EFiled: Oct 31 2024 04:29PM EDT
Transaction ID 74922644
Case No. 2024-0860-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DONALD H. NAU and DONALD W. HANSEN, Plaintiffs, v. PATIENT SQUARE CAPITAL, L.P. and JUSTIN SABET-PEYMAN, Defendants.	)	C.A. No. 2024-0860-JTL PUBLIC VERSION FILED October 31, 2024

ANSWER TO VERIFIED CLASS ACTION COMPLAINT

Defendants Patient Square Capital, L.P. and Justin Sabet-Peyman (together, "Defendants"), through their undersigned counsel, hereby answer the Verified Complaint filed by Plaintiffs Donald H. Nau and Donald W. Hansen (together, "Plaintiffs") on August 16, 2024.

This Answer is made without waiving, but instead expressly reserving, all rights that Defendants may have to file dispositive motions or other responses addressing some or all of the allegations and claims asserted in the Complaint. To the extent that certain paragraphs of Plaintiffs' Complaint include footnotes, Defendants' Answer to each numbered paragraph referencing a footnote should be read to include Defendants' response to the footnote. This Answer includes the Complaint's headings for reference only; Defendants do not admit the truth of any allegations contained in, or any inference that could be drawn from, those headings.

Except as expressly admitted herein, Defendants deny all allegations. To the extent Defendants admit the contents of statements written or made orally by others, such admission does not imply any admission of the truth of such statements. Capitalized terms not otherwise defined in this Answer have the meanings ascribed to them in the Complaint.

NATURE OF THE ACTION

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

RESPONSE: The allegations in Paragraph 1 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 1.

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").

RESPONSE: Defendants deny the allegations in Paragraph 2, except that they admit that (i) Parent and Merger Sub entered into the Merger Agreement dated October 29, 2023, pursuant to which Merger Sub merged with and into Eargo; and that, (ii) pursuant to the Merger Agreement, certain of Eargo's stock was cancelled and converted into the right to receive a cash amount of $2.55 per share.

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.

RESPONSE: Defendants deny the allegations in Paragraph 3, except they admit that prior to the Merger, Patient Square or its affiliates controlled approximately 76.2% of the outstanding common shares of Eargo and that three members of Eargo's Board were affiliated with and appointed by Patient Square or its affiliates.

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 Plaintiffs [redacted]

RESPONSE: The allegations in Paragraph 4 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 4, except Defendants admit that PSC Echo, L.P. ("PSC Echo"), an affiliate of Patient Square, held 76.2% of the voting power of Eargo's outstanding capital stock prior to the Merger.

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.

RESPONSE: Defendants deny the allegations in Paragraph 5.

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.

RESPONSE: The allegations in Paragraph 6 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 6.

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.

RESPONSE: Defendants deny the allegations in Paragraph 7, except Defendants admit that the 52-week average and high stock prices as of October 30, 2023, were, respectively, $6.31 and $14.60 per share (on a post-January 2023 1-for-20 reverse stock split basis).

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.

RESPONSE: Defendants deny the allegations in Paragraph 8, except that Defendants admit that the Company entered into a settlement with the DOJ

pursuant to which the Company paid $34,372,032.38 plus interest, in relation to hearing aid device reimbursement claims submitted to the FEHBP.

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.

RESPONSE: To the extent the allegations in Paragraph 9 state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 9, except they admit that Eargo was in need of additional financing to sustain operations and grow its business at the time of the Merger.

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).

RESPONSE: Defendants deny the allegations in Paragraph 10, except that (i) Defendants admit that the Eargo Board formed a three-person Special Committee on September 14, 2023; and (ii) to the extent Paragraph 10 purports to characterize the Merger Agreement, Defendants admit the existence of the Merger

Agreement and respectfully refer the Court to the agreement for an accurate and complete account of its contents.

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.

RESPONSE: To the extent the allegations in Paragraph 11 state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 11, except that Defendants admit that (i) Mr. Garg, Mr. Narual, and Mr. Sabet-Peyman were members of the Eargo Board at the time of the Merger and that PSC Echo, an affiliate of Patient Square, nominated them to the Eargo Board in December 2022; and that (ii) Mr. Garg, Mr. Narual, and Mr. Sabet-Peyman are affiliated with Patient Square.

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.

RESPONSE: To the extent the allegations in Paragraph 12 state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 12.

