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Case No. 2024-1163-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KEVIN LOUDY, Plaintiff, v. PATIENT SQUARE CAPITAL, L.P. and JUSTIN SABET-PEYMAN, Defendants.	C.A. No. 2024-1163-JTL PUBLIC VERSION FILED: NOVEMBER 18, 2024

VERIFIED CLASS ACTION COMPLAINT

Plaintiff, Kevin Loudy ("Plaintiff"), alleges the following upon personal knowledge with respect to himself, and upon information and belief based upon a review of public filings and other documents, books and records received in response to a demand made pursuant to Section 220 of the Delaware General Corporation Law ("220 Production"), and investigations undertaken by himself and his counsel:[1]

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of the former public stockholders of Eargo Hearing, Inc. ("Eargo" or the "Company") who have been

[1] Plaintiff further states, pursuant to a Confidentiality and Nondisclosure Agreement between Eargo, Inc. and Plaintiff, dated as of May 9, 2024, that all books and records produced by the Company in connection with the 220 Production are expressly incorporated by reference in this Complaint, to the extent permissible by Delaware law.

harmed as a result of Defendants' breaches of fiduciary duties related to a buyout of the public minority interest in Eargo by the Company's controlling stockholder (the "Merger" or "Buyout").

2. Specifically, pursuant to an Agreement and Plan of Merger, dated as of October 29, 2023 (the "Merger Agreement"), between PSC Echo Parent ("Parent"), a Delaware limited liability company formed by Patient Square Capital, L.P. ("Patient Square") to effectuate the Merger, PSC Echo Merger Merger Sub., Inc. ("Merger Sub"), a wholly owned subsidiary of Parent, and Eargo, Patient Square acquired Eargo's minority shares for $2.55 per share (the "Merger Consideration").

3. Prior to the Merger, Patient Square owned or controlled approximately 76.2% of the outstanding common shares of Eargo and three members of Eargo's Board of Directors (the "Board") were affiliated with and appointed by Patient Square.

4. Prior to the Merger, Patient Square was the controlling stockholder of Eargo. Given its controlling stockholder status, Patient Square owed fiduciary duties to Eargo's unaffiliated stockholders. The books and records obtained by Plaintiff [redacted].

5. Acting as the controlling stockholder, Patient Square sought to facilitate a merger primarily for its own benefit. Its motivations were typical of controller buyouts, aiming to acquire the unaffiliated shares at the lowest possible price.

6. Because Patient Square was Eargo's controlling stockholder and stood on both sides of the transaction, the Merger is subject to entire fairness review and it will be Patient Square's burden to prove that the transaction was entirely fair to Eargo's public stockholders.

7. Patient Square breached its fiduciary duties to the unaffiliated Eargo stockholders when it pushed through a Merger that was not entirely fair to those stockholders. Among other things, the 52-week average and high stock prices as of October 30, 2023, the day of the Merger announcement, of $6.31 and $14.60 per share, respectively (on a post-January 2023 1-for-20 reverse stock split basis), were significantly higher than Merger Consideration.

8. As the facts alleged herein illustrate, Patient Square opportunistically acquired Eargo just as its product line and distribution chain began showing significant promise, while Eargo maintained strict control over its manufacturing and development costs. This period of positive development coincided with Eargo's recovery from a settlement with the United States Department of Justice ("DOJ"), which required the Company to pay $34,372,032.38 plus interest to resolve allegations that Eargo had submitted, or caused to be submitted, claims for hearing

aid device reimbursements to the Federal Employees Health Benefits Program ("FEHBP") that contained unsupported hearing-loss diagnosis codes.

9. At the time of the Merger negotiations, Eargo was in need of funding to sustain operations and to grow its business. While the Merger was one of several financing options for the Company, it was the costliest option for minority stockholders. This Merger extinguished their Eargo shares for inadequate consideration, violating Patient Square's fiduciary duties to prioritize the interests of Eargo's minority stockholders over its own.

10. On September 14, 2023, the Eargo Board formed a three-person Special Committee, ostensibly to negotiate on behalf of minority stockholders. However, this Special Committee conducted lackluster negotiations with Patient Square, agreed to Merger Consideration that was unfair to minority stockholders, agreed to a Merger Agreement that did not include a go-shop provision despite initially advocating for the inclusion of such a provision, and failed to condition approval of the Merger on approval by the Special Committee and a vote of the majority of the unaffiliated minority stockholders (a majority-of-the-minority provision).

