

CIVIL COVER SHEET A - 1 3 - 6 8 7 6 6 5 - C

CLARK County, Nevada

X X X I

Case No. _____
(Assigned by Clerk's Office)**I. Party Information**

Plaintiff(s) JOSH HANSEN, on behalf of himself and all others similarly situated.

Attorney (name/address/phone):

Griffith H. Hayes, Esq., Nevada Bar 7374
Andrew R. Muehlbauer, Nevada Bar 10161
Cooksey, Toolen, Gage, Duffy & Woog,
3930 Howard Hughes Parkway, Ste. 200,
Las Vegas, NV 89169 (702) 949-3100

Defendant(s) 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.,

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input checked="" type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

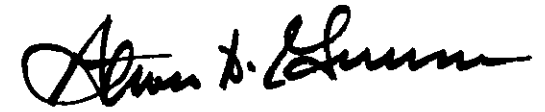
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

August 28, 2013

Date

Signature of initiating party or representative



CLERK OF THE COURT

1 **COMP**
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3 Nevada Bar No. 7374
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15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 JOSH HANSEN, on behalf of himself and all
18 others similarly situated,

19 Plaintiff,

20 v.

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

28 Defendants.

CASE NO. A - 1 3 - 6 8 7 6 6 5 - C

DEPT. NO. X X X I

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT

Plaintiff Josh Hansen ("Plaintiff"), by his attorneys, alleges upon information and belief, except for those allegations that pertain to Plaintiff, which are alleged upon personal knowledge, as follows:

NATURE OF THE ACTION

1. This is a shareholder class action brought by Plaintiff on behalf of himself and the

1 public shareholders of Parametric Sound Corporation (“Parametric” or the “Company”) to enjoin its
2 proposed merger, through its wholly owned subsidiary, Paris Acquisition Corp. (“Merger Sub”),
3 with VTB Holdings, Inc. and its subsidiary Voyetra Turtle Beach, Inc. (together, “Turtle Beach”),
4 pursuant to an agreement and plan of merger dated August 5, 2013 (the “Merger Agreement”) (the
5 “Proposed Merger”).

6 2. In entering into this unfair Merger Agreement, Defendants (as herein defined)
7 breached their fiduciary duties and/or aided in the breach of fiduciary duties owed to Plaintiff and
8 other public Parametric shareholders.

9 3. Parametric is a sound technology company whose share price, during the past eight
10 months, dramatically increased by more than 640%, from a 52-week low of \$3.49 price per share on
11 or about December 1, 2012, to an all-time high of \$22.39 price per share on or about May 13, 2013,
12 less than three months before the announcement of the Proposed Merger.

13 4. This dramatic spike in Parametric’s stock price followed a March 4, 2013
14 announcement that the Company signed a Memorandum of Understanding (“MOU”) to enter into a
15 strategic relationship with Shanghai Industrial Investment Group (“SIIG”) and Optek Electronics
16 (“Optek”), enabling Parametric’s products to reach the Chinese market -- one of the largest markets
17 for consumer electronic products.

18 5. News of the MOU and the promising opportunities for Parametric in China caught the
19 attention of the market, and on March 29, 2013, the Company disclosed that it had been approached
20 by several industry leaders to discuss strategic alternatives. In response, the Company retained the
21 services of Houlihan Lokey, Inc. to act as its financial advisor.

22 6. Parametric also posted impressive financial results. Revenues totaled \$234,000 and
23 gross profit was \$114,000 in fiscal 2012, as compared to \$79,000, and \$44,000 for 2011,
24 respectively. The growth in both revenues and gross profit continued in 2013, with the Company
25 announcing terrific financial results in the first three fiscal quarters of 2013. As evidenced by these
26 positive results, Parametric was and still is in the midst of impressive growth.