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.

RESPONSE: Defendants deny the allegations in Paragraph 13, except that Defendants (i) admit that, on October 29, 2023, the Special Committee unanimously recommended approval of the Merger and the Eargo Board, through its independent members, subsequently approved the Merger Agreement and that PSC Echo and Eargo entered into a Voting and Support Agreement on October 29, 2023, and (ii) to the extent that Paragraph 13 purports to characterize the Voting and Support Agreement, Defendants admit the existence of the agreement and respectfully refer the Court to the agreement for an accurate and complete account of its contents.

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.

RESPONSE: Defendants deny the allegations in Paragraph 14, except that Defendants admit that (i) the stockholders voted to approve the Merger and the Merger Agreement on February 13, 2024, (ii) the Merger closed on February 16, 2024, and (iii) as a result of the Merger, Eargo became a private company and was de-listed from the Nasdaq.

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

RESPONSE: The allegations in Paragraph 15 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 15.

PARTIES AND RELEVANT NON-PARTIES

16. Plaintiff Donald H. Nau was, at all times, an owner of 2,448 shares of Eargo common stock, and had his shares involuntarily converted as part of the Merger. Nau voted against approving the Merger at the February 13, 2023 stockholder vote.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 16.

17. Plaintiff Donald W. Hansen was, at all times, an owner of 2,870 shares of Eargo common stock, and had his shares involuntarily converted as part of the Merger. Hansen voted against approving the Merger at the February 13, 2023 stockholder vote.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 17.

18. 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."

RESPONSE: Defendants admit the allegations in Paragraph 18.

19. 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.

RESPONSE: Defendants admit the allegations in Paragraph 19.

20. 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.

RESPONSE: Defendants deny the allegations in Paragraph 20, except that Defendants (i) admit that Patient Square is a health care investment firm headquartered in California, and that its affiliate, PSC Echo, became Eargo's principal stockholder on November 25, 2022, as a result of Eargo's completion of the Rights Offering; and (ii) to the extent Paragraph 20 purports to characterize the

Note Purchase Agreement, Defendants admit that on June 24, 2022, Eargo and its subsidiaries entered into a Note Purchase Agreement with noteholders affiliated with Patient Square and respectfully refer the Court to the agreement for an accurate and complete account of its contents.

21. 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.

RESPONSE: To the extent the allegations in Paragraph 21 state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 21, except that Defendants admit that (i) Defendant Sabet-Peyman has served as a member of the Eargo Board since December 2022, when he was nominated to the Board by PSC Echo, an affiliate of Patient Square; (ii) Defendant Sabet-Peyman is a Partner at Patient Square where he has worked since September 2021 and has served on the Board of Directors of Syneos Health and Access Telecare; (iii) Defendant Sabet-Peyman previously served on the Boards of Heartland Dental, PetVet Care Centers, Trilogy MedWaste,

Ebb Therapeutics, EchoNous, Arbor Pharmaceuticals, and Lake Region Medical; and (iv) Defendant Sabet-Peyman served on the board at Ebb Therapeutics from 2016 to 2019, together with Donald Spence.

22. 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.

RESPONSE: Defendants admit the allegations in Paragraph 22, except that to the extent Paragraph 22 purports to characterize the Proxy, Defendants respectfully refer the Court to the Proxy for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

23. 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.

RESPONSE: Defendants admit the allegations in Paragraph 23, except that to the extent Paragraph 23 purports to characterize the Proxy, Defendants respectfully refer the Court to the Proxy for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

24. 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.

RESPONSE: Defendants admit the allegations in Paragraph 24, except that to the extent Paragraph 24 purports to characterize the Proxy, Defendants respectfully refer the Court to the Proxy for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

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

RESPONSE: Paragraph 25 defines the term "Special Committee Members" as Plaintiffs plan to use it in the Complaint, and thus does not contain any allegations that Defendants can admit or deny.

26. 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.

RESPONSE: To the extent the allegations in Paragraph 26 state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 26, except that Defendants admit that (i) Mr. Garg served as a member of the Eargo Board since December 2022, when he was nominated to the Board by PSC Echo, an affiliate of Patient Square; (ii) Mr.

Garg has served as a Vice President at Patient Square since October 2021; and (iii) Mr. Garg currently serves on the Board of Directors of Access TeleCare.

27. 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.

