

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS  
LITIGATION.

PAMTP, LLC,

Appellant,

vs.

KENNETH F. POSTASHNER; VTB  
HOLDINGS, INC.; STRIPES GROUP,  
LLC; SG VTB HOLDINGS, LLC;  
JUERGEN STARK; AND KENNETH  
FOX,

Respondents.

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS  
LITIGATION.

KENNETH F. POSTASHNER; VTB  
HOLDINGS, INC.; STRIPES GROUP,  
LLC; SG VTB HOLDINGS, LLC;  
JUERGEN STARK; AND KENNETH  
FOX,

Appellants,

vs.

PAMTP, LLC,

Respondent.

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS  
LITIGATION.

Case No. 83598  
Electronically Filed  
Aug 14 2023 04:54 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 84971

Case No. 85358

PAMTP, LLC,

Appellant,

vs.

KENNETH F. POSTASHNER; VTB  
HOLDINGS, INC.; STRIPES GROUP,  
LLC; SG VTB HOLDINGS, LLC;  
JUERGEN STARK; AND KENNETH  
FOX,

Respondents.

APPEAL

From the Eighth Judicial District Court  
The Honorable Susan Johnson, District Judge

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RESPONDENT KENNETH POSTASHNER'S MOTION FOR  
SUBSTITUTION AND DISMISSAL OF PAMTP'S APPEAL IN  
CASE NO. 83598

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Putterman, Robert Kaplan, Andrew Wolfe, and James Honorø

## I. INTRODUCTION

Respondent Kenneth Potashner, pursuant to NRAP 43, hereby moves this Court for an Order substituting himself as the real party in interest with regard to PAMTP's appeal of the district court's findings of fact, conclusions of law, order granting Defendants' Rule 52(c) Motion, and Judgment thereon, pending before this Court as Case No. 83598. Additionally, Potashner further moves this Court for an Order dismissing PAMTP's appeal in Case No. 83598 pursuant to NRAP 42(b).

On August 9, 2023, Potashner purchased the rights to PAMTP's causes of action (in the underlying civil suit and affirmative appeal rights in the pending appeals) during a duly noticed sheriff's sale for the sum of \$40,500.00. See Certificate of Sheriff's Sale dated August 10, 2023, a copy of which is attached hereto as Exhibit B.<sup>2</sup> Accordingly, PAMTP no longer has the right to maintain its appeal. Potashner is the real party in interest and now exercises his right to voluntarily dismiss with prejudice PAMTP's appeal.

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<sup>1</sup> As discussed below, the Motion seeks dismissal of PAMTP's appeal in Case No. 83598, but not either of the other appeals consolidated therewith.

<sup>2</sup> The Exhibits to this Motion are authenticated in the Declaration of Robert J. Cassity, Esq., attached as Exhibit A.

## II. PROCEDURAL HISTORY

### A. The District Court Costs Judgment Against PAMTP

PAMTP filed a lawsuit asserting claims for equity expropriation and aiding and abetting equity expropriation against Defendants in the Eighth Judicial District Court, Case No. A-20-815308-B, which was consolidated with Case No. A-13-686890-B. During the bench trial of this matter, the district court granted a motion for directed verdict for the Defendants pursuant to NRCP 52(c). Following the close of PAMTP's case-in-chief, a copy of the Order Granting Defendants' Rule 52(c) Motion and Judgment thereon is attached as Exhibit C. Thereafter, following the filing of memoranda of costs and briefing on PAMTP's motion to retax, the district court ultimately entered a Second Amended Judgment awarding costs against PAMTP as follows: (1) to Potashner in the amount of \$395,147.15 plus \$86,694.93 in judgment interest, and (2) to the remaining Defendants in the amount of \$774,836.71 plus \$134,195.05 in pre-judgment interest. See 2d Am. Judgment, attached as Exhibit D.

### B. Potashner Executes on and Purchases at a Sheriff's Sale PAMTP's Choses in Action, Including the Claims Asserted in This Lawsuit and Appeal Rights.

Although PAMTP initially moved the district court for approval of



a supersedeas bond in late 2022, never renewed its motion following entry of the Second Amended Judgment and it never posted any bond. Accordingly, Potashner commenced judgment enforcement activities. The district court issued a Writ of Execution on May 9, 2023, through which Potashner sought to execute against all of PAMTP's choses in action, claims, and appeals in Nevada, including PAMTP's interests in this lawsuit and appellate rights (but not defensive appellate rights) in this appeal. A true and correct copy of the Writ of Execution is attached as Exhibit E. Specifically, through the Writ of Execution, Potashner sought execution against the following property of PAMTP:

All claims for relief, causes of action, things in action, and choses in action against anyone in any lawsuit pending in Nevada, including, but not limited to, Eighth Judicial District Court Case No. A-20-815308-B, which was consolidated with Case No. A-13-686890-B as well as any and all appellate rights (but not defensive appellate rights) of Appellant PAMTP, LLC in the appeal of actions filed in the Supreme Court of the State of Nevada, including Case Number 83598, 84971, and 85358.

Id. (emphasis added).

PAMTP was served with the Writ of Execution and Notice of Execution on May 11, 2023. A copy of the Sheriff's Affidavit of Service is attached as Exhibit F. PAMTP filed no claim of exemption within the

ten-day statutory period following the May 11, 2023 service. Thereafter, a Notice of Sheriff's Sale was executed by the Sheriff and served on or about June 1, 2023. A copy of the Notice of Sheriff's Sale is attached as Exhibit G. Potashner complied with the statutory publication and posting requirements for the Notice of Sale. See Affidavit of Publication, a copy of which is attached as Exhibit H, and Affidavit of Posting, a copy of which is attached as Exhibit I.<sup>3</sup>

The Sheriff's Sale proceeded on August 9, 2023. Through a competitive bid process, involving numerous bids between two primary bidders (including a bidder claiming no affiliation with any of the parties) over the course of approximately ten minutes, Potashner was ultimately the successful bidder with a credit bid of \$40,500.00. As noted above, a copy of the Certificate of Sheriff's Sale is attached as Exhibit B.

Having acquired PAMTP's causes of action and affirmative appellate rights in this matter, Potashner now seeks substitution in the

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<sup>3</sup> On August 7, 2023, just two days before the sheriff's sale on August 9, 2023, PAMTP filed an untimely (and fully meritless) purported Claim of Exemption. However, because the filing was more than two months past the 10-day deadline following the May 11, 2023 service of the Notice of Execution, the sheriff's office proceeded with the sheriff's sale as scheduled.

place of PAMTP and dismissal with prejudice of the appeal.

### III. LEGAL ANALYSIS

#### A. PAMTP's Claims and Affirmative Appellate Rights Were Subject to Execution.

Statutes permitting execution against specified kinds of property must be liberally construed for the benefit of creditors. *Reynolds v. Tufenkjian*, 136 Nev. 145, 147, 461 P.3d 147, 150 (2020) (citing *Sportsco Enters. v. Morris*, 112 Nev. 625, 630 (1996)). NRS 21.080 sets forth the kinds of property subject to execution: [a]ll goods, chattels, money[,] and other property, real and personal, of the judgment debtor. Personal property is specifically defined to include things in action and evidences of debt. See NRS 10.045. A thing in action (sometimes referred to as a chose in action) is a party's legal right to bring an action to recover a debt, money, or thing. *Gallegos v. Malco Enters. of Nevada, Inc.* 127 Nev. 579, 582, 255 P.3d 1287, 1289 (2011).

Indeed, this Court has repeatedly recognized that a judgment creditor may execute on the choses in action of a judgment debtor. at 582, 255 P.3d at 1289 (rights of action held by a judgment debtor are personal property subject to execution in satisfaction of a judgment); *First 100, LLC v. Ragan*, 132 Nev. 968, 382 P.3d 499 (2016) (unpublished)

( We have confirmed that judgment creditors may acquire the rights to prosecute litigation in the place and stead of the judgment debtor. ); NRS 21.080; NRS 10.045.

For a thing in action to be subject to execution, it must be a claim that the judgment debtor has the power to assign Reynolds, 136 Nev. at 150, 461 P.3d at 150. A determination of whether a cause of action is assignable should be based upon an analysis of the nature of the claim to be assigned and on an examination of the public policy considerations that would be implicated if assignment were permitted. at 151-52, 461 P.3d at 153 (quoting 6A C.S.J. Assignments § 42 (2016)).

While tort claims involving personal injuries are not assignable, Waterton Glob. Mining Co., LLC v. Cummins Rocky Mountain, LLC , 3:14-cv-0405-RCJ-VPC, 2015 WL 14485, at \*2 (D. Nev. Feb. 19, 2015) (citations omitted) (emphasis added), when, as here, a tort claim alleges purely pecuniary loss. . . the claim may be assigned because it does not concern non-economic losses such as physical pain and mental anguish. Capitol Specialty Ins. Corp. v. Stedfast Ins. Co. 2:20-cv-1382-JCM-VCF, 2022 WL 16902545, at \*3 (D. Nev. Mar. 31, 2022) (quoting Reynolds, 136 Nev. at 153, 461 P.3d at 154). Regarding

claims in Nevada [which] only arise out of pecuniary loss, it is clear that the nature of such a claim is not to recover for a personal injury, but instead is more akin to a claim seeking recovery for a loss of property. Claims alleging damages to property, rather than personal damages, are generally assignable. Reynolds, 136 Nev. at 152, 451 P.3d at 153 (citations omitted).

In this case, PAMTP's claims against Defendants arise from an alleged breach of fiduciary duty for equity expropriation seeking pecuniary compensation for the value of Parametric equity that was allegedly expropriated by a controller from Parametric's non-controlling shareholders. As a claim arising out of pecuniary loss, PAMTP's claim was clearly assignable, as was its aiding and abetting claim.

Indeed, PAMTP's own purported standing to pursue its claim against the Defendants was predicated on the assignability of the underlying claims from the individual assignors (purported shareholders of Parametric) to PAMTP (a shell LLC the assignors created for the sole purpose of pursuing the claims). See Assignments, collectively attached as Exhibit J. Accordingly, to the extent PAMTP holds any causes of action against the Defendants, PAMTP is stopped from disputing that the

claims are assignable<sup>4</sup>. Therefore, PAMTP's equity expropriation claims were properly the subject of the sheriff's execution sale.

B. The Court Should Dismiss PAMTP's Appeal of the District Court's Dismissal of its Equity Expropriation Claim.

PAMTP's appeal should be dismissed for two reasons. First, because Potashner acquired PAMTP's interests in the underlying civil action and the subject appeal, PAMTP has lost standing to pursue or maintain those appeals. See, e.g., *Manko Holdings Ltd. v. Reno Project Mgmt., LLC*, No. 70525, 132 Nev. 1003 (Sept. 27, 2016) (unpublished disposition) (citing *Butwinick*, 128 Nev. 718, 721 2291 P.3d 119, 122). Second, because Potashner was the party who purchased PAMTP's interests, Potashner for all intents and purposes, holds PAMTP's position in regard to this appeal, and desires to exercise those rights voluntarily to dismiss the appeal with prejudice. See, e.g., *First 100, LLC*, 132 Nev.

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<sup>4</sup> As discussed in Defendants' appeals, Defendants maintain that PAMTP still lacked standing because even if the assignors had standing at the time of the merger, they subsequently disposed of their Parametric shares without any reservation of rights to pursue claims, and therefore lost standing to pursue any equity expropriation or aiding and abetting claim against Defendants related to those shares. See, e.g., Respondents Combined Answering Brief in Docket No. 83598, Answering Brief in Docket No. 85358, and Opening Brief in Docket No. 84971 (filed Mar. 23, 2023), at 60-64.

at 968, 382 P.3d at 499 (granting motion to dismiss appeal after the appellant's rights were acquired at auction). Reynolds, 136 Nev. at 153, 461 P.3d at 154 (Having further concluded that appellants[ ] claims for negligent misrepresentation and breach of contract are assignable and subject to execution, we grant respondents motion to substitute themselves for appellants as to those claims and to voluntarily dismiss this appeal as to those claims. ) Similarly here, because PAMTP's claim (to the extent it has any claim) would be assignable and was acquired by Potashner through the Certificate of Sheriff's Sale, Potashner as the real party in interest respectfully requests that the Court substitute him in the place of PAMP and dismiss with prejudice the appeal in Case No. 83598.