27 7. Despite the excellent financial results and dramatic increase in the Company’s stock
28 price, the Parametric Board of Directors (the “Board”) agreed to hand over control of the Company

1 and its lucrative assets to Turtle Beach for an inadequate consideration. The Merger Agreement
2 merely states that Turtle Beach stockholders are expected to own approximately 80 percent of the
3 combined company's shares outstanding at closing, and Parametric stockholders are expected to own
4 approximately 20 percent of the combined company's shares, subject to certain adjustments.

5 8. Significantly, following news of the unfair terms of the Proposed Merger,
6 Parametric's stock price lost more than 20% of its value, plummeting from a closing price of \$17.69
7 per share on August 5, 2013, to closing at \$14.00 per share on August 6, 2013—a \$3.69 per share
8 drop. Commenting on the Proposed Merger, analyst Paolo Santos stated on August 6, 2013, that
9 "this merger has potential to be disastrous for [Parametric] shareholders."

10 9. Additionally, there is no indication that Parametric's shareholders will be adequately
11 compensated for the significant synergies Turtle Beach will enjoy as a result of the Proposed
12 Merger. According to a Registration Statement filed on Form S-3 by the Company with the
13 Securities and Exchange Commission ("SEC") on May 6, 2013, Parametric has at least 26 U.S. and
14 foreign patents, and 12 pending patents. These patents are joined by Parametric's HyperSonic®
15 Sound ("HSS") technology which creates sound in a new way -- "in-the-air" along a directional
16 ultrasonic beam -- a significant departure from traditional speaker technology. Likewise, the
17 Company's patented technology continues to demonstrate positive results for those with hearing
18 deficiencies and show strong potential for future health care applications.

19 10. There is also no indication that Parametric's shareholders will be adequately
20 compensated for enabling Turtle Beach, which is a private company, to become publicly traded
21 without having to go through the rigorous process of conducting an initial public offering.

22 11. Knowing that the opportunistic timing of the Proposed Merger would draw serious
23 interest from other potential buyers, the Board acquiesced to strict and unreasonable deal protection
24 devices including: (i) a post-signing no-solicitation provision, precluding the Company from
25 soliciting potential competing bidders; (ii) matching rights and information provision that require the
26 Company to disclose confidential information about competing bids to Turtle Beach, and allows
27 Turtle Beach to match any competing proposal; and (iii) a termination provision that requires the
28 Company to pay Turtle Beach a \$1,000,000 termination fee and/or enter into a license agreement

1 with Turtle Beach with respect to certain Parametric intellectual property for use in console audio
2 products on an exclusive basis and computer audio products on a non-exclusive basis. Considered
3 together, these deal protection devices were designed to deter third parties from making an offer for
4 the Company and render the likelihood of an emerging rival bidder remote. Moreover, certain
5 stockholders of Parametric, including Defendants Kenneth Potashner ("Potashner") and Elwood G.
6 Norris ("Norris"), owning and controlling approximately 19.4% in the aggregate of the currently
7 outstanding shares of Parametric stock, have entered into voting agreements (collectively, the
8 "Voting Agreements") pursuant to which they agreed to vote in favor of the Proposed Merger. The
9 Voting Agreements and the deal protection devices work together to unfairly discourage competitive
10 offers from potential buyers.

11 12. Finally, the Proposed Merger was not negotiated with the best interest of Parametric's
12 stockholders in mind. Pursuant to Section 6.6 of the Merger Agreement, certain Parametric insiders,
13 including Defendant Potashner, who dominated and controlled the other Board members, will be
14 appointed to the post-merger combined company's board of directors. As a result, these insiders will
15 receive benefits from the Proposed Merger not available to Plaintiff and other public stockholders of
16 Parametric.

17 13. Plaintiff seeks to enjoin the Proposed Merger or rescind the Proposed Merger in the
18 event of its consummation. The circumstances described herein demonstrate that the Individual
19 Defendants (as herein defined) have violated their fiduciary duties to the Company, Plaintiff and the
20 members of the Class (as herein defined) by agreeing to the grossly unfair terms of the Merger
21 Agreement.