RESPONSE: To the extent the allegations in Paragraph 27 state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 27, except that Defendants admit that (i) Narula served as a member of the Eargo Board since December 2022, when he was nominated to the Board by PSC Echo, an affiliate of Patient Square; (ii) Narula is a Founding Partner of Patient Square Capital which he joined in March 2021, and where he oversees the firm's Transformation and Growth Team; and (iii) Narula is currently serving on the Board of Directors of Access Telecare and previously served on the Boards of Blue Sprig Pediatrics and Access Physicians.

CLASS ACTION ALLEGATIONS

28. Plaintiffs bring this action on their 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").

RESPONSE: Paragraph 28 purports to describe the nature of this action, and thus contains no allegations that Defendants can admit or deny. To the extent the allegations in Paragraph 28 state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 28.

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

RESPONSE: The allegations in Paragraph 29 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 29.

30. 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.

RESPONSE: The allegations in Paragraph 30 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 30, except Defendants admit that as of the record date of the Merger Agreement, Eargo had 20,762,389 shares of common stock outstanding.

31. 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 Plaintiffs 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.

RESPONSE: The allegations in Paragraph 31 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 31.

32. Plaintiffs are members of the Class and are committed to prosecuting this action. Plaintiffs have retained competent counsel experienced in litigation of this nature. The claims of Plaintiffs are typical of the claims of the other members of the Class. Plaintiffs do not have interests antagonistic to or in conflict with those they seek to represent. Plaintiffs are therefore an adequate representative of the Class.

RESPONSE: The allegations in Paragraph 32 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 32.

33. 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.

RESPONSE: The allegations in Paragraph 33 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 33.

34. 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.

RESPONSE: The allegations in Paragraph 34 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 34.

35. 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.

RESPONSE: The allegations in Paragraph 35 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 35.

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

RESPONSE: The allegations in Paragraph 36 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 36.

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

RESPONSE: The allegations in Paragraph 37 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit this Court is an appropriate forum for this dispute.

SUBSTANTIVE ALLEGATIONS

BACKGROUND REGARDING EARGO'S STOCK PERFORMANCE

38. 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.

RESPONSE: Defendants admit the allegations in Paragraph 38.

39. 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.

RESPONSE: Defendants deny the allegations in Paragraph 39, except they admit that Eargo closed its IPO on October 16, 2020, 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).

40. 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.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40.

41. 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.

RESPONSE: Defendants admit that, on April 29, 2022, the DOJ disclosed that it had reached a settlement with Eargo. To the extent Paragraph 41 purports to characterize DOJ's or Eargo's disclosures or public records of Eargo's stock price, Defendants respectfully refer the Court to the disclosures and records for an accurate and complete account of their contents and deny any characterizations that are inconsistent with their contents. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 41.

42. 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.

RESPONSE: Defendants deny the allegations in Paragraph 42, except they admit that Eargo stopped accepting insurance benefits as a direct method of payment from December 8, 2021, until September 2022.

43. 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.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 43.

44. 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.

RESPONSE: Defendants admit that (a) Eargo formed a partnership with NationsBenefits in December 2022; and (b) Eargo resumed accepting certain insurance benefits as a payment method in September 2022. To the extent Paragraph 44 purports to characterize the agreement between NationsBenefits and Eargo, Defendants respectfully refer the Court to the agreement for an accurate and complete account of its contents and deny any characterizations that are inconsistent with its contents. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 44.

45. 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.

RESPONSE: Defendants admit that on March 23, 2023, Eargo held an earnings call reporting on its financial results for the quarter ending December 31, 2022. The remainder of Paragraph 45 purports to characterize the transcript of Eargo's March 23, 2023 earnings conference call. Defendants respectfully refer the Court to the earnings call transcript for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

46. 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.

RESPONSE: Defendants admit the allegations in Paragraph 46.

47. 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.

RESPONSE: Defendants admit that, on May 11, 2023, Eargo held an earnings conference call reporting on its financial results for the quarter ending March 31, 2023. The remainder of Paragraph 47 purports to characterize Eargo's May 11, 2023 press release and the transcript of Eargo's May 11, 2023 earnings conference call. Defendants respectfully refer the Court to those documents for an

accurate and complete account of their contents and deny any characterizations that are inconsistent with the documents.

48. 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.