C. Defendants Cross-Appeal of the District Court's Denial of Their Motion for Attorneys Fees and PAMTP's Appeal of the District Court's Award of Costs to Defendants Remain at Issue.

Neither this Motion nor Potashner's purchase of PAMTP's affirmative appeal rights affects or requires the dismissal of Defendants appeal of the lower court's ruling denying Defendants attorneys fees based upon their offers of judgment. Further, PAMTP's legal defenses to Defendants affirmative arguments related to the lower court's ruling

regarding costs are not a thing in ~~tion~~ subject to execution and, thus, remain PAMTP's defensive appellate rights. See Butwinick, 128 Nev. at 723, 291 P.3d at 122 (citing NRS 280; NRS 10.045). Defendants' claims of error remain contested and at issue. That appeal has been fully briefed and, pending any oral argument, is ready for disposition by this Court.

Similarly, PAMTP's appeal concerning Defendants' award of costs is a defensive appellate right not subject to execution.

#### IV. CONCLUSION

For all of the foregoing reasons, the Court should substitute Potashner as the real party in interest in the place of PAMTP and dismiss with prejudice the appeal in Case No. 83598.

DATED: August 14, 2023

HOLLAND & HART LLP

/s/ Robert J. Cassity

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

John P. Stigi III, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, California 90067

Attorneys for Defendant Kenneth  
Potashner



CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) ~~yes~~, and I am not a party to, nor interested in, this action. On August 14, 2023, I caused to ~~be~~ served a true and correct copy of the foregoing RESPONDENT KENN (TH POTASHNER S MOTION FOR SUBSTITUTION AND DISMISSAL OF PAMTP S APPEAL IN CASE NO. 83598 upon the following by the method indicated:

BY E-MAIL: by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court s Service List for the above-referenced case.

BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the Court s Service List for the above-referenced case.

BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Valerie Larsen  
\_\_\_\_\_  
An Employee of Holland & Hart L.L.P.

# EXHIBIT A

# EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS  
LITIGATION.

Case No. 83598

PAMTP, LLC,

Appellant,

vs.

KENNETH F. POSTASHNER; VTB  
HOLDINGS, INC.; STRIPES GROUP,  
LLC; SG VTB HOLDINGS, LLC;  
JUERGEN STARK; AND KENNETH  
FOX,

Respondents.

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS  
LITIGATION.

Case No. 84971

KENNETH F. POSTASHNER; VTB  
HOLDINGS, INC.; STRIPES GROUP,  
LLC; SG VTB HOLDINGS, LLC;  
JUERGEN STARK; AND KENNETH  
FOX,

Appellants,

vs.

PAMTP, LLC,

Respondent.

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS  
LITIGATION.

Case No. 85358

PAMTP, LLC,

Appellant,

vs.

KENNETH F. POSTASHNER; VTB  
HOLDINGS, INC.; STRIPES GROUP,  
LLC; SG VTB HOLDINGS, LLC;  
JUERGEN STARK; AND KENNETH  
FOX,

Respondents.

APPEAL

From the Eighth Judicial District Court  
The Honorable Susan Johnson, District Judge

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DECLARATION OF ROBERT J. CASSITY, ESQ. IN SUPPORT  
OF RESPONDENT KENNETH F. POSTASHNER'S MOTION FOR  
SUBSTITUTION AND DISMISSAL OF PAMTP'S APPEAL IN  
CASE NO. 83598

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Attorneys for Defendants Kenneth F. Postashner, Elwood Norris, Seth  
Putterman, Robert Kaplan, Andrew Wolfe, and James Honorö

I, Robert J. Cassity, Esq., declare as follows:

1. I am over 18 years of age and am competent to testify to the matters set forth herein.

2. I am an attorney at Holland & Hart LLP, counsel of record for Defendant/Respondent Kenneth Potashner.

3. I am making this Declaration in support of Respondent Kenneth Potashner's Motion for Substitution and for Dismissal of PAMTP's Appeal in Case No. 83598 (the "Motion").

4. On August 9, 2023, Potashner purchased the rights to PAMTP's causes of action (in the underlying civil suit and affirmative appeal rights in the pending appeals) during a duly noticed sheriff's sale for the sum of \$40,500.00. A copy of the August 10, 2023 Sheriff's Certificate of Sale, filed in the district court on August 14, 2023, is attached to the Motion as Exhibit B.

5. During the bench trial of this matter, the district court granted a motion for directed verdict for the Defendants pursuant to NRCP 52(c) following the close of PAMTP's case-in-chief. A copy of the Order Granting Defendants' Rule 52(c) Motion and Judgment thereon

filed in the district court on September 3, 2021 is attached to the Motion as Exhibit C.

6. Thereafter, following the filing of memoranda of costs and briefing on PAMTP's motion to retax, the district court ultimately entered a Second Amended Judgment awarding costs against PAMTP as follows: (1) to Potashner in the amount of \$395,147.15 plus \$86,694.93 in prejudgment interest, and (2) to the remaining Defendants in the amount of \$774,836.71, plus \$134,195.05 in prejudgment interest. A copy of the Second Amended Judgment, filed in the district court on December 18, 2022, is attached to the Motion as Exhibit D.

7. Although PAMTP initially moved the district court for approval of a supersedeas bond in late 2022, it never renewed its motion following entry of the Second Amended Judgment, and it never posted any bond.

8. The district court issued a Writ of Execution on May 9, 2023. A true and correct copy of the Writ of Execution, filed May 9, 2023, is attached as Exhibit E.

9. A copy of the Sheriff's Affidavit of Service, reflecting service on PAMTP of the Writ of Execution and Notice of Execution on May 11, 2023, is attached as Exhibit F.

10. PAMTP filed no claim of exemption within the ten-day statutory period following the May 11, 2023 service.

11. A Notice of Sheriff's Sale was executed by the Sheriff and served on or about June 1, 2023. A copy of the Notice of Sheriff's Sale dated June 1, 2023 is attached as Exhibit G.

12. The Notice of Sale was published and posted in accordance with the requirements of NRS 21.130. A copy of the Affidavit of Publication is attached to the Motion as Exhibit H.

13. A copy of the Affidavit of Posting is attached to the Motion as Exhibit I.

14. The Sheriff's Sale proceeded on August 9, 2023. Through a competitive bid process, involving numerous bids between two primary bidders (including a bidder claiming no affiliation with any of the parties) over the course of approximately ten minutes, Potashner was ultimately the successful bidder with a credit bid of \$40,500.00. As noted above, a

copy of the Sheriff's Certificate of Sale, filed in the district court on August 14, 2023, is attached to the Motion as Exhibit B.

15. PAMTP's purported standing to pursue its claim against the Defendants was predicated on the assignability of the underlying claims from the individual assignors (purported shareholders of Parametric) to PAMTP (a shell LLC the assignors created for the sole purpose of pursuing the claims). Copies of the Assignments from the assignors to PAMTP are collectively attached to the Motion as Exhibit J.

Executed this 14th day of August 2023 at Clark County, Nevada.

/s/ Robert J. Cassity

Robert J. Cassity, Esq.



**EXHIBIT B**

**EXHIBIT B**



Summary Judgment as **Exhibit H**.

13. The Notice of Foreclosure Sale contained all information required pursuant to NRS 116.311635, including, but not limited to, the time and place of the sale of the Property. *Id.*

14. In addition, the Notice of Foreclosure Sale was published and posted as required by Nevada law. *See* NRS 116.311635 and NRS 21.130(1)(c)(2) and (3); *see also* Affidavit of Publishing and Posting attached to the Association’s Motion for Summary Judgment as **Exhibit I**.

15. On March 7, 2014, after complying with all requirements under Nevada law, the Property was sold at public auction to 322 Evan Picone Trust, for the sum of \$26,000.00 as evidenced by a Foreclosure Deed. *See* Foreclosure Deed attached to the Association’s Motion for Summary Judgment as **Exhibit J**.

Finally, after no payment had been received, the Association conducted a foreclosure sale on or about March 7, 2014 pursuant to NRS Chapter 116, 322 Evan Picone Trust being the highest bidder. *Id.* 6:1-3.

### III. ARGUMENTS

#### A. Whether the Bank Tendered an Amount to Protect its Deed of Trust is Irrelevant to any Claim Pending Against the Association.

The Bank argues that it is entitled to summary judgment because it redeemed the first deed of trust’s priority. *See* Motion at 7-10. There are multiple problems with the Banks tender based arguments. First, the Bank’s arguments regarding its tender in this case are at complete odds with its actions in pursuing damage-based claims against the Association in this case.<sup>1</sup> Based on its Complaint, the Bank is pursuing damage claims against the Association because the Association allegedly “rejected” the Bank’s “tender” attempt. However, the Bank argues in its Motion that the rejection of its tender does not invalidate the tender. *Id.* The Bank cannot argue in its Motion that it is irrelevant whether the Association rejected its tender attempt while simultaneously maintaining claims against the Association alleging that the Bank was damaged

<sup>1</sup> The Bank currently maintains claims against the Association for declaratory relief, unjust enrichment, tortious interference and wrongful foreclosure.



1 statute, from the notices provided (*See* NRS 116.3112) to the way the funds are to be dispersed  
2 (*see* NRS 116.31164(3)(c)). As such, it is the “statutory principles of priority, **not the monetary**  
3 **value of the respective liens**, control.” *7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*,  
4 979 F.Supp.2d 1142, 1151 (D.Nev.2013).

5 Here, after the Association’s conducting the foreclosure pursuant to the provisions of  
6 NRS 116, Plaintiff obtained the Property via a Foreclosure Deed. NRS 116.31164(2). As a  
7 matter of law, the Association never determines the price it sets at a foreclosure sale. The  
8 opening bid is always the amount of the Association’s lien and cannot be higher or lower than  
9 what is owed to the Association. *See* NRS 116.31164(2). Because issues related to notice and  
10 sales price are strictly controlled by statute, it is impossible for a Court to deem a homeowners’  
11 association’s foreclosure sale commercially unreasonable.

12 Third, the Bank incorrectly relies upon *Shadow Wood Homeowners Association, Inc. v.*  
13 *New York Community Bancorp, Inc.*, 366 P.3d 1105, 1112-1114 (Nev. 2016) to support its  
14 arguments regarding commercial reasonability. The Bank’s reliance upon this case is grossly  
15 misplaced for the simple reasons that contrary to the Bank’s arguments, *Shadow Wood did not*  
16 adopt Restatement (Third) of Property: Mortgages § 8.3 cmt. b, for the proposition that this  
17 Court should invalidate the sale because the price paid was less than 20 percent of some “fair  
18 market value.” Although mentioning the Restatement in *dicta*, the court reaffirmed long-  
19 established Nevada law that an allegation of inadequate sales price alone, no matter how low, is  
20 insufficient to set aside a foreclosure sale; “there must also be a showing of fraud, unfairness, or  
21 oppression” that caused the price. *Shadow Wood*, 2016 WL 347979 at \*4 (citing *Long v. Towne*,  
22 639 P.2d 528, 530 (Nev. 1982) and *Golden v. Tomiyasu*, 387 P.2d 989, 997 (Nev. 1963)  
23 (adopting the California rule that “inadequacy of price, **however gross**, is not in itself a  
24 sufficient ground for setting aside a trustee’s sale legally made; there must be in addition proof of  
25 some element of fraud, unfairness or oppression as accounts for and **brings about the**  
26 **inadequacy of price**” (internal citations omitted)) (emphasis added).

27 Nevada law is clear that the “[m]ere inadequacy of price is not sufficient to justify setting  
28 aside a foreclosure sale, absent a showing of fraud, unfairness or oppression.” *Long v. Towne*,

**EXHIBIT C**

**EXHIBIT C**



FFCL

DISTRICT COURT  
CLARK COUNTY, NEVADA

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION.

LEAD CASE NO.: A13-686890B  
DEPT. NO.: XI

This Document Related To:

PAMTP LLC v. KENNETH  
POTASHNER, et. al.