11. Eargo's six-person Board includes three directors who were not on the Special Committee: Trit Garg ("Garg"), Karr Narula ("Narula"), and Justin Sabet-Peyman ("Sabet-Peyman"). All were nominated by Patient Square in December 2022 and are employees, executives, or directors of Patient Square. Garg, Narula,

and Sabet-Peyman are dual fiduciaries, with loyalties to both Patient Square and Eargo.

12. Sabet-Peyman was closely involved with the merger transaction, overstepping his role as a dual-fiduciary director and breaching his fiduciary duties to the Company's public stockholders by putting Patient Square's interests above those of Eargo's minority stockholders, including by, among other things, failing to make sure that the negotiations conducted by the Special Committee were in the best interests of the Company's public stockholders, failing to offer and obtain Merger Consideration that was fair to minority stockholders, failing to condition approval of the Merger on approval by the Special Committee, and failing to condition approval of the Merger on a majority-of-the-minority vote or a "go-shop" provision.

13. On October 29, 2023, the Special Committee unanimously recommended approval of the transaction and the Eargo Board subsequently approved the Merger Agreement (with only the Special Committee Board members voting on the transaction). Simultaneously, Patient Square entered into a Voting and Support Agreement with Eargo in which it agreed to, among other things, vote all of its shares of Company common stock in favor of the Merger and the Merger Agreement. Without a majority-of-the-minority voting condition, Patient Square was able to approve the Merger with its vote alone.

14. The stockholder vote to approve the Merger and the Merger Agreement occurred on February 13, 2024, and the Merger was approved as a result of Defendants' majority voting power and control over the Merger. The Merger closed on February 16, 2024. As a result of the Merger, Eargo became a private company and was no longer publicly listed or traded on Nasdaq.

15. For these reasons and as set forth in detail herein, Plaintiff seeks to recover damages resulting from Defendants' violations of their fiduciary duties.

PARTIES AND RELEVANT NON-PARTIES

16. Plaintiff Kevin Loudy was, at all times, a continuous owner of Eargo common stock, and had his shares involuntarily converted as part of the Merger. Loudy did not vote to approve the Merger at the February 13, 2023 stockholder vote.

17. Eargo is a medical device company specializing in the research, development, and strategic marketing of hearing aids. Eargo primarily caters to consumers in the United States and utilizes direct-to-consumer and omni-channel sales approaches. Eargo is headquartered in California and incorporated in Delaware. Prior to the Buyout, shares of Eargo common stock were traded on the NASDAQ Stock Market under the symbol "EAR."

18. On or about June 30, 2023, Christian Gormsen ("Gormsen"), Eargo's former Chief Executive Officer ("CEO"), resigned from his position. Following Gormsen's resignation William Brownie ("Brownie"), Eargo's Chief Operating

Officer was appointed as the Interim Chief Executive Officer. Brownie continued to serve as the Interim CEO of Eargo at the time of the Merger and remains in this position.

19. Defendant Patient Square is a health care investment firm headquartered in California. Patient Square became Eargo's principal stockholder on approximately November 25, 2022, following Eargo's completion of a rights offering for up to 18,750,000 newly issued shares of common stock (the "Rights Offering"). Prior to this, on June 24, 2022, Eargo entered into an agreement with Patient Square to raise approximately $100 million through the sale of senior secured convertible notes (the "Notes"), with an additional $25 million future investment subject to certain conditions (the "Note Purchase Agreement"). In accordance with the terms of the Note Purchase Agreement, upon closing of the Rights Offering on November 23, 2022, the Notes converted into 15,821,299 shares of Eargo common stock, on a post-reverse stock split basis, representing approximately 76.2% of Eargo outstanding common stock as of the date of conversion.