RESPONSE: Paragraph 48 purports to characterize the transcript of Eargo's May 11, 2023 earnings conference call. Defendants respectfully refer the Court to the earnings call transcript for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

49. 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.

RESPONSE: Paragraph 49 purports to characterize the transcript of Eargo's May 11, 2023 earnings conference call. Defendants respectfully refer the Court to the earnings call transcript for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

50. 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.

RESPONSE: Paragraph 50 purports to characterize the transcript of Eargo's May 11, 2023 earnings conference call. Defendants respectfully refer the Court to the earnings call transcript for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

51. 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]

RESPONSE: Defendants deny the allegations in Paragraph 51, except that Defendants admit that (i) Gormsen resigned from his position as CEO of Eargo on June 23, 2023; and (ii) the Board appointed Brownie as Interim CEO and approved an updated 2023 cost reduction plan during the Board's June 23, 2023 meeting.

52. 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.

RESPONSE: Defendants admit that on August 10, 2023, the Company announced second quarter 2023 financial results. Paragraph 52 purports to characterize Eargo's August 10, 2023 press release and the transcript of Eargo's August 10, 2023 earnings conference call. Defendants respectfully refer the Court to those documents for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the documents.

53. 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.

RESPONSE: Paragraph 53 purports to characterize the transcript of Eargo's August 10, 2023 earnings conference call. Defendants respectfully refer the Court to the earnings call transcript for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

54. 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."

RESPONSE: Paragraph 54 purports to characterize the transcript of Eargo's August 10, 2023 earnings conference call. Defendants respectfully refer the Court to the transcript for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the document.

55. 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.

RESPONSE: Defendants admit that the 52-week average and high stock prices as of October 30, 2023, were, respectively, $6.31 and $14.60 per share (on a post-January 2023 reverse stock split basis). Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 55.

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

RESPONSE: Defendants deny the allegations in Paragraph 56.

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

57. 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.

RESPONSE: Defendants deny the allegations in Paragraph 57, except they admit that the Company was approached by Patient Square.

58. 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.

RESPONSE: Defendants deny the allegations in Paragraph 58, except that (i) Defendants admit that, on June 24, 2022, Eargo and certain noteholders affiliated with Patient Square entered into a Note Purchase Agreement; and (ii) to the extent Paragraph 58 purports to characterize the Note Purchase

Agreement, Defendants admit the existence of the Note Purchase Agreement and respectfully refer the Court to the agreement for an accurate and complete account of its contents.

59. 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.

RESPONSE: Defendants deny the allegations in Paragraph 59, except (i) Defendants admit that Eargo and noteholders affiliated with Patient Square entered into an Investors' Rights Agreement on June 24, 2022; and (ii) to the extent Paragraph 59 purports to characterize the Investors' Rights Agreement, Defendants admit the existence of the agreement and respectfully refer the Court to the agreement for an accurate and complete account of its contents.

60. 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.

RESPONSE: Defendants admit the allegations in Paragraph 60.

61. 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.

RESPONSE: Defendants deny the allegations in Paragraph 61, except Defendants admit that (i) in December 2022, PSC Echo nominated Narula, Sabet-Peyman, and Garg to the Board; (ii) Narula, Sabet-Peyman, and Garg became members of the Board on December 7, 2023; and (iii) pursuant to the Rights Offering, PSC Echo had the right to nominate a number of directors to the Eargo Board proportionate to its ownership in Eargo and a right to appoint a board observer.

62. 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.

RESPONSE: Defendants deny the allegations in Paragraph 62.

63. 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.

RESPONSE: Defendants admit that Perella Weinberg acted as financial advisor to Eargo in relation to the Note Purchase Agreement and to the Special Committee in relation to the Merger. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 63.

The Unfair Merger Process

64. 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.

RESPONSE: Plaintiffs deny the allegations in Paragraph 64.

65. On May 18, 2023, the Board and Eargo management met to discuss the [redacted] They considered [redacted] The Board explored [redacted] The Board also examined [redacted] The Board requested [redacted] (EAR_0000217).

RESPONSE: Paragraph 65 purports to characterize the meeting minutes from the Board's May 18, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their content and deny any characterizations that are inconsistent with the minutes.

66. 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).

RESPONSE: Paragraph 66 purports to characterize the meeting minutes from the Board's May 30, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their content and deny any characterizations that are inconsistent with the minutes.