25'(5 \* 5 \$ 17, 1 \* '())(1' \$ 176 ¶  
MOTION FOR JUDGMENT PURSUANT  
TO NRCP 52(c) FINDINGS OF FACT  
AND CONCLUSIONS OF LAW, AND  
JUDGMENT THEREON

This matter came on regularly for a non-jury trial beginning on August 16, 2021, and continuing through August 25, 2021. Plaintiff PAMTP, LLC appeared by and through their counsel of record George F. Ogilvie III of McDonald Carano LLP and Adam M. Apton of Levi & Korsinsky, LLP. Defendant Kenneth F. Potashner appeared by and through counsel of record J. Stephen Peek and Robert J. Cassity of Holland & Hart LLP and John P. Stigi. Alejandro E. Moreno of Sheppard, Mullin, Richter & Hampton LLP Defendant VTB + R O G L Q J V , Q E and Specialty-Appearing Defendants Stripes Group, LLC, SG VTB Holdings, LLC, Juergen Stark and Kenneth F. F R O O H F W L Y-HLOU H W K R I U<sup>3</sup> 1 R I O H Q G D appeared by and through their counsel Richard C. Gordon of Snell & Wilmer, LLP and Joshua D.N. Hess, David A. Kotler, Brian Raphael, and Ryan Moore of Dechert LLP.

\$ I W H U W K H F R Q F O c a s e n o f , R e f e r e n c e s t o t h e M o t i o n f o r J u d g m e n t p u r s u a n t t o NRCP Rule 52(c). The Court having considered the evidence presented at trial, along with oral and written arguments of counsel on such motion, and, with the intent of rendering a decision on all remaining claims<sup>2</sup> before the Court at this time, the Court GRANTS D H I H Q G D Q W V ¶ P

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

<sup>2</sup> The Nevada Supreme Court in *Parametric v. Eighth Judicial District Court*, 133 Nev. 417 (2017) 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 fraud was necessary to prove this type of claim.

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

### FINDINGS OF FACT

#### I. Class and Derivative Litigation

1. The underlying class action and shareholder derivative action was commenced on August 8, 2013.<sup>3</sup> The case arose out of the merger between Parametric Sound Corporation

33 DUDPHWULF' DQG 97% + ZKLFK FORVHG RQ -DQXDU\

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

3. OQ 0D\ WKH &RXUW JUDQWHG 3ODLQWLII Kenneth Potashner, Juergen Stark, and VTB Holdings, Inc. setting an evidentiary hearing on June 18, 2021 to determine sanctions, if any.

4. Following the June 18, 2021 evidentiary hearing, the Court imposed sanctions in the form of adverse inferences KTH &RXUW KHOG WKDW 3 destroyed V K Q H text messages text messages and emails relevant to this litigation, the Court makes an adverse inference that the lost text messages and emails relevant to this litigation would have shown that Potashner acted in bad faith when supporting and approving the merger. Potashner may testify and contest this at trial, but his testimony will go to his credibility only because an adverse inference of bad faith has already been made by the Court; and; (2) Stark and Fox having negligently failed to preserve text messages, the Court makes an adverse inference that

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<sup>3</sup> The claims against Defendants were largely resolved through a Rule 23.1 settlement. On January 17, 2020, the Court granted preliminary approval of the settlement. On May 18, 2020, the Court ordered that the class DFWLRQ DQG GHULYDWLYH VHWWOHPHQW ZDV 3 ILQDOO\ DSSURYHG RI WKH &ODVV\ UHOJDWH, pursuant to the terms of the Stipulation of Settlement filed on November 15, 2019. These Plaintiffs opted out of the class settlement.



1 WKH OR VW LQIRUPDWLRQ ZRXOG KDYH EHHQ DGYHUVH W  
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  
10 6. Plaintiff was not a holder of Parametric common stock on January 15, 2014.

11 7. The members of Plaintiff are IceRose Capital Management LLC, Robert  
12 Masterson, Richard Santulli, Marcia Patricof (as trustee of Patricof Family LP, Marcia Patricof  
13 Revocable Living Trust, and the Jules Patricof Revocable Living Trust), Alan and Anne  
14 Goldberg, Barry Weisbord, and Ronald and Muriel Etkin. D F K D Q 3 \$ V V L J Q R U ' F R  
15 3 \$ V V L J Q R U V '

16  
17 8. On April 22, 2020, Plaintiff, on behalf of the following individuals and/or  
18 entities, opted out of the class action settlement: IceRose Capital Management, LLC; Robert  
19 Masterson; Marcia Patricof, on behalf of the Patricof Family LP, Marcia Patricof Revocable  
20 Living Trust, and the Jules Patricof Revocable Living Trust; Alan and Anne Goldberg; Barry  
21 : H L V E R U G 5 R Q D O G D Q G 0 X U L H O ( W N L Q D Q G 5 L F K D U G 6  
22 with opting out of the class action settlement, the Assignors assigned their interests  
23 litigation to Plaintiff.

24  
25 9. PAMTP is managed by its Members. Assignors Adam Kahn (of IceRose Capital  
26 Management, LLC) and Robert Masterson were the Member Managers responsible for day-  
27 day decisions concerning the management of the litigation. Assignor Barry Weisbord is the  
28 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 L Q V X I I L F L H Q W H Y L G H Q F H W R D O O R Z W K H & R X U W W R G H V  
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 Claim in April 2020<sup>3</sup> D V [ring] Q  
11 transfer[ring], and set[ing] R Y H U X Q W R 3 \$ 0 7 3 // & D O O R I W K H \$ V V  
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 R P L V V L R Q V D O O H J H G L Q > W K L V O L W L J D W L R Q @ ' .

16 12. The Assignors notified the Court that they had opted-out of the Dykster  
17 dated April 22, 2020. The Assignors advised the Court that they K D G <sup>3</sup> D V V L J Q H G W K H L  
18 claims arising from the ownership of Parametric common stock to an entity created for the  
19 purposes of opting out of the.. O L W L J D W L R Q D Q G S X U V X L Q J F O D L P V L  
20 <sup>3</sup> > D @ F F R U G L Q J O \ W K D W H Q W L W e l f f r o m t h e C l a s s & t h e P a r a m e t r i c F O X  
21 6 H W W O H P H Q W ' .

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

ownership of Parametric common stock, including the claims asserted by plaintiff in this action.

15. 2Q -XQH WKH &RXUW FRQVROLGDWHG 3OD class action under the caption above. See 2 UGHU \*UDQWLQJ 'HIHQGDQWV ¶ 0F dated June 23, 2020.

B. Pre-Merger Parametric

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

17. Parametric was a start-up technology company focused on delivering novel DXGLR VROXWLRQV WKURXJK LWV +\SHU6RXQGÆ RU <sup>3+66</sup> the practical application of parametric acoustic technology for generating audible sound along a directional ultrasonic column. The creation of sound using Parametric WHFKQRORJ\ FUL unique sound image distinct from traditional audio systems. In addition to its commercial digital signage and kiosk product business, Parametric was targeting its technology for new uses in consumer markets, including computers, video gaming, television home audio along with other commercial markets including casino gaming and cinema. Parametric was also focusing development on health applications for persons with hearing loss.

C. Directors and Senior Officer of Pre-Merger Parametric

18. In August 2013 3DUDPHWULF ¶ V %RDUGORRistedLdshKFWRU V individuals: Potashner, Norris, Kaplan, Putterman, Wolfe and non-party James Honoré.

(1) Potashner

19. Potashner was appointed a director in December 2011 and Executive Chairman (equivalent to chief executive officer) March 2012. 3RWDVKQH UHFHLYHG KLV LQ HOHFWULFD O HQJLQHULQJ DW /DID\HWWH &ROOHJH engineering from Southern Methodist University in 1981.

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

(2) Norris

21. Norris was a member of the Board since the incorporation of the company on June 2, 2010 and cofounded the company with James Barnes as its chief financial officer. Norris was a member of the National Science Foundation and owner of more than 50 U.S. patents, primarily in the fields of electrical and acoustical engineering, and is a frequent speaker on innovation to corporations and government organizations. Norris is the inventor of proprietary technology.

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

(3) Putterman

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

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

(4) Kaplan

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

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

(5) Wolfe

27. Wolfe was appointed a director in February 2012.

(6) Honoré

29. Honoré was appointed a director in March 2012.

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

D. Non-Director Defendants

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" or "Turtle Beach  
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 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, a wholly owned subsidiary of SG VTB,  
10 // & 36 \* 97. % TBH 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. ) R [ L V 6 W U L S H V \* U R X S ¶ V V T B H K o a b h d i r e c t o r s a f t e r t h e R Q V  
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 7 X U W O H % H D F K ¶ t h e g e n e r a l m a n a g i n g o f f i c e r o f t h e c o m p a n y a s i t s C E O t o d a y . S t a r k a l s o s i t s  
22 on 7 X U W O H c o u n c i l o f d i r e c t o r s , a n d a s o f J a n u a r y 1 , 2 0 2 0 , b e c a m e C h a i r m a n o f  
23 the Board.

### 24 III. Merger Negotiations and the Parametric Board ¶ Process

25 37. \$ V S D U W R I 3 D U D P H W U L F ¶ V R Q J R L Q J V W U D W H J L  
26 D Q G 3 D U D P H W U L F ¶ V H [ H F X W L Y H R I I L F H U V U H J X O D U O \ U H  
27 d L U H F W L R Q D Q G D O W H U Q D W L Y H V L Q O L J K W R I W K H S H U I  
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 strategi  
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 meetings with  
8 financial and legal advisers regarding possible strategic transactions. During these meetings,  
9 WKH 'LUHFWRUV HQJDJHG LQ UREXVW GLVF XVVL RQV DPR  
10 regarding the risks and benefits of a strategic transaction with Turtle Beach and available  
11 alternative strategies and transactions.  
12

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

14           42. The Court previously adopted an adverse inference against Potashner that he  
15 3DFWHG LQ EDG IDLWK ZKHQ VXSSBWHQV of Doc. 355, DSSURY L  
16 Conclusions of Law, and Order Imposing Spoliation Sanctions dated July 15, 2021. The  
17 evidence at trial supported this conclusion.<sup>4</sup>  
18

19           43. Among the terms being negotiated was an agreement to grant to Turtle Beach an  
20 exclusive license to HyperSound technology in both the console gaming and PC audio fields in  
21 the event Parametric were to terminate any merger agreement before closing. Parametric  
22 RI IHUHG WKS VHEU LFN QVH DJUHHP HQW more attractive to W R P  
23 Turtle Beach and Stripes, which had not yet agreed to move forward with the deal. The Board  
24 informed itself of the fiduciary implications of this RWHQW-LXSOI FHEU G DFNH QVH DJU  
25 by consulting with counsel.  
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. 3 D U D P H W U L F H V W D E O L V K H G + \ S H U 6 0 W X G + H D O W  
4 subsidiary of Parametric, in October 2012 to facilitate Food and Drug Administration approval  
5 for certain medical applications of HyperSound technology (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 W K H V H I R X U L Q G L Y L G X D O V 7 X U W O H % H D F K L Q I R U P H G  
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 enrich 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 D Q F H O O D W L R Q R I 3 R W D  
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 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 D O O X P & D S L W D O \*-U D X S X / P & W R U S  
28 to provide an opinion regarding the fairness of the proposed merger. Craig D O O X P ¶ V F R P S H Q V

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

51. On August 2, 2013, a joint meeting of the Parametric Board and compensation committee was held, with the financial and legal advisors of the Parametric Board. At the meeting, representatives of Craig-Hallum reviewed and discussed with the Parametric Board the terms of the merger agreement with Turtle Beach (including, but not limited to, the terms of the merger agreement with reference to a proposed fairness opinion at the request of the Parametric Board, Craig-Hallum rendered its oral opinion to the effect that, as of August 2, 2013, subject to certain conditions, the merger agreement was fair, from a financial point of view, to Parametric.

52. 7KH 3HU 6KDUH ([FKDQJH 5DWLR -ZDWHU GHWHUPLQ

negotiations between Parametric and Turtle Beach.

