive Jet in 1984, and then I created the NetJets program in '86. And it's been sold at the Buffet [indiscernible; audio distortion].

Q Right. Sold it to Warren Buffet, whose company back -- for about $725 million?

A Uh-huh. Yes.

Q I think from the brokerage records, your investment in Parametric was about a million dollars, give or take?

A Yes, it was.

Q And I believe you told us that -- although a lot of money, that was not an amount of money that would impact the way that you lived; correct?

A That is correct.

Q And I believe --

A But a million dollars, it's a million dollars.

Q Right.

A So a million dollars is a lot of money.

Q The Parametric Turtle Beach merger transaction was something that you didn't really pay a lot of attention to; is that fair?

A That's correct.

Q You mentioned Mr. Barry Weisbord, he's been a close family friend of yours for 40 years?

A Yes.

Q And you guys are in the horse business together, among other businesses?

A Well, I mean, unless there's a business that I'm involved with, and no, the only businesses that I've been involved with Barry are in the horse businesses.

Q In the horse business?

A And, I guess, Parametrics, if you'd call it, when we were involved in the horse business together.

Q Gotcha. Thank you. And you invested in Parametric because of Mr. Weisbord, Barry Weisbord; is that fair?

A Well, kind of -- I mean, Joshua Weisbord, his son, and Barry. I mean, at the beginning, I didn't remember who made the demonstration of the product. But now thinking back, it was Joshua, because Barry would not have understood the technology. And to be honest with you, it was really a -- which I think was a, you know, an interesting technology, primarily because my dad, who was alive at the time, was hard of hearing and he didn't want to use hearing aids, and, you know, for instance, watching TV with him, I mean, you couldn't even stay in the room. So this technology was such that it could have been directed directly at him, so I thought it was interesting. If I didn't think it was interesting, I mean, I like Joshua very much, I've known him since he's a baby, you know, I thought it was an interesting technology. And so, you know, Barry, he came in, but he would not have been the one to demonstrate the technology. It had to be Joshua.

Q Do you recall that Joshua Weisbord also communicated with you in advance of the merger, expressing his view that the merger was a good idea for you to vote in favor of?

A Yeah. I mean, I'm sure if he thought I should vote in favor of it, and Barry -- if Barry thought I should vote in favor of it, I did. I didn't really know much about it. As I said, I assumed the whole -- that they would take the technology and it could help people that were hard of hearing. So.

Q Do you have Exhibit 1072 in that binder right by you there?

A Yes, I do.

Q If you would turn to 1072, it's an e-mail from Joshua Weisbord to you and several others, including Barry Weisbord and Mr. Masterson and Mr. Goldberg.

A Okay.

Q See that?

A Yes, I do.

Q In the e-mail, it's October 9th or so, 2013; do you see that?

A Yes, I do.

Q Do you recall receiving this communication from Josh Weisbord around that time in which he talks about his views of the Parametric company and its prospects?

A I absolutely do not recollect this unless I saw this in front of me right now. But, obviously, I got the e-mail. And so I received it.

Q Did this communication from Josh Weisbord in any -- play any role in your decision to vote in favor of the merger?

A I couldn't tell you that. I mean, I voted -- I mean, if everyone -- if Barry said we should vote and -- in favor of it, I said fine. Listen, you have to understand -- and I had started another company called Milestone Aviation. I raised, you know, $500 million. We were in the process of either going public at the time, and we ended up selling it. Actually, it was announced that it was a year after this, that selling it to GE for a billion-eight.

So, again, not to belittle the amount of this transaction, I really didn't pay much attention to this. I really didn't. Okay. And the reason I was invested in it was because of the family relationship I had with the Weisbords. And I had actually -- you could say I was led, you know, Barry just, basically, said -- whatever he asked me to do, you know, I thought it made sense and I did it. So that's what -- that's really the whole deal.

Q I appreciate that, Mr. Santulli. If I could ask you to turn to the next exhibit, 1073, please.

A Okay.

Q This is another e-mail from Joshua Weisbord to you and your number of fellow assigners and some others, sending you a copy -- a link to the proxy statement. And I know for your deposition that you did not read the proxy statement, but did you pay attention --

A That's correct.

Q -- to Joshua Weisbord's e-mail, when he said we will all be voting for it, referring to the merger?

A Yes. Uh-huh.

Q So you knew that --

A So we -- yes. Yes.

Q But you did not read the proxy statement; correct?

A No way. No, I did not read the proxy statement. And I'm sorry you may think I'm a jerk, but I -- as I said, I was doing other stuff and I -- I'm sorry.

Q You don't need to apologize. I do recall from your testimony you had a lot on your plate at that point.

A Uh-huh.

Q Just to kind of fill out the loop here, in not reading the proxy statement, I take it, then, that you were not, when voting for the merger, considering the description in the proxy of the process that the Parametric board went through over four or so months that resulted in the signing of the merger agreement; is that fair?

A That's fair.

Q And if the proxy had a description of the Parametric board's business and financial reasons for entering into the merger and recommending it to the shareholders, that wasn't something that you considered in voting for the merger; is that fair?

A That's fair.

Q And if the proxy had a description of a independent opinion that was provided to the board by an investment banking firm, Craig-Hallum, regarding the fairness of the merger ratio, the 80/20 split, that wasn't something that you considered in voting for the merger; is that fair?

A That's fair, because I assumed other people that had the time to read it, who had the -- you know, who thought it made sense to read it. That's fair. I mean, I didn't read it, so therefore I have no idea what was in it, so.

Q That is -- if the proxy had disclosure of the risks that the Turtle Beach business was facing in 2013 and 2014, that wasn't something that you took into account in voting for the merger; is that fair?

A That's fair.

Q When you signed -- let me change topics briefly -- when you signed the new LLC agreement recently, were you just sent a signature page or did you see a full new agreement; do you remember?

A I don't remember. I really don't remember. I wouldn't have read it anyway. I mean, it sounds, again -- but I would not have read it. If they basically all signed it, I would have signed it.

Q Fair enough?

A I mean, I got -- skimmed it, if I got -- I don't really remember.

Q Understood.

A I'm in the process of another company right now, cancer company that I'm the chairman and CEO of, and I -- that -- I spend all my time doing that. So.

Q We'll get you out of here quickly, just a couple more questions.

A Well, I have time. I'm in no rush.

THE COURT: But he is.

MR. KOTLER: Yeah.

BY MR. KOTLER:

Q I don't know, sir, I never got that feeling, now I'm talking to you twice.

A Yeah.

Q I do believe --

A Yeah, I mean, Judge, I am not someone that doesn't really take -- I really do pay attention to business deals, but not this one. So.

THE COURT: All right, sir. It's okay. Keep going.

THE WITNESS: Okay.

THE COURT: Let's get done.

MR. KOTLER: Yes, thank you, Your Honor.

BY MR. KOTLER:

Q You sold all of your shares before you signed that assignment to the LLC in this case; correct?

A Correct.

Q Any reason to doubt that you sold all your shares it looks like by the end of August 2015?

A If it says -- yes, I would have thought -- I'm surprised I held them that long. That's correct. Uh-huh.

Q And when you sold your shares, you just sold them into the open market; correct?

A That's correct.

Q So you didn't enter into any agreement with anyone who purchased the shares in which you reserved any rights that you may have had with the premerger Parametric shares; is that fair?

A I sold them in the open market. That's what I did, so -- and I assigned -- no, I sold them in the open market. I called my broker and he sold the shares.

Q Thank you.

MR. KOTLER: I don't have any further questions.

THE COURT: Thank you. If you could wipe down, please. Mr. Ogilvie?

MR. OGILVIE: No further -- nothing further, Your Honor.

THE COURT: Thank you, sir. We appreciate your afternoon. Have a great day. Thanks again, and sorry for the technical problems. Be well.

THE WITNESS: No problem. Thank you, people. Thank you, Judge. Bye-bye.

THE COURT: Next witness.

MR. OGILVIE: Robert Masterson.

THE COURT: Good afternoon. Can you hear me? Mr. Masterson? Good afternoon, sir. It's my understanding you've agreed to be sworn over our video line; is that correct, sir? Sir, can you hear me? Sir, can you hear me? Good afternoon, sir. Sir, can you hear me? Good afternoon, sir, can you hear me?

Mr. Apton, we're having a problem.

MR. APTON: I will call the witness right now. And --

THE COURT: Good idea. Works fine.

(Pause in proceedings.)

THE COURT: Thank you, sir. Can you hear me now?

MR. MASTERSON: Yes, I can hear you fine now.

THE COURT: All right. Raise your right hand.

MR. MASTERSON: [Indiscernible; audio distortion.]

THE COURT: Sir, it's my understanding you've agreed to be sworn over our video line; is that correct?

MR. MASTERSON: That is correct.

THE COURT: If you would raise your right hand for me, please. Thank you.

ROBERT EDWARD MASTERSON

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

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Robert Edward Masterson.

THE COURT: Thank you, sir.

THE WITNESS: R-O-B-E-R-T -- yeah.

THE COURT: Thank you, sir. We're all still wearing masks here in the courtroom, so you may not be able to understand us. If you need us to repeat, please let us know and we will be happy to do so. Okay?

THE WITNESS: Thank you.

THE COURT: If you need a break, you let us know. It shouldn't take more than a half hour.

Mr. Ogilvie, you're up.

MR. OGILVIE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. OGILVIE:

Q Good afternoon, Mr. Masterson.

A Good afternoon.
Q Where are you joining us from today?
A California.
Q Okay. Are you familiar with a publicly traded corporation known as Parametric Sound Corporation?
A I am.
Q Did you ever own shares of Parametric Sound Corporation?
A I did.
Q And do you have one or more brokerage accounts?
A I do.
Q Did you hold your Parametric shares with those brokerage houses?
A Yes.
Q Specifically, which brokerage houses?
A Oppenheimer and Morgan Stanley.
Q Okay. If you could turn to -- do you have a package of documents in front of you?
A Yes, I do.
Q If you could turn to Exhibit 251, please.
A I have it.
Q So Exhibit 251 is a couple of things. Do you recognize Exhibit 251?
A Yes, I do.
Q Let's just talk about the first two pages, which are

251-001 and 251-002; do you see those two pages?

A Yes, I do.

Q What are those two pages?

A They're the holding -- well, the first page was the information about my accounts. The second page is the number of shares that I purchased of Parametric Sound.

Q In which -- with which brokerage house?

A This is with Morgan Stanley, and for the period January 1, 19 -- January 1 through 31, 2014.

Q And are pages 1 and 2 of Exhibit 251 true and correct copies of a portion of your client statement from -- with Morgan Stanley for January 2014?

A Yes.

MR. OGILVIE: Your Honor, I'd move -- oh, well, I need to go to --

THE COURT: Why don't we do the Oppenheimer one.

MR. OGILVIE: I've got to do the Oppenheimer one, yes.

BY MR. OGILVIE:

Q Moving to page 3 through 8 of Exhibit 251, do you recognize those pages?

A Yes, I do.

Q And what are pages 3 through 8 of Exhibit 251?

A They are shares that I hold in Parametric Sound Corporation during the period of January 2014.

Q Okay. So they're -- those are -- each page has the word Oppenheimer on it, then over on the right-hand side of each page it says, Statement of Account. Do you recognize these as your account statements at Oppenheimer for the period January 2014?

A Yes, I do.

Q Is this a true and correct copy of -- or are these pages true and correct copies of pages of that statement of account for that period, January 2014?

A Yes, they are.

MR. OGILVIE: Your Honor, I'd move for admission on Exhibit 251.

MR. KOTLER: Objection, Your Honor. Completeness. The full brokerage statement is 1036 and 1078 are the pages that were not included as part of 251.

THE COURT: Any objection to 251, 1036, and 1078, Mr. Ogilvie?

MR. OGILVIE: No, Your Honor.

THE COURT: All three will come in.

MR. KOTLER: Thank you, Your Honor.

(Plaintiff's Exhibit Number(s) 251 admitted.)

(Defense Exhibit Number(s) 1036 and 1078 admitted.)

BY MR. OGILVIE:

Q Mr. Masterson, let's go back to the Morgan Stanley statement, and let's go to page 2, which is 251-002; do you see that?

A Yes, I do.

Q There's a big redacted portion of this page. Immediately below that, there is a identification of Parametric Sound Corporation; do you see that?

A Yes, I do.

Q Then over to the right there is a column entitled Quantity, and it reflects 20,000 shares; do you see that?

A Yes.

Q Did you hold 20,000 shares of Parametric Sound Corporation in your brokerage account with Morgan Stanley on January 15th, 2014?

A Yes, I did.

Q Let's move to page 4 and 5 and 6. Let's start with page 4 of Exhibit 251. And as you testified, this is a portion of your statement of account with Oppenheimer before January 2014. If you look down at the bottom of the page, there's a reference to Parametric Sound Corporation; do you see that?

A Yes.

Q Then you see various transaction dates or trade dates beginning with 7/17/12 and ending at the bottom of this page with 10/16/12; do you see that?

A Yes.

Q And then over in the column -- next column to the right, it has various quantities; do you see that? Beginning with 6,500 and ending on the bottom of this page with 2,500?

A Yes, I do.

Q Okay. And if you turn over to the next page, which is a continuation from the page before, so we're now at Exhibit 251, page 5, there are trade dates beginning with October 16th, 2012, and ending December 11th, 2013; do you see that?

A Yes.

Q And then the column to the right of that, again, it's the quantity column and there's various quantities beginning with 500 and ending with 1,000; do you see that?

A Yes.

Q Okay. And below that there is a line with a number 117,500; do you know what that 117,500 is in -- depicts?

A It depicts the January 31st amount of stocks that I had, which is 117,500. It does not depict the number of shares that I owned on January 15th.

Q Okay. So let's turn to the next page, page 6. And perhaps you could explain your last answer by referring to page 6?

A Page 6 is the number of shares I sold on January 22nd and 23rd, which was 16,500. So that needs to be added back in, because I had those shares on the transaction date, which was the 15th of January. So you'd add the 117,5 with the 16,5 to get 134,000 shares. And then you add the 20,000 to Morgan Stanley and get a total of 154,000 shares.

Q So the in Exhibit 251, when we looked at -- in the -- completely reflects that you held 154,000 shares in Parametric Sound Corporation through your accounts at Morgan Stanley and Oppenheimer on January 15th, 2014; is that correct?
A That is correct.
Q Let's turn to -- do you have Exhibit 475 in front of you?
A Yes, I do.
Q Why don't you turn to page 4 of Exhibit 475.
A Yes.
Q Page 4 is entitled, "Limited Liability Company Operating Agreement for PAMTP LLC, a Multiple Member Managed Limited Liability Company."
Are you familiar with PAMTP LLC?
A Yes, I am.
Q And what is PAMTP LLC?
A It's the live -- it's the LLC company that we formed in order to have the suit against Parametric.
Q Okay. If you would turn to --
A Not the --
Q I'm sorry, go ahead, sir.
A It's not the [indiscernible] agreement.
Q Okay. If you would turn to page 12 -- I'm sorry, page 10, 475-010.
A Yes.

Q This is entitled, Certification of Members. It says, "The other side hereby agree, acknowledge, and certify to adopt this operating agreement."

And then there's series of signature blocks, the second signature block over to the right of it says, "Printed Name, Robert Masterson, Shares, 154,000."

Do you see that?

A Yes.

Q Do you recognize the signature in the signature block right -- direct to the left of that?

A Yes, I do.

Q Is that your signature?

A Yes, it is.

Q Did you sign this on or about April 15th, 2020?

A Yes.

Q Let me direct your attention to page 16 of this document.

A 16.

Q 475-016.

A Okay.

Q So at the top, it says, "Exhibit A." And then there's a table entitled, "PAMTP LLC Ownership."

Do you see that?

A Yes.

Q And at line 2, it's Robert Masterson, 154,000 shares;

is that consistent with your understanding that you have held 154,000 shares as of January 15th, 2014, in Parametric Sound Corporation?

A Yes, it is.

Q Okay. Did there come a time that you became aware that some of the shareholdings depicted in Exhibit A were incorrect?

A Yes.

Q And when did that come to your attention?

A I don't remember the correct date, but Allen Goldberg and Kahn's numbers weren't correct, and we had to make an amendment to this agreement.

Q Okay. You said Allen Goldberg and Adam Kahn's shares were not correctly depicted in this document?

