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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE EARGO, INC. SECURITIES  
LITIGATION

Master File No. 3:21-cv-08597-CRB

**CONSOLIDATED AMENDED CLASS  
ACTION COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES LAWS**

Judge: Hon. Charles R. Breyer

**JURY TRIAL DEMANDED**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b><u>Page</u></b>
I. VIOLATIONS OF THE EXCHANGE ACT .....	2
A. INTRODUCTION .....	2
B. JURISDICTION & VENUE.....	9
C. THE EXCHANGE ACT PARTIES.....	10
1. Lead Plaintiffs.....	10
2. Exchange Act Defendants.....	10
D. SUMMARY OF THE FRAUD .....	11
1. Eargo’s Non-Traditional, Direct-To-Consumer Hearing Aid Sales Model .....	11
2. Eargo’s Growth Strategy Relies On Increasing FEHBP Customers .....	14
3. Eargo Launches A Successful IPO In October 2020 .....	18
4. As The Class Period Began, Eargo’s Momentum Continued, And Defendants’ False Or Misleading Statements Buoyed Eargo’s Stock Price .....	19
5. After Announcing Year-End 2020 Results, Eargo Stock Rises To Record Highs .....	20
6. Eargo’s Insurance-Focused Growth Strategy Was Predicated On Fraud .....	22
7. Eargo Misleads Investors In Announcing 2020 Financial Results And 2021 Revenue Guidance .....	31
8. <span style="background-color: black; color: black;">[REDACTED]</span> .....	35
9. Defendants Continue To Make False Or Misleading Statements About Eargo’s Insurance Coverage .....	39
10. <span style="background-color: black; color: black;">[REDACTED]</span> .....	40
11. Eargo Misleads Investors in its First Quarter of 2021 Earnings Call and Form 10-Q.....	41

1           12.   [REDACTED] ..... 43

2

3           13.   Eargo Belatedly Issues More Information About an Audit But

4           Continues To Mislead Investors To Stem A Sharper Stock Price

5           Decline ..... 46

6           14.   Eargo Continues to Mislead About the Audits ..... 48

7           15.   Defendants’ Misconduct Triggers A Government Investigation,

8           Causing Eargo’s Stock Price To Plummet..... 49

9           16.   Eargo Dramatically Cuts Its Workforce, Exits The Insurance

              Market, And Announces A Settlement With The Government For

              \$34.4 Million..... 52

10          E.    DEFENDANTS’ VIOLATIONS OF GENERALLY ACCEPTED

11          ACCOUNTING PRINCIPLES AND MISSTATEMENTS OF

              FINANCIAL METRICS..... 54

12           1.    GAAP Governs Eargo’s Reporting Of Financial Statements ..... 55

13           2.    Defendants Violated GAAP Provision ASC 606 By Improperly

14           Recognizing Revenue That Was Not Reimbursable..... 56

15           3.    Eargo Purported To Recognize Revenue In Accordance With ASC

16           606..... 57

17           4.    Defendants Violated ASC 606 By Knowingly or Recklessly

              Recognizing Revenue That Was Not Reimbursable..... 59

18          F.    ADDITIONAL SCIENTER ALLEGATIONS ..... 62

19          G.    THE EXCHANGE ACT DEFENDANTS’ ADDITIONAL FALSE AND

20          MATERIALLY MISLEADING STATEMENTS AND OMISSIONS ..... 72

21           1.    Materially False And Misleading Statements In Eargo’s Third

22           Quarter 2020 Earnings Call And Form 10-Q..... 72

23           2.    Materially False And Misleading Statements In Eargo’s Fourth

24           Quarter And Full Year 2020 Press And Earnings Releases, Investor

25           Presentations, And 2020 Form 10-K ..... 75

26           3.    Materially False And Misleading Statements In Eargo’s First

              Quarter 2021 Press And Earnings Release, Form 10-Q, And

              Investor Presentation..... 85

27

28

1           4.     Materially False And Misleading Statements In Eargo’s Second  
2                     Quarter 2021 Press And Earnings Release, Form 10-Q, and  
3                     Investor Presentations ..... 93

4     H.     LOSS CAUSATION..... 100

5     I.     PRESUMPTION OF RELIANCE ..... 105

6     J.     THE INAPPLICABILITY OF THE STATUTORY SAFE HARBOR  
7             AND BESPEAKS-CAUTION DOCTRINE ..... 106

8     K.     CLASS ACTION ALLEGATIONS APPLICABLE TO THE  
9             EXCHANGE ACT CLAIMS ..... 107

10    L.     CAUSES OF ACTION UNDER THE EXCHANGE ACT ..... 108

11    COUNT I ..... 108

12           For Violations Of Section 10(b) Of The Exchange Act And SEC Rule 10b-5  
13                     Promulgated Thereunder (Against All Exchange Act Defendants)..... 108

14    COUNT II ..... 110

15           For Violations Of Section 20(a) Of The Exchange Act (Against The Executive  
16                     Defendants) ..... 110

17    II.    VIOLATIONS OF THE SECURITIES ACT..... 112

18           A.     Securities Act Plaintiff ..... 113

19           B.     Securities Act Defendants ..... 113

20           C.     Summary Of The Securities Act Violations ..... 115


21                     1.     The Offering Documents Describe Eargo’s “Consumer-First”  
22                             Business Model ..... 115

23                     2.     In The Offering Documents, Eargo Reports Rapidly Rising  
24                             Revenue Driven By Its Purportedly Successful Penetration Of The  
25                             Insurance Market ..... 118

26                     3.     Eargo Launches A Successful IPO On The Strength Of Its  
27                             Revenue Growth And Seemingly Successful Insurance Initiatives..... 122

28                     4.     Unknown to Investors in the IPO, Eargo Was Submitting  
                           Unsupported and Invalid Claims For Reimbursement and  
                           Improperly Recognizing Revenue ..... 124

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5.  ..... 128

6. Audits and DOJ Settlement Reveals Information Available to Eargo at the Time of the Offering That Rendered Statements in the Offering Document Materially Inaccurate or Incomplete ..... 129

7. Eargo’s Stock Price Declines Due To The Conduct Described Herein..... 138

8. Eargo Violated GAAP And Overstated Revenue In The Offering Documents By Improperly Recognizing Revenue Of Sales To FEHBP Customers ..... 144