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

RESPONSE: Paragraph 67 purports to characterize the meeting minutes from the Board's June 23, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their content and deny any characterizations that are inconsistent with the minutes.

68. On August 15, 2023, Eargo management presented [redacted]

[redacted]
(EAR_0000229).

RESPONSE: Paragraph 68 purports to characterize the meeting minutes from the Board's August 15, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their content and deny any characterizations that are inconsistent with the minutes.

69. 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).

RESPONSE: Paragraph 69 purports to characterize the meeting minutes from the Board's September 14, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their content and deny any characterizations that are inconsistent with the minutes.

70. 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.

RESPONSE: Defendants admit the allegations in Paragraph 70.

71. 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.

RESPONSE: Defendants admit the allegations in Paragraph 71.

72. 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.

RESPONSE: Defendants admit the allegations in Paragraph 72.

73. 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.

RESPONSE: Defendants admit the allegations in Paragraph 73.

74. 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.

RESPONSE: Defendants admit that the Special Committee held a video conference meeting on October 13, 2023. To the extent that Paragraph 74 purports to characterize the Proxy, Defendants respectfully refer the Court to the Proxy for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the Proxy.

75. 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.

RESPONSE: Paragraph 75 purports to characterize the Proxy. Defendants respectfully refer the Court to the Proxy for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the Proxy. Defendant Sabet-Peyman admits the allegations in Paragraph 75 except he denies any references to Patient Square as opposed to its affiliate, PSC Echo.

76. 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.

RESPONSE: Paragraph 76 purports to characterize the Proxy. Defendants respectfully refer the Court to the Proxy for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the Proxy.

77. 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.

RESPONSE: Paragraph 77 purports to characterize the Proxy. Defendants respectfully refer the Court to the Proxy for an accurate and complete

account of its contents and deny any characterizations that are inconsistent with the Proxy.

78. According to the Meeting Minutes (EAR 0000123), [redacted]

RESPONSE: Paragraph 78 purports to characterize the meeting minutes from the Board's October 19, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

79. In its [redacted] (EAR 0000125-EAR 0000148), [redacted]

RESPONSE: Paragraph 79 purports to characterize the Project Puma Discussion Materials. Defendants respectfully refer the Court to the documents for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the documents.

80. Additionally, [redacted]

RESPONSE: Paragraph 80 purports to characterize Perella Weinberg's analysis in the Project Puma Discussion Materials document. Defendants respectfully refer the Court to the document for an accurate and complete account of its contents and deny any characterizations that are inconsistent the analysis.

81. [redacted] (EAR_0000170).

RESPONSE: Paragraph 81 purports to characterize Perella Weinberg's analysis in two Project Puma Discussion Materials documents. Defendants respectfully refer the Court to the documents for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the analyses.

82. 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.

RESPONSE: Paragraph 82 purports to characterize the Proxy. Defendants respectfully refer the Court to the Proxy for an accurate and complete account of its contents and deny any characterizations that are inconsistent with the Proxy.

83. On October 27, 2023, [redacted] *See* Special Committee Meeting Minutes dated October 27, 2023 (EAR 0000163). [redacted] *Id.*

RESPONSE: Paragraph 83 purports to characterize the minutes from the Special Committee's October 27, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

84. [redacted] *Id.*

RESPONSE: Paragraph 84 purports to characterize the minutes from the Special Committee's October 27, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

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

RESPONSE: Paragraph 85 purports to characterize the minutes from the Special Committee's October 27, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

86. [redacted] (EAR_0000204).

RESPONSE: The allegations in Paragraph 86 purport to characterize the October 29, 2023 Project Puma Discussion Materials. Defendants respectfully

refer the Court to the materials for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the materials.

87. Additionally, [redacted] Moreover, [redacted]

RESPONSE: Defendants deny the allegations in Paragraph 87, except, to the extent the allegations in Paragraph 87 purport to characterize the Proxy and the October 29, 2023 Project Puma Discussion Materials, Defendants admit the existence of the Proxy and the October 29, 2023 Project Puma Discussion Materials and respectfully refer the Court to these documents for an accurate and complete account of their contents.

88. 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.

RESPONSE: Defendants deny the allegations in Paragraph 88, except that Defendants (i) admit that on October 28, 2023, representatives of Perella Weinberg spoke by telephone with Mr. Sabet-Peyman to convey the Special Committee's $2.85 counter-proposal; and (ii) to the extent Paragraph 88 purports to characterize the Proxy and the minutes from the Special Committee's October 28, 2023 meeting, Defendants admit the existence of these documents and respectfully refer the Court to these documents for an accurate and complete account of their contents.