A That's correct.

Q Okay. And you said that you had to make an amendment. Is -- are you referring to amended operating agreement?

A Yes.

Q And did you sign that amended operating agreement?

MR. PEEK: Let the record reflect my objection. I know it's going to be overruled, but --

THE COURT: Overruled. Thank you.

BY MR. OGILVIE:

Q I'm sorry, you can -- maybe you answered, I didn't hear it. Did you sign --

A I signed it.

Q Did you sign the amended operating agreement?

A Yes.

Q Let me direct your attention to page 23 of Exhibit 475. It's 475-023.

A Yes.

Q It's entitled, Assignment of Claim, up in the first paragraph there's a blank -- it's handwritten Robert Masterson, and then there's a signature down at the bottom right-hand corner; is that your signature?

A Yes, it is.

Q Did you sign this assignment of claim at -- on or about April 15th, 2020?

A Yes, I did.

Q In the first paragraph it says that,

> Robert Masterson hereby assigns, transfers, and sets over unto PAMTP LLC all of the assigner's right, title, and interest in any claim that the assigner has or could have arising from his/her/its ownership of Parametric Sound Corporation, including any and all claims arising from or relating to the merger between B2B Holdings, Inc. and Parametric Sound Corporation on January 15th,

2014, against Parametric or any other entity or individual that could be liable for the acts/and/or omissions alleged in the litigation entitled In Re: Parametric Sound Corporation Shareholders Litigation.

Is this the document by which you assigned your right title and interest to any claims in this litigation to PAMTP, LLC?

A Yes, it is.

Q Thank you, sir.

MR. OGILVIE: Your Honor, I have -- I'll pass the witness.

THE COURT: Thank you. Mr. Kotler?

MR. KOTLER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. KOTLER:

Q Good afternoon, Mr. Masterson.

A Good afternoon.

Q My name is David Kotler, I represent Turtle Beach and Stripes and a few others here. I'm going to ask you a few questions as well. If you can't hear me, just let me know, okay?

A I will do that, yes.

Q You invested on a cost basis somewhere around 1.6, 1.7 million in Parametric; is that fair?

A I think that's correct. I mean, it's close. I'd have to dig it all up, yes.
Q I just did the math, it's around there.
A Yeah. Yes.
Q I believe you told us at your deposition that your investment in Parametric was not signature to you in the grand scheme of your financial portfolio; is that fair?
A That is fair.
Q You have been friends with Barry Weisbord for 40 years?
A Yes, I have.
Q And you've also been friends with Allen Goldberg and Richard Santulli for 40 years; is that right?
A Yep. That is correct, yes.
Q You joined this lawsuit that has us here today because Barry Weisberg -- Weisbord asked you to join; is that right?
A Yes.
Q And Mr. Ogilvie had asked you some questions about the operating agreement. You are a member/manager of the LLC that is asserting the claims here; is that correct?
A Yes, it is.
Q And Mr. Kahn is the other member/manager; is that right?
A Yes. Yes.

Q So you understand your role and responsibilities as a member/manager; right?

A Yes.

Q And you take those roles and responsibilities seriously; right?

A Yes.

Q So who told you that Mr. Kahn came to learn that he had underreported 527,000, the number of shares listed in the LLC agreement?

A Barry Weisbord.

Q Tell me everything you remember about that conversation, please.

A I just remember him telling us it was under -- unreported -- underreported. I don't remember at the time the number of shares that were underreported, I just remember the conversation, that's all.

Q And you testified that you signed -- you executed a new signature page for the LLC agreement; is that right?

A Yes.

Q When you signed that signature page, were you just given the signature page or did you see the full agreement?

A I saw the full agreement.

Q Were there any changes to the agreement other than correcting Mr. Kahn's share numbers and the Goldberg's share numbers?

A I don't remember, but I don't believe so.
Q Were any new LLC members added to the PAMTP LLC?
A No.
Q Were there any changes to capital contributions or cost-sharing provisions?
A No.
Q Were there any provisions regarding new investors or funders for the litigation?
A No.
Q Was there any reference to anyone who did not own and assign any premerger shares to the LLC?
A No.
Q I believe you told us at your deposition that Joshua Weisbord, Barry Weisbord's son, is not known for being the greatest with his investments; is that fair statement?
A Yes.
Q He's in the courtroom today, so he'll appreciate that. What role did Joshua play in your decision to vote in favor of the merger, if any?
A He didn't play any way at all in the merger.
Q I take it you did not read the proxy statement that Parametric put out approximately a month before the merger closed; is that right?
A I did not.
Q So the proxy statement, I take it, did not play any

role in your decision to vote in favor of the merger; is that fair?

A That's fair.

Q So if the proxy statement contained a description of the process by which the Parametric board -- what they went through in order to reach the agreement on the merger, that wasn't something that you considered; is that fair?

A That's fair.

Q And the reasons that the Parametric board was recommending the merger to shareholders such as yourself, both from a business and a financial standpoint, that wasn't something that you took into account when voting in favor of the merger; is that fair?

A That's fair.

Q And if the proxy had some disclosure about whether investors should or should not rely and to what extent they should rely on projections in the proxy statement, that wasn't something that you took into account in voting for the merger; is that fair?

A That's fair.

Q And if Turtle Beach was facing risks with its business, that were discussed in the proxy heading into 2014, that wasn't something that you took into account in voting for the merger; is that fair?

A That's fair.

Q I believe from your brokerage statements that you sold all of your Parametric and Turtle Beach shares before the end of 2014; does that sound about right?

A That sounds about right, yes.

Q So several years at least before the assignment that Mr. Ogilvie showed you in which you assigned your rights and claims to the LLC, fair?

A Fair.

Q You sold your Parametric and Turtle Beach shares into the open market?

A Yes.

Q So I take it you did not enter into an agreement with -- regarding your premerger shares with a purchaser in which you reserved any of the rights you had with respect to those premerger shares?

A You can't do that with the SEC.

Q And you did not do that; correct?

A I did not do that.

Q Thank you, Mr. Masterson. I don't have any further questions for you.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: Can you wipe down, please.

MR. KOTLER: Of course.

THE COURT: Mr. Ogilvie, any additional questions?

MR. OGILVIE: If I could have the Court's indulgence.
THE COURT: Absolutely. [Pause in proceedings.]
MR. OGILVIE: Nothing further, Your Honor.
THE COURT: Thank you, sir. Have a nice afternoon. Be well.
THE WITNESS: Thank you very much.
THE COURT: Next witness?
MR. APTON: Thank you, Your Honor. We call Juergen Stark.
THE COURT: Is Mr. Stark in the hallway?
Oh, there you are. How you doing, sir?
THE WITNESS: Good. How are you?
THE COURT: I'm well. Thank you.

JUERGEN STARK

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

THE WITNESS: I do.
THE CLERK: Please state your name for the record.
THE WITNESS: Juergen Stark.
THE COURT: Mr. Stark, you remember from the last time we were here, we were all wearing masks.
THE WITNESS: Yep.
THE COURT: It's a little hard for everybody to understand. Just like the last time, if you don't understand us, let us know. If we can't understand, we'll let you know.

THE WITNESS: Okay.

THE COURT: And then if you need a break at any time, you let me know. If you want to accept the binders counsel is going to give you, you can. You do not have to since he's not your counsel. And the COVID protocols are weird.

THE WITNESS: Sure.

THE COURT: Okay. All right, Mr. Apton. And I've been told you have four to six hours of questioning. We are breaking in about three hours, and then we'll come back for more.

MR. APTON: Okay.

DIRECT EXAMINATION

BY MR. APTON:

Q Mr. Stark, you're familiar with the proxy statement at issue in this case; correct?

A Yes.

Q It was filed December 3rd, 2013?

A Yes.

Q And did you have a role in its creation?

A Sure.

Q You reviewed its contents before filing?

A Yes.

Q And I assume you reviewed the description of VTB or Turtle Beach's business. Yes?

A Correct.

Q And of course, you approved the financial projections that Turtle Beach included in it; correct?

MR. HESS: Objection.

MR. APTON: The financial projection --

THE COURT: And what's the basis of your objection?

MR. HESS: Foundation of the proxy --

THE COURT: Overruled. You just got to say foundation, then I'm good.

MR. HESS: I'm sorry, Your Honor. I keep doing that.

THE COURT: It's all right. I'm just trying to guess --

MR. HESS: Yeah.

THE COURT: -- what's the basis was. So sorry, sir, you can continue.

THE WITNESS: Sure. So there were two sets of financials in the proxy.

One was year-to-date actuals, I think through September for Turtle Beach. I might be wrong about that.

And the second was the financials associated with the Fairness Opinion.

BY MR. APTON:

Q So I'm going to pull up Exhibit 244. I could not include it in the binder because it's very lengthy. And so it's going to come up on your screen.

And if we could go to page 83. So 244-83.

THE COURT: So that will be on the screen, sir.

THE WITNESS: Okay.

THE COURT: If you want to use the big screen TV, you can. If you want to use the little one on your witness stand, you can. And if you want to see above or below it to give yourself context --

THE WITNESS: Okay. Sure.

THE COURT: -- or other parts of the proxy, let them know and they will help you find it.

And your counsel is going to bring you an actual copy.

Mr. HESS: If I may approach, Your Honor?

THE COURT: Do you want to accept it from Mr. Hess?

THE WITNESS: Sure.

THE COURT: Okay. He said sure. But you've got to make sure you maintain your distance from Mr. Apton, who is not on your team.

MR. HESS: Yes, Your Honor.

THE COURT: Go wide.

THE WITNESS: Okay. So what am I looking -- what am I looking at here?

THE COURT: He gave you a hard copy of the proxy statement, so I don't know what page, what's on the screen it is.

What page is that, Counsel?

MR. APTON: 83.

THE COURT: So you're welcome to turn the paper version to 83 and refer to any other parts that you would like.

THE WITNESS: All right. 83 says the Merger Proposal. Is it 83 of the proxy or 83 of the binder?

BY MR. APTON:

Q So 83 in the binder. The bottom right-hand corner should be --

A Okay.

Q 244-83.

A Sure. I see it.

Q So my question is these projections for Turtle Beach, you understood these to be true and correct in all material respects when they were sent down with the proxy in December?

A No.

Q Okay. What was wrong with them at this point in time?

A These were the projections used in the Fairness Opinion that was dated, I think, early August, just before the close of the -- not the close -- but the signing of the Definitive Agreement.

I believe they are clearly articulated in the proxy that these were the numbers provided for the Fairness Opinion at that point in time. And at that point in time these were the best estimates we had for the business.

Q That point in time -- I'm referring to December of 2013. Were these the best estimates you had as of December of 2013?

A No.

Q But you included these in the proxy anyway; correct?

MR. HESS: Objection.

THE COURT: Overruled.

THE WITNESS: They were included in the proxy as part of the --

THE COURT: You can answer.

THE WITNESS: -- Fairness Opinion -- not cited as forecasts or up-to-date projections from the company.

BY MR. APTON:

Q So what I'd like to do is find out how we got to these numbers that went out in December of 2013.

A Sure.

Q If you could go to Tab 257 in Binder 1.

A All right. Sorry.

THE COURT: It's okay, sir.

THE WITNESS: There's a lot of pages here.

THE COURT: And it's not nearly as easy to get through it as it looks like when you're the one watching.

BY MR. APTON:

Q So --

A Okay.

Q -- this e-mail is from Bruce Murphy. He was your CFO at the time; correct?
A Correct.
Q And this is April of 2013?
A Correct.
Q He reported to you; right?
A Yes.
Q And now Mr. Murphy is sending out projections to Ken Potashner. He is at Parametric; right?
A Correct.
Q And these projections were sent out after merger negotiations began. Yes?
A Yes.
Q Okay. So giving that Mr. Murphy was sending these projections to Potashner, I assume you approved them beforehand; is that right?
A Yes.
Q And if you go to the next page, we see that the projections forecasted, let's see, sales for 2013 of 232.7 million and then upwards thereafter of roughly 20 percent, year over year; correct?
A Correct.
Q And the same goes for EBITDA in Row 25 --
A Yes.
Q -- 2013 started at 54.3 million; right?

A Yes. I believe these were our original plan for 2013, and then a long-term, you know, projection forecast.

Q Now, Mr. Murphy's cover e-mail refers to that. And he says, This forecast assumes a relatively modest 20 percent growth over the next four years.

But he also references console transition, does he not?

A Yes.

Q So he was projecting 20 percent year-over-year growth, even though you guys were heading into a console transition; is that right?

A Yeah. The console transition was viewed to be a net positive. And the business had grown, what, 168 to 200, something like that. The business had grown so rapidly at that point in time, we expected strong growth to continue.

Q So these projections sent to Mr. Potashner were true at the time Mr. Murphy sent them?

A These were our best estimates at the time, yes.

Q And the accounted for the console transition; correct?

A Well, they accounted for what -- by that time the console transition hasn't started. We didn't have any details about who was going to do what, when. We didn't have any information about compatibility, which ended up being a major issue later. And I don't even know at this time if we expected both consoles to transition at the same time, which they ended up doing. But at that time that had not happened in the past.

So I'm not sure how much we knew about the console transition, but we did know at that point in time that Microsoft, Xbox was coming. I don't know if we knew about PlayStation in 2013, or whether at this point we still thought it might have been 2014.

Q Okay. As of April, for 2013, sales 232.7 million and EBITDA 54.3 million; correct?

A That was our prediction of the future at the time, yes.

Q Okay. Let's go to, now, Tab 155.

A Okay.

Q Now, this is -- we're now in April 2013, e-mail from you to Ron Doornink. Who is Ron Doornink?

A He was the chairman of Turtle Beach at the time.

Q And was he affiliated with Stripes?

A He was an operating partner for Stripes.

Q And on April 20, 2013, if we go to page 2, we see Ron Doornink reaching out to Henry Nassau. He's at Dechert; correct?

A Correct.

Q And in Mr. Doornink's e-mail, he asked Dechert for help structuring the deal; is that right?

A Allow me to look at this here.

Q Sure.
A Okay. What was your question?
Q He's asking for Mr. Nassau's help structuring the deal; correct?
A Yes. He asked for help on the legal aspects of the deal.
Q And he also indicates or explains, I should say, that the deal provides VTB with a, quote, strong IP portfolio. That's in the first paragraph?
A Yes.
Q Did I read that right?
A Correct.
Q And then in though one, two, three, fourth paragraph, he also says that, quote, It's a critically important deal for VTB; is that right?
A That's what he says here. Yes.
Q Was the deal so critical for VTB because of the pressure VTB was receiving from its primary lender at that point in time, PNC Bank?
A Absolutely not.
Q No?
A Absolutely not.
Q One had nothing to do with the other?
A No.
Q Let's go to Exhibit 312, please.

A 312. I'm there.

Q Now, this is 5 days later, April 25th, 2013. And the top e-mail is you to Karen Kenworthy.

Who is Ms. Kenworthy?

A She was employed by Stripes and was a key person that we were working with an on kind of the day to day, you know, things like this.

Q Was she Ken Fox's number two, if you will?

A I think there were many people like Karen at Stripes or at least multiple people. She was the person kind of assigned to us.

Q Okay. And Ms. Kenworthy e-mails you on the 25th about amending the PNC facility; is that right?

A Yes.

Q And what was the issue with the PNC facility at this time?

A The issue with the PNC facility was that it was negotiated in August of 2012. And it was a $45 million loan initially, with a 3-year payback; a working capital line that was mixed in with the loan, which is very unusual. I think there were nine banks, or eight more other than PNC supporting, you know, as part of the lender contingent.

And the big issue was that the covenants, which are the loan provisions, were set at ridiculously high levels, particularly in relation to what a lender should need in terms of supporting the collateral that they need for the loan.

Q And VTB's liquidity, its ability to pay for its expenses during the course of the year, came from that PNC facility; is that right?

A No. I wouldn't say that.

Q What would you say?

A Well, there is a -- when you run a consumer business like ours, you buy product in the summer, basically. You buy all the inventory for holiday, basically starting in the summer through probably September. You often borrow to buy that inventory, because you have to pay the manufacturing partners for that inventory. And this can be tens of millions of dollars.

You sell that -- all that inventory that came in for holiday to the retailers. Then when you go into the holiday period, those sales typically start in October. But the retailers don't pay for about 60 days.