D. The Securities Act Defendants’ Additional Untrue Statements And Omissions..... 149

1. Untrue Statements And Omissions ..... 149

2. Failure To Disclose Information Required By Regulation S-K..... 152

E. The Securities Act Defendants’ Failure To Exercise Reasonable Care Or To Conduct A Reasonable Investigation In Connection With The Offering..... 154

F. CLASS ACTION ALLEGATIONS APPLICABLE TO THE SECURITIES ACT CLAIMS ..... 159

COUNT III..... 161

Against Eargo, The Securities Act Individual Defendants, And The Underwriter Defendants For Violations of Section 11 Of The Securities Act..... 161

COUNT IV..... 162

Against Eargo And The Underwriter Defendants For Violations Of Section 12(a)(2) Of The Securities Act ..... 162

COUNT V..... 163

Against The Securities Act Individual Defendants For Violations Of Section 15 Of The Securities Act..... 163

III. PRAYER FOR RELIEF ..... 164

IV. JURY TRIAL DEMANDED ..... 165

1           Lead Plaintiffs IBEW Local 353 Pension Plan (“IBEW Local 353”) and Xiaobin Cai  
2 (“Cai,” with IBEW Local 353, “Lead Plaintiffs” or “Plaintiffs”), by and through their undersigned  
3 counsel, bring two sets of claims in this action. First, Plaintiffs bring claims under the Securities  
4 Exchange Act of 1934 (the “Exchange Act”) individually and on behalf of all persons and entities  
5 who purchased or otherwise acquired the publicly traded common stock of Eargo, Inc. (“Eargo”  
6 or the “Company”) between November 20, 2020 and March 2, 2022, inclusive (the “Class  
7 Period”), and were damaged thereby (subject to certain exclusions enumerated in § I.K). As to  
8 these Exchange Act claims, Plaintiffs allege that throughout the Class Period, the Exchange Act  
9 Defendants (defined in § I.C.2) made a series of materially false or misleading statements and  
10 omissions that they knew or recklessly disregarded were materially false or misleading at the time  
11 the statements were made.

12           Second, as set forth separately in § II, Plaintiff IBEW Local 353 asserts claims under the  
13 Securities Act of 1933 (the “Securities Act”) individually and on behalf of all persons and entities  
14 who purchased Eargo common stock in or traceable to Eargo’s initial public offering (the “IPO”),  
15 conducted on or about October 16, 2020, and were damaged thereby. As to these Securities Act  
16 claims, Plaintiff alleges that the Securities Act Defendants (defined in § II.B) issued a materially  
17 inaccurate and incomplete registration statement and offering documents in connection with the  
18 Company’s IPO. As to these Securities Act claims, Plaintiffs disclaim any allegation of fraud.  
19 These Securities Act claims are based solely on strict liability and negligence.

20           Except as to allegations pertaining specifically to Lead Plaintiffs, all allegations in this  
21 Complaint are based upon the investigation undertaken by Lead Counsel, which included, but was  
22 not limited to, the review and analysis of: (i) public filings made by Eargo with the U.S. Securities  
23 and Exchange Commission (the “SEC”); (ii) press releases and other public statements issued by  
24 Defendants; (iii) research reports issued by securities and financial analysts; (iv) media and news  
25 reports and other publicly available information concerning Eargo and Defendants; (v) transcripts  
26 of Eargo’s earnings and other conference calls with investors and analysts; (vi) publicly available  
27 presentations, press releases, and interviews by Eargo and its employees; (vii) economic analyses  
28 of the movement and pricing of Eargo’s publicly traded common stock; (viii) information provided

1 by relevant consultants and experts; (ix) interviews with former employees (“FEs”) of Eargo; (x)  
2 an April 29, 2022 Press Release issued by the United States Department of Justice (“DOJ”) entitled  
3 “Hearing Aid Company Eargo Inc. Agrees to Pay \$34.37 Million to Settle Common Law and False  
4 Claims Act Allegations for Unsupported Diagnosis Codes”; (xi) an April 29, 2022 “Settlement  
5 Agreement” between Eargo, and the DOJ (on behalf of the Office of Personnel Management,  
6 which administers the Federal Employees Health Benefits Program (“FEHBP”)); and (xii)  
7 approximately 330 documents provided by Eargo to the DOJ in response to record requests in  
8 connection with its investigation. Lead Counsel’s investigation into the factual allegations  
9 continues, and many of the relevant facts are known only to Defendants or are exclusively within  
10 their custody or control. Plaintiffs believe that substantial additional evidentiary support will exist  
11 for the Complaint’s allegations after a reasonable opportunity for discovery, including access to  
12 materials in Defendants’ possession (including additional communications with insurers and the  
13 DOJ), as well as in the possession of third parties (including third-party insurance payors), but not  
14 to Plaintiffs.

## 15 **I. VIOLATIONS OF THE EXCHANGE ACT**

### 16 **A. INTRODUCTION**

17 1. The Exchange Act claims concern Defendants’ misstatements and omissions  
18 stemming from a practice of systemically falsifying insurance reimbursement requests to the  
19 FEHBP, misleading investors about the nature and scope of federal insurance audits, and  
20 misrepresenting the Company’s growth prospects and concerns about its insurance reimbursement  
21 model that threatened the Company’s viability.

22 2. The fraud allowed Eargo to report materially overstated revenue and growth rates  
23 in its financial statements, and to falsely portray its success in penetrating the market of consumers  
24 with insurance that covered hearing aids. In response to these representations, Eargo’s stock price  
25 initially soared. Ultimately, however, several insurers initiated audits of Eargo’s claim practices,  
26 revealing that Eargo could not satisfy medical necessity requirements, contrary to the  
27 representations it had made in its claims. Those audits led to a DOJ investigation. A series of  
28 disclosures culminated in Eargo’s agreement to pay \$34.4 million to resolve False Claims Act and

1 fraud allegations—an amount that when combined with related accounting reserves essentially  
2 wiped out all of Eargo’s insurance revenues. These disclosures shocked the market, decimated the  
3 price of Eargo stock, and caused unsuspecting investors to suffer large losses.

4 3. Eargo sells hearing devices to people with mild to moderate hearing loss. In the  
5 world of hearing device companies, Eargo pursued an atypical business model. Typically, hearing  
6 aid companies sell their products through doctors who prescribe them after examining the patient  
7 and conducting an in-person hearing examination. In contrast, Eargo employs a “direct to  
8 consumer” model, in which customers purchase a hearing device directly from Eargo without an  
9 audiogram and for a lower price than that offered by most hearing aid companies. Eargo  
10 characterized itself as an industry disruptor and repeatedly touted its consumer-centered, “Eargo  
11 Difference” as a way the Company set itself apart from its competitors.