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

RESPONSE: Paragraph 89 purports to characterize the Proxy and/or the minutes from the Special Committee's October 28, 2023 meeting. Defendants respectfully refer the Court to these documents for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the documents.

90. Later on October 28, 2023, [redacted]

[redacted] *Id.*

RESPONSE: Paragraph 90 purports to characterize the minutes from the Special Committee's October 28, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

91. [redacted]. *Id.*

RESPONSE: Paragraph 91 purports to characterize the minutes from the Special Committee's October 28, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

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

RESPONSE: Paragraph 92 purports to characterize the minutes from the Special Committee's October 28, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

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

RESPONSE: Paragraph 93 purports to characterize the minutes from the Special Committee's October 29, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes. Defendants specifically deny that the document marked EAR_0000190 reflects Special Committee meeting minutes dated October 28, 2023.

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

RESPONSE: Paragraph 94 purports to characterize the minutes from the Special Committee's October 29, 2023 meeting. Defendants respectfully refer the Court to the minutes for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the minutes.

95. 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.

RESPONSE: Paragraph 95 purports to characterize the Merger Agreement. Defendants respectfully refer the Court to the agreement for an accurate

and complete account of its contents and deny any characterizations that are inconsistent with its terms.

96. 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.

RESPONSE: Paragraph 96 purports to characterize the Merger Agreement. Defendants respectfully refer the Court to the agreement for an accurate and complete account of its contents and deny any characterizations that are inconsistent with its terms. Defendants deny the remaining allegations in Paragraph 96.

The Unfair Merger Consideration

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

RESPONSE: Defendants deny the allegations in Paragraph 97.

98. 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.

RESPONSE: Defendants deny the allegations in Paragraph 98, except they admit that the offered merger consideration of $2.55 per share 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.

99. 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.

RESPONSE: The allegations in Paragraph 99 purport to characterize the October 29, 2023 Project Puma Discussion Materials and the Proxy. Defendants respectfully refer the Court to these documents for an accurate and complete account of their contents and deny any characterizations that are inconsistent with the documents.

100. 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).

RESPONSE: Defendants deny the allegations in Paragraph 100, except Defendants admit that Eargo launched Eargo SE and LINK by Eargo in January 2024.

101. 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.

RESPONSE: Defendants admit the allegations in Paragraph 101.

102. 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.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 102.

103. 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.

RESPONSE: Defendants admit that Eargo entered into agreements with UnitedHealthcare and, respectively, BCBS. To the extent that Paragraph 103 purports to characterize these agreements, Defendants respectfully refer the Court to the agreements for an accurate and complete account of their contents and deny any allegations that are inconsistent with their terms.

The Unfair Merger is Consummated Without Approval From Minority Stockholders

104. 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.

RESPONSE: Defendants deny the allegations in Paragraph 104, except that to the extent that Paragraph 104 purports to characterize the Voting and

Support Agreement, Defendants admit that PSC Echo and Eargo entered into a Voting and Support Agreement on October 29, 2023 and respectfully refer the Court to the agreement for an accurate and complete account of its contents.

105. 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.

RESPONSE: Defendants deny the allegations in Paragraph 105, except that Defendants admit that Eargo scheduled a special meeting of stockholders for February 13, 2023, and that the special meeting was held to consider and vote on a proposal to approve and adopt the Merger Agreement.

106. 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.

RESPONSE: Defendants deny the allegations in Paragraph 106, except that Defendants admit that (a) at the special meeting of stockholders held on February 13, 2024, a significant majority of Eargo's stockholders voted to approve the Merger and (b) trading in Eargo's stock was halted effective February 16, 2024.

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

107. Plaintiffs repeat and reallege the previous allegations as if fully set forth herein.

RESPONSE: Defendants repeat and reallege the previous responses as if fully set forth herein.

108. 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.

RESPONSE: The allegations in Paragraph 108 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 108, except Defendants admit that PSC Echo possessed majority voting power in Eargo.

109. 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.

RESPONSE: Defendants deny the allegations in Paragraph 109.

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

RESPONSE: The allegations in Paragraph 110 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 110.