So you have -- it's kind of normal for a company like ours that you have a multi-month period where you have a working capital line -- not the core loans, by the way -- working capital line that you borrow against to fund your inventory, and then you pay it all back in -- starting late in the year and early in the following year.

Q PNC was VTB's main lender, though; correct?

A PTC (sic) and the consortium of the banks associated with the loan. Yes.

Q PNC.

A PNC.

Q I might have said --

A PNC.

Q PNC. Okay. In the bottom e-mail on the first page, it says, FYI, connected with PNC post-fall. They will not talk to the bank group until we have proposed the actual amendments.

What was the significance of the bank group at PNC?

A Yeah. So, you know, again, kind of not a good structure for a loan in a working capital line. I don't know the -- I don't remember the exact number. But I think there were like eight or nine other banks working behind PNC, so that every decision that needed to get made, PNC would have to get the rest of the lender group involved in the decision.

So I'm reading here that they're not willing to talk to their consortium of banks until we had some call with them.

Q So this facility was not ideal. Fair?

A It was -- the facility had covenants that were way too high, terribly negotiated; had a working capital line which was mixed in with the covenants of the facility, very unusual; and the lender and the lender group -- let me give an analogy here. It's almost like someone puts up a 15-mile-per-hour speed limit sign on the highway -- like, the equivalent of the covenants. Just because every time someone goes 16 miles per hour, us, they can come in, charge a bunch of fees.

And because there were like eight or nine banks, everybody got a take. They made -- they wanted to trip us up, and they made money every time they tripped us up.

So this -- by this point -- well, at least around this point in time, I was not happy with them as a lender and wanted to get them out.

Q Right. VTB wanted to get out of -- away from PNC; correct?

A Yes.

Q Okay.

A I don't remember how strongly I felt about that in April. But certainly as we got through the year, it was crystal clear that the PNC loan arrangement, with them constantly collecting fees for covenant issues that they shouldn't -- that are not relevant for them to support the loan -- you know, with a $45 million loan, you should need 15 million of EBITDA.

We had covenants with them set at something like, I think, originally, like $54 million. It was completely nuts. So yeah, over the course of 2013, we made the decision -- I made the decision that I wanted out of the PNC relationship.

Q Okay. So let's go to 147 now.

A I'm getting the hang of flipping the pages here.

Q Thank you.

A 147?

Q 147, yeah.

A All right.

Q The last document was April 25th, and now we're at May 9th.

A Okay.

Q And the top e-mail is from you to Ken Fox and cc Kenworthy and Doornink. But underneath is an e-mail from Ken to you. And it reports on a call that Fox had with the -- let's see, former head of New York equity sales at Goldman Sachs, current global head of equity sales at Barclays.

And Mr. Fox, in this conversation, he's exploring the possibility of an IPO for VTB; correct?

MR. HESS: Objection.

THE WITNESS: Yeah. I'm not sure what this is. Hang on.

THE COURT: Overruled.

THE WITNESS: It looks like he's discussing it. But I don't recall any -- any serious look at an IPO or any pressure, frankly, from Stripes about an IPO in 2013.

In fact, one of the things I liked about them when I took the job at the company was their only plan for me was grow a good business.

Many other PE firms, they want to -- they want you to go in for two years and then have an IPO or a sale and then get out. And they didn't seem to care about that at all. They just said, We'll support you, get in, build a good business, and at some point in time, there will be an exit. But had no pressure on me at the time.

So I don't know -- to me, I'm surprised to see that they're even discussing an IPO. And they might have actually been asking in the context of the Parametric merger, in terms of what it would mean for us to be public at the time -- not separately doing an IPO.

BY MR. APTON:

Q So about that exit strategy, is it your testimony that you were unaware Stripes wanted to exit from VTB at around this time?

A Yes. They put -- absolutely put no pressure on me to have any kind of exit at that point in time.

Q So the notes go on. They say -- Fox notes indicate that the market was likely to view the Parametric deal as a, quote, negative due to the change of business strategy from, quote, gaming to, quote, hearing-impaired, and proceeded as a single of, quote, limited growth opportunity in gaming going forward.

Did I read that right?

A Yeah. It very much looks -- you know, now that you are saying that, it looks like Ken is getting input from an equity analyst, or a salesperson, on how the market might perceive us being public after a Parametric merger. And it looks like the input is pretty negative.

And this was probably one of the reasons why Ken was not in favor of doing the deal.

Q Not just any sales representative. This is the global head of equity sales at Barclay; is that correct?

A Correct.

Q And the notes indicate that there was, quote, uncertainty around the combined companies, and the, quote, new platforms due to the upcoming console transition. It would make it a, quote, very difficult time to be public; right?

A Yeah. Any time you have kind of something new happening with the business, it -- as we now see in 2020 hindsight -- it can severely affect your ability to accurately predict the future about what's going to happen -- up or down, by the way. That doesn't mean negative. And that's not a good circumstance to do an IPO, for example.

So this was one of the reasons why Ken and myself -- we viewed merging with Parametric -- one of the negatives is that we would have to then be a public company.

Q Well, that's one of the reasons why you did the merger, is it not? Because an IPO was not possible. But at least according to these notes here, it says, quote, Right now, if you came to me and said we need to get an offering done, I would say you can't get it done; right?

A Going public, as part of the merger, was absolutely not one of the factors. In fact, it was very clearly a major negative for Ken, and at least a minor negative for me at the time.

Q Well, it did provide VTB the opportunity to access public equity markets. That's a positive, is it not?

A That's a positive. But it comes at the expense of being a public company and having to have public company costs, public company accountants, public company CFO. Like we didn't -- we had a good business going. There was no reason why we needed to essentially IPO at that point in time.

The right strategy, if we were to just purely thinking about ourselves, would be get past the console transition. The console transition was viewed to be highly positive, with some uncertainty about what would happen when and how fast it would hit. So you wait that out and then you do an IPO.

So Parametric kind of -- it forced us to consider the negative of being public earlier, essentially, than would have been a kind of a more natural process.

Q So what was the rush then? Why do the deal?

A There wasn't any rush in terms of being public. As I said, the being public was a negative -- the deal. But we found a technology that we liked. And, you know, unfortunately the only way to get that technology and the business and the promise of commercial revenues and the promise of the hearing business and all the things that appealed to me when I looked at the deal -- because I was very much in favor of us incorporating that into TB -- came with a negative that we would -- that the only way to do it was essentially to become a public company, at timing that arguably was not great. And then we didn't have a particular desire to be public at that time either. But there was no other way to get the deal done.

Q But you could have obtained the technology through a license. No?

A License for what, though? Because we didn't initially discuss licensing in the gaming segment. If you licensed more than that, like, if we wanted to license gaming and healthcare -- the healthcare was what was a primary interest to us. And I am happy to explain why. Then you essentially have licensed everything.

There's not a big difference between buying the company and doing that license.

However, if you license, you have no control over the development of the technology. And, you know, not -- I would say not in May, but certainly as the year went on, it became clear that Parametric, as a standalone licensee to us, for example, would have, you know, very little ability to actually fully commercialize what we would want to license.

Q So let's continue here. I want to go to Exhibit 316.

This is also May of 2013. Let me know when you are there.

A Sure.

MR. HESS: 316?

MR. APTON: 316.

THE WITNESS: Okay. I am there.

BY MR. APTON:

Q Yeah. And this is from you to Ken Fox, Kenworthy, Doornink, and now Dan Marriott.

Dan Marriott was who?

A He was Ken's partner at Stripes.

Q Okay. And you're providing additional projections now for 2013 through 2017; right? If you go to page 4, 5, and 6.

A Four, 5, and 6. Okay.

Q You have your baseline forecast on 4 -- revenue 243 million; EBITDA 53 million for 2013. Yeah?

A Yeah. I just want to get some context --

Q Sure.

A -- of what this document is here.

Q Absolutely.

A All right. So it looks like it's a first draft of a long-range forecast.

So this would be -- and you can see by the graphics. This would be us running kind of rough scenarios for how the business could pan out with a couple arrangements.

And I would only distinguish that this would be -- this would be a set of scenarios; right? And this was a first draft, so I don't know if this changed, by the way, either.

But it's a set of scenarios for how we would predict the future -- the kind of role, you know, to come to be with relation to our business.

Q Well, presumably, if it says scenarios, that is based on the best information you had at that time; right?

A Correct.

Q Okay. So if you look at --

A You know, just one other --

Q Sure.

A -- one other piece of important context. It's very possible that these scenarios were run with some simple modeling of the revenue line. And then a ratio of EBITDA margin.

And I'm only, making that distinction because if we're doing a real forecast, like for a business plan later in terms of Fairness Opinion for investors, all of that, that would be a full P&L. So we would then try to forecast revenues, gross margins, cost of goods, op ex, all of that.

This -- and I don't know, I don't remember this document -- but this very much looks like it's a forecast the top line, based on some simple ratios: Growth rates, how big each business could be; and then project an EBITDA margin into that revenue line.

Does that make sense?

Q It does. But you sent this to Fox, Marriott, Kenworthy, Doornink. So I have to assume that this, as you said before, was based on the best information you had at the time.

I mean, you're not going to give Stripes erroneous projections, are you?

A No. These are not -- and I never said that they would be erroneous projections. This looks like something where they might have asked, What do you think the business might do over time? It doesn't mean we do, like, a robust, detailed forecast. These are scenarios. The charts show it. This says, First draft. And that doesn't mean that we did anything more than just project the top line and provide a ratio to give everyone, like, a sense, What could this business turn into?

Q Well --

A That's very different than us saying, hey, here's -- like, here's our plan for 2014. When we say plan, that means we've done as much work as we possibly can to predict those numbers. This does not look like that.

Q Putting that aside, the charts do, in fact, show that between baseline pessimistic and optimistic forecasts, revenue for '13 was between 238 million and 243 million; correct?

A Okay.
Q Yes?
A Yes.
Q And EBITDA ranged from 52 to 53; is that right?
A In the scenarios here, yes.
Q Okay.
A Again, this could have been different than the kind of more robust forecast we had for 2013.
Q And --
A In fact, 53 was similar to the original board plan in the year, so that somewhat ties out. But I do believe, over this period of time, that we also reduced the internal real forecasts -- at least a little bit later than this. It might not have been -- what's the date on here? May? It might not have yet at the end of May.
Q But that's where we're going. But before we get there, I just want to point out, the second paragraph on page 3, you say that 100 million of EBITDA by 2016 is possible, but requires upside scenarios to occur across all of our business segments. And for us to become the number 3 player in high-end stereo mobile headsets; or for us to find new audio or gaming markets that can contribute 20 to 40 million new EBITDA, roughly 100 million to 200 million new revenue; is that right?
A Okay. Yes.
Q Who were the No. 1 and No. 2 players in high-end

stereo mobile at this time?

A Let's see here. So it says competing against Beats and Bose.

Q And what was their market share, relative to yours?

A In media headsets?

Q Uh-huh.

A We had not launched media headsets at this time.

Q Okay.

A So we would have had no market share. But it was a business that we thought had a lot of promise. And you can see in the scenarios that it does, over time, start to contribute to the top line.

Q So to realize 100 million of EBITDA by 2016, you would not only have to start a new business line, but also become the No. 3 player in it; correct?

A Okay. I don't -- again, I don't recall this, but that's what it says, yes.

Q Okay. Do you have any reason to doubt that that is not true?

A No. Again, in the spirit of running scenarios to see kind of what could happen with the business, that doesn't seem unreasonable.

Q Did these projections account for the console transition that Murphy referenced in Exhibit 257, that we looked at previously?

A What do you mean by account for the transition?

Q Well, did the projections factor that in?

A It would have factored in the best information we had at the time.

Q Okay. Let's go to Tab 315, just one previous. Now, this is June 14, 2013. This is from you to Kenworthy and Fox; right? Stripes Group. Yeah? And this is about the PNC credit facility again; right?

A Allow me to read this for a moment.

Q Look at Karen's e-mail first, though.

A Okay.

Q It's about the PNC facility?

A Yes.

Q And she is saying, I just got off the phone with PNC. Again, we have two issues we need to work out with them. One, current facility and covenant breach 12/31/12; and expected covenant breach 6/30/13, 9/30/13, 12/31/13. Number 2, bank approval for TB/PANT signing of the DA.

DA is Definitive Agreement; right?

A Correct.

Q So here we have additional recognition of problems with PNC. Yes?

A Recognition that the covenants would need to be adjusted, yes.

Q Or you need to get out of the facility entirely;

right? Swap out lenders?

A Well, yeah. That was a long-term plan, but you can't do that immediately.

Q Right. And now your e-mail on top, you take off Bruce, who is your CFO at the time; right?

A Correct.

Q And you say the issue is not covenants. The issue is that we understandably have no credibility with them. They did the financing in August based on a set of forecasts that did not reflect a realistic understanding in 2013 console transition, and then we surprised them with a 2012 inventory adjustment, and an April shortfall.

Is this what you were referring to earlier about the financing in August of 2012?

A Financing in August of 2012? Yeah. So this was -- this was something I was quite unhappy about. I had been in the company for what? seven or eight months the covenant -- the loan was done in August of 2012. And it was -- it didn't recognize that a new console transition was going to hit. And it took -- in some ways this might have been reasonable at the time in August, but it took two years of unbelievable growth in the business and growth in EBITDA and just projected them out forward.

So the covenants were -- they were still ridiculously high, in terms of what any lender would need to support their loans.

But it was also, you know, it was a credibility issue in that we agreed to the loan -- I wasn't there in August of 2012. A loan was agreed to, ridiculously high covenants were set, and then we were missing them. And that's not a good situation to be in with a lender.

Q Right. It provides a potential problem in terms of liquidity; correct?

A Not liquidity. It provides a problem in the -- in the sense that, like the lender could -- it would never call the loan here. There was plenty of collateral. There was plenty of EBITDA to support a loan.

Again, for a $45 million loan, you need around 12 to 15 million of EBITDA. That's it.

We were having arguments with them about $40 million of EBITDA; right? So that was the issue.

And I understood, by the way, why, if you're a lender, it doesn't matter that the covenants are way too high. When I tell somebody something, I want to make sure that we do it.

And what we told them August of 2012, a month before I got to the business, was just not realistic, and we weren't delivering on it to the lenders. So they -- and every time this happened, they could cash in, and we would have to pay them a bunch of money.

So it wasn't so much -- I had no concerns about liquidity whatsoever. I was concerned that we had a lender who is going to keep punishing us, and that we had to actually just keep hopping over these ridiculous covenant levels when they had no bearing on, like, what the loan needed to support itself.

Q This was a major impediment to VTB's business. Yes?

A I don't think it impeded the business. It cost us money. We were able to run the business as we did, but it was clearly a hassle for us and something that I wanted to get out of.

Q And you indicate in the e-mail that you take -- that you took a, quote, great pains to forecast this year and also understand the downside forecast.

Why did you feel -- why did you say that there?

A Well, because the forecast done in August was -- didn't reflect the market starting to slow down or a console transition. So I put a lot of effort into trying to do a better job of forecasting the business.

Forecasting this kind of a business -- if I can explain for a moment -- is horrendously difficult. You have to, number one, predict how many people are going to buy a headset? That, by itself, can move around a ton.

Number two, you have to then predict, Are they going to buy your headset or someone else's headset?

There is a good track record, because we had a higher market share. But even a one percent change in that market share can drive millions of dollars in difference to the top line.

And then, number three, you have to predict, Are they going to buy a $25 headset or a $250 headset? That's a ten X difference in the revenue level; right?

So while you can model away -- at the end of the day, you're trying to predict the future on something that is extremely difficult to predict, even under normal circumstances. Now you throw in a console transition that should be positive -- and there are a lot of signals with us having -- being one of only two licensees that could be very positive. But what that does is create a bunch of new dynamics that you've never modeled in the past, and you don't even know exactly how to model it.

And not knowing how to model, by the way, doesn't mean that it's negative. A forecast means you have an equal chance of being way above it and way below it.

And we've had forecasts even -- excuse me for the lengthy answer here -- you know, in 2018, where we started the year with 157 million in revenues and 12 million of EBITDA -- this is 2018, 5 years later. Much better ability to forecast -- 157 and 12. We ended the year at the 287 and 58.

And this is, again -- like, that is how difficult it is to predict this market. And every forecast we did in 2018 was way too low.

Q So is it your testimony that you were unable to adequately forecast at the time of the proxy in 2013?