12 4. Prior to October 2020, Eargo operated as a private company. In October 2020,  
13 Eargo conducted an initial public offering (“IPO”), going public at \$18 per share and raising \$162  
14 million in capital. From the time of its IPO and moving forward throughout the Class Period,  
15 Eargo’s ability to access a specific, untapped market of insurance customers was the critical growth  
16 driver for its sales and net revenue and, in turn, its stock price.

17 5. In particular, Eargo targeted customers who were insured by the FEHBP, the largest  
18 employer-sponsored group health insurance program in the world. The FEHBP provides a range  
19 of insurance plans to current and retired federal agency employees and United States Postal  
20 workers and their families. Most medical insurance plans, including Medicare and Medicaid, do  
21 not provide a direct hearing aid insurance benefit. The FEHBP, however, is an exception. Multiple  
22 FEHBP insurance plans offer some type of hearing aid benefit, including the Blue Cross Blue  
23 Shield Federal Employee Plan (“BCBS FEP”), the largest plan within the FEHBP, and the  
24 Government Employees Health Association (“GEHA”). Eargo priced its hearing aid models  
25 commensurate with these benefits, with the Company’s top-end model priced at or around the  
26 \$2,500 benefit offered by BCBS FEP. In its effort to aggressively mine this customer pool, Eargo  
27 took control of the claims process and centralized it in-house, both by submitting claims directly  
28 to FEHBP insurers and by preparing claim forms for consumers to submit directly to FEHBP plans.



1           6.       Throughout the Class Period, Eargo emphasized several benefits it received from  
2 tapping into the FEHBP market. First, the size of the market of consumers with access to a hearing  
3 aid benefit allowed Eargo to expand its potential consumer pool beyond cash-pay customers, who  
4 had to pay the full cost of hearing aids out-of-pocket. Second, the Company explained that  
5 consumers with a hearing aid insurance benefit were less likely than cash-pay customers to return  
6 their products given that the insurer paid most or all of the cost. Third, Eargo told investors that it  
7 validated “customer eligibility and reimbursement amounts” of insurance customers “prior to  
8 shipping the product,” which allowed the Company to record revenue from hearing aids sold to  
9 insurance customers upon shipment, rather than waiting for reimbursement.

10           7.       Eargo reported rapidly increasing revenues driven by this seemingly successful  
11 initiative. After embarking on its insurance strategy in 2019, Eargo’s net revenue more than  
12 doubled over the next year: from \$32.7 million at year-end 2019 to \$69.2 million in 2020. In fact,  
13 by year-end 2020, insurance customers comprised approximately 45% of Eargo’s total customer  
14 base. The Company attributed its increasing success to “rapid growth in the insurance channel,”  
15 which provided a “natural tailwind” and “a multiyear runway for continued efficient growth.” The  
16 company also based its 2021 public guidance, which forecast increasing net revenue up to \$93  
17 million, on what the Company “had already done” in this field, and its focus on continuing “to  
18 penetrate the Federal insurance opportunity[] that’s driving a big part of our growth.”

19           8.       Investors relied on Defendants’ statements and concluded that Eargo was, in fact,  
20 successfully penetrating this critical new insurance market and legitimately creating outsized  
21 revenue acceleration. For example, on January 12, 2021, a William Blair analyst reported that  
22 “[i]nsurance continues to outperform,” that “we continue to see significant opportunity in the  
23 FEHB channel today and ... over time,” and that “further expansion into insurance” positioned  
24 Eargo for continued growth.

25           9.       Fueled by Defendants’ misrepresentations to investors, Eargo’s stock price  
26 climbed. Eargo’s stock price rose from its IPO price of \$18 per share to a class period high of  
27 \$75.37 per share on February 10, 2021 – an increase of 319% in just under four months.

28           10.      Unbeknownst to investors, however, Eargo’s reported revenues were a mirage

1 because the Company systematically falsified insurance reimbursement claims that it prepared for  
2 Eargo’s FEHBP customers.

3 11. As a condition of reimbursement, the FEHBP requires hearing aid providers to  
4 certify that a health care provider has determined that a patient suffers from hearing loss and that  
5 a hearing aid is “medically necessary.” Eargo prepared insurance claims forms for its customers  
6 listing diagnosis codes that signified to FEHBP insurers that Eargo customers had received a  
7 hearing loss diagnosis based on a hearing test performed by a health care provider, and that a bona  
8 fide determination of medical necessity had been made. But Eargo did not require its insurance  
9 customers to submit to a hearing exam by a medical professional, and there had been no actual  
10 determination of medical necessity. Thus, as the DOJ ultimately determined, the reimbursement  
11 claims the Company submitted or caused customers to submit to FEHBP insurers were false and  
12 invalid.

13 12. [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 Yet none of these facts were disclosed. Rather than disclose these facts, Defendants made a host  
20 of false and misleading statements to the market about Eargo’s purported successful and legitimate  
21 penetration of its insurance market—all the while recording ever-increasing revenue to which it  
22 was not entitled.

23 13. Sure enough, as the volume of Eargo’s fraudulent insurance submissions intensified  
24 during the Class Period, BCBS FEP launched an audit and refused to pay *any* reimbursement  
25 claims as of March 1, 2021, [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 14. Despite the obvious importance to investors of Eargo’s insurance revenues (which  
4 Eargo recorded upon product shipment), Defendants kept the audit and payment freeze under  
5 wraps, continued to mischaracterize the Company’s insurance results and growth potential to  
6 investors, and continued to record revenue from FEHBP customers.

7 15. Even when Defendants belatedly revealed the existence of an audit being conducted  
8 by an unnamed insurance company on May 13, 2021, Defendants continued to conceal the key  
9 fact that the insurer had frozen payment for months, [REDACTED]  
10 [REDACTED]

11 [REDACTED] Instead, Defendants misled investors that  
12 the audit was “routine,” “happen[s] all the time,” and was “pretty common,” when BCBS-FEP [REDACTED]  
13 [REDACTED] was clearly questioning claims—making it  
14 improbable that Eargo would be reimbursed for the vast majority of insurance claims. Eargo also  
15 failed to disclose the existence of a separate audit, conducted by [REDACTED]  
16 which requested the same types of documents to satisfy medical necessity—documents that Eargo  
17 could not provide because they did not exist.

