

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 83598, 84971, and 85358

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IN RE PARAMETRIC SOUND CORPORATION  
SHAREHOLDERS' LITIGATION.

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Electronically Filed  
Jan 12 2023 09:02 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

PAMTP, LLC,

*Appellant,*

v.

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

*Respondents.*

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

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	Trial Exhibit 339	17	AA 3077- AA 3084
	Trial Exhibit 345	14	AA 2600- AA 2602
	Trial Exhibit 346	12	AA 2265- AA 2267
	Trial Exhibit 364	17	AA 3085- AA 3087
	Trial Exhibit 376	9	AA 1574- AA 1575
	Trial Exhibit 413	19	AA 3580- AA 3600
	Trial Exhibit 425	17	AA 3088- AA 3106
	Trial Exhibit 428	18	AA 3411- AA 3415
	Trial Exhibit 464	18	AA 3416- AA 3422
	Trial Exhibit 775	13	AA 2388
	Trial Exhibit 776	13	AA 2389- AA 2390
	Trial Exhibit 781	13	AA 2391- AA 2394
	Trial Exhibit 785	13	AA 2395- AA 2411

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 789	13	AA 2412- AA 2413
	Trial Exhibit 821	13	AA 2414
	Trial Exhibit 837	13	AA 2415- AA 2416
	Trial Exhibit 909	18	AA 3423- AA 3433
	Trial Exhibit 1052	16	AA 2818- AA 2862

## AFFIRMATION

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

Respectfully submitted this 12th day of January, 2023.

MCDONALD CARANO LLP

/s/ Jeff Silvestri  
Jeff Silvestri (NSBN 5779)  
George F. Ogilvie III (NSBN 3552)  
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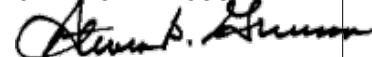
Daniel M. Sullivan (Admitted *PHV*)  
Scott M. Danner (Admitted *PHV*)  
Jordan Pietzsch (*PHV* Forthcoming)  
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*Attorneys for PAMTP, LLC*

## 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



1 **MEMO**

2 J. Stephen Peek, Esq.  
3 Nevada Bar No. 1758  
4 Robert J. Cassity, Esq.  
5 Nevada Bar No. 9779  
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19 jstigi@sheppardmullin.com

20 *Attorneys for Defendant*  
21 *Kenneth Potashner*

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 IN RE PARAMETRIC SOUND  
25 CORPORATION SHAREHOLDERS'  
26 LITIGATION.

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

**DEFENDANT KENNETH POTASHNER'S  
VERIFIED MEMORANDUM OF COSTS**

27 Pursuant to NRS 18.005, NRS 18.110, and NRS 18.020, Defendant Kenneth Potashner by  
28 and through his undersigned counsel, seeks recovery of his costs incurred in this action as detailed  
below.

///

///



1. NRS 18.005(1) - COURT FEES

Holland & Hart:

COURT FEES <sup>1</sup> - DESCRIPTION	DATE OF FILING	AMOUNT
Clark County: Initial Appearance Fee Disclosure (Business Court Transfer)	8/30/2013	\$3.50
Clark County: Defendants Parametric Sound Corporation, et al. Request for Assignment to Business Court	8/30/2013	\$3.50
Clark County: Defendants Parametric Sound Corporation, Paris Acquisition Corporation, Kenneth Potashner, Elwood Norris, Seth Putterman, Robert Kaplan, Andrew Wolfe and James Honore's Request for Assignment to Business Court	8/30/2013	\$1,486.50
Clark County: Certificate of Service of Motion to Associate Counsel	9/23/2013	\$3.50
Clark County: Order Granting Motion to Associate Counsel - John Peter Stigi, III	11/8/2013	\$3.50
Clark County: Notice of Entry of Order Granting Motion to Associate Counsel (John Peter Stigi, III, Esq.)	11/12/2013	\$3.50
Clark County: Parametric Defendants' Motion to Dismiss Plaintiffs' Amended Complaint	12/9/2013	\$3.50
Clark County: Stipulated Confidentiality Agreement and Protective Order Regarding the Sealing of Court Records	12/10/2013	\$3.50
Clark County: Notice of Parametric Defendants' Motion to Dismiss Plaintiffs' Amended Complaint	12/10/2013	\$3.50
Clark County: Notice of Entry of Stipulated Confidentiality Agreement and Protective Order Regarding the Sealing of Court Records	12/11/2013	\$3.50
Clark County: Parametric Defendants' Ex Parte Application for Leave to Exceed Page Limit for Their Opposition to Plaintiffs' Motion for Preliminary Injunction	12/23/2013	\$3.50
Clark County: Parametric Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction (Redacted)	12/24/2013	\$3.50
Clark County: Appendix of Exhibits in Support of Parametric Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction	12/24/2013	\$3.50
Clark County: Parametric Defendants' Motion to Redact Portions of Their Opposition to Plaintiffs' Motion for Preliminary Injunction and to Seal Certain Exhibits to Appendix Thereto	12/24/2013	\$3.50
Clark County: Order Granting Parametric Defendants' Ex Parte Application for Leave to Exceed Page Limit for Their Opposition to Plaintiffs' Motion for Preliminary Injunction	1/6/2014	\$3.50
Clark County: Notice of Entry of Order Granting Parametric Defendants' Ex Parte Application for Leave to Exceed Page Limit for Their Opposition to Plaintiffs' Motion for Preliminary Injunction	1/7/2014	\$3.50
Clark County: Notice of Submission of Defendants' Proposed Findings of Fact and Conclusion of Law Regarding Plaintiff's Motion for Preliminary Injunction	1/30/2014	\$3.50
Clark County: Order Granting Parametric Defendants' Motion to Redact Portions of Their Opposition to Plaintiffs' Motion for Preliminary Injunction and to Seal Certain Exhibits to Appendix Thereto	2/4/2014	\$3.50

<sup>1</sup> Filing receipts for filings between August 30, 2013 – January 16, 2015 are unavailable due to the Court's filing system upgrade to Odyssey EFileNV in 2018. However, the filing fees for these filings are listed by date in the Financial portion of the Court's Docket. (See Exhibit 1 at Page1).

1	<b>COURT FEES<sup>1</sup> -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION</b>	<b>FILING</b>	
3	Clark County: Notice of Entry of Order Granting Parametric Defendants' Motion to Redact Portions of Their Opposition to Plaintiffs' Motion for Preliminary Injunction and to Seal Certain Exhibits to Appendix Thereto	2/5/2014	\$3.50
4	Clark County: Substitution of Counsel	2/18/2014	\$3.50
5	Clark County: Appendix to the Director Defendants' Motion to Dismiss Counts I and II of Plaintiffs' Second Amended Class Action Complaint	2/24/2014	\$3.50
6	Clark County: The Director Defendants' Motion to Dismiss Counts I and Counts II of Plaintiffs' Second Amended Class Action Complaint (REDACTED)	2/24/2014	\$3.50
7	Clark County: Director Defendants' Motion to Seal Unredacted Version of their Motion to Dismiss Second Amended Class Action Complaint	2/24/2014	\$3.50
8	Clark County: Stipulation and Order to Extend Time for Defendants to File in Response to Second Amended Complaint	2/25/2014	\$3.50
9	Clark County: Notice of Director Defendants' Motion to Seal	2/25/2014	\$3.50
10	Clark County: Notice of Director Defendants' Motion to Dismiss	2/25/2014	\$3.50
11	Clark County: Notice of Entry of Stipulation and Order to Extend Time for Defendants to File in Response to Second Amended Complaint	2/26/2014	\$3.50
12	Clark County: Stipulation and Order to Vacate Hearing on Motions to Dismiss Pending Disposition of Motion to Intervene	3/11/2014	\$3.50
13	Clark County: Notice of Entry of Stipulation and Order to Vacate Hearing on Motions to Dismiss Pending Disposition of Motion to Intervene	3/17/2014	\$3.50
14	Clark County: The Director Defendants' Response to the California Plaintiffs' Motion to Intervene, Request to Vacate the Prior Plaintiff Leadership Structure and Appoint Post-Close Lead Counsel and Liaison Counsel	3/25/2014	\$3.50
15	Clark County: The Director Defendants' Motion to Seal Their Unredacted Response to the California Plaintiffs' Motion to Intervene, Request to Vacate the Prior Plaintiff Leadership Structure and Appoint Post-Close Lead Counsel and Liaison Counsel and the Declaration of Andrew Wolfe	3/25/2014	\$3.50
16	Clark County: Order Granting the Director Defendants' Motion to Seal Unredacted Version of Their Motion to Dismiss Second Amended Class Action Complaint	4/10/2014	\$3.50
17	Clark County: Notice of Entry of Order Granting the Director Defendants' Motion to Seal Unredacted Version of their Motion to Dismiss Second Amended Class Action Complaint	4/11/2014	\$3.50
18	Clark County: Order Granting the Director Defendants' Motion to Seal (1) Their Unredacted Response to The California Plaintiffs' Motion to Intervene, Request to Vacate the Prior Plaintiff Leadership Structure and Appoint Post-Close Lead Counsel and Liaison Counsel and (2) The Declaration of Andrew Wolfe	6/5/2014	\$3.50
19	Clark County: The Director Defendants' Motion to Seal Their Unredacted Motion to Dismiss The First Cause of Action in Plaintiffs' Class Action Complaint in Intervention and Certain Exhibits Thereto	6/20/2014	\$3.50
20	Clark County: The Director Defendants' Motion to Dismiss the First Cause of Action in Plaintiffs' Class Action Complaint in Intervention (Redacted)	6/20/2014	\$3.50
21	Clark County: Appendix of Exhibits Referenced in the Director Defendants' Motion to Dismiss the First Cause of Action in Plaintiffs'	6/23/2014	\$3.50

1	<b>COURT FEES<sup>1</sup> -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION</b>	<b>FILING</b>	
3	Class Action Complaint In Intervention		
4	Clark County: The Director Defendants' Notice of Non-Opposition to Plaintiffs' Ex Parte Application for Leave to File A Single 45 Page "Omnibus" Brief In Response to Two Motions to Dismiss	7/17/2014	\$3.50
5	Clark County: The Director Defendants' Reply In Support of Their Motion to Dismiss The First Cause of Action in Plaintiffs' Class Action Complaint in Intervention	8/1/2014	\$3.50
6	Clark County: The Director Defendants' Motion to Seal Their Unredacted Reply Brief in Support of Their Motion to Dismiss the First Cause of Action in Plaintiffs' Class Action Complaint in Intervention and Exhibit "A" Thereto	8/1/2014	\$3.50
7			
8	Clark County: Order Granting The Director Defendants' Motion to Seal Their Unredacted Motion to Dismiss the First Cause of Action in Plaintiffs' Class Action Complaint in Intervention and Certain Exhibits Thereto	8/5/2014	\$3.50
9			
10	Clark County: The Director Defendants' Motion to Seal Their Unredacted Answer to Class Action Complaint in Intervention.	9/26/2014	\$3.50
11	Clark County: The Director Defendants' Answer to Plaintiffs' Class Action Complaint in Intervention	9/26/2014	\$3.50
12	Clark County: Order Granting The Director Defendants' Motion to Seal Their Unredacted Reply in Support of Their Motion to Dismiss the First Cause of Action in Plaintiffs' Class Action Complaint in Intervention and Exhibit "A" Thereto	10/1/2014	\$3.50
13			
14	Clark County: Director Defendants' Status Report Regarding the Parties' Search Term Discussions	1/16/2015	\$3.50
15	Clark County: The Director Defendants' Motion to Dismiss Plaintiffs' Amended Class Action and Derivative Complaint	1/3/2018	\$3.50
16	Clark County: The Director Defendants' Reply Brief In Support of Their Motion to Dismiss Plaintiffs' Amended Class Action and Derivative Complaint	3/6/2018	\$3.50
17			
18	Clark County: The Director Defendants' Answer to Plaintiffs' Amended Class Action and Derivative Complaint	4/27/2018	\$3.50
19	Clark County: Notice of Submission of Proposed Order Denying Defendants' Motion to Stay	6/13/2018	\$3.50
20	Clark County: Notice of Entry of Order Denying Defendants' Motion to Stay	7/5/2018	\$3.50
21	Clark County: Order Denying Defendants' Motion to Stay	7/5/2018	\$3.50
22	Clark County: Ex Parte Application for Order Shortening Time and Order Thereon;	9/13/2018	\$3.50
23	Clark County: Motion to Associate Counsel (Alejandro E. Moreno);	9/13/2018	\$3.50
24	Clark County: Order Granting Motion to Associate Counsel (Alejandro E. Moreno);	9/17/2018	\$3.50
25	Clark County: Notice of Entry of Order Granting Motion to Associate Counsel (Alejandro E. Moreno);	9/24/2018	\$3.50
26	Clark County: Defendants' Opposition to Plaintiffs' Motion for Class Certification	10/10/2018	\$3.50
27	Clark County: Motion to Seal Exhibit "G" to Defendants' Opposition to Plaintiffs' Motion for Class Certification	10/10/2018	\$3.50
28	Clark County: Order Granting Motion to Seal Exhibit "G" to Defendants' Opposition to Plaintiffs' Motion for Class Certification	12/7/2018	\$3.50
	Clark County: Notice of Entry of Order Granting Motion to Seal Exhibit "G" to Defendants' Opposition to Plaintiffs' Motion for Class	12/8/2018	\$3.50

1	<b>COURT FEES<sup>1</sup> -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION</b>	<b>FILING</b>	
3	Certification		
4	Clark County: Notice of Submission of Defendants' Proposed Order on Plaintiffs' Motion for Class Certification	1/18/2019	\$3.50
5	Clark County: Order Regarding Class Certification	1/22/2019	\$3.50
6	Clark County: Stipulation and Order for Voluntary Dismissal Without Prejudice of James L. Honore Only	5/17/2019	\$3.50
7	Clark County: The Director Defendants' Notice of Non-Opposition to Plaintiffs' Motion to Associate Counsel on Order Shortening Time (Maxwell Ralph Huffman, Esq.)	8/6/2019	\$3.50
8	Clark County: Appendix of Exhibits to Director Defendants' Motion in Limine No. 2 to Exclude Evidence Concerning Discussions Regarding a Potential Bonus Payment to the Independent Directors of Parametric	9/28/2019	\$3.50
9	Clark County: Director Defendants' Motion in Limine No. 4 to Exclude Reference to Other Litigation Involving Kenneth Potashner	9/28/2019	\$3.50
10	Clark County: Director Defendants' Motion in Limine No. 3 to Exclude Evidence Regarding Non-Party John Todd's Prior Litigation And Settlement with the SEC	9/28/2019	\$3.50
11	Clark County: Director Defendants' Motion in Limine No. 1 to Exclude Evidence Concerning Certain Stock Options Granted in the Hypersound Health, Inc. Subsidiary of Parametric	9/28/2019	\$3.50
12	Clark County: Director Defendants' Motion in Limine No. 2 to Exclude Evidence Concerning Discussions Regarding A Potential Bonus Payment o the Independent Directors of Parametric	9/28/2019	\$3.50
13	Clark County: The Director Defendants' Motion for Partial Summary Judgment Regarding the First and Third Causes of Action in The Amended Class Action and Derivative Complaint	9/28/2019	\$203.50
14	Clark County: The Director Defendants' Motion for Summary Judgment Regarding the First Cause of Action in the Amended Class Action and Derivative Complaint	9/28/2019	\$203.50
15	Clark County: Appendix of Exhibits to the Director Defendants' Motion for Partial Summary Judgment Regarding the First and Third Causes of Action in the Amended Class Action and Derivative Complaint (Volume 1 of 4)	9/30/2019	\$3.50
16	Clark County: Appendix of Exhibits to the Director Defendants' Motion for Partial Summary Judgment Regarding the First and Third Causes of Action in the Amended Class Action and Derivative Complaint (Volume 2 of 4)	9/30/2019	\$3.50
17	Clark County: Appendix of Exhibits to Defendants' Motion in Limine No. 1 to Exclude Evidence Concerning Certain Stock Options Granted in the Hypersound Health, inc. Subsidiary of Parametric	9/30/2019	\$3.50
18	Clark County: Appendix of Exhibits to the Director Defendants' Motion for Partial Summary Judgment Regarding the First and Third Causes of Action in the Amended Class Action and Derivative Complaint (Volume 3 of 4)	9/30/2019	\$3.50
19	Clark County: Appendix of Exhibits to the Director Defendants' Motion for Partial Summary Judgment Regarding the First and Third Causes of Action in the Amended Class Action and Derivative Complaint (Volume 4 of 4)	9/30/2019	\$3.50
20	Clark County: Director Defendants' Limited Joinder to Plaintiffs' Motion for Final Approval of Settlement and Approval of Plan of Allocation, and an award of Attorneys' Fees and Expenses	5/4/2020	\$3.50
21	Clark County: Notice of Related Case	6/4/2020	\$3.50

<b>COURT FEES<sup>1</sup> - DESCRIPTION</b>	<b>DATE OF FILING</b>	<b>AMOUNT</b>
Clark County: Notice of Entry of Order Granting Defendants' Motion to Consolidate	6/24/2020	\$3.50
Clark County: Opposition to Plaintiff PAMTP LLC'S Motion to Compel Discovery Pursuant to Rule 26(h)	7/31/2020	\$3.50
Clark County: Director Defendants' Answer to Complaint	9/3/2020	\$3.50
Clark County: Defendant Kenneth Potashner's Opposition to Plaintiff's Motion for Sanctions Against Defendants' Kenneth Potashner, Juergen Stark, and VTB Holdings, Inc. for Willful Spoliation of Evidence	3/18/2021	\$3.50
Clark County: Director Defendants' Opposition to Plaintiff PAMTP LLC's Motion to Compel Discovery Pursuant to Rule 26 (h)	3/23/2021	\$3.50
Clark County: Director Defendants' Motion for Summary Judgment	6/11/2021	\$3.50
Clark County: Defendants' Motion in Limine to Exclude Plaintiff's Damages	6/11/2021	\$203.50
Clark County: Audiovisual Transmission Equipment Appearance Request - Woody Norris, Erik Houser	6/14/2021	\$3.50
Clark County: Errata and Supplement to Defendants' Motion to Strike and Motion in Limine to Exclude Plaintiff's Purported Testifying Experts at June 18, 2021 Evidentiary Hearing and at Trial	6/16/2021	\$3.50
Clark County: Defendants' Joint Pre-Evidentiary Hearing Disclosure of Witnesses and Documents Pursuant to NRCP 16.1(a)(3)	6/16/2021	\$3.50
Clark County: Defendants' First Supplemental Joint Pre-Evidentiary Hearing Disclosure of Witnesses and Documents Pursuant to NRCP 16.1(a)(3)	6/17/2021	\$3.50
Clark County: Defendants' Joint Counter Designations to PAMTP LLC's Deposition Designations for Use at Evidentiary Hearing	6/17/2021	\$3.50
Clark County: Director Defendants' Pre-Trial Disclosures Pursuant to NRCP 16.1	7/13/2021	\$3.50
Clark County: Reply Brief in Support of the Director Defendants' Motion for Summary Judgment	7/14/2021	\$3.50
Clark County: Reply in Support of Defendants' Motion in Limine to Exclude Plaintiff's Damages	7/14/2021	\$3.50
Clark County: PreTrial Memorandum	7/16/2021	\$3.50
Clark County: Director Defendants' First Supplemental Pre-Trial Disclosures Pursuant to NRCP 16.1(a)(3)	7/21/2021	\$3.50
Clark County: Director Defendants' Deposition Transcript Designations	8/2/2021	\$3.50
Clark County: Director Defendants' Second Supplemental Pre-Trial Disclosures Pursuant to NRCP 16.1(a)(3)	8/9/2021	\$3.50
Clark County: Audiovisual Transmission Equipment Appearance Request - R.Kaplan	8/10/2021	\$3.50
Clark County: Audiovisual Transmission Equipment Appearance Request - S.Putterman, E.Norris	8/12/2021	\$3.50
Clark County: Defendants' Motion for Judgment on Partial Findings Pursuant to NRCP 52(c) Regarding Lack of Control or Expropriation	8/24/2021	\$3.50
Clark County: Notice of Submission or Proposed Order Granting Defendants' Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon	9/2/2021	\$3.50
<b>TOTAL</b>		<b>\$2,636.00</b>

2. NRS 18.005(2) – REPORTERS’ FEES FOR DEPOSITIONS

Sheppard Mullin:

REPORTERS’ FEES FOR DEPOSITIONS - DEPONENT / DESCRIPTION	DATE OF INVOICE	AMOUNT
VENDOR: Aptus Court Reporting - Inv#1008025 - 1 Certified Copy Transcript; expedited postage; handling fee; Witness - Kenneth Potashner	12/20/2013	\$3,267.43
VENDOR: Aptus Court Reporting - Inv#1008056 - 1 Certified Copy of Transcript; expedited postage; handling fee, Witness - David J. Wambeke	12/23/2013	\$2,187.18
VENDOR: Aptus Court Reporting - Inv#1008090 - 1 Certified Copy of Transcript, Witness - Daniel Hoverman	12/30/2013	\$1,631.85
VENDOR: Esquire Deposition Solutions, LLC. - INV#INV1326464 – App Fee: First Hour - App Fee: Additional Hours; rough transcript; final transcript; exhibits; handling fees; Witness - Grant Oakes	09/27/2018	\$1,353.30
VENDOR; Esquire Deposition Solutions, LLC - Inv#INV1330153 - Transcript - Copy-VID-WI; transcript; exhibits; handling fee, Witness - PMK Of Kearney Irrv Trust	10/03/2018	\$1,016.70
VENDOR; Esquire Deposition Solutions LLC - Inv#INV1335426 - Videographer additional hours; synchronized video; handling fee, Witness - G. Oakes	10/10/2018	\$986.00
VENDOR; Esquire Deposition Solutions LLC - Inv#INV1337290 - Transcript - O&I-Vid-Wi, rough transcript; final transcript; exhibits; handling fee, Witness - Lance Mykita	10/12/2018	\$1,707.55
VENDOR: Aptus Court Reporting - Inv#1049864 - One Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - John Montgomery, Ph.D.	10/31/2018	\$1,101.41
VENDOR; Aptus Court Reporting - Inv#1056931 - 1 Certified copy of transcript; technology package; exhibits; synched video; media package; handling fee, Witness - James Honore	05/31/2019	\$2,047.85
VENDOR: Aptus Court Reporting - Inv#1057835 - 1 Certified copy of transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Robert Kaplan	05/31/2019	\$2,115.85
VENDOR: Aptus Court Reporting - Inv#1057844 - 1 Certified copy of transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Karen Kenworthy	05/31/2019	\$2,893.28
VENDOR: Aptus Court Reporting, LLC - Inv#1059689 - Certified Copy of transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Seth Putterman	07/30/2019	\$1,889.69
VENDOR: Aptus Court Reporting - Inv#1059923 - Certified Copy of a transcript; handling fee, Witness - Ronald Doornik	07/30/2019	\$1,602.18
VENDOR: Aptus Court Reporting - Inv#1060406 - 1 Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Mark Dufiho	07/31/2019	\$1,339.31
VENDOR: Aptus Court Reporting - Inv#1060639 - 1 Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - J. Barnes	07/31/2019	\$2,019.31
VENDOR: Aptus Court Reporting - Inv#1061021 - Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - David Wambeke	08/26/2019	\$1,268.61

<b>REPORTERS' FEES FOR DEPOSITIONS - DEPONENT / DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
VENDOR: Aptus Court Reporting, LLC - Inv#1061120 - Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Juergen Stark	08/26/2019	\$1,587.25
VENDOR: Aptus Court Reporting, LLC - Inv#1060814 - Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Kenneth Potashner	08/26/2019	\$2,490.03
VENDOR: Aptus Court Reporting, LLC - Inv#1061286 - Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Kenneth Fox	08/27/2019	\$845.97
VENDOR: Veritext - Inv#NY3926625 - Transcript Services; exhibits; realtime services; handling fees, Witness - John T. Atkins	08/30/2019	\$2,806.79
VENDOR: Aptus Court Reporting - Inv#1061863 -1 Certified Copy of Transcript; technology package; exhibits; handling fee, Witness - John Montgomery	08/30/2019	\$956.54
VENDOR: Aptus Court Reporting - Inv#1061438 - Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - John Hanson	08/30/2019	\$950.49
VENDOR: Aptus Court Reporting, LLC - Inv#1061636 - Certified Copy Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - John Todd	08/30/2019	\$1,429.64
VENDOR: Veritext - Inv# NY3951485 - Video services; handling fee, Witness - John T. Atkins	09/18/2019	\$889.67
VENDOR: Aptus Court Reporting, LLC - Inv#1061993 - Certified Copt of Transcript; technology package; exhibits; synched video; media package; expedited postage; handling fee, Witness - Andrew Wolfe	09/25/2019	\$3,544.34
VENDOR: Aptus Court Reporting LLC - Inv#1062715 - Certified Copy of Transcript; technology package; exhibits; synched video; media package; handling fee, Witness - Elwood Norris	09/26/2019	\$1,349.83
VENDOR: Esquire Deposition Solutions - Inv#INV1570408 - Transcript Services (9/28/18); exhibits; condensed/digital transcript; processing fee, Witness - Lance Mykita	10/03/2019	\$2,564.35
VENDOR: TSG Reporting, Inc. - Inv#2036840 - Certified Transcript; exhibits; Witness - Joshua Weisbord	01/06/2021	\$285.05
VENDOR: Veritext - Inv#4953603 - Virtual Participants; Exhibit Share, Witness - Richard Santulli	04/15/2021	\$513.00
VENDOR: TSG Reporting, Inc. - Inv#2050009 - Certified Transcript; exhibits; Witness - Kenneth Potashner	06/07/2021	\$358.25
VENDOR: TSG Reporting, Inc. - Inv#2050010 - Certified - MPEG, Witness - Kenneth Potashner	06/07/2021	\$100.00
<b>TOTAL</b>		<b>\$49,098.70</b>

**3. NRS 18.005(4) – WITNESSES’ FEES & EXPENSES FOR TRIAL, PRETRIAL  
HEARINGS AND DEPOSITIONS**

**Holland & Hart:**

<b>WITNESSES’ FEES &amp; EXPENSES - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
VENDOR: Jury to Verdict Trial Services; INVOICE#: 2020-2105; DATE: 6/27/2021 - Evidentiary Hearing Support	6/27/2021	\$1,775.00
VENDOR: Jury to Verdict Trial Services; INVOICE#: 08102021; DATE: 8/10/2021 - Trial Services	8/10/2021	\$2,500.00
VENDOR: Jury to Verdict Trial Services - Trial Support	8/30/2021	\$7,250.00
<b>TOTAL</b>		<b>\$11,525.00</b>

**4. NRS 18.005(5) – EXPERT FEES**

**Sheppard Mullin:**

<b>EXPERT FEES - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Ankura Consulting Group, LLC – Inv# FB# 101403 – Professional Fees - John Montgomery	12/14/2018	\$14,400.00
Ankura Consulting Group, LLC – Inv# FB# 1000000830 – Professional Fees - John Montgomery; Mason Shi	02/25/2019	\$5,160.75
Ankura Consulting Group, LLC – Inv# FB# 1000001229 – Professional Fees - John Montgomery; Mason Shi	03/29/2019	\$9,123.75
Ankura Consulting Group, LLC – Inv# TM00085300 – Professional Fees – Johnathan Kang; John Montgomery; Arun Sen	08/28/2019	\$7,469.00
Ankura Consulting Group, LLC – Inv# AFB200292 – Professional Fees - Johnathan Kang; John Montgomery; Arun Sen	09/12/2019	\$53,780.50
Ankura Consulting Group, LLC – Inv# AFB200311 – Professional Fees - John Montgomery	10/11/2019	\$1,912.50
<b>TOTAL</b>		<b>\$91,846.50</b>

**5. NRS 18.005(8) – OFFICIAL REPORTER COMPENSATION**

**Holland & Hart:**

<b>OFFICIAL REPORTER COMPENSATION - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
VENDOR: Clark County Treasurer; INVOICE#: 093013; DATE: 9/30/2013 - Transcript	9/30/2013	\$30.00
VENDOR: Florence M. Hoyt; INVOICE#: 093013; DATE: 9/30/2013 - Transcript	9/30/2013	\$151.74
VENDOR: Verbatim Digital Reporting; INVOICE#: 1234; DATE: 1/8/2014 - Transcript for Hrg on Mot for Prel Inj held on 12/26/2013	1/8/2014	\$230.00
VENDOR: Florence M. Hoyt; INVOICE#: 1312194; DATE: 1/10/2014 - Transcript for Hrg o 12/12/13 and 12/19/13	1/10/2014	\$225.50
VENDOR: Clark County Treasurer; INVOICE#: 011014; DATE:	1/10/2014	\$60.00



<b>OFFICIAL REPORTER COMPENSATION - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
1/10/2014 - Transcript for Hrg on 12/12/13 and 12/19/13		
VENDOR: Florence M. Hoyt; INVOICE#: 1408117; DATE: 8/29/2014 - Motions to Dismiss	8/29/2014	\$277.50
VENDOR: Clark County Treasurer; INVOICE#: 090914; DATE: 9/9/2014 - Motions to Dismiss	9/9/2014	\$30.00
VENDOR: Kristen Lunkwitz; INVOICE#: 14-135; DATE: 10/22/2014 - Transcript of hearing for Mandatory Rule 16 Conference	10/22/2014	\$168.60
VENDOR: Clark County Treasurer; INVOICE#: 110414B; DATE: 11/4/2014 - Transcript for hearing on Mandatory Rule 16 Conference	11/4/2014	\$30.00
VENDOR: Florence M. Hoyt; INVOICE#: 1412146; DATE: 12/9/2014 - Transcript of Hearing on Defendants' Motion for Stay and ESI Protocol	12/9/2014	\$172.50
VENDOR: Clark County Treasurer; INVOICE#: 122314; DATE: 12/23/2014 - Transcript of Hearing on Defendants' Motion for Stay and ESI Protocol	12/23/2014	\$30.00
VENDOR: Florence M. Hoyt; INVOICE#: 1809064; DATE: 9/24/2018;	9/24/2018	\$96.36
VENDOR: Clark County Treasurer; INVOICE#: A686890; DATE: 9/24/2018 - Payment for 9/24/18 Recording of Hearing;	9/24/2018	\$40.00
VENDOR: Clark County Treasurer; INVOICE#: 01172019; DATE: 1/17/2019 - Transcription of Jan 7 Hearing	1/17/2019	\$40.00
VENDOR: Florence M. Hoyt; INVOICE#: 01172019; DATE: 1/17/2019 - Transcript of Hearing	1/17/2019	\$104.85
VENDOR: JD Reporting, Inc.; INVOICE#: 2020-106; DATE: 10/14/2020 - Payment of Transcript	10/14/2020	\$68.62
VENDOR: Clark County Treasurer; INVOICE#: 10202020; DATE: 10/20/2020 - Recording of Hearing	10/20/2020	\$40.00
<b>TOTAL</b>		<b>\$1,864.29</b>

## 6. NRS 18.005(12) – PHOTOCOPY COSTS

### Holland & Hart:

<b>PHOTOCOPY COSTS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Holo Discovery – Trial Copies of Plaintiffs' Exhibits	8/19/2021	\$3,409.48
Litigation Discovery Group - Trial Copies of Defendants Exhibits, Material Sets, Witness Prep Materials and Designated Exhibits	8/31/2021	\$19,087.43
<b>TOTAL</b>		<b>\$22,496.91</b>

7. NRS 18.005(15) – REASONABLE TRAVEL AND LODGING COSTS

Sheppard Mullin:

REASONABLE TRAVEL AND LODGING COSTS - DESCRIPTION <sup>2</sup>	DATE OF INVOICE	AMOUNT
<b>A. Moreno, SMRH:</b>		
Airfare for A. Moreno - PAMT Document Review - 5/20-21/15	5/20/2015 - 5/21/2015	\$496.00
Cab fare to SD Airport for A. Moreno - PAMT Document Review - 5/20/15	5/20/2015	\$12.06
Hotel Expenses for A. Moreno - PAMT Document Review - 5/20-21/15	5/20/2015 - 5/21/2015	\$272.25
Car Rental for A. Moreno - PAMT Document Review - 5/20- 21/15	5/20/2015 - 5/21/2015	\$129.64
Cab fare from SD Airport to Office for A. Moreno - PAMT Document Review - 5/21/15	5/21/2015	\$20.70
Meal Expense for A. Moreno PAMT Document Review - 5/20/15	5/20/2015	\$50.89
Meal Expense for A. Moreno PAMT Document Review - 5/21/15	5/21/2015	\$8.99
Meal Expense for A. Moreno PAMT Document Review - 5/21/15	5/21/2015	\$41.20
Hotel Expenses for A. Moreno - PAMT in-person Document Collection - 6/9-10/15	6/9/2015 - 6/10/15	\$327.62
Meal Expense for A. Moreno PAMT in-person Document Collection - 6/9/15	6/9/2015	\$17.75
Meal Expense for A. Moreno PAMT in-person Document Collection - 6/9/15	6/9/2015	\$20.44
Mileage for A. Moreno (266 miles @ .575) - PAMT in-person Document Collection - 6/9-10/15	6/9/2015 - 6/10/2015	\$152.95
Parking Fee for A. Moreno - in-person Document Collection - 6/9/15	6/9/2015	\$12.00
Airline Baggage Fees for A. Moreno - Denver Depositions - Denver, CO - 09/11-13/2018	9/11/2018 - 9/13/2018	\$50.00
Airfare for A. Moreno - SAN to DEN -Denver Depositions - 09/12/2018 - 09/13/2018	9/12/2018 - 9/13/2018	\$235.40
Hotel Expense for A. Moreno - 09/12/2018 - 09/13/2018 - Denver Depositions - Hyatt Regency Denver at Colorado - Denver, CO	9/12/2018 - 9/13/2018	\$300.09
Transportation expenses for A. Moreno - 09/12/2018 - 09/13/2018 - Denver Depositions - Denver, CO	9/12/2018 - 9/13/2018	\$42.38
Meal Expenses for A. Moreno - Denver Depositions - for 9/12/18 - San Diego, CA and Denver, CO	9/12/2018	\$118.69
Meal Expense A. Moreno - Denver Depositions - for 9/13/18 - Denver, CO	9/13/2018	\$78.91
Airfare for A. Moreno - 09/17/2018 - 09/18/2018 - Dallas Depositions - Airfare SAN to Dallas, TX - San Diego	9/17/2018 - 9/18/2018	\$231.40
Hotel Expenses for A. Moreno - 09/17/2018 - 09/18/2018 - Dallas Depositions - Dallas Marriott City Center - Dallas, TX	9/17/2018 - 9/18/2018	\$276.11
Airline Baggage fees for A. Moreno - 09/17/2018 - 09/18/2018 - Dallas Depositions - San Diego, CA and Dallas TX	9/17/2018 - 9/18/2018	\$50.00
Transportation Expense for A. Moreno - 09/18/2018 - Dallas Depositions - San Diego, CA and Dallas, TX	9/18/2018	\$120.42

<sup>2</sup> Regarding travel and lodging costs related to depositions, Defendant Kenneth Potashner seeks only those costs related to depositions of individuals identified in Plaintiff's Pre-Trial Memorandum as potential witnesses for trial (either live or by deposition).

1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	Meal Expenses for A. Moreno - Dallas Depositions - for 9/17/18 - San Diego, CA and Dallas, TX	9/17/2018	\$89.08
4	Meal Expenses for A. Moreno - Dallas Depositions - for 9/18/18 - Dallas, TX	9/18/2018	\$56.76
5	Airfare for A. Moreno - 09/27/2018 - 09/28/2018 - Sacramento Depositions -SAN to SMF - San Diego	9/27/2018 - 9/28/2018	\$351.96
6	Hotel Expenses for A. Moreno - 09/27/2018 - 09/28/2018 - Sacramento Depositions - Hyatt Regency Sacramento - Sacramento, CA	9/27/2018 - 9/28/2018	\$240.80
7	Transportation Expense for A. Moreno - 09/27/2018 - 09/28/2018 - Sacramento Depositions - San Diego and Sacramento, CA	9/27/2018 - 9/28/2018	\$75.09
8	Meal Expense for A. Moreno - 09/27/2018 - Sacramento Depositions -for 9/27/18 - Sacramento, CA	9/27/2018	\$34.77
9	Meal Expense for A. Moreno - 09/28/2018 - Sacramento Depositions -for 9/28/18 - Sacramento, CA	9/28/2018	\$43.15
10	Airfare for A. Moreno - 07/10/2019 - 07/12/2019 - Parametric Depo of Ron Doornink - SD/WA	7/10/2019 - 7/12/2019	\$346.61
11	Airline Baggage fees for A. Moreno - 07/10/2019 - 07/12/2019 - Parametric Depo of Ron Doornink - SD/WA	7/10/2019 - 7/12/2019	\$60.00
12	Transportation Expense for A. Moreno - 07/10/2019 - Lyft from SD Office to SD Airport - Parametric Depo of Ron Doornink - SD/WA	7/10/2019	\$13.91
13	Transportation Expense for A. Moreno - 07/10/2019 - Lyft from WA Airport to Hotel - Parametric Depo of Ron Doornink - SD/WA	7/10/2019	\$20.39
14	Hotel Expenses for A. Moreno - 07/10/2019 - 07/12/2019 - Davenport Hotel - Parametric Depo of Ron Doornink - SD/WA	7/10/2019 - 7/12/2019	\$644.66
15	Meal Expenses for A. Moreno - 07/10/2019 -Parametric Depo of Ron Doornink - SD/WA	7/10/2019	\$30.10
16	Meal Expense for A. Moreno - 07/11/2019 - Meal Davenport Hotel- Parametric Depo of Ron Doornink - SD/WA	7/11/2019	\$27.26
17	Meal Expenses for A. Moreno - 07/11/2019 -Parametric Depo of Ron Doornink - SD/WA	7/11/2019	\$54.70
18	Meal Expenses for A. Moreno - 07/11/2019 -Parametric Depo of Ron Doornink - SD/WA	7/11/2019	\$34.29
19	Meal Expenses for A. Moreno - 07/11/2019 -Parametric Depo of Ron Doornink - SD/WA	7/11/2019	\$27.90
20	Transportation Expense for A. Moreno - 07/12/2019 - Cab to WA Airport - Parametric Depo of Ron Doornink - SD/WA	7/12/2019	\$21.00
21	Meal Expenses for A. Moreno - 07/12/2019 -Parametric Depo of Ron Doornink - SD/WA	7/12/2019	\$18.10
22	Transportation Expense for A. Moreno - 3 Lyft rides in Las Vegas for Parametric Evidentiary Hearing - June 16-18, 2021	6/16/2021	\$120.39
23	Airfare for A. Moreno - to Las Vegas for Parametric Evidentiary Hearing - June 16-18, 2021	6/16/2021 - 6/18/2021	\$331.96
24	Hotel Expenses for A. Moreno - JW Marriott Hotel in Las Vegas for Parametric Evidentiary Hearing - June 16-18, 2021	6/16/2021 - 6/18/2021	\$409.24
25	<b>A. Moreno, SMRH Sub-Total:</b>		<b>\$6,118.01</b>
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1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	<b>J. Stigi, SMRH:</b>		
4	Meal Expense for J. Stigi- 12/9 Meal re Parametric/Houlihan Lokey Depo	12/9/2013	\$2.45
5	Meal Expense for J. Stigi- 12/9 Dinner re Parametric/Houlihan Lokey Depo in NY	12/9/2013	\$69.25
6	Airfare Expense for J. Stigi- 12/9 R/T Airfare (LAX-NEW) re Parametric/Houlihan Lokey Depo in NY	12/9/2013	\$3,110.80
7	Transportation Expense for J. Stigi- 12/9 Car Service re Parametric/Houlihan Lokey Depo in NY	12/9/2013	\$122.77
8	Meal Expense for J. Stigi- 12/10 Dinner re Parametric/Houlihan Lokey Depo in NY	12/10/2013	\$77.76
9	Meal Expense for J. Stigi- 12/11 Dinner re Parametric/Houlihan Lokey Depo in NY	12/11/2013	\$22.29
10	Hotel Expenses for J. Stigi- 12/9-12/11 Hotel for Parametric/Houlihan Lokey Depo in NY	12/11/2013	\$1,221.06
11	Hotel Expenses for J. Stigi- 12/11 Hotel in LA re Parametric/Houlihan Lokey Depo	12/11/2013	\$175.77
12	Parking Expense for J. Stigi- 12/9-12/12 Hotel Parking in LA re Parametric/Houlihan Lokey Depo	12/12/2013	\$49.90
13	Meal Expense for J. Stigi- 12/12 Coffee re Parametric/Houlihan Lokey Depo in NY	12/12/2013	\$2.18
14	Transportation Expense for J. Stigi- 12/12 Car Service in Minneapolis re Parametric/Houlihan Lokey Depo	12/12/2013	\$122.30
15	Transportation Expense for J. Stigi Elite Car Service - Ride Date 12/11/13, Vchr #3121112916	12/13/2013	\$108.14
16	Parking Expense for J. Stigi- 12/12-12/13 LAX Airport Parking re Parametric/Houlihan Lokey Depo in NY	12/13/2013	\$60.00
17	Airfare Expense for J. Stigi- 12/12-12/13 R/T Airfare (LA-St Paul) re Parametric/Houlihan Lokey Depo	12/13/2013	\$2,458.80
18	Hotel Expenses for J. Stigi- 12/12-12/13 Hotel in Minneapolis re Parametric/Houlihan Lokey Depo	12/13/2013	\$306.79
19	Mileage Expense for J. Stigi- Mileage (299.9 mi) re Parametric/Houlihan Lokey Depo	12/13/2013	\$169.44
20	Meal Expense for J. Stigi- 12/17 Lunch re Parametric/Houlihan Lokey Depo	12/17/2013	\$6.54
21	Mileage Expense for J. Stigi - R/T Mileage to Bob Hope Airport - Parametric Shareholder Lit. Hearing	12/25/2013 - 12/26/2013	\$16.10
22	Airfare Expense for J. Stigi - R/T Airfare (Southwest) - Parametric Shareholder Lit. Hearing	12/25/2013 - 12/26/2013	\$458.80
23	Transportation Expense for J. Stigi - Ground Transportation - Parametric Shareholder Lit Hearing.	12/25/2013 - 12/26/2013	\$100.00
24	Meal Expense for J. Stigi - Breakfast plus tips - Parametric Shareholder Lit. Hearing	12/26/2013	\$12.00
25	Meal Expense for J. Stigi - Dinner at Tequileria - Parametric Shareholder Lit. Hearing	12/26/2013	\$76.77
26	Hotel Expenses for J. Stigi - Golden Nugget Hotel plus Dinner - Parametric Shareholder Lit. Hearing	12/25/2013 - 12/26/2013	\$102.99
27	Parking Expense for J. Stigi - Parking at Bob Hope Airport - Parametric Shareholder Lit. Hearing	12/26/2013	\$46.00
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1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	Mileage Expense for J. Stigi - R/T Mileage to/from LAX -	4/9/2014 -	\$14.67
4	Parametric Shareholder Lit. Hearing Motion to Intervene	4/10/2014	
5	Airfare Expense for J. Stigi - R/T Airfare to attend court hearing -	4/9/2014 -	\$544.00
6	Motion to Intervene	4/10/2014	
7	Hotel Expenses for J. Stigi - Golden Nugget Hotel + Internet and	4/9/2014	\$115.67
8	Tips; Parametric Shareholder Lit. Hearing Motion to Intervene		
9	Transportation Expense for J. Stigi - Cab fares to/from	4/9/2014 -	\$73.88
10	Hotel/Airport - 4/9-10/14; Parametric Shareholder Lit. Hearing	4/10/2014	
11	Motion to Intervene		
12	Parking Expense J. Stigi - Parking at LAX while at hearing in	4/10/2014	\$51.00
13	Las Vegas-; Parametric Shareholder Lit. Hearing Motion to		
14	Intervene		
15	Airfare Expense for J. Stigi - R/T Airfare to Las Vegas, NV -	8/27/2014 -	\$447.20
16	Turtle Beach - Shareholder Class Action - 8/27-28/14	8/28/2014	
17	Hotel Expenses for J. Stigi - The Cromwell - Shareholder Class	8/27/2014	\$206.08
18	Action - 8/27/14		
19	Transportation Expense for J. Stigi - Ground Transportation -	8/27/2014 -	\$97.72
20	Shareholder Class Action - 8/27-28/14	8/28/2014	
21	Parking Expense for J. Stigi - LAX Parking - Shareholder Class	8/27/2014 -	\$51.00
22	Action - 8/28/14	8/28/2014	
23	Mileage Expense for J. Stigi- 10/16/14-10/17/14 R/T Mileage to	10/16/2014	\$12.26
24	LAX - Turtle Beach/Class Action-Status Conference		
25	Transportation Expense for J. Stigi- 10/16/14 Taxi from airport to	10/16/2014	\$51.24
26	hotel - Turtle Beach/Class Action-Status Conference		
27	Airfare Expense for J. Stigi- 10/16/14-10/17/14 R/T Airfare (	10/16/2014	\$490.20
28	LA-LV) - Turtle Beach/Class Action Status Conference		
	Hotel Expenses for J. Stigi- 10/16/14 Golden Nugget Hotel -	10/16/2014	\$75.82
	Turtle Beach/Class Action-Status Conference		
	Parking Expense for J. Stigi- 10/17/14 Parking at LAX - Turtle	10/17/2014	\$30.00
	Beach/Class Action-Status Conference		
	Transportation Expenses for J. Stigi- 10/17/14 Taxi from hotel to	10/17/2014	\$51.44
	airport + tips - Turtle Beach/Class Action-Status Conference		
	Mileage Expense for J. Stigi - Roundtrip mileage to LAX - Turtle	12/9/2014	\$13.38
	Beach - Class Action (Hearing on Motion Stay and Approve ESI		
	Protocol) 12/7-8/14		
	Airfare Expense for J. Stigi - R/T airfare from LA to Las Vegas -	12/9/2014	\$511.20
	Turtle Beach - Class Action (Hearing on Motion Stay and		
	Approve ESI Protocol) 12/7-8/14		
	Hotel Expenses for J. Stigi - Golden Nugget (plus tip) - Turtle	12/9/2014	\$86.93
	Beach - Class Action (Hearing on Motion Stay and Approve ESI		
	Protocol) 12/7/14		
	Transportation Expense for J. Stigi - Taxi from airport to hotel -	12/9/2014	\$48.48
	Turtle Beach - Class Action (Hearing on Motion Stay and		
	Approve ESI Protocol) 12/7/14		
	Parking Expense for J. Stigi - Parking at LAX- Turtle Beach -	12/9/2014	\$30.00
	Class Action (Hearing on Motion Stay and Approve ESI		
	Protocol) 12/8/14		
	Transportation Expense for J. Stigi - Taxi to Hotel - Turtle Beach	2/16/2015	\$39.29
	- Class Action - 2/16-17/15		
	Parking Expense for J. Stigi - Parking at LAX - Turtle Beach -	2/17/2015	\$30.00
	Class Action - 2/17/15		
	Hotel Expenses for J. Stigi - Cancellation of Golden Nugget Hotel	5/8/2015	\$90.51
	- Turtle Beach - Shareholder Lit (Cancelled Hearing) - 5/8/15		

1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	Airfare Expense for J. Stigi - Fee from Altour Travel for cancelled flights - Turtle Beach - Shareholder Lit (Cancelled Hearing) - 5/14/15	5/14/2015	\$37.00
4	Airfare Expense for J. Stigi - R/T Airfare to Oakland - Turtle Beach - Class Action - 8/23-27/15	8/23/2015 - 8/27/2015	\$136.25
5	Hotel Expenses for J. Stigi - Hyatt Regency San Francisco - Turtle Beach - Class Action - 8/23-27/15	8/23/2015 - 8/27/2015	\$330.55
6	Transportation Expense for J. Stigi - Toll for Bay Bridge - Turtle Beach - Class Action - 8/23-27/15	8/28/2015	\$5.00
7	Parking Expense for J. Stigi - Parking at Bob Hope Airport - Turtle Beach - Class Action - 8/23-27/15	8/23/2015 - 8/27/2015	\$30.00
8	Mileage Expense for J. Stigi- 8/31/15-9/3/15 R/T Mileage to LAX	8/31/2015 - 9/03/2015	\$5.39
9	Parking Expense for J. Stigi- 8/31/15-9/3/15 Parking at LAX	8/31/2015 - 9/03/2015	\$31.00
10	Airfare Expense for J. Stigi- 8/31/15-9/3/15 Airfare for (3) flights (LA-Reno-New Orleans-LA)	8/31/2015 - 9/03/2015	\$299.00
11	Hotel Expenses for J. Stigi- 8/31/15-9/2/15 Hyatt Place Reno-Tahoe Airport	8/31/2015 - 9/03/2015	\$381.68
12	Hotel Expenses for J. Stigi - 10/01/2017 - 10/02/2017 - Golden Nugget Hotel in Las Vegas while attending Status Conference in Turtle Beach Class Action matter plus tips and meals - Las Vegas	10/1/2017	\$172.35
13	Airfare Expense for J. Stigi - 10/01/2017 - 10/02/2017 - R/T airfare to Las Vegas for Status Conference in Turtle Beach Class Action matter - San Diego - Las Vegas	10/1/2017	\$515.95
14	Transportation Expense for J. Stigi - 10/01/2017 - Taxi from Las Vegas airport to Golden Nugget - Las Vegas	10/1/2017	\$55.95
15	Parking Expense for J. Stigi - 10/01/2017 - 10/02/2017 - Parking at San Diego airport - San Diego	10/1/2017	\$32.00
16	Mileage Expense for J. Stigi - 03/11/2018 - 03/12/2018 - (11.3 miles) Mileage to LAX from residence re Parametric - Argument on Motion to Dismiss. - Los Angeles	3/11/2018	\$6.16
17	Parking Expense for J. Stigi - 03/11/2018 - 03/12/2018 - Parking at LAX re Parametric - Argument on Motion to Dismiss. - Los Angeles	3/11/2018	\$30.00
18	Airfare Expense for J. Stigi - 03/11/2018 - 03/12/2018 - Altour travel - Parametric - Argument on Motion to Dismiss. Southwest Airlines Roundtrip LAX to Las Vegas - Las Vegas	3/11/2018	\$544.96
19	Transportation Expense for J. Stigi - 03/11/2018 - Nellis Cab Co. from airport to hotel re Parametric - Argument on Motion to Dismiss. - Las Vegas	3/11/2018	\$52.86
20	Hotel Expenses for J. Stigi - 03/11/2018 - 03/12/2018 - Golden Nugget Hotel re Parametric - Argument on Motion to Dismiss. - Las Vegas	3/11/2018	\$155.38
21	Misc. Expense for J. Stigi - 03/11/2018 - 03/12/2018 - Miscellaneous travel tips in Las Vegas re Parametric - Argument on Motion to Dismiss. - Los Angeles	3/11/2018	\$2.00
22	Mileage Expense for J. Stigi - 03/12/2018 - (10.4 miles) Mileage from LAX to office re Parametric - Argument on Motion to Dismiss. - Los Angeles	3/12/2018	\$5.67
23	Mileage Expense for J. Stigi - 06/10/2018 - (11.1 miles) Mileage to LAX - Las Vegas - Parametric hearing on Motion to Stay and Rule 16 Conference	6/10/2018	\$6.05
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1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	Mileage Expense for J. Stigi - 06/10/2018 - (10.1 miles) Mileage from LAX to office - Las Vegas - Parametric hearing on Motion to Stay and Rule 16 Conference	6/10/2018	\$5.50
4	Transportation Expense for J. Stigi - 06/10/2018 - Taxi from airport to golden Nugget hotel - Las Vegas - Parametric hearing on Motion to Stay and Rule 16 Conference	6/10/2018	\$58.63
5	Misc. Expense for J. Stigi - 06/10/2018 - 06/11/2018 - Miscellaneous tips - Las Vegas - Parametric hearing on Motion to Stay and Rule 16 Conference	6/10/2018	\$5.00
6	Airfare Expense for J. Stigi - 06/10/2018 - Altour: R/T airfare from LAX to Las Vegas Southwest Airlines - Las Vegas - Parametric hearing on Motion to Stay and Rule 16 Conference	6/10/2018	\$552.96
7	Hotel Expenses for J. Stigi - 06/10/2018 - 06/11/2018 - Golden Nugget Hotel - Las Vegas - Parametric hearing on Motion to Stay and Rule 16 Conference	6/10/2018	\$276.06
8	Parking Expense for J. Stigi - 06/11/2018 - LAX Airport parking - Los Angeles - Parametric hearing on Motion to Stay and Rule 16 Conference	6/11/2018	\$30.00
9	Mileage Expense for J. Stigi - 10/29/2018 - (9.9 miles) Mileage to LAX - Los Angeles - Prepare and defend deposition of John Montgomery	10/29/2018	\$5.40
10	Airfare Expense for J. Stigi - 10/29/2018 - 10/31/2018 - Altour - American Airlines roundtrip tickets LAX - NY - Los Angeles - Prepare and defend deposition of John Montgomery	10/29/2018	\$531.40
11	Transportation Expense for J. Stigi - 10/29/2018 - Taxi from JFK - New York - Prepare and defend deposition of John Montgomery	10/29/2018	\$78.82
12	Meal Expense for J. Stigi - 10/29/2018 - Del Frisco's Grille - dinner - New York - Prepare and defend deposition of John Montgomery	10/29/2018	\$69.35
13	Hotel Expenses for J. Stigi - 10/29/2018 - 10/31/2018 - Jewel Hotel - New York - Prepare and defend deposition of John Montgomery	10/29/2018	\$631.24
14	Parking Expense for J. Stigi - 10/29/2018 - 10/31/2018 - Parking at LAX - Los Angeles - Prepare and defend deposition of John Montgomery	10/29/2018	\$90.00
15	Meal Expense for J. Stigi - 10/30/2018 - The Capital Grille - dinner - New York - Prepare and defend deposition of John Montgomery	10/30/2018	\$94.39
16	Mileage Expense for J. Stigi - 10/31/2018 - (15.5 miles) Mileage from LAX - Los Angeles - Prepare and defend deposition of John Montgomery	10/31/2018	\$8.45
17	Meal Expense for J. Stigi - 10/31/2018 - Vino Volo (JFK) - dinner - New York - Prepare and defend deposition of John Montgomery	10/31/2018	\$81.59
18	Misc. Expense for J. Stigi - 10/31/2018 - Tips - New York - Prepare and defend deposition of John Montgomery	10/31/2018	\$5.00
19	Transportation Expense for J. Stigi - 10/31/2018 - Subway to JFK - New York - Prepare and defend deposition of John Montgomery	10/31/2018	\$7.75
20	Airfare Expense for J. Stigi - 12/31/2018 - 01/02/2019 - Southwest airlines R/T airfare for meeting with Nevada counsel to prep for class cert. motion hearing. Parametric/Turtle Beach clients	12/31/2018	\$586.97