20. Defendant Sabet-Peyman has served as a member of the Eargo Board since December 2022, when he was nominated to the Board by Patient Square. Sabet-Peyman is a Partner at Patient Square where he has worked since September 2021. Sabet-Peyman currently serves on the Board of Directors of Syneos Health and Access Telecare. He previously served on the Boards of Heartland Dental,

PetVet Care Centers, Trilogy MedWaste, Ebb Therapeutics, EchoNous, Arbor Pharmaceuticals, and Lake Region Medical. Sabet-Peyman has a pre-existing relationship with Donald Spence, another Eargo director and member of the Special Committee, having served together on the board at Ebb Therapeutics from 2016 to 2019, with Spence serving as CEO from 2017 to 2019. Additionally, Sabet-Peyman served as a Board Observer at Eargo in the three years prior to joining the Board in 2022. As both an Eargo director and Partner at Patient Square, Sabet-Peyman is a "dual fiduciary," owing fiduciary duties to both companies.

21. Donald Spence ("Spence") served as a member and non-executive Chair of the Eargo Board beginning in December 2022 until the closing of the Merger. He retired as President and CEO of Ebb Therapeutics in August 2019, having served since March 2017. Spence was a member of the Special Committee formed by the Eargo Board to explore potential strategic alternatives available to Eargo. According to the Proxy Statement for the Merger, filed on January 16, 2024 (the "Proxy"), Spence beneficially owned approximately 6,191 shares of Eargo's issued and outstanding common stock as of January 12, 2024.

22. David Wu ("Wu") served as a member of the Eargo Board beginning July 2014 until the closing of the Merger. He is a Partner at Maveron LLC, a venture capital firm, focusing on emerging consumer internet companies since 2012. Spence was a member of the Special Committee formed by the Eargo Board to explore

potential strategic alternatives available to Eargo. According to the Proxy, Wu beneficially owned approximately 36,989 shares of Eargo's issued and outstanding common stock as of January 12, 2024.

23. Katie J. Bayne ("Bayne") served as a member of the Eargo Board since June 2021 until the closing of Merger. She is a Senior Advisor at Guggenheim Securities, LLC, and the founder and President of Bayne Advisors. Spence was a member of the Special Committee formed by the Eargo Board to explore potential strategic alternatives available to Eargo. According to the Proxy, Bayne beneficially owned approximately 11,709 shares of Eargo's issued and outstanding common stock as of January 12, 2024.

24. Spence, Wu, and Bayne are sometimes jointly referred to herein as the "Special Committee Members."

25. Garg served as a member of the Eargo Board since December 2022, when he was nominated to the Board by Patient Square. Garg has served as a Vice President at Patient Square since October 2021. Garg currently serves on the Board of Directors of Access TeleCare. As both an Eargo director and an executive of Patient Square, Garg is a "dual fiduciary," owing fiduciary duties to both companies.

26. Narula served as a member of the Eargo Board since December 2022, when he was nominated to the Board by Patient Square. Narula is a Founding Partner of Patient Square Capital which he joined in March 2021. At Patient Square,

Narula oversees the firm's Transformation and Growth Team. He currently serves on the Board of Directors of Access Tele care and previously served on the Boards of Blue Sprig Pediatrics and Access Physicians. As both an Eargo director and a Founding Partner of Patient Square, Narula is a "dual fiduciary," owing fiduciary duties to both companies.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on his own behalf, and as a class action pursuant to Court of Chancery Rule 23, on behalf of all former stockholders of Eargo, except Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants, who were harmed by Defendants' actions as described more fully herein (the "Class").

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

29. The Class is so numerous that joinder of all members is impracticable. As of the record date of the Merger Agreement, Eargo had 20,762,389 shares of common stock issued and outstanding. As minority stockholders owned roughly 33.8% of all outstanding shares, it is clear that such shares were held by hundreds, if not thousands, of individuals and entities throughout the country. The number and identities of the record holders of Eargo's securities can be easily determined from the stock transfer journals maintained by the Company, its agents, or successors.

30. There are common questions of law and fact involved affecting the members of the Class, including, inter alia, the following:

(a) Whether Defendants breached any of their fiduciary duties to Plaintiff and the other members of the Class in connection with the Merger, including the duties of loyalty and due care;

(b) Whether the Merger was entirely fair to the unaffiliated stockholders of the Company;

(c) Whether the members of the Class have sustained damages, and if so, what is the proper measure of damages; and

(d) Whether any Defendant aided and abetted any breaches of fiduciary duties.