18 16. In fact, citing the Company’s continued ‘momentum,’ Eargo doubled down and  
19 *raised* the bottom end of its 2021 revenue guidance by \$2 million. Analysts applauded Eargo’s  
20 strong first quarter performance, described its “continued momentum within the insurance  
21 channel,” and characterized the Company’s “guidance as achievable and beatable.”

22 17. What soon followed, however, was a cascade of disclosures concerning the fraud  
23 that caused Eargo’s stock price to collapse. On August 12, 2021, Eargo first disclosed that, during  
24 the audit, claims as of March 1, 2021, had not been paid, and that “another insurance company”  
25 was also auditing reimbursement claims submitted by Eargo. In response, Eargo’s stock price  
26 declined by 24% on high volume, falling from \$32.70 on August 12, 2021 to close at \$24.70 the  
27 following day. [REDACTED]  
28 [REDACTED]

1 [REDACTED] Eargo continued to mislead investors about the audit, calling it “an educational  
2 process that gives us the opportunity to further broaden our insurance coverage;” continued to  
3 book revenue upon the shipment of Eargo hearing aids to customers; and raised the Company’s  
4 revenue guidance once again from a range of \$89 million to \$93 million, to a range of \$93 million  
5 to \$96 million, citing “the continued momentum in our business and confidence in Eargo 5 driving  
6 consumer demand.” Analysts were reassured by Eargo’s misleading depiction of the audit, with  
7 Wells Fargo citing management’s confidence that “this is a routine diligence effort where the payor  
8 simply needs to change how they process claims, and expect it to be resolved without issue.”

9 18. Given these false reassurances about the nature of the audit and the Company’s  
10 access to customer insurance benefits, investors were blindsided on September 22, 2021, when  
11 Eargo announced that it was the target of a DOJ investigation related to insurance reimbursement  
12 claims the Company submitted on behalf of its customers covered by FEHBP insurers. As a  
13 consequence, Eargo also announced that it was withdrawing its guidance for 2021, which it had  
14 raised previously in consecutive quarters despite the ongoing audit and the Company’s internal  
15 review of improper insurance billing practices. Eargo’s stock price immediately cratered, falling  
16 68% on high volume, declining from a closing price of \$21.67 on September 22, 2021, to a closing  
17 price of \$6.86 on September 23, 2021.

18 19. Less than two months later, on November 16, 2021, Eargo announced that it was  
19 unable to file its quarterly report with the SEC due to the ongoing investigation “related to  
20 insurance reimbursement claims the Company submitted on behalf of its customers covered by  
21 various federal employee health plans under the [FEHBP]” and “the Company[?]s role in customer  
22 reimbursement claim submissions to federal employee health plans.” Eargo further disclosed that  
23 the investigation had expanded to include two additional third-party payor audits related to claims  
24 Eargo submitted for customers with FEHBP plans. In response to this news, Eargo stock price  
25 declined another 5%, from a closing price of \$7.18 on November 16, 2021, to close at \$6.79 the  
26 following day.

27 20. On March 2, 2022, Eargo disclosed that it was unable to file its 2021 financial  
28 statements due to the ongoing investigation. It further stated that it had “reached an understanding

1 in principle with the DOJ with respect to certain material terms of a potential settlement and  
2 resolution of the investigation and can now reasonably estimate a probable loss of approximately  
3 \$34.4 million in connection with the investigation.” Eargo’s audits continued to mushroom, with  
4 Eargo disclosing that “the Company is currently subject to a number of other ongoing audits of  
5 insurance reimbursement claims submitted to additional third-party payors. One of these claims  
6 audits does not relate to claims submitted under the FEHB program.” In response to this news,  
7 Eargo stock price declined 15%, falling to \$4.02 per share.

8 21. Finally, on April 29, 2022, Eargo and the DOJ announced they had reached a final  
9 settlement to resolve the DOJ’s healthcare fraud investigation for approximately \$34.4 million. In  
10 the Settlement Agreement, the DOJ concluded that “during the period from January 1, 2017  
11 through January 31, 2021, Eargo submitted or caused the submission of claims for payment to the  
12 FEHBP using unsupported hearing loss-related diagnosis codes . . . on claims for hearing aid  
13 devices that Eargo submitted to the FEHBP and on superbills Eargo provided to FEHBP  
14 participants to obtain reimbursement from the FEHBP.” The DOJ further concluded that “between  
15 February 1, 2021, and September 22, 2021, Eargo continued to include these unsupported hearing  
16 loss-related diagnosis codes on claims and superbills—even after completing an internal review of  
17 its billing and coding practices in January 2021—resulting in Eargo knowingly submitting or  
18 causing the submission of false claims for payment to the FEHBP.” The \$34.4 million settlement  
19 was more than Eargo’s reported revenue in 2021 (\$32.1 million) and over eight times the  
20 Company’s gross profit (\$4.1 million). As detailed herein, [REDACTED] the  
21 accounts of former Eargo employees interviewed by Lead Counsel corroborate the DOJ’s findings.

22 22. The fraud described herein has crippled the Company and severely harmed its  
23 investors.

24 23. As a direct result of these events, Eargo stated that it “made the decision to stop  
25 accepting insurance benefits . . . and it is uncertain when, if ever, the Company will resume[.]”  
26 While the Company began reaccepting FEHB insurance claims in September 2022, it now requires  
27 customers paying with FEHB insurance to “undergo[] additional testing by an independent  
28 licensed health care provider with supporting documentation.” Eargo also acknowledges that

1 customers seeking to use insurance “are required to receive in person hearing evaluations before  
2 [Eargo] can accept an order or submit an insurance plan for reimbursement.” Eargo stated that it  
3 did not expect to see “significant volume for insurance orders.”

4 24. The fraud also forced Eargo to lay off over one-quarter of its workforce.

5 25. In addition, due to the severe economic impact on the Company, Eargo told  
6 investors on May 2, 2022, “We anticipate that we will need to raise capital over the course of  
7 2022.” Ultimately, Eargo was, in fact, forced to seek financing from a private equity firm through  
8 a highly-diluted financing arrangement, which resulted in that firm becoming Eargo’s primary  
9 shareholder and gaining control of the Company’s Board. Because Eargo’s stock price fell so  
10 dramatically (at one point below \$.55 per share), Eargo undertook a 20-for-1 reverse stock split.