53. Craig + DOOXP XWLOLJHG 3DUDPHWULF ¶V LQWHUQD ended September 30, 2013 through September 30, 2017, prepared by and furnished to Craig-Hallum by the management of Parametric. Information regarding the net cash, number of fully-diluted shares of common stock outstanding and net operating losses for Parametric was provided by management. Craig + DOOXP XWLOLJHG 7XUWOH %HDFK ¶V L for fiscal years ended December 31, 2013 through December 31, 2016 prepared by and furnished to Craig-Hallum by the management of Turtle Beach. Information regarding the net debt, number of fully-diluted shares of common stock outstanding and net operating losses for Turtle Beach was provided by management.

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

55. In evaluating the merger agreement and the transactions contemplated, the Board



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. (DFK RI 3DUDPHWULF ¶V GLUHFWRUV GHWHUPLQH  
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 ZHUH QRW JXLGHG E\ OHW DORQH FRQWUROOHG EV 3RV

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 and/or investment control (such  
12 VWRFNKROGHUV DQG HQWLWLHV FROOHFWLYHO\ UHIHUU  
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 call with its shareholders.  
21 SURFHVV WR HOLFLW SRWHQWLDO <sup>3</sup>WRSSLQJ ELGV <sup>4</sup>\$V  
22 FRQWDFWHG GLIIHUHQW SDUWLHV 1RQH H[SUHVVHG

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 <sup>3</sup>ZH FDQW JXDUDQWHH WKDW ZLOO RFFXU

1           <sup>3</sup> LW TV YHU\ LPSRUWDQW WKDW \RX XQGHUVWDQG WK  
2           ;ER[ DQG 3OD\6WDWLRQ KDYH DQQRXQFHG ODXQFKH  
3           this year. As a result, the entire gaming sector is going through what we believe to be a  
4           QRUPDO F\FOH RI FRQWUDFWLRQ SULRU WR WKHVVH

5           <sup>3</sup> RXU EXVLQHVV UHVXOWV LQ SDUWLFXODU ZLOO EH  
6           purchasing behavior for more expensive accessories like headset plays out, heading into  
7           the transition. Two; when the new console launches will happen and three; what  
8           quantity of new consoles will be available [and] sold during the weeks between the  
9           ODXQFK DQG WKH \HDU HQG

10           <sup>3</sup> UHO\ DPRQJ RWKHU WKLQJV RQ XFWHNDXW ZLGHV  
11           sufficient selling weeks to impact this year as well as availability of some specific  
12           components from Microsoft required for sale of our licensed Xbox One headsets, this  
13           holiday. These specific items by the way are outside of our BoOtr

14           <sup>3</sup> WKHVVH XQFHUWDLQLHV DUH GULYLQJ WKH ZLGH U  
15           and EBITDA I just talked through, but W TV LPSRUWDQW WR QRWH WK  
16           fall materially outside of these ranges if the aforementioned assumptions turned out to  
17           be inaccurate.

18           66.     7XUWOH %HDFK TV DFWXDO UHYHQXH V LQ       ZHU  
19           forecasted in the projections provided to Craig-Hallum 7XUWOH %HDFK TV ILQDQFL  
20           underperformance caused it to trip certain debt covenants with its lender, which resulted in  
21           Turtle Beach renegotiating its credit facility in the second half of 2013.

22           67.     3DUDPHWULF TV DFWXDO UHYHQXH V IRU ILVFDO V  
23           forecasted in the projections provided to Craig-Hallum.

24           68.     3DUDPHWULF DQG 7XUWOH %HDFK ZHUH DZDUH P  
25           underperformance in late 2013. Parametric management determined that it was not in the best  
26           interest of the company or the shareholders to attempt to renegotiate the terms of the merger.

27           69.     On December 3, 2013, Parametric filed a ~~348~~ Definitive Proxy Statement  
28           with regard to the merger agreement with the SEC G WUDQVPLWWHG LW WR 3  
29           shareholders. The proxy statement sought shareholder votes on several proposals, including (a)  
30           whether to approve the issuance of new shares of Parametric common stock to Turtle Beach  
31           pursuant to the merger agreement (in effect, to approve the merger) and (b) whether to approve  
32           the change in control compensation awards to Potashner, Norris and Barnes in connection with  
33           the merger.

70. 3DUDPHWULF GLVFORVHG 7XUWOH %HDFK¶V DFW  
6HSWHPEHU LQ WKH SUR[ VWDWHPHQW DQG DOV  
respect to the debt covenants.

71. The proxy statement did not contain updated financial projections for either  
Turtle Beach or Parametric. The proxy statement cautioned readers that the projections that  
Craig-+DOOX P UHOLHG XSRQ ZHUH RQO\ FXUUHQW<sup>3</sup> DV RI \$  
RSLQLRQ ZDV LVVXHG<sup>3</sup> EDVHG RQ PDUNHW GDWD DV LW  
QHfHVVDULO\ LQGLFDWLYH RI FXUUHQW RU IXWXUH PDU  
contained a prominent warning in bold text that shareholders

should not regard the inclusion of these projections in this proxy statement as an  
indication that Parametric, Turtle Beach or any of their respective affiliates, advisors or  
other representatives considered or consider the projections to be necessarily predictiv  
RI DFWXDO IXWXUH HYHQWV

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

Microsoft has informed its partners in the Xbox one console launch that the Xbox One  
Headset Adapter, being built by Microsoft and provided to Turtle Beach for inclusion  
ZLWK QHZ JDPLQJ KHDGVHWV ZLOO QRW EH DYDLOD

<sup>3</sup> >h @ay will result in a downward revision to the 2013 outlook for revenue and  
(%,7'\$ SURYLGHG E\ 7XUWOH %HDFK¶V PDQDJHPHQW

73. The proxy statement XUWKHU GLVFORVHG WKH risk of a delay in the release of the  
GRZQZDUG UHYLVLRQ WR WKH RXWORN IRU UHYHQX  
management on August The level of such impact depends on several factors,  
including the projected launch date for the requisite hardware and software from Microsoft  
which is still being assessed. Turtle Beach plans to update its 2013 outlook for revenue and  
(%,7'\$ IROORZLQJ FRPSOHWLRQ RI WKLV DVVHVPHQW  
statement revealed that Turtle Beach expected its financial forecast to fall below the range  
disclosed on August 8, 2013, which was already lower than the forecast included in Craig-  
+DOOX P¶V IDLUQHVV RSLQLRQ

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

30 L F U R V R I W \ V G H O D \ R I W K s o f t w a r e U n t i l E a r l y 2 0 1 4 i s E x p e c t e d H D  
W R U H V X O W L Q D G H I H U U D O R I - r e l a t e d R e v e n u e s a n d P r o f i t s V ; E  
I R U 4

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

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

76. The proxy statement contained a fair summary of Craig D. O'Connell's opinion. The proxy statement also contained a fair and complete summary of interests and potential conflicts in the merger held by members of the Board and management of Parametric. No material interest or potential conflicts in the merger held by members of the Board and management of Parametric were undisclosed in the proxy statement.

77. Parametric held a special meeting of its shareholders on December 27, 2013. Approximately 95% of the shares voting in that election to approve the transaction. Neither the Settling Directors nor any combination of Parametric insiders owned sufficient shares in the 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. 3 R W D V K Q H U ¶ V H P S O R \ P H Q W D J U H H P H Q W Z K L F K  
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, D U D P H W U L F Z D V Q R W D U S F A R Q W U R  
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 F R P P R Q V V W R F N R I 3 D U D P H W U L F Q, 2013, were entitled to vote D W H  
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 related

19 82. On November 11, 2013, Potashner owned no shares of common  
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 D V 3 R W D V K Q H U ¶ V S U S I N G T H E B O A R D to, among other  
24 things:

- 25 a. cancel 3 R W D V K Q H U ¶ V S U S I N G T H E H H I subsidiary for no consideration;  
26 b. rebuff 3 R W D V K Q H U ¶ V S U S I N G T H E B O A R D to use Kaplan to retire from his position as a  
27 director of the pre-merger Parametric  
28 c. U H I X V H 3 R W D V K Q H U ¶ V U H T X H V W W R U H P R Y H

1 committee.

2 d. UHIXVH 3RWDVKQHUV UHTXHVW WR EH DOO  
3 announcement of the merger and

4 e. UHIXVH 3RWDVKQHUV UHTXHVW WR EH DOO OR Z  
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 business interactions with  
10 Potashner prior to Parametric. Norris, Putterman, Kaplan, Wolfe and Honoré had no  
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. DPHQG 3DUDPHWULFUV FHUWLILFDWH RI LQF  
23 e. cause Parametric to sell or substantially all of the assets of Parametric;  
24 f. DOWHU PDWHULD OO\ WKH QDWXUH RI 3DUDP

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,

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

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

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

## CONCLUSIONS OF LAW

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

2. The GLUHFWRUV RID 1HYDGD FRUSRUDWLRQ<sup>3</sup> DUH informed basis and with a view to the interests of the corporation NRS 78.138(3) In exercising his or her business judgment GLUHFWRU LV<sup>3</sup> HQWLWOHG WR U > DQG @ UHSRUWV IURP DRE DIRQS, OFFICERS AND EMPLOYEES OF THE corporation reasonably believed to be reliable competent in the matters passed or SUHVHNRS 78.138(2)(a) A di UHFWRU PD\ UHPODWXSRQ RISOLQLRQ V > DIURP counsel, public accountants, financial advisers, valuation advisers, investment bankers RU RWKHU SHUVRQV DV WR PDWWHUUV UHDVRQDEO\ EHOLD professional or expert competence 156 DLUHFWRUV<sup>3</sup> DUH QRW UHT the effect of a proposed corporate action upon any particular group having an interest in the FRUSRUDWLRQ DV NRS 78.138(5) DDOWS DFWA Pa'a corporation are not required to elevate the short-term interests of stockholders (such as maximizing immediate, short-term share value) ahead of any of their interests set forth NRS 78.138(4).

3. Under NRS 78.211(1),

<sup>3</sup> 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.

7 4. 'LUHFWRUV<sup>3</sup> FRQIURQWHG ZLWK D FKDQJH RU SR  
8 corporaWLRQ' KDYH D WKH QRUPDO GXWLHV RNRFDUH DQG  
9 78.138(1); (b) the benefit of the business judgment rule presumption established by NRS  
10 DQG preFogawke id undertake and act upon consideration pursuant to  
11 subsections 2, 4 and 5 of NRS 78.138 NRS 78.139(1). The provisions of NRS 78.139(2)  
12 not apply in this case.

13 5. In Chur v. Eighth Judicial Dist. Court, 136 Nev Adv. Op. 7, 458 P.3d 336, 340  
14 WKH & RXUW QRWHG WKDW step 1 analysis to impose individual UHV D  
15 OLDELWLW\ RQ D GILUHFWRUV R the business judgment rule must be  
16 rebutted. Id. Second, the<sup>3</sup> GLUHFWRUV RU RIILF must prove a breach of each D LOX  
17 of his or her fiduciary duties, and that breach must further involve "intentional misconduct,  
18 IUDXG RU D NQRZLQ NRS 78.138(1)(R)(2) The Court confirmed  
19 WKDW 156<sup>3</sup> SURYLGHV IRU WKH VROH FLUFXPVWDQF  
20 held individually liable for damages stemming from the director's or officer's conduct in an  
21 RIILFLDO EDUS 458 P.3d at 340.

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

24 <sup>3</sup> 7 R J her statute a realistic function, it must protect more than just directors (if any)  
25 who did not know what their actions were [wrongful]; it should protect directors who  
26 NQHZ ZKDW WKH\ GLG EXW QRW WKDW LW ZDV ZURQ  
27 Id. at 341. A SODLQWL ablish that the director or officer had knowledge that the alleged  
28 conduct was wrongful in order to show a knowing violation of law or intentional  
misconduct SXUVXDQW WR 156. E

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  
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 Potashne 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 Defendant's 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 D Q 3 H T X L W \ H [ S U R S U L D W L F R Q W U R O O L Q J V K D U H K R O G H U V \ R U E O O P A N Y W A S I N G O T H E R [ S U R S  
20 U S S E P A R A M E T R I C S O U N D C O R P. L. Eighth Jud. Dist., 183  
21 Nev. 417, 429, 401 P.3d 1100, 1109 (2017). Any other claim contesting the merger would be  
22 derivative in nature, and was extinguished by the settlement and judgment entered by this Court  
23 on May 18, 2020.