1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	Airfare Expense for J. Stigi - 12/31/2018 - 01/02/2019 - Airline change fee related to the meeting with Nevada counsel to prep for class cert. motion hearing. - Las Vegas - Parametric/Turtle Beach clients	12/31/2018	\$37.00
4	Airfare Expense for J. Stigi - 12/31/2018 - 01/02/2019 - Miscellaneous tips related to travel for meeting with Nevada counsel to prep for class cert. motion hearing. - Las Vegas - Parametric/Turtle Beach clients	12/31/2018	\$9.00
5	Transportation Expense for J. Stigi - 01/01/2019 - Taxi from airport to hotel re: meeting with Nevada counsel to prep for class cert. motion hearing. - Las Vegas - Parametric/Turtle Beach clients	1/1/2019	\$59.21
6	Hotel Expenses for J. Stigi - 01/01/2019 - 01/02/2019 - JW Marriott Hotel for meeting with Nevada counsel to prep for class cert. motion hearing. - Las Vegas - Parametric/Turtle Beach clients	1/1/2019	\$322.21
7	Transportation Expense for J. Stigi - 01/02/2019 - Taxi to meeting with Nevada counsel to prep for class cert. motion hearing. - Las Vegas - Parametric/Turtle Beach clients	1/2/2019	\$17.08
8	Transportation Expense for J. Stigi - 01/02/2019 - Lyft car to airport for meeting with Nevada counsel to prep for class cert. motion hearing. - Las Vegas - Parametric/Turtle Beach clients	1/2/2019	\$38.43
9	Mileage Expense for J. Stigi - 01/06/2019 - (11.1 miles) Mileage to LAX re: class cert. motion hearing - Las Vegas - Parametric/Turtle Beach clients	1/6/2019	\$6.44
10	Airfare Expense for J. Stigi - 01/06/2019 - 01/07/2019 - Southwest R/T airfare to attend class cert. motion hearing - Las Vegas - Parametric/Turtle Beach clients	1/6/2019	\$578.97
11	Airfare Expense for J. Stigi - 01/06/2019 - 01/07/2019 - Southwest change fee re: class cert. motion hearing - Las Vegas - Parametric/Turtle Beach clients	1/6/2019	\$37.00
12	Transportation Expense for J. Stigi - 01/06/2019 - Taxi to hotel re: class cert. motion hearing - Las Vegas - Parametric/Turtle Beach clients	1/6/2019	\$57.27
13	Misc. Expense for J. Stigi - 01/06/2019 - 01/07/2019 - Miscellaneous tips (\$5.00) and coffee (\$3.00) re: class cert. motion hearing - Las Vegas - Parametric/Turtle Beach clients	1/6/2019	\$8.00
14	Parking Expense for J. Stigi - 01/07/2019 - Parking at LAX re: class cert. motion hearing - Las Vegas - Parametric/Turtle Beach clients	1/7/2019	\$53.00
15	Mileage Expense for J. Stigi - 02/18/2019 - (9.4 miles) Mileage - Office to LAX - Los Angeles - Parametric Mediation in Las Vegas	2/18/2019	\$5.45
16	Parking Expense for J. Stigi - 02/18/2019 - Parking at LAX - Los Angeles - Parametric Mediation in Las Vegas	2/18/2019	\$80.00
17	Airfare Expense for J. Stigi - 02/18/2019 - 02/19/2019 - Altour Travel - Southwest Airlines Roundtrip LAX to Las Vegas - Los Angeles - Parametric Mediation in Las Vegas	2/18/2019	\$552.96
18	Transportation Expense for J. Stigi - 02/18/2019 - Taxi from Las Vegas airport to Hotel fare + tip - Las Vegas - Parametric Mediation in Las Vegas	2/18/2019	\$40.00
19	Misc. Expense for J. Stigi - 02/18/2019 - 02/19/2019 - Miscellaneous tips. - Los Angeles and Las Vegas - Parametric	2/18/2019	\$7.00



1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	Mediation in Las Vegas		
4	Hotel Expenses for J. Stigi - 02/18/2019 - 02/19/2019 - The Signature Hotel at MGM - Las Vegas - Parametric Mediation in Las Vegas	2/18/2019	\$384.25
5	Mileage Expense for J. Stigi - 02/19/2019 - (11.8 miles) Mileage - LAX to residence - Los Angeles - Parametric Mediation in Las Vegas	2/19/2019	\$6.84
6	Transportation Expense for J. Stigi - 02/19/2019 - Lyft to mediation - Las Vegas - Parametric Mediation in Las Vegas	2/19/2019	\$9.19
7	Transportation Expense for J. Stigi - 02/19/2019 - Lyft to Las Vegas airport - Las Vegas - Parametric Mediation in Las Vegas	2/19/2019	\$12.39
8	Mileage Expense for J. Stigi - 05/08/2019 - 05/09/2019 - (5.8 miles) Mileage from hotel to Del Mar Honore' Deposition (Parametric) - Del Mar - Parametric - Honore' Prep - Deposition	5/8/2019	\$3.36
9	Mileage Expense for J. Stigi - 05/08/2019 - 05/09/2019 - (120 miles) Mileage from Del Mar Honore' Deposition (Parametric) - Del Mar - Parametric - Honore' Depo Prep and Deposition	5/8/2019	\$69.60
10	Mileage Expense for J. Stigi - 05/08/2019 - (120 miles) Return Mileage to San Diego Honore' Prep and Deposition (Parametric) - San Diego - Client: Parametric	5/10/2019	\$69.60
11	Hotel Expenses for J. Stigi - 05/08/2019 - 05/09/2019 - Hyatt Regency - Parametric - Honore' Prep - Deposition - San Diego - Parametric - Honore' Prep - Deposition	5/8/2019	\$686.33
12	Misc. Expense for J. Stigi - 05/08/2019 - 05/09/2019 - Miscellaneous tips - Parametric - Honore' Prep - Deposition - San Diego - Parametric - Honore' Prep - Deposition	5/8/2019	\$5.00
13	Mileage Expense for J. Stigi - 05/09/2019 - (5.8 miles) Mileage from hotel to Del Mar Honore' Prep (Parametric) - Del Mar	5/9/2019	\$3.36
14	Mileage Expense for Mileage Expense for J. Stigi - 05/09/2019 - (5.8 miles) Mileage from hotel to Del Mar Honore' Prep (Parametric) - Del Mar	5/9/2019	\$3.36
15	SMRH Parking Charge, Office CC , by: John Stigi	5/16/2019	\$37.20
16	SMRH Parking Charge, Office CC , by: John Stigi	5/17/2019	\$148.80
17	Mileage Expense for J. Stigi - 05/28/2019 - (11.6 miles) Mileage to LAX - Los Angeles	5/28/2019	\$6.73
18	Mileage Expense for J. Stigi - 05/28/2019 - 05/30/2019 - (15.5 miles) Mileage from LAX - Los Angeles	5/28/2019	\$8.99
19	Parking Expense for J. Stigi - 05/28/2019 - 05/30/2019 - LAX Parking Garage - New York	5/28/2019	\$128.00
20	Hotel Expenses for J. Stigi - 05/28/2019 - 05/30/2019 - The Algonquin Hotel - lodging and two dinners - New York	5/28/2019	\$1,357.55
21	Misc. Expense for J. Stigi - 05/28/2019 - 05/30/2019 - Miscellaneous tips (\$7.00) subway to JFK (\$7.75) - New York	5/28/2019	\$14.75
22	Transportation Expense for J. Stigi - 05/28/2019 - Taxi from JFK to hotel - New York	5/28/2019	\$82.40
23	Airfare Expense for J. Stigi - 06/03/2019 - Altour American Airlines roundtrip - Los Angeles to NY	6/3/2019	\$517.88
24	Parking Expense for J. Stigi - 06/26/2019 - 06/27/2019 - LAX Parking Garage - Los Angeles - B. Murray Deposition	6/26/2019	\$80.00
25	Airfare Expense for J. Stigi - 06/26/2019 - 06/27/2019 - Altour - R/T airfareon American Airlines LAX to Austin - Los Angeles, CA and Austin, TX - B. Murray deposition	6/26/2019	\$317.63

1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
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3	Meal Expense for J. Stigi - 06/26/2019 - Areas USA Lax Dunkin Donuts - Los Angeles - B. Murray deposition	6/26/2019	\$3.06
4	Meal Expense for J. Stigi - 06/26/2019 - Areas USA Lax Sammv's Pizza - lunch - Los Angeles - B. Murray Deposition	6/26/2019	\$47.97
5	Misc. Expense for J. Stigi - 06/26/2019 - 06/28/2019 - Miscellaneous tips - Los Angeles - B. Murray Deposition	6/26/2019	\$7.00
6	Transportation Expense for J. Stigi - 06/26/2019 - 06/28/2019 - ATX Co-Op Taxi Company - Austin Taxi from airport to hotel. - Los Angeles - B. Murray Deposition	6/26/2019	\$36.84
7	Transportation Expense for J. Stigi - 06/26/2019 - 06/27/2019 - Lyft - to airport - Austin, Texas - B. Murray Deposition	6/26/2019	\$24.40
8	Hotel Expenses for J. Stigi - 06/26/2019 - 06/27/2019 - Aloft Austin Hotel In: 6.26.19 Out: 6.27.19 - Austin, Texas - B. Murray Deposition	6/26/2019	\$345.66
9	Mileage Expense for J. Stigi - 06/26/2019 - (11.7 miles) Mileage - residence to LAX - Los Angeles - B. Murray Deposition	6/26/2019	\$6.79
10	Meal Expense for J. Stigi - 06/27/2019 - Delaware North Austin Bergstrom Int'l Airport - dinner - Los Angeles - B. Murray Deposition	6/27/2019	\$93.49
11	Mileage Expense for J. Stigi - 06/27/2019 - (15.5 miles) Mileage - residence to LAX - Los Angeles - B. Murray Deposition	6/27/2019	\$8.99
12	SMRH Parking Charge, Office CC , by: John Stigi J. Barnes Depo Prep	7/1/2019	\$37.20
13	Meal Expense for J. Stigi - 07/01/2019 - Century Grill - Los Angeles - Lunch with client for J. Barnes deposition preparation.	7/1/2019	\$20.47
14	SMRH Parking Charge, Office CC , by: John Stigi J. Barnes Depo Prep	7/2/2019	\$186.00
15	Meal Expense The Office Express.com - Inv#809708 - w/John Stigi - 7/2/19 - Lunch J. Barnes Depo Prep	7/2/2019	\$166.26
16	Parking Expense for J. Stigi - 07/24/2019 - 07/25/2019 - Parking at LAX - Los Angeles - Parametric - J. Barnes deposition	7/24/2019	\$80.00
17	Airfare Expense for J. Stigi - 07/24/2019 - 07/25/2019 - Altour: Southwest Airlines roundtrip LAX to Las Vegas - Los Angeles - Parametric - J. Barnes deposition	7/24/2019	\$562.96
18	Mileage Expense for J. Stigi - 07/24/2019 - (9.5 miles) Mileage from office to LAX - Los Angeles - Parametric - J. Barnes deposition	7/24/2019	\$5.51
19	Transportation Expense for J. Stigi - 07/24/2019 - Taxi to hotel - Las Vegas - Parametric - J. Barnes deposition	7/24/2019	\$24.56
20	Mileage Expense for J. Stigi - 07/25/2019 - (15.7 miles) Mileage from LAX to residence - Los Angeles - Parametric - J. Barnes deposition	7/25/2019	\$9.11
21	Meal Expense for J. Stigi - 07/25/2019 - Tequileria Las Vegas Airport - dinner - Las Vegas - Parametric - J. Barnes deposition	7/25/2019	\$61.27
22	Transportation Expense for J. Stigi - 07/25/2019 - Lyft to deposition. - Las Vegas - Parametric - J. Barnes deposition	7/25/2019	\$2.00
23	Hotel Expenses for J. Stigi - 07/25/2019 - Signature Hotel - Las Vegas - Parametric - J. Barnes deposition	7/25/2019	\$240.54
24	Transportation Expense for J. Stigi - 07/25/2019 - Lyft to airport - Las Vegas - Parametric - J. Barnes deposition	7/25/2019	\$16.65
25	Mileage Expense for J. Stigi - 07/27/2019 - (133 miles) Mileage: residence to San Diego - Los Angeles to San Diego - Turtle Beach - Client deposition and preparation	7/27/2019	\$77.14

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3	Mileage Expense for J. Stigi - 07/30/2019 - (18.1 miles) Mileage from San Diego office to Del Mar Office - Los Angeles to San Diego - Turtle Beach - Client deposition and preparation	7/30/2019	\$10.50
4	Meal Expense for J. Stigi - 07/30/2019 - Come On In Cafe - SD - Lunch with client. E. Norris - Depo Prep Turtle Beach	7/30/2019	\$30.68
5	Mileage Expense for J. Stigi - 08/02/2019 - (2.8 miles) Mileage from SD to SD airport - Los Angeles to San Diego - Turtle Beach - Expert deposition and preparation	8/2/2019	\$1.62
6	Parking Expense for J. Stigi - 08/02/2019 - 08/06/2019 - Parking at San Diego for Expert Deposition Preparation - San Diego - Turtle Beach	8/2/2019	\$95.00
7	Airfare Expense for J. Stigi - 08/02/2019 - 08/06/2019 - Altour: R/T airfare on Delta - SD to NY - San Diego/NY - Turtle Beach - Expert deposition and preparation	8/2/2019	\$824.59
8	Transportation Expense for J. Stigi - 08/02/2019 - Taxi from JFK - NY - Lunch with client. E. Norris - Depo Prep Turtle Beach	8/2/2019	\$76.78
9	Meal Expense for J. Stigi - 08/04/2019 - Del Frisco's Grille - Dinner - Expert Deposition Preparation - NY - J. Hess	8/4/2019	\$129.96
10	Hotel Expenses for J. Stigi - 08/04/2019 - 08/06/2019 - Club Quarters Hotel - NY - Turtle Beach - Expert Deposition Preparation	8/4/2019	\$448.79
11	Meal Expense for J. Stigi - 08/05/2019 - Del Frisco's Grille - Dinner - Expert Deposition Preparation - NY - J. Montgomery	8/5/2019	\$134.15
12	Mileage Expense for J. Stigi - 08/06/2019 - Mileage from SD airport to SD office. - San Diego - Turtle Beach	8/6/2019	\$3.10
13	Transportation Expense for J. Stigi - 08/06/2019 - Taxi to JFK - NY - Turtle Beach - Expert Deposition Preparation	8/6/2019	\$76.77
14	Mileage Expense for J. Stigi - 08/07/2019 - 08/08/2019 - (5.9 miles) Mileage from hotel to Del Mar office. - DelMar - Turtle Beach	8/7/2019	\$3.42
15	Meal Expense for J. Stigi - 08/07/2019 - Cousins Maine Lobster San Diego - San Diego - Lunch with client (Deposition Preparation)	8/7/2019	\$33.29
16	Mileage Expense for J. Stigi - 08/07/2019 - (5.9 miles) Mileage from Del Mar office to hotel. - Del Mar - Turtle Beach	8/7/2019	\$3.42
17	Hotel Expenses for J. Stigi - 08/07/2019 - 08/08/2019 - Hyatt Regency - San Diego/Del Mar - Turtle Beach	8/7/2019	\$406.14
18	Mileage Expense for J. Stigi - 08/08/2019 - (113 miles) Mileage from Del Mar office to home - Del Mar/Los Angeles - Turtle Beach	8/8/2019	\$65.54
19	Meal Expense Panera, LLC - Inv.# 20429711628873 - Stigi Deposition - 8/13/19	8/8/2019	\$112.66
20	Parking Expense for J. Stigi - 08/11/2019 - 08/13/2019 - Parking at San Diego Airport (no receipt) - San Diego - Wolfe Deposition	8/11/2019	\$96.00
21	Mileage Expense for J. Stigi - 08/11/2019 - (135 miles) Mileage to San Diego Airport - San Diego - Wolfe Deposition	8/11/2019	\$78.30
22	Airfare Expense for J. Stigi - 08/11/2019 - 08/13/2019 - Altour R/T airfare on Southwest Airlines - San Diego and San Jose - Wolfe Deposition	8/11/2019	\$518.97
23	Hotel Expenses for J. Stigi - 08/11/2019 - 08/13/2019 - AC Hotels by Marriott - San Jose - Wolfe Deposition	8/11/2019	\$908.59
24	Transportation Expense for J. Stigi - 08/11/2019 - 08/13/2019 - Car Rental Hertz - San Jose - Wolfe Deposition	8/11/2019	\$193.40
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3	Transportation Expense for J. Stigi - 08/11/2019 - 08/13/2019 - Fuel - First Union Gas - San Jose - Wolfe Deposition	8/11/2019	\$9.75
4	Meal Expense for J. Stigi - 08/13/2019 - Flemings 1502 - San Jose - Wolfe Deposition	8/13/2019	\$81.96
5	J. Stigi - 08/13/2019 - 08/16/2019 - Miscellaneous tips - San Diego - Parametric - Stark, Todd and Hanson Depositions	8/13/2019	\$5.00
6	Mileage Expense for J. Stigi - 08/13/2019 - (13.9 miles) Mileage to Hyatt from SD airport - San Diego - Parametric - Stark, Todd and Hanson Depositions	8/13/2019	\$8.06
7	Hotel Expenses for J. Stigi - 08/13/2019 - 08/16/2019 - Hyatt Regency - San Diego - Parametric - Stark, Todd and Hanson Depositions	8/13/2019	\$1,089.58
8	Mileage Expense for J. Stigi - 08/14/2019 - (5.9 miles) Mileage to Del Mar Office - Del Mar - Parametric - Hanson Deposition	8/14/2019	\$3.42
9	Mileage Expense for Mileage Expense for J. Stigi - 08/14/2019 - (5.9 miles) Mileage back to Hyatt - Del Mar - Parametric - Hanson Deposition	8/14/2019	\$3.42
10	Meal Expense The Office Express.com - Inv# 835765 - Stigi Deposition	8/15/2019	\$214.30
11	Mileage Expense for J. Stigi - 08/15/2019 - (5.9 miles) Mileage to Del Mar Office - Del Mar - Parametric - Stark Deposition	8/15/2019	\$3.42
12	Mileage Expense for J. Stigi - 08/15/2019 - (5.9 miles) Mileage back to Hyatt - Del Mar - Parametric - Stark Deposition	8/15/2019	\$3.42
13	Mileage Expense for J. Stigi - 08/16/2019 - (12.8 miles) Mileage to SD Office (Todd deposition ) - San Diego - Parametric - Stark, Todd and Hanson Depositions	8/16/2019	\$7.42
14	Mileage Expense for J. Stigi - 08/16/2019 - (136 miles) Mileage from San Diego to residence - San Diego and Los Angeles - Parametric - Stark, Todd and Hanson Depositions	8/16/2019	\$78.88
15	Transportation Expense for J. Stigi - 08/17/2019 - Tollroad - San Diego - Parametric - Stark, Todd and Hanson Depositions	8/17/2019	\$6.62
16	Mileage Expense for J. Stigi - 08/18/2019 - (10.1 miles) Mileage to LAX - Los Angeles	8/18/2019	\$5.86
17	Parking Expense for J. Stigi - 08/18/2019 - 08/23/2019 - Airport LA parking - Los Angeles - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/18/2019	\$116.62
18	Misc. Expense for J. Stigi - 08/18/2019 - 08/23/2019 - Miscellaneous tips - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/18/2019	\$10.00
19	Airfare Expense for J. Stigi - 08/18/2019 - 08/23/2019 - Altour Travel: Roundtrip Delta Air - Lax - NY - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/18/2019	\$833.60
20	Transportation Expense for J. Stigi - 08/18/2019 - Taxi from JFK to Hotel - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/18/2019	\$76.77
21	Meal Expense for J. Stigi - 08/18/2019 - Kellari Seafood Taverna - dinner - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/18/2019	\$143.12
22	Hotel Expenses for J. Stigi - 08/18/2019 - 08/21/2019 - The Algonquin Hotel - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/18/2019	\$902.09
23	Transportation Expense for J. Stigi - 08/21/2019 - Taxi from deposition to Hertz. - New York - Turtle Beach Depositions of	8/21/2019	\$12.00

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3	J.T. Atkins, J. Montgomery and Ken Fox		
4	Meal Expense for J. Stigi - 08/21/2019 - Southampton Publick House - dinner - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/21/2019	\$53.42
5	Hotel Expenses for J. Stigi - 08/21/2019 - 08/23/2019 - Southampton Inn - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/21/2019	\$760.41
6	Meal Expense for J. Stigi - 08/22/2019 - Le Chef - lunch with co-counsel. - New York - J. Hess (Dechert) - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/22/2019	\$67.52
7	Meal Expense for J. Stigi - 08/22/2019 - Southampton Publick House - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/22/2019	\$63.10
8	Mileage Expense for J. Stigi - 08/23/2019 - (10.1 miles) Mileage from LAX - Los Angeles	8/23/2019	\$5.86
9	Meal Expense for J. Stigi - 08/23/2019 - SSP America at JFK - lunch - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/23/2019	\$52.83
10	Transportation Expense for J. Stigi - 08/23/2019 - Gas - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/23/2019	\$18.94
11	Transportation Expense for J. Stigi - 08/23/2019 - Hertz - New York - Turtle Beach Depositions of J.T. Atkins, J. Montgomery and Ken Fox	8/23/2019	\$230.14
12	Mileage Expense for J. Stigi - 08/25/2019 - (7.7 miles) Mileage to LAX - Los Angeles - Parametric Status Conference in Las Vegas	8/25/2019	\$4.47
13	Parking Expense for J. Stigi - 08/25/2019 - 08/26/2019 - Parking at LAX - Los Angeles - Parametric Status Conference in Las Vegas	8/25/2019	\$40.00
14	Airfare Expense for J. Stigi - 08/25/2019 - 08/26/2019 - Altour - R/T airfare LAX to Las Vegas - Southwest Airlines - Los Angeles - Las Vegas - Parametric Status Conference	8/25/2019	\$562.96
15	Transportation Expense for J. Stigi - 08/25/2019 - Taxi from airport to hotel - Las Vegas - Parametric Status Conference in Las Vegas	8/25/2019	\$23.09
16	Hotel Expenses for J. Stigi - 08/25/2019 - 08/26/2019 - MGM Hotel - Las Vegas - Parametric Status Conference	8/25/2019	\$267.65
17	Mileage Expense for J. Stigi - 08/26/2019 - (10 miles) Mileage from LAX to office. - Las Vegas - Parametric Status Conference	8/26/2019	\$5.80
18	Transportation Expense for J. Stigi - 08/26/2019 - Lyft from hotel to court. - Las Vegas - Parametric Status Conference	8/26/2019	\$16.18
19	Mileage Expense for J. Stigi - 09/04/2019 - (130 miles) Mileage to San Diego - Los Angeles, San Diego - Norris Depositions	9/4/2019	\$75.40
20	Mileage Expense for J. Stigi - 09/04/2019 - (2.5 miles) Mileage to San Diego airport - Los Angeles, San Diego - Norris Depositions	9/4/2019	\$1.45
21	Parking Expense for J. Stigi - 09/04/2019 - 09/05/2019 - San Diego Airport Parking - San Diego - Wolfe and Norris Depositions	9/4/2019	\$64.00
22	Airfare Expense for J. Stigi - 09/04/2019 - 09/05/2019 - Altour - round trip airfare San Diego to San Jose - San Deigo and San Jose - Wolfe and Norris Depositions	9/4/2019	\$518.97
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3	Transportation Expense for J. Stigi - 09/04/2019 - Green Cab -	9/4/2019	\$58.68
4	Taxi from SJ Airport to hotel. - San Deigo and San Jose - Wolfe		
5	and Norris Depositions		
6	Hotel Expenses for J. Stigi - 09/04/2019 - Courtyard by Marriott -	9/4/2019	\$499.80
7	San Deigo and San Jose - Wolfe and Norris Depositions		
8	Mileage Expense for J. Stigi - 09/05/2019 - (18.3 miles) Mileage	9/5/2019	\$10.61
9	from San Diego Airport to Marriott Del Mar - San Diego - Norris		
10	Depositions		
11	Meal Expense for J. Stigi - 09/05/2019 - Specialty's - lunch with	9/5/2019	\$14.98
12	client - San Diego - A. Wolfe		
13	Transportation Expense for J. Stigi - 09/05/2019 - Lyft to	9/5/2019	\$11.88
14	deposition in Palo Alto + tip - San Jose - Wolfe and Norris		
15	Depositions		
16	Transportation Expense for J. Stigi - 09/05/2019 - Lyft to San	9/5/2019	\$48.53
17	Jose airport - San Jose		
18	Hotel Expenses for J. Stigi - 09/05/2019 - 09/06/2019 - Marriott	9/5/2019	\$270.45
19	San Diego Del Mar - San Jose - Norris Depositions		
20	Mileage Expense for J. Stigi - 09/06/2019 - (0.7 miles) Mileage to	9/6/2019	\$0.41
21	Del Mar office - San Diego - Norris Deposition		
22	Mileage Expense for J. Stigi - 09/06/2019 - (113 miles) Mileage	9/6/2019	\$65.54
23	from Del Mar office to Los Angeles - San Diego - Norris		
24	Deposition		
25	Meal Expense Mendocino Farms - Inv.# 112434 - Stigi	9/6/2019	\$150.00
26	Deposition		
27	Mileage Expense for J. Stigi - 01/12/2020 - (11.4 miles) Mileage	1/12/2020	\$6.55
28	to LAX - Los Angeles - Parametric - Hearing on preliminary		
	approval of settlement.		
	Parking Expense for J. Stigi - 01/12/2020 - 01/13/2020 - Parking	1/12/2020	\$80.00
	at LAX - Los Angeles - Parametric - Hearing on preliminary		
	approval of settlement.		
	Airfare Expense for J. Stigi - 01/12/2020 - 01/13/2020 - Altour -	1/12/2020	\$332.81
	R/T airfare on Delta LAX - Las Vegas - Los Angeles and Las		
	Vegas - Parametric - Hearing on preliminary approval of		
	settlement.		
	Transportation Expense for J. Stigi - 01/12/2020 - Taxi from	1/12/2020	\$36.11
	airport to hotel - Las Vegas - Parametric - Hearing on		
	preliminary approval of settlement.		
	Misc. Expense for J. Stigi - 01/12/2020 - 01/13/2020 -	1/12/2020	\$5.00
	Miscellaneous tips. - Las Vegas - Parametric - Hearing on		
	preliminary approval of settlement.		
	Hotel Expenses for J. Stigi - 01/12/2020 - 01/13/2020 - The	1/12/2020	\$338.85
	Westin Hotel Las Vegas - accommodations - Las Vegas -		
	Parametric - Hearing on preliminary approval of settlement.		
	Mileage Expense for J. Stigi - 01/13/2020 - (11.6 miles) Mileage	1/13/2020	\$6.67
	from LAX - Los Angeles - Parametric - Hearing on preliminary		
	approval of settlement.		
	Transportation Expense for J. Stigi - 01/13/2020 - Lyft to court. -	1/13/2020	\$18.55
	Las Vegas - Parametric - Hearing on preliminary approval of		
	settlement.		
	Mileage Expense for J. Stigi - 06/15/2021 - (11.5 miles) Mileage	6/15/2021	\$6.44
	from residence to LAX - Los Angeles - Parametric hearing,		
	hearing preparation and meet and confer.		

1	<b>REASONABLE TRAVEL AND LODGING COSTS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION<sup>2</sup></b>	<b>INVOICE</b>	
3	Parking Expense for J. Stigi - 06/15/2021 - 06/18/2021 - Parking at LAX - Los Angeles - Legal defense team and clients re: Parametric hearing, hearing preparation and meet and confer.	6/15/2021	\$160.00
4	Airfare Expense for J. Stigi - 06/15/2021 - 06/18/2021 - Delta Airlines roundtrip LAX to Las Vegas - Los Angeles and Las Vegas - Legal defense team and clients re: Parametric hearing, hearing preparation and meet and confer.	6/15/2021	\$284.80
5	Misc. Expense for J. Stigi - 06/15/2021 - 06/18/2021 - Tips (handwritten in paper) - Las Vegas - Parametric hearing, hearing preparation and meet and confer.	6/15/2021	\$20.00
6	Transportation Expense for J. Stigi - 06/15/2021 - 06/18/2021 - Yellow Checker Star Taxi from Las Vegas airport to hotel. - Los Angeles - Legal defense team and clients re: Parametric hearing, hearing preparation and meet and confer.	6/15/2021	\$80.00
7	Hotel Expenses for J. Stigi - 06/15/2021 - 06/18/2021 - Marriot Hotel - Parametric hearing, hearing preparation and meet and confer.	6/15/2021	\$797.32
8	Transportation Expense for J. Stigi - 06/16/2021 - Lyft - ride between hotel and our Nevada counsel's office - Parametric hearing, hearing preparation and meet and confer.	6/16/2021	\$11.38
9	Transportation Expense for J. Stigi - 06/17/2021 - Lyft - ride between hotel and our Nevada counsel's office - Parametric hearing, hearing preparation and meet and confer.	6/17/2021	\$25.01
10	Mileage Expense for J. Stigi - 06/18/2021 - (12.1 miles) Mileage from LAX to residence. - Los Angeles - Parametric hearing, hearing preparation and meet and confer.	6/18/2021	\$6.78
11	Transportation Expense for J. Stigi - 06/18/2021 - Curb taxi - a taxi from the courthouse to the airport Parametric hearing	6/18/2021	\$57.22
12	<b>J. Stigi, SMRH Sub-Total:</b>		<b>\$40,044.22</b>
13			
14	<b>K. Potashner, Parametric:</b>		
15	Airline Expense K. Potashner, Reno to Las Vegas – Parametric hearing	06/17/2021	\$224.98
16	Hotel Expenses K. Potashner – Parametric hearing	06/17/2021	\$196.00
17	Transportation Expense K. Potashner taxi to hotel - Parametric hearing	06/17/2021	\$23.00
18	Transportation Expense K. Potashner Lyft to airport - Parametric hearing	06/18/2021	\$44.99
19	Airline Expense K. Potashner, Las Vegas to San Diego – Parametric hearing	06/18/2021	\$103.98
20	Transportation Expense K. Potashner Lyft to airport - Parametric hearing	06/18/2021	\$15.72
21	Transportation Expense K. Potashner, taxi - Parametric hearing	06/18/2021	\$31.09
22	<b>K. Potashner, Parametric Sub-Total:</b>		<b>\$639.76</b>
23			
24	<b>TOTAL</b>		<b>\$46,801.99</b>

8. NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES

a. COMPUTERIZED LEGAL RESEARCH

Holland & Hart:

COMPUTERIZED LEGAL RESEARCH - DESCRIPTION	DATE OF INVOICE	AMOUNT
Westlaw – Director Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction	12/20/2013	\$48.96
Westlaw – Director Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction	12/20/2013	\$54.40
Westlaw – Research regarding NRS 78 Provisions	7/16/2018	\$238.00
Westlaw – Research regarding NRS Chapter 78 Provisions	7/17/2018	\$59.50
Westlaw – Research regarding NRS Chapter 78 Provisions	7/17/2018	\$178.00
Westlaw – Research regarding NRS Chapter 78 Provisions	7/19/2018	\$59.50
Westlaw – Research regarding NRS Chapter 78 Provisions	7/23/2018	\$42.50
Westlaw – Research regarding <i>Parametric</i> decision and equity expropriation issues	7/23/2018	\$357.00
Westlaw – Research regarding <i>Parametric</i> decision and equity expropriation issues	7/24/2018	\$238.00
Westlaw - Research regarding <i>Parametric</i> decision and equity expropriation issues	7/25/2018	\$119.00
Westlaw - Research regarding <i>Parametric</i> decision and equity expropriation issues	8/6/2018	\$59.50
Westlaw - Research regarding <i>Parametric</i> decision and equity expropriation issues	8/8/2018	\$17.50
Westlaw - Research regarding <i>Parametric</i> decision and equity expropriation issues	8/10/2018	\$17.50
Westlaw - Research regarding <i>Parametric</i> decision and equity expropriation issues	8/10/2018	\$89.00
Westlaw - Research regarding <i>Parametric</i> decision and equity expropriation issues	8/15/2018	\$17.50
Westlaw - Research regarding <i>Parametric</i> decision and equity expropriation issues	9/11/2018	\$35.00
<b>TOTAL</b>		<b>\$1,630.86</b>

Sheppard Mullin:

COMPUTERIZED LEGAL RESEARCH - DESCRIPTION	DATE OF INVOICE	AMOUNT
Westlaw - Research by Landry, John, on 11/17/2013	11/17/2013	\$5.99
Westlaw research by Landry, John, on 11/18/2013	11/18/2013	\$1.00
Westlaw research by Landry, John, on 11/18/2013	11/18/2013	\$4.00
Westlaw research by Landry, John, on 11/19/2013	11/19/2013	\$2.00
Westlaw research by Landry, John, on 11/22/2013	11/22/2013	\$4.00



1	<b>COMPUTERIZED LEGAL RESEARCH -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION</b>	<b>INVOICE</b>	
3	Westlaw research by Landry, John, on 11/25/2013	11/25/2013	\$9.99
4	Westlaw research by Yun, Lisa, on 12/12/2013	12/12/2013	\$742.12
5	Westlaw research by Landry, John, on 12/13/2013	12/13/2013	\$10.99
6	Westlaw research by Yun, Lisa, on 12/13/2013	12/13/2013	\$169.20
7	Westlaw research by Landry, John, on 12/15/2013	12/15/2013	\$10.99
8	Westlaw research by Landry, John, on 12/16/2013	12/16/2013	\$3.00
9	Westlaw research by Yun, Lisa, on 12/16/2013	12/16/2013	\$845.32
10	Westlaw research by Moreno, Alejandro, on 12/18/2013	12/18/2013	\$89.10
11	Westlaw research by Yun, Lisa, on 12/18/2013	12/18/2013	\$697.81
12	Westlaw research by Moreno, Alejandro, on 2/5/2014	02/05/2014	\$178.20
13	Westlaw research by Moreno, Alejandro, on 2/13/2014	02/13/2014	\$178.20
14	Westlaw research by Moreno, Alejandro, on 3/11/2014	03/11/2014	\$267.30
15	Westlaw research by Boeck, George, on 6/10/2014	06/10/2014	\$1.00
16	Westlaw research by Moreno, Alejandro, on 7/24/2014	07/24/2014	\$44.10
17	Westlaw research by Korn, Martin, on 7/28/2014	07/28/2014	\$144.90
18	Westlaw research by Korn, Martin, on 7/31/2014	07/31/2014	\$76.03
19	Lexis research by Moreno, Alejandro on 8/20/2014	08/20/2014	\$21.38
20	Westlaw research by Yun, Lisa, on 10/7/2014	10/07/2014	\$199.80
21	Westlaw research by Yun, Lisa, on 10/8/2014	10/08/2014	\$525.60
22	Lexis research by Cook, Mercedes on 9/11/2015	09/11/2015	\$118.80
23	Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
24	Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
25	Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
26	Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
27	Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
28			

<b>COMPUTERIZED LEGAL RESEARCH - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	\$9.31
Bloomberg Finance LP. Invoice # 120151001. Invoice Date: 10/01/2015. Billing Period: 09/01/2015 - 09/30/2015. By: Martin Korn	10/01/2015	9.31
Lexis research by Landry, John on 7/6/2018	07/06/2018	\$809.10
Lexis research by Landry, John on 7/9/2018	07/09/2018	\$432.00
Lexis research by Shauer, Alyssa on 7/17/2018	07/17/2018	\$256.50
Lexis research by Amaro, Peter on 12/12/2018	12/12/2018	\$2262.60
Lexis research by Landry, John on 6/30/2020	06/30/2020	\$381.60
<b>TOTAL</b>		<b>\$8,557.79</b>

**b. ELECTRONIC DISCOVERY**

**Holland & Hart:**

<b>ELECTRONIC DISCOVERY - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Parametric-purchase of flash drive to transfer documents	12/16/2013	\$32.42
<b>TOTAL</b>		<b>\$32.42</b>

**Sheppard Mullin:**

<b>ELECTRONIC DISCOVERY - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Advanced Discovery – Inv#B98542 - Remote & Onsite Data Collection	09/30/2013	\$877.50
Advanced Discovery – Inv#B100887 - Native file processing; filter/export metadata & text extraction; record count	10/31/2013	\$411.00

<b>ELECTRONIC DISCOVERY - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Advanced Discovery – Inv#B100890 - Native file processing; filter/export metadata & text extraction; record count	10/31/2013	\$150.00
E-Discovery One-Time Loading Fee, 30 Gigabytes	10/31/2013	\$900.00
E-Discovery One-Time Loading Fee, 4 Gigabytes	11/29/2013	\$120.00
Advanced Discovery – Inv#B103171 - File processing; filter/export metadata & text extraction; logical document determination	11/30/2013	\$233.12
Advanced Discovery – Inv#B103535 - Scanning; OCR	11/30/2013	\$179.75
E-Discovery One-Time Loading Fee, 68 Gigabytes	12/31/2013	\$2,040.00
Advanced Discovery – Inv#B113875 – Native file processing; filter/export metadata & text extraction; OCR	03/31/2014	\$253.64
Advanced Discovery – Inv#B132092 - Native file processing; filter/export metadata & text extraction	10/31/2014	\$361.40
E-Discovery One-Time Loading Fee, 4 Gigabytes	10/31/2014	\$120.00
Advanced Discovery – Inv#B134210 – OCR; native file processing; filter/export metadata & text extraction; technical time	11/04/2014	\$204.81
Advanced Discovery – Inv#B134204 – Selective image creation for review or production	11/14/2014	\$46.61
Advanced Discovery – Inv#B134331 - OCR; native file processing; filter/export metadata & text extraction	11/21/2014	\$121.60
E-Discovery One-Time Loading Fee, 17 Gigabytes	11/30/2014	\$510.00
Setec Investigations – Inv ID 7855 – Forensic imaging; litigation support; travel; hardware fees; shipping fees	12/22/2014	\$5,863.25
Advanced Discovery – Inv#B137139 – OCR; scanning	12/26/2014	\$52.84
Advanced Discovery – Inv#B139499 – Shipping fee	01/31/2015	\$100.00
Advanced Discovery – Inv#B151912 – Processing fee; scanning; OCR; shipping fee	06/30/2015	\$462.13
E-Discovery One-Time Loading Fee, 1 Gigabyte	06/30/2015	\$30.00
Setec Investigations – Inv ID 8410 – Data collection; assemble data for delivery; travel; hardware fees; shipping fees	07/06/2015	\$2,057.21
E-Discovery Monthly Data Hosting Fees, 0.54 Gigabytes	01/01/2018	\$4.35

1	<b>ELECTRONIC DISCOVERY -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION</b>	<b>INVOICE</b>	
3	E-Discovery Data Hosting Fees, 0.54 Gigabytes	02/01/2018	\$4.35
4	E-Discovery Data Hosting Fees, 0.54 Gigabytes	03/01/2018	\$4.35
5	E-Discovery Data Hosting Fees, 0.54 Gigabytes	04/01/2018	\$4.35
6	E-Discovery Data Hosting Fees, 9.34 Gigabytes	5/31/2018	\$74.72
7	Advanced Discovery – Inv#B228047 – Native file processing; OCR; technical time	06/30/2018	\$292.28
8	E-Discovery Monthly Data Hosting Fees, 12.11 Gigabytes	06/30/2018	\$96.90
9	Advanced Discovery – Inv#AD62266 – Technical time	07/31/2018	\$70.00
10	E-Discovery Monthly Data Hosting Fees, 15.94 Gigabytes	07/31/2018	\$127.49
11	E-Discovery Monthly External User Fees, 3 Users	07/31/2018	\$207.00
12	Advanced Discovery – Inv#AD63321 – Project management	08/31/2018	\$225.00
13	E-Discovery Monthly Data Hosting Fees, 84.79 Gigabytes	08/31/2018	\$678.08
14	E-Discovery Monthly External User Fees, 3 Users	08/31/2018	\$207.00
15	E-Discovery Monthly Data Hosting Fees, 84.88 Gigabytes	09/30/2018	\$679.01
16	E-Discovery Monthly External User Fees, 3 Users	09/30/2018	\$207.00
17	Setec Investigations – Inv ID 17795 – Forensic acquisition; litigation support; travel/lodging	10/12/2018	\$1,705.79
18	E-Discovery Monthly Data Hosting Fees, 123.80 Gigabytes	10/31/2018	\$990.38
19	E-Discovery Monthly External User Fees, 3 Users	10/31/2018	\$207.00
20	E-Discovery Monthly Data Hosting Fees, 231.6 Gigabytes	11/30/2018	\$1,853.35
21	E-Discovery Monthly External User Fees, 3 Users	11/30/2018	\$207.00
22	E-Discovery Monthly Data Hosting Fees, 231.84 Gigabytes	12/31/2018	\$1,854.68
23	E-Discovery Monthly External User Fees, 1 User	12/31/2018	\$69.00
24	Advanced Discovery – Inv#AD68194 – Native file processing; OCR	01/31/2019	\$588.44
25	E-Discovery Monthly External User Fees, 1 User	01/31/2019	\$69.00
26	E-Discovery Monthly Data Hosting Fees, 317.58 Gigabytes	01/31/2019	\$3,175.77
27			
28			

1	<b>ELECTRONIC DISCOVERY -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION</b>	<b>INVOICE</b>	
3	Setec Investigations – Inv ID 18927 – Forensic acquisition; litigation support; hardware fees	02/11/2019	\$2,877.50
4	E-Discovery Monthly Data Hosting Fees, 469.23 Gigabytes	02/28/2019	\$4,692.26
5	E-Discovery Monthly External User Fees, 1 User	02/28/2019	\$69.00
6	E-Discovery Monthly Data Hosting Fees, 350.39 Gigabytes	03/31/2019	\$3,503.89
7	E-Discovery Monthly External User Fees, 1 User	03/31/2019	\$69.00
8	E-Discovery Monthly Data Hosting Fees, 350.39 Gigabytes	04/30/2019	\$3,503.89
9	E-Discovery Monthly External User Fees, 1 User	04/30/2019	\$69.00
10	E-Discovery Monthly Data Hosting Fees, 350.39 Gigabytes	05/31/2019	\$3,503.89
11	E-Discovery Monthly External User Fees, 4 Users	06/20/2019	\$276.00
12	E-Discovery Monthly Data Hosting Fees, 358.65 Gigabytes	07/20/2019	\$3,586.48
13	E-Discovery Monthly External User Fees, 4 Users	07/20/2019	\$276.00
14	Setec Security Technology - Invoice 20030 - For onsite efforts with Seth Putterman	08/14/2019	\$375.00
15	E-Discovery Monthly Data Hosting Fees, 356.26 Gigabytes	08/20/2019	\$3,562.58
16	E-Discovery Monthly External User Fees, 4 Users	08/20/2019	\$276.00
17	E-Discovery Monthly External User Fees, 1 User	11/20/2019	\$69.00
18	E-Discovery Monthly Data Hosting Fees, 480.81 Gigabytes	12/20/2019	\$4,808.09
19	E-Discovery Monthly Data Hosting Fees, 480.81 Gigabytes	02/20/2020	\$4,808.09
20	E-Discovery Monthly Data Hosting Fees, 480.81 Gigabytes	09/30/2020	\$4,808.09
21	E-Discovery Monthly Data Hosting Fees, 480.81 Gigabytes	10/31/2020	\$4,808.09
22	E-Discovery Monthly Data Hosting Fees, 481.62 Gigabytes	11/30/2020	\$4,816.20
23	E-Discovery Monthly Data Hosting Fees, 481.62 Gigabytes	12/30/2020	\$4,816.20
24	E-Discovery Monthly Data Hosting Fees, 494.24 Gigabytes	01/31/2021	\$9,884.78
25	E-Discovery Monthly Data Hosting Fees, 494.43 Gigabytes	02/28/2021	\$9,888.58
26	E-Discovery Monthly Data Hosting Fees, 507.65 Gigabytes	03/26/2021	\$10,152.98
27	E-Discovery Monthly Data Hosting Fees, 543.73 Gigabytes	04/30/2021	\$10,874.67
28			

<b>ELECTRONIC DISCOVERY - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
E-Discovery Monthly Data Hosting Fees, 551.17 Gigabytes	05/30/2021	\$11,023.36
E-Discovery Monthly Data Hosting Fees, 551.43 Gigabytes	06/30/2021	\$11,028.66
E-Discovery Monthly Data Hosting Fees, 551.43 Gigabytes	07/31/2021	\$11,028.66
Setec Investigations – Inv ID 24151 – Trial preparation; trial testimony	08/02/2021	\$975.00
<b>TOTAL</b>		<b>\$159,128.09</b>

**c. DELIVERY AND FILING SERVICES / MESSENGERS**

**Holland & Hart:**

<b>DELIVERY AND FILING SERVICES / MESSENGERS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Runner charge: To District Court, Dept. XI, Re: Opposition to Motion for Preliminary Injunction	12/24/2013	\$12.50
Runner charge: To District Court Clerk, Re: Opposition to Motion for Preliminary Injunction	12/24/2013	\$12.50
Runner charge: To District Court, Dept. XI, Pick up signed Order;	1/3/2014	\$12.50
Runner charge: To: District Court, Dept. XI	1/10/2014	\$12.50
Runners charge: To District Court, Re: Payment and submission to Dept. 11	1/17/2019	\$12.50
Runners charge: To District Court, Re: Pick up signed order on Motion for Class Certification from Dept. 11.	1/18/2019	\$12.50
Runners charge: Delivery to JAMS, Directors' Confidential Mediation Brief	2/13/2019	\$12.50
<b>TOTAL</b>		<b>\$87.50</b>

**Sheppard Mullin:**

<b>DELIVERY AND FILING SERVICES / MESSENGERS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
American Messenger Service, Inc. – Inv#185110313 - Filing	11/04/2013	\$9.00
Western Messenger Service, Inc. – Inv# 1206378 – State Bar fee	09/12/2018	\$15.18
American Messenger Service, Inc. – Inv# 185091618 – Obtain copies	09/17/2018	\$31.99
FEDEX – Tracking #796658141673 From: John Stigi To: J. Stephen Peek	09/10/2013	\$10.34
FEDEX – Tracking #875604908854 From: JOHN STIGI To: JOHN STIGI	09/13/2013	\$68.40
FEDEX – Tracking #773178353945 From: John Orr, Sheppard Mullin To: Alex Moreno,	09/10/2018	\$70.73

1	<b>DELIVERY AND FILING SERVICES / MESSENGERS -</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>DESCRIPTION</b>	<b>INVOICE</b>	
3	FEDEX – Tracking #773193464029 From: Alex Moreno To: Ms. Valerie Larsen	09/11/2018	\$11.97
4	FEDEX – Tracking #773675544790 From: Leandra Yahola To: John D. Montgomery, Ph.D	11/07/2018	\$45.68
5	FEDEX – Tracking #773995539069 From: Leandra Yahola for John Stigi To: Stephen J. Peek, Esq	12/17/2018	\$19.90
6	FEDEX – Tracking #774339404495 From: Leandra Yahola To: Mr. James Honore	01/29/2019	\$17.03
7	FEDEX – Tracking #790928693785 From: Mr. James Honore' To: John Stigi, Esq.	01/31/2019	\$11.35
8	FEDEX – Tracking #775363598952 From: Leandra Yahola To: Mr. James Honore	05/31/2019	\$40.72
9	FEDEX – Tracking #775422357916 From: Leandra Yahola, To: Dr. Robert Kaplan	06/07/2019	\$87.32
10	FEDEX – Tracking #775481808200 From: Cristina Ongsing To: Alex Moreno	06/14/2019	\$22.04
11	FEDEX – Tracking #790959997160 From: Mr. James Honore To: Leandra Yahola	06/15/2019	\$11.49
12	FEDEX – Tracking #790961802833 From: Dr. Robert Kaplan To: Leandra Yahola	06/20/2019	\$13.43
13	FEDEX – Tracking #775590135154 From: Alex Moreno To: John P. Stigi	06/27/2019	\$18.43
14	FEDEX – Tracking #775810336890 From: John Stigi, Esq. To: Dr. Seth Putterman	07/23/2019	\$17.79
15	FEDEX – Tracking #775894073638 From: JOHN P. STIGI II, ESQ To: GUEST JOHN P. STIGI III	08/01/2019	\$135.20
16	FEDEX – Tracking #775953289863 From: Alex Moreno To: GUEST: JOHN STIGI	08/09/2019	\$60.53
17	FEDEX – Tracking #775954112682 From: Leandra Yahola To: John Stigi - Guest of the Hote 94087	08/09/2019	\$82.87
18	FEDEX – Tracking #814582073957 From: SHEPPARD MULLIN ET AL LLP To: JOHN STIGI	08/13/2019	\$65.27
19	FEDEX – Tracking #790973311080 From: Dr. Seth Putterman To: John Stigi, Esq	08/14/2019	\$11.49
20	FEDEX – Tracking #776006236903 From: Leandra Yahola To: Production Department, Aptus Court Reporting	08/16/2019	\$10.49
21	FEDEX – Tracking #776032732519 From: Cristina Ongsing To: Stephanie Morrill	08/20/2019	\$18.71
22	FEDEX – Tracking #776081225670 From: Leandra Yahola To: Ken Potashner	08/26/2019	\$22.37
23	FEDEX – Tracking #776126126260 From: Leandra Yahola To: Robert J. Cassity, Partner	08/30/2019	\$17.43
24	FEDEX – Tracking #776204697287 From: Leandra Yahola To: John D. Montgomery, Ph.D	09/10/2019	\$35.76
25	FEDEX – Tracking #776219031305 From: Leandra Yahola To: Andrew Wolfe, Wolfe Consulting	09/11/2019	\$24.71
26	FEDEX – Tracking #776226056333 From: Leandra Yahola To: John D. Montgomery, Ph.D., Ankura Consulting Group, LLC	09/12/2019	\$35.76
27	FEDEX – Tracking #776312655580 From: Leandra Yahola To: Elwood G. Norris	09/23/2019	\$17.40
28	FEDEX – Tracking #790985913510 From: John D. Montgomery, Ph.D., Ankura Consulting Group, LLC To: John Stigi, Esq	10/01/2019	\$20.50

<b>DELIVERY AND FILING SERVICES / MESSENGERS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
FEDEX – Tracking #: 773995978023. From: John Stigi To: c/o J Stephen Peek	06/14/2021	\$36.64
FEDEX – Tracking #: 773995978295. From: John Stigi To: c/o J Stephen Peek	06/14/2021	\$42.90
FEDEX – Tracking #: 773995978104. From: John Stigi To: c/o J Stephen Peek	06/14/2021	\$38.73
FEDEX – Tracking #: 773995978300. From: John Stigi To: c/o J Stephen Peek	06/14/2021	\$37.69
FEDEX – Tracking #: 773995978300. From: John Stigi To: c/o J Stephen Peek	06/14/2021	\$47.08
FEDEX – Tracking #: 773995977943. From: John Stigi To: c/o J Stephen Peek	06/14/2021	\$41.86
FEDEX – Tracking #: 281546107723. From: Bill Gutman To: c/o Alejandro (Alex) Moreno	07/16/2021	\$33.48
FEDEX – Tracking #: 281546107892. From: Bill Gutman, To: c/o Alejandro (Alex) Moreno	07/16/2021	\$33.48
FEDEX – Tracking #: 774332442745. From: Bill Gutman, To: c/o Alejandro (Alex) Moreno	07/22/2021	\$35.93
FEDEX – Tracking #: 774449939306. From: Bill Gutman To: c/o Kenneth Potashner	08/04/2021	\$40.59
FEDEX – Tracking #: 774462013813. From: Bill Gutman To: c/o Alejandro (Alex) Moreno	08/05/2021	\$15.30
FEDEX – Tracking #: 282369608324. From: William Gutman To: c/o Alex Moreno	08/09/2021	\$15.89
FEDEX – Tracking #: 282401241605. From: Corrina Main To: c/o Alejandro Moreno Esq	08/10/2021	\$74.89
FEDEX – Tracking #: 282401471739. From: Corrina Main To: c/o Valerie Larsen	08/10/2021	\$74.89
FEDEX – Tracking #: 282418767431. From: Alejandro Moreno To: c/o Alejandro Moreno Esq	08/10/2021	\$40.63
FEDEX – Tracking #: 282418803271. From: Alejandro Moreno, To: c/o Alejandro Moreno Esq	08/10/2021	\$27.21
FEDEX – Tracking #: 282418847822. From: Alejandro Moreno To: c/o Alejandro Moreno Esq	08/10/2021	\$30.19
FEDEX – Tracking #: 282418824096. From: Alejandro Moreno To: c/o Alejandro Moreno Esq	08/10/2021	\$43.61
FEDEX – Tracking #: 282418869530. From: Alejandro Moreno To: c/o Alejandro Moreno Esq	08/10/2021	\$40.63
<b>TOTAL</b>		<b>\$1,832.90</b>

**d. COSTS RELATED TO PRO HAC VICE ADMISSIONS**

**Sheppard Mullin:**

<b>COSTS RELATED TO PRO HAC VICE ADMISSIONS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
State Bar of Nevada – Original Application fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 200104	09/10/2013	\$550.00



<b>COSTS RELATED TO PRO HAV VICE ADMISSIONS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 13338	08/01/2014	\$500.00
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 31217	09/01/2015	\$500.00
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 37471	08/22/2016	\$500.00
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 48708	08/21/2017	\$500.00
State Bar of Nevada - Original Application fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for Alejandro Moreno, Check # 800421	09/11/2018	\$650.00
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 1000521	08/12/2019	\$500.00
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for Alejandro Moreno, Check # 1000522	08/12/2019	\$500.00
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 1007406	08/12/2020	\$500.00
State Bar of Nevada - Annual Renewal fee for Association of Counsel in Re Parametric Sound Corp Shareholder Litigation for John Stigi, Check # 1013119	08/18/2021	\$500.00
<b>TOTAL</b>		<b>\$5,200.00</b>

**e. COSTS RELATED TO PARKING AND TRAVEL FOR MANDATORY  
HEARINGS**

**Holland & Hart:**

<b>COSTS RELATED TO PARKING AND TRAVEL FOR MANDATORY HEARINGS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Parking - Hearing on Motion to Consolidate and Appoint Lead Counsel	9/23/2013	\$12.00
Parking re hearing.	12/26/2013	\$25.00
Parking re hearing	4/10/2014	\$6.00
Parking re meeting.	8/28/2014	\$12.00
Parking re: Mandatory Rule 16 Conference	10/17/2014	\$12.00
Parking for Motion to Stay Pending COnsideration by the NV Supreme Court	12/8/2014	\$6.00
03/12/2018 - Amex - Parking - for hearings	3/12/2018	\$14.00
06/11/2018 - Amex - Parking - parking for hearing	6/11/2018	\$18.00

1	<b>COSTS RELATED TO PARKING AND TRAVEL FOR</b>	<b>DATE OF</b>	<b>AMOUNT</b>
2	<b>MANDATORY HEARINGS -</b>	<b>INVOICE</b>	
3	<b>DESCRIPTION</b>		
4	06/11/2018 - Amex - Parking - parking for hearing	6/11/2018	\$12.00
5	09/17/2018 - Amex - Parking - parking during hearing;	9/17/2018	\$10.00
6	09/24/2018 - Amex - Parking - parking during hearing;	9/24/2018	\$5.00
7	01/07/2019 - Amex - Parking - Parking for Hearing	1/7/2019	\$6.00
8	01/07/2019 - Amex - Parking - Parking for hearing	1/7/2019	\$6.00
9	08/26/2019 - Amex - Parking - Parking	8/26/2019	\$6.00
10	10/07/2019 - Amex - Parking - parking for hearing	10/7/2019	\$6.00
11	11/12/2019 - Amex - Parking - Parking during hearing	11/12/2019	\$6.00
12	05/11/2021 - Amex - Parking - Parking for hearing	5/11/2021	\$9.00
13	06/14/2021 - Amex - Parking - Parking for hearing	6/14/2021	\$12.00
14	06/17/2021 - Amex - Parking - Parking for hearing	6/17/2021	\$12.00
15	06/17/2021 - Amex - Parking - parking for hearing	6/17/2021	\$12.00
16	06/18/2021 - Amex - Parking - Parking for hearing	6/18/2021	\$24.00
17	06/18/2021 - Amex - Parking - Parking for hearing	6/18/2021	\$24.00
18	06/18/2021 - Amex - Parking - Parking at the Court for Parametric II, EVIDENTIARY Hearing.	6/18/2021	\$24.00
19	06/25/2021 - Amex - Parking - Parking for hearing	6/25/2021	\$12.00
20	06/25/2021 - Amex - Parking - Parking for hearing	6/25/2021	\$12.00
21	06/25/2021 - Amex - Parking - Parking at the Court for the Parametric II, continued Evidentiary Hearing.	6/25/2021	\$12.00
22	06/29/2021 - Amex - Parking - Parking for meeting	6/29/2021	\$6.00
23	07/08/2021 - Amex - Parking - Parking for hearing	7/8/2021	\$6.00
24	Parking - Calendar Call (JSpeek)	7/20/2021	\$6.00
25	VENDOR: Petty Cash; INVOICE#: 070721-66; DATE: 8/6/2021 - Petty Cash - Parking at Court	8/6/2021	\$23.00
26	Parking - Trial (RJCassity)	8/16/2021	\$24.00
27	Parking - Trial (JSpeek)	8/16/2021	\$24.00
28	Parking - Trial (AKBaker)	8/16/2021	\$15.00
	Parking - Trial (RJCassity)	8/17/2021	\$24.00
	Parking - Trial (JSpeek)	8/17/2021	\$24.00
	Parking - Trial (RJCassity)	8/18/2021	\$24.00
	Parking - Trial (JSpeek)	8/18/2021	\$24.00
	Parking - Trial (JSpeek)	8/19/2021	\$24.00
	Parking - Trial (RJCassity)	8/19/2021	\$18.00
	Parking - Trial (RJCassity)	8/20/2021	\$24.00
	Parking - Trial (JSpeek)	8/20/2021	\$24.00

<b>COSTS RELATED TO PARKING AND TRAVEL FOR MANDATORY HEARINGS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Parking - Trial (RJCassity)	8/23/2021	\$12.00
Parking - Trial (JSpeek)	8/23/2021	\$24.00
Parking - Trial (RJCassity)	8/24/2021	\$6.00
Parking - Trial (JSpeek)	8/24/2021	\$24.00
Parking - Trial (JSpeek)	8/25/2021	\$18.00
Parking - Trial (RJCassity)	8/25/2021	\$18.00
Parking - Trial (AKBaker)	8/25/2021	\$18.00
<b>TOTAL</b>		<b>\$725.00</b>

**f. COSTS RELATED TO MEDIATION**

**Holland & Hart:**

<b>COSTS RELATED TO MEDIATION - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
VENDOR: JAMS, Inc.; INVOICE#: 0004708330-260; DATE: 2/6/2019 - Feb. 19th Mediation	2/6/2019	\$2,800.00
VENDOR: JAMS; INVOICE#: 0004717688-260; DATE: 2/20/2019 - Reminder of Mediation Fees.	2/20/2019	\$44.57
<b>TOTAL</b>		<b>\$2,844.57</b>

**g. COSTS RELATED TO MANDATORY SUPREME COURT HEARINGS**

**Holland & Hart:**

<b>COSTS RELATED TO MANDATORY SUPREME COURT HEARINGS - DESCRIPTION</b>	<b>DATE OF INVOICE</b>	<b>AMOUNT</b>
Las Vegas/Reno Travel regarding oral argument. NOTE: Total flight fare was \$484, only 1/3 of the airfare was charged to client 83663-0001.	8/8/2015	\$161.34
Flight for Supreme Court argument	8/31/2015	\$484.00
Airport parking for Supreme Court Argument	9/1/2015	\$15.00
Cab rental to/from airport for Supreme Court argument	9/1/2015	\$102.25
<b>TOTAL</b>		<b>\$762.59</b>

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**10. TOTALS**

**Holland & Hart:**

<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005 (1) - COURT FEES	\$2,636.00
NRS 18.005(4) – WITNESSES’ FEES & EXPENSES FOR TRIAL, PRETRIAL HEARINGS AND DEPOSITIONS	\$11,525.00
NRS 18.005(8) – OFFICIAL REPORTER COMPENSATION	\$1,864.29
NRS 18.005(12) – PHOTOCOPY COSTS	\$22,496.91
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - a. COMPUTERIZED LEGAL RESEARCH	\$1,630.86
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - b. ELECTRONIC DISCOVERY	\$32.42
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - c. DELIVERY AND FILING SERVICES / MESSENGERS	\$87.50
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - e. COSTS RELATED TO PARKING AND TRAVEL FOR MANDATORY HEARINGS	\$725
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - f. COSTS RELATED TO MEDIATION	\$2,844.57
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - g. COSTS RELATED TO MANDATORY SUPREME COURT HEARINGS	\$762.59
<b>GRAND TOTAL</b>	<b>\$44,605.14</b>

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**Sheppard Mullin:**

<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005 (2) – REPORTER’S FEES FOR DEPOSITIONS	\$49,098.70
NRS 18.005(5) – EXPERT FEES	\$91,846.50
NRS 18.005(15) – DEPOSITION TRAVEL AND LODGING COSTS	\$46,801.99
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - a. COMPUTERIZED LEGAL RESEARCH	\$8,557.79
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - b. ELECTRONIC DISCOVERY	\$159,128.09
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - c. DELIVERY AND FILING SERVICES / MESSENGERS	\$1,832.90
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - d. COSTS RELATED TO PRO HAC VICE ADMISSIONS	\$5,200.00
<b>GRAND TOTAL</b>	<b>\$362,465.97</b>

Dated this 22nd day of September 2021.