11 26. Eargo’s stock price has never recovered from the fraud. As of the close of the  
12 market on March 15, 2023, Eargo stock was trading at \$4.60. Given the 20-for-1 reverse split,  
13 that closing price actually reflects a pre-split share price of just \$.23 per share.

14 **B. JURISDICTION & VENUE**

15 27. The claims asserted herein arise under and pursuant to: (i) Sections 10(b) and 20(a)  
16 of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by  
17 the SEC (17 C.F.R. § 240.10b-5); and (ii) Sections 11, 12(a)(2), and 15 of the Securities Act, 15  
18 U.S.C. §§ 77k, 77l(a)(2), and 77o.

19 28. This Court has jurisdiction over the claims asserted in this Complaint pursuant to  
20 Section 27 of the Exchange Act (15 U.S.C. § 78aa), Section 22 of the Securities Act (15 U.S.C. §  
21 77v), and 28 U.S.C. § 1331.

22 29. Venue is proper in this judicial district pursuant to Section 27 of the Exchange Act  
23 (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Eargo maintains its corporate headquarters and  
24 principal place of business in this District and did so at all relevant times, and many of the acts and  
25 conduct that constitute the violation of law complained of herein, including dissemination to the  
26 public of materially false or misleading information, occurred in and/or were issued from this  
27 District.

28 30. In connection with the acts and conduct alleged in this Complaint, Defendants,

1 directly or indirectly, used the means and instrumentalities of interstate commerce including, but  
2 not limited to, the mails, interstate telephone communications, and the facilities of the Nasdaq  
3 Stock Market, a national securities exchange.

## 4 **C. THE EXCHANGE ACT PARTIES**

### 5 **1. Lead Plaintiffs**

6 31. Lead Plaintiff IBEW Local 353 Pension Plan is a multi-employer defined benefit  
7 pension plan located in Canada. IBEW Local 353 manages nearly CAD\$2 billion in assets on  
8 behalf of its active members, retirees, and beneficiaries, who are members of the International  
9 Brotherhood of Electrical Workers working in a variety of electrical disciplines across central  
10 Ontario. As set forth in the certification previously filed with the Court (ECF No. 24-2), IBEW  
11 Local 353 purchased shares of Eargo common stock at artificially inflated prices during the Class  
12 Period, including shares purchased in and/or traceable to the IPO, and suffered damages as a result  
13 of the violations of the federal securities laws alleged herein.

14 32. Lead Plaintiff Xiaobin Cai is an individual investor. As set forth in the certification  
15 previously filed with the Court (ECF No. 21-3), Cai purchased shares of Eargo common stock at  
16 artificially inflated prices during the Class Period and suffered damages as a result of the violations  
17 of the federal securities laws alleged herein.

### 18 **2. Exchange Act Defendants**

#### 19 **(a) Corporate Defendant**

20 33. Defendant Eargo is a medical device company, focused on the development and  
21 sale of hearing aids. Incorporated in Delaware in November 2010 as Aria, Inc., the Company  
22 changed its name to Eargo in November 2014. Eargo maintains its corporate headquarters at 1600  
23 Technology Drive, San Jose, California. The Company is the issuer of the shares sold in the IPO.  
24 Eargo's common stock trades on Nasdaq under the ticker symbol "EAR." As of September 14,  
25 2021, Eargo had over 39 million shares of common stock outstanding, owned by hundreds or  
26 thousands of investors.

#### 27 **(b) Executive Defendants**

28 34. Defendant Christian Gormsen ("Gormsen") is, and was at all relevant times,

1 Eargo’s President and Chief Executive Officer (“CEO”) and a Director of the Company. Gormsen  
2 first joined the Company’s board of directors in November 2014, and he later became Eargo’s  
3 President and Chief Executive Officer in June 2016. Prior to joining Eargo, Defendant Gormsen  
4 spent a decade at GN Group, the owner of several brands producing medical grade hearing  
5 technology. In statements to investors, Gormsen touted his “significant background in the hearing  
6 aid industry.”

7 35. Defendant Adam Laponis (“Laponis”) is, and was at all relevant times, Eargo’s  
8 Chief Financial Officer (“CFO”). Earlier in his career, Defendant Laponis gained extensive  
9 accounting experience working for two healthcare companies, Cardinal Health and Johnson &  
10 Johnson. Defendant Laponis served 18 months as the Chief Financial Officer of Cardiovascular  
11 Care of Cardinal Health and over a decade in various financial roles at Johnson & Johnson.

12 36. Defendants Gormsen and Laponis are collectively referred to as the “Executive  
13 Defendants.”

14 37. The Executive Defendants, because of their positions with Eargo, possessed the  
15 power and authority to control the contents of the Company’s reports to the SEC and press releases  
16 and presentations to securities analysts, money and portfolio managers, and institutional investors.  
17 Each of the Executive Defendants made public statements and signed and/or was provided with  
18 copies of the Company’s reports, presentations, and press releases alleged herein to be misleading  
19 prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance  
20 or cause them to be corrected. Because of their positions and access to material non-public  
21 information available to them, each of the Executive Defendants knew that the adverse facts  
22 specified herein had not been disclosed to, and were being concealed from, the public, and that the  
23 positive representations which were being made were then materially false and/or misleading.

#### 24 **D. SUMMARY OF THE FRAUD**

##### 25 **1. Eargo’s Non-Traditional, Direct-To-Consumer Hearing Aid Sales** 26 **Model**

27 38. Eargo began selling its air conduction hearing aids in 2015. The Company claimed  
28 that its hearing aids offered several advantages over existing products, including that they are



1 “virtually invisible.”

2 39. Eargo characterized itself as a disruptor of a “relatively mature industry” based on  
3 its non-traditional business model. The traditional hearing aid sales model requires customers to  
4 make one or more in-person visits to hearing aid professionals, in order to be examined, have an  
5 audiogram performed, have hearing aids prescribed, and then have hearing aids tested and fitted.  
6 In contrast, Eargo emphasized its direct-to-consumer business model. Eargo stated that it was able  
7 to reduce to cost of hearing devices by avoiding a “business-to-business model in which hearing  
8 aid manufacturers rely on a fragmented network of independent hearing clinics to sell their devices  
9 to consumers.” According to Eargo, “the separation of the manufacturer from the consumer is not  
10 necessary, adds an incremental layer of cost and has contributed to the lack of consumer.” Thus,  
11 Eargo marketed and sold hearing aids direct to consumers through “a team of inside sales  
12 consultants and a dedicated customer support team of licensed hearing professionals” who  
13 interacted with the customer online and/or over the phone.