22 THE PARTIES

23 14. Plaintiff is and was, at all times relevant hereto, a holder of Parametric common
24 stock.

25 15. Defendant Parametric is a sound technology company. It was incorporated under the
26 laws of the State of Nevada, with its principal executive office located at 13771 Danielson Street,
27 Suite L, Poway, CA 92064. According to Parametric's Form 10-Q, filed with the SEC on August 8,
28 2013, as of June 30, 2013, there were 6,755,576 shares of Parametric common stock outstanding.

1 Shares of Parametric common stock are traded on the NASDAQ CM under the symbol "PAMT".

2 16. Defendant Merger Sub, a Delaware corporation, is a wholly owned subsidiary of
3 Parametric.

4 17. Defendant Potashner has been the Chairman of Parametric since March 2012 and its
5 director since March 2012.

6 18. Defendant James L. Honore ("Honore") has been a director and member of the audit
7 committee of Parametric since March 2012.

8 19. Defendant Norris has been a director of Parametric since June 2010, and its President
9 since March 2012. As of August 5, 2013, Defendant Norris was the owner of 1,011,270 shares of
10 Parametric common stock, representing 14.83% of the Company, making him its largest insider
11 shareholder.

12 20. Defendant Andrew L. Wolfe ("Wolfe") has been a director of Parametric since
13 February 2012.

14 21. Defendant Robert M. Kaplan ("Kaplan") has been a director of Parametric since May
15 2011.

16 22. Defendant Seth Putterman ("Putterman") has been a director of Parametric since May
17 2011.

18 23. Defendants Potashner, Honore, Norris, Wolfe, Kaplan, and Putterman are collectively
19 referred to herein as the "Individual Defendants" or the "Board".

20 24. The Individual Defendants, as officers and/or directors of Parametric, have a
21 fiduciary relationship and responsibility to Parametric and its shareholders.

22 25. Defendant VTB Holdings, Inc. is a private company incorporated under the laws of
23 Delaware with its principal office located at 100 Summit Lake Drive, Suite 100 Valhalla, NY 10594.

24 26. Defendant Voyetra Turtle Beach, Inc., a subsidiary of VTB Holdings, Inc., is a
25 private company incorporated under the laws of Delaware with its principal office located at 150
26 Clearbrook Road Suite 162 Elmsford, NY 10523. It designs, manufactures, and markets audio
27 peripherals for video game consoles and personal computers. It offers headsets for major gaming
28 systems, audio processors, sound cards, parts accessories, and recertified products.

28. Plaintiff brings this action individually and as a class action on behalf of all holders of Parametric stock who are being, and will be, harmed by Defendants' actions described herein (the "Class").

29. Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to, or affiliated with, any Defendants.

30. This action is properly maintainable as a class action.

31. The Class is so numerous that joinder of all members is impracticable. According to Parametric's Form 10-Q, filed with the SEC on August 8, 2013, as of June 30, 2013, there were 6,755,576 shares of Parametric common stock outstanding. Plaintiff believes that these shares are held by hundreds, if not thousands, of beneficial holders who are geographically dispersed across the country.

32. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

- a. whether the Individual Defendants have fulfilled, and are capable of fulfilling, their fiduciary duties to Plaintiff and the Class;
- b. whether Defendant Potashner has and will unfairly favor his own interests to the detriment of Parametric's public shareholders in violation of his fiduciary duties; and
- c. whether Plaintiff and the other members of the Class would be irreparably harmed were the transactions complained of herein consummated.

33. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

34. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

4 36. Plaintiff anticipates that there will be no difficulty in the management of this
5 litigation. A class action is superior to other available methods for the fair and efficient adjudication
6 of this controversy.

7 37. Defendants have acted on grounds generally applicable to the Class with respect to
8 the matters complained of herein, thereby making appropriate the relief sought herein with respect to
9 the Class as a whole.