A No. You can always do a forecast. My testimony is that it is -- you're predicting the future. And the future is notoriously difficult to predict.

Q But what about when you have the information in hand, do you not have an obligation to provide it to the people whom you are representing to?

A Of course.

Q Okay. Let's go to No. 318, please.

A 318, you said?

Q Yes. This is Kenworthy to you again, and also Bruce Murphy; June 19, 2013. Again, PNC.

Mr. Murphy tells you that PNC is refusing to amend the facility, in light of VTB Holdings forecasted downside scenario; is that right?

A Hang on a second.

Q Uh-huh.

A You're at 318?

Q Yes. 318.

A Okay.

Q I'm referring to the bottom e-mail.

A I don't see that. I'm sorry.

Q Halfway down the page.
A Call back -- but it does not work -- that's not going to work.
Okay. I see it.
Q What was the downside case that you had provided to PNC at this point?
A I don't remember.
Q Was it 33 million? Well, let's do this.
A I have to see it. Yeah.
Q Let's go to 363, which is in the other binder. Apologies.
A Are we still needing this binder?
Q Yeah. Yeah. Yeah.
A Okay. Which tab?
Q 363.
A 363. Okay. I am on 363.
Q And this is -- the top one's from Ken Potashner to you. And it looks like in the first e-mail he asks whether he's missing something in the numbers, referring to why JPM, J.P. Morgan, has declined to help you with your financing; is that right?
A Okay. I've read it. So go ahead and ask your question again.
Q Well, had VTB at this point in time approached J.P. Morgan in an effort to obtain financing?

A It looks like it from the e-mail, but I don't remember that.

Q And that would have been financing to replace or swap out PNC; right?

A That's what I would guess, yes.

Q And so Mr. Potashner asks whether he's missing anything in the numbers.

But had you discussed the PNC issues with Ken Potashner by this point in time?

A I believe so, yes.

Q You wouldn't have held anything back from him, would you have?

A Correct. Nothing material at least.

Q Nothing material at least?

A Yes.

Q So if you were having covenant issues, you would have disclosed those to Mr. Potashner?

A If they were material covenant issues that weren't just kind of a bump in the road, yes. We were not hiding anything.

Q Well, with respect to the covenant issues that Karen Kenworthy was talking about, in a few e-mails ago, were those material?

A I don't recall. Sometimes the bank would -- PNC would make a fuss about something that was very easy to sort out. So if I felt like it was something that we could sort out and it wasn't going to be a problem, then Ken may not have known about it. If it was something that could be a problem, we did not hold anything back from Ken.

Q Well, you respond to Ken that, you know, you assured nothing is new; right? Because you say, Nothing new?

A Yep.

Q So the fact that you were up against the covenant breach for June, September, and December of 2013, that seems fairly material. Would you agree?

A Well, it also cites EBITDA 40 million and a worse case of 33 -- both of which are more than sufficient to cover the loans -- like, three times more sufficient. So I don't know exactly what the projected miss was.

We've had misses with PNC where it would be a one-month issue, and then it would be resolved the next month. So I don't remember how material that issue was.

But that would not have stopped PNC from essentially hassling us and saying, We're not going to agree. We're going to charge you -- the prior e-mail said $600,000 to make an adjustment. This was the nature of the relationship with PNC. They were trying to trip us up so they can charge us fees. We wanted to get out of the deal.

The e-mail also says, Worst case scenario of 33 million. So you were asking me about the numbers before.

If we gave them a worst case EBITDA of 33 million, that would have been -- that would have meant that I was extremely confident that we would beat 33 million. Because at that point in time, I'm not giving the lenders anything I don't think we can beat, because they're just going to punish us for it.

Q Well, that's 19 million less than what you provided Stripes in May, from the other e-mail; right?

A Again, the Stripes was a set of scenarios. I don't think that was a robust forecast in any way.

Q Okay. But as of June 27, 2013, your worst case is down to 33?

A For the lenders.

Q What do you mean for the lenders?

A Their -- the business that -- this is a really important point.

We would have a baseline forecast. So it looks like here, the baseline forecast is 40 million. That means our prediction -- our prediction of the future for 2013, in June, where we still had -- June, we would have 70 to 80 percent of the business left to go, because 50 percent of the business would be in Q4 and probably 100 percent of our EBITDA; right?

So even though June seems like it's far into the year, it is not far into the year for a business where 50 percent of their revenues happen in Q4.

So we would do a base forecast. That's our best estimate of what we think is going to happen. And that means that the business could be higher or it could be lower.

And then in order to negotiate with the lenders, we would do a kind of a worst case scenario, where we would intentionally cut back the forecast -- because the minute we send this to PNC, they're going to come in and say, Okay, you've got a worst-case of 33. We're going to make your -- we're going to set your covenant at 33.

Q So you have projections for Stripes. You have a different set of projections for PNC. And then another set of projections for investors and, for example, the proxy statement?

A No. I've communicated this now three times. The Stripes document you showed me was a long-term financial scenario -- not a detailed forecast for 2013. The purpose of that document -- which was a first draft by the way, so I don't even know it if it changed -- was not what's going to happen in 2013. It was how could this business look over the next five years? Which by the way, is extremely difficult to forecast.

Q I get five years out is hard. But 2013, the year in which you were in, is much easier; correct?

A It is not easy, but it is certainly easier than predicting the future. That document would not have focused on what is going to happen in 2013.

Again, it looks like a simple revenue top line, EBITDA margin projected out, get some rough scenario.

There is no detailed P&L in there, which implies that that is not part and not a communication with Stripes of some kind of a detailed 2013 forecast.

Q So --

A We did have different forecasts for the lenders. A different forecast might not be the right term.

We had a baseline forecast. And then we adjusted those forecasts to be as conservative as possible for the lenders, who, again, were trying to trip us up at every possible point --

Q Okay.

A -- because they can charge money every time it happens.

Q Putting aside the motive of the lenders, the projections you provided to the lenders were still based on the best information you had, albeit they were very conservative. Yes?

A That's correct.

Q So 314, if you could go. That's back in the first binder. I believe these are the financials or projections you gave to PNC.

And if you go to page 80 of 314.

A 80 -- so this is a presentation.

Q It was from Bruce Murphy, to several folks at PNC, cc Karen and you, June 27, 2013.

Page 80 was the 3-year forecast; right?

A Yes.

Q Now, this is a substantial document. And it's -- I don't know how many pages, but clearly more than 80.

Which type of projections were these? Were these the conservative that you produced to the bank or something informally you produced to Stripes?

A This looks like it was in June and has a downside case of 33, but that doesn't look very much different from the numbers we just looked at.

Q So these were, in fact, the projections -- the conservative projections that you gave to PNC at this time?

A Yeah. It has 40 and the 33, so that looks pretty consistent.

Q Okay. All right. And if you could go to page 29 of this document.

A Okay. Yes.

Q It talks about the console transition; right?

A Yes.

Q And so is it fair to say that these projections factored in that console transition?

A Well, so these are not financial projections from us, to be clear. These are for software sales. But this kind of a pattern would have factored in.

Q Factored in, meaning it would have been accounted for. Yes?

A Yes. Well, to the best of our ability. This is not a forecast for our business. It's a forecast for -- out of the EA presentation, for what they believed would happen with the console transition in terms of their software sales.

Q Okay.

A Hardware is very different, by the way, than software.

Q So 33 million, which is your downside estimate that you gave to PNC, that accounts for the console transition?

A Well, it would have been the best information we had at the time.

Q Okay.

A So June, console transition had not happened yet. And I think by June, we probably knew that PlayStation was coming, but I don't know if we knew for sure at that time.

Q And this graph in front of us, or on the screen, that demonstrates what? It takes about two years to come out as a console transition? So your old gen gets replaced by the new gen?

A This is software, so hardware is different.

Q Okay.

THE COURT: And software is the actual games; right?

THE WITNESS: Software is the games.

THE COURT: Yeah.

THE WITNESS: I'm going to -- if I can draw a quick analogy because this console transition is really important.

Imagine you have an apartment building with 100 units. And you've got suites and one bedrooms and two bedrooms and three bedrooms.

And then someone says, hey, we're building a new building across the street. It's going to have 120 units, so you're going to make more money over time, but it still being built.

The console transition is like somebody announcing okay, over time, all of the renters are going to get out of the old apartment, and they're going to move into the new apartment over time.

What you don't know -- and that's a positive by the way, because you're going to rent a bunch of new apartments in a building that has more units -- but you don't know at what rate are they going to leave. And very importantly, at the start, you have not built to the other apartment yet.

So while we had like 20 products, like, so roughly $200 million of business in people buying headsets for PlayStation 3 and Xbox 360 -- even at the console transition, we only had a few products that people could use for Xbox One and PlayStation 4 -- I'll call those the new consoles. So lots of products for the old consoles. At the start, only a products for the new consoles.

That's not a big deal, by the way, at the beginning, because people don't immediately leave the old consoles; right? At the start, you know, only 100,000 people by the new console; right? So typically it takes, like, three years to transition where more people own the new console than the old console.

And that was the projected crossover, by the way. I think it was 2015 or 2016.

BY MR. APTON:

Q So initially sales pause or go down until so your new gen equipment takes over the old gen?

A Not necessarily. Because when -- it depends on, essentially, how quick the renters want to get out of the old apartment.

Typically that rate is slow, so they might still -- consumers might still buy headsets for their Xbox 360 and PlayStation 3. And then you get a net bump of positive, because some gamers are now buying for the next consoles.

It's really the relative rate of people leaving your one apartment and moving in while you're building out the new apartment. How fast that happens is what drives the financials.

And that, you know, that transition, the new consoles were far more successful than anybody had predicted. And we got it wrong, and the people that we relied on for their forecast, like DFC that does console forecasts, got it hugely wrong, including in 2014.

And that affected our forecast. It affected our financials for 2013. It affected our financials for 2014 and 2015. But that's something we only learned over time. In fact, the whole industry only learned that over time.

Q But this is where this is going, is when you actually learned that, relative to when the Fairness Opinion was? Relative to when the proxy came out? And relative to when the vote happened? So that's where we're going with this.

A Sure.

Q So if we can look at 274. This is an e-mail from you to Ken Potashner dated July 29th, 2013.

Now, I had asked you if you had kept anything from Ken Potashner about PNC. You said no. This e-mail would suggest to support that; right?

A To support it or not support it?

Q Support it. Because he asks about the status of the approval from PNC. I assume he is talking about amending the credit facility; correct?

A I would guess. Again, we don't hold anything back, material, from Ken or Parametric.

Q And you tell him that you haven't received word yet and you're super frustrated; right?

A Okay.
Q That's correct?
A Yes.
Q Okay.
A Hang on. Let me just look at this --
Q Sure.
A -- so I know the context. Yeah. I remember this phantom stock thing. This was -- Ken harassed me to the very last second to try to get everything out of the deal he possibly could. It drove me nuts.
Q We've heard testimony to that effect from a few people.
A The guy was -- he was relentless. This was like a tiny adjustment right at the end of the process to get a few more shares.
Q So let me ask you, What was the status of the agreement at this point?
And before you answer, if you -- you could use Exhibit 313 to refresh your recollection.
A Okay. July 29th would have been pretty close, because I think we signed the DA on the 5th. But I have to look at 313.
Q 313 is not an evidence yet, so don't tell me what it says. But you'll see it's a conversation between the Stripes folks.

A But this is earlier in July now.
Q Correct. But I'm wondering if it refreshes your recollection as to what the status of the PNC facility was at this point in time?
A I don't really -- it doesn't. I'm not sure. But the DA -- we signed the DA on the 5th of August, so we would have been pretty close by the 29th.
Does that answer your question?
Q It's an answer. I mean, it wasn't the answer I was hoping for, but that's okay.
A You can ask the question again, if you would like. I think you asked me where were we on the DA?
MR. HESS: That's the part you don't say out loud.
THE COURT: Yeah, you know.
THE WITNESS: You asked where we on the DA. And I said I think we were pretty close at this point in time.
BY MR. APTON:
Q Well, I would prefer if you had read Exhibit 313 and, you know, gone through it. But I don't want to waste too much time.
THE COURT: Counsel, let's just keep going.
MR. APTON: Okay.
THE WITNESS: Okay.
THE COURT: Remember, this is the part of the trial where you only ask questions you know the answer to.

BY MR. APTON:

Q So I --

A Is that how this works?

THE COURT: It's how it's supposed to work. At least in the dark ages, when I was a young lawyer, that's what I was told I was supposed to do.

THE WITNESS: It seems only fair that I would know the questions ahead of time too then if he knows the answers ahead of time.

THE COURT: I'm sure things have changed.

BY MR. APTON:

Q So Exhibit 84 is the Fairness Opinion. And you can go to that if you want. But I just want to confirm with you that it included --

A 84.

Q 84.

A Okay.

Q If you go to page 26. Now, this has --

A 84, you said?

Q Yeah. Yeah. Tab 84, page 26. Now, for 2013 it says suggested EBITDA. And you see the bar chart there?

A Yes.

Q 40.6 million for just the EBITDA for 2013. Now, we know that you were already forecasting downside of 33; right?

A Yeah. I think the range was 40, and then a lender conservative case of 33 -- which means that our best estimate at this time would have been 40, even though I think the -- this is in the Fairness Opinion, you said?

Q Uh-huh.

A Okay.

Q Yeah.

A I think those numbers were also a bit earlier in June, but I believe this was the forecast we had at the time -- 40.6.

Q As of June, the downside had gone down to 33. In August of Fairness Opinion uses 40.6?

A Yeah. But, again, the baseline case of 40 would have been our estimate of the most likely outcome at the time.

Q Okay. Well, let's go to 364 now. As you go there, I'll tell you 364 is an e-mail between you and Mr. Doornink. It's August 7, 2013, so 5 days after the Fairness Opinion.

A Okay. And what would you like --

Q And you're suggesting to Doornink that you guys put a range in the proxy. Quote, Range would be 180 to 195 and 30 to 35.

So whether you take the low end or the top end, either way, these are below or less than the numbers from the Fairness Opinion; correct?

MR. HESS: Objection. Misstates the document.

THE COURT: Overruled. And, sir, you're welcome to read the document cover to cover before answering if you would like to.

THE WITNESS: Yeah. I'm not sure what this is. It almost looks like it's in relation to a guidance or what we're going to tell investors. Hang on.

BY MR. APTON:

Q Do you want to read Document 364? Or should I ask a question, sir?

A You can ask a question.

Q So Mr. Doornink and you were discussing what to include in the proxy statement; correct?

MR. HESS: Objection. Lacks foundation.

THE COURT: Overruled.

THE WITNESS: I don't know. This is -- I don't see proxy statement someplace here. I'm sorry.

BY MR. APTON:

Q And Mr. Doornink sends you a draft of a disclosure; correct?

A Again, I'm sorry. But I don't know -- this looks like -- he says this refers to guidance. So I don't know if this is a range for guidance or something related to the proxy statement.

Q No, I think it is. He has a third option giving specific 2013 guidance.

Do you see that on the first page --

A Yeah.

Q -- first paragraph of his e-mail?

A I'm sorry. But where does it say proxy in here? That's what I'm missing.

Q Well, we're talking about Mr. Doornink's suggestion for giving specific 2013 guidance. Yes?

A I don't know. I don't know if that's guidance, because I think we had an investor call right around this time, where we were to make our first public comments.

You may be right, by the way, but I don't see proxy in here. And so I'm guessing this might have been in relation to the investor call we had right around this time.

Q That's fine. In any event, he's suggesting that you give specific numbers.

And if you go the top of page 2, As to Turtle Beach, we are expecting 2013 revenues of 180 million with EBITDA of 30 million. These expectations are consistent with the impact of the console transition, other companies in the gaming space are projecting. And we expect the company to resume growing the top and bottom line as the new cycle takes off.

So whether this is for an investor presentation or the proxy statement or anything else, you would agree Mr. Doornink is saying Turtle Beach is expecting 2013 revenues of 180 million and EBITDA of 30 million; correct?

A No.

MR. HESS: Objection. Speculation.

THE WITNESS: I don't think that's correct.

THE COURT: Overruled. You can answer.

THE WITNESS: No, I don't think that's correct.

BY MR. APTON:

Q Why is that not correct?

A Because he is -- I think he might -- he might just be picking numbers out of the air, just as an example of how to draft the document.