14 40. Eargo made intense marketing efforts to penetrate the hearing aid market.  
15 Consistent with its “consumer-first business model” and “consumer-first marketing efforts,” Eargo  
16 sought to accelerate customer adoption by “driving consumers to our website by optimizing our  
17 mix of digital and traditional media[.]” Eargo focused its direct marketing efforts on the  
18 “approximately 14 million people in the United States with mild to moderate hearing loss who  
19 have annual household income above the national median[.]” Eargo claimed that its model  
20 allowed these customers “to complete their purchase over the phone with their sales consultant or  
21 directly on our website, without the need to navigate multiple visits to the hearing clinic for tests  
22 and fittings.” These services, according to Eargo, “allows us to deliver clinical support in an  
23 efficient and streamlined manner without the burden of in-clinic visits.”

24 41. Defendant Gormsen addressed Eargo’s sales and marketing strategy in a February  
25 2019 *New York Times* article about the “increasingly tantalizing field” of medical technology. That  
26 article, which suggested that health care appeared to be the “next big thing” to be supported by  
27 Silicon Valley venture capitalists, described Eargo as “a new company that walks the line between  
28 medical firm and tech start-up.” The article stated that Eargo’s “support team consists of hearing

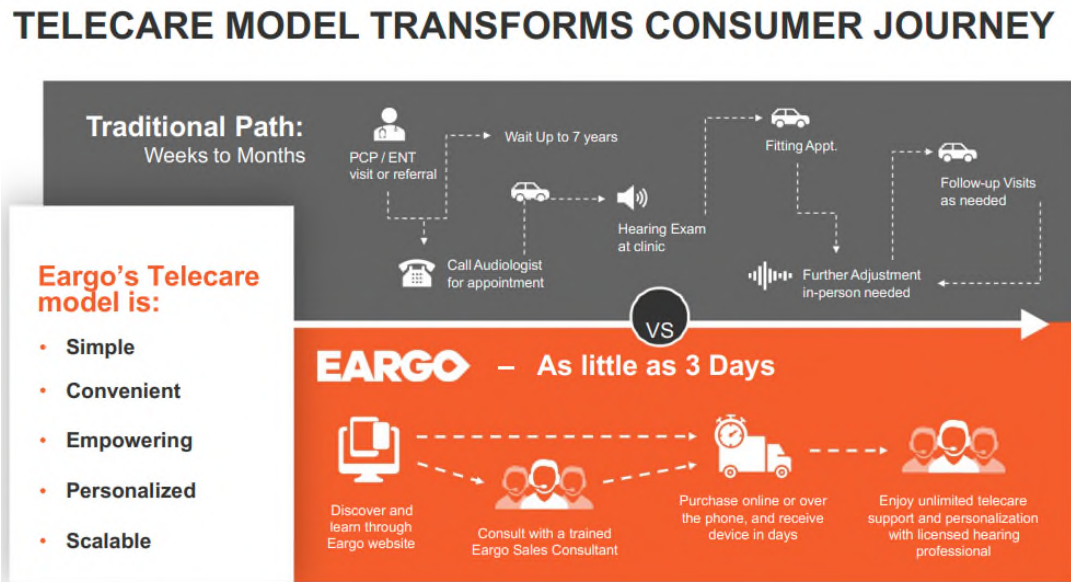
1 aid dispensers licensed in one or more states to advise customers on their hearing aid needs.  
2 Because Eargo sells its products online, rather than in physical stores, a dispenser that's licensed  
3 in one state can sell to customers in all of them." The article quoted Defendant Gormsen, who  
4 stated that the existing sales model of employing dispensers who are licensed by state-level boards  
5 and can only operate within their state was "archaic." Gormsen further stated: "I believe in a  
6 professional that's certified. I don't care whether that person is certified in California or Colorado  
7 ... It's like saying you can't drive your car outside the state where you got your driver's license.  
8 It doesn't make any sense." Based on its interview with Gormsen, the *New York Times* declared  
9 that Eargo "envisions that shopping for a hearing aid would look more like buying a phone than  
10 the more rigorous (but also time consuming) search for a medical device." As Gormsen stated,  
11 "We've been talking to the likes of Best Buy or so on where maybe you go and talk to a blue shirt  
12 and then a blue shirt could show you how the product works. And we could train them."

13 42. Eargo constructed its website to highlight its unique sales process. The Company  
14 stated that it sought to draw customers "to our website with landing pages where they can learn  
15 more about us, submit their contact information for phone-based follow-up or purchase  
16 immediately." A page on Eargo's website entitled "The Eargo Difference" touted its team of  
17 hearing professionals who would contact prospective customers and provide "unlimited support"  
18 to established customers.

19 43. Eargo's website stated that the Company "offer[s] an online, do-it-yourself hearing  
20 test for prospective customers who are interested in an assessment." According to Eargo,  
21 "potential customers are not required to have a hearing test to order the Eargo hearing solution,  
22 . . . simplifies the purchasing experience and improves the accessibility of hearing aids relative to  
23 the traditional hearing clinic channel." In fact, a page of "frequently asked questions" on the  
24 Company's website included the question, "Do I need to see an audiologist before calling or buying  
25 Eargo?" The answer stated: "Nope, no need to call an audiologist before calling or buying Eargo.  
26 Our team of pros here will work closely with you to understand your hearing situation and  
27 determine if Eargo is right for you." Another question asked, "Do I need an audiogram to buy  
28 Eargo?" The answer stated: "Nope, you don't need an audiogram to buy Eargo. Our team of pros

here will work closely with you to understand your hearing situation and determine if Eargo is right for you. If you’re more of a do-it-yourself kind of person, you can take our hearing check to get a better understanding of your hearing.”