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

RESPONSE: Defendants deny the allegations in Paragraph 111.

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

RESPONSE: Defendants deny the allegations in Paragraph 112.

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

RESPONSE: Defendants deny the allegations in Paragraph 113.

114. Plaintiffs and the other members of the Class have no adequate remedy at law.

RESPONSE: The allegations in Paragraph 114 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 114.

COUNT II
Breach of Fiduciary Duty
(Against Sabet-Peyman)

115. Plaintiffs repeat and reallege the previous allegations as if fully set forth herein.

RESPONSE: Defendants repeat and reallege the previous responses as if fully set forth herein.

116. 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.

RESPONSE: The allegations in Paragraph 116 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 116, except Defendants admit that Sabet-Peyman was a member of the Eargo Board and a Partner at Patient Square.

117. 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.

RESPONSE: Defendants deny the allegations in Paragraph 117.

118. 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.

RESPONSE: The allegations in Paragraph 118 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 118.

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

RESPONSE: Defendants deny the allegations in Paragraph 119.

120. 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.

RESPONSE: Defendants deny the allegations in Paragraph 120.

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

RESPONSE: Defendants deny the allegations in Paragraph 121.

122. Plaintiffs and the other members of the Class have no adequate remedy at law.

RESPONSE: The allegations in Paragraph 122 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 122.

RESPONSE TO PRAYER FOR RELIEF

Defendants deny that Plaintiffs are entitled to any of the relief they seek.

DEFENSES

Defendants assert the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof where such burden rests on Plaintiffs. Defendants' defenses are supported by and hereby incorporated into their Answer. Defendants reserve the right to amend this Answer to add additional defenses as continuing investigation, discovery, and litigation may reveal, and reserve all rights with respect to all counterclaims, cross-claims, third-party claims, indemnification, or contribution claims not asserted herein.

FIRST DEFENSE

Plaintiffs' Complaint, and each allegation therein, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the Merger was approved by both an independent special committee and a majority of disinterested, fully informed, and uncoerced stockholders; Plaintiffs have not overcome the business judgment rule; and, in any event, the Merger was entirely fair to Eargo's stockholders.

THIRD DEFENSE

Defendants are not liable for any injuries or damages allegedly suffered by Plaintiffs, the fact and extent of which are expressly denied by the Defendants, because such injuries or damages were not legally or proximately caused by Defendants' acts or omissions or because Plaintiffs' damages are speculative and impossible to ascertain.

FOURTH DEFENSE

The proposed class definition is overly broad insofar as such definition purports to include investors who made an uncoerced and fully informed choice to vote in favor of the Merger, or such investors' successors in interest. All such investors' claims are barred by the equitable doctrines of acquiescence, waiver, estoppel, consent, and ratification, and all such investors should be excluded from any class that the Court may certify in this action.

FIFTH DEFENSE

Plaintiffs' claims are barred pursuant to 8 *Del. C.* § 141(e) and otherwise because Defendants relied in good faith on the advice and opinions of external advisors, information provided to them by officers and employees of Eargo, and the records of Eargo.

SIXTH DEFENSE

Defendant Sabet-Peyman at all times acted loyally, with due care, in good faith, and with the honest and reasonable belief that his actions were beneficial to and in the best interests of Eargo and all its stockholders, including the proposed class. Defendant Sabet-Peyman therefore did not breach his fiduciary obligations as director of Eargo.

SEVENTH DEFENSE

To the extent that the Complaint purports to state a claim against Defendant Sabet-Peyman for breach of duty of care, Defendant Sabet-Peyman is shielded from monetary liability pursuant to Eargo's exculpatory charter provision adopted pursuant to 8 *Del. C.* § 102(b)(7).

EIGHTH DEFENSE

Plaintiffs' claims against Patient Square should be dismissed because Patient Square was not a controlling stockholder of Eargo and thus did not owe Eargo any fiduciary duties, or if it did owe Eargo any fiduciary duties, it did not breach them.

ADDITIONAL DEFENSES

Defendants presently have insufficient knowledge or information upon which to form a belief as to whether there may be additional, unstated defenses available to them, and therefore Defendants expressly reserve: (i) the right to amend and/or supplement this Answer and their defenses; as well as (ii) the right to assert any and all additional defenses in the event that discovery indicates such defenses would be appropriate.

/s/ Florentina D. Field

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Dated: October 23, 2024