24           12.      The Court in Parametric K H O G W K D W 3 H T X L W \ H [ S U R S U L D W L  
25 F R Q W U R O O L Q J V K D U H K R O G H U V \ R U E O O P A N Y W A S I N G O T H E R [ S U R S  
26 V K D U H K R O G H U V \ H T X L W \ W R E H G L O X W H G

27           13.      The severance payment and accelerated vesting of incentive stock options  
28 S U R Y L G H G I R U X O G I 2012 a R W D e K a g r e e m e n t, which were triggered upon  
the closing of the merger between Parametric and Turtle Beach on January 15, 2014, for

purposes of the motion, will be presumed to have constituted an expropriation by Potashner of value from the company causing Parametrix D U H K R O G H U V I H T X L W \ W R E H

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

15. Plaintiff has failed to meet its burden to prove that the issuance of incentive stock options is an expropriation of value by a controlling shareholder. As such, Plaintiff failed to prove an essential element of any expropriation claim under Nevada law.

16. Plaintiff further failed to meet its burden to prove that its decision was impacted by actual fraud, intentional misconduct, or bad faith.

17. %\ UH D V R Q R I 3 O D L Q W L I I t o p r o v e a p r i m a r y e q u i t y P H H W L  
expropriation claim against the Director Defendants, Plaintiff failed to meet its burden to prove  
a secondary aiding and abetting claim against the Non-Director Defendants.

18. Because the Court is granting the NRCP 52(c) motion on the aforementioned substantive grounds, it does not reach the merits of the additional arguments made by DHIHQGDQWV LQ UHJDUG WR 3ODLQWLII¶V VWDQGLOQJ measure of damages proffered by Plaintiff.

THE 5 ( ) 2 5 ( , 7 , 6 + ( 5 ( % < 2 5 ' ( 5 ( ' W K D W G H I H Q G D Q W V ¶ P  
52(c) is GRANTED.

## JUDGMENT

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that JUDGMENT is  
 HQWHUHG LQ IDYRU RI 'HIHQGDQWV DQG DUDLQV 3ODL

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

1 CSERV

2 DISTRICT COURT  
3 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  
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

15 "Barbara Clark, Legal Assistant" . bclark@albrightstoddard.com

16 "Bryan Snyder, Paralegal" . bsnyder@omaralaw.net

17 "David C. O'Mara, Esq." . david@omaralaw.net

18 "G. Mark Albright, Esq." . gma@albrightstoddard.com

19 "Valerie Weis, Paralegal" . val@omaralaw.net

20 Brian Raphel . brian.raphel@dechert.com

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22 Gaylene Kim . gkim@swlaw.com

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26  
27  
28

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13	Isis Crosby	icrosby@albrightstoddard.com
14		
15		
16		
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	
20	George Albright	801 S. Rancho Dr., #D-4 Las Vegas, NV, 89106
21	Joseph Peek	9555 Hillwood Drive 2nd Floor Las Vegas, NV, 89134
22		
23	Richard Gordon	Snell & Wilmer LLP Attn: Richard C. Gordon 3883 Howard Hughes Pkwy. - Suite 1100 Las Vegas, NV, 89169
24		
25		
26		
27		
28		

# EXHIBIT D

# EXHIBIT D

APP1401

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rgordon@swlw.com

[Additional Counsel on signature page]

Attorneys for Defendants VTB Holdings, Inc. and  
Specialty Tapes Group,  
LLC and VTB Holdings, LLC

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

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

KEARNEY IRRV TRUST, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

KENNETH F. POSTASHNER; ELWOOD  
G. NORRIS; SETH PUTTERMAN;  
ROBERT M. KAPLAN; ANDREW L.  
WOLFE; JAMES L. HONORE;  
PARAMETRIC SOUND CORPORATION;  
PARIS ACQUISITION CORP.; and VTB  
HOLDINGS, INC.

Defendants.

GRANT OAKES; RAYMOND BOYTIM,

Intervenor Plaintiffs.

VITIE RAKAUSKAS, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SECOND AMENDED JUDGMENT

Consolidated with:

Case No. A-13-687232-B  
Dept. No. XXII

Snell & Wilmer

L.L.P.

LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 784-5200



PARAMETRIC SOUND CORPORATION;  
VTB HOLDINGS, INC.; PARIS  
ACQUISITION CORP., KENNETH F.  
POTASHNER; ELWOOD G. NORRIS;  
ROBERT J. KAPLAN; SETH  
PUTTERMAN; ANDREW WOLF; and  
JAMES L. HONORE,

Defendants.

GEORGE PRIESTON, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

KENNETH F. POTASHNER;  
PARAMETRIC SOUND CORPORATION;  
JAMES L. HONORE; ROBERT M.  
KAPLAN; ELWOOD G. NORRIS; SETH  
PUTTERMAN; ANDREW WOLFE; VTB  
HOLDINGS, INC.; VOYETRA TURTLE  
BEACH, INC.; and PARIS ACQUISITION  
CORP.,

Defendants.

JOSH HANSEN, individually and on behalf  
of all others similarly situated,

Plaintiff,

vs.

PARAMETRIC SOUND CORPORATION;  
JAMES L. HONORE; ROBERT M.  
KAPLAN; ELWOOD G. NORRIS;  
KENNETH F. POTASHNER; SETH  
PUTTERMAN; ANDREW WOLFE; VTB  
HOLDINGS, INC.; VOYETRA TURTLE  
BEACH, INC. and PARIS ACQUISITION  
CORP.,

Defendants.

SHAHA VASEK, individually and on behalf  
of all others similarly situated,

Plaintiff,

vs.

Consolidated with:  
Case No. A-13-687354-B  
Dept. XXII

Consolidated with:  
Case No. A-13-687665-B  
Dept. XXII

Consolidated with:  
Case No. A-13-688374-B  
Dept. XXII

PARAMETRIC SOUND CORPORATION;  
KENNETH POTASHNER; ELWOOD G.  
NORRIS; ROBERT M. KAPLAN; SETH  
PUTTERMAN; ANDREW WOLFE; and  
JAMES L. HONORE; VTB HOLDINGS,  
INC.; and PARIS ACQUISITION CORP.,

Defendants.

LANCE MYKITA, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

5G VTB HOLDINGS, LLC; STRIPES  
GROUP, LLC; VTB HOLDINGS, INC.;  
TURTLE BEACH CORPORATION, INC.,

Defendants.

PAMTP, LLC,

Plaintiff,

vs.

SG VTB HOLDINGS, LLC; STRIPES  
GROUP, LLC; VTB HOLDINGS, INC.;  
JUERGEN STARK; KENNETH FOX;  
ANDREW WOLFE; SETH PUTTERMAN;  
ELWOOD G. NORRIS; KENNETH  
POTASHNER,

Defendants.

Consolidated with:  
Case No. A-16-741073-B  
Dept. XXII

Consolidated with:  
Case No. A-20-815308-B  
Dept. XXII

The Court having entered its (1) Order Granting Defendants' Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon, filed September 3, 2021; (2) Order Re: PAMTP, LLC Motion to Re-Tax Costs, filed August 29, 2022, (3) Amended Judgment, filed September 16, 2022, and (4) Order Granting Defendants' Motion to Amend Judgment, filed December 12, 2022, and good cause appearing,

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

///

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is  
2 entered in favor of Defendant Kenneth Potashner and against Plaintiff PAMTP, LLC in the  
3 amount of \$395,147.15.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is  
5 entered in favor of Defendants VTB Holdings, Inc. and Specially Appearing Defendants Stripes  
6 Group, LLC, SG VTB Holdings, LLC, Juergenast, and Kenneth Foxner against Plaintiff  
7 PAMTP, LLC in the amount of \$774,836.71.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pre-judgment interest  
9 on the foregoing collective amounts is awarded in favor of Defendants and against Plaintiff  
10 PAMTP, LLC in the amount of \$220,889.98, broken down as follows: (1) \$134,195.05 in favor  
11 of Defendants VTB Holdings, Inc. and Specially Appearing Defendants Stripes Group, LLC and  
12 SG VTB Holdings, LLC; and (2) \$86,694.93 in favor of Defendant Kenneth Potashner; and

13 Post-judgment interest on the foregoing amounts shall accrue as provided under Nevada  
14 law.

15  
16  
17  
18  
19 Submitted by:

20 SNELL & WILMER L.L.P.

21 By: /s/ Richard C. Gordon  
22 Richard C. Gordon, Esq. (Bar No. 9036)  
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5 Specially Appearing Defendants Stripes Group,  
6 LLC, SG VTB Holdings, LLC, Kenneth Fox, and  
7 Juergen Stark

8 HOLLAND & HART LLP

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12 SHEPPARD, MULLIN, RICHTER  
13 & HAMPTON LLP

14 John P. Stigi III (admitted pro hac vice)  
15 Alejandro Moreno  
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17 Los Angeles, CA 90067

18 Attorneys for Defendant Kenneth Potashner

19 Approved as to Form and Content:

20 McDONALD CARANO LLP

21 By: /s/ George Ogilvie  
22 George F. Ogilvie III, Esq. (Bar No. 3552)  
23 2300 West Sahara Avenue, Suite 1200  
24 Las Vegas, NV 89102

25 Attorneys for Plaintiff

26  
27 4862-3209-3760  
28

Luxford, Lyndsey

---

To: George F. Ogilvie III  
Subject: RE: PAMTP (A-13-686890-B): Draft Order Granting Motion to Amend and Second Amended Judgment

---

From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>  
Sent: Thursday, December 15, 2022 3:32 PM  
To: Austin, Bradley <baustin@swlaw.com>; Sullivan, Hsgllp.com  
Cc: Gordon, Richard <rgordon@swlaw.com>; Hess, Joshua <Joshua.Hess@dechert.com>; Kotler, David <david.kotler@dechert.com>; Steve Peek <SPEek@hollandhart.com>; Bob Cassity <BCassity@hollandhart.com>; John Stigi <JStigi@sheppardmullin.com>; Alejandro Moreno <AMoreno@sheppardmullin.com>; No Scrub <NoScrub@mcdonaldcarano.com>  
Subject: RE: PAMTP (A-13-686890-B): Draft Order Granting Motion to Amend and Second Amended Judgment

[EXTERNAL] [gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)

---

approved

George F. Ogilvie III | Partner



P: 702.873.4100 E: [gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)

---

From: Austin, Bradley <baustin@swlaw.com>  
Sent: Thursday, December 15, 2022 3:24 PM  
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Sullivan, Hsgllp.com  
Cc: Gordon, Richard <rgordon@swlaw.com>; Hess, Joshua <Joshua.Hess@dechert.com>; Kotler, David <david.kotler@dechert.com>; Steve Peek <SPEek@hollandhart.com>; Bob Cassity <BCassity@hollandhart.com>; John Stigi <JStigi@sheppardmullin.com>; Alejandro Moreno <AMoreno@sheppardmullin.com>; No Scrub <NoScrub@mcdonaldcarano.com>  
Subject: RE: PAMTP (A-13-686890-B): Draft Order Granting Motion to Amend and Second Amended Judgment

Hi George,

As indicated below on December 13<sup>th</sup> (highlighted below), I added the date of the executed motion to amend order at page 3, line 25 of the proposed Second Amended Judgment. There was previously a blank for the date (as the motion to amend order had not yet been executed by the Court). Otherwise, this is the same version as previously circulated and approved.

Please let us know if we have approval to e-sign on your behalf.

Thanks,

Brad

**EXHIBIT E**

**EXHIBIT E**

WTEX  
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Attorneys for Defendants  
Kenneth Potashner, Elwood Norris,  
Seth Putterman, Robert Kaplan and  
Andrew Wolfe

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION.

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

WRIT OF EXECUTION

KEARNEY IRRV TRUST, individually and  
on behalf of all others similarly situated,

...Earnings    \_ Other Property  
...Earnings, Order of Support

Plaintiff,

vs.