44. A chart included in Eargo’s January 2021 presentation at the J.P. Morgan Healthcare Conference further depicted the difference between Eargo’s “consumer-centric experience” and the “traditional path”:



**2. Eargo’s Growth Strategy Relies On Increasing FEHBP Customers**

45. The FEHBP is a federally funded health care program that governs the health benefits of more than 8 million federal civilian employees, retirees, and their eligible family members. Established by Congress in 1959, pursuant to the Federal Employees Health Benefits Act. 5 U.S.C. § 8901 *et seq.*, it is the largest employer-sponsored healthcare program in the world, The Office of Personnel Management (“OPM”) administers this program and contracts with various health insurance carriers to provide services and offer a range of healthcare plans to FEHBP members. *Id.* at § 8902, 8909(a). FEHBP funds are maintained in the Employees Health Benefits Fund (“Treasury Fund”), which OPM administers and is the source of all relevant payments to FEHBP insurance carriers for services rendered to members. *Id.* at § 8909.

46. At set forth in greater detail *infra*, benefits under the FEHBP program are payable only when medically necessary to prevent, diagnose, or treat an illness, disease, injury or condition.

1           47.     Given the volume of claims data, FEHBP relies on a decentralized self-certifying  
2 process that depends on the good faith and accuracy of the party submitting the claims for  
3 reimbursement. Simply because FEHBP administratively reimburses a claim does not mean that  
4 the claim is proper and meets the reimbursement requirements. In that respect, FEHBP is similar  
5 to Medicare, in that, for reasons of administrative efficiency, carriers typically authorize payment  
6 on claims immediately upon receipt of the claims. Individual insurers, such as BCBS-FEP, may  
7 later conduct audits to ensure that payments were made in accordance with criteria.

8           48.     Like many government programs, the FEHBP is susceptible to fraud, waste and  
9 abuse. In fact, overpayment of claims within the program is well documented. Each year, OPM  
10 issues a report on Fraud Waste and Abuse (“FWA”). Relevant Abusive schemes include “misusing  
11 procedure or diagnosis codes on the claim (i.e., the way the service is coded on the claim does not  
12 comply with national or local coding guidelines or is not billed as rendered), . . . and billing for  
13 items or services that should not be paid for by the FEHB Program . . . .”

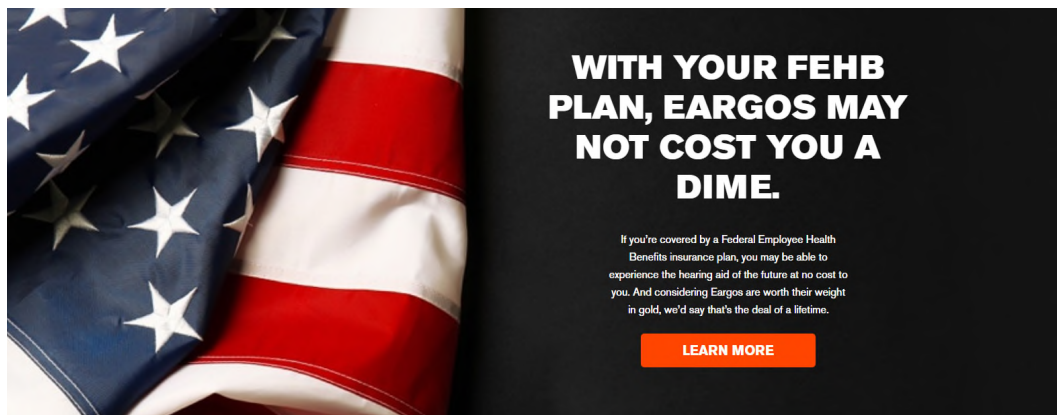
14           49.     Periodic audits conducted by insurers, like BCBS FEP, of samples taken from  
15 submissions for reimbursement by particular providers, as well as the threat of civil and criminal  
16 liability, serve as procedural safeguards for the submission of improper claims for reimbursement  
17 with unsupported billing codes. But, on a day-to-day basis, the insurance reimbursement system  
18 for healthcare providers operates predominantly on a presumption that the providers’ claims are  
19 accurate and well-supported. Providers willing to adopt the risk of potential liability in order to  
20 secure revenues from the submission of improper claims for reimbursement often go undetected  
21 for long periods of time. It is simply not practical or, indeed, feasible for insurers processing  
22 thousands of facially sufficient claims for reimbursement to scrutinize them and their  
23 underpinnings before payments go out.

24           50.     In its infancy, Eargo marketed its product primarily to cash-pay customers.  
25 Beginning in the fourth quarter of 2019, however, Eargo began to switch its focus and increasingly  
26 target insurance customers in order to open up a large new pool of customers and supercharge its  
27 growth. In very short order, the most critical factor driving the growth of Eargo’s business was  
28 increasing the Company’s customers with a hearing aid insurance benefit—particularly federal

1 employees and retirees covered by the FEHBP.

2 51. Eargo thus “began targeting a more diverse mix of consumers, including those with  
3 hearing aid health insurance benefits and repeat customers.” The Company explained that  
4 “consumers with hearing aid insurance benefits typically convert at higher rates and return their  
5 devices at lower rates, due in part to having reduced or, in some cases, no out of pocket cost for an  
6 Eargo hearing aid.” Eargo claimed that its strategy of focusing on insurance and repeat customers  
7 led to a “more optimized mix of customers,” which “has the potential to further improve the  
8 efficiency of our sales and marketing spend.” Further, to ease the purchasing process and control  
9 the claims submission process, Eargo stated that it “provides insurance claims processing for  
10 consumers, eliminating in most cases the need for consumers to interface with their insurance  
11 providers.”

12 52. Eargo constructed specific website pages for prospective customers with a hearing  
13 aid insurance benefit, particularly customers with an FEHBP insurance benefit. Eargo also priced  
14 most of their hearing aids to cover the \$2,500 benefit provided by the BCBS FEP, the FEHBP’s  
15 largest insurer. For example, Eargo’s website stated that “with your [Federal Employee Health  
16 Benefit] plan, Eargos May Not Cost You a Dime,” which was “the deal of a lifetime.”



24 53. Eargo also informed investors that it verified insurance customer eligibility prior to  
25 booking a sale to an insurance customer as revenue. As set forth in greater detail in § I.E, Eargo  
26 booked revenue upon shipment of the product, rather than upon receipt of reimbursement from an  
27 insurance company. Given this, and to assure investors that revenue was properly recorded, Eargo  
28 confirmed in public filings that “[f]or payments involving insurance payors, the Company

1 validates customer eligibility and reimbursement amounts prior to shipping the product.” Contrary  
2 to this statement, however, Eargo did not “validate[] customer eligibility and reimbursement  
3 amounts prior to shipping the product.” Nor could it as, set forth in §§81-82, *infra*, because Eargo  
4 itself recognized that the online screening was insufficient to support a diagnoses of hearing loss  
5 required for a valid claim. Further, Eargo employees recognized in an April 2020 email that the  
6 Company did not “do prior authorizations” because the Company did not “have the man power to  
7 complete a prior authorization.”