I don't believe at this time -- in fact, I think we had an investor call shortly after that, where we communicated a range of 195 to something, and EBITDA, I believe, of 32 to 40, consistent with the numbers we had been looking at.

I don't recall ever posting anything or discussing 180 and 30. So I'm guessing he's just drafting something, as an example, with some numbers filled in.

Q So it's your testimony, he's just making it up out of the blue?

A Not making it up, he's just giving an example of numbers.

Q And what about in the top line of your top e-mail: Range would be 180 to 195 and 30 to 35.

Is that based on anything in particular? Or no?

A Yeah. I think that this, again, might have been in the context of communicating to investors. And I have an inclination, like I do today still, if we're going to start communicating numbers to investors to have very high confidence that we can hit those numbers.

Q So did you --

THE COURT: So we're going to take our afternoon recess now. It's 3 o'clock. If I could see you guys back at 3:10.

MR. HESS: Thank you, Your Honor.

(Proceedings recessed at 3:01 p.m., until 3:07 p.m.)

(Pause in the proceedings.)

THE COURT: Okay. Are we ready?

MR. APTON: Yes, Your Honor.

BY MR. APTON:

Q So, Mr. Stark, we were looking at 364 and we were talking about this, quote, "specific 2013 guidance," close quote, that Doornink had circulated and arranged that you provided a response. And I believe it was your testimony that these might have just been placeholders or something to that effect?

A Yeah. It looks like he's giving me examples of how Activision would have provided guidance.

Q So let's go --

A And again, I think on the next day we talked to investors and gave a range of 195 to something and 32 to 40.

Q Let's go to 431. And as you get there, I'll tell you that this is from Karen Kenworthy at Stripes to a bunch of people, including you, as well as someone from JP Morgan. Correct? August 7, 2013.

A It looks like it, yep.

Q And so the same day you and Mr. Doornink are having your discussion, it looks like Karen Kenworthy circulates different projections, yeah? Back up to 198 to 218 for revenue and 34 to 40 in EBITDA. Yeah? On page 4.

A I don't see that here.

Q If you look at the second to the last paragraph we have the numbers that you and Mr. Doornink were talking about.

A The second to the last paragraph on what page?

Q Page 4.

A Oh, gotcha. Okay. I'm with you. Yes. Again, this looks like a variety of kind of options for communicating -- I don't know if this is the proxy or on an investor call.

Q But in any event, you guys are, in fact, talking about 180 million revenue for 2013 and 30 million of EBITDA.

A No. Again, it's the same statement from before. It looks like it's exactly the same set of paragraphs. I don't believe at this point in time we ever had a forecast that was 180 or 30. That doesn't mean that we might have not talked about communicating that to investors to be, like, ultra-conservative, but we didn't. I think on the next day we disclosed I think 32 to 40, or that day or whatever, and 195 to

214, so something in these ranges but nowhere close to 180 to 30.

Q Well, so that's actually correct. So if you go to 163 now, you're right, the next day you do discuss yet another range. Actually, your top email, which is August 8, 2013, this is Tab 163, from you to Kenworthy and Doornink, you say, "Let's stick with the 32 million and 190 as the low end of the EBITDA revenue -- or as the low end of EBITDA and revenue."

Right?

A Okay.

Q So I guess I'm having a hard time following the projections. What was Turtle Beach's best guess at this point in terms of what 2013 was going to look like?

A Yeah. So the best guess at this point in time would have been the baseline forecast, which I believe was around 215 and 40. We had a downside case, I think we looked at this before, of around 32 or maybe it was 33, something in that range in EBITDA, and 190. So what this is saying, which is totally not surprising, is that if we're going to communicate a range then I want to be conservative. I don't want to low ball and have investors be mad that we came in way above the forecast. But when I'm communicating with investors I want a high confidence if we provide a range that we're going to be in the range. So it would be very normal and appropriate to have the top end of the investor range be our base case because base case means that we have high confidence that's what we're going to hit, but we might be below, we might be above. If we're above, hopefully we wouldn't be far above where investors would be mad that we gave too low of a range. And use the downside case as the low end of the range, which means that's a number that we have extremely high confidence that we're going to hit.

Q So it was your idea to keep in the low end of the range, the 32 and the 90 -- or 190?

A I don't recall whose idea that was, but communicating a range would have been kind of consistent with giving us a high chance of being in a range of numbers that we gave to investors. I don't recall if it was my idea or somebody else's.

Q Okay. Let's go to Exhibit 43. And this is another conversation between you and Mr. Potashner, again about PNC; correct?

A Beginning of September, it looks like. Hang on.

Q So I take it VTB was still having problems with PNC at this point?

A Well, this looks like it's in regard to the deal. So, PNC had to approve the deal, as our primary lender. We originally had a $5 million capital raise requirement for Parametric as a way for them to get a little bit more percentage for their shareholders, and then eventually PNC said, yeah, we like the $5 million and made it a condition to closing. So it looks like that's what the email is in regard to.

Q And Potashner wanted to raise the $5 million with convertible debt, but you refused; right?

A Well, Potashner told me originally he wanted the higher percentage for his shareholders, I think 20 percent instead of 19, and he would go get the $5 million, which, by the way, they badly needed, so I liked the idea since they were running out of cash, and told me it would be a piece of cake to do that. So he just said I'll take the better deal and I'll come with $5 million.

Q And he wanted to raise it with convertible debt?

A I don't remember the details of the raise, whether it was -- I don't know. I don't recall, you know, the structure of that $5 million. I do recall that it got -- it wasn't quite as easy as he told me it was going to be, but I don't remember the structure exactly.

Q Would you have allowed him to raise it with convertible debt at that point?

A Again, I don't recall what the terms were. And it's possible, also, that the D.A., the Definitive Agreement might have defined what was allowed and not allowed, and I just don't remember that detail.

Q So are you familiar with an entity, Sorbus Advisors?

A Sorbus says something, but I don't have any recollection of Sorbus in regard to this at all.

Q If you could go to exhibit -- Proposed Exhibit 350.

A 350 or 15?

Q Three five zero. It's not in evidence, so I'm going to ask you some questions about it. I want to know if this email refreshes your recollection as to who Sorbus was.

A 350. Okay.

Q Did VTB engage Sorbus Advisors in the fall of 2013 for any reason?

A I don't have any recollection of Sorbus. It looks like from the document they did something, but I don't have any recollection of this.

Q Do you recall seeing a stock valuation report from your CFO at the time?

A I don't.

Q All right. Let's go to 172, please. On 172 --

A Hang on. You're switching binders on me each time.

Q Yeah.

A Okay.

Q So, October 25th, 2013, from you to -- it looks like John Hanson. John Hanson at this point, you hired him to replace Bruce Murphy as your CFO; is that right?

A Correct.

Q And if you go down to Mr. Hanson's email underneath yours, so just above halfway down the page.

A So it starts with, "When you read the disclosure."
Q Above that it says, "Will need your help here, chief."
A Okay.
Q And then, yeah, "When you read the disclosure." He says it's very negative. This was a disclosure that was prepared by Parametric's counsel that was sent to you; correct?
A I don't know what disclosure this is.
Q Why don't you take a minute and read the underlying email, too, from Jeremy Levy at Dechert. Do you see the first sentence of that email on the bottom: "Attached is a draft disclosure that Sheppard Mullin prepared relating to the financial projections VTB and PAMT exchanged during the negotiation of the merger agreement"?
A Yeah, I do.
Q Okay. And then Mr. Hanson forwards you that disclosure and he says, "When you read the disclosure you will not like it, so be warned. It is very negative."
Right?
A Yep, I see that. Oh, and the subject here is the proxy.
Q Right.
A So I'm assuming this is some discussion about the proxy.
Q Mr. Hanson goes on, and he says,

"What is important is for you to look at the projections that were disclosed for the two companies. I was under the impression that you provided a range of results for 2013. This appears to be disclosing the projections in the fairness opinion."

So Mr. Hanson at this point is saying, hey, I thought we had a range; why are we still using the numbers from the fairness opinion? Correct?

A It looks like that, yes. Yeah, this was October, so we already had the investor meeting and we disclosed the 32 to 40 range and the 190 to 214 or whatever range.

Q What was Mr. Hanson's background when you hired him?

A CFO.

Q Of a company?

A Multiple times, yes.

Q So he's familiar with what sort of numbers belong in a proxy statement. Would you agree with that?

A I don't know that he had ever done a proxy statement, but...

MR. HESS: Objection. Calls for speculation.

THE COURT: Overruled.

BY MR. APTON:

Q And he's flagging for you that range is not in the proxy; correct?

A He's telling me that they're different than the fairness opinion, but the fairness opinion was a point in time and done in August, not in October.

Q Right.

A So he may have been asking me, even though I wouldn't know. I'm assuming the lawyers would know what belongs in the proxy. Is it the fairness opinion or is it the recent disclosure to investors of the updated projections? Remember, the fairness opinion was June-July forecast for the business. August, we had lowered the numbers and communicated the lower numbers to investors.

Q Is it your testimony that lawyers may have told you not to include the range --

A No.

Q -- and instead go with the proxy -- with the fairness opinion numbers?

A No. I believe the proxy includes the fairness opinion. The fairness opinion is the fairness opinion, which was done in August. So I'm not familiar and I don't know who told me what about what else needs to go into the proxy statement.

Q In your email you say, "Okay. Let's discuss. I've also sent the document to Ken P." -- Ken Potashner -- "since their numbers, no surprise, are way high. Our are a bit high and reflect what we believed would happen this year." Past tense, correct?

A Correct.

Q So you're admitting that the numbers in the proxy for VTB are a bit high and that they reflected what you believed would have happened this year; right?

A They reflect what I -- what we believed, the best information we had at the time when the fairness opinion was completed, which was June and July forecast for the business.

Q As of October, though, your new CFO is saying what happened to the range? What happened to the range results for 2013? Right?

A But we had disclosed the range to investors. So this is a matter of what appropriately belongs in a proxy statement. If the fairness opinion needs to be included in the proxy statement and the fairness opinion is finished and communicated or done before the merger agreement is signed, and the proxy requires the fairness opinion to be in the proxy, then the fairness opinion numbers are what show up in the proxy.

Q But the proxy statement said these are VTB's financial projections for 2013, '14, '15 and '16.

A No, it did not.

Q Do you want to go back?

A Yeah.

Q Okay.

A Let's look at the proxy statement.

Q Can we go to 244-83, please.

A The proxy statement says this is the forecast at a specific date and time. These are not -- I think it said something like these are not to be relied on as a current forecast for the business. And then in bold letters says -- I think you have it below there -- these are not to be relied on as a current projection for the business. This is important to me, by the way, because I feel very strongly if we're communicating something to investors that they could read as guidance or a commitment, that me, the CEO, has a reasonable shot of hitting those numbers.

Q This is from the proxy.

A Correct.

Q "Turtle Beach's internal financial projections included the following."

A Yeah. Scroll down. Scroll down.

Q I don't have control over it.

A There's a bold statement below there or above that says, These -- "You should not regard the inclusion as an indication" -- there you go. And above that it says, These were the forecasts used in the fairness opinion based on June and July that was completed in August.

Q The information you had at the time this went out was different than what appeared in the proxy statement; correct?

A The information we had at the time, the forecast for our business in October was different than the fairness opinion numbers done in June and July. That is correct.

Q So I want to go back to your email at 172. You say -- you explain why your numbers are a bit high: "I believe they were done in the spring time frame" -- which is effectively what you just said -- "though, and we had just come off a very strong Q1. Since then, the market has clearly slowed."

And then a little bit down you refer to Parametric's numbers and you say,

"I'm more concerned about anybody taking the PAMT numbers of $23 and $12 million EBITDA and thinking there is a hope in hell of actually doing that next year, particularly given the lack of progress at PAMT since August."

Particularly given the lack of progress at PAMT since August. That seems a bit disingenuous. Would you disagree?

A Disingenuous how?

Q Well, weren't you instructing Potashner to slow down progress at Parametric during this time frame?

A Absolutely not. And progress, by the way, was related -- We relied on two things from Parametric in negotiating the agreement, and the ratio, by the way. One was they had a $29 million weighted sales pipeline for 2014. $29 million of revenue. Now, we knew that we should probably discount that somewhat, but they had a $23 million projection for 2014, too, which we also, frankly, discounted. That ended up turning into roughly zero. It was overstated by a hundred times. So by October it was becoming very clear that the numbers they had given us were way, way, way too high. No comparison to what was happening to us. The second thing we relied on was that they would have a healthcare product ready to go, either the current emitter technology or the new technology, let's say in the first half of 2014. By the 25th of October, I had already conducted some reviews with the team there and it was like, are you kidding me? These guys are nowhere progress since August in terms of having any hope in hell of getting a product to market, that I was now going to own and own the financials for that they had committed to us, that we had done -- you know, in our diligence that was part of negotiating the ratio. No chance.

Q Let's go to Exhibit 143. I understand what you're saying, but at the same time, for example, in Exhibit 143, you have Potashner saying that he's stalling licensing discussions.

A Yeah, so March 2013. Yeah.

Q Yeah. That he's retaining bankers to stall discussions. Do you see that -- with Sony?

A Yes. Ken sent me lots of stuff like this. Ken was -- by the way, this was like shortly after we got to know each other. Ken was always selling and always negotiating, to the point where it became really annoying to me and I didn't believe half of the stuff he sent me. In fact, half the time I'd get something from him and it would be like, what is this guy's problem? Like, why would he send me something like this?

Q But he actually said he was going to give you, quote, "contractual exclusivity while you work through logistics and options."

Yeah?

A Contractual exclusivity for what?

Q Licensing? No?

A I don't recall that. But there's --

Q In Exhibit 143.

A -- there's something very important in the licensing here. If you're buying someone's house and they come and tell you, hey, I'm going to sign a long-term lease for the bedroom of the house, well, they can certainly do that, but you might not do the deal anymore because you're looking to buy the whole house. So I didn't stop any licensing agreement or encourage Ken to do anything with them. That doesn't -- that's different from him communicating to me that, hey, I'm trying to, like, do the right thing here and slow everything down, which I didn't really give a lot of credibility to, frankly. But signing the wrong license deal could actually cause our deal to fall apart. You're not going to buy something if they license it away to somebody else.

Q Well, Exhibit 109, Ken tells you he's going to, quote, slow play further licensing discussions with Qualcomm."

A 109?

Q 109.

A I'm on 109. Where are you looking? Oh, yeah, okay. It's on page 2 you're talking about?

Q Yeah.

A So, April 3rd, very early in the negotiation process.

Q No. Sorry, page 1. Excuse me.

A Page 1.

Q Email -- the bottom email on page 1. And I'm just saying Potashner told you he was going to slow play the Qualcomm discussion. Yeah?

A That's what he told me.

Q And Tab 30.

A 30?

Q Uh-huh. He tells you, "My stock is taking a beating due to me deferring signing licensing deals."

A Yes. Okay. Okay. Like I said, always negotiating and harassing me, even at the beginning of our relationship.

Q Well, understood, but if you go to Tab 111 now, you're getting this from Ken Potashner. But in Number 111, which -- the second email down from the bottom, you say, "Continuing discussions is okay, but I would slow roll a bit if it is not disruptive and obviously don't sign anything."

So you're not just getting the emails and deleting them, but you're encouraging him to continue slow rolling; right?

MR. HESS: Objection, Your Honor.

THE WITNESS: Yeah. I think Qualcomm actually was something a little bit different.

THE COURT: Overruled.

BY MR. APTON:

Q Mr. Potashner says, "Agree."

MR. PEEK: I don't think they've heard his answer yet.

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

BY MR. APTON:

Q I'm sorry, I thought you were done. Continue.

A Yeah. Man, I vaguely remember the Qualcomm stuff, but the email is refreshing my memory.

Licensing discussion at the silicon level. So I believe Qualcomm was trying to get or, you know, discussing a commitment from HyperSound to use Qualcomm chips in the solution. That's not necessarily revenue, by the way, to Parametric. That means that they're going to do the silicon inside the product. That would be something, as a future owner of the business, that we would want to make sure we're okay with because that's like -- that's a long-term commitment to use someone's parts inside your product. So my guess is that's what, you know, slow roll on this one until we knew if we were doing a deal or not, because on April 13 we didn't -- we weren't certain we were going to do this or not and I wouldn't have wanted them to sign a deal for parts inside of a product that we might have not wanted.