KENNETH F. POTASHNER; ELWOOD G.  
NORRIS; SETH PUTTERMAN; ROBERT  
M. KAPLAN; ANDREW L. WOLFE; JAMES  
L. HONORE; PARAMETRIC SOUND  
CORPORATION; PARIS ACQUISITION  
CORP.; and VTB HOLDINGS, INC.

Defendants

GRANT OAKES; RAYMOND BOYTIM,  
Intervenor Plaintiffs,

VITIE RAKAUSKAS, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs

PARAMETRIC SOUND CORPORATION;  
VTB HOLDINGS, INC., PARIS  
ACQUISITION CORP., KENNETH F.  
POTASHNER; ELWOOD G. NORRIS;  
ROBERT J. KAPLAN; SETH PUTTERMAN;  
ANDREW WOLF; and JAMES L. HONORE,

Defendants

GEORGE PRIESTON, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

KENNETH F. POTASHNER; PARAMETRIC  
SOUND CORPORATION; JAMES L.  
HONORE; ROBERT M. KAPLAN;  
ELWOOD G. NORRIS; SETH  
PUTTERMAN; ANDREW WOLFE; VTB  
HOLDINGS, INC.; VOYETRA TURTLE  
BEACH, INC.; and PARIS ACQUISITION  
CORP.,

Defendants

JOSH HANSEN, individually and on behalf of  
all others similarly situated,

Plaintiff

vs

PARAMETRIC SOUND CORPORATION;  
JAMES L. HONORE; ROBERT M.  
KAPLAN; ELWOOD G. NORRIS;  
KENNETH F. POTASHNER; SETH  
PUTTERMAN; ANDREW WOLFE; VTB  
HOLDINGS, INC.; VOYETRA TURTLE  
BEACH, INC. and PARIS ACQUISITION  
CORP.,

Defendants

Consolidated with:  
Case No. A-13-687232-B Dept. No. XXII

Consolidated with:  
Case No. A-13-687354-B Dept. XXII

Consolidated with:  
Case No. A-13-687665-B Dept. XXII



1 SHAHA VASEK, individually and on behalf  
2 of all others similarly situated,

3 Plaintiff,

4 vs.

5 PARAMETRIC SOUND CORPORATION;  
6 KENNETH POTASHNER; ELWOOD G.  
7 NORRIS; ROBERT M. KAPLAN; SETH  
8 PUTTERMAN; ANDREW WOLFE; and  
9 JAMES L. HONORE; VTB HOLDINGS,  
10 INC.; and PARIS ACQUISITION CORP.,

11 Defendants

12 LANCE MYKITA, individually and on behalf  
13 of all others similarly situated,

14 Plaintiff,

15 vs.

16 5G VTB HOLDINGS, LLC; STRIPES  
17 GROUP, LLC; VTB HOLDINGS, INC.;  
18 TURTLE BEACH CORPORATION, INC.,

19 Defendants

20 PAMTP, LLC

21 Plaintiff

22 vs

23 SG VTB HOLDINGS, LLC; STRIPES; VTB  
24 HOLDINGS, INC.; JUERGEN STARK;  
25 KENNETH FOX; ANDREW WOLFE; SETH  
26 PUTTERMAN; ELWOOD G. NORRIS;  
27 KENNETH POTASHNER,

28 Defendants

Consolidated with:  
Case No. A-13-688374-B Dept. XXII

Consolidated with:  
Case No. A-16-741073-B Dept. XXII

Consolidated with:  
Case No. A-20-815308-B Dept. XXII

THE PEOPLE OF THE STATE OF NEVADA:

TO: CLARK COUNTY SHERIFF, LAS VEGAS, NEVADA, GREETINGS:

This Writ of Execution is in furtherance of collection of a judgment, for the recovery of money for Judgment Creditor Kenneth F. Potashner.

On December 18, 2022, a Second Amended Judgment (the "Judgment") was entered by the above-entitled Court in the above-entitled action in favor of Defendant Kenneth F. Potashner,

as Judgment Creditor ("Judgment Creditor") against Plaintiff PAMTP, LLC, as Judgment Debtor<sup>1</sup> in the following amounts:

JUDGMENT BALANCE		AMOUNTS TO BE COLLECTED BY LEVY	
Principal (Judgment)	\$395,147.15	NET BALANCE	\$499,053.08
Pre-Judgment Interest	\$86,694.93		
Attorneys' Fees	\$0	For this Writ	
Costs	\$0	Garnishment Fee	
FINAL JUDGMENT TOTAL	\$481,842.08	Mileage	
Accrued Costs		Levy Fee	
Accrued Interest <sup>2</sup>	\$17,211.00	Advertising	
Less Satisfaction	\$0		
Sub-Total:	\$499,053.08	Storage	
NET BALANCE	\$499,053.08	Interest from	
		Commission	
		TOTAL LEVY	\$

Attached hereto as Exhibit is a true and correct copy of the Judgment.

NOW THEREFORE, you are commanded to satisfy the Judgment for the total amount due out of the following described personal property of the Judgment Debtor:

All claims for relief, causes of action, things in action, and choses in action against anyone in any lawsuit pending in Nevada, including, but not limited to, Eighth Judicial District Court Case No. A-20-815308-B, which was consolidated with Case No. A-13-686890-B, as well as any and all appellate rights (but not defensive appellate rights) of Appellant PAMTP, LLC in the appeal of actions filed in the Supreme Court of the State of Nevada, including Case Number 83598, 84971, and 85358.

<sup>1</sup> Notice of Entry of the Second Amended Judgment was filed on December 20, 2022.

<sup>2</sup> See Calculation of Interest attached Exhibit 2.

EXCEPTION TO LEVY

Except that for any workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued exceeded \$770, unless the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater is exempt from any levy of execution pursuant to this writ and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what you have done.

☒ Property Other Than Wages. The exemption set forth in NRS 21.090 or in other applicable Federal Statutes may apply. Consult an attorney.

☐ Earnings  
The amount subject to garnishment and this writ shall not exceed for any one pay period the lesser of:  
A. 25% of the disposable earnings due the judgment debtor for the pay period, or  
B. the difference between the disposable earnings for the period and \$100.50 per week for each week of the pay period.

Earnings (Judgment or Order for Support)

A Judgment was entered for amounts due under a decree or order entered on \_\_\_\_ day of \_\_\_\_, 20\_\_, by the \_\_\_\_, for the support of \_\_\_\_ for the period from \_\_\_\_, 20\_\_, through \_\_\_\_, 20\_\_, in \_\_\_\_ installments of \$\_\_\_\_.

The amount if disposable earnings subject to garnishment and this writ shall not exceed for any one pay period: (check appropriate box)

... A maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or dependent child other than the dependent named above;

... A maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse or dependent child other than the dependent named above;

... Plus an additional 5 percent of the disposable earnings of such judgment debtor if an to extent that the judgment is for support due for a period of time more than 12 weeks prior to the beginning of the work period of the judgment debtor during which the levy is made upon the disposable earnings.

NOTE: Disposable earnings are defined as gross earnings less deductions for Federal Income Tax Withholding Federal Social Security Tax and Withholding for any State, County or City Taxes.

HOLLAND & HART LLP  
9555 HILLWOOD DRIVE, 2ND FLOOR  
LAS VEGAS, NV 89134

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Issued at the direction of:  
  
HOLLAND & HART LLP  
  
\_\_\_\_\_  
/s/Robert J. Cassity  
J. Stephen Peek (NV Bar 1758)  
Robert J. Cassity (NV Bar 9779)  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134  
  
Attorneys for Defendant/Judgment Creditor  
Kenneth Potashner

STEVEN D. GRIERSON,  
CLERK OF COURT  
  
\_\_\_\_\_  
APR 17 2020  
DEPUTY CLERK                      DATE  
  
I hereby certify that I have this date returned RETURN  
the foregoing Writ of Execution with the \_\_\_\_\_  
results of the levy endorsed thereon. \_\_\_\_\_  
  
Las Vegas Constable \_\_\_\_\_  
  
\_\_\_\_\_  
CONSTABLE                      DATE  
  
\_\_\_\_\_  
Not satisfied \$ \_\_\_\_\_  
Satisfied in \_\_\_\_\_  
the sum of \$ \_\_\_\_\_  
Costs retained \$ \_\_\_\_\_  
Commission \_\_\_\_\_  
Retained \$ \_\_\_\_\_  
Costs incurred \$ \_\_\_\_\_  
Commission \_\_\_\_\_  
Incurred \$ \_\_\_\_\_  
Costs received \$ \_\_\_\_\_  
  
REMITTED TO  
JUDGMENT CREDITOR \$ \_\_\_\_\_

20230652\_v5

**EXHIBIT**

**EXHIBIT**



Richard C. Gordon, Esq.  
Nevada Bar No. 9036  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Tel. (702) 784-5200  
Fax. (702) 784-5202  
rgordon@swlw.com

[Additional Counsel on signature page]

Attorneys for Defendants VTB Holdings, Inc. and  
Specialty Pipes Group,  
LLC and VTB Holdings, LLC

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

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

KEARNEY IRRV TRUST, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

KENNETH F. POSTASHNER; ELWOOD  
G. NORRIS; SETH PUTTERMAN;  
ROBERT M. KAPLAN; ANDREW L.  
WOLFE; JAMES L. HONORE;  
PARAMETRIC SOUND CORPORATION;  
PARIS ACQUISITION CORP.; and VTB  
HOLDINGS, INC.

Defendants.

GRANT OAKES; RAYMOND BOYTIM,

Intervenor Plaintiffs.

VITIE RAKAUSKAS, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SECOND AMENDED JUDGMENT

Consolidated with:

Case No. A-13-687232-B  
Dept. No. XXII

Snell & Wilmer

L.L.P.

LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 784-5200

PARAMETRIC SOUND CORPORATION;  
VTB HOLDINGS, INC.; PARIS  
ACQUISITION CORP., KENNETH F.  
POTASHNER; ELWOOD G. NORRIS;  
ROBERT J. KAPLAN; SETH  
PUTTERMAN; ANDREW WOLF; and  
JAMES L. HONORE,

Defendants.

GEORGE PRIESTON, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

KENNETH F. POTASHNER;  
PARAMETRIC SOUND CORPORATION;  
JAMES L. HONORE; ROBERT M.  
KAPLAN; ELWOOD G. NORRIS; SETH  
PUTTERMAN; ANDREW WOLFE; VTB  
HOLDINGS, INC.; VOYETRA TURTLE  
BEACH, INC.; and PARIS ACQUISITION  
CORP.,

Defendants.

JOSH HANSEN, individually and on behalf  
of all others similarly situated,

Plaintiff,

vs.

PARAMETRIC SOUND CORPORATION;  
JAMES L. HONORE; ROBERT M.  
KAPLAN; ELWOOD G. NORRIS;  
KENNETH F. POTASHNER; SETH  
PUTTERMAN; ANDREW WOLFE; VTB  
HOLDINGS, INC.; VOYETRA TURTLE  
BEACH, INC. and PARIS ACQUISITION  
CORP.,

Defendants.

SHAHA VASEK, individually and on behalf  
of all others similarly situated,

Plaintiff,

vs.

Consolidated with:  
Case No. A-13-687354-B  
Dept. XXII

Consolidated with:  
Case No. A-13-687665-B  
Dept. XXII

Consolidated with:  
Case No. A-13-688374-B  
Dept. XXII

PARAMETRIC SOUND CORPORATION;  
KENNETH POTASHNER; ELWOOD G.  
NORRIS; ROBERT M. KAPLAN; SETH  
PUTTERMAN; ANDREW WOLFE; and  
JAMES L. HONORE; VTB HOLDINGS,  
INC.; and PARIS ACQUISITION CORP.,

Defendants.

LANCE MYKITA, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

5G VTB HOLDINGS, LLC; STRIPES  
GROUP, LLC; VTB HOLDINGS, INC.;  
TURTLE BEACH CORPORATION, INC.,

Defendants.

PAMTP, LLC,

Plaintiff,

vs.