HOLLAND & HART LLP

/s/ Robert J. Cassity

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Robert J. Cassity, Esq.  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

John Peter Stigi, III, Esq.  
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HAMPTON LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, California 90067

*Attorneys for Defendant  
Kenneth Potashner*

**DECLARATION IN SUPPORT OF VERIFIED MEMORANDUM OF COSTS**

I, Robert J. Cassity, declare the following:

1. I am a Partner at Holland & Hart LLP, which is counsel of record for Defendant Kenneth Potashner in the above-entitled matter.

2. I am familiar with the costs incurred by Holland & Hart LLP in defending Kenneth Potashner in this matter.

3. I have read the foregoing Verified Memorandum of Costs and Exhibits 1, 3, 5, 6, 8, 10, 12, 15, 16, & 17 within the Appendices thereto. These costs and the invoices and materials contained therein are true and correct to the best of my knowledge and belief.

4. The costs set forth in the foregoing Verified Memorandum of Costs and Appendices thereto have been necessarily and reasonably incurred and paid in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 22, 2021

/s/ Robert J. Cassity  
Robert J. Cassity, Esq.

**DECLARATION IN SUPPORT OF VERIFIED MEMORANDUM OF COSTS**

I, John P. Stigi, declare the following:

1. I am a Partner at Sheppard Mullin Richter & Hampton LLP, which is counsel of record for Defendant Kenneth Potashner in the above-entitled matter.

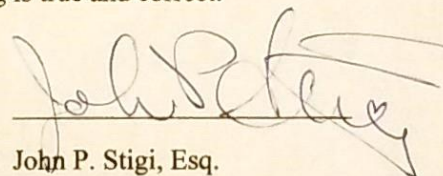
2. I am familiar with the costs incurred by Sheppard Mullins Richter & Hampton LLP in defending Kenneth Potashner in this matter.

3. I have read the foregoing Verified Memorandum of Costs and Exhibits 2, 4, 7, 9, 11, 13, & 14 within the Appendices thereto. These costs and the invoices and materials contained therein are true and correct to the best of my knowledge and belief.

4. The costs set forth in the foregoing Verified Memorandum of Costs and Appendices thereto have been necessarily and reasonably incurred and paid in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 22, 2021

  
John P. Stigi, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of September 2021, a true and correct copy of the foregoing **DEFENDANT KENNETH POTASHNER'S VERIFIED MEMORANDUM OF COSTS** was served by the following method(s):

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

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*Attorneys for Grant Oakes and Derivative  
Plaintiff Lance Mykita*

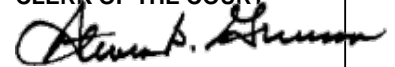
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*Attorneys for Defendant VTB Holdings, Inc. and  
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LLC, SG VTB Holdings, LLC, Juergen Stark, and  
Kenneth Fox*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

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

**HEARING REQUESTED**

This Document Related To:  
ALL ACTIONS

**DEFENDANTS' MOTION FOR  
ATTORNEYS' FEES**

Defendants Kenneth Potashner and VTB Holdings, Inc., and Specially Appearing Defendants Stripes Group, LLC, SG VTB Holdings, LLC, Juergen Stark, and Kenneth Fox, by and through their counsel of record, move for attorneys' fees and costs pursuant to NRCP 68. This Motion is based on the pleadings and papers on file, the following Memorandum of Points and Authorities, the accompanying declarations of Joshua D. N. Hess, John P. Stigi III, Richard C. Gordon, and Robert J. Cassity, and any argument the Court may entertain on behalf of Defendants.

1 Dated: September 29, 2021

SNELL & WILMER L.L.P.

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3 By: /s/ Richard C. Gordon

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14 *Specially Appearing Defendants Stripes Group,*  
15 *LLC, SG VTB Holdings, LLC, Juergen Stark, and*  
16 *Kenneth Fox*

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25  
26 *Attorneys for Defendant Kenneth Potashner and*  
27 *Petitioners Elwood Norris, Seth Puttermann,*  
28 *Robert Kaplan, and Andrew Wolfe*

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

This Court granted judgment in Defendants' favor under NRCP 52(c) the morning after Plaintiff rested its case at trial because Plaintiff had failed to establish even the most basic elements of its direct equity expropriation claim, namely: (1) "Plaintiff failed to meet its burden of proving that Parametric [Sound Corporation] had a controlling shareholder or controlling director" and thus had "failed to prove an essential element of an equity expropriation claim under Nevada law," and (2) "Plaintiff further failed to meet its burden to prove that the Parametric Board's decision was impacted by actual fraud, intentional misconduct, or bad faith." *See* Final Order and Judgment at Conclusions of Law ¶¶ 14-16.

This decisive outcome could not reasonably have come as a surprise to Plaintiff. In 2017, three years before Plaintiff filed its opt-out complaint,<sup>1</sup> the Nevada Supreme Court held in this case that any Parametric shareholder would need to make both of these showings in order to prevail on a direct equity expropriation claim. *See Parametric Sound Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 417, 428-29, 401 P.3d 1100, 1109 (2017) ("*Parametric*"). But Plaintiff never had evidence to make either showing. Instead, Plaintiff built a case purely on rhetoric that it was entirely incapable of supporting at trial, which served the intended purpose of forcing Defendants to incur substantial and unnecessary fees and costs to defend themselves. Despite Plaintiff's inability to provide evidentiary support for its claims in this case, Defendants served an offer of judgment on July 1, 2020, and a second offer of judgment on May 28, 2021, both of which Plaintiff rejected. Defendants now seek recovery of those fees and costs under NRCP 68(f).

Every factor the Court must consider before granting this request weighs in Defendants' favor. *See Beattie v. Thomas*, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983) (listing factors to be considered before awarding attorneys' fees):

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<sup>1</sup> Plaintiff is a shell entity formed in 2020. It purports to be the assignee of certain claims purportedly held by IceRose Capital Management, Barry Weisbord, Robert Masterson, Richard Santulli, Marcia Patricof, Alan and Anne Goldberg, and Ronald and Muriel Etkin (collectively, the "Assignors"), each of which purport to have held Parametric stock at the time of the merger that gave rise to this action. The Assignors opted out of a class settlement and then assigned any claims they may have had at the time to Plaintiff so that Plaintiff could bring this lawsuit on their behalf. Plaintiff is an alter ego for the Assignors.

1           *First*, Plaintiff cannot possibly claim to have litigated this case in good faith because  
2 Plaintiff knew, or reasonably should have known, it had no evidence to demonstrate either that  
3 Parametric had a controlling shareholder or that a majority of its board of directors engaged in  
4 actual fraud, as required by *Parametric*. Indeed, Plaintiff premised its entire case on the  
5 unprecedented argument that Parametric’s Executive Chairman, Kenneth Potashner, was a  
6 “controlling shareholder” of Parametric despite *knowing* he did not own a single share of Parametric  
7 stock at the time of the vote on the merger transaction at issue and despite constant opposition from  
8 other members of Parametric’s board. Frankly, it is (and always has been) preposterous for Plaintiff  
9 to suggest that Potashner was a “controlling shareholder” without even being a shareholder in the  
10 first place. Such a position requires total disregard not only for the undisputed facts in this case,  
11 but also all known legal precedent that exists from any jurisdiction. Although the Court gave  
12 Plaintiff every opportunity to strengthen its claim with evidence, if such evidence existed, the  
13 record is now clear that Plaintiff never had any support for its claim. Further, by begging this Court  
14 to relieve it of its burden to prove actual fraud by a majority of Parametric’s board—which this  
15 Court rejected correctly—Plaintiff admitted it never had any basis to allege actual fraud by a  
16 majority of the board in the first place.

17           *Second*, Defendants’ offers of judgment were eminently reasonable and were made in a  
18 good faith effort to resolve this lawsuit without the unnecessary expenditure of additional attorneys’  
19 fees. As an initial matter, the Assignors could have participated in the class action settlement in  
20 this case, which the Court approved as fair and reasonable, that would have provided them hundreds  
21 of thousands of dollars in recovery, collectively. Moreover, at the pleading stage, Defendants  
22 provided an offer of \$1, which would have allowed all parties to walk away from this doomed  
23 lawsuit before incurring substantial additional fees. Defendants increased that offer to \$150,000—  
24 far more than Defendants believed the claims were worth—shortly after filing motions for summary  
25 judgment. This substantial amount represented a significant portion of the maximum damages  
26 Plaintiff could have hoped to achieve if there had been any merit to its claims.

27           *Third*, it was entirely unreasonable for Plaintiff to reject these offers. Plaintiff knew it had  
28 no evidence to satisfy the central elements of its claims and thus had no prospect of prevailing at

1 trial. Despite this knowledge, Plaintiff rejected a substantial payment from Defendants and forced  
2 all parties and this Court to participate in a trial that Plaintiff knew it could not win. Although the  
3 Court entered judgment in Defendants' favor promptly after Plaintiff rested, and without requiring  
4 Defendants to present any defense, the damage already had been done because Defendants incurred  
5 substantial fees that could have been avoided had Plaintiff behaved reasonably and rationally.

6 *Fourth*, Defendants' fees were incurred reasonably and justifiably. Defendants now seek  
7 fees of either \$7,054,396.88 or \$3,915,171.30, depending on whether fees are measured from the  
8 first or second offer of judgment. Either amount represents a fraction of the total compensatory  
9 damages, punitive damages, and pre-judgment interest that Plaintiff sought in this action. Such  
10 fees were necessary because this was a complicated case presenting numerous issues of first  
11 impression for the Court to consider and also because Plaintiff took numerous actions that  
12 needlessly drove up the cost of this unnecessary and meritless lawsuit.<sup>2</sup>

13 In short, Plaintiff litigated this case under a knowingly false premise that it would be able  
14 to meet its burden of proof at trial with evidence that Plaintiff knew did not exist. The Court entered  
15 judgment correctly in Defendants' favor, but Plaintiff's bad faith tactics nevertheless succeeded in  
16 saddling Defendants with millions of dollars in attorneys' fees incurred after Defendants made two  
17 good-faith attempts to resolve this matter. Defendants are now entitled to full reimbursement of  
18 those fees from Plaintiff.

## 19 II. RELEVANT BACKGROUND

### 20 A. Plaintiff Rejected Substantial Settlement Terms And Instead Re-Filed The 21 Same Deficient Equity Expropriation Claims In A New Lawsuit.

22 This case arises out of the January 15, 2014 merger between Parametric Sound Corporation  
23 ("Parametric") and VTB Holdings, Inc. ("Turtle Beach") under which Turtle Beach became a  
24 wholly owned subsidiary of Parametric and, in exchange, Parametric issued stock to Turtle Beach's  
25 former shareholders sufficient to give them approximately 80% ownership of the combined  
26 company (the "Merger"). Parametric's pre-Merger shareholders continued to hold the remaining

27 <sup>2</sup> These fees are explained in detail in the declarations of Joshua D. N. Hess, John P. Stigi III,  
28 Richard C. Gordon, and Robert J. Cassidy filed herewith.

20% of the company, which was now substantially larger and, for the first time, profitable. A small minority of Parametric’s pre-Merger shareholders sought to enjoin the Merger based on allegations that the Merger diluted their interests in Parametric excessively. This effort failed on December 27, 2013, and the Merger closed on January 15, 2014.

Following the close of the Merger, this same minority of Parametric’s pre-Merger shareholders filed a class-action complaint asserting direct claims for breach of fiduciary duty against Parametric’s Board of Directors and also asserting aiding-and-abetting claims against Turtle Beach. Ultimately, the Nevada Supreme Court addressed the post-Merger proceedings on September 14, 2017, where it ruled in a unanimous, *en banc* decision that the shareholders had pled classic equity dilution claims, which are derivative in nature under Delaware and Nevada law. *See Parametric*, 133 Nev. at 428-29, 401 P.3d at 1109 (“a pure equity dilution claim is viewed as a derivative claim”). As such, individual shareholders lacked standing to pursue them in a direct capacity. *Id.* In the same ruling, however, the Nevada Supreme Court recognized an exception to this rule under then-existing Delaware law under which, as the Court explained, minority shareholders may have direct standing to assert an equity dilution claim when they can demonstrate that the dilution was caused by a controlling shareholder’s expropriation of equity from a company.<sup>3</sup> *Id.* The Court recognized that the shareholders had not pled such a claim, but ruled that they should be given an opportunity to do so. *Id.* The Court instructed unambiguously that such a claim could succeed only if Parametric shareholders could prove, among other elements, (1) “a controlling shareholder’s or director’s expropriation of value from the company, causing other shareholders’ equity to be diluted,” and (2) “actual fraud” by Parametric’s Board of Directors in order to overcome the statutory “conclusive deference to the directors’ judgment.” *Id.*

Following the Nevada Supreme Court’s instruction, three former Parametric shareholders filed an amended class action complaint in December 2017 that asserted the two direct and six

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<sup>3</sup> The Nevada Supreme Court based this exception on the Delaware Supreme Court’s ruling in *Gentile v. Rossette*, 906 A.2d 91 (Del. 2006). On September 20, 2021, the Delaware Supreme Court unanimously overturned *Gentile*. *See Brookfield Asset Mgmt., Inc. v. Rosson*, No. 406, 2020, 2021 WL 4260639, at \*19 (Del. Sept. 20, 2021) (“The difficulty courts have had in applying *Gentile* in a logically consistent way, along with *Gentile*’s erosion of *Tooley*’s simple analysis convinces us that *Gentile* should be overruled.”).

1 derivative claims, including a direct claim for equity expropriation. The parties litigated these  
2 claims extensively throughout 2018 and 2019, culminating in a settlement of all eight claims for  
3 \$9.65 million, or \$1.65 per Parametric share held on the date of the Merger. *See* April 17, 2020,  
4 Plaintiffs’ Motion for Final Approval of Settlement (“Final Approval Motion”) at 1. At the time,  
5 Plaintiffs’ class counsel hailed this settlement, which provided a 12% premium on the value of the  
6 stock just prior to the close of the Merger, as “an almost unprecedented figure in merger litigation  
7 nationwide” and “a remarkable achievement considering the size and revenues of Parametric.” *Id.*  
8 at 1-2. Indeed, class counsel bragged that “it is rare that post-merger litigation results in any  
9 monetary recovery at all” and “[a] settlement of \$9.65 million in additional cash for a Company  
10 that had recognized \$233,649 in annual revenues for the fiscal year preceding the Merger is a truly  
11 extraordinary litigation recovery.” *Id.* at 2.<sup>4</sup>

12 The Assignors were the only Parametric shareholders to raise any objection to the  
13 settlement. The Assignors simply could have objected and proceeded to trial immediately but,  
14 instead, decided in April 2020 to exclude themselves from the class—not merely the settlement—  
15 and filed a new complaint (copied nearly verbatim from the prior complaint) on May 20, 2020. As  
16 this Court noted, this procedure was unusual. Normally, when a party opts out of a settlement, the  
17 claim “is then tried as part of the class action case. It’s not usually a separate case.” Aug. 25, 2021  
18 Trial Tr. at 40:8-11. By excluding themselves from the class and refiled the same direct claims  
19 that the class plaintiffs and Defendants had already litigated for nearly seven years, the Assignors  
20 effectively restarted this case at the beginning, delayed the trial of these claims by an additional  
21 year and a half, and, in doing so, increased Defendants’ costs to defend against this lawsuit  
22 dramatically.

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27 <sup>4</sup> Class counsel further elaborated that Parametric’s total revenues throughout the entirety of its  
28 existence both before and after the Merger amounted to only \$4,122,755. *See* Final Approval  
Motion at 5-6. Thus, the settlement more than doubled the amount of these lifetime earnings.



1           **B.     Plaintiff Avoided Pre-Trial Dismissal Of Its Claims By Promising The Court It**  
2           **Would Support Its Claims With Evidence At Trial That Plaintiff Knew Did**  
3           **Not Exist.**

4           After Plaintiff restarted this lawsuit, Defendants were forced to file new motions to dismiss  
5           (on July 1, 2020) and motions for summary judgment (on May 5, 2021). Relevant here, each of  
6           these motions informed Plaintiff of Defendants' position that Plaintiff would not be able to establish  
7           an equity expropriation claim under *Parametric* because Parametric did not have a controlling  
8           shareholder prior to the Merger. See July 1, 2020 Motion to Dismiss at 15-17; May 5, 2021 Motion  
9           for Summary Judgment at 13-15. In each instance, Plaintiff assured the Court it would be able to  
10          present evidence at trial in support of its claims and the Court responded by denying the motions  
11          while noting the evidentiary issues Plaintiff would need to address eventually. See, e.g., Aug. 10,  
12          2020 Minute Order (denying motion to dismiss because "factual issues related to Potashner's  
13          control pre[c]lude a ruling at this stage."); June 14, 2021 Hr'g. Tr. at 14:20-22. (denying motion  
14          for summary judgment because "Mr. Potashner has genuine issues of material fact as to whether he  
15          is part of a control group[.]").

16          Plaintiff's assurances to the Court were false. Plaintiff always knew that it would not be  
17          able to support its claims with evidence at trial. Indeed, Parametric disclosed publicly in 2013 that  
18          Potashner did not own even a single share of Parametric at the time the Merger was negotiated and  
19          approved, meaning he was not a shareholder of the company, let alone a controlling shareholder,  
20          at that time.<sup>5</sup> Plaintiff also knew there was no good-faith basis to argue that a majority of  
21          Parametric's directors had engaged in actual fraud because there was no evidence to support such  
22          an argument. These basic truths were, or certainly should have been, evident to Plaintiff through  
23          the public record, the extensive discovery record from the class proceedings that Defendants  
24          produced to Plaintiff, and the tens of thousands of additional documents that Defendants produced  
25          to Plaintiff at Plaintiff's request.

27          <sup>5</sup> See December 3, 2013 Proxy Statement at 38-39, publicly available at  
28          [https://www.sec.gov/Archives/edgar/data/1493761/000119312513459818/d621612ddefm14a.htm#toc621612\\_6](https://www.sec.gov/Archives/edgar/data/1493761/000119312513459818/d621612ddefm14a.htm#toc621612_6).

1           **C.     Plaintiff Rejected Two Reasonable Offers Of Judgment.**

2           Defendants coupled their Motions to Dismiss and Motions for Summary Judgment with  
3           Offers of Judgment under NRCP 68. With the motions to dismiss, Defendants served an offer of  
4           judgment for \$1.00, which accurately reflected that value of an equity expropriation claim against  
5           a company with no controlling shareholder. *See* Ex. July 1, 2020 Offer of Judgment (“First Offer”).  
6           If accepted, Plaintiff could have avoided causing all parties to incur substantial fees and costs  
7           litigating claims for which Plaintiff knew (or should have known) it could never hope to prove at  
8           trial. Plaintiff rejected this offer.

9           On May 28, 2021, with Defendants’ motions for summary judgment pending, Defendants  
10          submitted a second offer of judgment to Plaintiff. Although Defendants still believed that an equity  
11          expropriation claim without any evidence of an expropriation by a controlling shareholder was a  
12          valueless claim, Defendants decided to increase their offer in the hope of sparing all parties from  
13          needlessly expending more money on a trial. Defendants offered \$150,000. *See* May 28, 2021  
14          Offer of Judgment (“Second Offer”). As explained in greater detail below, Defendants viewed this  
15          offer as being particularly generous given the deficiencies in Plaintiff’s claims, the maximum  
16          amount Plaintiff reasonably could hope to recover even if it could overcome the deficiencies in its  
17          claims, the amount this Court had already approved as fair and reasonable for the full suite of claims  
18          asserted in the class action prior to the settlement, and Defendants’ grave concerns regarding  
19          Plaintiff’s standing to assert any claim at all. Plaintiff rejected this offer just a few days later.

20           **D.     As Defendants Had Predicted Repeatedly, Plaintiff Failed To Meet Its**  
21           **Evidentiary Burden At Trial.**

22          Despite no evidence of expropriation by a Parametric controlling shareholder, Plaintiff  
23          proceeded to trial, contending that over \$100 million had been “expropriated” from Parametric’s  
24          minority shareholders and that Plaintiff was entitled to a nearly \$10 million portion of these  
25          hypothetical damages, in addition to substantial prejudgment interest and punitive damages. In  
26          stark contrast, on the eve of trial, Plaintiff elected to settle with the Parametric director defendants  
27          except for Potashner for \$100,000 each.

1           Once trial began, Plaintiff no longer could hide behind deferential standards and untethered  
2 rhetoric. As soon as it became Plaintiff's burden to support its claims with evidence, the Court  
3 found Plaintiff's case to be lacking. For this reason, the Court granted judgment in Defendants'  
4 favor under NRCP 52(c) at the conclusion of Plaintiff's case-in-chief, without requiring Defendants  
5 even to begin their affirmative case. In its order, the Court agreed with core positions that  
6 Defendants had taken throughout this litigation. Specifically, the Court recognized (1) that  
7 Potashner owned no stock in Parametric at the time of the shareholder vote, (2) the majority of  
8 Parametric's Board "could and did outvote Potashner on any and all matters on which the majority  
9 disagreed with Potashner," (3) no director "was unable to freely exercise his judgment as a member  
10 of the Board" because of any action taken by Potashner, (4) no single Parametric shareholder had  
11 authority to make unilaterally any material changes to the company, (5) Potashner did not receive  
12 anything through the Merger that he was not entitled to receive through his employment agreement,  
13 (6) Potashner had no side deals or other agreements with Turtle Beach, and (7) all directors were  
14 equally diluted with every other Parametric shareholder. Final Order Findings of Fact ¶¶ 80-90.  
15 Thus, the Court held that "Plaintiff failed to meet its burden of proving that Parametric had a  
16 controlling shareholder or controlling director." *Id.* Conclusions of Law ¶ 14. The Court further  
17 held that Plaintiff "failed to meet its burden of proving that a majority of the Board engaged in a  
18 knowing violation of law or intentional misconduct, or engaged in actual fraud." *Id.* Conclusions  
19 of Law ¶ 8.

20           Given the Court's ruling that Plaintiff had failed to meet its burden of proving its claim, the  
21 Court had no occasion to address specifically each of Defendants' arguments regarding Plaintiff's  
22 claimed damages. Indeed, because judgment was entered under NRCP 52(c), Defendants had no  
23 occasion even to present their own arguments in defense.

24           Because judgment has been entered in Defendants' favor after Plaintiff rejected two  
25 reasonable offers of judgment, Defendants now seek recovery of attorneys' fees after those offers  
26 were made pursuant to NRCP 68(f).  
27  
28

### III. LEGAL ARGUMENT

#### A. Legal Standard

Nevada courts may award attorneys' fees whenever they are authorized by rule, statute, or contract. *State v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376 (1993). Relevant here, Nevada Rule of Civil Procedure 68 permits an award of attorneys' fees and costs where an offeree rejects an offer and fails to obtain a more favorable judgment. NRCP 68(f)(1)(A), (B) states:

If the offeree rejects an offer and fails to obtain a more favorable judgment: (A) the offeree cannot recover any costs, expenses or attorney's fees and may not recover interest for the period after the service of the offer and before the judgment; and (B) the offeree shall pay the offeror's post-offer costs and expenses,... applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer.

Further, "[t]he penalties in this rule run from the date of service of the earliest rejected offer for which the offeree failed to obtain a more favorable judgment." NRCP 68(f)(2). Enforcement of NRCP 68(f) supports the important public policy of encouraging and promoting settlements "by rewarding defendants who make reasonable offers and penalizing plaintiffs who refuse to accept them." *John W. Muije, Ltd. v. A N. Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990). Furthermore, "[e]arly settlement saves time and money for the court system, the parties, and the taxpayers." *Id.*

Under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983), a trial court is required to evaluate the following factors when considering an award of attorneys' fees: "(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount." No single *Beattie* factor is determinative, and the district court has broad discretion in awarding attorneys' fees so long as all factors are considered in a non-arbitrary manner. *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 251 n.16, 955 P.2d 661, 672 (1998).

All four of these factors weigh convincingly in Defendants' favor.

1           **B.      Plaintiff's Claims Were Not Brought In Good Faith.**

2           After opting out of a class settlement asserting both direct and derivative claims, Plaintiff  
3           had arguable standing to pursue only two direct claims: an equity expropriation claim and an  
4           ancillary claim of aiding and abetting that same equity expropriation.<sup>6</sup> At the time, Plaintiff was  
5           fully aware that the Nevada Supreme Court already had ruled in this case that any direct equity  
6           expropriation claim would require proof of the following, among other elements: (1) "a controlling  
7           shareholder's or director's expropriation of value from the company, causing other shareholders'  
8           equity to be diluted," and (2) "actual fraud" by Parametric's Board of Directors in order to  
9           overcome the statutory "conclusive deference to the directors' judgment." *Parametric*, 133 Nev.  
10          at 428-29, 401 P.3d at 1109. These are the precise elements Plaintiff was unable to prove at trial.  
11          Plaintiff knew, or should have known, at all relevant times that it would be unable to prove either  
12          of them.

13                   **1.      Plaintiff Knew, Or Certainly Should Have Known, That It Could Not**  
14                   **Prove That Parametric Had A Controlling Shareholder Prior To The**  
15                   **Merger.**

16          Plaintiff never had any chance of proving that Parametric had a controlling shareholder prior  
17          the Merger. Plaintiff tried on multiple occasions to portray Parametric's Executive Chairman,  
18          Kenneth Potashner, as a controlling shareholder, but the unavoidable truth always has been that  
19          Potashner was not even a shareholder as of the date of the vote on the Merger. The proxy statement  
20          issued to all Parametric shareholders, including the Assignors, in December 2013 made clear that  
21          Potashner owned only unexercised stock options, which gave him beneficial ownership over just  
22          5.8% of Parametric, but no actual ownership over even a single share of Parametric stock.<sup>7</sup> Until  
23          he exercised those options, which did not occur when the Merger was negotiated or approved,  
24          Potashner did not own any stock in Parametric and was not a shareholder. Because Plaintiff was

25          <sup>6</sup> Although not relevant to this Motion, Defendants continue to dispute that Plaintiff had standing  
26          to assert even its two direct claims because Plaintiff failed to provide evidence at trial demonstrating  
27          that the Assignors held such standing at the time they purported to assign their claims to Plaintiff.  
28          See *infra* Section III.C.

27          <sup>7</sup> See December 3, 2013 Proxy Statement at 38-39, publicly available at  
28          [https://www.sec.gov/Archives/edgar/data/1493761/000119312513459818/d621612ddefm14a.htm#toc621612\\_6](https://www.sec.gov/Archives/edgar/data/1493761/000119312513459818/d621612ddefm14a.htm#toc621612_6).

1 required to prove an equity expropriation by a controlling shareholder, Plaintiff's entire claim  
2 hinged on convincing this Court to endorse the preposterous premise that someone could be a  
3 controlling shareholder without even being a shareholder in the first place. No court in any  
4 jurisdiction ever has endorsed such a theory, for good reason.

5 There can be no doubt that Plaintiff knew Potashner's lack of stock ownership precluded  
6 him from being a controlling shareholder. Indeed, Assignor IceRose's representative, Adam Kahn,  
7 testified under oath that he agreed that someone, like Potashner, who owned only stock options and  
8 not actual stock, was not a controlling shareholder because, in his own words, "a controlling  
9 shareholder must own at least one share." Trial Tr. Day 1 at 144:24-145:4. In this instance, Kahn  
10 is correct and he, like all of the Assignors and their counsel, could have and should have known in  
11 2013 that Potashner did not own "at least one share" and was not a controlling shareholder.

12 Moreover, even if Plaintiff genuinely believed, contrary to the sworn testimony of its own  
13 Assignor, that Potashner's ownership of stock options could be treated as stock ownership—which  
14 they are not because, among other reasons, stock options provide no voting rights—neither  
15 Defendants nor Plaintiff nor the class plaintiffs ever has been able to identify even a single case  
16 from any jurisdiction in which someone owning an amount as low as 5.8% of a company has been  
17 treated as a controlling shareholder.<sup>8</sup> The closest Plaintiff has ever been able to identify is a single  
18 case from the Delaware Chancery Court holding that Elon Musk might hold control over Tesla  
19 Motors, a company with which his name is synonymous, through his 22.1% voting interest. *See In*  
20 *re Tesla Motors, Inc. S'holder Litig.*, C.A. No. 12711, 2020 WL 553902, at \*4 (Del. Ch. Feb. 4,  
21 2020). Even in this extreme outlier, the ownership of the alleged controller is nearly four times  
22 larger than the amount Potashner would have had if he had exercised his options in 2013, which he  
23 did not.

24 Plaintiff will no doubt point to its successful defense against motions to dismiss and for  
25 summary judgment as demonstrating some modicum of merit for its legal theory that a controlling  
26 shareholder did not need to be an actual shareholder. But this Court never found any support for

27 <sup>8</sup> Indeed, if Potashner actually held the shares represented by his options, he still would have owned  
28 less stock in Parametric than Assignor IceRose, alone, claimed to own at the time of the Merger.  
*See* Plaintiff's July 16, 2021, Pre-Trial Memorandum at 2.

1 this unprecedented position. Instead, Plaintiff avoided dismissal by (1) suggesting that Potashner  
2 was part of a “control group” with an ever-changing cast of characters who actually may have  
3 owned stock,<sup>9</sup> and (2) arguing that Potashner dominated his fellow directors by making threats  
4 against them when he disagreed with him. By making such arguments, Plaintiff represented under  
5 NRCP 11(b)(3) that such “contentions have evidentiary support.” Based on these arguments and  
6 the representation of forthcoming evidentiary support, this Court ruled only that material issues of  
7 fact existed relating to Potashner’s alleged control over Parametric and that Plaintiff would need to  
8 address these material issues of fact at trial. *See, e.g.*, Aug. 10, 2020 Minute Order (denying motion  
9 to dismiss because “factual issues related to Potashner’s control pre[c]lude a ruling at this stage.”);  
10 June 14, 2021 Hr’g. Tr. at 14:20-22. (denying motion for summary judgment because “Mr.  
11 Potashner has genuine issues of material fact as to whether he is part of a control group[.]”). This  
12 Court never determined that Potashner was a controlling shareholder, nor did it ever endorse the  
13 unprecedented legal position that stock ownership was not required to be a controlling shareholder.

14 Trial demonstrated that Plaintiff never had evidentiary support for the arguments it made in  
15 opposing the motions to dismiss and for summary judgment. Plaintiff presented no evidence at  
16 trial that Potashner did, in fact, own stock in Parametric at any relevant time. Further, Plaintiff  
17 abandoned its “control group” theory entirely at trial, making it clear that Plaintiff had advanced  
18 this argument for the sole purpose of avoiding summary judgment.<sup>10</sup> Finally, Plaintiff never once  
19 presented any evidence of any Parametric director taking any action with which he did not agree  
20 because of Potashner’s threats. To the contrary, the Court concluded that Parametric’s directors

21 <sup>9</sup> In opposing summary judgment, Plaintiff argued for the first time that Potashner was actually part  
22 of a “control group” that included Potashner, another director, and James Barnes (a non-party).  
23 May 26, 2021 Opp. to MSJ at 13. This was just one of many “control group” theories that Plaintiff  
24 advanced to suit the exigencies of the moment before abandoning the theory at trial. *See, e.g.*  
25 Compl. ¶ 15 (alleging that “Stripes Group, VTBH, SG VTB, and the Parametric Board,” but not  
26 James Barnes, “acted as a control group” prior to the Merger”); Opposition to Director Defendants’  
27 Motion for Summary Judgment at 2, 10 (referring to Potashner as “the controlling stockholder” and  
28 claiming the Parametric “Board had abdicated control”); Opposition to Specially Appearing  
Defendants’ Motion for Summary Judgment at 20 (“Stark and Fox were de facto controllers of  
Parametric . . . before the merger was approved”).

<sup>10</sup> Plaintiff’s Pre-Trial Memorandum argued that “Potashner exercised control over Parametric.”  
July 16, 2021 Pre-Trial Memo at 8. In its opening statement at trial, Plaintiff argued that Potashner,  
alone, was “negotiating for his own self-interest in an attempt to use the merger to benefit himself.”  
Aug. 16, 2021 Trial Tr. 10:7-11. Plaintiff did not even mention any alleged “control group” at any  
point at trial.

1 were “often hostile to what they perceived as Potashner’s personal interests” and a “majority [of  
2 the Board] could and did outvote Potashner on any [and] all matters on which that majority  
3 disagreed with Potashner.” Final Order Findings of Fact ¶¶ 83-84. Plaintiff knew, or should have  
4 known, it would not be able to substantiate its claims before it filed them (and certainly before  
5 Defendants presented their offers of judgment). As such, Plaintiff cannot now claim it litigated  
6 these claims in good faith.

7 Plaintiff’s lack of good faith is further demonstrated by the fact that the Court granted  
8 judgment in Defendants’ favor pursuant to NRCp 52(c), rather than at the conclusion of trial.  
9 Defendants did not even need to present their case. This is not a matter where the Court needed to  
10 weigh competing evidence from both sides to determine who had the better of two seemingly valid  
11 positions. This is a matter in which Plaintiff was entirely unable to support its own claims at the  
12 first moment when it had the burden to do so.

13 **2. Plaintiff Knew, Or Certainly Should Have Known, That It Could Not**  
14 **Prove “Actual Fraud” By Parametric’s Board Of Directors.**

15 Separate from Plaintiff’s doomed obligation to prove Parametric had a controlling  
16 shareholder prior to the Merger, Plaintiff also was required to rebut the business judgment rule for  
17 a majority of Parametric’s Board of Directors by demonstrating, under NRS 78.200 and NRS  
18 78.211, that this majority had engaged in “actual fraud” in approving the Merger. *Parametric*, 133  
19 Nev. at 428-29, 401 P.3d at 1109. This, too, was a requirement that Plaintiff knew it could not  
20 satisfy.

21 Plaintiff’s total inability to present evidence in support of this essential element of its claim  
22 is perhaps best exemplified by the trial brief Plaintiff filed on this precise issue the day before this  
23 Court granted judgment in Defendants’ favor under NRCp 52(c). In that brief, Plaintiff did not  
24 argue that a majority of Parametric’s Board of Directors had engaged in actual fraud but, instead,  
25 argued that it should be relieved of the burden to prove actual fraud by a majority of the board. *See*  
26 Aug. 24, 2021 Memorandum of Law at 2-4. Contrary to NRS 78.200, NRS 78.211, and the Nevada  
27 Supreme Court’s unambiguous instruction that Plaintiff needed to prove “actual fraud,” Plaintiff  
28 begged this Court to adopt an alternative, lesser standard under which Plaintiff would need only to



1 provide proof that a majority of the directors acted in “bad faith” or with “reckless indifference.”  
2 *Id.* Plaintiff never would have been able to establish even this lesser standard—as recognized by  
3 the Court’s ruling—but Plaintiff’s eleventh-hour request for relief from the burden to establish an  
4 essential element of its claim demonstrates recognition that it had no means of establishing this  
5 element in the first place. Plaintiff cannot claim to have been litigating this claim in good faith  
6 when it knew it could not prove actual fraud by a majority of the directors and evidently had no  
7 intention of doing so. The Court correctly rejected this argument the following day, concluding  
8 that Plaintiff had not demonstrated actual fraud by any director, let alone a majority of them. *See*  
9 Final Order Conclusions of Law ¶¶ 9, 16.

10 **3. The Assignors’ Actions And Testimony Demonstrate They Did Not**  
11 **Litigate Their Claims In Good Faith.**

12 The Assignors could have accepted a settlement that this Court determined would have  
13 given them fair and reasonable compensation not only for the two direct claims they asserted at  
14 trial but also six stronger derivative claims that they lacked standing to assert personally. By  
15 excluding themselves from the class action settlement and refiled the same direct claims that the  
16 class plaintiffs and Defendants already had litigated for nearly seven years, the Assignors  
17 effectively forwent compensation for the six derivative claims, restarted this case at the beginning,  
18 delayed the trial of their claims by an additional year and a half, re-opened discovery, and, in doing  
19 so, increased Defendants’ costs to defend against this lawsuit dramatically. Defendants submit that  
20 needlessly driving up Defendants’ costs, rather than a good-faith belief that it would ever be able  
21 to demonstrate the existence of a controlling shareholder or actual fraud, was Plaintiff’s true  
22 motivation for pursuing this lawsuit.

23 The Assignors each had clear interests in driving up costs for the Defendants apart from the  
24 merits of their claims, such as they were. Assignor Barry Weisbord is the father of non-party Joshua  
25 Weisbord, a former Turtle Beach employee who has spent years pursuing meritless wrongful  
26 termination claims in ongoing litigation against Turtle Beach in California state court, which is  
27 being financed by Barry Weisbord. *See* Aug. 17, 2021 Trial Tr. (PM) at 129:22-25, 130:4-15. Mr.  
28 Weisbord testified at trial that he had a modest investment in Parametric at the time of the merger

1 and only became interested in this lawsuit when he saw an opportunity to transplant the discovery  
2 record from his son's California proceedings into this case. *Id.* at 71:4-9, 131:17-132:21. Except  
3 for Assignor IceRose Capital Management, every Assignor who testified at trial testified that they  
4 only invested in Parametric and participated in this lawsuit because Barry Weisbord told them to  
5 do so.<sup>11</sup> Each of their investments in Parametric, while in some instances totaling \$1 million or  
6 more, were effectively meaningless to them given their overall levels of wealth.<sup>12</sup>

7 Assignor IceRose had a separate axe to grind with Turtle Beach. Ice Rose's founder (and  
8 Managing Member of Plaintiff) Adam Kahn, testified about his long-running efforts to pressure  
9 Turtle Beach management to act pursuant to his wishes using the threat of litigation. Kahn admitted  
10 under oath that he views the legal system as part of his "playbook" to put pressure on companies  
11 in which he invests. Aug. 16, 2021 Trial Tr. at 190:3-11. He agreed that "part of the playbook"  
12 included making allegations "but not really mean[ing] them" because this is "a course of action . . .  
13 to apply pressure." *Id.* He further admitted that, following his "playbook," he both retained a  
14 prominent New York law firm (Kirkland & Ellis) to draft a complaint against Turtle Beach and  
15 then flat out lied to Turtle Beach about his intention to file that complaint solely in an effort to  
16 pressure the company to appoint him (or his designee) as a director. *See* Aug. 16, 2021 Trial Tr. at  
17 196:2-21 (acknowledging that claims made by Kahn's retained legal counsel at his direction were  
18 "definitely not true").

19 Put simply, Plaintiff's complete and total dereliction of its obligation to provide any  
20 evidence in support of basic elements of its claims, combined with its decision to litigate this matter  
21 in an unusual manner that would maximize Defendants' fees and costs, combined with its clear  
22

23 <sup>11</sup> *See, e.g.*, Aug. 23, 2021 Trial Tr. (PM) at 96:16-20 ("Q. It was Barry Weisbord who told you to  
24 assign your potential claims . . . to the LLC that he was forming to bring this lawsuit; is that right?  
25 A. That is correct"); Aug. 23, 2021 Trial Tr. (PM) at 16:17-24 ("Barry just said – whatever he  
26 asked me to do, you know, I thought it made sense and I did it"); 33:9-18 ("Q. You joined this  
27 lawsuit that has us here today because [Barry Weisbord] asked you to join; is that right? A. Yes");

28 <sup>12</sup> *See, e.g.*, Aug. 23, 2021 Trial Tr. (PM) at 13:11-17 (Assignor Santulli testifying that the amount  
of money he had invested in Parametric "was not an amount of money that would impact the way  
[he] lived") 32:5-8 (Assignor Masterson testifying that his "investment in Parametric was not  
[significant] to [him] in the grand scheme of his financial portfolio"); *see also* Aug. 23, 2021 Trial  
Tr. (PM) at 68:13-23, 96:12-15.

1 incentive to make its meritless claims as expensive as possible to Defendants, demonstrate that  
2 Plaintiff did not litigate its claims in good faith.

3 **C. Defendants' Offers Of Judgment Were Reasonable And In Good Faith In**  
4 **Timing And Amount.**

5 Defendants, like Plaintiff, always have known that no evidence existed suggesting that  
6 Parametric had a controlling shareholder prior to the Merger or that a majority of Parametric's  
7 directors had engaged in actual fraud. Accordingly, Defendants always have known that Plaintiff's  
8 claims were entirely without merit, and thus were valueless. In this context, any offer of judgment  
9 could be considered reasonable. Indeed, after Plaintiff rejected the generous settlement terms  
10 offered as part of the class settlement and had an opportunity to investigate further the remaining  
11 direct claims—and their lack of evidentiary support—Defendants' initial offer of judgment on July  
12 1, 2020, presented a reasonable opportunity for Plaintiff to walk away from this matter without  
13 needlessly accumulating additional fees and costs and forcing Defendants to do the same. If  
14 Defendants had done no more than that, they could demonstrate that this offer was in good faith  
15 given the severe flaws in Plaintiff's claims that are set forth above that precluded any reasonable  
16 chance of Plaintiff prevailing at trial.

17 But Defendants did not stop there. Although Plaintiff had no evidence to support its claims,  
18 Plaintiff had been successful in its true goal of placing financial pressure on Defendants and thus  
19 had created a nuisance value for this case. In a final effort to reach a reasonable conclusion to this  
20 matter, Defendants made a second offer on May 29, 2021, for \$150,000, which greatly exceeded  
21 Defendants' perceived (and, ultimately, correct) value for Plaintiff's doomed claims, but was an  
22 amount Defendants hoped might incentivize Plaintiff to cease needlessly increasing costs and fees  
23 for everyone involved. This offer was generous by any reasonable metric.

24 *First*, this offer was plainly reasonable as to its amount because Plaintiff had no valid claim  
25 for damages in this matter and knew (or should have known) this at the time the offer was made.  
26 This offer would have provided a significant amount of money to Assignors who had asserted  
27 meritless claims in connection with their minor investments in a company that had never been  
28 profitable.

1 Plaintiff will likely argue that \$150,000 was insufficiently low because it is just a fraction  
2 of the damages Plaintiff sought at trial, which included nearly \$10 million in compensatory  
3 damages, eight years' worth of pre-judgment interest, and punitive damages. But there are several  
4 major flaws with this line of reasoning. Most significantly, Plaintiff never had any realistic prospect  
5 of winning such exorbitant damages even if it had overcome the numerous fatal evidentiary  
6 deficiencies with its claims. It is undisputed that the measure of damages for an equity  
7 expropriation claim is limited to the fair value of the equity expropriated by the controlling  
8 shareholder. *See Gentile*, 906 A.2d at 103.<sup>13</sup> Here, the Court ruled that this purported expropriation  
9 was limited to Potashner's receipt of a "severance payment and accelerated vesting of incentive  
10 stock options provided for under Potashner's April 2012 employment agreement." Final Order  
11 Conclusions of Law ¶ 12. The proxy statement disclosed each of these payments in 2013, which  
12 had a reported present value of \$2.8 million,<sup>14</sup> meaning the maximum damages to all Parametric  
13 shareholders for a valid equity expropriation claim, if one had existed, would have been \$2.8  
14 million. Since Plaintiff's Assignors claim to have held less than 10% of Parametric's stock at the  
15 time of the Merger, this means their maximum portion of the damages would have been limited to  
16 less than \$280,000. A \$150,000 offer on a maximum claim of \$280,000, especially with all of the  
17 warts on this particular claim, is plainly reasonable. *See, e.g., Scott-Hopp v. Bassek*, 130 Nev. 1241,  
18 \*6 (Nev. 2014) (\$25,000 offer reasonable where plaintiff sought over \$150,000 in medical costs,  
19 in addition to other damages, because an offer covering "only a fraction of [the] alleged damages"  
20 can be reasonable in light of adverse facts).

21 Further, it is undisputed that that the Assignors held no more than 28,700 collective shares  
22 at the time they assigned their claims to Plaintiff and the Assignors did not know if they had held

23 <sup>13</sup> In *Parametric*, the Nevada Supreme Court adopted *Gentile* in recognizing the existence of direct  
24 equity expropriation claims in Nevada. As noted previously, the Delaware Supreme Court  
25 overruled *Gentile* last week, which leaves the continued validity of equity expropriation claims in  
Nevada in doubt. *See supra* note 3. Nevertheless, to the extent that equity expropriation claims  
remain valid in Nevada, they are defined – and limited – by *Gentile*.

26 <sup>14</sup> *See* Proxy Statement at 77, publicly available at  
27 [https://www.sec.gov/Archives/edgar/data/1493761/000119312513459818/d621612ddefm14a.htm#toc621612\\_6](https://www.sec.gov/Archives/edgar/data/1493761/000119312513459818/d621612ddefm14a.htm#toc621612_6).  
28 Notably, most of this value came from the present value of unexercised stock  
options and, by the terms of the Merger, Potashner had agreed to a six-month "lock up" of those  
options. Final Order Findings of Fact ¶ 62.

any of those specific shares at the time of the Merger. Final Order Findings of Fact ¶ 10. Every other share that the Assignors claim to have held on the date of the Merger was sold to third parties before the Assignors purported to assign any claims to Plaintiff. *Id.* Those sales reduced Plaintiff’s potential recovery in this action dramatically because the right to bring any equity dilution claim against Defendants was sold with those shares. See *Urdan v. WR Capital Partners, LLC*, 244 A.3d 668, 677 (Del. 2020).<sup>15</sup> Thus, although the Court had no occasion to address the calculation of potential damages in this case, it is very likely that Plaintiff’s damages would have, at best, been limited only to the 28,700 shares it held at the time of the Assignment, rather than the 800,000+ shares it claimed were at issue when performing its own damages calculations. Thus, Plaintiff’s maximum damages most likely would have been a small fraction of the \$280,000 mentioned above, and would have been even less than the \$150,000 that Defendants offered.

*Second*, the timing of the offers was reasonable. Defendants’ First Offer was made alongside Defendants’ motions to dismiss, at which point (if not earlier) Plaintiff certainly should have been on notice of the fatal deficiencies in its claims. At that early point in the matter, all parties could have walked away without incurring the millions of dollars in fees that are now the subject of this motion. Defendants made their Second Offer after they filed their motions for summary judgment in which they highlighted, among other topics, (1) Parametric’s lack of a controlling shareholder and (2) the effect that *Urdan* would have on Plaintiff’s maximum recovery. Plaintiff was fully aware of both arguments, as well as all the evidence that the parties could present to address these issues, and was capable of weighing the risks that it would not prevail.

**D. Plaintiff’s Rejection Of Defendants’ Offers Were Unreasonable.**

Without question, Plaintiff hoped that continued litigation would lead to a Hail Mary victory or (more realistically) some exorbitant settlement payment from Defendants. But Plaintiff needed to consider more than just its best-case scenario when deciding whether to accept Defendants’ offer of judgment. Plaintiff needed to consider, and was capable of considering, the likelihood that it

<sup>15</sup> The Nevada Supreme Court clarified in *Parametric* that Nevada jurisprudence for equity dilution claims should be “aligned” with Delaware jurisprudence. *Parametric*, 133 Nev. at 427, 401 P.3d at 1108. In Delaware jurisprudence, *Urdan* governs standing to assert equity “dilution claims, whether direct”—like those asserted by Plaintiff here—“derivative, or a combination of the two” arising from the ownership of stock “are not claims personal to the stockholder.” 244 A.3d at 678.

1 would be unable to establish at trial that Potashner—a man who did not own a single share of  
2 Parametric stock at the relevant time period—was a controlling shareholder. Plaintiff needed to  
3 consider, and was capable of considering, its own lack of evidence suggesting that a majority of  
4 Parametric’s directors had engaged in “actual fraud.” Plaintiff needed to consider, and was capable  
5 of considering, that damages under *Gentile* would be limited to a small fraction of the \$2.8 million  
6 that Potashner actually received through the Merger. Plaintiff needed to consider, and was capable  
7 of considering, the near total loss of its claim if the Court decided to apply Delaware law (as stated  
8 in *Urdan*) to Plaintiff’s equity dilution claims, as required by the Nevada Supreme Court in  
9 *Parametric*. The only way Plaintiff could have concluded that it was beneficial to decline  
10 Defendants’ offers is if Plaintiff consciously disregarded each of these substantial risks.

11 For the reasons elaborated upon above in greater detail, such disregard is unreasonable.  
12 Defendants made reasonable offers that Plaintiff rejected with full knowledge that it had no  
13 reasonable chance of prevailing at trial. *See Cormier v. Manke*, 108 Nev. 316, 318, 830 P.2d 1327,  
14 1328 (1992) (when considering “reasonableness” of rejecting an offer of judgment, a court must  
15 consider “whether the offeree’s rejection unreasonably delayed the litigation with no hope of a  
16 greater recovery”).

17 **E. Defendants’ Requested Fees Are Reasonable And Justified.**

18 In considering the fourth *Beattie* factor, whether the fees sought are reasonable and justified,  
19 the district court must consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85  
20 Nev. 345, 349, 455 P.2d 31, 33 (1969). The *Brunzell* factors are:

21 (1) the qualities of the advocate: his ability, his training, education,  
22 experience, professional standing and skill; (2) the character of the  
23 work to be done: its difficulty, its intricacy, its importance, time and  
24 skill required, the responsibility imposed and the prominence and  
25 character of the parties where they affect the importance of the  
litigation; (3) the work actually performed by the lawyer: the skill,  
time and attention given to the work; (4) the result: whether the  
attorney was successful and what benefits were derived.

26 *Id.* After weighing these factors, “the district judge may, where warranted, award up to the full  
27 amount of fees requested.” *Beattie*, 99 Nev. at 589, 668 P.2d at. “[U]nless the trial court’s exercise  
28 of discretion ... is arbitrary or capricious, [the Nevada Supreme Court] will not disturb the lower

1 court's ruling on appeal." *Yamaha Motor Co.*, 114 Nev. at (1998) (internal quotations and citation  
2 omitted).

3 Depending on whether fees are measured from the first or second offer of judgment,  
4 Defendants seek at least the following fees, which were reasonably and necessarily incurred in  
5 litigating this matter:<sup>16</sup>

	Fees After First Offer	Fees After Second Offer
Dechert LLP	\$5,191,240.88	\$2,646,077.30
Snell & Wilmer LLP	\$396,885.00	\$265,849.00
Sheppard, Mullin, Richter & Hampton LLP	\$1,055,051.00	\$680,084.00
Holland & Hart LLP	\$411,220.00	\$323,161.00
<b>Total</b>	<b>\$7,054,396.88</b>	<b>\$3,915,171.30</b>

15 The quality of defense counsel is not reasonably in dispute. Dechert LLP, Sheppard Mullin  
16 Richter & Hampton LLP, Snell & Wilmer LLP, and Holland & Hart LLP are highly reputable firms  
17 and the specific attorneys who worked on this trial have extensive experience litigating similar  
18 matters. At the end of trial, the Court praised counsel for their work: "I want to compliment all of  
19 you. This is my last trial, and I truly appreciate the professional way over many, many years that  
20 all of you, except for [Plaintiff's counsel] Mr. Apton, who is our recent addition, have presented  
21 matters in this Court and I truly have appreciated working with the quality of lawyers that I've had  
22 the benefit to work with." Aug. 25, 2021 Trial Tr. 86:21-87:1.