31. Plaintiff is a member of the Class and is committed to prosecuting this action. Plaintiff has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class. Plaintiff does not have interests antagonistic to or in conflict with those they seek to represent. Plaintiff is therefore an adequate representative of the Class.

32. The likelihood of individual Class members prosecuting separate individual actions is remote due to the relatively small loss suffered by each Class member as compared to the burden and expense of prosecuting litigation of this nature and magnitude. Absent a class action, Defendants are likely to avoid liability

for their wrongdoing, and Class members are unlikely to obtain redress for the wrongs alleged herein.

33. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

34. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, relief on behalf of the Class, as a whole, is appropriate.

35. There are no difficulties likely to be encountered in the management of the Class claims.

36. This Court is an appropriate forum for this dispute.

SUBSTANTIVE ALLEGATIONS

Background Regarding Eargo's Stock Performance

37. Eargo is a medical device company incorporated in Delaware on November 12, 2010 (under the name "Aria Innovations, Inc.") and focuses on researching, developing, and marketing hearing aids. The Company holds a number

of patents, covering a diverse range of technologies and innovations. Many of these patents are specifically related to Eargo's focus on creating small, efficient, and advanced hearing aid solutions designed to meet the needs of users seeking discreet and high-performing devices.

38. On October 16, 2020, Eargo closed its initial public offering ("IPO"), selling an aggregate of 9,029,629 shares of common stock at $18.00 per share (on a pre-January 2023 reverse stock split basis), raising approximately $148.1 million in proceeds, net of underwriting discounts, commissions, and costs.

39. On October 19, 2020, the first day of trading for Eargo's common stock, the stock closed at $33.68 per share, or 87.1% above its IPO price, on a pre-January 2023 reverse stock split basis. Four months later, on February 10, 2021, the stock closed as high as $75.37 per share on a pre-January 2023 reverse stock split basis, more than four times its IPO price, valuing the Company at about $2.9 billion.

40. However, on September 22, 2021, after the market closed, Eargo disclosed that insurance claims it submitted on behalf of certain customers might have constituted fraud against the U.S. federal government. Specifically, Eargo revealed that the DOJ had launched a criminal investigation into the Company, alleging that Eargo had submitted, or caused to be submitted, claims for hearing aid devices reimbursement to the FEHBP that contained unsupported hearing loss diagnosis codes. As a result of these disclosures, Eargo's stock price declined

precipitously. On April 29, 2022, the DOJ disclosed that it had reached a settlement with Eargo, requiring the Company to pay $34,372,032.38 plus interest to resolve the investigation.

41. The settlement with the DOJ significantly impacted Eargo's ability to have its products covered by insurance. Following the DOJ investigation, Eargo stopped accepting insurance benefits as a direct method of payment from December 8, 2021, until it resumed accepting limited insurance benefits in September 2022.

42. Amidst this period of instability, significant regulatory and strategic developments occurred. In August 2022, the FDA enacted a landmark regulation that expanded access to hearing aids by creating a new category of over-the-counter ("OTC") devices available in both traditional and retail drug stores.

43. Following this development, in September 2022, the Company began accepting insurance benefits as a payment method in specific situations. By December 2022, the Company had formed a partnership with NationsBenefits to provide OTC hearing aids to members of health plans.

44. On March 23, 2023, Eargo reported its financial results for the fourth quarter ending December 31, 2022, and held an earnings call. During the call, then-CEO Gormsen highlighted the Company's progress, noting that in 2022, Eargo "made meaningful progress against [its] most important business priorities" and expressed excitement over the commercial launch of Eargo 7, its most advanced

technology yet, which launched in February 2023. Gormsen emphasized the significant impact of Eargo's strategic evolution into a true omni-channel business.

45. On January 17, 2023, Eargo effected a 1-for-20 reverse stock split of the Company's common stock. On January 18, 2023, Eargo common stock began trading on the NASDAQ market on a split-adjusted basis, closing at $10.67 per share that day.

46. On May 11, 2023, Eargo reported its financial results for the first quarter ended March 31, 2023, announcing continued progress following the DOJ settlement. The Company reported net revenues of $11.8 million, up 29% year-over-year; gross systems shipped of 8,705, up 51% year-over-year; and a GAAP total operating loss of $22.8 million for the first quarter of 2023, compared to $30.4 million for the first quarter of 2022.