11 Parametric Company Background

38. Parametric, a technology company, focuses on delivering audio solutions through its HSS technology platform primarily in North America, Europe, and Asia. The Company's HSS-3000 product line delivers directed audio solutions to customers primarily for digital signage, point-of-purchase, in-store network, and related applications. Parametric's technology is also used in commercial and consumer markets, including kiosks, electronic gaming, computers, video gaming, televisions, home audio, health care, movies and cinema, and mobile devices. Parametric markets its products to commercial customers, integrators, and value added resellers to use its sound solution in their products and services, as well as to distributors.

39. Created via a spin-off of LRAD Corporation in 2010, Parametric further traces its roots back to 1995 when the Company's founder and lead innovator, Defendant Norris, first started developing the Company's HSS technology. In January 2012, Parametric rolled out the latest generation of its HSS technology, which produces "crisp, clean and unique" sound from just two thin emitters, or in other words, a three dimensional sound.

40. On March 4, 2013, seeking to tap into the Chinese market, Parametric entered into an MOU with SIIG, a Shanghai company engaged in the importation and exportation of non-quota commodities in China, and Optek, a manufacturer of audio and video products, which will provide Parametric with complete manufacturing and assembly services at its production and testing

1 complexes in Shenzhen and Dongguan, China. The MOU has defined four key areas of focus,
2 including a licensing agreement, a manufacturing agreement, a joint product development agreement
3 and the establishment of a joint venture to address the Chinese market, one of the largest for
4 consumer electronics products.

5 41. Following the announcement of the MOU, there was a dramatic increase in the stock
6 price of Parametric, from \$4.36 per share in November 2012 to as high as \$21.05 per share on May
7 10, 2013. Undeniably, the Company is in the midst of tremendous growth.

8 42. As mentioned above, the Company's recent gross profit and revenues for the period
9 ending June 30, 2013 more than doubled as compared to the previous year. Parametric's revenues
10 totaled \$234,000 and gross profit was \$114,000 in fiscal 2012, as compared to \$79,000, and \$44,000
11 for 2011, respectively. The growth in both revenues and gross profit continued in 2013, with the
12 Company announcing terrific financial results in the first three fiscal quarters of 2013.

13 The Unfair Merger Agreement

14 43. On August 5, 2013, Parametric and Turtle Beach jointly announced the Merger
15 Agreement pursuant to which the Merger Sub will merge with and into Turtle Beach and holders of
16 Parametric common stock will receive 20% of the combined company's shares, while Turtle Beach
17 will receive 80%. The pertinent portion of the press release reads:

18 Under the terms of the agreement, **former Turtle Beach stockholders are expected**
19 **to own approximately 80 percent of the combined company's shares outstanding**
20 **at closing, and Parametric stockholders are expected to own approximately 20**
21 **percent of the combined company's shares, subject to adjustment as provided in**
22 **the merger agreement.** The new company will continue to operate under the name
23 Parametric Sound Corporation and will be headquartered in San Diego. The gaming
24 products will continue under the well regarded Turtle Beach brand. In connection
25 with the proposed transaction, Parametric intends to file with the SEC a proxy
26 statement and other relevant materials and documents regarding the proposed
27 transaction.

28 (Emphasis supplied).

44. In addition, the Merger Agreement provides that each outstanding option to purchase
Turtle Beach common stock will be converted at the effective time of the Merger into an option to
purchase Parametric common stock and will be assumed by Parametric. Certain redeemable, non-
convertible preferred stock of Turtle Beach with a stated value of \$12,000,000, plus dividends

1 accrued but unpaid thereon, as well as certain phantom stock units of Turtle Beach, will remain
2 outstanding following the Proposed Merger and will not be exchanged for Parametric common
3 stock.

4 45. Critically, Turtle Beach shares are not traded on any exchange and thus have no
5 readily ascertainable market value. Consequently, Parametric's public shareholders must bear
6 additional uncertainty in the Proposed Merger stemming from Turtle Beach's status as a private
7 company.