Q What about 108, Tab 108? This is about the SIIG deal, SIIG. He told you he had, quote, "frozen the deal. That it could have pushed PAMT's stock to the 20s if signed and announced."

A Yeah. What's your question? He's sending me emails like this constantly.

Q He tells you, in fact, that --

A Look at this. It's just crazy. I'm going to announce a deal that has no material financial significance to the business and my stock is going to be in the 20s. This was like Ken's style. This is something, by the way, over time that bothered me. He would just want to do -- he would want to tell a story. He would want to do press releases that had no substance and weren't going to convert into any financials later in time. And none of them did, by the way. Like, not a single one of them converted into something real. So, yeah, this was Ken's style and something that was very much, frankly, not my style.

Q I understand that but, you know, if you go to Tab 38, he's emailing Barnes, and he says that you and Ken Fox would prefer that he did not defend the stock and that the premium on the deal would look better.

So I understand what you're saying about Potashner, but you're encouraging him, aren't you?

A I don't think I'm encouraging anything here. Obviously, if we negotiated a deal and their stock price goes through the roof, the deal is going to be off. Like, it's just not going to happen.

By the way, I'm on the other side of the table. I'm the buyer here; right? I'm trying to get the best deal for my shareholders that I can, and Ken is trying to do exactly the same thing. And, frankly, his style was to do things like this with me and tell me this is what he's doing to essentially egg me on to make sure the deal kept going.

He told me about competitors they were negotiating, like all this stuff. And I didn't know, obviously, what was really going on or not going on, but I very much viewed this as him just constantly prodding us to move the deal forward without any further delay.

Q So if you go to Tab 106, for instance, he says again -- you know, these are all examples. So he's in a, quote, "precarious situation delaying licenses."

The same thing with, you know, 105, for example. He's going to defer the license or "defer the release based on our discussion."

A Yes. What's your question?

Q Well, my question is --

A This is not me sending him emails saying, hey, stop licensing, start deferring things. Not at all. This is exactly what I just said. He's sending me things, making me feel -- which was somewhat effective, by the way -- that if we don't get this deal done, he's going to start doing license deals and the deal is not going to happen. This was part of his pressure tactic to keep me moving forward and interested in the deal. And, you know, as much as I knew he was a salesman and, you know, a promoter, this was effective because I was always under the impression that the guy was, like, holding up something. If we didn't keep moving this thing forward, the deal might not happen, because if he licenses away a big part of the business, we're not doing the deal anymore.

Q But it went past that because he started doing things, did he not, that he acknowledged were contrary to his fiduciary duties in an effort to aid the deal?

MR. HESS: Objection.

BY MR. APTON:

Q If you'd go to Tab 138.

THE COURT: Overruled.

THE WITNESS: I'm on 138.

/ / /

BY MR. APTON:

Q 138, he's talking about giving you the exclusive gaming license as part of the breakup fee. Do you see your notes from his call, April 6th, 2013?

A Yes. You mean, the license fee that would have us paying millions of dollars to allow Parametric to work with the largest gaming audio company in the world by far, and pay them a royalty. Like we would have been -- this license agreement would have made us the biggest customer they ever had, and the biggest real announcement they ever had.

So what's the -- what's the bad part about this?

Q Well, so he tells you that this breakup fee, that if you go to 32 --

A 132?

Q Just 32.

A Okay. So end of April. All right.

Q He says, The issuance of an exclusive gaming license as breakup is deemed well in excess of traditional breakup fees and thus BOD, board of director, fiduciary issue.

So he's telling that he's had -- has a potential fiduciary issue; yes?

A Perfect negotiating tactic. Make me feel like he's giving me something that's highly valuable when I know at the other end of this, that this would be extremely valuable to them. Again, biggest customer ever. Real financial money coming into them for something, and a company that could actually commercialize something they were doing in gaming.

This is nothing more than him trying to make me feel like I was getting something special. And frankly, I knew that I wasn't.

Q Well, what about the negotiations about HHI though? So you knew you weren't supposed to be talking to him about HHI; correct?

A We got to the point on HHI where I said I wanted it out, and I didn't have any interest in having a further conversation with Ken, about his -- his option grant in HHI.

Q So if you go to 17, you forward an e-mail from Ken to Seth and Jim, Seth Putterman and Jim Barnes. You recognize that Potashner was not supposed to be -- there was a board resolution prohibiting him from talking to you about the options. And that's why you forwarded the e-mail to Putterman and Barnes; correct?

A I don't remember this e-mail. But I certainly had no interest in talking to Ken any further about his option grant in HHI. And I'm -- I'm making the distinction because there were other major issues with HHI, that had to get resolved, and I had to be involved in. But most importantly, there were two doctors who were doing the testing and -- and had a very, very important role in HHI. Those doctors were granted options in this HHI entity. I believe, if I remember correctly, that there was no provision to cancel those options. So we had no legal ability to actually get them out of that.

So we -- we had to come up with a solution to keep the doctors on board. They had to agree to it, by the way, like we couldn't force it on them. Keep them on board, and keep them motivated in -- in supporting the continued progression of the healthcare product, which was the core part of the value we saw in Parametric.

So there were -- there were multiple other items on HHI that had to be sorted out. And I would -- I did, and had to keep continue communicating with Ken, about those issues.

On his options, I had zero interest in having any communication or negotiation with him. And frankly, there wasn't any. My stance was crystal clear. Get rid of HHI. And the -- even with Seth and these guys, there was no more negotiation. It was all the discussion was then about how do we do it without offending the doctors, well, by keeping them on board.

Q So you recognized that you weren't supposed to be talking to Potashner about the options then; correct?

A About the -- his HHI option grant.

Q Well, if we go to 104, it looks like Ken reaches out to you, not just about his option grant, but other HHI related matters. And you asked, "Shouldn't I be discussing this with Seth and Jim?"

A Okay. That sounds perfect.

Q But -- right, you were not supposed to be talking to Ken Potashner about HHI and you knew it; correct?

A Well, but that's what I sent him in the e-mail. Why are you -- that -- by the way, none of this stopped him from badgering me on HHI, including these options.

Q But again, it's not as if you just deleted the e-mails. I mean, you did engage him. If you go to Exhibit 99. Ken's forwarding you an e-mail from -- from Andy Wolfe. But Exhibit 131, he's setting up a meeting with you to talk about HHI.

A You're on one -- on 99?

Q I'm on 131.

A I'm sorry. I thought you said 99. 131?

Q Uh-huh.

A All right.

Q So you guys are setting up a meeting to talk about HHI?

A Yeah. Like I said, there were really important things that had to be worked out in HHI. None of this is specific to his option grant.

Q Exhibit 98's another example.

A So he's sending me another e-mail about HHI. Where are you seeing me negotiating with him on anything here?

Q Well, in negotiating, I don't -- I don't know whether this is negotiating or not, but you're engaging with him on the topic, knowing that you're not supposed to be talking about it; right?

A Well, I'm sorry, but I see him sending the e-mails, not me engaging with him. I can't help that he sends me e-mails.

Q And 152, he actually asks for a gentlemen's agreement, if he can't talk you into keeping HHI.

What was the outcome of that? If you could go to 152 and take a look. This is July 12th. He says -- it's a little bit more than halfway down the page.

A 151.

Q 152.

A Oh, sorry. 152?

Q Uh-huh.

A Where am I looking?

Q Let's say, second paragraph on the bottom. Four lines down, "I also said in a gentleman to give me a consulting deal, if I couldn't talk you into keeping HHI, equal to what you think my stake was worth."

Mr. Potashner got a consulting agreement; did he not?

A No.

Q $350,000 for 12 months?

A I don't believe so. We -- we didn't engage him after the -- the merger was closed. I might be mistaken about that, but I don't think we did.

Q Now, this is interesting. Exhibit 159, so this is July 22nd, 2013. He starts talking to Ron Doornink about HHI. And Doornink says to him, "We got to get this HHI problem cleaned up before signing the DA." Correct?

A Correct.

Q Potashner says, "This we can support." Correct?

A Okay.

Q Is this moment the HHI problem went away?

A I don't remember. It went away. We obviously solved it, because we signed the DA. But I think around this time, I -- I believe I even called them to say, we're canceling the deal, unless this HHI issue is resolved.

I remember that, because that was a very big deal, given how much effort we had -- and cost we had put into this. But I had -- I had drawn a very clear line in the sand. HHI needed to go away. I was not -- I didn't negotiate for four months over the last tenth of a percent, on the split on the deal, only to find out that I'm not going to actually own, that Turtle Beach wouldn't own all of the asset we were buying. That -- that was the core issue with the HHI deal. That's why we drew a line in the sand. And there was no negotiating. It had to go.

Q But you needed his help to get the deal done; right?

A Whose help?

Q Potashner's.

A Help in what regard? He was the CEO of the company, or effectively the CEO of the company we were buying.

Q So you guys were working together to get the deal done; yes?

A We were negotiating on opposite sides of the table to get the deal done; yes.

Q Well, he removed the -- will you go to Tab 50. You circulate a press release announcing the -- the DA, the signing. This is August 3rd, 2013.

And you removed the Go-Shop paragraph from the press release; yeah?

A And where are you looking here exactly?

Q If you go to page 2, bottom of page 2, number 2.

A Okay.

Q "Let's get rid of the Go-Shop paragraph." Ken agreed with you on that point; right?

A I actually don't -- I think there was a -- there -- no, there -- I know there was a Go-Shop period, but I don't know if it was in the press release or not. Yeah. I also don't know if it's normal to have a Go-Shop provision in the press release, but they did launch a Go-Shop process.

Q Well, Tab 149, is another e-mail on this.

A Man, you guys like --

Q Where --

A -- (indiscernible) cookies in the (indiscernible). You're forcing me to flip hundreds of pages every time. 141?

Q 149.

A All right. I'm getting there.

Q At your request, August 3rd, 2013, Potashner says, "If the Go-Shop can come out, I will take it out."

You say, "Go-Shop is not needed."

A Okay. I'm not sure why as a buyer we have anything to do with a Go-Shop. But obviously, we're -- we're motivated to close the deal. So Go-Shop is something that the -- that the seller wants to make sure happens, and it did happen.

Q Well, it -- it went further than just taking the Go-Shop announcement from the -- out of the DA Press Release; right?

A I don't --

Q Where he -- he says in his e-mail --

A -- know what that means.

Q -- that, quote, "Two others that we discussed, but I put them on licensing track discussions and anticipate they will stay there, Amazon and Dolby. I slowed both discussions to get our deal done."

Did I read that correctly?

A That's what his e-mail to me says, yes.

Q And he says, in fact, you know, Potashner later told you that he put, quote, "boundaries in place." That made it, quote, "Very difficult for interested buyers to outbid VTB."

Do you remember that?

A I don't remember that.

Q If you go to 74.

A Okay. I am here.

Q So did I read that correctly, that he put boundaries that were very difficult for interested buyers to overcome?

A I don't know what he did. This is what he communicated to me. As I mentioned, he -- he, you know, continued even -- this is -- this is crazy, November 19th, he's still positioning with me to make sure that we're -- we're pressing forward to get the deal closed. And this is after the DA is signed, or maybe this is because his business is having all kinds of issues and I'm angry with him that -- that they're not making progress themselves.

Q Was he angling for something at this point?

A I have no idea. I'm not going to put myself in his head here.

Q It went further; right? He did other things, too. Didn't he skew the vote to make it easier for the merger to get approved?

A I have no idea what you're talking about.

Q Go to Tab 162. Is this from Potashner to you?

He says, quote, "I skewed the scenario, so we don't need 50 percent of the vote. Just 50 percent of those in attendance or those who vote their proxy. This should help.

So my question is, is he did a number of things to aid you in closing this deal; correct?

A Again, these are e-mails he is sending me. These are not e-mails from -- with me asking him to do anything. I don't know what he did, or why he was implying this, or what actions he took. And frankly, those -- those are not my responsibility. I'm on the other side of the table negotiating to buy a company. At this point, we signed the DA. My goal now is to move us through the process and get the deal closed. And given the deal was good for both sides, that would be his motivation as well.

Q Let me ask you about one e-mail. Excuse me, it's in this other binder, unfortunately, but, 492.

Well you know what, it's actually --

MR. APTON: Your Honor, give me one second. Give me one second.

THE WITNESS: Sure.

THE COURT: Okay.

(Pause in the proceedings.)

THE COURT: And IT hasn't validated it yet?

MR. APTON: IT has not validated it yet. We sent it last night to --

THE COURT: It's Monday. Monday's are the worst day for IT.

MR. PEEK: Your Honor, he has to show it on the screen.

THE COURT: Is it admitted?

MR. APTON: No.

MR. PEEK: No.

THE COURT: I'm going to step down the stairs while you show the witness, so I can't see, but I'll still be listening.

MR. APTON: Okay. Can we show 492?

BY MR. APTON:

Q Mr. Stark, do you see the e-mail --

MR. HESS: Well, it's 492. 492's in?

MR. PEEK: No, he's trying to -- he's trying to -- he's trying to lay a foundation for it.

MR. HESS: Oh, whoops, I'm sorry.

MR. APTON: Unless you stipulate to it.

MR. HESS: No, no, no, I go it. Sorry. Go for it.

MR. APTON: Okay.

BY MR. APTON:

Q Mr. Stark, did you send this top e-mail, on the screen?

A This is really small here.

Q Sorry. Mr. Stark, I'm referring to the -- on the screen.

A Yeah. I've got it here in front of me.

Q Oh, okay.
A I'm looking at it here.
Q Okay.
A This is an e-mail from me to Ken. Yes.
Q Okay.
A November 12th.
Q And you -- you sent it on November 12th, 2013?
A It looks that way, yep.
Q And does it appear to be a true and correct copy of the e-mail you sent to the best of your knowledge?
A To the best of my knowledge.
Q Okay.
MR. APTON: Your Honor?
THE COURT: Any objection?
MR. HESS: No objection.
MR. PEEK: No.
THE COURT: It'll be admitted.
(Plaintiff's Exhibit Number(s) 492 admitted.)
MR. PEEK: It's Monday, Your Honor.
THE COURT: That's all right. It's Day 6.
BY MR. APTON:
Q So, Mr. Stark, I -- this is an e-mail from you to Mr. Potashner, and it's a response to his offer to go out and raise some additional capital; right, 5 to 15? Is that right?
A It looks like it. Yep.

Q And dated November 13. And, I mean, you received this favorably; yeah?

A It looks like it, yeah. Especially since we wanted to get PNC out, some additional capital would be good. Plus, we anticipated that HyperSound would cost a material amount of money to commercialize. So, yeah, getting additional capital into the business would have been good.

Q Why do you refer -- or why do you use the term "Hail Mary," the last line there?

A I don't have any recollection, although I like the analogy.

Q Well, in the analogy, who would the receiver be?

MR. HESS: Objection.

THE WITNESS: I have no idea.

THE COURT: Overruled.

THE WITNESS: I don't know. I --

BY MR. APTON:

Q Were you not referring to the investors?

A I don't think so. It sounds like the receiver is me, and he's -- I think he -- you know, he had a lot of trouble closing 5 million. So my interpretation, although I don't remember this at all, was that he now is proposing to get another 5 to 10 million, which, given how much trouble he had closing the original 5, sounded like a Hail Mary, and if I'm the receiver, he's throwing a Hail Mary and not telling me about it. That's my interpretation, but I might be wrong.

Q Well --

THE COURT: But you at least have your eyes on the ball and are prepared to catch it --

THE WITNESS: No, he's like --

THE COURT: -- if it's even close? Okay.

THE WITNESS: He threw it, and I don't even know it's coming.

THE COURT: All right. Yeah, okay.

THE WITNESS: That would not -- knowing, you know, my -- knowing Ken, that's not -- not surprising.

BY MR. APTON:

Q Okay. What I'd like to do is go back to the timeline. Remember, we were discussing before how I was saying VTB's financials were coming down during 2013?

A Yes.

Q Okay. So last, we were at -- think it was August, and your downside was 32 million EBITDA, 190 in revenue. Does that sound about right?

A That sounds about right.

Q So let's -- let's go back. It's now October. If you go to 268. And this is correspondence from Daniel Hoverman at Houlihan Lokey. What was Houlihan Lokey's role in this?

A They were the bankers for Parametric. Yeah, I think that's right.

Q And Houlihan Lokey is asking you for the revised 2013 forecast and the, quote, "model that supports the forecasts for the additional years," correct?