47. During Eargo's May 11, 2023 earnings conference call, Gormsen commented on the continued progress towards evolving Eargo into a true omni-channel business, highlighting retail as a key driver in diversifying business growth and noting improvements in the direct-to-consumer, cash-pay business.

48. Gormsen also highlighted Eargo's efforts to expand in the insurance market and emphasized the successful launch of the Eargo 7 self-fitting hearing aid with Sound Match, a feature of the Eargo 7 that allows users to customize their hearing experience via a mobile app. He discussed the strategic initiative of

increasing Eargo's presence in retail, noting that Eargo's devices are now available in approximately 1,500 locations of Victra, the largest Verizon Authorized Retailer in the United States, with approximately 1,500 retail locations. Gormsen expressed confidence in the growth potential of this partnership as a key component of Eargo's strategic plans.

49. Gormsen also stated that he was pleased with the initial uptake of the Eargo 7 and the positive customer feedback, expressing his belief in the growth of hearing aid distribution through physical retail channels in the U.S., with Eargo as a market leader in this evolution.

50. On June 23, 2023, Gormsen resigned from his position and the Board appointed Chief Operating Officer ("COO"), Brownie, as Interim CEO. The Board also approved an updated 2023 cost reduction plan [redacted]

51. On August 10, 2023, the Company announced second quarter 2023 financial results, including a 12% year-over-year increase in net revenue and a 14% year-over-year increase in gross shipments.

52. On Eargo's August 10, 2023 earnings conference call, Brownie commented on the incremental progress, stating:

> Our core direct-to-consumer cash-pay segment has been stable through 2023 as compared to 2022. We continue to focus on lowering customer acquisition costs through further optimizing media spend and maintaining an efficient inside sales force. Meanwhile, demand from consumers interested in purchasing Eargo devices through our evolving retail channel continues to develop following our launch in Victra's

approximately 1,500 retail locations nationwide and the FDA's over-the-counter final rule.

53. Brownie continued, noting the Company's likelihood for future success: "The cost reduction plan is expected to reduce our go-forward cash burn estimates, and we anticipate this reduced burn rate will extend our net operating cash runway into the second half of 2024."

54. Additionally, at the time of the Merger, Eargo's 52-week average and high stock prices for the period October 31, 2022, through October 30, 2023, were $6.31 and $14.60 per share, respectively, on a post-January 2023 reverse stock split basis, with investors expecting further growth due to the Company's potential.

55. However, despite this upward trajectory and potential for success, the Defendants orchestrated an unfair Buyout of Eargo, resulting in inadequate Merger Consideration.

Patient Square Becomes Eargo's Majority Controlling Stockholder in Advance of the Merger

56. Prior to the beginning of Eargo's upward trajectory, during its period of financial difficulties, the Company was proactively approached by Patient Square with interest in a potential investment.

57. On June 24, 2022, Eargo signed a Note Purchase Agreement with Patient Square, pursuant to which Eargo issued approximately $105.5 million of Notes in two tranches and agreed to conduct the Rights Offering for an aggregate of

18.75 million shares of common stock to stockholders at an offering price of $10.00 per share of common stock.

58. In connection with the Note Purchase Agreement, Eargo also entered into an Investors' Rights Agreement (the "Investors' Rights Agreement") with Patient Square, pursuant to which, among other things, Patient Square had the right to nominate a number of directors to the Board.

59. The Rights Offering closed on November 23, 2022, with Eargo only selling an aggregate of approximately 2.9 million shares to existing stockholders, from which Eargo received net proceeds of $27.6 million. In accordance with the terms of the Note Purchase Agreement, the Notes converted into 15,821,299 shares of Eargo common stock, on a post-January 2023 reverse stock split basis, representing approximately 76.3% of Eargo's outstanding common stock as of the date of conversion.

60. Patient Square strategically leveraged its investment to secure significant governance rights. Following the rights offering, they gained a board observer position, and the right to nominate directors proportionate to its ownership. In December 2022, Patient Square exercised its right and nominated Narula, Sabet-Peyman, and Garg to the Board. On December 7, 2022, they became members of the Board. Therefore, by the end of 2022, Patient Square completely controlled the Company.