23 Further, although the case was ultimately decided based on Plaintiff's failure to substantiate  
24 its own claims, this was a complex and difficult matter to litigate for a number of reasons:

25 <sup>16</sup> All of defense counsel's fees were reasonably incurred. Those fees are set forth in detail in the  
26 accompanying declarations of Joshua D. N. Hess, John P. Stigi III, Richard C. Gordon, and Robert  
27 J. Cassity. The fees listed above and in the accompanying declarations do not include all fees that  
28 have been incurred, or that will be incurred in the future, in connection with litigating this motion  
and Defendants' requests for costs. Defendants will provide an updated calculation of fees at the  
time of the hearing on this motion.

1           *First*, to Defendants’ knowledge, this is the first equity expropriation claim to be litigated  
2 in Nevada. Indeed, the Nevada Supreme Court recognized the existence of such a claim in Nevada  
3 for the first time in this case. As such, this case required the parties to litigate numerous complex  
4 issues of first impression in Nevada.

5           *Second*, due to the unusual procedural posture of Plaintiff’s post-settlement self-exclusion  
6 from the underlying class and subsequent filing of a “new” lawsuit as the purported assignee of  
7 former class members, Defendants were forced effectively to relitigate from scratch a case that  
8 already had been prepared for trial but now Defendants needed to also address many new and  
9 complicated issues regarding Plaintiff’s standing.

10           *Third*, Plaintiff embroiled the parties and the Court in an evidentiary dispute over sanctions  
11 that had no ultimate bearing on Plaintiff’s claims. Indeed, this Court issued judgment under NRC  
12 52(c) against Plaintiff despite granting evidentiary sanctions in Plaintiff’s favor.<sup>17</sup> Motions practice  
13 and a full-day hearing over this evidentiary dispute proved to be a very substantial waste of  
14 resources for everyone involved.

15           *Fourth*, although applicable law likely would have placed severe limitations on Plaintiff’s  
16 available damages, *see supra* Section III.C, Plaintiff disregarded this law and sought exorbitant  
17 damages including nearly \$10 million in compensatory damages plus pre-judgment interest from  
18 2013 to present day and punitive damages. The amount of fees Defendants seek in this motion  
19 represent only a fraction of the damages Plaintiff insisted were at issue at trial. Under the threat of  
20 such severe damages, it is unsurprising that Defendants retained legal counsel of such quality.

21           *Fifth*, Plaintiff demanded, and received production of tens of thousands, of documents  
22 produced in Joshua Weisbord’s unrelated lawsuit against Turtle Beach, which Defendants told  
23 Plaintiff were entirely irrelevant and would be substantially burdensome to produce. Although  
24 Plaintiff agreed the cases were unrelated, it nevertheless insisted on this costly review and  
25 production. As predicted, these materials played no significant role at trial and Plaintiff did not  
26 offer even a single one of these documents into evidence.

27 \_\_\_\_\_  
28 <sup>17</sup> Plaintiff’s inability to prove its claims even with a metaphorical thumb on the scales in its favor  
further demonstrates the extent to which Plaintiff never had any hope of prevailing at trial.



1        *Sixth*, Plaintiff refused to produce highly relevant brokerage statements absent compulsion  
2 from this Court and, even after being compelled to produce these materials, unduly delayed  
3 production. Accordingly, Defendants were forced to engage in additional motions practice to  
4 obtain these important materials.

5        *Seventh*, trial was expected be significant in both scope and length. Had the Court  
6 determined that presentation of a defense was necessary, trial would have lasted three weeks with  
7 over a dozen witnesses and hundreds of exhibits, all of which needed to be coordinated and  
8 presented under significant restraints caused by the COVID-19 pandemic, which has been ongoing  
9 since before Plaintiff filed its complaint in this matter.

10       Without question, Defendants were successful. Defense counsel worked tirelessly to ensure  
11 this matter was presented properly to the Court and, given the Court's compliments, achieved this  
12 goal. As a direct result of defense counsel's advocacy, the Court granted judgment in Defendants'  
13 favor on all claims under NRCP 52(c) at the close of Plaintiff's evidence. Moreover, Defendants  
14 built a substantial record to provide the Nevada Supreme Court with multiple grounds upon which  
15 to affirm the ruling if Plaintiff chooses to pursue an appeal.

16       **IV. CONCLUSION**

17       Defendants acted in good faith to reach a reasonable conclusion of this litigation without  
18 trial. Plaintiff rejected those efforts despite the highly likely possibility that Plaintiff would not be  
19 able to achieve a better outcome. Defendants are now entitled to attorneys' fees they never would  
20 have incurred if not for Plaintiff's unreasonable actions.

21       Dated: September 29, 2021

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**CERTIFICATE OF SERVICE**

On the date below, as an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing **DEFENDANTS' MOTION FOR ATTORNEYS' FEES** via e-service through Odyssey to the email addresses listed below:

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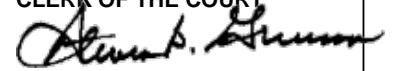
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Dated: September 29, 2021

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

Case No.: A-13-686890-B

Dept. No.: XI

**PLAINTIFF PAMTP LLC'S  
NOTICE OF APPEAL**

This Document Relates To:

PAMPT LLC v. KENNETH POTASHNER  
*et. al.*

Notice is hereby given that PLAINTIFF PAMTP, LLC appeals to the Supreme Court of Nevada from the Order Granting Defendant's Motion for Judgment Pursuant to NRCP 52c, Findings of Fact and Conclusions of Law, and Judgment Thereon entered in this action on September 3, 2021. A true and correct copy of this Order is attached hereto as **Exhibit A**.

1 DATED this 30th day of September, 2021.

2 MCDONALD CARANO LLP

3 By: /s/ Jeff Silvestri

4 Jeff Silvestri, Esq. (NSBN 5779)

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on or about September 30, 2021, a true and correct copy of the foregoing **PLAINTIFF PAMTP LLC’S NOTICE OF APPEAL** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ CaraMia Gerard  
An employee of McDonald Carano LLP



**EXHIBIT A**

**EXHIBIT A**

1 **FFCL**

3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 IN RE PARAMETRIC SOUND  
6 CORPORATION SHAREHOLDERS'  
LITIGATION.

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

**ORDER GRANTING DEFENDANTS'  
MOTION FOR JUDGMENT PURSUANT  
TO NRCP 52(c), FINDINGS OF FACT  
AND CONCLUSIONS OF LAW, AND  
JUDGMENT THEREON**

7 This Document Related To:

8 PAMTP LLC v. KENNETH  
9 POTASHNER, *et. al.*

10 This matter came on regularly for a non-jury trial beginning on August 16, 2021, and  
11 continuing through August 25, 2021. Plaintiff PAMTP, LLC appeared by and through their  
12 counsel of record George F. Ogilvie III of McDonald Carano LLP and Adam M. Apton of Levi  
13 & Korsinsky, LLP. Defendant Kenneth F. Potashner appeared by and through his counsel of  
14 record J. Stephen Peek and Robert J. Cassity of Holland & Hart LLP and John P. Stigi III and  
15 Alejandro E. Moreno of Sheppard, Mullin, Richter & Hampton LLP.<sup>1</sup> Defendant VTB  
16 Holdings, Inc. ("VTBH"), and Specially Appearing Defendants Stripes Group, LLC, SG VTB  
17 Holdings, LLC, Juergen Stark and Kenneth Fox (collectively, the "Non-Director Defendants")  
18 appeared by and through their counsel Richard C. Gordon of Snell & Wilmer, LLP and Joshua  
19 D.N. Hess, David A. Kotler, Brian Raphel, and Ryan Moore of Dechert LLP.

20 After the conclusion of Plaintiff's case-in-chief, Defendants made motions pursuant to  
21 NRCP Rule 52(c). The Court having considered the evidence presented at trial, along with oral  
22 and written arguments of counsel on such motions, and with the intent of rendering a decision  
23 on all remaining claims<sup>2</sup> before the Court at this time, the Court GRANTS Defendants' motion  
24

25 <sup>1</sup> Certain Director Defendants (Kaplan, Norris, Putterman and Wolf) ("Settling Directors") announced a  
26 settlement on the first day of the trial. The Settling Directors Motion for Good Faith Settlement was granted.

27 <sup>2</sup> The Nevada Supreme Court in *Parametric v. Eighth Judicial District Court*, 133 Nev. 417 (2017)  
28 determined that a derivative claim of equity dilution survived and the claims could include equity expropriation. In footnote 15, the Nevada Supreme Court determined that *actual fraud* was necessary to prove this type of claim.

1 pursuant to NRCP 52(c) and enters judgment in favor of Defendants, upon the following  
2 findings of fact and conclusions of law.

### 3 **FINDINGS OF FACT**

#### 4 **I. Class and Derivative Litigation**

5 1. The underlying class action and shareholder derivative action was commenced  
6 on August 8, 2013.<sup>3</sup> The case arose out of the merger between Parametric Sound Corporation  
7 (“Parametric”) and VTBH which closed on January 15, 2014.

8 2. The derivative causes of action for breach of fiduciary duty, aiding and abetting  
9 and unjust enrichment claims were extinguished by the settlement and judgment entered by this  
10 Court on May 18, 2020.

11 3. On May 18, 2021, the Court granted Plaintiff’s motion against Defendants  
12 Kenneth Potashner, Juergen Stark, and VTB Holdings, Inc. setting an evidentiary hearing on  
13 June 18, 2021 to determine sanctions, if any.

14 4. Following the June 18, 2021 evidentiary hearing, the Court imposed sanctions in  
15 the form of adverse inferences. The Court held that: “(1) Potashner having willfully destroyed  
16 text messages text messages and emails relevant to this litigation, the Court makes an adverse  
17 inference that the lost text messages and emails relevant to this litigation would have shown  
18 that Potashner acted in bad faith when supporting and approving the merger. Potashner may  
19 testify and contest this at trial, but his testimony will go to his credibility only because an  
20 adverse inference of bad faith has already been made by the Court; and; (2) Stark and Fox  
21 having negligently failed to preserve text messages, the Court makes an adverse inference that  
22  
23  
24

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25  
26 <sup>3</sup> The claims against Defendants were largely resolved through a Rule 23.1 settlement. On January 17,  
27 2020, the Court granted preliminary approval of the settlement. On May 18, 2020, the Court ordered that the class  
28 action and derivative settlement was “finally approved in all respects” and entered a final judgment dismissing all  
of the Class’ released claims, with prejudice, pursuant to the terms of the Stipulation of Settlement filed on  
November 15, 2019. These Plaintiffs opted out of the class settlement.

1 the lost information would have been adverse to them.” See Findings of Fact, Conclusions of  
2 Law, and Order Imposing Spoliation Sanctions dated July 15, 2021.

3 **II. Opt-Out Litigation**

4 **A. Plaintiff and Assignors**

5 5. Plaintiff PAMTP, LLC is a Delaware limited liability company formed for the  
6 purpose of asserting the claims presented in this lawsuit. It purports to assert claims assigned to  
7 it by individuals and entities who held Parametric common stock on the closing date of the  
8 merger, January 15, 2014.

9 6. Plaintiff was not a holder of Parametric common stock on January 15, 2014.

10 7. The members of Plaintiff are IceRose Capital Management LLC, Robert  
11 Masterson, Richard Santulli, Marcia Patricof (as trustee of Patricof Family LP, Marcia Patricof  
12 Revocable Living Trust, and the Jules Patricof Revocable Living Trust), Alan and Anne  
13 Goldberg, Barry Weisbord, and Ronald and Muriel Etkin (each, an “Assignor”; collectively, the  
14 “Assignors”).

15 8. On April 22, 2020, Plaintiff, on behalf of the following individuals and/or  
16 entities, opted out of the class action settlement: IceRose Capital Management, LLC; Robert  
17 Masterson; Marcia Patricof, on behalf of the Patricof Family LP, Marcia Patricof Revocable  
18 Living Trust, and the Jules Patricof Revocable Living Trust; Alan and Anne Goldberg; Barry  
19 Weisbord; Ronald and Muriel Etkin; and Richard Santulli (the “Assignors”). In conjunction  
20 with opting out of the class action settlement, the Assignors assigned their claims in the  
21 litigation to Plaintiff.

22 9. PAMTP is managed by its Members. Assignors Adam Kahn (of IceRose Capital  
23 Management, LLC) and Robert Masterson were the Member Managers responsible for day-to-  
24 day decisions concerning the management of the litigation. Assignor Barry Weisbord is the  
25 Chief Executive Manager of Plaintiff who was designated to resolve any disagreements

1 between the Member Managers on any particular decision.

2 10. Each of the Assignors held Parametric common stock on the date the merger  
3 closed. Each of them, however, sold that stock prior to assigning their claims to Plaintiff in  
4 April 2020. Except for IceRose, none of the Assignors owned any Parametric common stock  
5 when they purported to assign their claims to Plaintiff. IceRose owned 28,700 shares of  
6 Parametric common stock at the time of the purported assignment, but Plaintiff presented  
7 insufficient evidence to allow the Court to determine whether IceRose's stockholding in  
8 Parametric at the time of the assignment was composed of any of the shares in Parametric it  
9 held as of January 15, 2014.

10 11. The Assignors executed Assignments of Claim in April 2020 "assign[ing],  
11 transfer[ring], and set[ing] over unto PAMTP LLC . . . all of the Assignor's right, title and  
12 interest in any claim that the Assignor has or could have arising from his/her/its ownership of  
13 Parametric . . . stock, including any and all claims arising from or related to the [merger]  
14 against Parametric or any other entity or individual that could be liable for the acts and/or  
15 omissions alleged in [this litigation]."

16 12. The Assignors notified the Court that they had opted-out of the Class by letter  
17 dated April 22, 2020. The Assignors advised the Court that they had "assigned their interests in  
18 claims arising from the ownership of Parametric common stock to an entity created for the  
19 purposes of opting out of the . . . litigation and pursuing claims independently" and,  
20 "[a]ccordingly, that entity, PAMTP LLC, also exclude[d] itself from the Class in the Parametric  
21 Settlement."

22 13. On May 20, 2020, Plaintiff filed its Complaint in this action asserting two causes  
23 of action against defendants: a direct breach of fiduciary duty claim against the Director  
24 Defendants based upon an alleged equity expropriation caused by the merger and a direct claim  
25 for aiding and abetting against the Non-Director Defendants in connection with the same  
26 alleged breach of fiduciary duty.

27 14. When the Assignors sold the Parametric common stock they owned as of  
28 January 15, 2014, the Assignors did not enter into any agreement with purchasers of such

1 shares to retain their rights, titles and interests in any claims arising from the Assignors' prior  
2 ownership of Parametric common stock, including the claims asserted by plaintiff in this action.

3 15. On June 23, 2020, the Court consolidated Plaintiff's action with and into the  
4 class action under the caption above. *See* Order Granting Defendants' Motion to Consolidate  
5 dated June 23, 2020.

6 **B. Pre-Merger Parametric**

7 16. Parametric was founded in 2010. In 2013, it was a publicly traded corporation  
8 listed on the NASDAQ stock exchange. Parametric was organized under the laws of the State  
9 of Nevada.

10 17. Parametric was a start-up technology company focused on delivering novel  
11 audio solutions through its HyperSound™ or "HSS®" technology platform, which pioneered  
12 the practical application of parametric acoustic technology for generating audible sound along a  
13 directional ultrasonic column. The creation of sound using Parametric's technology created a  
14 unique sound image distinct from traditional audio systems. In addition to its commercial  
15 digital signage and kiosk product business, Parametric was targeting its technology for new  
16 uses in consumer markets, including computers, video gaming, televisions and home audio  
17 along with other commercial markets including casino gaming and cinema. Parametric was  
18 also focusing development on health applications for persons with hearing loss.

19 **C. Directors and Senior Officer of Pre-Merger Parametric**

20 18. In August 2013, Parametric's Board of Directors ("Board") consisted of six  
21 individuals: Potashner, Norris, Kaplan, Putterman, Wolfe and non-party James Honoré.

22 **(1) Potashner**

23 19. Potashner was appointed a director in December 2011 and Executive Chairman  
24 (equivalent to chief executive officer) in March 2012. Potashner received his bachelor's degree  
25 in electrical engineering at Lafayette College in 1979 and a masters' degree in electrical  
26 engineering from Southern Methodist University in 1981.

27 20. Potashner resigned from the Board effective May 12, 2014.  
28

1                   **(2) Norris**

2           21. Norris was a member of the Board since the incorporation of the company on  
3 June 2, 2010 and co-founded the company with James Barnes (“Barnes”), Parametric’s chief  
4 financial officer. Norris was Parametric’s President and Chief Scientist. Norris is an inventor  
5 and owner of more than 50 U.S. patents, primarily in the fields of electrical and acoustical  
6 engineering, and is a frequent speaker on innovation to corporations and government  
7 organizations. Norris is the inventor of pre-merger Parametric’s HSS technology.

8           22. Norris resigned from the Board effective January 15, 2014.

9                   **(3) Putterman**

10          23. Putterman was appointed a director in May 2011. He has been a full faculty  
11 member at UCLA since 1970, where he is a Professor of Physics. His research areas include  
12 nonlinear fluid mechanics and acoustics, sonoluminescence, friction, x-ray emission and crystal  
13 generated nuclear fusion. He earned a B.S. from the California Institute of Technology in 1966  
14 and his Ph.D. from Rockefeller University in 1970.

15          24. Putterman resigned from the Board effective November 21, 2013.

16                   **(4) Kaplan**

17          25. Kaplan was appointed a director in May 2011. He is a retired business executive  
18 with extensive experience in the financial and retail sectors. Kaplan earned an MBA from  
19 Harvard University in 1961 and a Ph.D. in Business Economics from Michigan State University  
20 in 1967.

21          26. Kaplan resigned from the Board effective January 15, 2014.

22                   **(5) Wolfe**

23          27. Wolfe was appointed a director in February 2012.

24                   **(6) Honoré**

25          29. Honoré was appointed a director in March 2012.

26          30. Honoré resigned from the Board effective January 15, 2014.

27                   **D. Non-Director Defendants**

28          31. VTBH was a privately held Delaware corporation. VTBH and its subsidiaries,

1 including Voyetra Turtle Beach, Inc., are collectively referred to as “Turtle Beach.” Turtle  
2 Beach designs, develops and markets premium audio peripherals for video game, personal  
3 computer, and mobile platforms. Turtle Beach had strong market share in established gaming  
4 markets, including a 53% share of the U.S. console gaming headset market as of year-end 2012  
5 according to The NPD Group. Turtle Beach had a presence in 40 countries and has partnered  
6 with major retailers, including Wal-Mart, Carrefour, Tesco, Best Buy, GameStop, Target and  
7 Amazon.

9 32. VTBH was majority owned by Stripes Group, LLC (“Stripes”) and SG VTB,  
10 LLC (“SG VTB”). VTBH is a wholly owned subsidiary of the post-merger Turtle Beach.

11 33. Stripes is a private equity firm focused on internet, software, healthcare, IT and  
12 branded consumer products businesses. In 2010, Stripes invested in VTBH and became its  
13 majority owner.

14 34. Fox is Stripes Group’s founder. Fox sat on the VTBH board of directors after the  
15 merger, stepping down on November 15, 2018.

16 35. SG VTB, LLC is a Delaware LLC and is a wholly owned subsidiary of Stripes  
17 Group. Stripes formed SG VTB in 2010 to acquire a majority position in VTBH. SG VTB is  
18 an investment vehicle for Stripes.

19 36. Stark was chief executive officer of VTBH during negotiations leading to the  
20 merger and was named to that position by Stripes in September 2012. Stark has served as  
21 Turtle Beach’s CEO since the merger and continues to serve as its CEO today. Stark also sits  
22 on Turtle Beach’s current board of directors, and as of January 1, 2020, became Chairman of  
23 the Board.

### 24 **III. Merger Negotiations and the Parametric Board’s Process**

25 37. As part of Parametric’s ongoing strategic planning process, the Parametric Board  
26 and Parametric’s executive officers regularly reviewed and evaluated Parametric’s strategic  
27 direction and alternatives in light of the performance of Parametric’s business and operations  
28 and market, economic, competitive and other conditions and developments.



1           38.     In March 2013, Parametric engaged Houlihan Lokey as its financial advisor to  
2 evaluate possible strategic alternatives.

3           39.     Between March 2013 and August 2013, Houlihan Lokey (working on behalf of  
4 Parametric) contacted a total of 13 parties other than Turtle Beach to explore possible strategic  
5 alternatives. None of those other parties expressed any material interest in a competing or  
6 alternative transaction.

7           40.     During this five-month period, the Board held several formal meetings with  
8 financial and legal advisers regarding possible strategic transactions. During these meetings,  
9 the Directors engaged in robust discussions among themselves and with the Board's advisers  
10 regarding the risks and benefits of a strategic transaction with Turtle Beach and available  
11 alternative strategies and transactions.

12           41.     Potashner played a leading role in the negotiation of the merger,

13           42.     The Court previously adopted an adverse inference against Potashner that he  
14 "acted in bad faith when supporting and approving the merger." *See* Findings of Fact,  
15 Conclusions of Law, and Order Imposing Spoliation Sanctions dated July 15, 2021. The  
16 evidence at trial supported this conclusion.<sup>4</sup>

17           43.     Among the terms being negotiated was an agreement to grant to Turtle Beach an  
18 exclusive license to HyperSound technology in both the console gaming and PC audio fields in  
19 the event Parametric were to terminate any merger agreement before closing. Parametric  
20 offered this "break-up fee license agreement" in order to make the merger more attractive to  
21 Turtle Beach and Stripes, which had not yet agreed to move forward with the deal. The Board  
22 informed itself of the fiduciary implications of this potential "break-up fee license agreement"  
23 by consulting with counsel.  
24  
25

26  
27 <sup>4</sup>       The Court declines Plaintiff's invitation to find that actual fraud is not fraud but simply an intentional act.  
28 While the Court finds that Potashner acted in bad faith, that finding does not equate to a finding of fraud under any  
analysis currently adopted in Nevada.

1           44.     The break-up fee license agreement was viewed as complementary to other  
2     licensing activities sought out by Parametric at the time.

3           45.     Parametric established HyperSound Health, Inc. (“HHI”), a wholly owned  
4     subsidiary of Parametric, in October 2012 to facilitate Food and Drug Administration approval  
5     for certain medical applications of HyperSound technology (*e.g.*, hearing devices). In February  
6     2013 and March 2013, options were granted to four individuals (Potashner and three  
7     consultants) to purchase shares of the common stock of HHI.

8           46.     Turtle Beach learned about the existence of these stock options through due  
9     diligence in late June 2013, after the core terms of the merger had been negotiated. Upon  
10    discovery, Turtle Beach demanded that Parametric cancel the stock options it had issued to  
11    these four individuals. Turtle Beach informed each of Parametric’s directors that it would not  
12    move forward with the merger until these stock options were cancelled. Turtle Beach issued  
13    this demand on multiple occasions in June and July 2013.

14          47.     The evidence showed that Potashner made efforts to entrench himself in HHI,  
15    and to enrich himself with his options in HHI. To obtain these personal benefits, Potashner  
16    attempted to favor Turtle Beach, including by avoiding completing valuable licensing deals and  
17    delaying announcements of completed deals.

18          48.     When it became apparent to the Board that cancellation of Potashner’s HHI was  
19    required to facilitate a merger with Turtle Beach, a majority of the Board demanded that  
20    Potashner agree to cancel his HHI stock options. In July 2013, at the demand of the Board,  
21    Potashner agreed that his HHI options would cancel upon the closing of the proposed merger  
22    with Turtle Beach.

23          49.     Potashner entered into this agreement without being provided any payment or  
24    additional compensation from Parametric, Turtle Beach, Stripes, or anyone else. Potashner  
25    received nothing of value from Turtle Beach and lost stock options that he believed could have  
26    held substantial value following the merger.

27          50.     Parametric engaged Craig-Hallum Capital Group, LLC (“Craig-Hallum”) to pro-  
28    vide an opinion regarding the fairness of the proposed merger. Craig-Hallum’s compensation

1 for preparing a fairness opinion was not contingent upon the closing of any transaction.

2 51. On August 2, 2013, a joint meeting of the Parametric Board and compensation  
3 committee was held, with the financial and legal advisors of the Parametric Board. At the  
4 meeting, representatives of Craig-Hallum reviewed and discussed with the Parametric Board  
5 Craig-Hallum's financial analysis and views regarding the merger with Turtle Beach and the  
6 terms of the merger agreement with Turtle Beach (including the "Per Share Exchange Ratio"),  
7 with reference to a proposed fairness opinion at the request of the Parametric Board, Craig-  
8 Hallum rendered its oral opinion to the effect that, as of August 2, 2013, subject to certain  
9 assumptions, qualifications and limitations, the "Per Share Exchange Ratio" contemplated by  
10 the merger agreement was fair, from a financial point of view, to Parametric.

11 52. The Per Share Exchange Ratio was determined through arm's-length  
12 negotiations between Parametric and Turtle Beach.

13 53. Craig-Hallum utilized Parametric's internal financial projections for fiscal years  
14 ended September 30, 2013 through September 30, 2017, prepared by and furnished to Craig-  
15 Hallum by the management of Parametric. Information regarding the net cash, number of fully-  
16 diluted shares of common stock outstanding and net operating losses for Parametric was  
17 provided by management. Craig-Hallum utilized Turtle Beach's internal financial projections  
18 for fiscal years ended December 31, 2013 through December 31, 2016 prepared by and  
19 furnished to Craig-Hallum by the management of Turtle Beach. Information regarding the net  
20 debt, number of fully-diluted shares of common stock outstanding and net operating losses for  
21 Turtle Beach was provided by management.

22 54. At the August 2, 2013 meeting of the Board, the Directors engaged in robust  
23 discussion with representatives of Craig-Hallum regarding its fairness opinion and the  
24 calculations. The Directors relied in good faith upon the competency of the analyses performed  
25 and opinions rendered by Craig-Hallum. None of the Settling Directors was made aware of  
26 errors, if any, contained in Craig-Hallum's analyses.

27 55. In evaluating the merger agreement and the transactions contemplated, the Board  
28 consulted with Parametric's management and legal and financial advisors, reviewed a

1 significant amount of information and considered numerous factors which the Parametric Board  
2 viewed as generally supporting its decision to approve the merger agreement and the  
3 transactions contemplated. The Board also considered and discussed numerous risks,  
4 uncertainties and other countervailing factors in its deliberations relating to entering into the  
5 merger agreement and the merger.

6 56. Although the Court made an adverse inference that Potashner acted in bad faith  
7 in pursuit of his own self-interest when supporting and approving the merger, the Court finds  
8 that the Board nevertheless approved the merger agreement with Turtle Beach on August 2,  
9 2013 by a majority of independent and disinterested directors exercising their business  
10 judgment in good faith. Norris, Kaplan, Putterman, Wolfe and Honoré exercised their good  
11 faith business judgment independent of Potashner.

12 57. A majority of the Board believed in good faith that the potential benefits to  
13 Parametric shareholders of the merger agreement and the transactions contemplated outweighed  
14 the risks and uncertainties attendant to the proposed merger, as well as risks and uncertainties  
15 attendant to remaining as a stand-alone entity. A majority of the Board recognized that the  
16 expected benefits of the proposed merger with Turtle Beach vastly outweighed the risks  
17 attendant to continuing to attempt to execute on its stand-alone entity business plan.

18 58. Under the merger, a subsidiary of Parametric merged with Turtle Beach, with  
19 Turtle Beach continuing as the surviving corporation. As a result of the merger, each share of  
20 Turtle Beach common stock and Series A Preferred Stock would be cancelled and converted  
21 into the right to receive a number of shares of Parametric stock. The end result of the merger  
22 was that the pre-merger security holders of Parametric would own 20.01% of the post-merger  
23 Parametric (on a fully-diluted basis), while the security holders of Turtle Beach would own the  
24 remaining 79.99% of the post-merger Parametric (on a fully-diluted basis).

25 59. Each of Parametric's directors determined independently that the merger was in  
26 the best interests of Parametric and its shareholders. Kaplan, Norris, Putterman, Wolfe, and  
27 Honoré conducted their own analysis of the terms of the merger agreement, with the assistance  
28 of their legal counsel and financial advisors. Their decisions to vote in favor of the merger

1 were not guided by, let alone controlled by, Potashner's support for the merger.

2 60. Kaplan, Norris, and Putterman testified that they did not trust or believe  
3 Potashner at all times but they agreed with him in supporting the merger based on their  
4 independent judgment.

5 61. Potashner, Norris and Barnes (along with affiliated entities) entered into voting  
6 agreements which required them to vote in favor of the merger and to not sell or otherwise  
7 transfer their shares for at least six months following the merger. These agreements were  
8 disclosed in the proxy statement and represented approximately 19.2% of the outstanding  
9 shares of Parametric common stock as of the record date.

10 62. Under the voting agreements entered into by Potashner, Barnes and Norris, as  
11 well as certain entities over which they exercised voting and/or investment control (such  
12 stockholders and entities collectively referred to as the "management stockholders"), the  
13 management stockholders were subject to a lock-up restriction whereby they agreed not to sell  
14 or otherwise transfer the shares of Parametric common stock beneficially owned by them or  
15 subsequently acquired by them until six months following the closing of the merger, subject to  
16 certain exceptions.

#### 17 **IV. Post-Announcement of the Merger**

18 63. On August 5, 2013, after the close of trading on NASDAQ, Parametric issued a  
19 press release announcing the execution of the merger agreement.

20 64. Pursuant to the merger agreement, Parametric conducted a 30-day "go-shop"  
21 process to elicit potential "topping bids." As part of the "go shop" process, Houlihan Lokey  
22 contacted 49 different parties. None expressed interest in making a "topping bid."

23 65. In a call with Parametric shareholders on August 8, 2013 announcing the  
24 merger, Turtle Beach disclosed that it expected 2013 revenues and EBITDA to fall in a range  
25 that was below the projections Craig-Hallum had relied upon. Turtle Beach disclosed to  
26 Parametric shareholders that although console transitions have led to subsequent industry  
27 growth in the past,

28 "we can't guarantee that will occur."

1 “it’s very important that you understand the gaming industry context for 2013. Both  
2 Xbox and PlayStation have announced launches of new consoles during the holiday’s  
3 this year. As a result, the entire gaming sector is going through what we believe to be a  
normal cycle of contraction, prior to these new console release[s].”

4 “our business results in particular will be very much dependent on one; how consumer  
5 purchasing behavior for more expensive accessories like headset plays out, heading into  
6 the transition. Two; when the new console launches will happen and three; what  
quantity of new consoles will be available [and] sold during the weeks between the  
launch and the year end.”

7 “rely among other things on successful widespread launch of the new consoles with  
8 sufficient selling weeks to impact this year as well as availability of some specific  
components from Microsoft required for sale of our licensed Xbox One headsets, this  
9 holiday. These specific items by the way are outside of our control.”

10 “these uncertainties are driving the wide range around the expectations for revenues  
11 and EBITDA I just talked through, but it’s important to note that our actual results could  
12 fall materially outside of these ranges if the aforementioned assumptions turned out to  
be inaccurate.”

13 66. Turtle Beach’s actual revenues in 2013 were 18% lower than had been  
14 forecasted in the projections provided to Craig-Hallum. Turtle Beach’s financial  
15 underperformance caused it to trip certain debt covenants with its lender, which resulted in  
16 Turtle Beach renegotiating its credit facility in the second half of 2013.

17 67. Parametric’s actual revenues for fiscal year 2013 were 44% lower than had been  
18 forecasted in the projections provided to Craig-Hallum.

19 68. Parametric and Turtle Beach were aware of each other’s respective  
20 underperformance in late 2013. Parametric management determined that it was not in the best  
21 interest of the company or the shareholders to attempt to renegotiate the terms of the merger.

22 69. On December 3, 2013, Parametric filed a 348-page Definitive Proxy Statement  
23 with regard to the merger agreement with the SEC and transmitted it to Parametric’s  
24 shareholders. The proxy statement sought shareholder votes on several proposals, including (a)  
25 whether to approve the issuance of new shares of Parametric common stock to Turtle Beach  
26 pursuant to the merger agreement (in effect, to approve the merger) and (b) whether to approve  
27 the change in control compensation awards to Potashner, Norris and Barnes in connection with  
28 the merger.

1           70.     Parametric disclosed Turtle Beach's actual revenues for 2013 (through  
2     September 28, 2013) in the proxy statement and also disclosed Turtle Beach's issues with  
3     respect to the debt covenants.

4           71.     The proxy statement did not contain updated financial projections for either  
5     Turtle Beach or Parametric. The proxy statement cautioned readers that the projections that  
6     Craig-Hallum relied upon were only current "as of August 2, 2013," the date the fairness  
7     opinion was issued, "based on market data as it existed on or before August 2, 2013 and is not  
8     necessarily indicative of current or future market conditions." The proxy statement also  
9     contained a prominent warning in bold text that shareholders

10           "should not regard the inclusion of these projections in this proxy statement as an  
11           indication that Parametric, Turtle Beach or any of their respective affiliates, advisors or  
12           other representatives considered or consider the projections to be necessarily predictive  
          of actual future events."

13           72.     The proxy statement also disclosed the risk Stark had warned about on the  
14     August 8, 2013 investor call had been realized. The proxy statement disclosed that

15           "Microsoft has informed its partners in the Xbox One console launch that the Xbox One  
16           Headset Adapter, being built by Microsoft and provided to Turtle Beach for inclusion  
          with new gaming headsets, will not be available until early 2014."

17           "[t]his delay will result in a downward revision to the 2013 outlook for revenue and  
18           EBITDA provided by Turtle Beach's management on August 8, 2013."

19           73.     The proxy statement further disclosed that "[t]his delay will result in a  
20     downward revision to the 2013 outlook for revenue and EBITDA provided by Turtle Beach's  
21     management on August 8, 2013." The level of such impact depends on several factors,  
22     including the projected launch date for the requisite hardware and software from Microsoft  
23     which is still being assessed. Turtle Beach plans to update its 2013 outlook for revenue and  
24     EBITDA following completion of this assessment." In making this disclosure, the proxy  
25     statement revealed that Turtle Beach expected its financial forecast to fall below the range  
26     disclosed on August 8, 2013, which was already lower than the forecast included in Craig-  
27     Hallum's fairness opinion.  
28

1           74.     In late 2013, Turtle Beach provided additional financial disclosures showing that  
2 Turtle Beach's actual performance in 2013 was materially underperforming Turtle Beach's  
3 performance in the same time period in 2012 and its prior guidance for 2013. On November 7,  
4 2013, Parametric filed a Form 8-K, which disclosed an investor presentation prepared by  
5 Parametric and Turtle Beach that included updated net revenue, EBIDTA, and net income  
6 numbers for Turtle Beach for the twelve-month period preceding June 30, 2013. That investor  
7 presentation also stated that

9           "Microsoft's delay of the Xbox One hardware and software until early 2014 is expected  
10 to result in a deferral of Turtle Beach's Xbox One headset-related revenues and profits  
11 for Q4."

12 Parametric shareholders had access to this information when deciding whether to vote in favor  
13 of the merger.

14           75.     The proxy statement disclosed that Turtle Beach expected to underperform even  
15 the lowered guidance provided to Parametric shareholders on August 8, 2013 and explained  
16 that this underperformance was due to the unexpected unavailability of the Microsoft  
17 component. The proxy statement further disclosed that Turtle Beach would be revising its  
18 projections downward, but that it would not be able to provide those projections until that  
19 process was completed.

20           76.     The proxy statement contained a fair summary of Craig-Hallum's fairness  
21 opinion. The proxy statement also contained a fair and complete summary of interests and  
22 potential conflicts in the merger held by members of the Board and management of Parametric.  
23 No material interest or potential conflicts in the merger held by members of the Board and  
24 management of Parametric were undisclosed in the proxy statement.

25           77.     Parametric held a special meeting of its shareholders on December 27, 2013.  
26 Approximately 95% of the shares voting in that election to approve the transaction. Neither the  
27 Settling Directors nor any combination of Parametric insiders owned sufficient shares in the  
28 pre-merger Parametric to control the outcome of the vote in favor of the merger.



1           78.     The merger closed on January 15, 2014. As consideration for the merger,  
2 Parametric issued new shares of its common stock to Stripes and Turtle Beach, the net effect  
3 being that Stripes controlled approximately 80.9% of the combined company. Parametric  
4 shareholders, including each of the Settling Directors, who owned a combined 100% of  
5 Parametric before the merger, were reduced to a minority 19.1% interest.

6           79.     Potashner's employment agreement, which came into effect in April 2012,  
7 contained certain change in control provisions. Under that agreement, upon a change in control  
8 at Parametric, Potashner would be entitled to a severance payment equivalent to twelve months  
9 salary and accelerated vesting of unvested incentive stock options regardless of whether he had  
10 met the required milestones.

11 **V.     No Control or Actual Fraud**

12           80.     Prior to January 15, 2014, Parametric was not a "controlled company" pursuant  
13 to NASDAQ rules because more than 50% of its voting power was not concentrated in any  
14 single shareholder or control group.

15           81.     As disclosed in the proxy statement, persons or entities who held shares of  
16 commons stock of Parametric on the "record date" of November 11, 2013, were entitled to vote  
17 at the special meeting of shareholders to be held on December 27, 2013. Parametric had  
18 6,837,321 shares of common stock outstanding on the record date.

19           82.     On November 11, 2013, Potashner owned no shares of common stock of  
20 Parametric. Accordingly, Potashner was not entitled to vote at the special meeting of  
21 shareholders held on December 27, 2013.

22           83.     Norris, Putterman and Kaplan often were hostile to Potashner and acted contrary  
23 to what they perceived as Potashner's personal interests by causing the Board to, among other  
24 things:

- 25                   a.     cancel Potashner's options in the HHI subsidiary for no consideration;
- 26                   b.     rebuff Potashner's efforts to cause Kaplan to retire from his position as a
- 27                   director of the pre-merger Parametric;
- 28                   c.     refuse Potashner's request to remove Wolfe from Parametric's audit

1 committee.

2 d. refuse Potashner's request to be allowed to sell Parametric stock after the  
3 announcement of the merger; and

4 e. refuse Potashner's request to allow Parametric consultant John Todd to  
5 sell Parametric after the announcement of the merger.

6 84. A majority of the Board of Parametric was independent of Potashner. That  
7 majority could and did outvote Potashner on any all matters on which that majority disagreed  
8 with Potashner.

9 85. Norris, Putterman, Kaplan and Honoré had no business interactions with  
10 Potashner prior to Parametric. Norris, Putterman, Kaplan, Wolfe and Honoré had no pre-  
11 existing personal or familial relationship with Potashner.

12 86. None of the Settling Directors was unable to freely exercise his judgment as a  
13 member of the Board by reason of:

- 14 a. dominion or control of another;  
15 b. fear of retribution by another;  
16 c. contractual obligations owed to another; or  
17 d. employment by or other business relationship with another.

18 87. No one single individual or group had the authority unilaterally to:

- 19 a. elect new directors to the Board;  
20 b. cause a break-up of Parametric;  
21 c. cause Parametric to merge with another company;  
22 d. amend Parametric's certificate of incorporation;  
23 e. cause Parametric to sell all or substantially all of the assets of Parametric;  
24 f. alter materially the nature of Parametric and the public shareholders'

25 interest therein; or

- 26 g. offer employment to anyone in the post-merger Parametric.

27 88. Potashner did not receive any compensation as a result of the merger that he was  
28 not entitled to receive through his employment contract, which included a severance payment,

1 an annual bonus, and accelerated vesting of certain incentive stock options upon a change in  
2 control. Potashner could have received the same compensation had Parametric merged with a  
3 different partner. Each of these forms of compensation were disclosed in the proxy statement.

4 89. Potashner did not enter any side deals or other agreements with Turtle Beach or  
5 Stripes for additional compensation. Other than through his employment agreement, Potashner  
6 received nothing of value from Turtle Beach or Stripes in exchange for his support for the  
7 merger.

8 90. All directors holding equity in Parametric were diluted by the merger to the  
9 same extent as every other public shareholder.

#### 10 **CONCLUSIONS OF LAW**

11 1. NRCP 52(c) allows the district court in a bench trial to enter judgment on partial  
12 findings against a party when the party has been fully heard on an issue and judgment cannot be  
13 maintained without a favorable finding on that issue.

14 2. The directors of a Nevada corporation “are presumed to act in good faith, on an  
15 informed basis and with a view to the interests of the corporation”. NRS 78.138(3). In  
16 exercising his or her business judgment, a director is “entitled to rely on information, opinions  
17 [and] reports” from, among others, “[o]ne or more directors, officers or employees of the  
18 corporation reasonably believed to be reliable and competent in the matters prepared or  
19 presented.” NRS 78.138(2)(a). A director may rely upon “information, opinions [and] reports”  
20 from “[c]ounsel, public accountants, financial advisers, valuation advisers, investment bankers  
21 or other persons as to matters reasonably believed to be within the preparer’s or presenter’s  
22 professional or expert competence.” NRS 78.138(2)(b). Directors “are not required to consider  
23 the effect of a proposed corporate action upon any particular group having an interest in the  
24 corporation as a dominant factor.” NRS 78.138(5). Directors of a Nevada corporation are not  
25 required to elevate the short-term interests of stockholders (such as maximizing immediate,  
26 short-term share value) ahead of any of the other interests set forth in NRS 78.138(4).

27 3. Under NRS 78.211(1),

28 “the board of directors may authorize shares to be issued for consideration consisting of  
any tangible or intangible property or benefit to the corporation, including, but not

1 limited to, cash, promissory notes, services performed, contracts for services to be  
2 performed or other securities of the corporation. The nature and amount of such  
3 consideration may be made dependent upon a formula approved by the board of  
4 directors or upon any fact or event which may be ascertained outside the articles of  
5 incorporation or the resolution providing for the issuance of the shares adopted by the  
6 board of directors if the manner in which a fact or event may operate upon the nature  
7 and amount of the consideration is stated in the articles of incorporation or the  
8 resolution. The judgment of the board of directors as to the consideration received for  
9 the shares issued is conclusive in the absence of actual fraud in the transaction.”

10 4. Directors “confronted with a change or potential change in control of the  
11 corporation” have (a) the normal duties of care and loyalty imposed by operation of NRS  
12 78.138(1); (b) the benefit of the business judgment rule presumption established by NRS  
13 78.138(3); and (c) the “prerogative to undertake and act upon consideration pursuant to  
14 subsections 2, 4 and 5 of NRS 78.138.” NRS 78.139(1). The provisions of NRS 78.139(2) do  
15 not apply in this case.

16 5. In *Chur v. Eighth Judicial Dist. Court*, 136 Nev. Adv. Op. 7, 458 P.3d 336, 340  
17 (2020), the Court noted that “NRS 78.138(7) requires a two-step analysis to impose individual  
18 liability on a director or officer.” First, the presumptions of the business judgment rule must be  
19 rebutted. *Id.* Second, the “director’s or officer’s act or failure to act” must constitute “a breach  
20 of his or her fiduciary duties,” and that breach must further involve “intentional misconduct,  
21 fraud or a knowing violation of law.” NRS 78.138(7)(b)(1)-(2). The *Chur* Court confirmed  
22 that NRS 78.138 “provides for the sole circumstance under which a director or officer may be  
23 held individually liable for damages stemming from the director’s or officer’s conduct in an  
24 official capacity.” *Chur*, 458 P.3d at 340.

25 6. The *Chur* Court also explained that intentional misconduct and knowing  
26 violation of the law under NRS 78.138 is an expansive test:

27 “To give the statute a realistic function, it must protect more than just directors (if any)  
28 who did not know what their actions were [wrongful]; it should protect directors who  
knew what they did but not that it was wrong.”

*Id.* at 341. A plaintiff “must establish that the director or officer had knowledge that the alleged  
conduct was wrongful in order to show a “knowing violation of law” or “intentional  
misconduct” pursuant to NRS 78.138(7)(b).” *Id.*

1           7.       The Settling Directors were entitled to the benefit of the business judgment rule  
2 presumption in connection with their consideration and approval of the merger with Turtle  
3 Beach.

4           8.       Plaintiff failed to meet its burden of rebutting the business judgment rule  
5 presumption as to a majority of the Board. A majority of the Board (a) reasonably relied upon  
6 the advice, information and opinions of other directors, employees and competent professionals  
7 (including counsel) and financial advisors and (b) acted in good faith and independently when  
8 considering and approving the merger. Plaintiff failed to meet its burden of proving that a  
9 majority of the Board engaged in a knowing violation of law or intentional misconduct, or  
10 engaged in actual fraud.

11          9.       Plaintiff failed to meet its burden of proving that Potashner engaged in actual  
12 fraud.

13          10.      Plaintiff failed to meet its burden of proving that Houlihan Lokey and/or Craig-  
14 Hallum did not have knowledge and competence concerning the matters in question or that any  
15 purported conflict of interest would cause the Director Defendants' reliance thereon to be  
16 unwarranted.

17          11.      In 2017, the Nevada Supreme Court ruled in this litigation that the only direct  
18 claim that Parametric shareholders might have standing to assert arising out of the merger was  
19 an "equity expropriation" claim. *See Parametric Sound Corp. v. Eighth Jud. Dist. Ct.*, 133  
20 Nev. 417, 429, 401 P.3d 1100, 1109 (2017). Any other claim contesting the merger would be  
21 derivative in nature, and was extinguished by the settlement and judgment entered by this Court  
22 on May 18, 2020.

23          12.      The Court in *Parametric* held that "equity expropriation claims involve a  
24 controlling shareholder's or director's expropriation of value from the company causing other  
25 shareholders' equity to be diluted." *Id.*

26          13.      The severance payment and accelerated vesting of incentive stock options  
27 provided for under Potashner's April 2012 employment agreement, which were triggered upon  
28 the closing of the merger between Parametric and Turtle Beach on January 15, 2014, for

1 purposes of the motion, will be presumed to have constituted an expropriation by Potashner of  
2 value from the company causing Parametric shareholders' equity to be diluted.

3 14. Plaintiff failed to meet its burden of proving that Parametric had a controlling  
4 shareholder or controlling director.

5 15. Plaintiff has failed to meet its burden to prove that Potashner's receipt of  
6 incentive stock options is an expropriation of value by a controlling shareholder. As such,  
7 Plaintiff failed to prove an essential element of an equity expropriation claim under Nevada  
8 law.

9 16. Plaintiff further failed to meet its burden to prove that the Parametric Board's  
10 decision was impacted by actual fraud, intentional misconduct, or bad faith.

11 17. By reason of Plaintiff's failure to meet its burden to prove a primary equity  
12 expropriation claim against the Director Defendants, Plaintiff failed to meet its burden to prove  
13 a secondary aiding and abetting claim against the Non-Director Defendants.

14 18. Because the Court is granting the NRCP 52(c) motion on the aforementioned  
15 substantive grounds, it does not reach the merits of the additional arguments made by  
16 Defendants in regard to Plaintiff's standing, the operation of the statute of limitations or the  
17 measure of damages proffered by Plaintiff.

18 THEREFORE, IT IS HEREBY ORDERED that defendants' motion pursuant to NRCP  
19 52(c) is GRANTED.

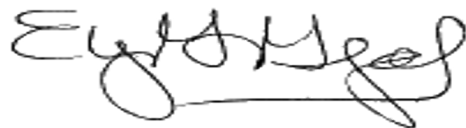
20 **JUDGMENT**

21 The Court having entered the foregoing Findings of Fact and Conclusions of Law, and  
22 good cause appearing,

23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that JUDGMENT is  
24 entered in favor of Defendants and against Plaintiff as to all of Plaintiff's remaining claims.

25 DATED this \_\_\_\_\_ day of September 2021.

**Dated this 3rd day of September, 2021**

26 

27  
28  
\_\_\_\_\_  
- 21 - **7F9 8D2 0FBD 00D8**  
**Elizabeth Gonzalez**  
**District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA  
4

5  
6 Kearney IRRV Trust, Plaintiff(s) | CASE NO: A-13-686890-B  
7 vs. | DEPT. NO. Department 11  
8 Kenneth Potashner, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 9/3/2021

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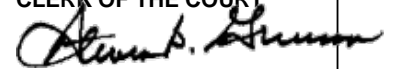
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17 If indicated below, a copy of the above mentioned filings were also served by mail  
18 via United States Postal Service, postage prepaid, to the parties listed below at their last  
19 known addresses on 9/7/2021

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

Case No.: A-13-686890-B

Dept. No.: XXII

**MOTION TO RETAX DEFENDANT  
KENNETH POTASHNER'S VERIFIED  
MEMORANDUM OF COSTS**

**(HEARING REQUESTED)**

This Document Relates To:  
  
ALL ACTIONS.

Pursuant to NRS 18.110(4), PAMTP LLC ("PAMTP") hereby moves the Court to retax and settle the costs in the Memorandum of Costs ("Memo of Costs") filed by Defendant Kenneth Potashner ("Potashner"). After opting out of a class settlement, PAMTP filed this case on May 20, 2020 against Potashner, Elwood Norris, Seth Putterman, Robert Kaplan, Andrew Wolfe, Kenneth Fox, Juergen Stark, VTB Holdings, Inc. ("VTB Holdings"), Stripes f/k/a Stripes Holding Group, LLC ("Stripes"), and SG VTB Holdings ("SG VTB").<sup>1</sup> On the eve of trial, this Court held an evidentiary hearing ("Evidentiary Hearing") to determine appropriate evidentiary sanctions against Potashner, Stark, Fox, and VTB Holdings for destruction of evidence. *See Findings of*

<sup>1</sup> The parties have referenced Fox, Stark, VTB Holdings, Stripes, and SG VTB collectively as the "Non-Director Defendants" during this case. PAMTP maintains that nomenclature in this Motion.

1 Fact, Conclusions of Law, and Order Imposing Spoliation Sanctions (“Spoliation FFCL”), on file.  
2 The Court found that Potashner willfully destroyed evidence in bad faith while Stark and Fox  
3 negligently did the same. *See id.* at 9:19-10:9.

4 Soon after, Norris, Putterman, Kaplan, and Wolfe settled with PAMTP while Potashner  
5 and the Non-Director Defendants chose to go to trial. *See* Order Granting Certain Director  
6 Defendants’ Motion for Determination of Good Faith Settlement. Because Potashner, Fox, and  
7 Stark destroyed relevant evidence, PAMTP did not have the full evidentiary record to present at  
8 trial, and Potashner and the Non-Director Defendants prevailed on an NRCP 52(c) motion. Now,  
9 having prevailed at trial despite the Court’s finding of bad-faith destruction of evidence, Potashner  
10 seeks hundreds of thousands of unrecoverable costs under NRS Chapter 18.

11 First, though PAMTP filed its Complaint on May 20, 2020, Potashner seeks nearly  
12 \$300,000 in costs he incurred defending the earlier Class Action, years *before* PAMTP filed its  
13 lawsuit. Costs incurred before a party files its lawsuit are not recoverable under NRS 18.005, and  
14 Potashner cannot shift costs from the Class Action to PAMTP, which bears no responsibility for  
15 the incurrence of those costs. The Class Action is an independent “action” under NRS 18.020;  
16 therefore, Potashner is only entitled to recover costs incurred after PAMTP filed its own  
17 independent “action” on May 20, 2020.

18 Second, and alarmingly, Potashner seeks to recover costs for the Evidentiary Hearing  
19 brought about by his own willful destruction of evidence. In other words, Potashner wants the  
20 Court to monetarily reward him for his bad faith acts that harmed PAMTP’s case. This is  
21 impermissible.

22 Third, Potashner seeks nearly \$160,000 in e-discovery expenses for storing and producing  
23 ESI, yet NRS 18.005 does not provide for recovery of such costs and courts in other jurisdictions  
24 have rejected them as taxable costs as well. Potashner’s effort to obtain costs for ESI storage is  
25 particularly ironic given the Court’s finding that he willfully and in bad faith destroyed relevant  
26 ESI to PAMTP’s prejudice.

27 Finally, Potashner seeks costs for pro hac vice fees, though these are an overhead expense  
28 of counsel and, thus, not typically recoverable by a client.

1 As a result, PAMTP moves to retax Potashner's claimed costs. Because of his bad-faith  
2 destruction of evidence, the Court should exercise its discretion to award Potashner no costs  
3 incurred in this case. Litigants who destroy evidence and undermine the litigation process should  
4 not be permitted to have their litigation costs covered by the other side, which is inevitably  
5 prejudiced by the spoliation. To the extent the Court wishes to award him any costs, NRS Chapter  
6 18 only allows the award of those costs incurred after May 20, 2020 and expressly authorized by  
7 the statutory language. That leaves Potashner with only \$29,579.53, far less than the \$400,000+  
8 that he impermissibly seeks in his memorandum of costs.

9 DATED this 7th day of October, 2021.

10 McDONALD CARANO LLP

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

A. PAMTP's Assignors Opt Out of a Prior Class Action Before PAMTP Files Its Own Independent Case Against Defendants.

This case and a preceding class action case center on a January 15, 2014 merger between Parametric Sound Corporation ("Parametric") and VTB Holdings and allegations that various insiders (including Potashner and the Non-Director Defendants) acted in their own self-interest or expropriated equity from Parametric's shareholders. *See* PAMTP Complaint ¶¶ 210-224. These derelictions left Parametric's shareholders holding the bag, with shares that lost over 96% of their value from before the merger. *See id.* ¶ 4.

Because the announcement of the merger and the process used were unmitigated disasters, a class of Parametric's shareholders sued before the merger closed. *See* Kearney IRVV Trust Complaint for Breach of Fiduciary Duty, Case No. A-13-686890-C. Those shareholders prosecuted the Class Action for several years, ultimately resulting in a Class settlement, which led the Court to enter a final judgment and order of dismissal with prejudice on May 19, 2020. *See* Final Judgment and Order of Dismissal with Prejudice ("Class Action Dismissal"). In doing so, the Court noted that the parties were dismissing the Class Action with each side to bear its own costs through that date. *See* Class Action Dismissal ¶ 7 ("The Court hereby dismisses with prejudice and *without costs*, the Litigation and all claims contained therein . . .") (emphasis added).

The next day, PAMTP, the assignee of various Parametric shareholders who had opted out of the Class Action to pursue their own claims against Defendants, filed this lawsuit alleging two causes of action: (1) Breach of Fiduciary Duty (Equity Expropriation) against the individual defendants; and (2) Aiding and Abetting Breach of Fiduciary Duty (Equity Expropriation) against Fox, Stark, Stripes, VTB Holdings, and SG VTB. *See generally* Complaint.

B. Potashner, Fox, Stark, and VTB Holdings Destroyed Highly Relevant Text Messages and Emails.

During discovery, PAMTP learned that Potashner, Fox, and Stark destroyed highly relevant evidence necessary for PAMTP's case. *See generally* Spoliation FFCL. Potashner, as Parametric's Executive Chairman and CEO, received two litigation holds from counsel and four other warnings

1 to preserve relevant evidence. *See id.* at 2:11-15. Still, Potashner did not save the phone he used,  
2 and so text messages were irretrievably lost, though Potashner claimed he did not send relevant text  
3 messages. *See id.* at 2:16-18. At the Evidentiary Hearing, the Court expressly found that  
4 Potashner's testimony was not credible and was contradicted by evidence from other sources. *See*  
5 *id.* at 3:2-7.