8 46. Furthermore, under the Merger Agreement, as a condition to the deal, Parametric
9 must raise fresh debt or equity before closing. Parametric could see its stake in the combined
10 company increase to 21.5% if it raises \$15 million in new equity, the maximum allowed under the
11 Merger Agreement. However, if Parametric is forced to raise more than \$15 million in new debt or
12 equity, its stockholders will receive no additional benefits in exchange for the assumption of
13 additional debt or equity.

14 47. In short, Turtle Beach seeks to acquire the Company at the most opportune time when
15 the Company is poised for tremendous growth. As can be seen in the chart below, Parametric's stock
16 price was steadily and exponentially increasing until news of the Proposed Merger with Turtle Beach
17 caused its stock to decline by nearly 21%.



1 48. Additionally, there is no indication that the merger consideration will account for the
2 massive benefits Turtle Beach will receive through the Proposed Merger. Parametric has 26 U.S. and
3 foreign patents and 12 pending patents. Of those, 7 U.S. patents and all pending patents directly
4 support Parametric's technology. Turtle Beach will earn a windfall if the Proposed Merger is
5 consummated because these patents will effectively block out competitors.

6 49. Moreover, there is also no indication that the merger consideration will account for
7 the fact that the Proposed Merger will allow Turtle Beach, a private company, to become a publicly
8 traded company without having to undertake the rigors of conducting an initial public offering.

9 50. The market's reaction to the announcement of the Merger Agreement was swift and
10 severe. Following news of the unfair terms of the Proposed Merger, Parametric's stock price lost
11 more than 20% of its value, plummeting from a closing price of \$17.69 per share on August 5, 2013,
12 to closing at \$14.00 per share on August 6, 2013—a \$3.69 per share drop.

13 51. On August 6, 2013, Analyst Paolo Santos, writing for *Seeking Alpha*, concluded that
14 "[i]n short, this merger has the potential to be disastrous for [Parametric] shareholders." He
15 explains, in pertinent part:

16 [W]e can reasonably expect Turtle Beach to trade at a valuation that's close to it's
17 comparables. Something between 0.50 times sales and, to be generous, 1.00 times
sale.

18 That would mean that the [post-merger Company] would trade with a market
19 capitalization of somewhere between \$102.5 million and \$205 million. But
20 remember, present [Parametric] shareholders will have just 20% of this new
21 company. This would give them a value of between \$20.5 and \$41 million. And
therein lies the problem - [Parametric] presently trades with a market capitalization of
\$118.1 million, so if Turtle Beach happens to converge to the valuation of its
comparables, then **the downside for present [Parametric] shareholders will be
somewhere between 65% and 82%.**

22 **In short, this merger has the potential to be disastrous for [Parametric]
23 shareholders.**

24 The only hope would be for the shares to trade at a huge premium, which would be a
25 bonanza for Turtle Beach shareholders - the shares would have to trade at a market
26 capitalization of \$590.5 million for [Parametric] shareholders not to lose, and this
would value Turtle Beach shares at \$472.4 million for a price/sales on the deal of 2.3
times (for Turtle Beach shareholders only). This is unlikely to happen given what we
saw regarding comparable companies.

27 **So the one thing that's likely to happen is for [Parametric] shareholders to lose
28 and lose big.**

1 (Emphases supplied).

2 52. Given the Company's prospects for growth, the dramatic increase in Parametric's
3 stock price, the unique benefits that Parametric could bring to Turtle Beach, and the uncertainty of
4 the value of the combined company, the consideration for the Proposed Merger undervalues
5 Parametric. As a consequence, Parametric shareholders could lose well over half of the value of
6 their investment in the Company, as discussed above, if the Proposed Merger is consummated.