A Allow me to look at this, please.

Q Yep. Yeah, I'm sorry. If you go to the underline -- or the first e-mail.

A First e-mail on what page?

Q It starts on three, goes into four.

MR. PEEK: Page 3?

MR. APTON: 268-3 --

MR. PEEK: Okay.

MR. APTON: -- going onto --

MR. PEEK: She's still on one. That's why I asked.

THE WITNESS: Yeah. So this is their -- Houlihan Lokey asking us for, I think, a revised 2013, but more importantly, it sounds like a 2014 forecast.

BY MR. APTON:

Q Well, okay. They asked you for the 2013 -- revised 2013 forecast in the proxy, because as of right now, the 2013 forecast said, if I remember correctly, 218 million in revenue and 40 million EBITDA; is that right?

A No. That's not right.

Q Will you go back to the --

A We've been through this four times now. That was the fairness opinion completed in August, based on the best information we had in July and June. It was never communicated as a current forecast at the time of the proxy.

Q Okay. I disagree because we looked at the proxy, and the wording of the proxy very clearly said these are VTB's internal projections for 2013, '14, '15, '16.

But did it not say that?

MR. HESS: Objection, argumentative.

THE COURT: Overruled.

THE WITNESS: The little window you showed here said that. But if you read above and below it, it says this is from the fairness opinion, completed at the beginning of August based on July and June forecasts. And it is absolutely true that between that time and the end of October that our -- out best estimates, our forecasts for the year, changed. They were lower.

BY MR. APTON:

Q And Mr. Hanson previously asked you, hey, are we putting in the revised forecast, and now Houlihan Lokey's doing the same thing; are they not?

A No, they're looking for new forecasts for 2014 from us.

Q And 2013; correct?

A Yeah. 2013 -- I think we gave them color on 2013, it says in the e-mail as well. In October, we had a -- I still remember this very specifically, a shocking event happened to the business. So Xbox One was launching for holiday. We had tens of thousands of units of headsets ready to go for Xbox One. We put an enormous amount of effort -- one headset model only -- to getting that headset done and ready to go. And in October, Microsoft called me and said no headsets were going to work on Xbox One.

That was -- that was absolutely shocking. And that took out what would have been, you know, 20 to 25 million of revenue, looking at the e-mail here, refreshing my memory, and to 10 million in EBITDA, because everyone who bought an Xbox One at holiday, right after launch, a big part of our plans for 2013, would not be able to get a headset. Big issue for us, by the way, and absolutely stunning that Microsoft would do that, and consumers wouldn't have any way to play multi-player games on the Xbox One.

However, they told us that they expected to have compatibility with the headsets in early 2014. And so this, for us, would just create pent-up demand. People would buy an Xbox One, they'd be really mad at Microsoft that no headsets worked. But if they want to play Call of Duty and all the popular games, which is what the early Xbox One users want to do, they would just be lining up and waiting.

It's almost like that apartment building was suddenly not open to rent, but people were going to wait outside, and the minute you open it up, they were going to come piling in.

And that's indeed what happened. It pushed revenues into 2014 and EBITDA.

But that was a major shock, and I was extremely upset about it because, by this time, we had already been communicating with investors that 40 to -- 32 to 40 range, and this would be a downside on that range now.

Q Right. Because that -- you -- in your e-mail here in response to Mr. Hoverman, you say, "The Xbox One move is worth about 20 to 25 million in revenue, and 9 to 10 million in EBITDA, so we will end up at the lower end of the guidance given, with a chance of being below that," right?

A Right. Correct.

Q And Hoverman presses you after that, and you respond, quote, "Guys, let's get real here. We are talking about two placeholder numbers, two, revenue range and EBITDA range." Did I read that right?

A Yes.

Q But you didn't provide those ranges ultimately in the proxy, did you?

A We did not redo the forecast for 2014. Even today, we don't do that until --

Q 2013, I'm talking about.

A Well, we gave them 2013. We gave them the 20 to 25 and 9 to 10. So that was -- that was our expectation of how that would layer into the base forecast. And indeed, given our baseline was, I think, 214 or 210, something like that, and 40, the 9 to 10 would -- if it was 10, we'd be below the 32. So that math, like, all tracks.

Q But -- but --

A Right. So we would be below that. But what they really wanted, I remember this, they were pressuring us to give them numbers for 2014. And it -- there are too many moving parts in October. You've got to get through holiday first and see what happens before we were going to, like, re- forecast 2014, even for ourselves, by the way.

Q But my question was, is that revised range for 2013, never made its way into the proxy; correct?

A I believe the proxy communicated that there was going to be a negative impact of the Xbox One not shipping with headsets. I don't remember if we included the specific numbers, but we clearly communicated them to Parametric and their banker.

Q And let's go to 374. 374, this is -- this part of the same conversation with Hoverman; correct?

A It looks like it, yes.

Q And in this one, he tells you that, "If there's a chance 32 million isn't possible, then Craig-Hallum will," quote, "clearly want to disclaim," close quote, "the 2013 EBITDA projection of 40.6 million from the proxy."

Is that right?

A That's what he's saying here, yes.

Q So the conversation was very much a part -- or very much about 2013; correct?

A Okay.

Q Do you agree?

A It looks like that's what he's communicating to me, yes. I don't know what "disclaim" means, but okay.

Q Well, it means that it was going to try to -- Craig-Hallum was going to revise its fairness opinion; correct?

MR. HESS: Objection. Foundation.

THE COURT: Overruled.

THE WITNESS: I don't know if a Fairness Opinion gets revised or not, at this point, after this DA is signed.

BY MR. APTON:

Q Right. You've been a CEO for many years. So I assume you dealt with this before. No?

A Yeah. I had done about -- I think three or four acquisitions to this point in time. And in October 31st, the Definitive Agreement was signed. It was done. We were doing the deal.

So, you know -- and at this time, remember that Parametric's performance was really falling apart in ways that were going to hurt us. So even though we were having issues on the Xbox One, we very much knew that as a deferral into the next year.

I didn't view us as having any major problems. I certainly, at this point in time viewed Parametric to be falling way short of what we relied on in the deal.

So if -- you know, if the question is like should the Fairness Opinion have been redone and the deal renegotiated? Well, that's up to the Fairness Opinion. It is Parametric's responsibility.

But I'm pretty sure they would not have wanted to raise that issue, because had we renegotiated, it would have gone far in the other direction.

Q So is it your testimony that after the DA was signed, that you didn't have any obligation to provide updated financial information to Parametric's investors?

A No. We did provide updated financial information.

Q But you didn't provide the revised 2013 guidance, though?

A We provided guidance and clearly communicated to investors that we would miss the numbers, based on the Xbox One issue.

I was very careful and very conservative to make sure we were not setting expectations that I didn't think we could make.

Q Well, let's go to 330, please.

A 330?

Q Uh-huh. 330. Now, while you're talking Hoverman, you're having an issue internally here, trying to reconcile your 2013 guidance; correct?

I'm looking at the e-mail between you and Murphy and Hanson.

A Just allow me a minute to read this here.

Q If you look at the first paragraph, you'll see John is getting a full year EBITDA, even at 195 net revenue that is much lower than 32 million.

A Okay. Yeah, I see that.

Q So internally your projections are now giving you something much lower than 32 million, even at a net revenue of 195?

A I do kind of vaguely remember this. So we had the -- we had audited private company financials. The -- we had to change auditors, based on public company rules about who provided the financials -- so that's what re-audit refers to. It doesn't mean that the numbers were wrong or the audit was bad.

But when a new accounting firm comes in, and they look at all the numbers, then there's an enormous amount of complexity that goes into the details, especially of public company members. What counts as a cost of goods? What counts in the margins? What counts in the op ex? What continues in the EBITDA?

And I remember that numbers were moving around, driven by essentially accounting changes -- so what counts and what doesn't count.

This implies that John -- you know, that we were getting numbers that indicated a lower EBITDA than 32. But I don't know what happened to this. So I don't know if that got sorted out -- because again numbers were moving around -- and we got back on track? I don't have kind of the rest of what happened on this.

Q Well, I asked if you put in the revised 2013 guidance. And I believe you said we put in -- I forget the adjective you used -- but you said you put in a disclosure, instead of the numbers; correct?

A In the proxy.

Q In the proxy, yes. So let's look at exactly what you put in. I think I know the section.

If we can go to 244, page 139. It's not in your binder, Mr. Stark.

MALE SPEAKER: He has it.

THE COURT: It's in the --

MR. APTON: Oh, he does? Okay.

THE COURT: It's in the smallest of your binders, sir --

MR. APTON: Yeah. Thank you.

THE COURT: -- because Mr. Hess brought it to him. Remember?

THE WITNESS: What am I looking at here?

BY MR. APTON:

Q Page 139.

THE COURT: If you want to look at paper, it's in your tiny little binder.

THE WITNESS: All right. I've got it.

BY MR. APTON:

Q And it's heading, 2013 Outlook.

A Okay.

Q So you would agree that this section does not disclose to investors that EBITDA for 2013 is down to, I think, below 32 at this point?

A No. It says the label resulting in downward revision.

FEMALE SPEAKER: Judge, I can't hear him.

THE COURT: Sir, you've got to keep your voice up.

THE WITNESS: Oh, sorry. I've got so many documents --

THE COURT: I know.

THE WITNESS: -- it's [indiscernible] facing the wrong way.

THE COURT: I understand.

THE WITNESS: So it says Turtle Beach is -- the Xbox One had sent related revenues.

The delay will result in a downward revision in the

2013 outlook for revenue and EBITDA provided by Turtle Beach management on August 8th -- that was the 32 to 40 range. So we're saying a downward revision to that.

That's pretty clear. And remember that we didn't -- at the end of October, we still have November and December to go. Like, the numbers can still move enormously, including up. They didn't, by the way, against our expectations.

But the forecast -- again, it's a prediction of the future. This may sound very strange, but November and December could drive 40 percent of the total revenue for the year. So you have to get through that.

And we -- actually, we don't have a reliable view on revenue until we get to the back part of December; and EBITDA takes us until last January to have a good review.

So yeah, I think this is a very reasonable disclosure of the risk. And it was important to me that we're not communicating something that was not like realistic and reasonable. Because my goal as the CEO of the company is to not tell investors something that I didn't have confidence we could accomplish.

BY MR. APTON:

Q But the downward revision in your EBITDA had already occurred. And plus you already knew you were having console transition problems with the Xbox by this point in time. So it wasn't a matter of will result. It had already resulted.

A No. Remember that -- that John's communication is this is our forecast. Even if it was 32 million; right? And that may have meant that he was running a scenario and we could get to or below 30; right? But that doesn't mean that that's a sure thing that's going to happen.

Again, we still have an enormous amount of year left. We could have come in at 40, if things turned out better; right? So the numbers are difficult to predict and they move around. And my goal was to make sure we were communicating, to the best of our ability, what we expected to happen and in an environment that was extremely difficult to forecast.

Q So is it your testimony that, as of December 3rd, the date of this proxy, you thought things were going to turn around? You thought you were going to hit the 40 million EBITDA or come anywhere close?

A No. I didn't say hit the 40. But -- no, I didn't say that.

And by December, depending on what it is, we would have gotten more and more visibility into it. But I think the disclosure is fair for that point in time.

Q And just to be clear, the disclosure does not contain the specific 2013 revenue guidance; correct? Numbers.

MR. HESS: Objection.

THE COURT: Overruled.

THE WITNESS: No. It just refers to a downward revision from the range provided in August.

BY MR. APTON:

Q And had it included the specific guidance, it would have shown 30 million in EBITDA; correct?

A No.

Q Why not?

A Why -- where are you getting the 30 million?

Q Well, wasn't that the number you and Mr. Doornink were discussing --

A No.

Q -- back in October?

A I told you that he was just using that as an example of how to position the guidance. He --

Q Let's go to 372, please. And 372 is: I'm still having issues with PNC; correct, the capital raise? This is an e-mail with you to Hanson and Kenworthy.

A Where are you seeing PNC here? Gotcha.

Q Well, you're discussing how to raise the capital for the closing requirement for PNC; right?

A Well, that wasn't our requirement. That was Parametric's requirement.

Q Okay. And you're acknowledging that Ken Potashner doesn't want to do it, because, let's see, quote, of course they don't like the dilution, and we don't care about diluting them. So I would like us to figure out what the right move is here for us and our shareholders; right?

A Correct.

Q But Potashner ended up raising the 5 million with Hodge's Capital Management. Does that sound correct?

A That does sound correct.

Q That was in November of 2013?

A I don't remember the specific timing, but clearly it got done, otherwise the deal wouldn't have closed.

Q So a proxy comes out December 3rd. We've talked about it. We've seen the financial projections for VTB; right?

A The Fairness Opinion numbers, you mean?

Q I guess we'll have to agree to disagree. But on page 83, the numbers underneath the heading VTB's financial projections?

A For the Fairness Opinion, yes.

MALE SPEAKER: What number are we on?

BY MR. APTON:

Q We're going to go to 328. This is December 6th, 2013. And Kenworthy is asking -- Kenworthy, from Stripes, is asking you for the final fourth quarter numbers for PNC.

A Okay. I see that.

Q And you told her you had the fourth quarter 2013 estimate. Yeah?

A Wait. Say that again. I missed your comment due to the sneeze.

Q And you told her you had the numbers that she was asking for, right?

A I say we have an estimate for Q4 in 2013, that they can -- that you can use. That would have been an estimate with one month to go in the year.

Q And then do you remember what those were?

A I don't.

Q Well, let's go to 425. And here Hanson is giving the numbers for Q1 of '14: EBITDA of 1.5 to 3.5, which I believe you had initially intended to include revenue from the Xbox One fiasco that got pushed into Q1 of '14; correct?

A I don't remember when we thought that revenue was going to come in.

Q In any event, the EBITDA you were projecting for the first quarter of 2014, according to Ms. Kenworthy, went down from downside motto we loss provided for them.

You had previously provided 5.2 million and now you were looking at 1.5 to 3.5; right?

A Yeah. Lender forecast, intentionally very conservative.

Q But still, based on the best information you had at the time; right?

A And then reduced in haircut because it was going to a lender. So that would mean -- if this was going to the lender, that would mean that our best estimate was higher than these numbers by some amount. We would always want to have cushion in whatever we sent to the lenders.

Q Now, if you can go to 370.

A Okay. The 16th.

Q And this is Mr. Hanson telling you guys that you were -- VTB was going to breach its covenant for 12/31/2013; right?

A Where do you see that here? Do you want me to read the whole e-mail or are you pointing it out?

Q Yeah. You can read the one from Matt Levering. He's at PNC?

A Matt.

Q He's explaining how the covenant's at risk for the end of the year; correct?

A Okay. I see that.

Q But Hanson says that the loss of approximately 4 to 6 million EBITDA was from the Xbox. So that's less than 9 to 10 that you previously stated?

A Okay. I don't have any recollection of that. And this would have been some time later, so maybe we had a revision of what the impact was. But I remember the 8 to 10 or 9 to 10.

Q Okay. Well, let's go to 324. Now, 324 is dated December 16th, from Hanson to you and the guys at Houlihan Lokey. On page 2, you have the forecast for 2013, and it looks like you're coming in: Revenue 179.5; EBITDA 21.2.

Did I get that right?

A And what was the date -- yeah, what was the date here? Okay. So by the middle of December, we would have had a reasonably good idea of the revenue, but EBITDA would still be an estimate that could change still significantly.

Q And this wasn't -- this was not being sent to PNC; correct?

A I don't know. This says low range, so it was a downside forecast. This could have been something that we used -- you know, we tended to use the kind of the low or the downside case with PNC. But it doesn't reference anything related to PNC. So this is his downside forecast being sent to me.

Q And you would agree that this is now significantly less than the numbers in the proxy, the 40 million; correct?

A It's certainly less than the 40 million, yes.

Q And now, I have another document that we were waiting for validation on.

But perhaps I could show the witness.

THE COURT: Let me go stand on these little stairs down here. All right. Continue on.

BY MR. APTON:

Q If you could pull up 493. Mr. Stark, are you a recipient on this e-mail?