6 To quote the Court, even "more disturbing" was Potashner's failure to produce relevant  
7 emails from his Gmail account, as the Evidentiary Hearing revealed that Potashner deleted between  
8 27.1% and 42.5% of his emails with a relevant witness. *See id.* at 3:8-21. Further, Potashner did  
9 not provide full access to his Gmail account until June 14, 2018, nearly four and a half years after  
10 the challenged merger. *See id.* at 4:7-12. Because of this, the Court found that Potashner's  
11 destruction was "material and significant" and that he had willfully destroyed relevant evidence.  
12 *See id.* at 4:16-7 and 9:19-25.

13 Similarly, the Court found that Stark and Fox, as directors of VTB Holdings, negligently  
14 destroyed relevant evidence. *See id.* at 4:19-6:22. Stark could not produce text messages from his  
15 phone because he "cleared" it and, though he echoed Potashner in claiming his text messages were  
16 irrelevant, the Court expressly found him unbelievable on that point. *See id.* at 5:9-6:1. Fox similarly  
17 replaced his phone after a litigation hold, and so he could not produce text messages or emails from  
18 his Gmail account. *See id.* at 6:3-12. The Court expressly found that Fox's testimony at the  
19 Evidentiary Hearing was not credible. *See id.*

20 C. Without the Highly Relevant and Spoliated Evidence, PAMTP Was Unsuccessful at  
21 Trial, Though PAMTP Settled with Certain Director Defendants Before Trial  
22 Ended.

23 After the Evidentiary Hearing, the parties proceeded to trial. Days before the trial began,  
24 Norris, Putterman, Kaplan, and Wolfe settled with PAMTP. *See Order Granting Certain Director*  
25 *Defendants' Motion for Determination of Good Faith Settlement.*

26 After PAMTP put on its case without the benefit of the ESI that Potashner, Stark, and Fox  
27 destroyed, Potashner and the Non-Director Defendants successfully moved for judgment under  
28 NRCP 52(c). In considering the motion, the Court recognized that, because of the circumstances  
around the merger and the conduct of the Defendants, "It's got so much bad smell to it." Tr. 61:7.

1 Nevertheless, in what is described as a “hard decision[]” (*id.* at 61:10), the Court granted the motion.  
2 In its Order, the Court held that PAMTP failed to overcome the business judgment rule or otherwise  
3 show that Potashner engaged in actual fraud related to the merger. *See* Order Granting Defendants’  
4 Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and  
5 Judgment Thereon (“NRCP 52(c) Judgment”) at 20:4-12. The Court also concluded that PAMTP  
6 failed to prove that Parametric had a controlling shareholder or director and that Potashner receiving  
7 certain incentive stock options was an expropriation of value by such a controlling shareholder or  
8 director. *See id.* at 21:3-8. Finally, the Court held that PAMTP failed to prove the decision of  
9 Parametric’s board to approve the merger was impacted by actual fraud, intentional misconduct, or  
10 bad faith in approving the merger. *See id.* at 21:9-10.

11 PAMTP has appealed this judgment. Although PAMTP appeals on the ground, among other  
12 things, that the Court’s decision was erroneous on the merits, surely had Potashner, Fox, and Stark  
13 not destroyed highly relevant evidence, it is more likely that PAMTP would have persuaded the  
14 Court that PAMTP had established its case. *See id.*

## 15 II. ARGUMENT

### 16 A. Legal Standard Under NRS Chapter 18.

17 The traditional American rule is parties are responsible for their own attorney’s fees and  
18 costs in litigation. *Aleyska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 247 (1975). A  
19 statutory exception has arisen in many jurisdictions, however, for “relatively minor, incidental  
20 expenses.” *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 573 (2012). These taxable costs  
21 have a “narrow scope” and are a “fraction of the nontaxable expenses borne by litigants.” 566 U.S.  
22 at 573. Thus, they “almost always amount to less than the successful litigant’s total expenses in  
23 connection with a lawsuit.” *Id.* Such statutes only allow for costs listed in the statute “absent  
24 explicit statutory instruction” otherwise. *Rimini St., Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 878  
25 (2019).

26 Nevada’s cost statutes are found in NRS Chapter 18. NRS 18.020 allows the Court to award  
27 certain taxable costs to the prevailing party “in an action for the recovery of money or damages,  
28 where the plaintiff seeks to recover more than \$2,500.” NRS 18.020(3). The specific allowable

costs are expressly enumerated in NRS 18.005. *See* NRS 18.005. A party claiming costs under these statutory provisions must prove that the costs were “reasonable, necessary, and actually incurred.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015). At a minimum, this requires an affidavit from counsel and supporting documentation establishing the costs were reasonable, necessary, and actually incurred. *See id.*

B. Under NRS Chapter 18, Potashner Cannot Recover Costs He Incurred Before PAMTP Filed This Case on May 20, 2020.

PAMTP filed this action on May 20, 2020, a day after the Class Action was settled. Thus, for the purposes of NRS 18.020, the “action” began on that date, and Potashner may only seek costs for items specifically enumerated in NRS 18.005 incurred after the filing of PAMTP’s action.

Even so, and without a single legal citation, Potashner seeks costs that he incurred years before PAMTP filed this action. Potashner lists \$407,071.11 in costs, but his own supporting material reveals he incurred \$272,337.02 of those costs in the Class Action, which was litigated and resolved *before* PAMTP ever filed its action. *See* Exhibit 1, Summary of Costs Claimed By Potashner.<sup>2</sup> The earliest such costs is an August 30, 2013 court fee for Potashner’s initial appearance in the Class Action. *See* Potashner’s Memorandum of Costs at 2:4-5. Since he incurred such costs before PAMTP’s action, he cannot recover them under NRS 18.020. Moreover, it would be fundamentally unfair and contrary to the statute for the Court to impose on PAMTP costs it did not cause Potashner to incur.

The terms of the Class Action settlement—to which Potashner is a party—further demonstrate that costs Potashner incurred in connection with the Class Action are unavailable. *See generally* Class Action Dismissal. In that settlement, Potashner and the other defendants agreed that each party bore its own fees and costs before May 19, 2020. *See id.* ¶ 7 (“The Court hereby dismisses with prejudice and without costs, the Litigation and all claims contained therein . . .”). Having prevailed in PAMTP’s subsequent action, Potashner cannot now seek to shift costs he

---

<sup>2</sup> For ease of reference, Exhibit 1 breaks down Potashner’s claimed costs into three categories: (1) those incurred before May 20, 2020; (2) those incurred after May 20, 2020; and (3) those incurred related to the Evidentiary Hearing.



1 incurred in the Class Action to PAMTP because PAMTP filed an independent action from the Class  
2 Action.<sup>3</sup>

3 When the Court appropriately backs out the costs that Potashner incurred before PAMTP  
4 filed this action on May 20, 2020, Potashner is only left with a maximum of \$134,734.09 in  
5 potentially recoverable costs under NRS 18.005 and 18.020.

6 C. Potashner Cannot Recover Costs Associated with the Evidentiary Hearing Brought  
7 About by His Own Willful Destruction of Evidence.

8 Remarkably, Potashner seeks costs associated with the evidentiary hearing this Court was  
9 compelled to hold because of *his own* spoliation of evidence. Specifically, Potashner has the  
10 temerity to seek \$5,201.20 in witness fees and expenses, travel and lodging costs, delivery and  
11 filing costs for the Evidentiary Hearing. *See generally* Potashner's Memorandum of Costs and  
12 Supporting Appendices; *see also* Ex. 1, Summary of Costs Claimed By Potashner. This is a bald-  
13 faced effort by Potashner to reward himself for his own egregious behavior. Judge Gonzalez found  
14 that Potashner willfully destroyed his text messages and emails, prompting PAMTP to move this  
15 Court for relief. *See generally* Spoliation FFCL. It would be outrageous for Potashner to recover  
16 costs incurred to defend his own destruction of evidence. Indeed, it would violate the fundamental  
17 maxim that no one should be rewarded for his own wrongdoing. *See Truck Ins. Exchange v. Palmer*  
18 *J. Swanson, Inc.*, 124 Nev. 629, 637-38, 189 P.3d 656, 662 (2008) (doctrine of unclean hands "bars  
19 relief to a party who has engaged in improper conduct in the matter in which the party is seeking

20 \_\_\_\_\_  
21 <sup>3</sup> In their memorandum of costs, the Non-Director Defendants argue—again without  
22 citation—that recovery of their costs incurred before PAMTP filed this action is justifiable since  
23 PAMTP sought prejudgment interest dating to August 13, 2013. *See* Non-Director Defendants'  
24 Memorandum of Costs at 2:1-10. It is unclear whether Potashner is parroting this argument in his  
25 own memorandum of costs, but in any event, it is a non-sequitur.

26 The Nevada Supreme Court has often stated that a plaintiff is entitled to prejudgment  
27 interest "from the time the cause of action accrues until the time of judgment." *Ramada Inns, Inc.*  
28 *v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985). Thus, it was appropriate for PAMTP to seek  
prejudgment interest dating back to August 2013, as that was when Defendants' wrongdoing  
occurred and when PAMTP's causes of action accrued. *See* PAMTP Complaint ¶ 2 (noting merger  
announcement occurred on August 5, 2013).

There is no similar look-back period for statutory costs under NRS 18.005 and 18.020 when  
a class participant opts out to file an independent action. Instead, those costs are limited to the ones  
incurred in the opt-out "action," i.e., costs incurred after an opt-out plaintiff files its complaint.

1 relief.”). When these costs are appropriately backed out, Potashner is left with a maximum of  
2 \$129,532.89 in potentially recoverable costs.

3 D. Potashner Cannot Recover E-Discovery Storage and Hosting Costs After May 20,  
4 2020 Because NRS 18.005 Does Not Include Them as Taxable Costs.

5 Potashner seeks to recover \$98,913.36 in e-discovery costs after May 20, 2020. *See*  
6 Potashner’s Memorandum of Costs at 30:21-31:5. These costs cover monthly charges for “E-  
7 Discovery Monthly Data Hosting Fees.” *See id.* But Parties may not recover e-discovery hosting  
8 and storage costs as a taxable cost.

9 Potashner relies on NRS 18.005(17), which allows a party to recover “any other reasonable  
10 and necessary expense incurred in connection with the action, including reasonable and necessary  
11 expenses for computerized services for legal research.” This section does not support Potashner’s  
12 attempt to recover e-discovery storage costs. Because the Nevada Legislature included this  
13 provision in the statute in 1989 – long before parties began incurring e-discovery costs for data  
14 storage – it is not “explicit statutory instruction” that e-discovery hosting and storage costs are  
15 recoverable. *Rimini St., Inc.*, 139 S. Ct. at 878. Moreover, prohibiting recovery of exorbitant e-  
16 discovery hosting and storage costs such as Potashner seeks here fits the historical principle that  
17 “[t]axable costs are limited to relatively minor, incidental expenses.” *Taniguchi*, 566 U.S. at 573.

18 To be sure, the Nevada Supreme Court has stated that certain e-discovery costs for  
19 producing and acquiring documents are recoverable. *See Matter of DISH Network Derivative Litig.*,  
20 133 Nev. 438, 450-51, 401 P.3d 1081, 1092-93 (2017). But it has never held that this principle  
21 means that costs to merely store ESI are recoverable. Other jurisdictions have expressly rejected  
22 including hosting and storage costs as taxable costs under the statute. In *Rimini St., Inc.*, for  
23 example, the United States Supreme Court held that the federal cost statute did “not authorize an  
24 award for . . . e-discovery expenses.” 139 S. Ct. 873, 878 (2019). The same is true for NRS 18.005’s  
25 general provision, as there is no explicit statutory instruction that e-discovery hosting and storage  
26 costs are recoverable. Indeed, where the Nevada Legislature has expressed the intention to update  
27 the statute for costs associated with electronic legal work—i.e., computerized legal research—it did  
28 so explicitly in NRS 18.005(17). That the Nevada Legislature has not provided for e-discovery

storage and hosting costs illustrates that they are not recoverable under NRS 18.005(17).<sup>4</sup>

When Potashner's e-discovery hosting and storage costs are withdrawn from his total, he is left with a maximum of \$30,619.53 in potentially recoverable costs after May 20, 2020.

E. Potashner Cannot Recover Pro Hac Vice Fees After May 20, 2020.

Along with trying to jam e-discovery costs into NRS 18.005's general provision, Potashner also seeks to recover \$1,000.00 in pro hac vice fees after May 20, 2020. These are also unrecoverable because they are "an expense of counsel, not the client." *Schmitz-Werke GmbH & Co. v. Rockland Indust., Inc.*, 271 F. Supp. 2d 734, 735 (D. Md. 2003); *see also Kalitta Air LLC v. Central Texas Airborne Sys. Inc.*, 741 F.3d 955, 658 (9th Cir. 2013) (federal cost statute "does not allow for an award of pro hac vice fees as taxable costs"). This leaves Potashner with a maximum of only \$29,619.53 in potentially recoverable costs after May 20, 2020.

**III. CONCLUSION**

PAMTP requests that this Court retax the costs in Potashner's Memorandum of Costs. Potashner has claimed \$407,071.11 in total costs, including the following unrecoverable items:

<u>Unrecoverable Cost</u>	<u>Amount Improperly Claimed</u>
Costs Incurred Before May 20, 2020	\$272,377.02
Costs for Evidentiary Hearing	\$5,201.20
Costs for E-Discovery Data Hosting After May 20, 2020	\$98,913.36
Costs for Pro Hac Vice Fees After May 20, 2020	\$1,000
<u>Total Unrecoverable Costs</u>	\$377,491.58

Once Potashner's claimed costs are reduced consistent with NRS 18.005 and 18.020, his allowable costs only total \$29,579.53. If the Court is inclined to grant Potashner any costs after his willful

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<sup>4</sup> As the *Taniguchi* court explained, taxable costs have a "narrow scope" and are a "fraction of the nontaxable expenses borne by litigants." 566 U.S. at 573. Thus, they "almost always amount to less than the successful litigant's total expenses in connection with a lawsuit."

1 destruction of evidence, PAMTP requests that the Court settle Potashner's recoverable costs to that  
2 amount.

3 DATED this 7th day of October, 2021.

4 McDONALD CARANO LLP

5  
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10 *Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 7th day of October, 2021, a true and correct copy of the foregoing **MOTION TO RETAX DEFENDANT KENNETH POTASHNER'S VERIFIED MEMORANDUM OF COSTS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/Jelena Jovanovic

An employee of McDonald Carano LLP

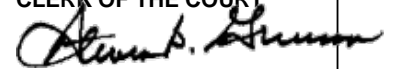
# EXHIBIT “1”

<b>Prior to May 2020</b>	
<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005 (1) - COURT FEES	\$2,145.50
NRS 18.005 (2) – REPORTER’S FEES FOR DEPOSITIONS	\$47,842.40
NRS 18.005(5) – EXPERT FEES	\$91,846.50
NRS 18.005(8) – OFFICIAL REPORTER COMPENSATION	\$1,687.05
NRS 18.005(15) – DEPOSITION TRAVEL AND LODGING COSTS	\$43,851.69
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - a. COMPUTERIZED LEGAL RESEARCH	\$9,807.05
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - b. ELECTRONIC DISCOVERY	\$65,055.24
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - c. DELIVERY AND FILING SERVICES / MESSENGERS	\$1,168.78
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - PRO HAC VICE	\$4,200.00
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - COSTS RELATED TO PARKING AND TRAVEL FOR MANDATORY HEARINGS	\$171.00
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - COSTS RELATED TO MEDIATION	\$2,844.57
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - COSTS RELATED TO MANDATORY SUPREME COURT HEARINGS	\$762.59
NRS 18.005 (15) – Travel and Lodging	\$994.65
<b>GRAND TOTAL</b>	<b>\$272,377.02</b>

<b>After May 2020</b>	
<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005 (1) - COURT FEES	\$287.50
NRS 18.005 (2) – REPORTER’S FEES FOR DEPOSITIONS	\$1,256.30
NRS 18.005(4) – WITNESSES’ FEES & EXPENSES FOR TRIAL, PRETRIAL HEARINGS AND DEPOSITIONS	\$9,750.00
NRS 18.005(8) – OFFICIAL REPORTER COMPENSATION	\$108.62
NRS 18.005(12) – PHOTOCOPY COSTS	\$22,496.91
NRS 18.005(8) – OFFICIAL REPORTER COMPENSATION	\$108.62
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - COMPUTERIZED LEGAL RESEARCH	\$381.60
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - ELECTRONIC DISCOVERY	\$98,913.36
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - DELIVERY AND FILING SERVICES / MESSENGERS	\$506.72
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES- PRO HAC VICE	\$1,000.00
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - COSTS RELATED TO PARKING AND TRAVEL FOR MANDATORY HEARINGS	\$404.00
NRS 18.005 (15) – Travel and Lodging	\$677.28
<b>GRAND TOTAL</b>	<b>\$135,890.91</b>



<b>Evidentiary Hearing</b>	
<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005(4) – WITNESSES’ FEES & EXPENSES FOR TRIAL, PRETRIAL HEARINGS AND DEPOSITIONS	\$1,775.00
NRS 18.005(15) – DEPOSITION TRAVEL AND LODGING COSTS	\$2,950.30
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - DELIVERY AND FILING SERVICES / MESSENGERS	\$244.90
NRS 18.005(17) – OTHER REASONABLE AND NECESSARY EXPENSES - COSTS RELATED TO PARKING AND TRAVEL FOR MANDATORY HEARINGS	\$150.00
NRS 18.005 (15) – Travel and Lodging	\$81.00
<b>GRAND TOTAL</b>	<b>\$5,201.20</b>



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*Attorneys for Plaintiff PAMTP LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

Case No.: A-13-686890-B

Dept. No.: XXII

**MOTION TO RETAX  
NON-DIRECTOR DEFENDANTS'  
MEMORANDUM OF COSTS**

**(HEARING REQUESTED)**

This Document Relates To:  
  
ALL ACTIONS.

Pursuant to NRS 18.110(4), PAMTP LLC ("PAMTP") hereby moves the Court to retax and settle the costs included in the Memorandum of Costs ("Memo of Costs") filed by Defendants Kenneth Fox, Juergen Stark, VTB Holdings, Inc. ("VTB Holdings"), Stripes f/k/a Stripes Holding Group, LLC ("Stripes"), and SG VTB Holdings ("SG VTB").<sup>1</sup> After opting out of a class settlement, PAMTP filed this case on May 20, 2020 against the Non-Director Defendants, Kenneth Potashner, Elwood Norris, Seth Putterman, Robert Kaplan, and Andrew Wolfe. On the eve of trial, Judge Gonzalez held an evidentiary hearing ("Evidentiary Hearing") to determine appropriate

<sup>1</sup> The parties have referenced Fox, Stark, VTB Holdings, Stripes, and SG VTB collectively as the "Non-Director Defendants" during this case. PAMTP maintains that nomenclature in this Motion.

1 evidentiary sanctions against Potashner, Stark, Fox, and VTB Holdings for destruction of  
2 evidence, and determined that Potashner willfully destroyed evidence in bad faith, while Stark and  
3 Fox negligently did the same. *See* Findings of Fact, Conclusions of Law, and Order Imposing  
4 Spoliation Sanctions (“Spoliation FFCL”), at 9:19-10:9.

5       Soon after, Norris, Putterman, Kaplan, and Wolfe settled with PAMTP while Potashner  
6 and the Non-Director Defendants chose to go to trial. *See* Order Granting Certain Director  
7 Defendants’ Motion for Determination of Good Faith Settlement. Because Potashner, Fox, and  
8 Stark destroyed relevant evidence, PAMTP did not have the full evidentiary record to present at  
9 trial, and Potashner and the Non-Director Defendants prevailed on an NRCP 52(c) motion. Now,  
10 having prevailed at trial despite the Court’s finding of bad-faith destruction of evidence, the Non-  
11 Director Defendants seek over \$1,000,000 in costs in a matter that went to trial 15 months after it  
12 was filed. Under NRS Chapter 18, less than \$118,000 of those requested costs are recoverable.

13       First, though PAMTP filed its Complaint on May 20, 2020, the Non-Director Defendants  
14 seek \$585,083.29 in costs they incurred defending the earlier Class Action, years *before* PAMTP  
15 filed its lawsuit. Costs incurred before a party files its lawsuit are not recoverable under NRS  
16 18.005, and the Non-Director Defendants cannot shift costs from the Class Action to PAMTP,  
17 which bears no responsibility for the incurrence of those costs. The Class Action is an independent  
18 “action” under NRS 18.020; therefore, the Non-Director Defendants are only entitled to recover  
19 costs incurred after PAMTP filed its own independent “action” on May 20, 2020.

20       Second, the Non-Director Defendants seek to recover over \$23,000 in costs for the  
21 Evidentiary Hearing brought about by Stark, Fox, and VTB Holdings’ destruction of evidence. In  
22 other words, the Non-Director Defendants want the Court to monetarily reward them for their bad  
23 faith acts that harmed PAMTP’s case. This is impermissible.

24 . . .

25 . . .

26 . . .

27 . . .

28 . . .

1 Third, the Non-Director Defendants seek over \$140,000 in e-discovery expenses for storing  
2 and hosting ESI; yet, NRS 18.005 does not provide for recovery of such costs, and courts in other  
3 jurisdictions have rejected them as well. The effort to obtain costs for ESI storage is particularly  
4 ironic given the Court's finding that Defendants willfully and in bad faith destroyed relevant ESI  
5 to PAMTP's prejudice.

6 Fourth, the Non-Director Defendants seek \$55,838.95 in expert fees incurred after May 20,  
7 2020, far above NRS 18.005(5)'s reasonable fee of not more than \$1,500 for each expert witness.  
8 While the Non-Director Defendants claim this fee was necessary for a single expert, John  
9 Montgomery of Ankura Consulting Group, LLC, because of extenuating circumstances, they do  
10 not establish such circumstances in their memorandum of costs. Montgomery did not even testify  
11 at trial, and so the Non-Director Defendants are not entitled to any fee for him and certainly not  
12 one exceeding \$1,500.

13 Fifth, the Non-Director Defendants seek to recover \$123,508.80 in "trial support," which  
14 amounts to "equipment rental" and "graphics and onsite support." The underlying documentation  
15 reveals this was unnecessary overkill, including five printers, one copier, 18 monitors, two WiFi  
16 routers, "24/7 IT support availability," and 190 hours of "support" services from out-of-  
17 jurisdiction providers at hourly rates from \$265-\$400. The Non-Director Defendants are not  
18 entitled to recover such bloated costs under NRS 18.005's general provision on costs.

19 Finally, the Non-Director Defendants seek \$2,000 in costs for pro hac vice fees after May  
20 20, 2020, though these are an overhead expense of counsel and, thus, not typically recoverable by  
21 a client.

22 As a result, PAMTP moves to retax the Non-Director Defendants' claimed costs. Because  
23 of their bad-faith destruction of evidence, the Court should exercise its discretion to award the  
24 Non-Director Defendants *no* costs incurred in this case. Litigants who destroy evidence and  
25 undermine the litigation process should not be permitted to have their litigation costs covered by  
26 the other side, which is inevitably prejudiced by the spoliation. To the extent the Court wishes to  
27 award any costs, NRS Chapter 18 only allows the award of those costs incurred after May 20, 2020  
28 and expressly authorized by the statutory language. That leaves the Non-Director Defendants with

1 just over \$117,000 in potentially recoverable costs, far less than the \$1.047 million they seek in  
2 their memorandum of costs.

3 DATED this 7th day of October, 2021.

4 McDONALD CARANO LLP

5  
6 By: /s/ George F. Ogilvie III  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

A. PAMTP's Assignors Opt Out of a Prior Class Action Before PAMTP Files Its Own Independent Case Against Defendants.

This case and a preceding class action case center on a January 15, 2014 merger between Parametric Sound Corporation ("Parametric") and VTB Holdings and allegations that various insiders (including Potashner and the Non-Director Defendants) acted in their own self-interest or expropriated equity from Parametric's shareholders. *See* PAMTP Complaint ¶¶ 210-224. These derelictions left Parametric's shareholders holding the bag, with shares that lost over 96% of their value from before the merger. *See id.* ¶ 4.

Because the announcement of the merger and the process used were unmitigated disasters, a large class of Parametric shareholders sued before the merger closed. *See* Kearney IRRV Trust Complaint for Breach of Fiduciary Duty, Case No. A-13-686890-C. Those shareholders prosecuted the Class Action for several years, ultimately resulting in a Class settlement, which led the Court to enter a final judgment and order of dismissal with prejudice on May 19, 2020. *See* Final Judgment and Order of Dismissal with Prejudice ("Class Action Dismissal"). In doing so, the Court noted that the parties were dismissing the Class Action with each side to bear its own costs through that date. *See* Class Action Dismissal ¶ 7 ("The Court hereby dismisses with prejudice and *without costs*, the Litigation and all claims contained therein . . .") (emphasis added).

The next day, PAMTP, the assignee of various Parametric shareholders that had opted out of the Class Action settlement to pursue their own claims against Defendants, filed this lawsuit alleging two causes of action: (1) Breach of Fiduciary Duty (Equity Expropriation) against the individual defendants; and (2) Aiding and Abetting Breach of Fiduciary Duty (Equity Expropriation) against Fox, Stark, Stripes, VTB Holdings, and SG VTB. *See generally* Complaint.

B. Potashner, Fox, Stark, and VTB Holdings Destroyed Highly Relevant Text Messages and Emails.

During discovery, PAMTP learned that Potashner, Fox, and Stark destroyed highly relevant evidence necessary for PAMTP's case. *See generally* Spoliation FFCL. Potashner, as Parametric's

1 Executive Chairman and CEO, received two litigation holds from counsel and four other warnings  
2 to preserve relevant evidence. *See id.* at 2:11-15. Still, Potashner did not save the phone he used,  
3 and so text messages were irretrievably lost, though Potashner claimed he did not send relevant text  
4 messages. *See id.* at 2:16-18. At the Evidentiary Hearing, the Court expressly found that  
5 Potashner's testimony was not credible and was contradicted by evidence from other sources. *See*  
6 *id.* at 3:2-7.

7 To quote the Court, even "more disturbing" was Potashner's failure to produce relevant  
8 emails from his Gmail account, as the Evidentiary Hearing revealed that Potashner deleted between  
9 27.1% and 42.5% of his emails with a relevant witness. *See id.* at 3:8-21. Further, Potashner did  
10 not provide full access to his Gmail account until June 14, 2018, nearly four and a half years after  
11 the challenged merger. *See id.* at 4:7-12. Because of this, the Court found that Potashner's  
12 destruction was "material and significant" and that he had willfully destroyed relevant evidence.  
13 *See id.* at 4:16-7 and 9:19-25.

14 Similarly, the Court found that Stark and Fox, as directors of VTB Holdings, negligently  
15 destroyed relevant evidence. *See id.* at 4:19-6:22. Stark could not produce text messages from his  
16 phone because he "cleared" it and, though he echoed Potashner in claiming his text messages were  
17 irrelevant, the Court expressly found him uncredible on that point. *See id.* at 5:9-6:1. Fox similarly  
18 replaced his phone after a litigation hold, and so he could not produce text messages or emails from  
19 his Gmail account. *See id.* at 6:3-12. The Court expressly found that Fox's testimony at the  
20 Evidentiary Hearing was not credible. *See id.*

21 C. Without the Highly Relevant and Spoliated Evidence, PAMTP Was Unsuccessful at  
22 Trial, Though PAMTP Settled with Certain Director Defendants Before Trial  
23 Ended.

24 After the Evidentiary Hearing, the parties proceeded to trial. Days before the trial began,  
25 Norris, Putterman, Kaplan, and Wolfe settled with PAMTP. *See Order Granting Certain Director*  
26 *Defendants' Motion for Determination of Good Faith Settlement.*

27 After PAMTP put on its case without the benefit of the ESI that Potashner, Stark, and Fox  
28 destroyed, Potashner and the Non-Director Defendants moved for judgment under NRCP 52(c). In  
considering the motion, the Court recognized that, because of the circumstances around the merger

1 and the conduct of the Defendants, “It’s got so much bad smell to it.” Tr. 61:7. Even so, in what  
2 it described as a “hard decision[]” (*id.* at 61:10), the Court granted the motion. In its Order, the  
3 Court held that PAMTP failed to overcome the business judgment rule or otherwise show that  
4 Potashner engaged in actual fraud related to the merger. *See* Order Granting Defendants’ Motion  
5 for Judgment Pursuant to NRCF 52(c), Findings of Fact and Conclusions of Law, and Judgment  
6 Thereon (“NRCF 52(c) Judgment”) at 20:4-12. The Court also concluded that PAMTP failed to  
7 prove that Parametric had a controlling shareholder or director and that Potashner receiving certain  
8 incentive stock options was an expropriation of value by such a controlling shareholder or director.  
9 *See id.* at 21:3-8. Finally, the Court held that PAMTP failed to prove that the decision of  
10 Parametric’s board to approve the merger was impacted by actual fraud, intentional misconduct, or  
11 bad faith in approving the merger. *See id.* at 21:9-10.

12 PAMTP has appealed this judgment. Although PAMTP appeals on the ground, among other  
13 things, that the Court’s decision was erroneous on the merits, surely had Potashner, Fox, and Stark  
14 not destroyed highly relevant evidence, it is more likely that PAMTP would have persuaded the  
15 Court that PAMTP had established its case. *See id.*

## 16 II. ARGUMENT

### 17 A. Legal Standard Under NRS Chapter 18.

18 The traditional American rule is parties are responsible for their own attorney’s fees and  
19 costs in litigation. *Aleyska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 247 (1975). A  
20 statutory exception has arisen in many jurisdictions, however, for “relatively minor, incidental  
21 expenses.” *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 573 (2012). These taxable costs  
22 have a “narrow scope” and are a “fraction of the nontaxable expenses borne by litigants.” 566 U.S.  
23 at 573. Thus, they “almost always amount to less than the successful litigant’s total expenses in  
24 connection with a lawsuit.” *Id.* Such statutes only allow for costs listed in the statute “absent  
25 explicit statutory instruction” otherwise. *Rimini St., Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 878  
26 (2019).

27 Nevada’s cost statutes are found in NRS Chapter 18. NRS 18.020 allows the Court to award  
28 certain taxable costs to the prevailing party “in an action for the recovery of money or damages,



1 where the plaintiff seeks to recover more than \$2,500.” NRS 18.020(3). The specific allowable  
2 costs are expressly enumerated in NRS 18.005. A party claiming costs under these statutory  
3 provisions must prove that the costs were “reasonable, necessary, and actually incurred.” *Cadle*  
4 *Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015). At a minimum,  
5 this requires an affidavit from counsel and supporting documentation establishing the costs were  
6 reasonable, necessary, and actually incurred. *See id.*

7 B. Under NRS Chapter 18, the Non-Director Defendants Cannot Recover Costs That  
8 They Incurred Before PAMTP Filed This Case on May 20, 2020.

9 PAMTP filed this action on May 20, 2020, a day after the Class Action was settled. Thus,  
10 for the purposes of NRS 18.020, the “action” began on that date, and the Non-Director Defendants  
11 may only seek costs for items specifically enumerated in NRS 18.005 incurred after the filing of  
12 PAMTP’s action.

13 Even so, and without a single legal citation, the Non-Director Defendants seek costs that  
14 they incurred years before PAMTP filed this action. The Non-Director Defendants list  
15 \$1,046,849.92 in costs, but their own supporting material reveals they incurred \$585,083.29 of  
16 those costs in the Class Action, which was litigated and resolved *before* PAMTP ever filed its  
17 action. *See* Exhibit 1, Summary of Costs Claimed by Non-Director Defendants.<sup>2</sup> The earliest of  
18 such costs date back to the Non-Director Defendants’ initial appearances in the Class Action. *See*  
19 Ex. 11 to Non-Director Defendants’ Memorandum of Costs at 1262. Since the Non-Director  
20 Defendants incurred such costs before PAMTP’s action, they cannot recover them from PAMTP  
21 under NRS 18.020. Moreover, it would be fundamentally unfair and contrary to the statute for the  
22 Court to impose on PAMTP costs it did not cause the Non-Director Defendants to incur.

23 The terms of the Class Action settlement—to which the Non-Director Defendants were  
24 parties—further demonstrate that costs the Non-Director Defendants incurred in connection with  
25 the Class Action are unavailable. *See generally* Class Action Dismissal. In that settlement, the  
26

27 <sup>2</sup> For ease of reference, Exhibit 1 breaks down the Non-Director Defendants’ claimed costs  
28 into three categories: (1) those incurred before May 20, 2020; (2) those incurred after May 20, 2020;  
and (3) those incurred related to the Evidentiary Hearing.

1 Non-Director Defendants and the other defendants agreed that each party bore its own fees and  
2 costs before May 19, 2020. *See id.* ¶ 7 (“The Court hereby dismisses with prejudice and without  
3 costs, the Litigation and all claims contained therein . . .”). Having prevailed in PAMTP’s  
4 subsequent action, the Non-Director Defendants cannot now seek to shift costs they incurred in the  
5 Class Action to PAMTP because PAMTP filed an independent action from the Class Action.

6 The Non-Director Defendants argue—again without citation—that recovery of their costs  
7 incurred before PAMTP filed this action is justifiable since PAMTP sought prejudgment interest  
8 dating to August 13, 2013. *See* Non-Director Defendants’ Memorandum of Costs at 2:1-10. This  
9 is a non-sequitur. The Nevada Supreme Court has repeatedly determined that a plaintiff is entitled  
10 to prejudgment interest “from the time the cause of action *accrues* until the time of judgment.”  
11 *Ramada Inns, Inc. v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985) (emphasis added). Thus, it  
12 was appropriate for PAMTP to seek prejudgment interest dating back to August 2013, as that was  
13 when Defendants’ wrongdoing occurred and when PAMTP’s causes of action accrued. *See*  
14 PAMTP Complaint ¶ 2 (noting merger announcement occurred on August 5, 2013). There is no  
15 similar look-back period for statutory costs under NRS 18.005 and 18.020 when a class participant  
16 opts out to file an independent action. Instead, costs a defendant can seek from an opt-out plaintiff  
17 are limited to the ones incurred in the opt-out “action,” i.e., costs incurred after an opt-out plaintiff  
18 files its complaint.

19 When the Court appropriately backs out the costs that the Non-Director Defendants incurred  
20 before PAMTP filed this action on May 20, 2020, the Non-Director Defendants are only left with  
21 a maximum of \$461,766.53 in potentially recoverable costs under NRS 18.005 and 18.020.

22 C. The Non-Director Defendants Cannot Recover Costs Associated with the  
23 Evidentiary Hearing Brought About by Their Destruction of Evidence.

24 Remarkably, the Non-Director Defendants seek costs associated with the evidentiary  
25 hearing this Court was compelled to hold because of *their own* spoliation of evidence. Specifically,  
26 the Non-Director Defendants have the temerity to seek \$23,039.97 in witness fees and expenses,  
27 travel and lodging costs, and delivery and filing costs for the Evidentiary Hearing. *See generally*  
28 Non-Director Defendants’ Memorandum of Costs and Supporting Appendices; *see also* Ex. 1,

1 Summary of Costs Claimed by Non-Director Defendants. This is a bald-faced effort by the Non-  
2 Director Defendants to reward themselves for their own bad behavior. Judge Gonzalez found that  
3 Stark, Fox, and VTB Holdings destroyed text messages and emails, prompting PAMTP to move  
4 the Court for relief. *See generally* Spoliation FFCL. It would be outrageous for the Non-Director  
5 Defendants to recover costs incurred to defend their own destruction of evidence. Indeed, it would  
6 violate the fundamental maxim that no one should be rewarded for his own wrongdoing. *See Truck*  
7 *Ins. Exchange v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 637-38, 189 P.3d 656, 662 (2008)  
8 (doctrine of unclean hands “bars relief to a party who has engaged in improper conduct in the matter  
9 in which the party is seeking relief.”).

10 When these costs are appropriately backed out, the Non-Director Defendants are left with a  
11 maximum of \$438,726.56 in potentially recoverable costs.

12 D. The Non-Director Defendants Cannot Recover E-Discovery Storage and Hosting  
13 Costs After May 20, 2020 Because NRS 18.005 Does Not Include Them as Taxable  
14 Costs.

15 The Non-Director Defendants seek to recover \$140,048.59 in e-discovery costs after May  
16 20, 2020. *See* Non-Director Defendants’ Memorandum of Costs at 2:17-18. These costs cover  
17 monthly charges for “e-discovery hosting, processing, and production.” *See* Exhibit 7 to Non-  
18 Director Defendants’ Memorandum of Costs at 1104. But Parties may not recover e-discovery  
19 hosting and storage costs as a taxable cost.

20 The Non-Director Defendants rely on NRS 18.005(17), which allows a party to recover  
21 “any other reasonable and necessary expense incurred in connection with the action, including  
22 reasonable and necessary expenses for computerized services for legal research.” This section does  
23 not support the Non-Director Defendants’ attempt to recover e-discovery storage costs. Because  
24 the Nevada Legislature included this provision in the statute in 1989 – long before parties began  
25 incurring e-discovery costs for data storage – it is not “explicit statutory instruction” that e-  
26 discovery hosting and storage costs are recoverable. *Rimini St., Inc.*, 139 S. Ct. at 878. Moreover,  
27 prohibiting recovery of exorbitant e-discovery costs such as Non-Director Defendants seek here fits  
28 the historical principle that “[t]axable costs are limited to relatively minor, incidental expenses.”  
*Taniguch.*, 566 U.S. at 573.

1 To be sure, the Nevada Supreme Court has stated that certain e-discovery costs for  
2 producing and acquiring documents are recoverable. *See Matter of DISH Network Derivative Litig.*,  
3 133 Nev. 438, 450-51, 401 P.3d 1081, 1092-93 (2017). But it has never held that this principle  
4 means that costs to merely store ESI are recoverable. Other jurisdictions have expressly rejected  
5 including hosting and storage costs as taxable costs under the statute. In *Rimini St., Inc.*, for  
6 example, the United States Supreme Court explicitly held that the federal cost statute did “not  
7 authorize an award for . . . e-discovery expenses.” 139 S. Ct. at 878. The same is true for NRS  
8 18.005’s general provision, as there is no explicit statutory instruction that e-discovery hosting and  
9 storage costs are recoverable. Indeed, where the Nevada Legislature has expressed the intention to  
10 update the statute for costs associated with electronic legal work—i.e., computerized legal  
11 research—it did so explicitly in NRS 18.005(17). That the Nevada Legislature has not provided  
12 for e-discovery storage and hosting costs illustrates that they are not recoverable under NRS  
13 18.005(17).<sup>3</sup>

14 When the Non-Director Defendants’ hosting and storage e-discovery costs are withdrawn  
15 from their total, they are left with a maximum of \$298,677.97 in potentially recoverable costs after  
16 May 20, 2020.

17 E. The Non-Director Defendants Cannot Recover \$55,838.95 for One Expert Used  
18 After May 20, 2020 When That Expert Did Not Testify at Trial.

19 NRS 18.005(5) allows a party to recover reasonable fees of not more than \$1,500 per expert  
20 witness for no more than five experts. There is a limited exception to this cap if the “circumstances  
21 surrounding the expert’s testimony were of such necessity as to require the larger fee.” *Id.* When  
22 a trial court wishes to invoke the exception, it must evaluate several factors, including the  
23 “importance of the expert’s testimony to the party’s case, the extent of the expert’s work, and  
24 whether the expert had to conduct independent investigation or testing.” *Motor Coach Indus., Inc.*

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26  
27 <sup>3</sup> As the *Taniguchi* court explained, taxable costs have a “narrow scope” and are a “fraction  
28 of the nontaxable expenses borne by litigants.” 566 U.S. at 573. Thus, they “almost always amount  
to less than the successful litigant’s total expenses in connection with a lawsuit.” *Id.* The Non-  
Director Defendants’ expansive reading of NRS 18.005(17) would allow them to capture all their  
expenses associated with this lawsuit. That is far beyond what taxable costs historically cover.

1 *v. Khiabani by & through Rigaud*, 137 Nev. Adv. Op. 42, 493 P.3d 1007, 1017 (2021). An expert  
2 “must testify to recover more than \$1,500 in expert fees.” *Pub. Employees’ Ret. Sys. of Nevada v.*  
3 *Gitter*, 133 Nev. 126, 134, 393 P.3d 673, 681 (2017).

4 The Non-Director Defendants seek \$55,838.95 in expert witness fees incurred after May  
5 20, 2020 for John Montgomery of Ankura Consulting Group LLC, ***but Montgomery did not testify***  
6 ***at trial***. See Exhibit 2 to Non-Director Defendants’ Memorandum of Costs at 203-208. The Non-  
7 Director Defendants never put on any witnesses, including Montgomery. Therefore, they cannot  
8 recover a fee for his work. See *Pub. Employees’ Ret. Sys. of Nevada*, 133 Nev. at 134, 393 P.3d  
9 at 681.

10 When these unrecoverable expert witness fees are backed out of the Non-Director  
11 Defendants’ claimed costs, their potentially recoverable costs fall to a maximum of \$242,839.02.

12 F. The Non-Director Defendants Cannot Recover for “Trial Support” Amounting to  
13 Gratuitous Equipment Rental, Graphics, and Onsite IT Support.

14 The Non-Director Defendants seek \$123,507.80 in “trial support” costs. See Non-Director  
15 Defendants’ Memorandum of Costs at 2:19-20. Their backup documentation reveals this includes  
16 \$89,545 for “equipment rental” and \$33,963.80 for “trial graphics and onsite support.” Exhibit 10  
17 to Non-Director Defendants’ Memorandum of Costs. A close inspection reveals that much of  
18 these costs are exorbitant expenses that do not reflect reasonable costs.

19 The equipment rental included five printers, one copier, 18 monitors, two WiFi routers,  
20 and “24/7 IT support availability.” See *id.* at 1252-1260. The Non-Director Defendants apparently  
21 set up five different “war” rooms for trial, including three at the Cosmopolitan Hotel and Casino.  
22 See *id.*<sup>4</sup> This was unnecessary, as a single “war” room at the offices of local counsel, using  
23

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24  
25 <sup>4</sup> The Non-Director Defendants’ supporting documentation also reveals that they used  
26 limousines to travel to and from hearings, stayed at the Encore and Cosmopolitan at room rates of  
27 \$300+ per night, booked \$2,000+ first class domestic flights, and ate \$350+ meals with few  
28 attendees. See Exhibit 5 to Non-Director Defendants’ Memorandum of Costs at 303 and 370  
(\$350.23 meal at DB Brasserie for two attorneys on August 27, 2014), 303 (limousine service to  
the Encore), 328 (limousine service to the 6/19/20 hearing), 352-53 (\$2,885.48 first-class flight  
from Washington, D.C. to Las Vegas), 355 (one-night stay at Encore totaling \$387.60), and 440  
(one-night stay at Encore totaling \$449.40).

1 equipment normally included in law firm overhead, would have sufficed. This is the normal  
2 practice in this jurisdiction. Nor was it necessary for the Non-Director Defendants to incur costs  
3 for 190 hours of “graphics” services from out-of-jurisdiction providers at hourly rates from \$265-  
4 \$400. *See id.* at 1256. Such rates are not common for the Las Vegas market and exceed the hourly  
5 rate that many Nevada attorneys charge for their services.

6 The Non-Director Defendants are not entitled to recover such bloated costs under NRS  
7 18.005’s general provision because they were unnecessary. When these costs are backed out of  
8 the total, the Non-Director Defendants’ potentially recoverable costs fall to a maximum of  
9 \$119,331.23.

10 G. The Non-Director Defendants Cannot Recover Pro Hac Vice Fees After May 20,  
11 2020.

12 The Non-Director Defendants also seek to recover \$2,000.00 in pro hac vice fees after May  
13 20, 2020. *See* Exhibit 1, Non-Director Defendants’ Summary of Costs. These are also  
14 unrecoverable because they are “an expense of counsel, not the client.” *Schmitz-Werke GmbH %8f*  
15 *Co. v. Rockland Indust., Inc.*, 271 F. Supp. 2d 734, 735 (D. Md. 2003); *see also Kalitta Air LLC v.*  
16 *Central Texas Airborne Sys. Inc.*, 741 F.3d 955, 658 (9th Cir. 2013) (federal cost statute “does not  
17 allow for an award of pro hac vice fees as taxable costs”). This leaves the Non-Director Defendants  
18 with a maximum of only \$117,331.23 in potentially recoverable costs after May 20, 2020.

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26

27 That type of lavishness is neither necessary nor reasonable to defend a case. While the Non-  
28 Director Defendants incurred many of these costs before PAMTP filed this action on May 20, 2020,  
the Court no doubt has discretion to reduce the Non-Director Defendants’ travel and lodging  
expenses after that date to avoid rewarding such extravagance.

**III. CONCLUSION**

PAMTP requests that this Court retax the costs in the Non-Director Defendants' Memorandum of Costs. The Non-Director Defendants have claimed \$1,046,849.82 in total costs, including the following unrecoverable items:

<u>Unrecoverable Cost</u>	<u>Amount Improperly Claimed</u>
Costs Incurred Before May 20, 2020	\$585,083.29
Costs for Evidentiary Hearing	\$23,039.97
Costs for E-Discovery Data Hosting and Storage After May 20, 2020	\$140,048.59
Costs for Expert Fees After May 20, 2020	\$55,838.95
Costs for Trial Support After May 20, 2020	\$123,507.80
Costs for Pro Hac Vice Fees After May 20, 2020	\$2,000
<b><u>Total Unrecoverable Costs</u></b>	<b>\$929,518.60</b>

Once the Non-Director Defendants' claimed costs are reduced consistent with NRS 18.005 and 18.020, their allowable costs only total \$117,331.23. If the Court is inclined to grant the Non-Director Defendants any costs after their destruction of evidence, PAMTP requests that the Court settle the Non-Director Defendants' recoverable costs to that amount.

DATED this 7th day of October, 2021.

MCDONALD CARANO LLP

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 7th day of October, 2021, a true and correct copy of the foregoing **MOTION TO RETAX NON-DIRECTOR DEFENDANTS' MEMORANDUM OF COSTS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/Jelena Jovanovic

An employee of McDonald Carano LLP

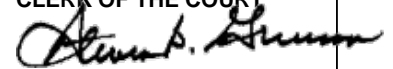


# **EXHIBIT “1”**

<b>Prior to May 2020</b>	
<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005 (1) - Court Fees (Dechert)	\$99.30
NRS 18.005 (2) – Reporter's Fees for Depositions - (Dechert)	\$73,654.12
NRS 18.005(5) – Expert Fees- (Dechert)	\$167,192.24
NRS 18.005(12) – Photocopy Costs- (Dechert)	\$1,858.53
NRS 18.005(14) – Postage/Fed Ex (Dechert)	\$2,443.36
NRS 18.005(15) – Deposition Travel and Lodging Costs- (Dechert)	\$86,004.28
NRS 18.005(17) – Other Reasonable and Necessary Expenses - Computerized Legal Research - (Dechert)	\$230,975.81
NRS 18.005(17) – Other Reasonable and Necessary Expenses - Pro Hac Vice-	\$7,850.00
NRS 18.005 (1) – CLERK'S FEES- (Snell & Wilmer)	\$3,418.05
NRS 18.005 (2) and (8) Reporter's Fees for Depositions, Hearings, and Trial (Snell & Wilmer)	\$1,733.99
NRS 18.005 (11) – Telecopies-(Snell & Wilmer)	\$1.50
NRS 18.005 (12) – Costs for Printing/Copying/Scanning-(Snell & Wilmer)	\$1,734.24
NRS 18.005 (14) – Postage/Federal Express - (Snell & Wilmer)	\$166.53
NRS 18.005 (17) – Other Reasonable and Necessary Expenses - Computerized Legal Research-(Snell & Wilmer)	\$2,775.00
NRS 18.005 (17) – Other Reasonable and Necessary Expenses - Conference Calls (Snell & Wilmer)	\$77.39
NRS 18.005 (17) – Other Reasonable and Necessary Expenses - Costs related to Pro Hac Vice - (Snell & Wilmer)	\$4,400.00
NRS 18.005 (17) – Other Reasonable and Necessary Expenses - Messenger Services- (Snell & Wilmer)	\$698.95
<b>GRAND TOTAL</b>	<b>\$585,083.29</b>

<b>After May 2020</b>	
<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005 (2) – Reporter's Fees for Depositions (Dechert)	\$998.45
NRS 18.005(5) – Expert Fees- (Dechert)	\$55,838.95
NRS 18.005(12) – Photocopy Costs- (Dechert)	\$73,289.35
NRS 18.005(17) – Other Reasonable and Necessary Expenses - Computerized Legal Research (Dechert)	\$24,297.67
NRS 18.005(17) – Other Reasonable and Necessary Expenses - Electronic Discovery - (Dechert)	\$140,048.59
NRS 18.005(17) – Other Reasonable and Necessary Expenses- Pro Hac Vice (Dechart)	\$1,500.00
NRS 18.005(17) – Other Reasonable and Necessary Expenses - Trial Support -	\$123,507.80
NRS 18.005 (1) –Clerk's Fees- (Snell & Wilmer)	\$1,062.00
NRS 18.005 (2) and (8) Reporter's Fees for Depositions, Hearings, and Trial (Snell & Wilmer)	\$14,139.39
NRS 18.005 (12) – Costs for Printing/Copying/Scanning (Snell & Wilmer)	\$941.25
NRS 18.005 (17) – Other Reasonable and Necessary Expenses - Computerized Legal Research-(Snell & Wilmer)	\$100.00
NRS 18.005 (17) – Other Reasonable and Necessary Expenses - Costs related to Pro Hac Vice - (Snell & Wilmer)	\$500.00
NRS 18.005 (17) – Other Reasonable and Necessary Expenses - Messenger Services-(Snell & Wilmer)	\$432.00
<b>GRAND TOTAL</b>	<b>\$436,655.45</b>

<b>Evidentiary Hearing</b>	
<b>NRS 18.005 CATEGORY</b>	<b>AMOUNT</b>
NRS 18.005(12) – Photocopy Costs- (Dechert)	\$6,854.80
NRS 18.005(15) – Deposition Travel and Lodging Costs- (Dechert)	\$16,185.17
<b>GRAND TOTAL</b>	<b>\$23,039.97</b>



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

Case No.: A-13-686890-B

Dept. No.: XXII

**PLAINTIFF PAMTP LLC'S OPPOSITION  
TO MOTION FOR ATTORNEYS' FEES**

This Document Relates To:

ALL ACTIONS.

**I. INTRODUCTION**

Defendants Kenneth Potashner, VTB Holdings, Inc., Stripes Group, LLC, SG VTB Holdings, LLC, Juergen Stark, and Kenneth Fox (collectively "Defendants") prevailed at trial. As the Court itself said at the time, however, its ruling was a "hard decision" because the record of Defendants' conduct here "has got so much bad smell to it." *See* Trial Tr. (Aug. 25, 2021) at 63:7; *see also id.* at 63:8-9 (addressing PAMTP's counsel, "[T]hat's why you're here is because this case smells so bad."). And the record Plaintiff PAMTP developed revealed Defendants, and Potashner in particular, engaged in a consistent course of shocking misconduct, including lying to shareholders about the merger they were asked to approve and controlling the entire merger

1 negotiation process through misrepresentations to, threats against, and importuning of the board of  
2 directors, all to advantage Defendants at the expense of Parametric's shareholders.

3 Defendants' misconduct persisted into this litigation. This Court sanctioned Potashner, Fox,  
4 and Stark, finding that they spoliated documents and then gave non-credible testimony under oath  
5 about having done so—as sure an admission of guilt as one sees in litigation. Yet, *these are the*  
6 *very defendants* who now ask this Court to foist their bloated attorneys' fees and costs onto PAMTP.  
7 Their request is not only deeply inequitable, it lacks any legitimate basis in law or grounding in  
8 common sense.

9 First, the motion stumbles at the starting gate because Defendants cannot satisfy NRCP 68,  
10 which they invoke as the basis for attorneys' fees. Defendants are a subset of the original defendants  
11 in this opt-out litigation. As a group, the original defendants made two offers of judgment—a pro  
12 forma offer of \$1, and a second offer of \$150,000. Then, on the eve of trial, four of the original  
13 defendants—Elwood G. Norris, Seth Putterman, Robert Kaplan, and Andrew Wolfe—***settled for***  
14 ***\$400,000***—nearly three times the highest offer of judgment from all original defendants. That  
15 settlement, which was memorialized by court order, in and of itself, defeats the motion. After all,  
16 the whole point of fee awards under Rule 68 is to encourage settlement. By ignoring the resolution  
17 PAMTP reached with half of the defendants here (and the *less* culpable half, at that), Defendants  
18 adopt a position that would end up *discouraging* settlement by penalizing parties who reach partial  
19 settlements. That is antithetical to good policy, and courts applying the analogous federal rules  
20 have found that such partial settlements must be considered for purposes of Rule 68 offers.

21 Second, even were the Court to engage in the discretionary Rule 68 analysis, the only fair  
22 conclusion is to reject the motion. Defendants must show that PAMTP pursued its claims in bad  
23 faith, Defendants made offers of judgment in good faith, and it was unreasonable for PAMTP to  
24 reject those offers. Yet, Defendants ignore the mountain of evidence that they manipulated and  
25 corrupted the merger negotiation and approval process—the “bad smell” the Court felt compelled  
26 to reference on the record. Defendants rest their motion on the flawed premise that all their blatant  
27 misconduct is irrelevant because PAMTP could never win as a matter of law. But this Court  
28 rejected the original defendants' motion to dismiss and summary judgment motions, each of which

1 invoked the same legal defense Defendants now say demonstrates it was bad faith for PAMTP to  
2 even file this action.

3 More telling still is what Defendants and Norris, Putterman, Kaplan, and Wolfe *did* when  
4 their money was on the line. This case is an opt-out proceeding from a class action. Defendants  
5 settled the class action (in which the class originally sought damages of \$100 million) for \$10  
6 million. The settled class claims include the very equity expropriation and aiding and abetting  
7 claims that PAMTP pursued in this proceeding. Moreover, as noted above, Norris, Putterman,  
8 Kaplan, and Wolfe settled the opt-out claims—the same ones Defendants now declare are  
9 valueless—for \$400,000. While that fact completely nullifies application of Rule 68, it also  
10 demonstrates PAMTP’s good faith in pressing its claims and its reasonableness in rejecting the low-  
11 ball offers Defendants collectively made.

12 At the end of the day, Defendants’ request is legally unsupported under NRCP 68. Because  
13 PAMTP has appealed the dismissal of its claims at trial, Defendants’ motion merely a bid to  
14 intimidate PAMTP (and its assignors) into abandoning the effort to hold Defendants accountable  
15 for an egregious course of misconduct. PAMTP asks the Court to reject Defendants’ cynical tactic.

## 16 **II. BACKGROUND**

### 17 **A. Defendants Cause Parametric And Turtle Beach To Merge**

18 This case arises from a merger between Parametric Sound Corporation (“Parametric”), then  
19 a publicly traded company, and VTB Holdings, Inc. (generally referred to as “Turtle Beach”).  
20 Parametric’s board of directors approved the merger on August 2, 2013, and it was publicly  
21 announced three days later.

22 The merger agreement called for Parametric to issue new stock, which would then be used  
23 to pay Turtle Beach’s pre-merger shareholders for ownership of Turtle Beach. Parametric’s stock  
24 issuance, in turn, would dilute the pre-merger shareholders of Parametric: before the merger, they  
25 owned 100% of Parametric; after, they would own only 19% of the combined company.

26 Within days of the merger’s announcement, numerous Parametric shareholders filed suits  
27 to enjoin the merger and seek damages from (1) Parametric’s board of directors, for breaching their  
28 fiduciary duties in approving the merger; and (2) Turtle Beach and its private-equity sponsors, for

1 aiding and abetting the Parametric directors' breaches. Relying on a proxy statement and  
2 representations by the Defendants that the evidence shows was materially false and misleading, the  
3 Parametric shareholders approved the merger in late December 2013. The merger closed on  
4 January 15, 2014.