61. Patient Square's investment in Eargo was presented as a strategy to drive growth, optimize operations, and restore insurance coverage. However, this move also allowed Patient Square to wield substantial influence over Eargo's future. By leveraging its control during a period of financial vulnerability for Eargo, Patient Square facilitated the unfair Merger.

62. Perella Weinberg Partners L.P. ("Perella Weinberg") acted as financial advisors to Eargo in securing the investment from Patient Square. Perella Weinberg later advised the Special Committee (described below) throughout the Merger process.

The Unfair Merger Process

63. As detailed in the books and records produced by the Company and the Proxy, the process leading to the Merger was fundamentally flawed and inadequate. It was driven by Patient Square's self-interest and designed with a single objective: to acquire Eargo and the outstanding minority shares of common stock by any means necessary.

64. On May 18, 2023, the Board and Eargo management met to discuss the [redacted] They considered [redacted] The Board explored [redacted]

[redacted]. The Board also examined [redacted] The Board requested [redacted] (EAR_0000217).

65. On May 30, 2023, Eargo management provided the Board with an update on Eargo's performance since May 18, 2023, noting marginal improvements. [redacted] The Board and management [redacted]

[redacted] (EAR_0000223).

66. On June 23, 2023, Eargo management [redacted] The Board discussed [redacted] (EAR_0000225).

67. On August 15, 2023, Eargo management presented [redacted] (EAR_0000229).

68. On September 14, 2023 a meeting of the Board was held with Eargo management [redacted] The Board engaged in a full discussion about [redacted] (EAR_0000242).

69. On September 18, 2023, the Board, by unanimous written consent, approved the creation of the Special Committee with full authority to consider, review, negotiate, assess, and recommend terms for the Potential Alternatives. The committee was also empowered to retain necessary advisors. Spence, Wu, and Bayne were appointed as members of the Special Committee.

70. On September 29, 2023, the Special Committee engaged Davis Polk & Wardwell LLP as its legal counsel. Subsequently, on October 9, 2023, the Special Committee engaged Perella Weinberg as its financial advisor.

71. Also on October 9, 2023, the Special Committee instructed Eargo management to prepare certain long-term financial projections for Eargo, which would likely be required for Perella Weinberg to undertake certain financial analyses in connection with the Special Committee's review of Potential Alternatives.

72. On October 11, 2023, the Special Committee held a video conference meeting with members of Eargo management and, at the request of the Special Committee, representatives of Davis Polk and Perella Weinberg, in order to review management's long-term financial projections.

73. On October 13, 2023,the Special Committee held a video conference meeting. During that meeting, Davis Polk informed the Special Committee of a call that Davis Polk had received from Ropes & Gray LLP ("Ropes"), counsel to Patient Square, regarding the possibility of a potential transaction between Patient Square and the Company, though no decision had been made by Patient Square regarding a transaction.

74. On October 16, 2023, Sabet-Peyman spoke to Spence via telephone. Sabet-Peyman explained that Patient Square had not made any decision to pursue a strategic transaction with Eargo but, if any decision was made by Patient Square to pursue a transaction, Patient Square believed it was very important, particularly in light of Eargo's cash position, that a definitive agreement with respect to any such transaction be executed quickly because the Company's challenged liquidity

position and declining stock price could damage Eargo's relationships with customers, suppliers, employees, and partners.

75. The Special Committee held a video conference meeting later on October 16, 2023, where Spence provided the Special Committee and its advisors with a summary of the call he had received from Sabet-Peyman.

76. On October 18, 2023, the Special Committee held a video conference meeting, which was attended by representatives of Davis Polk and Perella Weinberg and, at the request of the Special Committee, members of Eargo management. At the meeting, members of Eargo management reviewed with the Special Committee and its advisors management's long-term financial projections and the differences to the long-term projections prepared by management in 2022.

77. According to the Meeting Minutes (EAR_0000123), [redacted]

78. In its [redacted] (EAR_0000125-EAR_0000148), [redacted]

79. Additionally, [redacted]

80. [redacted]

[redacted] (EAR_0000170).