SG VTB HOLDINGS, LLC; STRIPES  
GROUP, LLC; VTB HOLDINGS, INC.;  
JUERGEN STARK; KENNETH FOX;  
ANDREW WOLFE; SETH PUTTERMAN;  
ELWOOD G. NORRIS; KENNETH  
POTASHNER,

Defendants.

Consolidated with:  
Case No. A-16-741073-B  
Dept. XXII

Consolidated with:  
Case No. A-20-815308-B  
Dept. XXII

The Court having entered its (1) Order Granting Defendants' Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon, filed September 3, 2021; (2) Order Re: PAMTP, LLC's Motion to Re-Tax Costs, filed August 29, 2022, (3) Amended Judgment, filed September 16, 2022, and (4) Order Granting Defendants' Motion to Amend Judgment, filed December 12, 2022, and good cause appearing,

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

///



1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is  
2 entered in favor of Defendant Kenneth Potashner and against Plaintiff PAMTP, LLC in the  
3 amount of \$395,147.15.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is  
5 entered in favor of Defendants VTB Holdings, Inc. and Specially Appearing Defendants Stripes  
6 Group, LLC, SG VTB Holdings, LLC, Juergenast, and Kenneth Foxner against Plaintiff  
7 PAMTP, LLC in the amount of \$774,836.71.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pre-judgment interest  
9 on the foregoing collective amounts is awarded in favor of Defendants and against Plaintiff  
10 PAMTP, LLC in the amount of \$220,889.98, broken down as follows: (1) \$134,195.05 in favor  
11 of Defendants VTB Holdings, Inc. and Specially Appearing Defendants Stripes Group, LLC and  
12 SG VTB Holdings, LLC; and (2) \$86,694.93 in favor of Defendant Kenneth Potashner; and

13 Post-judgment interest on the foregoing amounts shall accrue as provided under Nevada  
14 law.

15  
16  
17  
18  
19 Submitted by:

20 SNELL & WILMER L.L.P.

21 By: /s/ Richard C. Gordon  
22 Richard C. Gordon, Esq. (Bar No. 9036)  
23 3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

24 DECHERT LLP

25 Joshua D. N. Hess, Esq. (submitted pro hac vice)  
26 One Bush Street, Suite 1600  
27 San Francisco, CA 94104  
28

David A. Kotler, Esq. (admitted pro hac vice)  
1095 Avenue of the Americas  
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

HOLLAND & HART LLP

J. Stephen Peek (Bar No. 1758)  
955 Hillwood Drive, 2d Floor  
Las Vegas, NV 89134

SHEPPARD, MULLIN, RICHTER  
& HAMPTON LLP

John P. Stigi III (admitted pro hac vice)  
Alejandro Moreno  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067

Attorneys for Defendant Kenneth Potashner

Approved as to Form and Content:

McDONALD CARANO LLP

By: /s/ George Ogilvie  
George F. Ogilvie III, Esq. (Bar No. 3552)  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, NV 89102

Attorneys for Plaintiff

4862-3209-3760

Luxford, Lyndsey

---

To: George F. Ogilvie III  
Subject: RE: PAMTP (A-13-686890-B): Draft Order Granting Motion to Amend and Second Amended Judgment

---

From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>  
Sent: Thursday, December 15, 2022 3:32 PM  
To: Austin, Bradley <baustin@swlaw.com>; Sullivan, Hsgllp.com  
Cc: Gordon, Richard <rgordon@swlaw.com>; Hess, Joshua <Joshua.Hess@dechert.com>; Kotler, David <david.kotler@dechert.com>; Steve Peek <SPEek@hollandhart.com>; Bob Cassity <BCassity@hollandhart.com>; John Stigi <JStigi@sheppardmullin.com>; Alejandro Moreno <AMoreno@sheppardmullin.com>; No Scrub <NoScrub@mcdonaldcarano.com>  
Subject: RE: PAMTP (A-13-686890-B): Draft Order Granting Motion to Amend and Second Amended Judgment

[EXTERNAL] [gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)

---

approved

George F. Ogilvie III | Partner



P: 702.873.4100 E: gogilvie@mcdonaldcarano.com

---

From: Austin, Bradley <baustin@swlaw.com>  
Sent: Thursday, December 15, 2022 3:24 PM  
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Sullivan, Hsgllp.com  
Cc: Gordon, Richard <rgordon@swlaw.com>; Hess, Joshua <Joshua.Hess@dechert.com>; Kotler, David <david.kotler@dechert.com>; Steve Peek <SPEek@hollandhart.com>; Bob Cassity <BCassity@hollandhart.com>; John Stigi <JStigi@sheppardmullin.com>; Alejandro Moreno <AMoreno@sheppardmullin.com>; No Scrub <NoScrub@mcdonaldcarano.com>  
Subject: RE: PAMTP (A-13-686890-B): Draft Order Granting Motion to Amend and Second Amended Judgment

Hi George,

As indicated below on December 13<sup>th</sup> (highlighted below), I added the date of the executed motion to amend order at page 3, line 25 of the proposed Second Amended Judgment. There was previously a blank for the date (as the motion to amend order had not yet been executed by the Court). Otherwise, this is the same version as previously circulated and approved.

Please let us know if we have approval to e-sign on your behalf.

Thanks,

Brad

**EXHIBIT 2**

**EXHIBIT 2**



1 J. Stephen Peek, Esq.  
2 Nevada Bar No. 1758  
3 Robert J. Cassity, Esq.  
4 Nevada Bar No. 9779  
5 HOLLAND & HART LLP  
6 9555 Hillwood Drive, 2nd Floor  
7 Las Vegas, Nevada 89134  
8 (702) 669-4600  
9 (702) 669-4650 – fax  
10 speak@hollandhart.com  
11 bcassity@hollandhart.com

12 John P. Stigi III, Esq.  
13 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
14 (310) 228-3700  
15 (310) 228-3917 – fax  
16 jstigi@sheppardmullin.com

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IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION.

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

KEARNEY IRRV TRUST, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

KENNETH F. POTASHNER; ELWOOD G.  
NORRIS; SETH PUTTERMAN; ROBERT  
M. KAPLAN; ANDREW L. WOLFE; JAMES  
L. HONORE; PARAMETRIC SOUND  
CORPORATION; PARIS ACQUISITION  
CORP.; and VTB HOLDINGS, INC.

Defendants

GRANT OAKES; RAYMOND BOYTIM,  
Intervenor Plaintiffs,

1 VITIE RAKAUSKAS, individually and on  
2 behalf of all others similarly situated,

3 Plaintiff,

4 vs

5 PARAMETRIC SOUND CORPORATION;  
6 VTB HOLDINGS, INC., PARIS  
7 ACQUISITION CORP., KENNETH F.  
8 POTASHNER; ELWOOD G. NORRIS;  
9 ROBERT J. KAPLAN; SETH PUTTERMAN;  
10 ANDREW WOLF; and JAMES L. HONORE,

11 Defendants

12 GEORGE PRIESTON, individually and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 KENNETH F. POTASHNER; PARAMETRIC  
17 SOUND CORPORATION; JAMES L.  
18 HONORE; ROBERT M. KAPLAN;  
19 ELWOOD G. NORRIS; SETH  
20 PUTTERMAN; ANDREW WOLFE; VTB  
21 HOLDINGS, INC.; VOYETRA TURTLE  
22 BEACH, INC.; and PARIS ACQUISITION  
23 CORP.,

24 Defendants

25 JOSH HANSEN, individually and on behalf of  
26 all others similarly situated,

27 Plaintiff

28 vs

PARAMETRIC SOUND CORPORATION;  
JAMES L. HONORE; ROBERT M.  
KAPLAN; ELWOOD G. NORRIS;  
KENNETH F. POTASHNER; SETH  
PUTTERMAN; ANDREW WOLFE; VTB  
HOLDINGS, INC.; VOYETRA TURTLE  
BEACH, INC. and PARIS ACQUISITION  
CORP.,

Defendants

Consolidated with:  
Case No. A-13-687232-B Dept. No. XXII

Consolidated with:  
Case No. A-13-687354-B Dept. XXII

Consolidated with:  
Case No. A-13-687665-B Dept. XXII

1 SHAHA VASEK, individually and on behalf  
2 of all others similarly situated,

3 Plaintiff,

4 vs.

5 PARAMETRIC SOUND CORPORATION;  
6 KENNETH POTASHNER; ELWOOD G.  
7 NORRIS; ROBERT M. KAPLAN; SETH  
8 PUTTERMAN; ANDREW WOLFE; and  
9 JAMES L. HONORE; VTB HOLDINGS,  
10 INC.; and PARIS ACQUISITION CORP.,

11 Defendants

12 LANCE MYKITA, individually and on behalf  
13 of all others similarly situated,

14 Plaintiff,

15 vs.

16 5G VTB HOLDINGS, LLC; STRIPES  
17 GROUP, LLC; VTB HOLDINGS, INC.;  
18 TURTLE BEACH CORPORATION, INC.,

19 Defendants

20 PAMTP, LLC

21 Plaintiff

22 vs

23 SG VTB HOLDINGS, LLC; STRIPES; VTB  
24 HOLDINGS, INC.; JUERGEN STARK;  
25 KENNETH FOX; ANDREW WOLFE; SETH  
26 PUTTERMAN; ELWOOD G. NORRIS;  
27 KENNETH POTASHNER,

28 Defendants

Consolidated with:  
Case No. A-13-688374-B Dept. XXII

Consolidated with:  
Case No. A-16-741073-B Dept. XXII

Consolidated with:  
Case No. A-20-815308-B Dept. XXII

25  
26  
27 A court has determined that you owe money to \_\_\_\_\_, the judgment  
28 creditor. The judgment creditor has begun the procedure to collect that money by garnishing your



wages, bank account and other personal property by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or mobile home, not to exceed \$550,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

1 12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary  
2 or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-  
3 five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded  
4 \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay  
5 is less than 50 times the federal minimum hourly wage, in which case the entire amount may be  
6 exempt.

7 13. Money, not to exceed \$1,000,000 in present value, held in:

8 (a) An individual retirement arrangement which conforms with or is maintained  
9 pursuant to the applicable limitations and requirements of section 408 or 408A of the  
10 Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an  
11 inherited individual retirement arrangement;

12 (b) A written simplified employee pension plan which conforms with or is maintained  
13 pursuant to the applicable limitations and requirements of section 408 of the Internal  
14 Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified  
15 employee pension plan;

16 (c) A cash or deferred arrangement plan which is qualified and maintained pursuant  
17 to the Internal Revenue Code including, without limitation, an inherited cash or deferred  
18 arrangement plan;

19 (d) A trust forming part of a stock bonus, pension or profit-sharing plan that is qualified  
20 and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C.  
21 §§ 401 et seq.; and

22 (e) A trust forming part of a qualified tuition program pursuant to chapter 353B of  
23 NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529  
24 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the  
25 entry of a judgment against the purchaser or account owner or the money will not be used  
26 by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$10,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earnings credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

These exemptions may not apply in certain cases as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through Nevada Legal Services or Legal Aid Center of Southern Nevada. If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.

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PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed. You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of check records from financial institutions or any other document which demonstrates that the money in your account is exempt.

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1 IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE  
2 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO  
3 THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

4  
5 HOLLAND & HART LLP

6 /s/Robert J. Cassity  
7 J. Stephen Peek (NV Bar 1758)  
8 Robert J. Cassity (NV Bar 9779)  
9 9555 Hillwood Drive, 2nd Floor  
10 Las Vegas, NV 89134

11 Attorneys for Defendant/Judgment Creditor Kenneth  
12 Potashner

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# EXHIBIT F

# EXHIBIT F

1 **INTERROGATORY NO. 19:**

2 Please describe with particularity any and all actions taken by the Bank against Roger and  
 3 Kathryn Paramo under its promissory note related to the Property. In answering this Interrogatory,  
 4 state with specificity:

- 5 1. The date of the action(s);
- 6 2. The substance and general description of the action(s); and
- 7 3. The names and contact information for the individuals that would have knowledge  
 8 concerning such action(s).