5 The merger proved disastrous for Parametric and its shareholders. On August 4, 2013, just  
6 before the merger was announced, Parametric's stock traded at \$17.69 per share. The market  
7 reacted negatively to news of the merger and, by January 15, 2014, the day the Merger closed,  
8 Parametric's stock had lost 20% of its value, dropping to \$14.19 per share. Even before the merger  
9 was complete, Turtle Beach's business massively underperformed the projections upon which  
10 Parametric's board and shareholders relied in approving the merger. By late 2017, the combined  
11 company's stock closed at \$0.57 per share. Thus, each pre-merger Parametric shareholder who  
12 held shares as of that date lost over 96% of the value of his or her investment as a result of the  
13 merger. This decline represents over \$100 million in destroyed market value between the pre-  
14 merger and post-merger entity.

15 **B. A Class Of Parametric Shareholders Asserts The Same Claim PAMTP Brings**  
16 **Here**

17 Following the closing of the merger, a putative class of Parametric shareholders continued  
18 to pursue their damages claims. After this Court denied a motion to dismiss the class claims, the  
19 Nevada Supreme Court granted defendants' petition for a writ. *Parametric Sound Corp. v. Eighth*  
20 *Jud. Dist. Ct. of Nev.*, 133 Nev. 417, 401 P.3d 1100 (2017). The Supreme Court held that the  
21 "equity dilution" claims alleged in the complaint were derivative in nature and, therefore, must be  
22 pursued on behalf of Parametric rather than on behalf of its shareholders directly. However, the  
23 Court added, the complaint also "suggest[ed]" a direct claim for "equity expropriation," which  
24 could be pursued by shareholders individually or as a class. *Id.* at 429. Accordingly, the Court  
25 granted the class plaintiffs leave to amend their complaint to allege direct equity expropriation  
26 claims.

27 The Supreme Court also added a few observations regarding the standard applicable to  
28 direct equity expropriation claims. It explained that such claims "involve a controlling  
shareholder's *or director's* expropriation of value from the company, causing other shareholders'



1 equity to be diluted.” *Id.* (emphasis added). Further, the Court continued, in light of statutes  
2 affording deference to directors who approve stock issuances like Parametric’s here, “the  
3 shareholders must show actual fraud in any direct equity dilution claim they may have.” *Id.* at 429  
4 n.15.

5 On December 1, 2017, the class plaintiffs amended their complaint in accordance with the  
6 Nevada Supreme Court’s decision. The defendants filed a new motion to dismiss, which the court  
7 denied, finding that the amended class complaint overcame the presumption of the business  
8 judgment rule because it “sufficiently pleads facts demonstrating that all of the Parametric directors  
9 acted in bad faith when negotiating and approving the merger.” Order Den. Mot. To Dismiss (Mar.  
10 27, 2018) at ¶ 15. The court explained that the class plaintiffs had alleged specifically that  
11 Potashner—Parametric’s Executive Chairman and CEO, who led the merger negotiation and  
12 approval process—“misrepresented material facts” to his fellow directors, “ignored their  
13 instructions,” and “made a series of coercive demands”, and that the other directors, “despite  
14 recognizing [Potashner’s] conflict, . . . agreed to Potashner’s demands, not for the interests of  
15 [Parametric] or its shareholders, but because [they] asked Potashner to include a benefit for  
16 themselves in negotiations with” Turtle Beach. *Id.* On the basis of these allegations, and looking  
17 “to Delaware law to determine the contours of an equity expropriation claim,” the court held that  
18 “the [class plaintiffs] sufficiently plead[ed] a claim for equity expropriation.” *Id.* ¶¶ 27, 30.

19 On January 18, 2019, the court granted class certification for an “equity expropriation class”  
20 consisting of holders of Parametric common stock on January 15, 2014, the date the merger closed.  
21 *See Order Regarding Class Certification* (Jan. 18, 2019), at 7.

22 **C. Class Discovery Confirms Defendants’ Rampant Misconduct**

23 Discovery in the class action revealed damning misconduct in connection with the approval  
24 of the merger, especially on the part of Potashner. That evidence – later adduced at trial in this  
25 action – established that Potashner used his preeminent position in the company and practical  
26 control over Parametric’s daily operations to steer the merger process toward his own selfish ends.

27 In particular, defying the board’s repeated instructions, Potashner engaged in direct  
28 negotiations with Turtle Beach’s CEO, Juergen Stark, aimed at ensuring that Potashner would retain

1 his equity in, and control over, a Parametric subsidiary named HyperSound Health, Inc. (“HHI”).  
2 As Potashner would later tell Stark, the “whole reason” he “entered into [a] deal” with Turtle Beach  
3 “in the first place” was “[t]o build a multi billion dollar HHI and benefit from it” personally. Trial  
4 Ex. PX-152, attached as **Exhibit 1**. The evidence showed that Potashner initiated, negotiated, and  
5 ultimately consummated the merger, not with the interests of Parametric or its shareholders in mind,  
6 but to benefit himself.

7 Parametric’s other directors recognized that Potashner had a conflict of interest in  
8 simultaneously negotiating the merger and retaining his equity in, and control over, HHI.  
9 Parametric’s board met on July 1, 2013. According to the minutes from that meeting, the board  
10 “reminded” Potashner that he had a “conflict of interest” by negotiating the merger while retaining  
11 his HHI options at the same time and suggested that a “disinterested director” be tasked with taking  
12 over the negotiations. The board then instructed Potashner “to avoid any conflict of interest” by  
13 “ceas[ing] all discussions” regarding HHI and to allow two other directors, Putterman and Wolfe,  
14 to represent Parametric in the negotiations going forward.

15 But the board was a paper tiger. It did nothing to stop Potashner from pursuing his self-  
16 interest at the company’s (and the shareholders’) expense. On July 1, 2013, the same day he was  
17 told to cease communications about HHI, Potashner strategized with John Todd, a third-party  
18 consultant loyal to Potashner, over how they could still control the negotiation.<sup>1</sup> Their strategies  
19 included “rais[ing] the stakes” with one director, Putterman, to make sure the negotiation followed  
20 Potashner’s plan and demoting another director, Elwood Norris, to ensure he knew Potashner was  
21 his “boss.” The very next day, Potashner resumed his HHI negotiations with Stark, contrary to the  
22 board’s instructions. On July 3, 2013, Potashner made clear in an email to Stark that he would be  
23 using yet another director, Wolfe, as his “catalyst” to close the deal and not, as the board had  
24 decided, the independent director designated to lead the negotiations. Stark then forwarded that  
25 email to Putterman and Jim Barnes, Parametric’s CFO, to let them know that Potashner was still  
26 negotiating over HHI despite the board’s resolution.

27 \_\_\_\_\_  
28 <sup>1</sup> Todd worked as a third-party consultant after the SEC barred him from serving as a director  
or officer of a public company. See Aug. 20, 2021 Trial Transcript at 22:18-29:7.

1 On July 5, 2013, Parametric’s board convened a special meeting. The board “reiterated its  
2 direction to Mr. Potashner not to discuss HHI or the HHI stock options.” In response, Potashner  
3 threatened to call a “special meeting . . . for the purpose of replacing the Board” if they tried to  
4 “dissolve HHI.” Later that day, director Wolfe confirmed in an email to Potashner that he was “to  
5 avoid all discussions with” Turtle Beach or its private equity sponsor “regarding [his] HHI stock  
6 options” due to his “conflict of interest” and that he should further “avoid any discussion” of the  
7 options with Todd.

8 Again, the board’s directives were meaningless to Potashner. In the succeeding days,  
9 Potashner deliberately and brazenly continued pursuing his own ends. For example, on July 6,  
10 2013, he forwarded to Stark a confidential email from Wolfe discussing HHI. Potashner provided  
11 the email to Stark—who was supposed to be across the negotiating table from Potashner and  
12 Wolfe—because he thought Stark would find it “useful.” On July 9, 2013, Potashner emailed Stark  
13 to schedule an in-person meeting to discuss the HHI options, specifically excluding Wolfe from the  
14 meeting. Two days later, Potashner emailed Stark yet again to discuss HHI and the value of his  
15 options. Potashner also claimed that “if it weren’t for [his] fiduciary responsibility [he] wouldn’t  
16 do the deal” because he was “losing the whole reason that [he] entered into the deal in the first  
17 place,” which was “[t]o build a multi billion dollar HHI and benefit from it.” On July 13, 14, 15,  
18 and 17, 2013, Potashner and Stark discussed the HHI options further, exchanging key terms and  
19 concessions.

20 Yet again the board found out but could not stop Potashner. On July 19, Norris emailed  
21 Potashner telling him once again that he was “NOT authorized” to negotiate on HHI and that he  
22 was “major conflicted” on the issue. Norris pleaded with Potashner, “Please start acting like you  
23 are working for [Parametric], not yourself!” Norris’s email had no effect on Potashner, who  
24 continued to defy the board.

25 What Potashner’s repeated and open defiance of the board shows is that the board had  
26 passively ceded control over the merger process to Potashner. That is how he was able repeatedly  
27 to run roughshod over the board to pursue his personal interests. Indeed, that dynamic had been in  
28 place for some time. For example, on March 30, 2013, Wolfe wrote to Potashner, telling him to

1 “[j]ust get the deal” with Turtle Beach and the board would “make the agreements match whatever  
2 deal [he] put together without any substantial delays,” because “[n]either the [board] nor the lawyers  
3 are going to get in the way of an accretive deal.” In exchange for Wolfe’s cooperation, Potashner  
4 asked Todd to speak with him and figure out how to compensate him and also nominated Wolfe to  
5 serve on the board of the post-merger company. By July, as the board struggled in vain to prevent  
6 Potashner from negotiating the merger directly with Stark, director Robert Kaplan acknowledged  
7 that Potashner had “left [them] in the dark” and “misrepresent[ed]” the status of the merger  
8 negotiations. Kaplan also admitted that he and the other directors had “been far too passive in the  
9 past” and allowed Potashner to mismanage Parametric as a “dictator.” Kaplan even told Potashner  
10 that he was “total conflicted, ignored his fiduciary responsibility to [Parametric’s] shareholders and  
11 has been negotiating constantly for his own self interest.”

12 Despite the complaints of the directors about Potashner, they took no action against him at  
13 any point during the merger negotiations. On the rare occasions where the board did try to exercise  
14 control over Potashner, he overcame them with a combination of threats, bribes, and lies to bend  
15 them to his will. *See, e.g.*, Trial Ex. 6, at 5-6, attached as **Exhibit 2** (Potashner threatening to  
16 replace the board for interfering with HHI); Trial Ex. PX-112, attached as **Exhibit 3** (Potashner  
17 threatening Putterman); Trial Ex. PX-439, attached as **Exhibit 4** (Potashner threatening Norris);  
18 Trial Ex. 58, at 2, attached as **Exhibit 5** (Kaplan admitting the board had been “far too passive” in  
19 dealing with Potashner). Ultimately, the other board members admitted that they had abdicated  
20 their duties to oversee Potashner and as a result were exposed to legal liability. Thus, on July 28,  
21 2013—just days before the board voted to approve the merger—Kaplan, on behalf of the other  
22 directors, asked Parametric’s CFO, Jim Barnes, for a \$50,000 cash bonus upon closing of the  
23 Merger to “compensat[e]” them for being “legally exposed to a lot of the decisions he”—meaning  
24 Potashner—“force[d] upon [them].”

25 Even worse, another way Potashner controlled the merger process—and manipulated his  
26 fellow directors’ evaluation of a potential deal with Turtle Beach—was by artificially depressing  
27 Parametric’s revenue, thus devaluing the company and leading to more favorable merger terms for  
28 Turtle Beach. This happened throughout the spring preceding the merger. For example, on March

1 27, 2013, Potashner told Karen Kenworthy at Stripes Group—the private equity firm that owned  
2 Turtle Beach before the merger—that he would be delaying discussions with a potential licensing  
3 partner in an effort to protect Stripes’ interests in the Merger. Two days later, Potashner told Stark  
4 not to be “overly concerned” by Parametric’s recent “stock run up” because he planned to “delay[]  
5 announcements” of positive news “for as long as possible.” On April 4, 2013, Potashner offered  
6 further support to Stark in the form of “slow play[ing]” additional “licensing discussions” with  
7 another entity, Qualcomm. On April 8, 2013, Potashner reminded Stark once again that he had not  
8 been “announcing licensing deals” and that Parametric’s stock price had “come under substantial  
9 pressure” as a result.

10 And the evidence further showed that Turtle Beach’s executives encouraged Potashner’s  
11 disloyal scheme. For example, Stark responded to Potashner on April 12, 2013, telling him to  
12 continue to “slow-roll” discussions on potential licensing deals. Potashner obliged, reporting to  
13 Stark on April 15, 2013 that he had “frozen” another licensing deal with an additional party, SIIG,  
14 that would have driven Parametric’s stock price to the “20s” if signed and announced. Potashner  
15 continued to delay and conceal various licensing deals thereafter while also acknowledging, on May  
16 25, 2013, that doing so was “contrary to the responsibility” he had to Parametric. Trial Ex. PX-  
17 277, attached as **Exhibit 6**. Turtle Beach insisted that this manipulative management continue. On  
18 June 2, 2013, Stark told Potashner that he and Fox would “prefer[]” that Potashner not “defend the  
19 stock in that the premium on [the] deal will look better.” Late in July 2013, as the merger approval  
20 date drew near, Potashner went so far as to even grant Stark “veto rights on all licenses,” without  
21 having authority to do so from the board, in order to avoid “los[ing] the deal.”

22 The result of Potashner’s revenue-suppression scheme was that Parametric was less  
23 valuable than it otherwise would have been at the time the Parametric board (and later its  
24 shareholders) voted to approve the deal. This devaluation not only permitted Turtle Beach to insist  
25 on more favorable economic terms, but also made less attractive the strategic alternative of  
26 foregoing a merger altogether. And that alternative was all but foreclosed when Potashner agreed,  
27 after the merger negotiations had progressed for several months, to give Turtle Beach an exclusive  
28 license to use HHI’s signature technology in the event the merger was not approved. Thus,

1 Potashner was able to, and did, influence the board and shareholder approval processes regardless  
2 of whether the other directors liked, trusted, or otherwise relied on the things he said.

3 Potashner's dishonesty and manipulation did not stop with the board's approval of the  
4 merger on August 3, 2013. The shareholders still had to approve. Thus, Potashner continued to lie  
5 to his fellow directors and to Parametric's shareholders to ensure both that the board would not seek  
6 to renegotiate the deal and that the shareholders would vote to approve it.

7 Significantly, the December 3, 2013 proxy statement soliciting shareholder votes relied on  
8 projections of Turtle Beach's revenue that Potashner and Turtle Beach executives knew to be  
9 outdated and unreliable. For example, while the proxy statement represented that VTB Holdings  
10 estimated net sales of \$218 million and adjusted EBITDA of **\$40.6 million** for fiscal year 2013,  
11 Potashner and Turtle Beach executives knew, based on VTB Holdings' updated internal estimates,  
12 that EBITDA for 2013 was projected to be "***much lower than \$32m***" even with "\$195m net  
13 revenue." Trial Ex. PX-330, attached as **Exhibit 7**. Moreover, after the proxy statement was  
14 released but before the shareholder vote, Potashner and Turtle Beach executives knew that VTB  
15 Holdings' further revised projections showed EBITDA for 2013 in the range of \$16 million to \$23  
16 million. Thus, while the shareholders were led to believe that VTB Holdings estimated adjusted  
17 2013 EBITDA of \$40.6 million, Potashner and Turtle Beach knew that revised estimates put that  
18 number as low as **\$16 million**.

19 Potashner also lied to Parametric's shareholders directly about VTB Holdings' financial  
20 condition. For example, in response to a question about the timing of the closing from Adam Kahn,  
21 on behalf of one of Parametric's largest shareholders, IceRose Capital Management, Potashner  
22 attributed the delay to mere "administrative" issues with VTB Holdings' lender, PNC Bank. In  
23 truth, as Potashner well knew, the delay was caused by VTB Holdings' impending covenant  
24 breaches with PNC and its need for critical refinancing. Potashner had reason to believe that telling  
25 Kahn the truth about the delay—and VTB Holdings' dire financial condition—could have  
26 jeopardized approval of the merger, as Kahn had specifically informed Potashner that Kahn would  
27 vote to approve the merger on the stated terms only if "there's no impairment to [VTB Holdings']  
28 business post merger, i.e. the 2014 and beyond business expectations haven't changed."

1 Stark, the CEO of Turtle Beach, also lied and obfuscated to make sure the deal went through.  
2 He also spoke with Mr. Kahn of IceRose in November 2013, and again in December 2013, to  
3 persuade IceRose to support the merger. In those discussions, he endorsed the same financial  
4 projections that Stark and others at Turtle Beach knew to be inaccurate in light of Turtle Beach's  
5 actual performance during the fall of 2013. He also assured Mr. Kahn that there would be no  
6 impairment to Turtle Beach's business, despite knowing of the looming covenant defaults.

7 **D. Defendants Pay Almost \$10 Million To Avoid Trial On The Class Claims**

8 Faced with a torrent of damning evidence, defendants settled the class claims for nearly \$10  
9 million in October 2019.

10 Defendants represented that they "agree[d] to settle this action voluntarily after consultation  
11 with competent legal counsel to eliminate," among other things, "the risk of liability" on the class  
12 claims. Stipulation of Settlement (Nov. 15, 2019), at 6:2-5; *see also* Notice of Proposed Settlement  
13 of Class and Derivative Action (Jan. 17, 2020), at 4, attached as **Exhibit 8** ("[A]ll sides agreed to  
14 the Settlement to avoid the costs and risks of further litigation[.]"). Defendants' \$10 million  
15 settlement payment reflected about 10% of the roughly \$100 million the class plaintiffs sought in  
16 damages. Importantly, while the \$10 million settlement amount was allocated among the  
17 defendants, it was **not** allocated across the claims released. Thus, while Defendants now suggest  
18 that all or most of the class settlement payment should be attributed to settlement of the derivative  
19 claims (rather than to the direct claims), there is no support for that suggestion in the parties'  
20 agreement settling the class action.

21 The settlement was approved and its terms effectuated in the first half of 2020.

22 **E. PAMTP Opts Out Of The Settlement And Defeats Defendants' Motion To**  
23 **Dismiss**

24 Not all Parametric shareholders were satisfied with the class settlement, however. As  
25 relevant here, many chose to forego the settlement payments by opting out of the class and forming  
26 PAMTP to pursue their own direct claims at their own expense.<sup>2</sup>

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27 <sup>2</sup> On April 22, 2020, PAMTP opted out of the class action settlement on behalf of the  
28 following individuals and/or entities: IceRose Capital Management, LLC; Robert Masterson;  
Marcia Patricof, on behalf of the Patricof Family LP, Marcia Patricof Revocable Living Trust, and



1 On May 20, 2020, PAMTP commenced the instant action by filing its complaint against  
2 Defendants on behalf of the Assignors. As the court has recognized, other than naming two new  
3 defendants, Juergen Stark and Kenneth Fox, “PAMTP’s complaint is substantively identical to the  
4 March 7, 2019 class action complaint.” Order Den. Mot. To Dismiss (Aug. 20, 2020), at 4:4-5.  
5 Using the same measure of damages the class plaintiffs had used, which estimated \$100 million in  
6 damages to the class, PAMTP sought \$10 million, which corresponded to the value of the  
7 Assignor’s combined ownership of pre-merger Parametric shares.

8 Defendants moved to dismiss PAMTP’s opt-out complaint. Accompanying Defendants’  
9 motion to dismiss was an un-apportioned offer of judgment on behalf of all Defendants for \$1.00.  
10 See July 1, 2020 Offer of Judgment, attached as **Exhibit 9**. PAMTP rejected Defendants’ offer.

11 In their motion to dismiss, Defendants did not argue that PAMTP had failed to allege “actual  
12 fraud,” as the Nevada Supreme Court had required; instead, they argued that PAMTP’s claims were  
13 legally invalid because PAMTP purportedly failed to allege “an *expropriation* of economic and  
14 voting power *by a controlling shareholder* from minority shareholders *to the controller*” or “that  
15 any defendant was a ‘*controlling shareholder*’ of Parametric at the time of the Merger.” Defs.’  
16 Mot. To Dismiss for Failure to State a Claim (July 10, 2020), at 1, 15 (fourth emphasis added).  
17 This is the same argument that Defendants now contend has always been such a slam dunk that for  
18 PAMTP to have dared to litigate its claims justifies a fee award to Defendants. Indeed, although  
19 all original defendants collectively had settled the same direct equity expropriation claims on a class  
20 basis for as much as \$10 million in May 2020, Defendants now disingenuously assert to this Court  
21 that their July 2020 offer of \$1.00 was reasonable because it “accurately reflected th[e] value of an  
22 equity expropriation claim against a company with no controlling shareholder.” Defs.’ Mot. for  
23 Attorneys’ Fees (“Opening Br.”), at 7.

24 Tellingly, the court denied Defendants’ motion to dismiss. This was not, as Defendants  
25 now imply, because PAMTP promised it could show that Potashner had been a “controlling  
26

27  
28 the Jules Patricof Revocable Living Trust; Alan and Anne Goldberg; Barry Weisbord; Ronald and  
Muriel Etkin; and Richard Santulli (the “Assignors”). In conjunction with opting out of the class  
action settlement, the Assignors assigned their claims in the litigation to PAMTP.



shareholder” under Defendants’ view of Delaware law. On the contrary, PAMTP argued that it was sufficient under settled Delaware law to show that Potashner (alone or as part of a control group) exercised de facto control over the merger process. This Court agreed, rejecting Defendants’ argument that PAMTP could not win because it had not identified a “controlling stockholder.” Rather, the Court held, “PAMTP adequately allege[d] facts sufficient to demonstrate Potashner’s control over Parametric.” Order Den. Mot. To Dismiss (Aug. 20, 2020), at 7:10-13.

**F. The Court Sanctions Certain Defendants For Destroying Evidence**

After Defendants’ motion to dismiss was denied, PAMTP learned that defendants Potashner, Fox, and Stark—the same defendants now moving for attorney fees—had destroyed relevant evidence necessary for PAMTP’s case.

Despite Defendants’ efforts to wave away the significance of the spoliation, the court held a full-day evidentiary hearing. Then, in an order dated July 14, 2021, the court found that Potashner, as Parametric’s Executive Chairman and CEO, received two litigation holds from counsel and four other warnings to preserve relevant evidence. Findings of Fact, Conclusions of Law and Order Imposing Spoliation Sanctions (July 14, 2021), at 2:11-15. Notwithstanding the litigation holds, Potashner did not save the phone he used, and so text messages were irretrievably lost. *See id.* at 2:16-18. Although Potashner claimed at the evidentiary hearing that he did not send relevant text messages, the court found that Potashner’s testimony was contradicted by evidence from other sources, and not credible. *See id.* at 3:2-7.

The court found it even “more disturbing” that Potashner’s failed to produce relevant emails from his Gmail account, as the proof at the evidentiary hearing revealed that Potashner deleted between 27.1% and 42.5% of his emails with Todd, the third-party consultant with whom Potashner had schemed to maintain control of HHI. *See id.* at 3:8-21. Potashner did not provide full access to his Gmail account until June 14, 2018, *nearly four and a half years* after the challenged merger. *See id.* at 4:7-12. Because of this, the Court found that Potashner’s destruction was “material and significant” and that he had willfully destroyed relevant evidence. *See id.* at 4:16-7, 9:19-25.

Similarly, the Court found that Stark and Fox, as directors of Turtle Beach, negligently destroyed relevant evidence. *See id.* at 4:19-6:12. Stark could not produce text messages from his

1 phone because he “cleared” it and, though he echoed Potashner in claiming his text messages were  
2 irrelevant, the court expressly found him not credible on that point. *See id.* at 5:9-6:1. Fox similarly  
3 “replaced” his phone after a litigation hold, and so he could not produce text messages or emails  
4 from his Gmail account. *See id.* at 6:3-12. The court found that Fox’s testimony, too, was not  
5 credible. *See id.*

6 In sanctioning these Defendants’ spoliation of evidence, the court “presumed” for purposes  
7 of trial that “Potashner’s text messages and Gmail account emails were adverse to Potashner in this  
8 action for these reasons and that he acted in bad faith when supporting and approving the merger,”  
9 and that the evidence Stark and Fox failed to preserve was “adverse” to them. *Id.* at 10:3-9.

10 The spoliation motion, besides its bearing on Defendants’ conduct of this litigation, is also  
11 relevant context for Defendants’ second offer of judgment. This was another un-apportioned offer  
12 of judgment on behalf of all ten defendants, this time for \$150,000. May 28, 2021 Offer of  
13 Judgment, attached as **Exhibit 10**. Defendants describe the second offer as a “generous” nuisance  
14 fee offered to avoid further litigation costs, and state that it was made while Defendants’ motion for  
15 summary judgment was pending. Opening Br. 7. Yet, May 28 was *after* the Court had ordered an  
16 evidentiary hearing on PAMTP’s spoliation motion, but before the hearing was held and sanctions  
17 imposed. PAMTP rejected the offer.

18 **G. PAMTP Defeats Summary Judgment And Some Defendants Pay \$400K To**  
19 **Settle In Part**

20 On June 11, 2021—also while PAMTP’s motion for spoliation sanctions was pending—  
21 Defendants moved for summary judgment. They repeated, among their other arguments, the same  
22 “controlling shareholder” argument they made on their motion to dismiss (and repeat again now).  
23 Director Defs.’ Mot. for Summ. J. (June 11, 2021), at 1 n.1 (arguing PAMTP could not prevail at  
24 trial because “Parametric had no pre-merger controlling shareholder” and that “Potashner lacked  
25 ‘actual or effective’ control over Parametric.”). Defendants again failed to make any argument that  
26 PAMTP could not prove “actual fraud.” In fact, Defendants were apparently sufficiently concerned  
27 about the strength of PAMTP’s evidence of fraud that they filed a motion in limine to prevent  
28 PAMTP from introducing that evidence, taking the position that proof of fraud is *irrelevant* to a

1 direct claim for equity expropriation. Defs.’ Mot. in Limine To Exclude Evid. Related to Alleged  
2 Fraud by the Non-Director Defs. (June 11, 2021), at 1; *id.* at 2 (“[F]raud is not an element of an  
3 equity expropriation or aiding-and-abetting claim.”).

4 In an order dated August 3, 2021, the court rejected Defendants’ arguments (again), noting  
5 that it had “already adopted an adverse inference of bad faith against Potashner,” and that “there is  
6 a triable issue regarding whether each of the Director Defendants was disinterested and independent  
7 when each voted to approve the merger, which creates a triable issue under NRS 78.138(7).” Order  
8 Den. Director Defs.’ Mot. for Summ. J. (Aug. 3, 2021), at 3:1-4.

9 On the eve of the August 16 trial date, a subset of the Defendants paid \$400,000—nearly  
10 triple the offer of judgment Defendants as a group had made just weeks earlier—to settle the case.  
11 The “Settling Defendants” were the former Parametric directors other than Potashner: Wolfe,  
12 Putterman, Kaplan and Norris. Unlike the remaining, non-settling defendants, the Settling  
13 Defendants had *not* been sanctioned for illegal spoliation. Thus, PAMTP had every reason to  
14 believe the case that remained for trial was the core of it, targeted at the primary authors of the  
15 misconduct, namely Potashner and his aiders and abettors at Turtle Beach, who had destroyed  
16 evidence in an effort to hide their misdeeds.

17 **H. PAMTP Adduces Evidence In Support Of Each Of Its Claims At Trial**

18 Trial commenced on August 16 and concluded on August 25, 2021. In the interim, PAMTP  
19 adduced evidence in support of the allegations it made in its complaint—allegations the court had  
20 previously held sufficient to state a claim for relief. Among other evidence, PAMTP introduced  
21 the same evidence detailed above, which demonstrated that Potashner defied the board’s  
22 instructions, negotiating the deal to suit his personal interests at the expense of the shareholders;  
23 lied, cajoled, and threatened the board to leave him in control; artificially depressed Parametric’s  
24 revenues to devalue the company and push the board (and shareholders) into approving a bad deal;  
25 and then conspired with Turtle Beach to misrepresent that deal to the shareholders in public and  
26 private communications to ensure they would vote to ratify it. *Supra* Section C (citing documents  
27 produced in discovery and ultimately admitted at trial).  
28

1 PAMTP called numerous hostile witnesses in its direct case, including Potashner and three  
2 other Parametric directors. Potashner's testimony was not credible, as he was impeached repeatedly  
3 with contemporaneous evidence. The remaining Parametric directors called by PAMTP—Kaplan,  
4 Putterman, and Norris—all claimed that they did not rely on or defer to Potashner, but admitted  
5 that he kept them in the dark concerning the deterioration of Turtle Beach's business during the  
6 period between the signing of the merger agreement in August 2013 and the shareholder vote in  
7 December 2013. *See* Trial Tr. (Aug. 20, 2021), at 98:11-21 (Kaplan); *id.* at 139:2-5 (Putterman);  
8 Trial Tr. (Aug. 23, 2021), at 53:6-20 (Norris).

9 At the conclusion of PAMTP's evidence, the Court granted Defendants' Rule 52(c) motion  
10 for judgment on partial findings. At argument on the motion, the Court recognized that, because of  
11 the circumstances around the merger and the conduct of the Defendants, commenting that "[i]t's  
12 got so much bad smell to it." Trial Tr. (Aug. 25, 2021), at 63:7. The Court continued, "I know; I  
13 understand[,] . . . and that's why you're here is because this case smells so bad." *Id.* at 63:8-9.  
14 Nevertheless, in what it described as a "hard decision[]" (*id.* at 63:10), the Court granted the motion.

15 On September 30, 2021, PAMTP noticed its appeal to the Nevada Supreme Court.

### 16 **III. ARGUMENT**

17 Because "Nevada follows the American rule," "attorney fees may not be awarded absent a  
18 statute, rule, or contract authorizing such award." *Thomas v. City of N. Las Vegas*, 122 Nev. 82,  
19 90, 127 P.3d 1057, 1063 (2006). NRCF 68's attorney-fee provision operates in derogation of the  
20 common law, *Quinlan v. Camden USA, Inc.*, 126 Nev. 311, 314, 236 P.3d 613, 615 (2010), and  
21 must therefore be "strictly construed" and interpreted "in the way that least changes the common  
22 law," *Branch Banking v. Windhaven & Tollway, LLC*, 131 Nev. 155, 158–59, 347 P.3d 1038, 1040  
23 (2015); *see, e.g., Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 286, 890 P.2d 769, 775 (1995)  
24 (narrowly construing an attorney-fee provision, NRS 18.010(2)(a), to "minimize[] any harmful  
25 impact upon the policies underlying the American Rule").

#### 26 **A. The Partial Settlement Alone Defeats Application Of Rule 68**

27 Rule 68 allows an offeror to recover "post-offer costs and expenses" and "reasonable  
28 attorneys' fees" only if an offeree "rejects an offer and fails to obtain a more favorable judgment."

1 NRCP 68(f)(1)(B). Here, PAMTP obtained a *more* favorable judgment because it settled a portion  
2 of its claims for \$400,000, an amount nearly three times the offer. Defendants ignore the partial  
3 settlement, but it dooms their motion at the starting gate.

4 A settlement counts as a “judgment” for purposes of Rule 68(f). In fact, applying the  
5 similarly worded provision of the Federal Rules of Civil Procedure, the Ninth Circuit Court of  
6 Appeals recently so held. *See Stone Creek, Inc. v. Omnia Italian Design, Inc.*, 808 F. App’x 459  
7 (9th Cir. 2020); *see also Moseley v. Eighth Jud. Dist. Ct.*, 124 Nev. 654, 662–63, 188 P.3d 1136,  
8 1142 (2008) (when construing a Nevada Rule of Civil Procedure, the court may also look to the  
9 interpretation of similarly worded federal rules).<sup>3</sup>

10 In *Stone Creek*, two defendants made a joint offer of judgment for \$25,000 pursuant to  
11 Federal Rule of Civil Procedure 68, which like NRCP 68 allows an offeror to obtain costs “[i]f the  
12 judgment that the offeree finally obtains is not more favorable than the unaccepted offer.” Fed. R.  
13 Civ. P. 68(d). After the plaintiff rejected the offer, it settled with one of the defendants for more  
14 than the offer amount but went to trial against the other defendant and lost. *Stone Creek*, 808 F.  
15 App’x at 461. The district court held that the settlement could not be considered for purposes of  
16 determining whether the plaintiff obtained a more favorable judgment and awarded costs to the  
17 non-settling defendant under Rule 68. The Ninth Circuit reversed. Rejecting the argument that  
18 Rule 68 only applies to “judgments,” it held that “[a] settlement resulting in dismissal with prejudice  
19 constitutes a judgment for purposes of Rule 68.” *Id.*; *see also Lang v. Gates*, 36 F.3d 73, 76 (9th  
20 Cir. 1994) (settlement resulting in an order of dismissal with prejudice is, “if not in form a judgment  
21 for defendants, . . . certainly one in substance”). The court thus held that the district court should  
22 have “add[ed] the settlement amount to the final judgment and compare[d] that figure to the  
23 defendants’ joint Rule 68 offer.” *Stone Creek*, 808 F. App’x at 461.

24 The Ninth Circuit’s reasoning applies with even greater force to NRCP 68. *First*, the term  
25 “judgment” “includes a decree and any order from which an appeal lies.” NRCP 54(a). That would  
26 necessarily include an order dismissing claims, which is identical in form whether the dismissal is  
27

28 <sup>3</sup> Although *Stone Creek* is unpublished, it is citable under Ninth Circuit rules. *See* Ninth  
Circuit Local Rule 36-3(b) (permitting citation of unpublished opinions after 2007).

by settlement or otherwise. *Second*, not only is it logical to consider a settlement a “judgment” for purposes of Rule 68, that interpretation is most consistent with Rule 68’s purpose “to encourage settlement.” *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983). Where an entire group of defendants makes a joint offer to settle all claims, a later partial settlement increases the risk that the plaintiff will not obtain a judgment more favorable than the joint offer, because the amount of possible recovery necessarily would be reduced by the partial settlement. Yet, Defendants apparently believe that settlement recoveries should be ignored for purposes of Rule 68. That must be wrong—it would *discourage* settlements because the benefit of the settlement would have to be weighed against the increased risk of paying a fee award to the non-settling defendants. That is the opposite of Rule 68’s aim.

Where, as here, a joint offer by all defendants is followed by a partial settlement by some, the only sensible reading of NRCP 68 is that the settlement amount is included in the assessment of whether the PAMTP obtained a “more favorable judgment.” NRCP 68(f)(1)(B). This interpretation also comports with the Nevada Supreme Court’s instruction that exceptions to the American Rule be “strictly construed” and interpreted “in the way that least changes the common law,” *Branch Banking*, 131 Nev. at 158-59, 347 P.3d at 1040. PAMTP’s \$400,000 settlement with some of the Defendants is plainly more favorable than the \$150,000 offer made by all Defendants; therefore Defendants are not entitled to any award under Rule 68.

**B. Regardless, An Award Of Attorney Fees Is Unwarranted**

If the Court nevertheless determines that Defendants may be eligible for any award of attorney fees even though PAMTP recovered more to settle in part than the highest offer of judgment, then the motion for fees fails under the four *Beattie* factors: “(1) whether [PAMTP’s] claim was brought in good faith; (2) whether the defendants’ offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether [PAMTP’s] decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.” *Beattie*, 99 Nev. at 588–89, 668 P.2d at 274. Each of these factors weighs strongly *against* an award of fees.

...

1                   1. PAMTP Brought Its Claims In Good Faith

2           Each of the three individual Defendants was sanctioned by this Court for destroying  
3 evidence. Their unlawful conduct not only prejudiced PAMTP and contributed to its loss at trial,  
4 but flaunted the court's authority and undermined the truth-finding function itself. As a result, the  
5 court imposed sanctions, including a finding that Potashner had acted in "bad faith." *Supra*  
6 Background Section F. Yet now, having gotten away with their wrongdoing (and potentially having  
7 won at trial because of it), Defendants have the hubris to accuse *PAMTP*, the victim of their illegal  
8 tactics, of bad faith litigation conduct, and to seek a multimillion-dollar windfall as the reward for  
9 their own inequity. And Defendants seek more than money. Their motion is a transparent attempt  
10 to kneecap PAMTP's appeal (just noticed).

11           The Court should not endorse this cynical ploy. PAMTP brought its claims in good faith,  
12 pressed them in good faith all the way through trial, and continues to pursue its claims on appeal.  
13 Defendants' arguments are meritless.

14                   *a. PAMTP always had a good-faith basis to press its claims*

15           PAMTP's complaint asserts a direct claim of equity expropriation against former Parametric  
16 directors, as well as a claim against certain non-director defendants for aiding and abetting that  
17 expropriation. There is no dispute that this is a valid legal theory under Nevada law. *Parametric*  
18 *Sound Corp.*, 133 Nev. at 429, 401 P.3d at 1109.

19           PAMTP filed its complaint after opting out of a shareholder class action that asserted the  
20 same equity expropriation claim against the same director Defendants employing the same facts  
21 (and more). That claim survived a motion to dismiss, where the Court rejected some of the same  
22 arguments Defendants now repeat to argue that PAMTP's claim was always doomed. Then, after  
23 obtaining class certification and extensive discovery, and with Defendants' summary judgment  
24 motions pending, the equity expropriation claim resulted in a settlement worth nearly \$10 million.  
25 *Supra* Background Section D. Thus, when PAMTP opted-out of the class and brought its own  
26 complaint in May 2020, PAMTP already had good reason to believe its equity expropriation claim  
27 had a strong basis in law and fact. *See Assurance Co. of Am. v. Ironshore Specialty Ins. Co.*, No.  
28 2:15-cv-0460, 2018 WL 4468986, at \*2 (D. Nev. Sept. 18, 2018) (rejecting NRCP 68 motion



1 because the fact that plaintiffs “had received a favorable ruling on the same legal issues in a separate  
2 action” is evidence that the claims were “brought and pursued . . . in good faith”).

3 PAMTP’s reasonable belief in the merits of its claim is confirmed by the opt-out  
4 proceedings that followed: PAMTP’s equity expropriation claim survived not only a motion to  
5 dismiss but also summary judgment; PAMTP successfully moved for sanctions based on the  
6 individual Defendants’ spoliation of evidence; and PAMTP obtained a \$400,000 settlement with  
7 only a subset of the Defendants—and the non-sanctioned Defendants, at that. *Supra* Background  
8 Sections E, F, G. And the court, itself, recognized that the conduct PAMTP challenges “has got so  
9 much bad smell to it”—in other words, it stinks. In short, before trial even began, PAMTP had  
10 recovered almost three times the highest offer of judgment Defendants ever extended in this  
11 litigation, further confirming PAMTP’s good faith—and economic wisdom—in pursuing its claim  
12 even after Defendants made that offer of judgment. The history of the litigation thus further  
13 confirms that PAMTP brought its claims, and continued to pursue them through trial, in good faith.

14 *b. Defendants’ hindsight provides no basis to find bad faith*

15 Defendants paid \$10 million to the class, and a subset of defendants then \$400,000 to  
16 PAMTP, to avoid the risk of an adverse judgment on an equity expropriation theory. But, now that  
17 the court has ruled against PAMTP, Defendants tell this Court (with the benefit of hindsight) that  
18 PAMTP “never had any chance” of winning. Opening Br. 10; *see also id.* at 1 (outcome “could not  
19 reasonably have come as a surprise to Plaintiff”). The Court should believe what Potashner and the  
20 other Defendants actually *did*—(*i.e.*, settle)—when their money was on the line, rather than the false  
21 bravado they now project.

22 In any event, the fact the Court ultimately ruled for the non-settling Defendants at trial has  
23 no bearing on PAMTP’s good faith, because “[c]laims may be unmeritorious and still be brought  
24 in good faith.” *Max Baer Prods., Ltd. v. Riverwood Partners, LLC*, No. 03:09-cv-00512, 2012 WL  
25 5944767, at \*3 (D. Nev. Nov. 26, 2012) (applying NRCP 68). Courts applying NRCP 68(f)  
26 routinely find that plaintiffs who, “incorrectly in hindsight, believed they had a good chance of  
27 success on the merits” nevertheless “pursued the claims in good faith.” *Assurance Co. of Am. v.*  
28 *Nat’l Fire & Marine Ins. Co.*, No. 2:09-cv-1182, 2012 WL 6626809, \*3 (D. Nev. Dec. 19, 2012);



1 *see also, e.g., Gallagher v. Crystal Bay Casino, LLC*, No. 3:08-cv-00055, 2012 WL 1409244, at \*4  
2 (D. Nev. Apr. 20, 2012) (even where plaintiffs “failed to carry their burden of proof,” court could  
3 not say “that the claim was brought in bad faith.”). To be clear, PAMTP believes the court  
4 committed reversible error in ruling for Defendants mid-trial and, as noted, is appealing the  
5 judgment. But, whether PAMTP is ultimately vindicated is not the question on this motion; rather,  
6 because PAMTP always had a reasonable, good faith belief in the merits of its claims, an award of  
7 fees under Rule 68(f) is unwarranted.

8 Contrary to Defendants’ suggestion, the rule is no different when a defendant prevails on a  
9 Rule 52(c) motion after a plaintiff rests its case. *See, e.g., Certified Fire Prot. Inc. v. Precision*  
10 *Constr.*, 128 Nev. 371, 383, 283 P.3d 250, 258 (2012) (affirming refusal to award fees to defendant  
11 where defendant prevailed under NRCP 52(c)). And it would be especially inappropriate to punish  
12 PAMTP for losing on a Rule 52(c) motion here, because the court was only able to make the ruling  
13 it did because PAMTP chose to call a majority of the Parametric board as hostile witnesses on its  
14 direct case. PAMTP adduced the same evidence on the same theory that had defeated two  
15 dispositive motions, and should not be punished for the fortuity of how it chose to present its  
16 evidence at trial.

17 Defendants nevertheless contend that a direct equity expropriation claim has two “precise  
18 elements”—the existence of a “controlling shareholder or director” and “actual fraud”—and that  
19 PAMTP “knew, or should have known, at all relevant times that it would be unable to prove either  
20 of them.” Opening Br. 10. Defendants’ argument is incorrect.

21 **Control.** PAMTP’s theory was that Potashner exercised “effective control” over  
22 Parametric. Defendants took the position throughout the litigation that effective control was legally  
23 insufficient, and that PAMTP was required to show that Parametric had a controlling shareholder  
24 prior to the merger. But this Court *rejected* Defendants’ position—correctly finding that it  
25 “misconstrues the legal standard of the claim,” Order Den. Mot. To Dismiss (Aug. 20, 2020), at  
26 7:4-5 —and allowed PAMTP to proceed on its theory of effective control. *Supra* Background  
27 Section E. That is the same legal standard PAMTP advanced on summary judgment and at trial,  
28 relying on the evidence detailed above (and more). *Supra* Background Sections G, H. Thus,

1 Defendants' claim that PAMTP lacked good faith in bringing its claim is based on an incorrect,  
2 overly narrow standard for "control" that the Court repeatedly rejected.

3 Defendants also argue that PAMTP presented no evidence of effective control at trial, and  
4 that PAMTP "never once presented any evidence of any Parametric director taking any action with  
5 which he did not agree because of Potashner's threats." Opening Br. 12. The trial record tells a  
6 very different story, by way of contemporaneous emails documenting, day-by-day, hour-by-hour,  
7 the complete abdication of responsibility by the Parametric board while Potashner ran roughshod  
8 over them and steered the merger according to his whims. A selection of that evidence is referenced  
9 in or attached to this motion, *see, e.g., supra* Background Section C, but there is much more.

10 ***Actual fraud.*** It is curious that Defendants now claim that it was always obvious that  
11 PAMTP could not prove "actual fraud" as required by NRS 78.200 and NRS 78.211. That  
12 contention appears nowhere in Defendants' motion to dismiss or summary judgment briefs, or in  
13 the Court's orders denying those motions. If the absence of evidence of fraud was so obvious that  
14 it was bad faith to pursue the claim, then why would Defendants have neglected to mention it until  
15 the middle of the trial itself?

16 The answer is apparent from the trial record, which is replete with evidence of actual fraud.  
17 Potashner knowingly included blatant falsehoods in Parametric's proxy disclosure for the merger—  
18 the document on which shareholders are supposed to rely in deciding whether to support the merger.  
19 Stark, in aid of Potashner's campaign of lies to ensure shareholder approval, lied directly to the  
20 principal of one of PAMTP's Assignors, Adam Kahn of IceRose Capital Management, while  
21 encouraging another Assignor, Barry Weisbord, to support the merger ***even after Potashner had***  
22 ***learned that Turtle Beach was in dire financial straits and had no hope of meeting the projections***  
23 ***upon which the business case for the merger was premised.*** Indeed, the evidence of Defendants'  
24 fraud was so extensive that Defendants moved in limine to exclude it. *Supra* Background Section  
25 G. They even argued that proof of fraud is not relevant to PAMTP's equity expropriation claim—  
26 a position starkly inconsistent with Defendants' position in the instant motion.

27 In any event, Defendants' suggestion that the standard for "actual fraud" in the context of  
28 an equity expropriation claim has been clearly established under Nevada law is preposterous and

contradicts Defendants’ own description of this as a “complicated case presenting numerous issues of first impression for the Court to consider.” Opening Br. 3; *see also id.* at 21 (“[T]his is the first equity expropriation claim to be litigated in Nevada.”). Indeed, in the court’s earlier order denying Defendants’ motion to dismiss the class claims, the court recognized that “Nevada has not defined ‘actual fraud’ in th[e] context [of a claim for equity expropriation],” and then purported to apply a standard developed by Delaware courts interpreting an analogous provision under Delaware law (8 Del. C. § 152) with the same “in the absence of actual fraud” language as in NRS 78.200 and NRS 78.211. Order Den. Mot. To Dismiss (Mar. 27, 2018) ¶ 29; *see Parfi Holding AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1234–35 (Del. Ch. 2001) (Strine, V.C.), *rev’d on other grounds*, 817 A.2d 149 (Del. 2002) (Delaware courts use “relatively flexible” standard that could be met by grossly “excessive valuation” or “when the underlying transaction involves unfair self-dealing proscribed by equitable fiduciary duty concepts”). That standard is notably different than the common-law-fraud standard Defendants pressed at trial. *Compare* Defs.’ Opp. to PAMTP’s Mem. of Law Regarding NRS 78.200 and NRS 78.211 (Aug. 25, 2021) at 1–2 (arguing that “actual fraud” under NRS 78.200 and NRS 78.211 requires proof of scienter and reliance), *with Parfi*, 794 A.2d at 1234 (rejecting notion that a plaintiff needs to prove “common law fraud” under 8 Del. C. § 152).<sup>4</sup>

PAMTP respectfully submits that the court misapplied the standard for “actual fraud.” But, even if the Court’s novel application of law were correct, PAMTP should have prevailed under that standard as well, because Potashner affected the merger process through “fraud,” under any known legal definition of that term. In any event, whether PAMTP ultimately wins or loses on appeal, there is no basis to conclude that PAMTP lacked good faith in bringing its claim.

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<sup>4</sup> Decisions from other jurisdictions interpreting analogous state laws with the same “in the absence of actual fraud” language comport with the approach taken by Delaware courts. *See, e.g., Virgil Kirchoff Revocable Tr. Dated 06/19/2009 v. Moto, Inc.*, 482 S.W.3d 834, 841 (Mo. Ct. App. 2016); *Lerner v. Lerner Corp.*, 711 A.2d 233, 242 (Md. App. 1998); *Burge v. Frey*, 545 F. Supp. 1160, 1172–73 (D. Kan. 1982); *Morris v. N. Evanston Manor Bldg. Corp.*, 49 N.E.2d 646, 649 (Ill. App. Ct. 1943). Conversely, Defendants have cited no authority, from Nevada or elsewhere, in which a court has interpreted an “actual fraud” standard to incorporate elements of common law fraud.

1 *c. Defendants' efforts to impugn PAMTP's subjective motivation are baseless*

2 Finally, Defendants seek to distract from the relevant inquiry—the merits of PAMTP's  
3 claims—by questioning the subjective motives of the Assignors. None of this relevant and, in any  
4 event, the individual Assignors who assigned their claims to PAMTP acted in good faith in the  
5 belief that their claims were meritorious. *See Harrah's Las Vegas, LLC v. Muckridge*, 473 P.3d  
6 1020, 2020 WL 5888032, at \*6 (Nev. Oct. 1, 2020) (first *Beattie* factor satisfied where offeree  
7 “succeeded on summary judgment” and “presented strong evidence” during trial). Defendants'  
8 innuendos do not suggest otherwise.

9 For example, Defendants suggest the Assignors did something “unusual” when they opted  
10 out of the class. Opening Br. 15. But the stipulation Defendants filed with the Court, and the  
11 notices Defendants sent to putative class members, repeatedly made clear that the *only* way for  
12 Parametric shareholders to pursue claims individually was to exclude themselves from the class by  
13 opting out. *See* Ex. 8, at 1 (telling putative class members that “exclud[ing] yourself” was “the only  
14 option that potentially allows you to ever be part of *any other lawsuit* against the Defendants”  
15 (emphasis removed and added)). The court's order preliminarily approving the settlement provided  
16 for the same exclusive procedure for shareholders who wished to pursue their claims individually.  
17 *See* Order Preliminarily Approving Settlement and Providing for Notice (Jan. 17, 2020), at 5 (“Any  
18 Person falling within the definition of the Class may, upon request, be excluded or ‘opt out’ from  
19 the Class.”); *see also* NRCP 23(d)(3)(A) (class notice “must advise each member that . . . the court  
20 will exclude the member from the class if the member so requests by a specified date”). Defendants  
21 now seek attorney fees from PAMTP's pocket because the Assignors did what they and this Court  
22 said the Assignors must do to preserve their direct claims against the Defendants. *See generally* 3  
23 Newberg on Class Actions § 9:38 (5th ed.) (noting that “exclusion, or opting out” is “a central  
24 definitional characteristic of the class suit, indeed a core component of its constitutional  
25 legitimacy”).

26 Defendants' personal attacks against Kahn and Weisbord fare no better. They suggest Mr.  
27 Kahn behaved dishonestly when his prior counsel threatened the post-merger entity with a lawsuit,  
28 but this reflected nothing more than advocacy in asserting Mr. Kahn's legal rights. In any event, it

1 is more than a little ironic that Defendants, several of whom were found by this Court to have given  
2 non-credible testimony *under oath*, would point the finger at Mr. Kahn. Similarly, Defendants  
3 attempt to tarnish Mr. Weisbord with the bizarre accusation that he opted out of the class settlement  
4 only to obtain discovery for use in an unrelated litigation involving Mr. Weisbord's son.  
5 Defendants have no evidence for this accusation. And it makes no sense: If evidence is relevant  
6 in the unrelated proceeding, it will be produced there; if not, then it will either not be produced or  
7 not be admitted into evidence.

8 Defendants' theory of the supposed bad faith of Assignors is incorrect. According to  
9 Defendants, the Assignors gave up hundreds of thousands of dollars from the class settlement to  
10 pursue a claim they knew to be meritless in order to induce defendants to pay a settlement, even  
11 though the class settlement Assignors were giving up was "hailed . . . as 'an almost unprecedented  
12 figure in merger litigation nationwide' and 'a remarkable achievement considering the size and  
13 revenues of Parametric.'" Opening Br. 5 (quoting Pls.' Mot. for Final Approval of Settlement (Apr.  
14 17, 2020) at 1–2). That is not economically rational, and Defendants give no explanation why  
15 Assignors would do that.

16 2. Defendants' Offers Of Judgment Were Not Reasonable

17 In considering the reasonableness of an offer of judgment, the district court's discretion  
18 should be guided by the purpose of NRCP 68's fee-shifting rule: to encourage settlement without  
19 "forc[ing] plaintiffs unfairly to forego legitimate claims." *Beattie*, 99 Nev. at 588, 668 P.2d at 274;  
20 *see also O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 556, 429 P.3d 664, 669 (Ct. App. 2018)  
21 ("[T]he district court is vested with discretion to consider the adequacy of the offer and the  
22 propriety of granting attorney fees.").

23 Neither of Defendants' offers of judgment were reasonable. On July 1, 2020, accompanying  
24 their motion to dismiss, Defendants made their first offer of judgment on behalf of all ten  
25 Defendants for \$1. On this motion, Defendants claim that amount "accurately reflected th[e] value  
26 of an equity expropriation claim against a company with no controlling shareholder." Opening Br.  
27 7. Again, Defendants' claim is contradicted by their contemporaneous behavior when their own  
28 money was at stake. Just months before they made their \$1 offer, Potashner and the other

1 Defendants settled the class claims—including virtually identical direct claims for equity  
2 expropriation—for nearly \$10 million, representing that they did so to eliminate the risk of liability.  
3 *See supra* Background Section D. And yet, under Defendants’ logic on this motion, those equity  
4 expropriation claims suffered from the very same deficiencies that supposedly rendered PAMTP’s  
5 equity expropriation claim “entirely incapable of support[] at trial.” Opening Br. 2.

6 In short, Defendants’ first offer of judgment for \$1 was a quintessential token offer made at  
7 the outset of a case that could not possibly have been designed to achieve a settlement. It is therefore  
8 patently unreasonable and cannot trigger a fee-shifting claim, because PAMTP’s “rejection of an  
9 utterly frivolous settlement offer” cannot be “a watershed event” that allows a defendant to recover  
10 fees. *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 356, 101 S.Ct. 1146, 1152 (1981).

11 Defendants’ second offer for \$150,000, made on May 28, 2021, fares little better. At that  
12 point, PAMTP had survived a motion to dismiss and had filed an ultimately successful motion for  
13 sanctions. Using the same calculations as the class plaintiffs, PAMTP sought approximately \$10  
14 million in damages and, as noted, defendants settled the class claims for roughly 10% of the \$100  
15 million the class had sought. *See Ironshore*, 2018 WL 4468986, at \*2 (noting that a \$39,000 offer  
16 of judgment was unreasonable in amount and not made in good faith when the defendant’s potential  
17 liability was \$835,000). About two months after the second offer of \$150,000, the four *least*  
18 culpable Defendants paid \$400,000—nearly three times the second offer—to settle the claims,  
19 notwithstanding the supposedly ironclad defenses Defendants now try to paint as inevitable. These  
20 payments convincingly demonstrate that the \$150,000 offer—which was made on behalf of *all*  
21 Defendants—grossly undervalued PAMTP’s claims, *even in Defendants’ own estimation*.

22 3. Even If The Offers Were Reasonable, PAMTP Reasonably Rejected Them

23 The third *Beattie* factor requires Defendants to show that PAMTP’s rejection of the offers  
24 was *grossly* unreasonable or in bad faith. “Grossly unreasonable or bad faith rises to a much higher  
25 level than poor judgment or incorrect tactical decisions.” *Nat’l Fire*, 2012 WL 6626809, \*3; *see*  
26 *also HSBC Bank USA Nat’l Ass’n v. Suzannah R. Noonan IRA, LLC*, No. 2:16-cv-01216, 2020 WL  
27 5437726, at \*2 (D. Nev. Sept. 10, 2020) (decision to reject offer and “roll[] the dice” after discovery  
28 was not grossly unreasonable or in bad faith under *Beattie*).

Defendants argue that PAMTP's rejection of the offers was unreasonable because PAMTP purportedly "consciously disregarded" the purported "lack of evidence" on the substantive elements of its claim. Opening Br. 18–19. But as detailed above (*supra* II.A and II.B), PAMTP pursued its claims in the good faith belief—grounded in the history of the litigation and Defendants' settlements—that it would ultimately prevail at trial, and was met with unreasonable, low-ball settlement offers apparently intended, not to resolve the case, but to set up a motion like this in the event Defendants ultimately prevailed. PAMTP's rejection of those offers was thus imminently reasonable, as the subsequent partial settlement for \$400,000 confirms.