7 **Insiders to Receive Special Benefits Not Available to Plaintiff and Other Class Members**

8 53. Certain Parametric insiders will be appointed to the combined company's board of
9 directors. According to Section 6.6 of the Merger Agreement, Parametric will select two members of
10 the post-merger combined company's nine-member board. In addition, Defendant Potashner has
11 secured his continued employment as a director of the combined company following the completion
12 of the Proposed Merger.

13 54. Based on the above, the Proposed Merger is unfair to Parametric shareholders and
14 represents an effort by certain Parametric insiders to aggrandize their own financial positions and
15 interests at the expense of and to the detriment of Parametric's public shareholders.

16 **The Unreasonable Deal Protection Devices**

17 55. The Proposed Merger is also unfair because as part of the Merger Agreement,
18 Defendants agreed to certain onerous and unreasonable deal protection devices that operate
19 conjunctively to make the Proposed Merger a *fait accompli* and ensure that no competing offers will
20 emerge for the Company.

21 56. The Merger Agreement contains a strict "no solicitation" post-signing provision that
22 prohibits the Board from taking any meaningful action to ensure that they are in compliance with
23 their fiduciary duties, including solicitation of alternative acquisition proposals or business
24 combinations. Specifically, Section 5.5 of the Merger Agreement gives the Company just 30 days
25 beginning on August 5, 2013 to solicit alternative proposals. Subsequently, the "no solicitation"
26 period commences barring the Company from soliciting interest from other potential acquirers in
27 order to procure a price in excess of the merger consideration offered by Turtle Beach.

28 57. The effect of this provision is to prevent the Board from entering discussions or

1 negotiations with other potential purchasers unless the Board can first determine that the competing
2 acquisition proposal is, in fact, "superior." This severely limits the opportunity for a potential
3 purchaser to emerge, and severely limits the ability of the Individual Defendants to properly exercise
4 their fiduciary duties.

5 58. Section 5.5(a) of the Merger Agreement requires the Company to notify Turtle Beach
6 within no more than two business days if it receives an offer from another bidder. The Company
7 must also supply Turtle Beach with the identity of the bidder and all material terms of the offer.
8 Additionally, if an offer is made from another bidder, the Company is required to negotiate in good
9 faith with Turtle Beach for five business days in order to match the unsolicited offer. Put simply, the
10 Merger Agreement gives Turtle Beach access to confidential information and a free right to top any
11 superior offer by matching it.

12 59. Section 8.3 of the Merger Agreement requires the Company pay a termination fee of
13 \$1 million to Turtle Beach, and/or enter into a license agreement with Turtle Beach with respect to
14 certain Parametric intellectual property for use in console audio products on an exclusive basis and
15 computer audio products on a non-exclusive basis, in the event that the Company decides to pursue
16 the superior competing offer. These deal protection devices all but ensure that no competing offer
17 will appear, as any competing bidder would essentially pay a premium for the right to provide
18 Parametric's stockholders with a superior offer.

19 60. Moreover, in connection with the Proposed Merger, certain Parametric shareholders
20 holding an aggregate of 19.4% of the Company's common stock, including all Individual
21 Defendants, have entered into the Voting Agreements pursuant to which they agree to vote in favor
22 of the Proposed Merger with Turtle Beach, and against any competing offers. These Voting
23 Agreements operate as an additional deterrent to other potential purchasers.

24 61. Ultimately, these unreasonable deal protection provisions illegally restrain the
25 Company's ability to solicit or engage in negotiations with any third party regarding a proposal to
26 acquire all or a significant interest in the Company. The circumstances under which the Board may
27 respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or
28 would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to

1 provide an effective “fiduciary out” under the circumstances.

2 62. As demonstrated by the allegations above, the Individual Defendants are knowingly
3 or recklessly failing to exercise the care required, and are breaching their duties of loyalty, good
4 faith, and independence owed to the shareholders of Parametric because, among other reasons, they
5 agreed to these unreasonable deal protections. Accordingly, Plaintiff seeks injunctive and other
6 equitable relief to prevent the irreparable injury that Company stockholders will continue to suffer
7 absent judicial intervention.