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AKERMAN LLP

1160 Town Center Drive, Suite 330  
 LAS VEGAS, NEVADA 89144  
 TEL.: (702) 634-5000 - FAX: (702) 380-8572



**EXHIBIT G**

**EXHIBIT G**

Leach Johnson Song & Gruchow  
8945 West Russell Road, Suite 330  
Las Vegas, NV 89148

APP1204

This witness is expected to testify regarding relevant facts and information relating to the nonjudicial foreclosure sale relevant to this litigation.

4. Corporate Representative and/or Employees for Nevada Association Services, Inc.  
6225 W. Desert Inn Road  
Las Vegas, NV 89146

This witness is expected to testify regarding relevant facts and information relating to the homeowners' association's nonjudicial foreclosure efforts.

5. Corporate Representative and/or Employees for TRS SVC as Trustee for 322 Evan Picone Trust  
c/o Michael Beede, Esq.  
2300 W. Sahara Ave, Suite 420  
Las Vegas, NV 89101

This witness is expected to testify regarding the purchase of the subject property, as well as other matters relating to this property (including any current use and possession of the property, any rents or other income from the property, etc.).

6. Corporate Representatives and/or Employees of Miles, Bauer, Bergstrom & Winters, LLP  
1231 E. Dyer Rd., Suite 100  
Santa Ana, CA 92705  
Telephone: (714) 481-0239

This witness and/or these witnesses are expected to testify regarding Miles Bauer's knowledge of the HOA's foreclosure and all facts related thereto, including, without limitation, the payment of the super-priority Miles Bauer performed and/or attempted on Bank of America's behalf. On information and belief, Doug Miles is likely to testify as the corporate representative, person most knowledgeable, and Rule 30(b)(6) witness for Miles Bauer, and his address is provided in this disclosure. Bank of America reserves the right to call other corporate representatives, persons most knowledgeable, and Rule 30(b)(6) witnesses for Miles Bauer on the topics stated herein, including, without limitation, Rock K. Jung, Esq.

7. Rock K. Jung, Esq.  
Wright, Finlay & Zak, LLP



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**D. INSURANCE AGREEMENTS**

Bank of America is not aware of any insurance agreements at this time, and specifically reserves the right to supplement this initial disclosure to add relevant information, if subsequent information and investigation so warrant.

DATED: November 29th, 2016

AKERMAN LLP

/s/ Allison Schmidt  
ARIEL E. STERN, ESQ.  
Nevada Bar No. 8276  
ALLISON R. SCHMIDT, ESQ.  
Nevada Bar No. 10743  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A.*



**EXHIBIT H**

**EXHIBIT H**

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Affidavit of Publication

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# EXHIBIT I

# EXHIBIT I

APP1204

1 **Exhibit F-1** (emphasis added). The HOA refused to provide a super-priority payoff quote, instead  
2 providing a statement of account showing the amount of the last nine months of delinquent  
3 assessments – the maximum amount the HOA could claim had super-priority over BANA’s senior  
4 Deed of Trust – to be \$116.25.<sup>2</sup> **Exhibit G.** BANA, through Miles Bauer, physically delivered  
5 payment of \$116.25, to the HOA Trustee to satisfy the full super-priority portion of the HOA’s lien.  
6 **Exhibit F-2.** The letter enclosing the check made clear the payment was meant to extinguish only  
7 the super-priority portion of the HOA’s lien and nothing else, stating specifically that the check was  
8 to “satisfy [BANA’s] Super-Priority Amount obligations to the HOA as a holder of the first deed of  
9 trust against the property.” **Exhibit F-2.** The HOA Trustee unjustifiably rejected this super-priority  
10 tender. *Id.*

11 Instead of accepting the tender, the HOA Trustee proceeded with the foreclosure process, and  
12 on March 7, 2014, the HOA, through the HOA Trustee, non-judicially foreclosed on the Property.  
13 **Exhibit H.** According to the Trustee’s Deed Upon Sale, the HOA sold the Property to 322 Evan  
14 Picone Trust (**Plaintiff**) for only \$26,000.00. *See Id.*

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27 <sup>2</sup> The annual dues owed to the HOA was \$155.00. *See Exhibit G.* The super-priority amount is calculated by  
28 dividing \$155.00 (the monthly assessment amount) by 12 and multiplying that amount by 9. Calculated in  
this manner, the super-priority amount of the HOA’s lien was \$116.25 – the exact amount tendered by Miles  
Bauer to the HOA.



1           **1. Intent to induce a breach of contract is not an element of tortious interference**  
2           **under Nevada law.**

3           The HOA contends that to state a claim for tortious interference, the claimant must  
4 demonstrate that the defendant intended to induce the other party to breach the contract with the  
5 claimant and cites *J.J. Industries*. In *J.J. Industries*, the Nevada Supreme Court explained that “the  
6 necessary elements to establish the tort of intentional interference with contractual relations” were  
7 derived from *Ramona Manor Convalescent Hosp. v. Care Enters*, 177 Cal. App. 3d 1120 (Cal. Ct.  
8 App. 1996). *J.J. Indus.*, 119 Nev. at 275. The *Ramona Manor* court emphasized repeatedly that  
9 tortious interference requires an “intent [] to interfere,” not an “intent to induce the other party to  
10 breach,” as the HOA erroneously contends. See *Ramona Manor*, 177 Ca. App. 3d at 1130 (“[P]roof  
11 of the requisite intent required more than a showing it intended the act which caused the  
12 interference; it required **evidence that [the tortfeasor] intended to cause the interference itself.**”);  
13 *id.* at 1131 (“Only if and when plaintiff establishes **an intent to interfere** does the issue of  
14 justification come into play.”); *id.* at 1133 (“To subject the actor to liability under this rule, his  
15 conduct **must be intended to affect the contract of a specific person.**”); *id.* (that the tortfeasor  
16 acted “with the knowledge that such action would **frustrate the legitimate contractual**  
17 **expectations**” of the plaintiff “**is all it was required to know to incur liability.**”) (emphasis added).

18           Further, the *J.J. Industries* Court explained “the heart of an intentional interference action is  
19 whether Plaintiff has proved intentional acts by Defendant intended or designed to disrupt Plaintiff’s  
20 contractual relations.” *J.J. Indus.*, 119 Nev. at 275. Although the Court stated that the “necessary  
21 intentional act” in that particular case was “inducement to commit breach of contract,” the Court did  
22 so by citing the Restatement (Second) of Torts, which reads in full:

23                     One who intentionally and improperly interferes with the performance of a  
24 contract ... between another and a third person by inducing **or otherwise causing**  
25 **the third person not to perform the contract**, is subject to liability to the other  
26 for the pecuniary loss resulting to the other from the failure of the third person to  
27 **perform the contract.**

28           Restatement (Second) of Torts § 766 (1979) (emphasis added). Notwithstanding the HOA’s position  
to the contrary, Nevada law does not require an “intent to induce the other party to breach” as an  
element of tortious interference. Rather, the intentional act simply must be “intended or designed to  
disrupt the contractual relationship.” *J.J. Indus.*, 119 Nev. at 274.

**EXHIBIT J**

**EXHIBIT J**

1 Granting super-priority to nominal HOA liens over first deeds of trust “represents a  
2 ‘significant departure from existing practice.’” *SFR Investments*, 334 P.3d at 412 (quoting official  
3 comments to UCIOA § 1-116). However, NRS 116.1113’s requirement that the foreclosure of these  
4 super-priority liens be commercially reasonable provides first deed of trust holders with assurance  
5 that, in the event of an HOA foreclosure, they will receive some of the value they bargained for  
6 when they provided a mortgage loan. The commercial reasonableness requirement is provided in the  
7 statutory text, was clearly intended by the statute’s drafters, and has been recently recognized by the  
8 Nevada Supreme Court interpreting the same statutory provision at issue here. The foreclosure sale  
9 in this case was not commercially reasonable.

10 **3. The sale of the Property for less than 15% of its fair market value is**  
11 **commercially unreasonable as a matter of law.**

12 This Court should deny the HOA’s Motion for Summary Judgment on BANA’s wrongful  
13 foreclosure claim because the sale of the Property for less than 15% of its fair market value was  
14 grossly inadequate and commercially unreasonable as a matter of law. The Nevada Supreme Court  
15 in *Shadow Wood* stated that a court is warranted in setting aside a foreclosure sale where, like here,  
16 the purchase price at the sale was less than 20% of the Property’s fair market value. *Shadow Wood*,  
17 366 P.3d at 1112-13. Here, the HOA sold the Property for approximately 15% of the Deed of Trust  
18 value and less than 13% of its fair market value at the time of the foreclosure sale—accordingly, as  
19 the *Shadow Wood* Court explained, this is “grossly inadequate as a matter of law.” *Id.* BANA  
20 produced expert testimony showing the value of the Property at the time of the foreclosure sale was  
21 \$205,000.00. **Exhibit I.** The value of the Deed of Trust was \$167,062.00. The HOA sale price was  
22 \$26,000.00. Dividing the sales price by the fair market value of the Property at the time of the sale  
23 shows the Property was sold for less than 13% of its fair market value. Similarly, dividing the sales  
24 price by the original value of the Deed of Trust, the Property sold for approximately 15% the value  
25 of the Deed of Trust. Accordingly, BANA has produced clear evidence proving that the sale was  
26 grossly inadequate as a matter of law under *Shadow Wood*, and is thus invalid. Because the Property  
27 was sold for less than 15% of its fair market value here, this Court should set aside the sale.

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APP1249

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APP1258

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Barry Werber

Berry Wersborg APP1249

APP1264

# FHA PLANNED UNIT DEVELOPMENT RIDER

FHA CASE NO.

332-4675193-703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **9th** day of **September 2008** and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to **Taylor, Bean & Whitaker Mortgage Corp.**

("Lender") of the same date and covering the property described in the Security Instrument and located at:

**322 EVAN PICONE DRIVE**  
**Henderson, NV 89014**  
[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

**Warm Springs**  
[Name of Planned Unit Development Project]

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.
- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

2/91

ITEM T6543L1 (9612)

(Page 1 of 2 pages)

GREATLAND ■  
To Order Call: 1-800-538-9393 ☐ Fax 616-791-1131



\*0231322817304\*

ARPP1268

BANA(RP-267)0000341269

Inst #: 201110170002643

Fees: \$15.00

N/C Fee: \$0.00

10/17/2011 03:14:45 PM

Receipt #: 948988

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Recording Requested By:

Bank of America

Prepared By: Mercedes Judilla  
888-603-9011

When recorded mail to:

CoreLogic

450 E. Boundary St.

Attn: Release Dept.

Chapin, SC 29036



DocID# 1742260494339701

Tax ID: 178-09-612-010

Property Address:

322 Evan Picone Dr

Henderson, NV 89014-6080

NV0-ADT 15765697 10/6/2011

This space for Recorder's use

MIN #: 100029500028173049

MERS Phone #: 888-679-6377

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 451 7TH ST.SW #B-133, WASHINGTON DC 20410 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender:

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.

Made By:

ROGER SAMUEL PARAMO AND KATHRYN GRAYCE PARAMO, HUSBAND  
AND WIFE, AS JOINT TENANTS

Trustee:

LAWYERS TITLE OF NEVADA

Date of Deed of Trust: 9/9/2008

Original Loan Amount: \$167,062.00

Recorded in Clark County, NV on: 9/15/2008, book N/A, page N/A and instrument number 20080915-0003707

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

10/11/11

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.

By:

  
Pabla Zuniga, Assistant Secretary

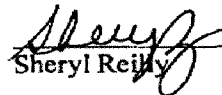
ARPP1292

BANA(PARAMO)000048-1273

State of Nevada )

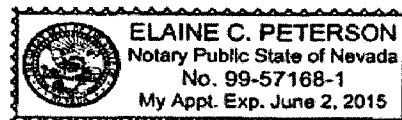
Country of Clark )

Sheryl Reilly being first duly sworn, deposes and says: That I am the authorized representative of Rancho Galleria HOA in the above entitled action: That I have read the foregoing Notice of Delinquent Assessment Lien and know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

  
Sheryl Reilly

Subscribed and Sworn to before  
me the 29 day of Sept., 2011.

  
Elaine C. Peterson



ARPP1276

BANA(RANMO)0000451277

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