Defendants nevertheless argue that PAMTP acted unreasonably in rejecting their offers because "the maximum damages to all Parametric shareholders for a valid equity expropriation claim, if one had existed, would have been \$2.8 million," only a fraction of which would have been available to PAMTP. Opening Br. 17. But Defendants do not explain why they (and the other Defendants) would have paid \$10 million—as much as **3.5 times** the supposed "maximum" amount—to avoid the "risk of liability" on the class claims. *Supra* Background Section D. Nor do Defendants explain why the non-sanctioned director Defendants would pay \$400,000 to settle a portion of the opt-out claim, which by Defendants' math would have had a maximum value of approximately \$280,000.

In short, Defendants' position assumes that Defendants were willing to pay gratuitous multiples of their supposedly "maximum" exposure. This assumption is especially puzzling since both the class claims and the opt-out claims the non-sanctioned director Defendants settled would have been subject to the same defenses Defendants now trumpet as so "obvious" and "inevitable" that it was bad faith for PAMTP to have proceeded in the face of them. The Court should thus reject the premise—which, given their payment history, even Defendants do not seem to believe—that PAMTP's case was worth little, or that PAMTP was "grossly unreasonable" in rejecting the settlement offers.

#### 4. Defendants' Fee Claims Are Not Reasonable

"When it is determined that the first three *Beattie* factors weigh in favor of the party who rejected the offer of judgment, the reasonableness of the requested fees becomes irrelevant as the



1 reasonably of the fees alone cannot support an attorney-fees award.” *O’Connell*, 134 Nev. at  
2 555, 429 P.3d at 668. Thus, for the reasons set forth above, the Court need not reach the  
3 reasonableness of the fees. To the extent the Court concludes otherwise, however, it should reject  
4 Defendants’ exorbitant fee demand.

5 Defendants have the burden to establish that the requested fees “‘were actually and  
6 necessarily incurred and were reasonable.’” *Stefonich v. Bautista*, 487 P.3d 389, 2021 WL  
7 2178577, at \*1 (Nev. May 27, 2021). That showing must be “supported by substantial evidence.”  
8 *Logan v. Abe*, 131 Nev. 260, 266–67, 350 P.3d 1139, 1143 (2015).

9 Here, because the first offer of \$1.00 was patently unreasonable (*supra* II.B), any fee claim  
10 is necessarily limited to fees incurred after the second offer, made on May 28, 2021. But even with  
11 respect to fees incurred after the second offer, Defendants have failed to meet their burden.

12 *First*, Potashner and the other director Defendants, all of whom settled, had the same  
13 counsel. Yet Potashner has not submitted any evidence of fees incurred solely on his behalf, rather  
14 than on behalf of the other Settling Defendants. Potashner seeks \$680,084 in post-second-offer  
15 fees incurred by Sheppard Mullin and \$323,161 in such fees incurred by Holland & Hart. *See*  
16 Opening Br. 20. John P. Stigi III, for Sheppard Mullin, admits that the \$680,084 figure represents  
17 “Sheppard Mullin’s fees to the *Director Defendants*,” not just Potashner. *See* Decl. of John P. Stigi  
18 III (“Stigi Decl.”) ¶ 9 (emphasis added). Robert J. Cassity, for Holland & Hart, is less forthcoming;  
19 he says that the \$323,161 figure represents “Holland & Hart’s fees to Defendant Potashner,” Decl.  
20 of Robert J. Cassity, Esq (“Cassity Decl.”) ¶ 8, but even a cursory review of the supporting materials  
21 reflects that these fees likewise include work that was done for the director Defendants who settled.<sup>5</sup>

22 Potashner is not entitled to fees incurred on behalf of other Defendants, particularly those  
23 who settled the identical claims lodged against them for \$400,000, nearly three times as much as  
24 the highest offer of judgment. Thus, any fees incurred solely on behalf of the Settling Defendants  
25

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26 <sup>5</sup> *See, e.g., id.* at Ex. 1, unnumbered page 18 (entry for 8/13/21 by Tignor, Elody C., billing  
27 3.7 hours for “Draft motion for good faith settlement; Draft motion for settlement agreement;”); *id.*  
28 (entry for 8/14/21 by Cassity, Bob J., billing 7.1 hours work that included “[d]raft[ing] and  
revis[ing] settlement agreement and release of claims and motion for determination of good faith  
settlement”); *id.* (entry for 8/15/21 by Tignor, Elody C., billing 1 hour for “Prepar[ing] an order on  
certain director defendants’ motion for determination of good faith settlement”).



1 must be cut entirely from Potashner's request, and fees incurred jointly on behalf of Potashner and  
2 the Settling Defendants must be reduced to reflect Potashner's proportionate share.

3 *Second*, the fees Defendants incurred are excessive given their view of the claims at issue.  
4 According to Defendants, the maximum damages conceivably at issue were \$280,000. *See* Opening  
5 Br. 17. Defendants cannot credibly claim that it was necessary and reasonable to incur nearly \$4  
6 million in fees after the second offer to defeat claims that in their view are worth less than one-tenth  
7 of that amount. *Cf. Osness v. Sherry*, No. A444508, 2005 WL 519091, at \*1 (Nev. Dist. Ct. Jan.  
8 14, 2005) ("It would not be reasonable for a plaintiff to pay \$10,000.00 . . . in hourly rates in order  
9 to recover \$10,519.00."). Indeed, the fees Defendants incurred are not even reasonable from the  
10 perspective of PAMTP's assessment of damages, as Defendants' fees of over \$7 million represent  
11 70% of the \$10 million in compensatory damages that PAMTP sought.

12 *Third*, the fees the non-director Defendants incurred are excessive when measured against  
13 the fees the director Defendants incurred. The claims against the former were not materially  
14 different from the claims against the latter, and both groups of Defendants pursued similar strategies  
15 and performed similar work preparing for trial. Yet the non-director Defendants incurred nearly \$3  
16 million in fees post-second-offer—*three times* the \$1 million in fees the director Defendants  
17 incurred during the same period. It is not reasonable to seek \$3 million in fees when counsel  
18 working on the same litigation on essentially the same claims incurred only one-third that amount.

19 *Fourth*, the fees incurred by out-of-state counsel—Dechert LLP for the non-director  
20 Defendants and Sheppard Mullin for the director Defendants—are based on hourly rates that are  
21 far out of proportion to reasonable hourly rates charged by Nevada attorneys. Both out-of-state  
22 firms billed hourly rates for *associates* that greatly exceeded hourly rates for partners from the  
23 Nevada firms.<sup>6</sup> Unsurprisingly, the partner rates used by the out-of-state firms also far exceed the  
24

25  
26 <sup>6</sup> *Compare* Stigi Decl. ¶ 14 (reflecting Sheppard Mullin associate rates of \$775 and \$650 per  
27 hour); Decl. of Joshua D. N. Hess ("Hess Decl."), Ex. 2 at 136 (reflecting Dechert associate rates  
28 of \$845 and \$955 per hour), *with* Cassity Decl. ¶ 12 (reflecting Holland & Hart partner rates of  
\$670 and \$385 per hour); Decl. of Richard C. Gordon ("Gordon Decl.") Ex. 1 (reflecting entries  
for work performed by Mr. Gordon and billed by Snell & Wilmer at a rate of \$620 per hour).

rates used by the Nevada firms—some by as much as 50-200%.<sup>7</sup> The out-of-state paralegal rates are also substantially inflated compared to the Nevada paralegal rates.<sup>8</sup> Fees incurred at these grossly excessive out-of-state rates are not reasonable compared to local market rates and should be rejected on that basis alone. *See, e.g., Canyon Villas Apartment Corp. v. ANSE, Inc.*, No. 05A498865, 2014 WL 9861725, at \*7 (Nev. Dist. Ct. Sept. 16, 2014) (rejecting request for fees based on “an unreasonably high hourly rate for a paralegal’s work given comparable charges by paralegals within the greater Las Vegas area”).

#### IV. CONCLUSION

Despite rampant misconduct by Defendants Potashner and others, both during the course of the merger negotiations giving rise to this litigation, and then again during the litigation itself, Defendants have managed to dodge an adverse verdict at trial. Now, even though a subset of Defendants paid nearly triple the highest settlement offer to settle on the eve of trial, Defendants seek from PAMTP—the victim of their wrongdoing—a windfall profit to reward them for their illegal and inequitable conduct.

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<sup>7</sup> *See* Stigi Decl. ¶ 14 (reflecting Mr. Stigi’s rate of \$975 per hour); Hess Decl., Ex. 2 at 136 (reflecting Dechert partner rates of \$1,195 and \$1,350 per hour); *see also Edwards v. Timeshare Liquidators, LLC*, No. A-18-776375-C, 2020 WL 5093547, at \*2 (Nev. Dist. Ct. Aug. 18, 2020) (lead attorney’s \$450 hourly rate was reasonable); *Jacks v. Cozen-McNally*, No. A-18-777060-C, 2019 WL 11343507, at \*6 (Nev. Dist. Ct. Sept. 16, 2019) (lead attorney’s \$350 hourly rate was reasonable); *Murray v. A Cab Taxi Service LLC*, No. A-12-669926-C, 2019 WL 6615395, at \*3 (Nev. Dist. Ct. Feb. 6, 2019) (\$400 for “senior counsel” and “lesser amounts for . . . other counsel” were “justified, reasonable and appropriate”); *Peccole v. Peccole Nev., Corp.*, No. 16A739654, 2017 WL 1103859, at \*8 (Nev. Dist. Ct. Jan. 20, 2017) (partner hourly rates of \$395 to \$595 and associate hourly rates of \$275 were consistent with rates “customarily charged in Clark County, Nevada for similar legal services” and were “reasonable”).

<sup>8</sup> *Compare* Gordon Decl. Ex 1 at 19 (reflecting entries for work performed by Snell & Wilmer paralegals at hourly rates between \$90 and \$150 per hour); Cassity Decl. ¶ 12 (reflecting paralegal rates of \$200 to \$215 per hour); *9101 Alta LLC v. Pennymac Mortg. Inv. Tr. Holdings I*, No. A-18-776933-C, 2020 WL 10502818, at \*3 n.3 (Nev. Dist. Ct. Apr. 13, 2020) (\$125 per hour for paralegals is “customary in the local legal community”), *rev’d on other grounds*, 486 P.3d 1286 (Nev. 2021), *with* Stigi Decl. ¶ 14 (reflecting Sheppard Mullin paralegal rates of \$260 to \$425 per hour); Hess Decl., Ex. 2 at 136 (reflecting Dechert paralegal rate of \$395 per hour).

1 Accordingly, PAMTP respectfully requests that the Court deny Defendants' motion in its  
2 entirety.

3 DATED this 13th day of October, 2021.

4 McDONALD CARANO LLP

5  
6 By: /s/ George F. Ogilvie III  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 13th day of October, 2021, a true and correct copy of the foregoing **PLAINTIFF PAMTP LLC'S OPPOSITION TO MOTION FOR ATTORNEYS' FEES** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/Jelena Jovanovic

An employee of McDonald Carano LLP

# EXHIBIT “1”

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**From:** ken potashner <ken.potashner@gmail.com>  
**To:** Juergen Stark <juergen.stark@turtlebeach.com>  
**Sent:** 7/12/2013 9:42:15 AM  
**Subject:** Re:

I know ..i appreciate you highlighting the issue

On Fri, Jul 12, 2013 at 6:04 AM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:  
The 280G is absolutely nothing to do with us or any attempt to take anything away. It's a normal consequence of CIC. It came up in diligence because it creates potential negative tax consequences for us (and for you).

On Fri, Jul 12, 2013 at 12:48 AM, ken potashner <ken.potashner@gmail.com> wrote:  
Juergen,

I wrote the email while driving to dinner on my ipad and it was pretty intelligible so I cleaned it up..I am not necessarily looking for a response. The 280G stuff is daunting and if you need to find another 'take away' from me we can figure something out.. At a personal level I always overpay for deals(I want everyone happy), overtip at restaurants, give my teams big bonuses(for good performance) and gladly gave my wife half when we got divorced. Life is easier this way...

The email should have read:

Also I have been frustrated for 2 weeks as my bod and team got torn apart over this topic.we didn't sneak HHI in place as this deal happened. It has been an integral part of the company strategy since its conception 9 months ago.

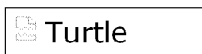
For what it is worth if it weren't for my fiduciary responsibility I wouldn't do the deal because I am losing the whole reason that I entered into the deal in the first place.. To build a multi billion dollar HHI and benefit from it for my shareholders and myself(and team)

I said I would take nothing for my HHI position in the form of buyout shares,options or cash to get the deal done. I also said that it will be my intent to convince you between DA and closing to keep HHI alive in which case my options would still remain. Given that we need to keep HHI going until post closing because of the factors we discussed today doesnt create a change in my position. I am not looking for a conversion or buyout. I also said in a gentlemen agreement to give me a consulting deal if I couldn't talk you into keeping HHI equal to what you think my stake was worth. You still retain the right to shut it down post deal and do the right thing (whatever you decide that is).

I personally make out much better if the deal doesn't happen but I will do what it takes to make the deal happen. I need you to help.

--

**Juergen Stark**  
CEO



---

**Turtle Beach, Inc.**  
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# **EXHIBIT “2”**



**Minutes of the Special Meeting of  
the Board of Directors of  
Parametric Sound Corporation  
July 5, 2013**

A special telephonic meeting of the Board of Directors (the "Board") of Parametric Sound Corporation (the "Company") was held, commencing at approximately 8:00 a.m. (Pacific time), Monday, July 5, 2013 as previously noticed to each member.

Kenneth F. Potashner, Executive Chairman of the Company, acted as chairman of the meeting. Mr. Potashner designated James A. Barnes, Secretary of the Company, to act as the secretary of the meeting.

1. Call to Order, Roll Call, Establish Quorum

The following directors, constituting all of the directors and a quorum for the conduct of business, were present telephonically:

Kenneth F. Potashner (Chairman)  
Jimmy Honore  
Robert M. Kaplan  
Elwood G. Norris  
Seth Putterman  
Andrew Wolfe

The following other persons were also present at the invitation of the Board: (1) James A. Barnes, Chief Financial Officer, Treasurer and Secretary, (2) John Hentrich and (for a portion of the meeting) Rob Wernli of Sheppard, Mullin, Richter & Hampton LLP, corporate counsel, (4) Daniel Hoverman, Adam Greenway and Mark Dufilho of Houlihan Lokey, financial advisor to the Company (for a portion of the meeting), and (5) David Wambeke of Craig-Hallum (for a portion of the meeting).

2. Project Beam – Financing Update (Part 1) (only directors, Mr. Barnes and Mr. Hentrich in attendance)

Mr. Potashner updated the Board regarding potential financing contingencies related to the merger agreement and other transaction issues. He noted that Project Beam Merger Partner required longer term financing to be secured and consent of lenders to the merger. There was discussion of a \$15 million requirement and discussions regarding \$10 million required on Project Beam side and \$5 million to be secured by the Company for working capital and closing costs to the planned merger. It was noted that the major shareholder of Project Beam seemed willing to invest the \$10 million of financing on its side but was requiring \$5 million from the Company to meet lender requirements and this may be a closing condition. Discussion ensued on the transaction and such financing aspects.

Mr. Potashner and the Board discussed outstanding issues and differences of opinion regarding stock options of HyperSound Health, Inc. ("HSI") related to the transaction and otherwise. Mr. Potashner indicated that, although there were differences of opinion among the Company Board members, it was important to reach internal agreement in negotiations with Project Beam. Mr. Wolfe summarized the discussions he and Mr. Barnes had with CEO of

**Minutes of the Special Meeting of  
the Board of Directors of  
Parametric Sound Corporation  
July 5, 2013**

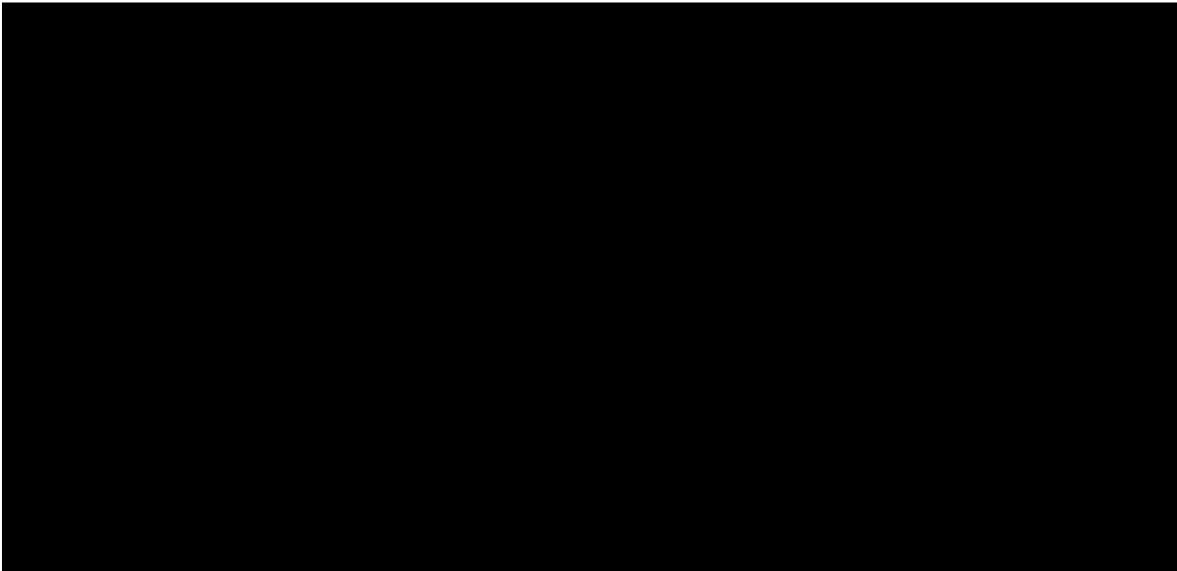
Merger Partner on the evening of July 3, 2013. The Merger Partner CEO stated that for the merger to close a satisfactory resolution to concerns previously expressed regarding HHI was necessary (preferably dissolution of HHI) effective at closing or with firm agreements in place at closing to dissolve HHI thereafter. The three primary reasons offered by the Merger Partner CEO were:

- Economic impact of only 86% not 100% of HHI (previously expected by Merger Partner) and fact that hearing related products may be greater than 50% of business in first several years.
- Unwanted internal complexity: Other equity owners created a need to charge for services to the HHI subsidiary. Related, the Company could not keep precise accounting and could not move money freely between parent/subsidiary.
- Litigation concern: If not eliminated, Mr. Potashner could be seen as not being diluted in the merger to the same extent as other stockholders.

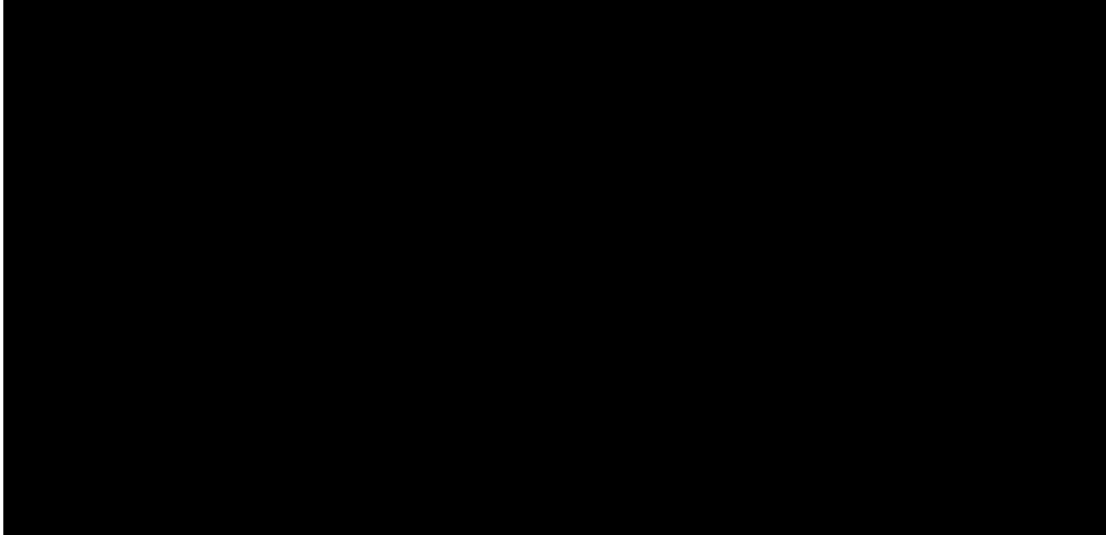
Mr. Wolfe stated that Merger Partner Project Beam was willing to negotiate with and accept costs with the medical team, but not with Mr. Potashner or Mr. Todd, which negotiation needed to be resolved at the expense of the Company.

3. Project Beam - Merger Agreement

*[Messrs. Wernli, Hoverman, Dufilho, Greenway and Wambeke joined the meeting at approximately 9:05 a.m.]*

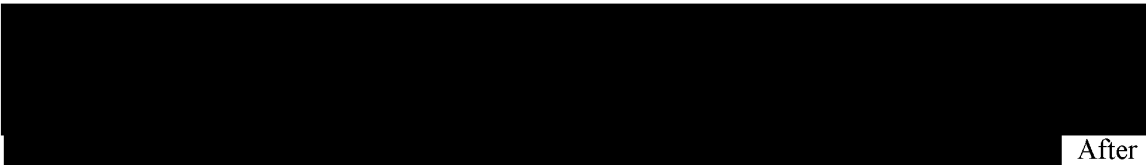


**Minutes of the Special Meeting of  
the Board of Directors of  
Parametric Sound Corporation  
July 5, 2013**



otherwise.

4. Amendment to Bylaws.



After full discussion, and upon motion duly made, seconded and carried, the Board unanimously adopted the following resolutions:

**WHEREAS**, Article IV, Section 20(e) of the Bylaws provides that notice of all special meetings of the Board of Directors shall be delivered orally or in writing, by telephone, facsimile, telegraph or telex or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting;

**WHEREAS**, Article XII, Section 43(b) of the Bylaws provides that notice required to be given to any director may be given by the method stated in Article XII, Section 43(a), or by facsimile, telex or telegram;

**WHEREAS**, Article XII, Section 43(d) of the Bylaws provides that notices given by mail shall be deemed to have been given as at the time of mailing, and all notices given by facsimile, telex or telegram shall be deemed to have been given as of the sending time recorded at time of transmission;

**WHEREAS**, Article XIII, Section 44 of the Bylaws provides that the Board of Directors of the Company has the power to adopt, amend or repeal the Bylaws; and

**Minutes of the Special Meeting of  
the Board of Directors of  
Parametric Sound Corporation  
July 5, 2013**

**WHEREAS**, it is advisable and in the best interests of the Company to amend the Bylaws as hereinafter provided.

**NOW, THEREFORE, BE IT RESOLVED:** That the first sentence of Article IV, Section 20(e) of the Bylaws is hereby amended to read in its entirety as follows: "Notice of the time and place of all special meetings of the Board of Directors shall be delivered: (i) orally (in person or by telephone) or in writing through personal delivery or electronic transmission (by a form consented to by the recipient), in either case at least twenty-four (24) hours before the date and time of the meeting; or (ii) through registered or certified mail (postage prepaid), return receipt requested, at least three (3) days before the date of the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting of the Board of Directors."

**FURTHER RESOLVED:** That Article XII, Section 43(b) of the Bylaws is hereby amended to read in its entirety as follows: "**Notice to Directors.** Any notice required to be given to any director may be given by any method stated in Section 20(e). Notice sent through registered or certified mail, return receipt requested, shall be sent to such address as the director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director. Notice may be delivered by electronic transmission if: (i) consented to by the recipient, and (ii) the electronic transmission contains or is accompanied by information from which the recipient can determine the date of the transmission (such as, for example, electronic mail or facsimile). Any consent to receive notice by electronic transmission may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if: (i) the person is unable to receive two consecutive electronic transmissions given by the Company in accordance with such consent; and (ii) such inability becomes known to the Secretary of the Company or other person responsible for the giving of notice. The inadvertent failure to treat any such inability as a revocation does not invalidate any meeting or other action."

**FURTHER RESOLVED:** That Article XII, Section 43(d) of the Bylaws is hereby amended to read in its entirety as follows: "**Time Notices Deemed Given.** Notice shall be deemed effective: (i) if personally delivered, when given directly to the recipient or when left at the residence or usual place of business of the recipient; (ii) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; (iii) if given by electronic transmission, when (A) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions of the type sent, and (B) it is in a form ordinarily capable of being processed by that system. Consistent with the foregoing and by way of example, notice by electronic transmission shall be deemed effective: (i) if given by facsimile, when directed to a number at which the recipient has consented to receive notice; and (ii) if given by electronic mail, when directed to an electronic mail address at which the recipient has consented to receive notice. An electronic transmission shall be deemed received under this

**Minutes of the Special Meeting of  
the Board of Directors of  
Parametric Sound Corporation  
July 5, 2013**

Section 43(d) even if no natural person is aware of its receipt. In the absence of fraud, an affidavit of the Secretary of the Company that the notice has been given by a form of electronic transmission is prima facie evidence of the facts stated in the affidavit.

**FURTHER RESOLVED:** That Article XII, Section 43(i) is hereby added to the Bylaws and shall read in its entirety as follows: “**Electronic Transmission.** For purposes of these Bylaws, ‘electronic transmission’ means any form or process of communication not directly involving the physical transfer of paper or another tangible medium which: (i) is suitable for the retention, retrieval and reproduction of information by the recipient; and (ii) is retrievable and reproducible in paper form by the recipient through an automated process used in conventional commercial practice. The term ‘electronic transmission’ shall include, without limitation, facsimile and electronic mail.

**FURTHER RESOLVED:** That, each director hereby consents to electronic transmission at the email address or addresses historically used by the Company and, to the extent necessary, waives any defect in notice of prior board meetings provided by email to those email addresses.

*[Mr. Wambeke left the meeting at approximately 10:01 a.m.]*

5. Project Beam – Financing Update (Part II)

Mr. Dufilho presented to the Board and led the Board in a discussion regarding the proposed requirement from the lender of Merger Partner that, as a condition to consenting to the merger, Merger Partner must raise \$10 million in capital (likely subordinated debt) and the Company must raise \$5 million in capital (likely either debt or equity) prior to the closing of the merger. After full discussion, the Board determined that management should resist, to the extent practical, such a condition being added to the Merger Agreement.

*[Messrs. Hoverman, Dufilho and Greenway left the meeting at approximately 10:06 a.m.]*

6. HHI Stock Options

The Board next discussed the situation regarding HHI and the HHI stock options, the Board’s concerns and the concerns of the CEO of Merger Partner regarding the same as discussed earlier in the meeting and proposed solutions for resolving the situation, including the dissolution of HHI or an amendment to the exclusive license between the Company and HHI. In light of Mr. Potashner’s conflict of interest, the Board reiterated its direction to Mr. Potashner not to discuss HHI or the HHI stock options either with Merger Partner or its CEO or with Mr. Todd or the two doctors who hold HHI stock options.

Mr. Potashner indicated that he was willing to negotiate regarding his HHI stock options, but not in the context of dissolution of HHI or other significant change to HHI. Further, if the Board were to dissolve HHI, Mr. Potashner stated that he would call a special meeting of

**Minutes of the Special Meeting of  
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Parametric Sound Corporation  
July 5, 2013**

stockholders for the purpose of replacing the Board. Mr. Potashner informed the Board that he could obtain proxies for 40% of the Company's outstanding shares to effectuate such a replacement.

Mr. Norris then stated that Mr. Potashner's proposed actions would be unacceptable to him and that he would not continue with the Company if the Board were replaced.

The Board next directed Mr. Potashner to present a proposal to the Board regarding how many stock options of the Company he would accept in exchange for his HHI stock options.

*[Mr. Potashner left the meeting at approximately 10:33 a.m.]*

7. Executive Session

The Board discussed the initial reasons for setting up HHI (potential separate financing and/or spin-off) and, in light of a change in strategic direction, whether a restructuring of HHI made sense under the circumstances, with provision for appropriate compensation to the holders of HHI stock options. The Board noted that the valuation of HHI probably had not changed in the short time since the stock options were granted, particularly as the Company had no commitment to finance HHI and there was also no outside financing for HHI. [REDACTED]

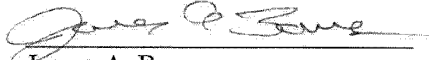
The Board next directed Mr. Barnes to obtain a valuation of HHI, which Mr. Barnes indicated he was already in the process of procuring for purposes of preparing the Company's Form 10-Q for the quarter ended June 30, 2013. The Board also directed Mr. Wolfe to communicate to Mr. Potashner that (i) Mr. Potashner propose how many Company stock options he would accept in exchange for his HHI stock options no later than Monday, July 8, 2013, and (ii) Mr. Potashner, in light of his conflict of interest, not discuss HHI or the HHI stock options with Merger Partner or its CEO, Mr. Todd or the two doctors holding HHI stock options (and that Mr. Wolfe would handle such negotiations until further notice).

The Board also discussed further a potential amendment to the license agreement between the Company and HHI, possibly contingent upon the closing of the merger, including an amendment that would make the license non-exclusive, at least with respect to non-regulated products.

**Minutes of the Special Meeting of  
the Board of Directors of  
Parametric Sound Corporation  
July 5, 2013**

8. Adjournment

There being no further business to come before the meeting, on motion duly made, seconded and carried, the meeting of the Board was adjourned at 11:08 a.m.

  
James A. Barnes  
Secretary of the Meeting

# **EXHIBIT “3”**



**From:** Ken <ken.potashner@gmail.com>  
**Sent:** Thursday, October 24, 2013 8:55 PM  
**To:** Seth Putterman <puherman@ritva.physics.ucla.edu>  
**Subject:** Re: Unfortunate Indeed

---

Very tired of getting sabotaged at every BOD meeting.

Juergen was informed by one of our bod members what transpired this morning. Very difficult for me.

This BOD is the most unprofessional dysfunctional team I have ever worked with and the sooner we all distance ourselves the better. There is most definitely a path where we all begin suing each other. If I were you I would be more interested in drinking wine and enjoying the fruits of your hard work instead of spending great sums on lawyers and spending time being deposed.

No apology is due Woody in that I have no reason to believe that the BOD authorised a tax reimbursement for on szygy. I will leave it to Kaplan to assess.

Sent from my iPad

On Oct 24, 2013, at 7:47 PM, "Seth Putterman" <puherman@ritva.physics.ucla.edu> wrote:

> Ken:  
> I propose that it is profoundly unfair of you to let one misconstrued  
> comment cancel the many efforts I have made to find a smooth middle path  
> between you and the founder. And to effectively deal with the health issue.  
> Also your comments regarding szyrgy, Jim and Woody are outrageous and  
> deserve a remorseful apology on your part-to them.  
> Seth  
>  
>  
> -----Original Message-----  
> From: Ken [mailto:ken.potashner@gmail.com]  
> Sent: Thursday, October 24, 2013 5:33 PM  
> To: Seth Putterman  
> Subject: Unfortunate  
>  
> Your question of looking for loopholes around how to misrepresent to the  
> shareholders that we will nominate ken in the proxy and then swap him out at  
> the last minute hits a nerve with me. It is unlikely that I can work with  
> you in the future or support your involvement on anything I am affiliated  
> with.  
>  
> More important you take on incredible personal liability if it can be  
> demonstrated that you are participating in a plan to deceive our  
> shareholders  
>  
>  
>  
> Sent from my iPad  
>



# EXHIBIT “4”

**To:** John Todd[[john1228@earthlink.net](mailto:john1228@earthlink.net)]  
**From:** ken.potashner@gmail.com  
**Sent:** Mon 7/1/2013 9:42:15 PM  
**Subject:** Re: clarification

---

I am thinking of reorganizing And have him work directly for Sassan

Sent from my iPhone

On Jul 1, 2013, at 2:34 PM, "John Todd" <[john1228@earthlink.net](mailto:john1228@earthlink.net)> wrote:

Good email you might add that you are his boss and you are directing him to not make contact.

**From:** ken potashner [<mailto:ken.potashner@gmail.com>]  
**Sent:** Monday, July 1, 2013 2:28 PM  
**To:** Elwood Norris  
**Subject:** Re: clarification

very simply put- DO NOT FUCK UP THIS DEAL. .... The day I have to announce deal is off stock will go to 5 . For the life of me I am struggling to see what you get out of screwing this up. The only thing I can think of is you think I am making too much on the transaction so you think it is better to have us lose the deal then have me make money...The problem is you screw the PAMT shareholders in the process

This constitutes the 4th personal attack you have made on me this year...

I still remember vividly you telling me that you are happy that your wife is a heavy smoker and you dont expect her to be around to get your money. You have a substantial miswiring somewhere. Perhaps it allows you to be brilliant on some things but I am getting tired of this....

No xmas card from the Potashner family this year

On Mon, Jul 1, 2013 at 2:04 PM, Elwood Norris <[enorris@parametricssound.com](mailto:enorris@parametricssound.com)> wrote:  
Ken,

So you say...

Woody

---

**From:** ken potashner <[ken.potashner@gmail.com](mailto:ken.potashner@gmail.com)>  
**Date:** Monday, July 1, 2013 1:56 PM  
**To:** Elwood Norris <[enorris@parametricssound.com](mailto:enorris@parametricssound.com)>  
**Subject:** clarification

deal was 80/20 likely to happen and now is 50/50 based on your actions

TODD0005998  
439 - 001  
AA 4012

# **EXHIBIT “5”**

From: Kaplan Robert <bobkaplan007@gmail.com>  
Subject: options  
Date: July 6, 2013 10:16:09 AM MDT  
To: Norris Woody <ENorris@parametricsound.com>, Jim Barnes <jbarnes@parametricsound.com>, James Honore <jameslhonore@gmail.com>, Seth Putterman <puherman@ritva.physics.ucla.edu>, Andrew Wolfe <awolfe@awolfe.org>  
Bcc: Kaplan Robert <rmkaplan@cox.net>

Gentlemen;

I have gone through the "dilution" analysis of Andy, John T, Jim B, and my own. It was an interesting exercise but the conclusion is that none of this matters. Nor does the analysis that Ken has requested from our investment bankers. What really matters is that if we want to get the merger with VTB done - the HHI subsidiary must be owned 100% by PAMT before the merger with no options outstanding for others to buy a piece in the future. That is what Juergen has emphatically indicated and here we are dancing all around the issue. It is clear to me what has to be done, and done before the merger. This is one of our strong points in the saga.

Andy indicates that our dilution in HHI is the result of our merger with VTB. It will also be the result of the exercise of the 16% options (merger or not). VTB does not want to face that dilution when they assume ownership of PAMT and its subsidiary along with the inherent problems associated with partial ownership of a subsidiary.

We have given Ken until Monday to come with an offer to trade back in his options (I presume this will include John T's as well). The Doctors we should deal with separately. There's a different situation.

As Andy pointed out in his analysis, the best estimate of the fair value of the options should be as calculated by the Black-

Scholes model. This will be difficult to calculate because of the unknowns of many of the variables but we can make some reasonable assumptions to arrive at a value.

That number should be our starting point and then after that it is all negotiation. This is one of our weak points in the saga. However if we are not able to come to a reasonable conclusion, we still have some nuclear options available - and that is our trump card!

The longer this goes on the more difficult it becomes and the messier.

Personally I think this has gone on far too long. We need to get on with the business of running the business. What has been going on since this VTB idea surfaced? Where are our licensing agreements, where are sales (incremental improvement due to David), Epsilon, Amazon, The Chinese, McDonalds, The Bear stores(still in beta mode), Sony, Samsung, etc.?

AND WE HAVE SURE BURNED THROUGH A HELL OF A LOT OF MONEY. The only real forward movement has been the technology! And this is not because of the executive suite - it is because of Woody's love of inventing and that we had the money to support him.

It is time for the BOD to step up and take charge! We have been far too passive in the past.

It is good to have a strong leader but not a dictator.

# **EXHIBIT “6”**



**From:** Ken <ken.potashner@gmail.com>  
**Sent:** Saturday, May 25, 2013 2:05 PM  
**To:** Juergen Stark <juergen.stark@turtlebeach.com>  
**Subject:** Re: history timeline

---

I know you are but the reality is that need to get on with running my business and getting shareholder value . Withholding license deals and announcements is contrary to the responsibility that I have.

I will support your effort as best I can.  
Sent from my iPad

On May 25, 2013, at 1:45 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

understood. doing the best i can. i also want to get an answer.

On Sat, May 25, 2013 at 1:33 PM, Ken <ken.potashner@gmail.com> wrote:

I don't want to add complexity but I need to reengage on my licensing discussion with SIIG and also decide on whether I want to further evolve amazon. SIIG has a large team coming in 2 weeks and I need to advance that ball with their key guy next week.

Sent from my iPad

On May 25, 2013, at 1:11 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Next call is Tuesday. that will be two hour discussion with Ken and his partner.  
Goal would be to get their decision but they may want some soak time.  
Everybody knows we want to get to decision.

On May 25, 2013 1:04 PM, "Ken" <ken.potashner@gmail.com> wrote:

Should I therefore assume that final decision will be made on Tuesday and we can either move together or move apart staring Weds?

Sent from my iPad

On May 25, 2013, at 12:52 PM, Juergen Stark  
<juergen.stark@turtlebeach.com> wrote:

Ok thanks not a big rush. Don't need until Tuesday.

On May 25, 2013 12:41 PM, "James Barnes"

<[jbarnes@parametricssound.com](mailto:jbarnes@parametricssound.com)> wrote:

Juergen,

Ken asked me to forward a history timeline to you. As Woody has mentioned this concept was explored by Sony and others years ago but the phenomenon was never made practical or useable until our innovations and never commercial or consumer until the major reinvention in 2010/2011. This is not unlike many technologies/concepts that developed over time and in our respect the advancements in emitter technology and DSP power helped make this economical and commercial.

We have developed a first draft of a response regarding the DSP improvement issue but I need Woody to review. Hope to get to you within an hour or so.

Jim Barnes

--

**Juergen Stark**  
CEO

---

**Turtle  
Beach, Inc.**

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Confidential

PAMTNV0106728

277 - 002

AA 4018



# **EXHIBIT “7”**

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**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](mailto:juergen.stark@turtlebeach.com)>  
Date: Thu, Oct 31, 2013 at 11:25 PM  
Subject: URGENT - Reconciliation  
To: Bruce Murphy <[bruce.murphy@turtlebeach.com](mailto:bruce.murphy@turtlebeach.com)>, John Hanson <[john.hanson@turtlebeach.com](mailto: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 than 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?**

**STRIPES 0082003**

330 - 001

AA 4021

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.

--

**Juergen Stark**  
CEO



---

**Turtle Beach, Inc.**

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**Juergen Stark**  
CEO



---

**Turtle Beach, Inc.**

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**STRIPES 0082004**

330 - 002

AA 4022

**Document Produced in Native Format**

**STRIPES 0082005**

330 - 003

AA 4023

# EXHIBIT “8”



EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

In re PARAMETRIC SOUND CORPORATION ) SHAREHOLDERS' LITIGATION ) _____) ) This Document Relates To: ) ALL ACTIONS. )	Lead Case No. A-13-686890-B Dept. No. XI <u>CLASS ACTION</u>
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**NOTICE OF PROPOSED SETTLEMENT OF CLASS AND DERIVATIVE ACTION**

TO: **ALL PERSONS AND/OR ENTITIES THAT HELD SHARES OF PARAMETRIC SOUND CORPORATION ("PARAMETRIC" OR THE "COMPANY") COMMON STOCK ON JANUARY 15, 2014, AT THE TIME PARAMETRIC ISSUED SHARES IN THE MERGER PURSUANT TO THE AGREEMENT AND PLAN OF MERGER, WHETHER BENEFICIALLY OR OF RECORD, INCLUDING THE LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS-IN-INTEREST, TRANSFEREES, AND ASSIGNEES OF ALL SUCH FOREGOING HOLDERS, BUT EXCLUDING DEFENDANTS, EXECUTIVE OFFICERS OF PARAMETRIC AS OF JANUARY 15, 2014, AND THEIR LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS-IN-INTEREST, TRANSFEREES, AND ASSIGNEES**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER/MERGER STOCKHOLDER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM ("PROOF OF CLAIM") **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE JUNE 3, 2020.**

This Notice of Proposed Settlement of Class and Derivative Action ("Notice") has been sent to you pursuant to an Order of the Eighth Judicial District Court for the State of Nevada, Clark County (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of the Litigation (the "Settlement") and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement and the proposed Plan of Allocation of the Settlement proceeds, as well as Co-Lead Counsel's application for fees and expenses and Plaintiffs' request for reimbursement of time and expenses. This Notice describes the rights you may have in connection with your participation in the Settlement, what steps you may take in relation to the Settlement and this Litigation, and, alternatively, what steps you must take if you wish to be excluded from the Class and this Litigation.<sup>1</sup>

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A PROOF OF CLAIM</b>	The only way to be eligible to receive a payment. <b>Proofs of Claim must be postmarked or submitted online on or before June 3, 2020.</b>
<b>EXCLUDE YOURSELF</b>	Receive no payment. This is the only option that <i>potentially</i> allows you to ever be part of any other lawsuit against the Defendants or any of the Released Defendant Parties about the legal claims related to the issues raised in this Litigation. <b>Exclusions must be received no later than May 4, 2020</b> , unless you object (as described below).
<b>OBJECT</b>	Write to the Court about why you oppose the Settlement, the Plan of Allocation, the request for attorneys' fees and expenses and/or Plaintiffs' request for reimbursement of time and expenses. You will still be a member of the Class. <b>Objections must be received by the Court and counsel for the Settling Parties on or before May 4, 2020.</b> The Court has ruled that it will conduct a hearing within three (3) days of when an objection is filed. Any such objector shall have an additional five (5) days after the relevant objection hearing to submit a request for exclusion.
<b>GO TO A HEARING ON MAY 18, 2020, AND FILE A NOTICE OF INTENTION TO APPEAR</b>	Ask to speak in Court about the fairness of the Settlement. <b>Requests to speak must be received by the Court and counsel for the Settling Parties on or before May 4, 2020.</b>

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement, which, along with other important documents, is available on the Settlement website, [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

<b>DO NOTHING</b>	Receive no payment from the Settlement. Members of the Class or Merger Stockholders who do nothing remain bound by the terms of the Settlement unless you have requested exclusion from the Class.
-------------------	--

## **SUMMARY OF THIS NOTICE**

### **Statement of Class and Derivative Recovery**

Pursuant to the Settlement described herein, the Settlement Amount is \$9,650,000.00. The Settlement Amount, plus accrued interest, and minus the costs of this Notice, all costs associated with the administration of the Settlement, taxes and tax expenses, as well as attorneys' fees and expenses as approved by the Court (the "Net Settlement Fund"), will be distributed *pro rata* to Class Members/Merger Stockholders who submit valid and timely Proofs of Claim pursuant to the Plan of Allocation that is described below in this Notice.

Your share of the fund will depend on several things, including how many Merger Stockholders/Class Members submit timely and valid Proofs of Claim, and the number of shares of Parametric common stock you held and received consideration for in the Merger. Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Class Members/Merger Stockholders who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. If 100% of non-insider shares outstanding immediately prior to the close of the Merger (January 15, 2014) submit a claim, each share's average distribution under the Settlement will be approximately \$1.65 per share, before deduction of any Taxes on any income earned on the Settlement Amount, Tax Expenses, Notice and Administration Costs, the attorneys' fees and expenses and the expenses of Plaintiffs, as determined by the Court.

See the Plan of Allocation at page 8 hereof for more information on your claim.

### **Reasons for the Settlement**

The principal reason for the Settlement is the cash benefit to be provided to stockholders now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future, against the Defendants. See "Why is there a settlement" at page 3 below for more information.

### **Statement of Attorneys' Fees and Expenses Sought**

Co-Lead Counsel will apply to the Court for an award of attorneys' fees of up to 25% of the Settlement Amount, plus expenses up to \$790,000.00, plus interest on both amounts. Since the Litigation's inception, Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this Litigation on a contingent fee basis and advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees, in addition to expenses reasonably incurred in the litigation. In addition, Plaintiffs may seek reimbursement of their time and expenses up to \$3,000.00 each.

### **Further Information**

For further information regarding the Litigation, this Notice or to review the Stipulation of Settlement, please contact the Claims Administrator toll-free at 1-866-458-2206, or visit the website [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

You may also contact a representative of Co-Lead Counsel: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, [www.rgrdlaw.com](http://www.rgrdlaw.com).

Please Do Not Call the Court or the Defendants with Questions About the Settlement.

## **BASIC INFORMATION**

### **1. Why did I get this Notice package?**

You have been identified as a potential Class Member and Merger Stockholder.

The Court directed that this Notice be sent to stockholders at the time of the January 15, 2014 Merger because they have a right to know about the proposed Settlement of this class and derivative lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

This Notice explains the class action and derivative lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the Litigation is the Eighth Judicial District Court for the State of Nevada, Clark County, and the case is known as *In re Parametric Sound Corporation Shareholders' Litigation*, Lead Case No. A-13-686890-B. The case has been assigned to the Honorable Elizabeth Gonzalez. The Kearney IRRV Trust and Lance Mykita are the lead plaintiffs (referred to as "Plaintiffs" in this Notice), and the parties who were sued and who have now settled are called the "Defendants."

**2. What is this lawsuit about?**

This is a shareholder class action seeking monetary damages and alleging that Defendants Kenneth Potashner, James Honore, Robert Kaplan, Elwood G. Norris, Andrew Wolfe, and Seth Putterman (referred to as the "Individual Defendants" in this Notice) breached their fiduciary duties in connection with the Merger and that Stripes Group, LLC, SG VTB Holdings, LLC, and VTB Holdings, Inc. aided and abetted those breaches of fiduciary duty. In addition, the lawsuit alleges derivatively, on behalf of Nominal Defendant Turtle Beach Corporation, that the Individual Defendants breached their fiduciary duties to Parametric in connection with the Merger and that Stripes Group, LLC, SG VTB Holdings, LLC, and VTB Holdings, Inc. aided and abetted in those breaches. The Merger closed on January 15, 2014.

**3. Why is this a class action and a derivative action?**

In a class action, one or more people called a plaintiff sues on behalf of people who have similar claims. All of the people with similar claims are referred to as a Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who excluded themselves from the Class. In a derivative action, one or more people sue on behalf of a corporation in which they own stock for claims belonging to the corporation. This case involves a dual-natured direct and derivative claim challenging the Merger, which closed on January 15, 2014. The "Class Members" and the "Merger Stockholders" thus involve the same group of stockholders immediately prior to effectuation of the Merger on January 15, 2014.

**4. Why is there a settlement?**

The Court has not decided in favor of the Defendants or the Plaintiffs. Instead, all sides agreed to the Settlement to avoid the costs and risks of further litigation, including trial and post-trial appeals. Plaintiffs agreed to the Settlement in order to ensure that Class Members/Merger Stockholders will receive compensation, and because Plaintiffs (advised by Plaintiffs' Counsel) considered the Settlement Amount to be a favorable recovery compared to the risk-adjusted possibility of recovery after trial and any appeals. Plaintiffs and Plaintiffs' Counsel believe the Settlement is in the best interest of all Class Members and the Company in light of the real possibility that continued litigation could result in no recovery at all.

**WHO IS IN THE SETTLEMENT**

To see if you will get money from this Settlement, you first have to decide if you are a Class Member, which involves the same group of stockholders on January 15, 2014 as the "Merger Stockholders."

**5. How do I know if I am part of the Settlement?**

The Court directed that everyone who fits this description is a Class Member: All persons and/or entities that held shares of Parametric common stock on January 15, 2014, at the time Parametric issued shares in the Merger pursuant to the Agreement and Plan of Merger, whether beneficially or of record, including the legal representatives, heirs, successors-in-interest, transferees, and assignees of all such foregoing holders, except those Persons and entities that are excluded, as described below.

Previous stockholders of VTB Holdings, Inc. who received Parametric stock as part of the Merger do not fall within this Class definition.

**6. Are there exceptions to being included?**

Excluded from the Class are: Defendants, executive officers of Parametric as of January 15, 2014, and their legal representatives, heirs, successors-in-interest, transferees, and assignees. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to this Notice and who timely and validly requested exclusion following the notice of pendency.

**7. What if I am not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at 1-866-458-2206 or visit the Settlement website [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com), or you can fill out and return the Proof of Claim enclosed with this Notice package, to see if you qualify.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 8. What does the Settlement provide?

In exchange for the Settlement and the release of the Released Claims (defined below) as well as dismissal of the Litigation, Defendants have agreed that a payment of \$9,650,000.00 will be made by Defendants (or on their behalf) to be divided, after taxes, fees, and expenses, among all Class Members and Merger Stockholders who send in a valid Proof of Claim.

## HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

### 9. How can I receive a payment?

To qualify for a payment, you must submit a Proof of Claim. A Proof of Claim is enclosed with this Notice or it may be downloaded at [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com). Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and return it so that it is postmarked, if mailed, or received, if submitted online, no later than June 3, 2020. The Proof of Claim may be submitted online at [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

### 10. When would I receive my payment?

The Court will hold a Final Approval Hearing on May 18, 2020, to decide whether to approve the Settlement. If the Court approves the Settlement, there might be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

### 11. What am I giving up to receive a payment or to stay in the Class?

Unless you exclude yourself, you will remain a Class Member, and that means that, if the Settlement is approved, you will give up all “Released Claims” (as defined below), including “Unknown Claims” (as defined below), against the “Released Defendant Parties” (as defined below):

- “Released Claims” means all claims, demands, rights, actions or causes of action, liabilities, debts, demands, rights, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, whether based in law or equity, that have been, or could have been, asserted in the Litigation or any forum by Plaintiffs for themselves or by or on behalf of any member of the Class and/or derivatively on behalf of Turtle Beach Corporation, based on, arising out of, or relating to: (A) his, her, or its ownership of Parametric stock (whether individual, class, derivative, representative, legal, equitable, or any other type or in any other capacity); and (B) the allegations and claims in the Amended Class Action and Derivative Complaint; provided, however, that the Released Claims shall not include any claims to enforce the Settlement Term Sheet or the Stipulation. “Released Claims” includes “Unknown Claims” as defined below.
- “Released Defendant Parties” means (i) Defendants; (ii) Defendants’ affiliates; and (iii) all of the respective families, heirs, executors, personal or legal representatives, counsel (including, but not limited to, Defendants’ counsel), insurers, estates, administrators, predecessors, successors and assigns for those persons identified in part (i) of this paragraph.
- “Settled Defendants’ Released Claims” means all actions, claims, debts, demands, liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever, known or unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal, state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore have existed, that have been or could have been asserted in the Litigation or any forum by the Released Defendant Parties or any of them against Plaintiffs, Class Members, or Plaintiffs’ Counsel, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Released Defendant Parties, provided, however, that this release shall not include any claims to enforce the Settlement Term Sheet or the Stipulation in the Litigation. “Settled Defendants’ Released Claims” includes “Unknown Claims” as defined below.
- “Unknown Claims” means any of the Released Claims which Plaintiffs or any Class Member does not know or suspect to exist in such party’s favor at the time of the release of the Released Defendant Parties, and any of the Settled Defendants’ Released Claims that the Released Defendant Parties do not know or suspect to exist in his, her, or its favor at the time of the release

of Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, which, if known by such party, might have affected such party's settlement with and release of the Released Defendant Parties or Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, or might have affected such party's decision not to object to this Settlement or seek exclusion. Unknown Claims include those Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Released Claims and the Settled Defendants' Released Claims, upon the Effective Date, Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Defendant Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code §1542, which provides:

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

Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Defendant Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Plaintiffs, Class Members and the Released Defendant Parties may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of the Released Claims and the Settled Defendants' Released Claims, but Plaintiffs and Defendants shall expressly, and each Class Member and Released Defendant Parties, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Released Claims, or the Settled Defendants' Released Claims, as the case may be, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, whether or not previously or currently asserted in any action. Plaintiffs and Defendants acknowledge, and the Class Members and Released Defendant Parties shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

If you remain a Class Member, all of the Court's orders will apply to you and legally bind you.

#### **EXCLUDING YOURSELF FROM THE CLASS**

If you do not want a payment from this Settlement, and you want to keep the right to sue the Defendants and/or the other Released Defendant Parties, on your own, about the legal issues in this Litigation, then you must take steps to remove yourself from the Settlement. This is called excluding yourself.

<b>12. How do I get out of the proposed Settlement?</b>
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To exclude yourself from the Class, you must send a letter by First-Class Mail stating that you "request exclusion from the Class in the *Parametric Settlement*." To be valid, your letter must include the number of shares of Parametric common stock you held on January 15, 2014. In addition, you must include your name, address, telephone number, and your signature. You must submit your exclusion request so that it is **received no later than May 4, 2020** to:

*Parametric Settlement*  
c/o Gilardi & Co. LLC  
Claims Administrator  
EXCLUSIONS  
3301 Kerner Blvd.  
San Rafael, CA 94901

The Court has ruled that it will conduct a hearing within three (3) days of when an objection is filed. Any such objector shall have an additional five (5) days after the relevant objection hearing to submit a request for exclusion.

If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this Litigation, you may want to consult an attorney and discuss whether any individual claim that you wish to pursue would be time-barred by the applicable statutes of limitations or repose.

**13. If I do not exclude myself, can I sue the Defendants and the other Released Defendant Parties for the same thing later?**

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit against the Released Defendant Parties, speak to your lawyer in that case immediately. You must exclude yourself from this Litigation to continue your own lawsuit. Remember, the exclusion deadline is May 4, 2020.

**14. If I exclude myself, can I get money from the proposed Settlement?**

No. If you exclude yourself, you may not send in a Proof of Claim to ask for any money. But, you may be able to sue or be part of a different lawsuit against the Defendants and the other Released Defendant Parties about the claims raised in this Litigation.

**THE LAWYERS REPRESENTING YOU**

**15. Do I have a lawyer in this case?**

The Court ordered that the law firms of Robbins Geller Rudman & Dowd LLP and Saxena White P.A. represent the Class, including you. These lawyers are called Co-Lead Counsel. They will be paid from the Settlement Fund to the extent the Court approves their application for fees and expenses. If you want to be represented by your own lawyer, you may hire one at your own expense.

**16. How will the lawyers be paid?**

Co-Lead Counsel will move the Court for an award of attorneys' fees of up to 25% of the Settlement Amount and for expenses up to \$790,000.00, plus interest on both amounts. Such sums as may be approved by the Court will be paid from the Settlement Fund. In addition, Plaintiffs may seek reimbursement for their time and expenses up to \$3,000.00 each.

The attorneys' fees and expenses requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this Litigation on behalf of Plaintiffs, the Company, and the Class nor for the litigation expenses Plaintiffs' Counsel have incurred. The fee requested will compensate Plaintiffs' Counsel for their work in achieving the Settlement Fund and is within the range of fees and expenses awarded to class counsel under similar circumstances in other cases of this type.

**OBJECTING TO THE SETTLEMENT**

**17. How do I tell the Court that I object to the proposed Settlement?**

If you are a Class Member, you can write to the Court to object to the proposed Settlement, the proposed Plan of Allocation, and/or Co-Lead Counsel's fee and expense application. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed Settlement, the proposed Plan of Allocation, and/or the application for fees and expenses, in the *Parametric Settlement* and the reasons you object. Be sure to include your name, address, telephone number, and your signature, identify the number of shares of Parametric common stock you held on January 15, 2014, and state the reasons why you object. Your objection must be filed with the Court **and** mailed or delivered to **each** of the following addresses such that it is **received no later than May 4, 2020**. The Court has ruled that it will conduct a hearing within three (3) days of when an objection is filed.