81. On October 24, 2023, representatives of Ropes spoke via telephone with representatives of Davis Polk. Representatives of Ropes indicated that, while Patient Square had not made any decision to pursue a transaction, if any decision was made by Patient Square to pursue a transaction, Patient Square believed it was very important, particularly in light of Eargo's cash position, that a definitive agreement with respect to any such transaction be executed quickly.

82. On October 27, 2023, [redacted] *See* Special Committee Meeting Minutes dated October 27, 2023 (EAR_0000163). [redacted] *Id.*

83. [redacted]. *Id*.

84. Later on October 27, 2023, [redacted] (EAR_0000165). [redacted]

85. [redacted] (EAR_0000204).

86. Additionally, [redacted]. *Id*. Moreover, [redacted].

87. On October 28, 2023, [redacted] *See* Special Committee Meeting Minutes dated October 28, 2023

(EAR_0000167). Perella Weinberg communicated the $2.85 per-share counter offer to Sabet-Peyman later on October 28, 2023.

88. Later that day, [redacted] *See* Special Committee Meeting Minutes dated October 28, 2023 (EAR_0000186).

89. Later on October 28, 2023, [redacted] *Id.*

90. [redacted] *Id.*

91. Later on the evening of October 28, 2023, [redacted] *See* Special Committee Meeting Minutes dated October 28, 2023 (EAR_0000188).

92. On October 29, 2023, [redacted] *See* Special Committee Meeting Minutes dated October 28, 2023 (EAR_0000190).

93. Later in the day on October 29, 2023, [redacted] (EAR_0000244).

94. Crucially, the Merger Agreement provided that delivery of the affirmative vote or written consent of the holders of a majority of the voting power of the outstanding shares of Eargo common stock approving the Merger Agreement would be sufficient to adopt the Merger Agreement and approve the Merger.

95. Markedly absent from the terms of the Merger Agreement was a majority-of-the-minority condition or a "go-shop" provision. Therefore, Patient Square was able to unilaterally approve the Merger and acquire Eargo using only its greater-than-majority holdings.

The Unfair Merger Consideration

96. The Merger Consideration was inadequate and unfair to Eargo's unaffiliated stockholders.

97. Specifically, the merger's $2.55 per share offer, was below both the 52-week average and the high stock prices of $6.31 and $14.60 per share as of the Merger announcement, respectively, on a post-January 2023 reverse stock split basis.

98. Furthermore, one of the two valuations derived from Perella Weinberg's Selected Public Companies Analysis suggests a range of implied per-share prices for Eargo common stock of between $3.77 and $5.69 per share, emphasizing the perceived undervaluation of the current offer.

99. The Merger Consideration was all the more disappointing considering that Eargo was undergoing significant breakthroughs in its research and development. Throughout the Merger process, Eargo was preparing to launch two new over-the-counter hearing devices, Eargo SE and LINK by Eargo. Both products

have since launched and received endorsements from the National Council on Aging (NCOA).

100. Additionally, in early 2024, Eargo announced the expansion of its telehealth services, offering telehealth consultations with licensed Eargo audiologists in select states with plans to expand coverage to additional states throughout 2024.

101. Likewise, Eargo was poised to benefit from the potential future value of the hearing aid market, which is projected to grow globally from $11.98 billion in 2023 to $21.09 billion by 2030.

102. Furthermore, Eargo made significant strides in expanding insurance coverage for its products. On November 16, 2023, Eargo announced that UnitedHealthcare Hearing plans would expand their benefits in 2024 to include OTC hearing aids, featuring a range of Eargo products such as the Eargo 7, 6, and 5 models. Additionally, on December 15, 2023, Eargo announced that it would enter an in-network agreement with Blue Cross Blue Shield ("BCBS") in 2024. This agreement allows BCBS members with applicable hearing benefits to apply those benefits towards the purchase of Eargo hearing aids, potentially lowering their out-of-pocket costs.

The Unfair Merger is Consummated Without Approval From Minority Stockholders

103. On October 29, 2023, Patient Square entered into a Voting and Support Agreement with Eargo in which it agreed to (i) vote all shares of Company Common Stock beneficially owned by Patient Square in favor of the Merger and the Merger Agreement, (ii) not exercise dissenters' rights, appraisal rights or vote in favor of an alternative proposal or other action that would reasonably be expected to prevent, interfere with, adversely affect or delay the Merger and (iii) not enter into any contract, option or other arrangement or understanding with respect to the transfer of any shares of Company Common Stock held by the Patient Square, other than as provided under certain customary exceptions.