8 **CLAIMS FOR RELIEF**

9 **FIRST CLAIM FOR RELIEF**

10 **Breach of Fiduciary Duties**

11 **(Against All Individual Defendants)**

12 63. Plaintiff incorporates by reference and realleges each and every allegation contained
13 above, as though fully set forth herein.

14 64. The Proposed Merger will result in change of control of the Company which imposes
15 heightened fiduciary responsibilities to maximize Parametric’s value for the benefit of the
16 stockholders and requires enhanced scrutiny by the Court.

17 65. By the acts, transactions, and courses of conduct alleged herein, the Individual
18 Defendants are attempting to unfairly deprive Plaintiff and other members of the Class of the true
19 value of their investment in Parametric, or have otherwise failed to secure the best price reasonable
20 under the circumstances for Plaintiff and other members of the Class.

21 66. By the acts, transactions and courses of conduct alleged herein, the Individual
22 Defendants have breached their fiduciary duties of undivided loyalty, due care, and good faith owed
23 to the public stockholders of Parametric. Parametric shareholders do not even know how to value
24 the consideration they are to receive for their shares pursuant to the Proposed Merger.

25 67. As a result of the Individual Defendants’ breaches of fiduciary duties, Plaintiff and
26 the Class will suffer irreparable injury in that they have not received and will not receive their fair
27 portion of the value of Parametric’s assets and will be prevented from benefiting from a value-
28 maximizing transaction.

1 68. Unless enjoined by this Court, the Individual Defendants will continue to breach their
2 fiduciary duties owed to Plaintiff and the Class, and may consummate the Proposed Merger, to the
3 irreparable harm of the Class.

4 **SECOND CLAIM FOR RELIEF**

5 **Aiding And Abetting Breaches Of Fiduciary Duties**

6 **(Against Turtle Beach)**

7 69. Plaintiff incorporates by reference and realleges each and every allegation contained
8 above, as though fully set forth herein.

9 70. Turtle Beach, by reason of its status as a party to the Merger Agreement and its
10 possession of non-public information, has acted and is acting with knowledge of, or with reckless
11 disregard to, the fact that the Individual Defendants have committed aforesaid breaches of their
12 fiduciary duties, or has participated in such breaches of fiduciary duties.

13 71. Turtle Beach has knowingly aided and abetted the Individual Defendants'
14 wrongdoing alleged herein. In so doing, Turtle Beach rendered substantial assistance in order to
15 effectuate the Merger Agreement and the Proposed Merger in breach of the Individual Defendants'
16 fiduciary duties. Such breaches of fiduciary duties could not and would not have occurred but for
17 the conduct of Turtle Beach.

18 72. As a result of this conduct, Plaintiff and the other members of the Class have been
19 and will be damaged in that they have been, and will be prevented from obtaining, fair value for their
20 shares in Parametric stock.

21 73. Plaintiff and the Class have no adequate remedy at law.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff demands injunctive relief, in his favor and in favor of the Class
24 and the Company and against Defendants as follows:

25 A) Declaring that this action may be maintained as a class action and certifying Plaintiff
26 as the Class representative and Plaintiff's counsel as Class counsel;

27 B) Declaring that the Proposed Merger is unfair, unjust and inequitable to Plaintiff and
28 the other members of the Class;

C) Preliminarily and permanently enjoining Defendants and all persons acting in concert with them, from proceeding with, consummating, or closing the Proposed Merger;

D) In the event Defendants consummate the Proposed Merger, rescinding it and setting it aside or awarding rescissory damages to Plaintiff and the Class;

E) Directing Defendants to account to Plaintiff and the Class for their damages sustained because of the wrongs complained of herein;

F) Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and expert's fees; and

G) Granting such other and further relief as may be just and proper.

Dated: August 28, 2013

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG P.C.

By: 

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