**COURT**

CLERK OF THE COURT  
Department XI  
Eighth Judicial District Court  
Clark County, Nevada  
200 Lewis Avenue  
Las Vegas, NV 89101

**CO-LEAD COUNSEL**

David Knotts  
ROBBINS GELLER  
RUDMAN & DOWD LLP  
655 West Broadway,  
Suite 1900  
San Diego, CA 92101

**DEFENDANTS' COUNSEL**

John P. Stigi III  
SHEPPARD, MULLIN,  
RICHTER & HAMPTON LLP  
1901 Avenue of the Stars,  
Suite 1600  
Los Angeles, CA 90067

**18. What is the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you do not like something about the proposed Settlement, the Plan of Allocation, or the fee and expense application. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class.

**THE COURT'S SETTLEMENT HEARING**

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

**19. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Final Approval Hearing at 9:00 a.m., on Monday, May 18, 2020, before the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court of Clark County, Nevada, 200 Lewis Avenue, Las Vegas, Nevada, Courtroom 3E. At the hearing the Court will consider whether the Settlement and proposed Plan of Allocation are fair, reasonable, and adequate, and whether Co-Lead Counsel's fee and expense application should be granted. If there are objections, the Court has ruled that it will conduct a hearing on that particular objection within three (3) days of when the objection is filed. Any such objection hearing may therefore take place on a date that is different from May 18, 2020. The Court will listen to people who have asked to speak at the hearing. After the Final Approval Hearing, the Court will decide whether to approve the Settlement, the Plan of Allocation and the amount of fees and expenses. We do not know how long these decisions will take. The Court may change the date and time of the Final Approval Hearing without another notice being sent to Class Members. If you want to attend the hearing, you may wish to check with Co-Lead Counsel or the Settlement website beforehand to be sure that the date and/or time has not changed.

**20. Do I have to come to the hearing?**

No. Co-Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

**21. May I speak at the hearing?**

If you object to the Settlement, the Plan of Allocation, and/or the fee and expense application, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection (*see* Question 17 above) a statement saying that it is your "Notice of Intention to Appear in the *Parametric Settlement*." Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing. You cannot speak at the hearing if you exclude yourself.

**IF YOU DO NOTHING**

**22. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit or be part of any other lawsuit against the Released Defendant Parties about the legal issues in this case ever again.

**GETTING MORE INFORMATION**

**23. Are there more details about the proposed Settlement?**

This Notice summarizes the proposed Settlement. More details are in a Stipulation of Settlement dated November 14, 2019 (the "Stipulation"). You can obtain answers to common questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at 1-866-458-2206. A copy of the Stipulation and other relevant documents are also available on the Settlement website at [www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com).

**PLAN OF ALLOCATION OF NET SETTLEMENT FUND  
AMONG CLASS MEMBERS AND MERGER STOCKHOLDERS**

Your share of the Net Settlement Fund will depend on how many shares of Parametric common stock you held on January 15, 2014, and the number of shares of Parametric common stock represented by valid claims made by members of the Class.

Distributions will be made *pro rata* to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. The Net Settlement Fund will be disbursed by the Claims Administrator to the Authorized Claimants and will be allocated on a *pro rata*, equal per-share basis amongst the Authorized Claimants. Any distribution will require a \$10.00 minimum.

If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the initial distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Co-Lead Counsel, shall, if feasible, reallocate on a *pro rata* basis among Authorized Claimants who negotiated the checks sent to them in the initial distribution and who would receive a minimum of \$10.00. These reallocations shall be repeated until the balance remaining in the Net Settlement Fund is *de minimis* and any remainder shall thereafter be donated to an appropriate non-profit organization selected by Co-Lead Counsel.

Class Members who do not submit acceptable Proofs of Claim will not share in the Settlement proceeds. The Settlement and the Order and Final Judgment releasing the Defendants and other Released Defendant Parties and dismissing this Litigation will nevertheless bind all Class Members.

Please contact the Claims Administrator if you disagree with any determinations made by the Claims Administrator regarding your Proof of Claim. If you are unsatisfied with the determinations, you may ask the Court, which retains jurisdiction over all Class Members and the claims administration process, to decide the issue by submitting a written request.

No Person shall have any claim against Plaintiffs' Counsel, Plaintiffs, the Claims Administrator, Defendants and the Released Defendant Parties, or any Person designated by Co-Lead Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Class Member shall have any claim against any Released Defendant Parties for any Released Claims.

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you held Parametric common stock on January 15, 2014 for the beneficial interest of an individual or organization other than yourself, the Court has directed that, WITHIN FIFTEEN (15) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each beneficial owner of the common stock, or (b) request additional copies of this Notice and the Proof of Claim, which will be provided to you free of charge, and within fifteen (15) days mail the Notice and Proof of Claim directly to the beneficial owners of the common stock referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed and retain the names and addresses for any future mailings to Class Members. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

*Parametric Settlement*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43342  
Providence, RI 02940-3342  
[www.ParametricShareholderLitigation.com](http://www.ParametricShareholderLitigation.com)

DATED: January 17, 2020

BY ORDER OF THE COURT  
EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA



# **EXHIBIT “9”**

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.784.5200

Richard C. Gordon, Esq.  
Nevada Bar No. 9036  
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[rgordon@swlaw.com](mailto:rgordon@swlaw.com)

[Additional counsel on signature page]

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

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

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

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

This Document Related To:  
ALL ACTIONS

**DEFENDANTS' OFFER OF JUDGMENT**

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1 Pursuant to Nevada Rule of Civil Procedure (“NRCPP”) 68, Defendants Kenneth Potashner,  
2 Elwood G. Norris, Seth Putterman, Robert Kaplan, Andrew Wolfe, and VTB Holdings, Inc., as  
3 well as Specially-Appearing Defendants Stripes Group, LLC, SG VTB Holdings, LLC, Kenneth  
4 Fox, and Juergen Stark (collectively, “Defendants”) by and through their undersigned counsel of  
5 record, hereby offer to allow judgment to be entered against them and in favor of Plaintiff PAMTP  
6 LLC in the amount of **One Dollar (\$1.00)**.

7 This offer is inclusive of attorneys’ fees, costs of suit, and prejudgment interest, and  
8 prohibits any application or motion for a post-acceptance award of taxable costs, attorney’s fees,  
9 or interest. The offer is not to be construed as an admission that any Defendant is liable in this  
10 action or that Plaintiff has suffered any damage or that Plaintiff is the prevailing party.

11 Evidence of this offer of judgment is not admissible, except in a proceeding to determine  
12 costs and reasonable attorney’s fees. If any portion of this offer of judgment is determined to be  
13 unenforceable, the remainder of the offer, and any potential consequence thereof, remains  
14 enforceable. A judgment entered in accordance with this Offer of Judgment is intended to fully  
15 and finally resolve all claims that have been asserted or could have been asserted in this action  
16 against all Defendants.

17 Pursuant to NRCPP 68, acceptance of this offer shall be made by service of written notice of  
18 Plaintiffs’ acceptance, directed to Snell & Wilmer, L.L.P., at the address set forth below, within  
19 fourteen (14) days after service of this offer. If the offer is not accepted within the fourteen-day  
20 period, it is deemed rejected by Plaintiff and automatically withdrawn by Defendants.

21 Pursuant to NRCPP 68(d), if Plaintiffs accept this Offer of Judgment, Defendants will pay  
22 the sum of \$1.00 to Plaintiff within a reasonable time and Plaintiff’s claims will be dismissed  
23 with prejudice instead of entry of judgment.

24 Dated: July 1, 2019

SNELL & WILMER L.L.P.

26 By: /s/ Richard C. Gordon

Richard C. Gordon (Bar No. 9036)  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

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DECHERT LLP

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New York, NY 10036

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

SHEPPARD MULLIN RICHTER & HAMPTON LLP

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Alejandro Moreno, Esq. (*Admitted Pro Hac Vice*)  
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Los Angeles, CA 90067

HOLLAND & HART LLP

By: /s/ Robert Cassity  
J. Stephen Peek, Esq. (Bar No. 1758)  
Robert Cassity, Esq. (Bar No. 9779)  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

*Attorneys for Defendants Kenneth Potashner, Elwood G.  
Norris, Seth Putterman, Robert Kaplan, and Andrew Wolfe*

**CERTIFICATE OF SERVICE**

As an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing **DEFENDANTS' OFFER OF JUDGMENT** on the 1st day of July 2020, via e-service through Odyssey File and serve to the email addresses listed below:

**SHEPPARD MULLIN RICHTER & HAMPTON LLP**  
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**ALBRIGHT STODDARD WARNICK & ALBRIGHT**  
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# **EXHIBIT “10”**



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

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

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

This Document Related To:  
PAMTP LLC v. POTASHNER, *et al.*

**DEFENDANTS' OFFER OF JUDGMENT**

Pursuant to Nevada Rule of Civil Procedure (“NRCP”) 68, Defendants VTB Holdings, Inc., Stripes Group, LLC, SG VTB Holdings, LLC, Juergen Stark, Kenneth Fox, Kenneth F. Potashner, Elwood G. Norris, Seth Bttermann, Robert M. Kaplan, and Andrew Wolfe (collectively, “Defendants”) by and through their undersigned counsel of record, hereby offer to allow judgment to be entered against them and in favor of Plaintiff PAMTP LLC in the amount of **One Hundred and Fifty Thousand Dollars (\$150,000.00)**.

This offer is inclusive of attorneys’ fees, costs of suit, and prejudgment interest, and prohibits any application or motion for a post-acceptance award of taxable costs, attorney’s fees, or interest. The offer is not to be construed as an admission that any Defendant is liable in this action, that Plaintiff has suffered any damage, or that Plaintiff is the prevailing party.

Evidence of this offer of judgment is not admissible, except in a proceeding to determine costs and reasonable attorney’s fees. If any portion of this offer of judgment is determined to be unenforceable, the remainder of the offer, and any potential consequence thereof, remains enforceable. Acceptance of this Offer of Judgment is intended to fully and finally resolve all claims that have been asserted or could have been asserted in this action against all Defendants.

Pursuant to NRCP 68, acceptance of this offer shall be made by service of written notice of Plaintiffs’ acceptance, directed to Snell & Wilmer, L.L.P., at the address set forth below, within fourteen (14) days after service of this offer. If the offer is not accepted within the fourteen-day period, it is deemed rejected by Plaintiff and automatically withdrawn by Defendants.

Pursuant to NRCP 68(d), if Plaintiff accepts this Offer of Judgment, Defendants will pay the sum of \$150,000.00 to Plaintiff within a reasonable time and Plaintiff’s claims will be dismissed with prejudice instead of entry of judgment.

Dated: May 28, 2021

SNELL & WILMER L.L.P.

By: /s/ Richard C. Gordon, Esq.

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**CERTIFICATE OF SERVICE**

As an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing **DEFENDANTS' OFFER OF JUDGMENT** on the 28<sup>th</sup> day of May 2021, via e-service through Odyssey File and Serve to the email addresses listed below:

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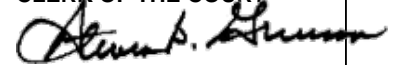
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**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

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

This Document Related To:  
ALL ACTIONS

**NON-DIRECTOR DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION  
TO RETAX COSTS**

Hearing Date: November 16, 2021  
Hearing Time: 8:30 a.m.

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## I. INTRODUCTION

For eight years, Plaintiff PAMTP LLC<sup>1</sup> and its predecessors-in-interest forced the Non-Director Defendants<sup>2</sup> to litigate meritless breach of fiduciary duty and aiding-and-abetting claims. At the first instance when the burden fell on Plaintiff to substantiate those claims, Plaintiff was utterly unable to do so, and the Court entered judgment in Defendants favor under NRCP 52(c). This ruling brought this extended lawsuit to its correct and inevitable conclusion, but left the Non-Director Defendants saddled with at least \$1,046,849.92 in costs that were reasonably necessary to reach this point. NRS 18.020 dictates that such costs “must be allowed of course” to the Non-Director Defendants. Plaintiff concedes that the Non-Director Defendants are entitled to \$117,331.23, but asserts meritless objections for the remainder.

*First*, Plaintiff contends that it insulated itself from responsibility for any costs incurred prior to May 20, 2020, by filing a new complaint on that date. In making this argument, Plaintiff requests an inequitable outcome, unsupported by any legal authority, that ignores repeated conflicting arguments that Plaintiff advanced throughout the course of this lawsuit, such as when Plaintiff wished to obtain all discovery produced in this case before May 20, 2020, or sought the accrual of prejudgment interest beginning in 2013. This lawsuit, filed under the caption stated at the top of Plaintiff’s Motion, has been ongoing since 2013. Plaintiff has reaped the benefits of eight years’ worth of litigation and now, when it has a statutory obligation to cover the costs generated by that litigation, would have this Court pretend that this lawsuit began in 2020, not 2013.

*Second*, Plaintiff alleges that the Non-Director Defendants are precluded from seeking costs associated with an evidentiary hearing that the Non-Director Defendants did not win, even though

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<sup>1</sup> Plaintiff is a shell entity formed in 2020. It purports to be the assignee of certain claims purportedly held by IceRose Capital Management, Barry Weisbord, Robert Masterson, Richard Santulli, Marcia Patricof, Alan and Anne Goldberg, and Ronald and Muriel Etkin (collectively, the “Assignors”), each of which purport to have held Parametric stock at the time of the merger that gave rise to this action. The Assignors have been putative or actual members of the class in this lawsuit since 2013, opted out of a class settlement in 2020, and then assigned any claims they may have had at the time to Plaintiff so that Plaintiff could bring this lawsuit on their behalf. Plaintiff is an alter ego for the Assignors.

<sup>2</sup> The Non-Director Defendants include Defendant VTB Holdings, Inc. (“Turtle Beach”), which has been a party to this litigation since 2013, Specially Appearing Defendants Stripes Group, LLC and SG VTB Holdings, LLC, which have been parties since 2016, and Specially Appearing Defendants Juergen Stark (“Stark”) and Kenneth Fox (“Fox”), who have been parties since 2020.

1 the sanctions that Plaintiff obtained from that hearing against the Non-Director Defendants played  
2 no material role in the outcome of this litigation. Even with the evidentiary scales tipped in  
3 Plaintiff's favor, this Court still found Plaintiff's claims to be so lacking in substance that judgment  
4 under NRCP 52(c) was appropriate. This outcome does not suggest that the Non-Director  
5 Defendants should bear their own costs associated with the evidentiary hearing; it suggests that the  
6 evidentiary hearing was nothing more than a waste of time and resources in the first place.  
7 Consistent with NRS 18.020, Plaintiff should bear the costs of this irrelevant hearing.

8 *Third*, Plaintiff misreads Nevada Supreme Court precedent as precluding recovery of costs  
9 associated with the hosting and storage of e-discovery. In fact, the same authority that Plaintiff  
10 cites expressly authorizes and affirms recovery of such costs.

11 *Fourth*, Plaintiff argues that the Non-Director Defendants should not be allowed to recover  
12 more than \$1,500 for expert fees because their expert did not testify at trial. Again, Plaintiff ignores  
13 controlling precedent, which holds that such a limitation does not apply when it is the non-  
14 prevailing party's fault that the prevailing party's expert did not testify. It was both reasonable and  
15 necessary for the Non-Director Defendants to retain a damages expert to rebut the testimony of  
16 Plaintiff's damages expert. Plaintiff's failure to present a claim with enough substance to warrant  
17 a response at trial does not preclude the Non-Director Defendants from recovering costs associated  
18 with a rebuttal expert who would have testified just two days later.

19 *Fifth*, Plaintiff wildly misrepresents certain trial support costs in a misguided effort to make  
20 them appear unreasonable. Plaintiff does not (and could not) dispute that trial support costs are  
21 recoverable, and it offers no legitimate basis to deem the trial support costs here to be unreasonable  
22 or unnecessary.

23 *Sixth*, after retaining non-Nevada counsel of its own to address issues that never had been  
24 litigated in Nevada courts, Plaintiff now attempts to penalize the Non-Director Defendants for  
25 retaining foreign counsel of their own by seeking to retax certain fees associated with *pro hac vice*  
26 admissions in Nevada. Such expenses were reasonable and necessary and thus are recoverable  
27 under NRCP 18.020.

28

1 In short, Plaintiff offers no legitimate basis to retax any portion of the reasonable and  
2 necessary costs that the Non-Director Defendants have incurred over the course of this litigation.  
3 Plaintiff's Motion should be denied.<sup>3</sup>

## 4 II. RELEVANT BACKGROUND

### 5 A. This Lawsuit Began In 2013, Not 2020, And Has Resulted In Substantial Costs 6 Over The Past Eight Years.

7 This case arises out of the January 15, 2014 merger between Parametric Sound Corporation  
8 ("Parametric") and VTB Holdings, Inc. ("Turtle Beach") under which Turtle Beach became a  
9 wholly owned subsidiary of Parametric and, in exchange, Parametric issued stock to Turtle Beach's  
10 former shareholders sufficient to give them approximately 80% ownership of the combined  
11 company (the "Merger"). Parametric's pre-Merger shareholders continued to hold the remaining  
12 20% of the company, which was now substantially larger and, for the first time, profitable.

13 Before the Merger occurred, several Parametric shareholders filed putative class actions in  
14 August 2013. These shareholders, purporting to act on behalf of all Parametric shareholders,  
15 accused Parametric's directors of breaching their fiduciary duties to Parametric shareholders and  
16 accused Turtle Beach of aiding-and-abetting such breaches. Those claims have remained consistent  
17 throughout the entirety of this case. When the shareholders' efforts to enjoin the Merger failed,  
18 they renewed these same claims in amended class action complaints filed after the Merger closed.  
19 The Assignors were members of these putative classes and enjoyed the benefits of the litigation  
20 that these shareholders pursued on their behalf.

21 After several years of minimal activity while this case was under review by the Nevada  
22 Supreme Court, former Parametric shareholders filed yet another amended class action complaint  
23 on December 1, 2017, that continued to assert the same direct breach of fiduciary duty and aiding-  
24 and-abetting claims. The class was certified on January 18, 2019, and the class notice was sent to  
25 potential class members shortly thereafter. The class representatives requested and received  
26 extensive discovery over multiple objections from Defendants that such discovery was irrelevant,

27 <sup>3</sup> In the alternative, to the extent the Court believes any cost listed in the Non-Director Defendants  
28 Memorandum of Costs falls outside the scope of NRS 18.005, this Court has discretion to assess  
costs somewhere between \$117,331.23, which Plaintiff concedes is appropriate, and the full amount  
that the Non-Director Defendants seek.

1 overbroad, and unduly burdensome. The Non-Director Defendants produced tens of thousands of  
2 documents in discovery and participated in more than twenty depositions (the “Class Discovery”),  
3 often at significant expense.

4 Trial was originally scheduled to begin in November 2019, but the class representatives  
5 chose to settle their claims on the eve of trial rather than respond to pending summary judgment  
6 motions. The class representatives filed a motion for preliminary approval of the settlement on  
7 November 15, 2019, and the Assignors received, reviewed, and prepared a response to that motion  
8 by November 18, 2019. The Assignors assigned their claims to Plaintiff and opted out of both the  
9 class and the class settlement on or around April 20, 2020. The class settlement was then approved  
10 on May 19, 2020.

11 **B. Plaintiff Argued Repeatedly, And Successfully, That This Lawsuit Began In**  
12 **2013 And Always Has Treated It As A Singular Lawsuit.**

13 The direct breach of fiduciary duty and aiding-and-abetting claims were already ripe for  
14 trial when the class action settled in November 2019. As such, the Assignors, having objected to  
15 the settlement, could have proceeded to trial immediately. Instead, they decided in April 2020 to  
16 exclude themselves from the class—not merely the settlement—and filed a new complaint (copied  
17 nearly verbatim from the prior complaint) on May 20, 2020. As this Court noted later, this  
18 procedure was unusual. Normally, when a party opts out of a settlement, the claim “is then tried  
19 as part of the class action case. It’s not usually a separate case.” Aug. 25, 2021 Trial Tr. at 40:8-  
20 11.

21 Promptly after Plaintiff filed its nearly identical complaint that asserted the exact same  
22 direct claims that the parties already had litigated for nearly seven years, the parties agreed that  
23 Plaintiff’s case should be consolidated with the class proceedings. Plaintiff represented to the Court  
24 that it was in favor of consolidation because it intended to rely on NRCP 26(h) to obtain all of the  
25 Class Discovery. See June 11, 2020 PAMTP Resp. to Defs.’ Mot. to Consolidate at 2  
26 (“consolidation of the cases would allow Plaintiff to receive immediate the discovery that has  
27 already been conducted in this matter.”). Defendants objected to this request on the grounds that  
28 Plaintiff’s opt-out proceedings constituted a new legal action and thus Plaintiff needed to comply

1 with NRCP 16 and 16.1 before it could obtain any discovery in this matter. *See* Defs.’ July 31,  
2 2020 Opp. to Mot. to Compel at 4-6. Plaintiff rejected that position, asserting that these opt-out  
3 proceedings were not separate from the class proceedings and thus compliance with NRCP 16 and  
4 16.1 already had been accomplished during the class proceedings in 2014. *See* July 17, 2020 Mot.  
5 to Compel at 1-2; Aug. 17, 2020 PAMTP Reply ISO Motion to Compel at 2. Plaintiff prevailed  
6 and the Court compelled production under NRCP 26(h). *See* Aug. 31, 2020 Order.

7 Shortly before trial, Plaintiff confirmed once again that it saw no meaningful distinction  
8 between its own lawsuit and the class proceedings that began in 2013. Plaintiff represented to this  
9 Court that if the Court were to apply prejudgment interest from the moment the operative complaint  
10 was filed and served in this action, as required by NRS 17.130(2), then the operative complaint the  
11 Court should use were the putative class complaints filed on the Assignors’ behalf in August 2013.  
12 PAMTP Pre-Trial Memorandum at 11-12. The Court never had an opportunity to address this  
13 argument, but Plaintiff’s position was nonetheless consistent with its earlier representation to this  
14 Court that this lawsuit began in 2013, not 2020.

15 **C. The Court Granted Judgment In Defendants’ Favor Under NRCP 52(c)**  
16 **Because Plaintiff Failed To Prove Basic Elements Of Its Claims, Even With**  
**Adverse Inferences In Its Favor**

17 To prevail at trial, Plaintiff always has known that it would need to prove, among other  
18 elements, (1) “a controlling shareholder’s or director’s expropriation of value from the company,  
19 causing other shareholders’ equity to be diluted,” and (2) “actual fraud” by Parametric’s Board of  
20 Directors in order to overcome the statutory “conclusive deference to the directors’ judgment.” *See*  
21 *Parametric Sound Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 417, 428-29, 401 P.3d 1100, 1109  
22 (2017). At trial, Plaintiff failed on both counts. Regarding the first element, Plaintiff not only  
23 failed to demonstrate that Parametric had a controlling shareholder, but it also failed to demonstrate  
24 even that the alleged controller—Parametric’s Executive Chairman—was a shareholder in the first  
25 place at the relevant time. *See* Final Order and Judgment at Findings of Fact ¶ 81. The Court  
26 correctly issued judgment in Defendants’ favor under NRCP 52(c).

27 This outcome is particularly noteworthy because, as Plaintiff discusses at length in its  
28 Motion (and apparently intends to make the focus of a meritless appeal), Plaintiff had obtained

adverse inferences against three Defendants in this case based on the Court’s belief that some relevant evidence may not have been maintained.<sup>4</sup> Even after applying these inferences in Plaintiff’s favor, the Court still found Plaintiff’s presentation of its own case to be so lacking that judgment was appropriate under NRCP 52(c) without the need for Defendants to present their case.

Notwithstanding Plaintiff’s total inability to present a valid claim even in the advantageous circumstances the Court provided, Defendants prepared to present a thorough and vigorous defense. The specific claim that Plaintiff asserted here—an equity expropriation claim—never before had been litigated in Nevada (and never may be litigated in Nevada again).<sup>5</sup> For example, Defendants knew that Plaintiff had retained an expensive expert witness to perform an unprecedented calculation of damages for this novel claim and Defendants similarly needed to prepare expert testimony in rebuttal. Defendants retained John Montgomery, Ph.D., and invested considerable time and resources working with him to prepare a response to the anticipated testimony of Plaintiff’s expert. Defendants also worked with reputable trial support vendors to assist with the presentation of complex financial issues for the Court’s consideration. Plaintiff’s inability to present an affirmative case rendered any affirmative defense from the Defendants unnecessary, but did not retroactively obviate the need for Defendants to prepare their defense and incur reasonable costs in connection with this defense.

#### **D. The Non-Director Defendants Seek Their Reasonable And Necessary Costs**

As stated in the Non-Director Defendants’ Memorandum of Costs, they seek \$1,046,849.92 in costs, which includes the following categories of expenses:

<sup>4</sup> Against certain of the Non-Director Defendants, the Court determined only that some small number of text messages may have not been preserved. Plaintiff does not (and cannot) explain how any hypothetical text message on a Non-Director Defendant’s phone conceivably could have changed the fact that Parametric’s Executive Chairman was not a shareholder of the company. In granting the Rule 52(c) motion, the Court applied the adverse inferences and determined correctly that no hypothetical “missing” evidence could shore up the fatal defects with Plaintiff’s claims.

<sup>5</sup> The Nevada Supreme Court recognized the existence of equity expropriation claims in this case out of a desire to bring Nevada jurisprudence in line with Delaware’s, which had recognized the existence of such claims in *Gentile v. Rossette*, 906 A.2d 91 (Del. 2006). *See Parametric*, 133 Nev. at 428-29, 401 P.3d at 1109. On September 20, 2021, the Delaware Supreme Court unanimously overturned *Gentile*. *See Brookfield Asset Mgmt., Inc. v. Rosson*, No. 406, 2020, 2021 WL 4260639, at \*19 (Del. Sept. 20, 2021) (“The difficulty courts have had in applying *Gentile* in a logically consistent way, along with *Gentile*’s erosion of *Tooley*’s simple analysis, convinces us that *Gentile* should be overruled.”). The Nevada Supreme Court again will have the opportunity to align Nevada’s jurisprudence with Delaware’s on the appeal in this case.

### COSTS INCURRED BY DECHERT LLP

Category	Amount
NRS 18.005(2) – Reporters’ Fees For Depositions	\$74,652.57
NRS 18.005(5) – Expert Witness Fees <sup>6</sup>	\$223,031.19
NRS 18.005(12) – Cost For Printing / Copying / Scanning	\$82,002.66
NRS 18.005(14) – Postage / Federal Express	\$2,443.46
NRS 18.005(15) – Travel And Lodging For Hearings And Depositions <sup>7</sup>	\$102,189.45
NRS 18.005(17) – Other Reasonable And Necessary Expenses	
• Computerized Legal Research	\$85,922.55
• Electronic Discovery	\$309,399.52
• Access To Court Records	\$99.30
• Costs Related To Pro Hac Vice Admissions	\$9,350.00
• Equipment Rental For Trial	\$123,508.80
<b>TOTAL</b>	<b>\$1,012,571.70</b>

### COSTS INCURRED BY SNELL & WILMER LLP

Category	Amount
NRS 18.005(1) – Clerk’s Fees	\$4,480.05
NRS 18.005(2) and (8) – Reporters’ Fees For Depositions, Hearings, and Trial	\$16,172.38
NRS 18.005(11) – Telecopies	\$1.50
NRS 18.005(12) – Cost For Printing / Copying / Scanning	\$2,675.49
NRS 18.005(14) – Postage / Federal Express	\$167.53
NRS 18.005(15) – Travel And Lodging For Hearings And Depositions	\$1,752.93
NRS 18.005(17) – Other Reasonable And Necessary Expenses	
• Computerized Legal Research	\$2,920.00
• Conference Calls	\$77.39
• Costs Related To Pro Hac Vice Admissions	\$4,900.00
• Messenger Services	\$1,130.95
<b>TOTAL</b>	<b>\$34,278.22</b>

Plaintiff concedes that the Non-Director Defendants are entitled to \$117,331.23 in costs.  
 Mot. at 14.

### III. LEGAL ARGUMENT

#### A. Legal Standard

“Costs must be allowed of course to the prevailing party . . . in an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.” NRS 18.020(3). NRS 18.005(1)-(16) enumerate specifically certain categories of “costs” that are recoverable under this

<sup>6</sup> NRS 18.005(5) allows the Court to award greater than \$1,500 per expert witness “after determining the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” Such circumstances are warranted here where Plaintiff and Defendants both obtained substantial expert testimony related to a complicated calculation of potential damages in this matter. Retention of Defendants’ expert was necessary to rebut the opinions offered by Plaintiff’s expert, who was forced to amend his own opinions after being corrected by Defendants’ expert. The billing rate for Defendants’ expert (\$750 per hour) was lower than the billing rate for Plaintiff’s expert (\$825-925 per hour).

<sup>7</sup> Regarding travel and lodging costs related to depositions, Defendants seek only costs related to depositions of individuals identified in Plaintiff’s Pre-Trial Memorandum as potential witnesses for trial (either live or by deposition).

rule, and NRS 18.005(17) clarifies that “costs” also include “any other reasonable and necessary expense incurred in connection with the action.” “The district court retains discretion . . . in determining the reasonableness of the amounts and the items of cost to be awarded” and any such reward may be reviewed only for abuse of discretion. *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1050-52, 881 P.2d 638, 643-44 (1994). Plaintiff does not dispute that the Non-Director Defendants are entitled to recover their reasonable costs, nor does Plaintiff suggest that the Non-Director Defendants’ Memorandum of Costs was insufficiently detailed or lacking in support. Instead, Plaintiff asserts only that certain broad categories of costs included in the Non-Director Defendants’ Memorandum of Costs fall outside the scope of NRS. 18.005 and NRS 18.020. Plaintiff is incorrect.

**B. Plaintiff’s Unusual Decision To File A New Complaint Does Not Deprive The Non-Director Defendants Of Their Statutory Right To Collect Costs**

Plaintiff first takes the untenable position that it somehow cut off the Non-Director Defendants’ right to recover costs prior to May 20, 2020, by deciding to file a new complaint on that day. Mot. at 8.<sup>8</sup> Plaintiff cites no authority for this proposition because none exists. Instead, Plaintiff does nothing more than argue it somehow would be “unfair” to grant the Non-Director Defendants their actual costs in this case. Plaintiff is incorrect. NRS 18.020 already establishes that the Non-Director Defendants are entitled to recover all reasonable and necessary costs incurred in this action.

Plaintiff’s core argument is that the case it brought to trial and lost under the caption *In re Parametric Shareholders Litigation*, is somehow not the same “action” as the *In re Parametric Shareholders Litigation* that has been litigated before this Court since 2013. The factual background here is not reasonably in dispute. Plaintiff’s Assignors were actual or putative class members in this action since its inception in 2013 and, in that capacity, received the benefits of the legal advocacy of class counsel and the discovery produced by Defendants. In early 2020, the Assignors decided they were no longer satisfied with their representation by class counsel and so

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<sup>8</sup> Aside from its blanket objection to all costs predating May 20, 2020, Plaintiff asserts no specific objections to any particular costs incurred in this time period.



1 they opted out of the class, retained new counsel, and continued to assert the exact same claims  
2 under the exact same caption. This Court already has recognized the standard way to do this would  
3 have been to try Plaintiff's claims "as part of the class action case" and not as a "separate case."  
4 Aug. 25, 2021 Trial Tr. at 40:8-11. But Plaintiff employed a strange procedural maneuver by filing  
5 a new complaint on May 20, 2020, quickly agreeing to have it consolidated with the original action,  
6 and then promptly demanding all discovery produced earlier in the singular action, rendering any  
7 purported separation between the two cases illusory at best. Plaintiff asserts, without citation, that  
8 filing an unnecessary new complaint – that increased the costs to all parties – somehow insulates it  
9 from costs incurred prior to May 20, 2020.

10 Plaintiff, itself, having confirmed repeatedly that there is only one, singular "action" here,  
11 is now judicially estopped from contending otherwise. If, as Plaintiff now contends, its claims were  
12 asserted in an action that was separate and distinct from the class proceedings, then Plaintiff never  
13 could have relied on NRCP 26(h) to obtain the Class Discovery because NRCP 26(h) applies only  
14 when a new party joins an action—not when a new action is filed—and "makes a written demand  
15 for disclosures or discovery that took place before the demanding party became a party to the  
16 action." *See* NRCP 26(g); *see also* Pl.'s July 17, 2020 Mot. to Compel at 1-2 (Plaintiff seeking "all  
17 prior discovery in this action, *i.e.*, the discovery produced and exchanged in this Class Action.")  
18 (emphasis added); Pl.'s Aug. 17, 2020 Reply ISO Mot. to Compel at 3 ("Plaintiff has properly  
19 demanded all prior discovery in the action") (emphasis added).

20 Plaintiff's newfound belief that it filed a separate action in 2020 that is meaningfully distinct  
21 from the class action is particularly ironic since that is the precise argument that Defendants  
22 attempted to make, over Plaintiff's objection, and lost. As Plaintiff well knows, Defendants argued  
23 that Plaintiff could not collect discovery under any subsection of NRCP 26, including NRCP 26(h),  
24 until Plaintiff complied with NRCP 16.1(b). Defendants elaborated that Plaintiff could not rely on  
25 the Rule 16 conference that had occurred in 2014 because Plaintiff had initiated a new action, which  
26 required a new Rule 16 conference. *See* Defs.' July 31, 2020 Opp. to Mot. to Compel at 4-6. This  
27 is, effectively, the same argument Plaintiff makes here. Plaintiff opposed that argument, stating  
28 that it did not need to wait for a new Rule 16 conference because any such requirement was satisfied

1 by the occurrence of a Rule 16 conference “in the Class Action on October 17, 2014.” Pl.’s July  
2 17, 2020 Mot. to Compel at 1-2. Plaintiff further argued that any distinction between the class  
3 action proceedings and the opt-out proceedings was relevant only for “appellate purposes.” Pl.’s  
4 Aug. 17, 2020 Reply ISO Mot. to Compel at 2. Plaintiff prevailed on its Motion. *See* Aug. 31,  
5 2020 Order. Having prevailed on its arguments, Plaintiff cannot now take a contrary position by  
6 asserting that there is any material distinction between the class action proceedings and the opt-out  
7 proceedings for non-appellate purposes. *See, e.g., Kaur v. Singh*, 477 P.3d 358, 362 (Nev. 2020)  
8 (“Judicial estoppel prevents a party from stating a position in one proceeding that is contrary to his  
9 or her position in a previous proceeding.”).

10 This discovery dispute was not the only time Plaintiff took a position that is irreconcilable  
11 with Plaintiff’s present position. Plaintiff renewed its contention that there was only a singular  
12 action shortly before trial, when Plaintiff argued in its Pre-Trial Memorandum that any calculation  
13 of prejudgment interest should begin *before* May 20, 2020. Plaintiff acknowledged that NRS  
14 17.130 states that the accumulation of prejudgment interest begins with the filing of the operative  
15 complaint and argued to this Court that the applicable complaint that should be used to perform this  
16 calculation is “the initial complaint in the Class Action,” which was filed on “August 13, 2013.”  
17 Pl. Pre-Trial Memo. at 11-12. If, in Plaintiff’s own words, the “initial complaint” in this action was  
18 filed on August 13, 2013, then there is no reasonable basis to deny the Non-Director Defendants  
19 from recovering reasonable and necessary costs from that date. It would make no sense for  
20 prejudgment interest to begin accruing in August 2013 if, as Plaintiff now suggests, this action did  
21 not begin until 2020.

22 To be sure, Plaintiff attempts to sidestep this obvious inconsistency in its positions by  
23 suggesting that the calculation of prejudgment interest is based on the date the claim accrued and  
24 not on the date the initial complaint was served. Mot. at 9. But this doublespeak runs contrary to  
25 the clear language of the prejudgment interest statute, which would explain why consistent  
26 precedent from the Nevada Supreme Court has rejected this argument repeatedly. *See, e.g., Albios*  
27 *v. Horizon Cmtys., Inc.*, 122 Nev. 409, 430, 132 P.3d 1022, 1036 (2006) (prejudgment interest “as  
28 specified in NRS 17.130(2)” runs “from the time of service of the summons and complaint”); *Lee*

1 v. *Ball*, 121 Nev. 391, 395, 116 P.3d 64, 67 (2005) (“Under NRS 17.130(2), a judgment accrues  
2 interest from the date of the service of the summons and complaint until the date the judgment is  
3 satisfied”); *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours*, 106 Nev. 283, 289, 792  
4 P.2d 386, 389 (1990) (clarifies that the accrual date is used when “damages [are] sustained after  
5 the service of the complaint”).

6 The outcome Plaintiff seeks is not only completely unsupported by any authority and belied  
7 by Plaintiff’s own prior arguments, but it also would be profoundly inequitable to the Non-Director  
8 Defendants to use Plaintiff’s procedural gamesmanship – which needlessly increased their costs in  
9 this litigation – now to deny the Non-Director Defendants recovery of over half the costs they  
10 incurred to achieve their trial victory over Plaintiff. The breach of fiduciary duty and aiding-and-  
11 abetting claims that Assignors asserted at trial are the exact same claims that have been litigated  
12 under the exact same caption for over eight years. The research and discovery that the Non-Director  
13 Defendants performed during the class proceedings, and the attendant costs they incurred, reduced  
14 substantially the research, discovery, and costs that were necessary after Plaintiff decided to  
15 relitigate the entire case from scratch on May 20, 2020. Plaintiff only needed to take a single  
16 deposition and had no need to repeat substantial document discovery because Plaintiff already had  
17 the benefit of the extensive Class Discovery. At trial, Plaintiff relied on hundreds of documents  
18 produced by Defendants in the class proceedings, as well as nearly 20 depositions taken during the  
19 class proceedings.<sup>9</sup> Defendants incurred reasonable and necessary costs litigating these same  
20 claims from the moment they were first asserted in this action on behalf of all Parametric  
21 shareholders, including the Assignors, in August 2013. Defendants are entitled to recover those  
22 costs.<sup>10</sup>

23 \_\_\_\_\_  
24 <sup>9</sup> Plaintiff did not rely on the depositions of the class representatives of the class proceedings.  
Accordingly, the Non-Director Defendants did not seek costs related to those depositions.

25 <sup>10</sup> By opting out of the class settlement, Plaintiff relinquished any benefit the settlement might  
26 otherwise have provided to them, including the waiver of costs incurred prior to the settlement.  
The Court’s Jan. 17, 2020 Order granting preliminary approval of the settlement expressly provided  
27 that “[a]ll Persons who submit valid and timely Requests for Exclusion in the manner set forth in  
this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the  
Net Settlement Fund, and shall not be bound by the [Nov. 15, 2019] Stipulation or any final  
28 judgment.” See Jan. 17, 2020 Order (filed on Jan. 18, 2020) at ¶ 16 (emphasis added). By  
continuing the litigation after the class proceedings, with the benefit of all prior litigation and

1           **C.     The Non-Director Defendants May Recover All Reasonable And Necessary**  
2           **Costs, Even When Associated With A Motion They Did Not Win**

3           Without citation to any supporting authority, Plaintiff next proposes a victory test, under  
4           which a defendant could not recover costs associated with a motion it did not win. Specifically,  
5           Plaintiff alleges that the Non-Director Defendants should be precluded from recovering costs  
6           associated with an evidentiary hearing held on June 18, 2021, because it resulted in a rebuttable  
7           adverse presumption against two of them (Stark and Fox)<sup>11</sup> that certain text messages that may have  
8           existed on their personal cell phones may have been adverse to them. Plaintiff cites no authority  
9           suggesting that this is a legitimate basis to retax costs associated with this hearing.<sup>12</sup> A party is a  
10          prevailing party under NRS 18.010, and thus is entitled to its costs, “if it succeeds on any significant  
11          issue in litigation which achieves some of the benefit it sought in bringing suit,” and the prevailing  
12          party “need not succeed on every issue.” See *Las Vegas Metro Police Dep’t v. Blackjack Bonding,*  
13          *Inc.*, 131 Nev. 80, 90, 343 P.3d 608 (2015) (citing *Valley Elec. Ass’n v. Overfield*, Nev. 7, 10, 106  
14          P.3d 1198, 1200 (2005) and *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L. Ed.  
15          2d 40 (1983)). Indeed, even where a party “lost every round except the last” in litigation, the party  
16          is entitled to costs under NRS 18.020(3) as a matter of right. See *Franchise Tax Bd. of Cal. v.*  
17          *Hyatt*, No. 80884, 485 P.3d 1247, 2021 WL 1609315 (Nev. Apr. 23, 2021).

18          The evidentiary hearing now has been shown to have been an unnecessary sideshow that  
19          accomplished nothing other than to drive up the costs of this litigation. Again, it bears repeating  
20          that this Court granted judgment under NRCP 52(c) in Defendants’ favor because Plaintiff was  
21          unable to substantiate even the most basic elements of its claims for several reasons, including the  
22          fact that their alleged “controlling shareholder” did not hold a single share of Parametric stock at  
23          discovery in this matter that Plaintiff received for free, Plaintiff realized substantial cost benefits at  
24          Defendants’ expense. It would be inequitable to now saddle Defendants with those costs.

25          <sup>11</sup> As far as the Non-Director Defendants are concerned, the Court issued adverse inference  
26          sanctions against only Stark and Fox. No adverse inference was issued against Stripes, SG VTB,  
27          or Turtle Beach, each of which seeks its costs.

28          <sup>12</sup> Plaintiff suggests that the Non-Director Defendants have “unclean hands” that should prevent  
            them from recovering costs. Plaintiff’s only cited authority on this point is a case that says nothing  
            about costs and does nothing more than state the basic terms of the “unclean hands” doctrine. In  
            Nevada, costs are “mandatory rather than discretionary,” so Plaintiff has no basis to suggest there  
            is any discretion in determining whether the Non-Director Defendants are entitled to their  
            reasonable costs regardless of any attack on the cleanliness of their hands. See *Beattie v. Thomas*,  
            99 Nev. 579, 588 n.5 (1983).

1 the relevant time. Though the parties disagreed, and continue to disagree, on the potential relevance  
2 of any text messages that may have existed on Stark's or Fox's personal cell phones, it is beyond  
3 dispute that no text message could have demonstrated that Potashner was a controlling shareholder  
4 at the relevant time when it is irrefutable that he held no stock at that time. The Court gave Plaintiff  
5 an adverse inference, properly applied that adverse inference at trial, and still concluded that  
6 Plaintiff's claims were so lacking in support that judgment in Defendants' favor was appropriate  
7 without even requiring Defendants to present their defense. In the proper context, it is now clear  
8 that the evidentiary hearing was a colossal waste of time and resources that Plaintiff forced on the  
9 parties and the Court when Plaintiff knew, or should have known, it would make no difference at  
10 trial. Plaintiff should not be permitted to saddle the Non-Director Defendants with the cost of that  
11 hearing, especially when no legal authority supports its position.

12 **D. The Non-Director Defendants May Recover Reasonable And Necessary Costs**  
13 **Associated With E-Discovery Storage And Hosting**

14 Plaintiff misreads the Nevada Supreme Court's ruling in *In re DISH Network Derivative*  
15 *Litigation*, 133 Nev. 438, 450-51, 401 P.3d 1081, 1092-93 (2017) ("*DISH*") to allow "certain e-  
16 discovery costs for producing and acquiring documents," but to prohibit costs associated with e-  
17 discovery "hosting and storage" to argue that the Non-Director Defendants should not be able to  
18 recover costs associated with storage and hosting of e-discovery. Mot. at 10-11. Plaintiff should  
19 have paid more attention to *DISH*. In *DISH*, the successful defendant sought reimbursement of  
20 \$151,178.32 in costs paid to its electronic discovery vendor, which expressly included costs  
21 associated with hosting e-discovery. See *In re DISH Network Derivative Litig.*, No. A-13-68675-  
22 B (Clark Cty., Nev.), Special Litig. Cmte. of DISH Network Corp.'s Verified Mem. of Costs (filed  
23 Oct. 15, 2019) at 13-14 (including numerous descriptive entries for "hosting data," "host data,"  
24 "index data"); *id.* at App'x pp. 324-360 (invoices for electronic discovery expenses, including  
25 charges for "data hosting," "hosted data," etc.). The Defendant was awarded this full amount of  
26 \$151,783.32 and the Supreme Court of Nevada's ruling that Plaintiff relies upon approved this  
27 award in full as a "reasonable and necessary expense incurred as part of" responding to the  
28 plaintiff's "discovery requests." *DISH*, 133 Nev. at 451, 401 P.3d at 1093. Thus, *DISH* does not

1 reject recovery of costs associated with e-discovery hosting, as Plaintiff suggests; it expressly  
2 confirms that such costs are recoverable.

3 Plaintiff knows there is no reasonable dispute the e-discovery hosting charges are permitted  
4 under Nevada law. In fact, earlier in this same action, when the Assignors were still represented  
5 by class counsel, class counsel listed \$79,549.15 in “eDiscovery Database Hosting” among the  
6 costs they claimed were recoverable under Nevada law. See April 17, 2020 Declaration of David  
7 Knotts Ex. B.<sup>13</sup> This assertion, like the *DISH* ruling, is hardly surprising. In complicated matters  
8 such as this one, it is effectively impossible to work with the amount of data that plaintiffs’ firms  
9 often seek in discovery without hosting the materials on a document review platform. Indeed, the  
10 reason e-discovery costs are as high as they are in this case is because Plaintiff demanded  
11 reproduction of all of the prior discovery in this action (despite settlement of most of the claims)  
12 and then demanded substantial additional discovery, including tens of thousands of documents from  
13 an unrelated case that Plaintiff knew was irrelevant.<sup>14</sup> At every opportunity, Plaintiff sought to  
14 drive up e-discovery costs unnecessarily and now cannot complain credibly that e-discovery was  
15 expensive in this case.

16 The Non-Director Defendants made every effort to keep e-discovery costs as low as  
17 possible but, in light of Plaintiff’s broad stance on discovery, hosting a large amount of data was  
18 reasonable and absolutely necessary. Under *DISH*, there is no question that the Non-Director  
19 Defendants are entitled to these costs.

20 **E. The Non-Director Defendants May Recover Reasonable And Necessary Fees**  
21 **Paid To An Expert Witness Who Would Have Testified At Trial If Not For**  
22 **Plaintiff’s Failure To Present A Valid Claim**

23 Plaintiff relies on *Public Employees’ Retirement System v. Gitter*, 133 Nev. 126, 134, 393  
24 P.3d 673, 681 (2017) for the proposition that a non-testifying expert cannot recover more than  
25 \$1,500, but Plaintiff’s reliance on *Gitter* is wildly misplaced and evinces a total disregard for the  
26 applicable caselaw. The expert at issue in *Gitter* was a “nontestifying expert consultant” who was

27 <sup>13</sup> Fees and costs for the class proceedings were set at 25% of the class settlement amount, so the  
28 Court had no occasion to apportion individual categories of costs or fees specifically. Plaintiff’s  
former counsel nonetheless clearly understood that e-discovery hosting was a taxable cost.

<sup>14</sup> Plaintiff, notably, did not use any document from this unrelated case at trial.

1 “never disclosed, never filed a report and never testified.” *Id.* Plaintiff is well aware that is not  
2 what happened here. Defendants disclosed Dr. Montgomery as a testifying witness properly. He  
3 prepared multiple expert reports in this action and sat for deposition twice. Defendants disclosed  
4 him as a rebuttal expert witness at trial so that he could rebut testimony provided by Plaintiff’s  
5 damages expert. Defendants and Dr. Montgomery spent substantial time preparing for his  
6 anticipated testimony and the only reason he did not testify at trial is because Plaintiff failed to  
7 present any claim that had enough substance to warrant a response. It is Plaintiff’s fault that  
8 Dr. Montgomery did not testify, not Defendants’.

9 The circumstances here are directly analogous to those in *Logan v. Abe*, 131 Nev. 260, 350  
10 P.3d 1139 (2015), in which more than \$1,500 in costs was awarded for a non-testifying expert and  
11 those costs were affirmed by the Supreme Court of Nevada. In *Logan*, the defendants disclosed a  
12 rebuttal expert and notified the plaintiffs that they intended to call their rebuttal expert at trial.  
13 Ultimately, the defendants did not call this rebuttal expert because “the [plaintiffs] chose on the eve  
14 of trial (or during trial) to not call their expert” and “thus, the circumstances surrounding the  
15 [rebuttal] expert’s testimony, or in this case, the lack thereof, were of the [plaintiffs’] creation and  
16 were of such necessity as to require the larger fee.” *Id.* at 268, 1144 (quotations and citation  
17 omitted). That is precisely what happened here. Dr. Montgomery was a rebuttal expert whose  
18 testimony was rendered unnecessary mid-trial because of Plaintiff’s actions (specifically, its failure  
19 to present any valid claim).

20 This case was the first time any court in Nevada addressed an equity expropriation claim  
21 and so the calculation of damages was an issue of first impression. Plaintiff does not dispute, as  
22 mentioned in the Memorandum of Costs, that Plaintiff’s damages expert charged more on an hourly  
23 basis than Dr. Montgomery. *See* Non-Director Defs’ Mem. of Costs at 2 n.3.<sup>15</sup> It would have been  
24 malpractice not to retain a suitably qualified damages expert to rebut the testimony of Plaintiff’s  
25 damages expert because the Non-Director Defendants could not reliably count on Plaintiff being

26 <sup>15</sup> Plaintiff’s former counsel has affirmed that Plaintiff’s damages expert charged \$319,212.39 for  
27 the class proceedings alone, which is where he prepared the expert report that Plaintiff relied upon  
28 here. *See* April 17, 2020 Declaration of David Knotts Ex. B. Including additional costs for the opt-  
out proceedings, which included trial preparation and trial testimony, Plaintiff’s expert almost  
certainly cost more than Defendants’ expert in total. At minimum, their costs were comparable.

1 unable to present an affirmative case. The Non-Director Defendants reasonably, necessarily, and  
2 appropriately prepared for Dr. Montgomery’s testimony and recovery of the costs incurred in that  
3 process are permitted under NRS 18.005(5) and *Logan*. The fact that Plaintiff’s trial failures  
4 prevented Dr. Montgomery from having any need to go forward with his testimony does not change  
5 this analysis.<sup>16</sup>

6 **F. The Non-Director Defendants May Recover Reasonable And Necessary Trial**  
7 **Support Costs**

8 Plaintiff does not dispute in principle that Defendants may recover reasonable and necessary  
9 trial support costs, including equipment rental, trial graphics, and onsite support. Plaintiff simply  
10 disputes the amount that Defendants seek to recover for these costs. Motion at 12.

11 In an effort to portray these costs as “exorbitant,” Plaintiff misrepresents them. Contrary to  
12 Plaintiff’s representations, the Non-Director Defendants did not set up “five different ‘war’ rooms”  
13 and the supporting materials do not suggest otherwise. Mot. at 12.<sup>17</sup> The invoices attached to the  
14 Memorandum of Costs demonstrate that the Non-Director Defendants paid for a single war room.  
15 *See* Mem. of Costs Ex. 10-A Page 1-2. Aside from that, three members of the Non-Director  
16 Defendants legal team requested basic equipment (e.g., monitors and keyboards) for their hotel  
17 rooms, which is completely reasonable in normal circumstances and necessary when trial is  
18 conducted in the middle of a pandemic and social distancing must be observed where possible. *Id.*  
19 The final room was a rented room close to the courthouse that included only a single printer and  
20 was used for witness preparation during the trial. *Id.*

21 Regarding trial graphics and on-site support, Plaintiff also hired on-site graphics support to  
22 present exhibits and other materials on the screens in the courtroom, which precludes any argument

23 <sup>16</sup> In the class proceedings, Plaintiff’s former counsel retained two non-testifying experts: Guhan  
24 Subramanian and RGL, Inc. When preparing an itemized list of costs for the class settlement,  
25 former counsel listed fees far in excess of \$1,500 for both of them. *See* April 17, 2020 Declaration  
26 of David Knotts Ex. B (\$42,510.00 for Subramanian and \$11,942.00 for RGL, Inc.).

27 <sup>17</sup> Similarly, Plaintiff falsely accuses the Non-Director Defendants of “us[ing] limousines to travel  
28 to and from hearings.” Mot. at 12 n. 4. To be clear, the Non-Director Defendants never used  
limousines in this action and none of the extensive supporting materials attached to the  
Memorandum of Costs suggests otherwise. Plaintiff appears to base this accusation on the fact that  
Defendants arranged transportation with a vendor called “A1 Limousine,” but the invoices that the  
Non-Director Defendants provided specify clearly that “A1 Limousine” provided transportation  
with a standard sedan. *See* Ex. 5-A at 651-653.



1 that such practices were unreasonable or unnecessary. *See also Brochu v. Foote Enters., Inc.*, 128  
2 Nev. 884, at \*8, 381 P.3d 596 (2012) (“[t]he district court did not abuse its discretion in awarding  
3 costs for . . . audio and visual equipment” because “expenses for audio and visual equipment used  
4 during trial to present certain evidence can readily be deemed reasonable with little other  
5 explanation”). While normally taxable, in this case such services were not merely useful but  
6 necessary to comply with the Court’s COVID trial protocols that prohibited providing the Court or  
7 witnesses with paper copies of exhibits unless absolutely necessary.<sup>18</sup> Moreover, the Non-Director  
8 Defendants prepared visual aids to support Dr. Montgomery’s testimony—exactly as Plaintiff had  
9 done with its own expert witness—and in support of closing arguments. The Non-Director  
10 Defendants never had an opportunity to present these materials in court because judgment was  
11 granted under Rule 52(c), but Plaintiff’s failure to present a valid claim does not retroactively render  
12 it unreasonable for the Non-Director Defendants to have prepared these materials.

13 **G. The Non-Director Defendants May Recover Reasonable And Necessary *Pro***  
14 ***Hac Vice* Admission Fees**

15 Lastly, Plaintiff seeks to punish the Non-Director Defendants for retaining non-resident  
16 counsel by retaxing the costs for their *pro hac vice* admissions. NRS 18.005(17) allows the Non-  
17 Director Defendants to recover all reasonable and necessary costs. Here, this case presented  
18 multiple issues of first impression in Nevada, for which the parties and the Court benefitted from  
19 the expertise of foreign counsel who specialize in such issues. Plaintiff also retained foreign  
20 counsel. As such, the comparatively minor fees spent on *pro hac vice* admissions are well within  
21 the types of costs that are recoverable under NRS 18.005(17). Although the Nevada Supreme Court  
22 has yet to address this issue specifically, federal courts analyzing the federal cost statute have  
23 allowed recovery of such costs. *See, e.g., Craftsmen Limousine, Inc. v. Ford Motor Co.*, 579 F.3d  
24 894, 898 (8th Cir. 2009) (holding that district court did not abuse its discretion in awarding *pro hac*  
25 *vice* expenses); *United States ex rel. Gear v. Emergency Medical Associates of Illinois, Inc.*, 436  
26 F.3d 726, 730 (7th Cir. 2006) (affirming award of *pro hac vice* fees as costs).

27 <sup>18</sup> See June 3, 2021 Covid-19 Jury Trial Plan, available at  
28 [http://www.clarkcountycourts.us/res/EJDC%20 COVID-19%20Jury%20Trial%20Plan/EJDC%20COVID-19%20Jury%20Trial%20Plan\\_Public.pdf](http://www.clarkcountycourts.us/res/EJDC%20COVID-19%20Jury%20Trial%20Plan/EJDC%20COVID-19%20Jury%20Trial%20Plan_Public.pdf)

IV. CONCLUSION

The Non-Director Defendants seek reasonable and necessary costs falling under the scope of NRS 18.005 and NRS 18.020. Plaintiff presents no legitimate basis to retax any portion of those costs. Accordingly, Plaintiff's Motion should be denied.

Dated: October 21, 2021

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**CERTIFICATE OF SERVICE**

On the date below, as an employee of Snell & Wilmer L.L.P., I certify that I served a copy of the foregoing **NON-DIRECTOR DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO RETAX COSTS** via e-service through Odyssey to the email addresses listed below:

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4865-2199-2704