104. A special meeting of stockholders was scheduled for February 13, 2023, with the approval of the Merger Agreement contingent on receiving affirmative votes from at least a majority of the voting power of the outstanding shares of Company Common Stock. Given that Patient Square held approximately 76.2% of Eargo's outstanding capital stock, they effectively secured the approval of the Merger before the vote even took place.

105. On February 13, 2024, at the special meeting of stockholders, the Merger was approved as anticipated and Eargo became a private company. Trading in shares of Eargo was halted effective February 16, 2024.

COUNT I

Breach of Fiduciary Duty
(Against Patient Square as Controlling Stockholder)

106. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

107. Patient Square, through its subsidiary PSC Echo, LP, possessed majority stock voting power, enabling it to exercise actual control both over the business affairs of Eargo, and in connection with the Merger. As the controlling stockholder, Patient Square owed fiduciary duties to the Company's minority stockholders.

108. Patient Square violated its fiduciary duties owed to Eargo's public stockholders by engaging in a conflicted transaction in which it stood on both sides of the Merger, and which resulted in a transaction unfair to the Class, both in terms price and process. Patient Square placed its own interests ahead of the interests of the Company's unaffiliated stockholders.

109. The Merger, in which Eargo's controlling stockholder, Patient Square, stood on both sides of the transaction, is subject to entire fairness.

110. The Merger was not entirely fair as to price and process.

111. By the acts, transactions and courses of conduct alleged herein, Patient Square unfairly deprived Plaintiff and other members of the Class of the true value inherent in and arising from their Eargo shares.

112. By reason of the foregoing, each member of the Class has suffered damages.

113. Plaintiff and the other members of the Class have no adequate remedy at law.

COUNT II

Breach of Fiduciary Duty
(Against Sabet-Peyman)

114. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

115. Sabet-Peyman, as simultaneously a director and/or officer of both Eargo and Patient Square, owed fiduciary duties to both Patient Square and Eargo's public, minority stockholders. Sabet-Peyman violated his fiduciary duties to Eargo's public, minority stockholders, acted disloyally, in bad faith, and without due care, failed to take adequate measures to ensure that the interests of Eargo's minority stockholders were properly protected in connection with the Merger, failed to act reasonably to obtain the highest share price for minority stockholders' Eargo shares, failed to provide or secure adequate or fair consideration in the Merger as a result of conflicts of interests with Patient Square, failed to condition approval of the Merger on approval by the Special Committee and failed to demand inclusion of a majority-of-the-minority provision or a "go-shop" provision. As detailed herein, Sabet-Peyman is liable to the Class for breaching his fiduciary duties in his role as director and/or officer of Eargo.

116. Sabet-Peyman served his own interests and the interests of Patient Square at the expense of the minority stockholders of Eargo to which he owed fiduciary duties. As such, he breached his duty of loyalty, as well as his duties of care, good faith, fair dealing, and candor.

117. The Merger, in which Eargo's controlling stockholder, Patient Square, stood on both sides of the transaction, as did Sabet-Peyman as a dual-fiduciary director, is subject to entire fairness review.

118. The Merger was not entirely fair as to price and process.

119. By the acts, transactions, and courses of conduct alleged herein, Sabet-Peyman unfairly deprived the Company's public, minority stockholders of the fair and true value of their Eargo investment.

120. By reason of the foregoing, each member of the Class has suffered damages.

121. Plaintiff and the other members of the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in their favor and in favor of the Class, and against Defendants, as follows:

A. Declaring this action to be a class action and certifying Plaintiff as the Class representative and Plaintiff's counsel as Class counsel;

B. Rescinding the Merger and setting it aside, or awarding rescissory and compensatory damages to Plaintiff and the Class, including pre-judgment and post-judgment interest;

C. Directing Defendants to account to Plaintiff and the Class for all damages suffered by them as a result of Defendants' wrongful conduct alleged herein;

D. Awarding Plaintiff the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of its attorneys and experts; and

E. Granting such other and further equitable and legal relief as may be just and fair in the premises.

KAHN SWICK & FOTI, LLC

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Dated: November 13, 2024