A Yes.
Q And you received it from John Hanson on December 19th?
A Yes.
Q And do you believe, to the best of your knowledge, that is a true and correct copy of the e-mail that you received from Mr. Hanson on that day?
A Sure.
MR. APTON: Your Honor, I move to admit.
THE COURT: Any objection?
MR. HESS: No objection.
MR. STIGI: No objection.
THE COURT: Be admitted. Thank you.
(Plaintiff's Exhibit Number(s) 493 admitted.)
MR. APTON: That's Exhibit 493.
BY MR. APTON:
Q So now, these are the projections that Mr. Hanson sent to PNC; right? The same numbers that were in the one we just looked at?
A I don't know if those are the same numbers. It's not on the e-mail here.
MR. APTON: Can you scroll down, Karen?
BY MR. APTON:
Q And let's see, fiscal year 2013 --
A Can you make it a little --

Q EBITDA, at the bottom, 22.1.
A Okay. I see that.
Q Between 22.1 -- and your high is 27.4; right?
A Yeah. And what's the date on the e-mail again?
Q It was December 10th, 2013 -- no, December 19th --
A 19th.
Q -- 2013.
A Okay. Fair enough.
Q So I have a question here, if we could go to Exhibit 376.
A Okay. I'm on 376.
Q So this is an e-mail chain with one of my clients, Adam Kahn and Ken Potashner. You spoke to Adam Kahn. Yeah?
A Yes.
Q Do you recall what was said during that conversation?
A I don't.
Q And on January 3rd, he e-mails, When is the deal closing?
And Ken Potashner responds that same day. He says, The final step is administrative sign-offs by VTB's banking entity, PNC.
Now, you're copied on this; right?
A Yes.
Q And the e-mail says, PNC has a syndicate with several banks, all requiring the sign-off, and this process has now

commenced. The holiday has impacted the speed of this.

Do you regard that e-mail as being truthful?

A I don't know. I don't recall what was going on with PNC at the -- you know, in this time frame.

Q Well, were you dealing --

A They had to --

Q Sorry.

A They had to approve the close, so I think that there were a lot of things that we were working on with PNC. But I don't recall what exactly was going on here.

And it looks like I'm bcc'd on this. You know, our CFO would have been the key person driving the PNC thing.

So I'm not -- I don't have enough context to be able to answer it accurately.

Q Well, let's look at 424. This is an e-mail just days later, from Hanson to you and Kenworthy.

A Okay.

Q PNC is insisting on dissolving HHI in its entirety; right?

A Allow me to look at this for a moment. Where do you see that?

Q If you look at John Hanson's e-mail on the bottom of the first page?

A Okay. I see it.

Q So PNC was looking to dissolve HHI; correct?

A It looks like it, yes.

Q And they also needed 4 million from PAMT to Turtle Beach; correct?

A I don't remember that. But that's what the e-mail says.

Q And you would agree that these are not, quote, administrative issues; correct?

A It doesn't sound like it. But, you know, they often made a fuss about stuff that we could quickly resolve. And clearly from John's e-mail, he's very unhappy that they're raising that at this point in time.

This was also on the 9th. What was the day of the other e-mail?

Q The 3rd.

A The 3rd. So on the 3rd, that could have very much been true. It sounds like this is something that came up at the last minute here.

Q Let's go to Exhibit 168, please. Oh, I'm sorry. 424. 424. Sorry.

A I'm on 424.

Q Okay. So then, yeah. [Indiscernible?]

A He said the e-mail before, where the administrative issues came up was from the 3rd. And this was from the 9th.

Q So are you saying you had no insight as to the scope of the problems with PNC on the 3rd?

A Again, I don't recall this. But this sounds like they sprung this on us at the last minute. And so this could have very easily happened after the 3rd, but the -- you know, by the 9th.

There were -- obviously when you're closing a deal, there's a lot of moving parts here.

Q Well, the purpose of Hanson's e-mail is to update you to say that the dissolution now had to be within one day of close.

So there was something prior to this that presumably allowed it to be a little bit longer than one day; correct?

A Yeah. But the e-mail below that says they sprung that on us at the last minute, basically, very unprofessional.

I do remember them requiring us to dissolve HHI, and I also understood the rationale. Lenders don't like a legal sub inside of a company where you can move assets that they don't -- that they don't have collateral access to.

I think we were all unhappy, because this was like something they sprung on it. It didn't matter to us because we -- there were some benefits of having HHI in terms of the -- the FDA approval.

But other than that, this is -- was just a complication essentially with them and something they should have told us, you know, well before this -- not at the last minute.

Q Could we go to 168, please.
A Sure.
Q So in 168, you're discussing the dissolution with Mr. Ken Potashner.
Was this the first time you had told him about the dissolution of HHI?
A I don't remember. It looks like from the e-mail like it came up at the last minute. But I don't recall the specifics of this.
Q Had you been told sooner by PNC, you would have communicated that to him; correct?
A Well, yes.
Q Well, based on your conversations with Potashner, why was he so opposed to dissolving HHI?
A Because he -- he thought there was an opportunity to spinout HHI to shareholders and essentially fund it as a separate entity. That was not something that we were interested in doing. That seemed like an overly complex move, like, kind of a financial engineering move. I understood his logic. It wasn't something that we supported doing. We wanted HHI to be part of our company -- not HHI, sorry.
We wanted the healthcare business of Parametric to be part of our company. And so that was the main reason.
There was a complication that was important with FDA approval, because HHI was the legal entity used to get FDA

approval. And I don't recall -- I recall that as an issue that we had to solve in terms of how to move that approval into either another legal sub or however we were going to do that.

Q Mr. Stark, did there come a point in time when Turtle Beach reached out to Wells Fargo for financing?

A I don't recall. It's certainly possible. They're a bank that we've talked to in the past. I don't know if we did it in the context of the fund raise here.

Q Can you look at proposed Exhibit 412, please.

A Sorry. 412?

Q That's right. 412.

A Yeah. Got it.

MR. HESS: And this is one that's not --

MR. APTON: Proposed Exhibit 412.

MR. HESS: Proposed.

MR. APTON: All right, Your Honor. No. Your Honor, you can -- you can stay if Your Honor wishes.

THE COURT: I can stay? I don't have to go to the little cubbyhole behind where I can't see the documents on the screen?

MR. APTON: No.

THE COURT: Okay.

BY MR. APTON:

Q Mr. Stark, this is an e-mail from your CFO John Hanson. Yeah?

A Yes.

Q It's dated February 13, 2014?

A Yes.

Q And does this refresh your recollection as to whether your CFO to reached out to Wells Fargo for financing?

A Clearly, he did. And we were looking to replace PNC, so they're a lender. I'm not surprised.

But I don't have any recollection of the Wells Fargo interactions.

Q Do you believe to the best of your knowledge that this is a true and correct copy of Mr. Hanson's e-mail?

A Sure.

MR. APTON: Your Honor, move to admit 412.

THE COURT: Any objection?

MR. HESS: Object to the foundation, yes.

THE COURT: Can you lay some additional foundation, please.

BY MR. APTON:

Q So, Mr. Stark, you said that you were interested in -- Turtle Beach was interested in replacing PNC as it primary lender; correct?

A Yes.

Q And so which lenders did you consider?

A I don't remember who he reached out to. And that would have been something that John would have led, not me.

Q Was Wells Fargo one of those lenders?

A It could have very well been. And I don't --

Q Had it been --

A I don't recall.

Q Had it been, would Mr. Hanson have sent them financial forecasts from the company?

A Again, I have -- I'm sorry. But I have no recollection of the interactions with Wells Fargo. Ultimately, we went with B of A.

Wells Fargo is another lender. So it's very possible that John would have been interacting with them, and frankly, me not involved at all in it, because that's kind of the CFO's job.

Q Do you have any reason to doubt that this is a true and complete and accurate copy of the e-mail Mr. Hanson sent to Wells Fargo containing the projections for Turtle Beach failure?

A No.

MR. APTON: Your Honor, move to admit?

THE COURT: Any objection?

MR. HESS: No foundation objection. [Indiscernible.]

THE COURT: The objection is sustained.

MR. HESS: Thank you.

MR. APTON: Your Honor, may I have one moment?

THE COURT: You may.

BY MR. APTON:

Q Okay. I -- and if we can go to Exhibit 321, Mr. Stark.

A Oops, wrong binder. Okay. I'm there.

Q Now, this is another e-mail from PNC; correct? And the important part is Mr. Doherty, Jeff Doherty --

Was he your contact at PNC?

A He was the main person there, yes.

Q He's saying that another breach is likely. And if so, quote, revolver reduces to 35 million effective Friday for its current outstandings in the 39 million range.

So if your revolver reduces below your outstandings, what's the net effect of that?

A We have to manage cash to get 4 million out -- not a major problem, frankly.

Q What sort of penalties would there have been?

A I don't remember that. If we breach a covenant, then the bank comes and they, you know, charge a bunch of penalties and fees. But I don't remember what the specifics were. These guys very much liked collecting a speeding ticket as often as they could.

Q Let's go to Exhibit 339, please. And this is from you to Doornink, Fox, and Kenworthy; March 25th, 2014.

A March 25th, 2014 -- okay. I got it. I'm there.

Q Now, on page 4 lists your final numbers for the year, for 2013.

A Yes.

Q Revenue, 178,669; EBITDA, 13.8; correct?

A Correct.

Q So that's 75 percent less -- or 25 percent of what was in the proxy statement; correct?

A On the EBITDA line?

Q Uh-huh.

A Yes.

Q And roughly half of the revenue; right?

A No. I don't think it was half the revenue. I think the revenue in the Fairness Opinion was 210, something like that.

Q No. The -- I'm sorry. You had 218 revenue, and this was 178, so 40 million less.

A Yeah. And note the Parametric actuals here as well -- way, way, way off of their numbers.

Q And interestingly, for 2014, you're planning 223 million in revenue. And 28.5 --

A Yeah. There are allocations, once we had HyperSound. So the -- with the allocations, the headset business would be 30 -- 33 essential, 33.9.

Q Well, for EBITDA in the proxy statement for 2014, you put in 56.7. So 2014 was also well off; correct?

A Yes.

Q And if we can go to Exhibit 407. We're going to fast forward almost an entire year to now January 14, 2015. You're announcing to your team that revenues for 2014 to be within our prior guidance range of 185 to 195, although at the low end.

A Wait. Where are you? I'm sorry.

Q Sorry. 407.

A I see that, yep.

Q So for 2014, the proxy said 268.6. And it looks like year, in 2015, you're counting of the previous year only at 185; correct?

A 2000 -- you're talking about 2014 or '15?

Q I'm talking about your revenue for 2014.

A I'm not -- I don't remember the 268. But there -- there were two major things that happened in 2014. And indeed, our actual revenues came in much lower than we had forecasted in June of 2013.

The two things that happened were -- I'll use the apartment analogy. We lost more than 57 percent of old gen revenues -- so more than a hundred million dollars.

So in the apartment analogy, 57 of the hundred people moved out of the apartment. So old gen revenues dropped way faster than anyone expected, because the new consoles were doing way better than anyone expected.

That, by the way, not only impacted 2014, but impacted 2015, and EBITDA of 2016, because essentially people moved out of the apartment way sooner than expected.

And just to put some numbers around it. Our business in old gen went from, call it 180, to less than 80, to less than 30 in two years.

So that -- that's an enormous and unexpected change in the circumstances that we didn't accurately predict. So that hurt our financials for 2014; it also hurt the financials for 2015.

Q Okay. And that information, though, at least some of that information was known at the time of the proxy statement; right?

A No. No. We had no idea. The people who forecasted the console market, whose sole profession is to do forecasts, DFC, got it completely wrong, completely wrong.

Q Now, throughout this negotiation process with Ken Potashner, you used the word relentless.

But at the same time, you did give him things in return, did you not?

A What -- I don't know what you mean.

Q Let's go to 86. This is a press release announcing the signing. And on page 3, you'll see fourth -- or fifth paragraph from the bottom, that Ken Potashner, executive chairman of Parametric, will continue a leadership role for HyperSound Health, the company's health subsidiary.

So you promised him a continued leadership role;

correct?

A No.

MR. HESS: Objection.

THE COURT: Overruled.

THE WITNESS: This is --

THE COURT: You can answer.

THE WITNESS: This is a draft press release. This press release, I believe, was drafted probably by Ken himself, putting himself in here to get a leadership position.

This is first of all not the press release that went out.

And second of all -- let me see here -- of the last six acquisitions I've done, I have kept every CEO in those acquisitions, except for Ken Potashner. It is very normal to keep and want to keep the CEO, because after you buy the company, you need someone to run it, at least for some amount of time. We didn't have someone who would step in.

So the normal -- my normal predisposition would be to try to keep the CEO, at least for some amount of time. And I decided, as we went along, that Ken Potashner was not going to add value to what we were trying to do with Parametric post-close and didn't proceed with that.

BY MR. APTON:

Q But you know that that position was valuable to him, did you not?

A No. I don't know if it was valuable to him. He was collecting severance if he was terminated.

Q So you go to Tab 160, please. This is you and Doornink, just a few days prior to this press release, July 19th.

A Sure.

Q Subject line is Bone?

A Bone?

Q I guess like throw him a bone.

A Oh.

Q I don't know.

A Okay.

Q But the e-mail suggests that -- and an agreement that Ken will initially run the HHI sub and get paid for it until we hire somebody, and then become an advisor with a specific role to advise on HHI build, something like that. That differentiates Ken from John, so we're going to put John in the same position, and throws Ken a bone. I should hope satisfies unselfish passion, smiley face, to help build HHI.

So you knew that that position was valuable to him and you provided it to him. You threw him a bone; correct?

A No. This is an exchange between us. I think Ron was -- we were both trying to help find a solve for the HHI issue; right?

And if Ken could add value to HHI, and we set some enormously high threshold -- if we generated $50 million in revenues on medical products, I would happily have paid Ken a million dollars. But none of this went anywhere.

Q Well --

A Because shortly after this, we said it's got to go away. There's no compensation. You guys fix it.

So this is us brainstorming about potential ways to help get the HHI problem solved so that we could move ahead with the DA.

Q Well, you guys had no intention of letting him take over that position; isn't that right?

A No, that's not right.

Q So if you go to 130.

THE COURT: So before we go to a new document, let's break for the evening.

We'll be back at 9 o'clock tomorrow. I do have calendar calls at 8:30. Hopefully no one will talk as long as the people talked this morning, and so we will be able to start on time.

If not, you're welcome to come in and hang out while the multitude of lawyers whine at me.

MR. HESS: Is it possible that we can get a potential kind of guesstimate as to how much time Mr. Apton has? And I think --

THE COURT: In addition to the 157 minutes he's already used on Mr. Stark?

MR. HESS: That is correct, Your Honor.

THE WITNESS: It feels much longer.

THE COURT: It feels like -- well, get up, sir, and walk around.

THE WITNESS: I'm on fire.

THE COURT: Mr. Apton, best guess, they're trying the plan.

MR. APTON: I could have finished in about 10 minutes.

THE COURT: Yeah, right. Lawyers say that all the time to try and keep --

THE WITNESS: I'm okay finishing.

THE COURT: Yeah. Well, you know --

THE WITNESS: I'm okay finishing.

THE COURT: You know, it's not going to happen.

THE WITNESS: Okay.

THE COURT: But we'll be doing -- how long in the morning?

MR. APTON: Well, it won't be 10 minutes now.

THE COURT: You think about a half hour in the morning? 45 minutes?

MR. APTON: I have to confer with counsel, but something along those lines, yes.

THE COURT: Okay. Does that answer your question, Mr. Hess?

MR. HESS: It does. Thank you, Your Honor.

THE COURT: So the plaintiffs used 258 minutes today and the defendants used a total of 74; taking me to a total of 322.

THE WITNESS: Am I keeping these up here? Yeah. Okay.

THE COURT: Yeah. Leave your binders there, because you're going to use them tomorrow, I'm sure.

THE WITNESS: All right. Great.

THE COURT: Anything else, guys? Have a lovely evening.

Mr. Ogilvie only has one of the minor calendar calls on, so his will probably be the quickest of the entire group.

Right, George?

MR. OGLIVIE: Well, I think my client may describe it as not minor.

THE COURT: Well, your case is shorter than somebody asking for three weeks and trying to negotiate with the dates when I won't be here.

MR. OGLIVIE: And frankly, I think there will be another continuance, so --

(Proceedings recessed for the evening at 4:47 p.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER 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.

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DANA L. WILLIAMS, TRANSCRIBER

08/23/2021

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