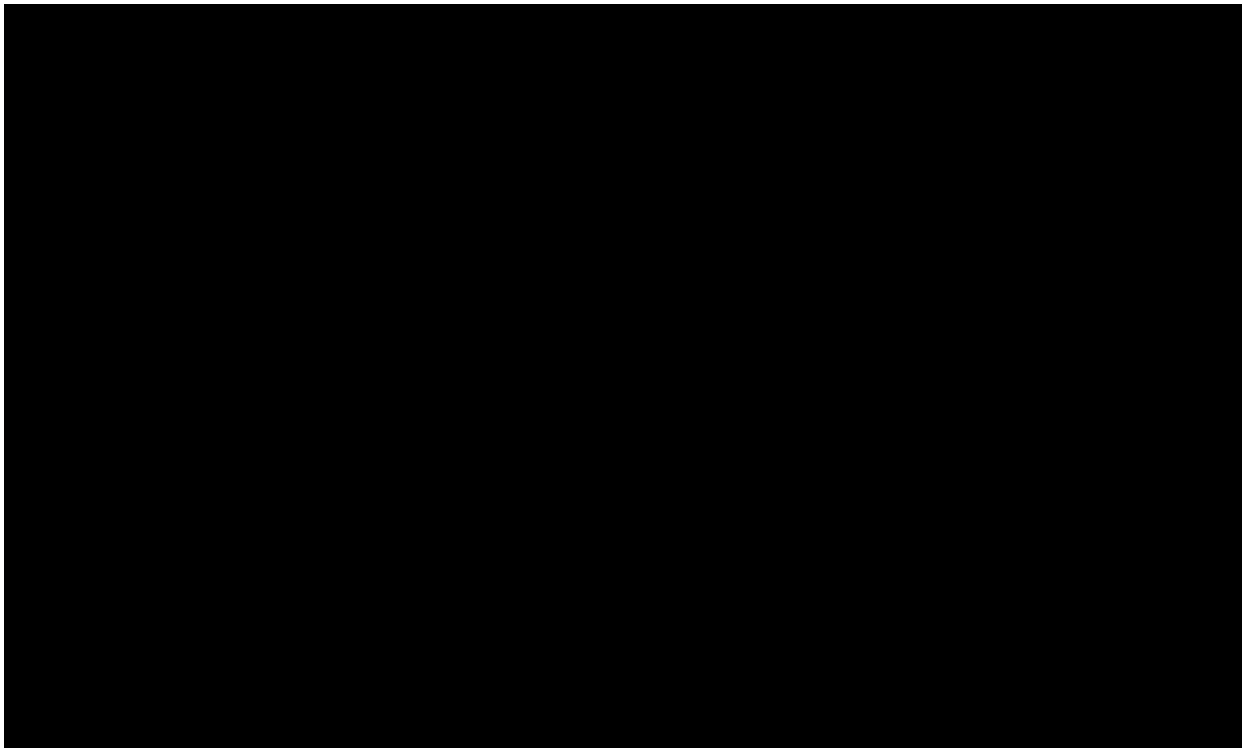
8 54. Eargo’s growth strategy of targeting customers with hearing aid insurance benefits  
9 was successful. In October 2020, Eargo reported that its insurance customers represented a  
10 “significant driver” of its growth, and the Company stated its “inten[t] to pursue additional  
11 coverage in the future.” By year-end 2020, insurance customers represented 45% of Eargo’s  
12 customer mix. That percentage grew to approximately 48% by September 2021.

13 55. [REDACTED]

18 56. [REDACTED]

22 57. [REDACTED]

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58. [REDACTED]



59. Eargo thus recognized the exact deficiencies that were revealed publicly at the end of the Class Period, *i.e.*, that Eargo could not satisfy the requirement of a prescription or hearing test if its documentation was scrutinized in an audit, and the Company had no ability to actually support claims that it nevertheless submitted to insurers.

**3. Eargo Launches A Successful IPO In October 2020**

60. The promise of Eargo’s medical technology and the Company’s rapid growth was, in fact, enticing to private investors. Between 2016 to July 2020, Eargo raised approximately \$187 million in private financing.

61. By the fall of 2020, Eargo undertook plans to initiate an IPO of Eargo common stock. On September 25, 2020, Eargo filed a Form S-1 Registration Statement and Prospectus with the SEC, which was amended on three occasions (the “Offering Documents”). On October 15,

1 2020, the SEC issued a notice of effectiveness, which allowed the IPO to commence.

2 62. The IPO was a success. On October 16, 2020, Eargo conducted an initial public  
3 offering of 9,029,629 shares of its common stock at the price of \$18.00 per share, raising over  
4 \$162.5 million in gross proceeds and \$148.1 million in net proceeds for the Company's benefit.  
5 Eargo's stock opened on October 16, 2020, at \$36.00 per share, doubling the IPO price of \$18,  
6 and closed at \$33.68—a premium of 87%. Eargo's market value rose to about \$1.2 billion, which  
7 was approximately five times its valuation by private investors several months earlier. Defendant  
8 Gormsen stated that Eargo would use the IPO proceeds “to invest in our technology department  
9 and build out our tele-care model,” which was “resonating as we have seen strong growth during  
10 the pandemic.”

11 63. Analysts reacted positively to Eargo's IPO and its focus on insurance customers.  
12 For example, on November 10, 2020, J.P. Morgan initiated coverage of Eargo with an  
13 “Overweight” rating, predicting a December 2021 price target of \$41 on the strength of Eargo's  
14 “differentiated direct-to-consumer business model, which has been validated by its strong market  
15 presence and brand recognition.” Referencing “the generous coverage policy” of the “FEHB  
16 program relative to Eargo's average selling price,” J.P. Morgan found that Eargo “has seen  
17 tremendous success so far in penetrating this target market with greater sales of the company's  
18 premium products and lower return rates.” Its model forecasted “rapid growth in the insurance  
19 channel.” The share price continued in a range of \$33-\$36 through November 19, 2020.

20 **4. As The Class Period Began, Eargo's Momentum Continued, And**  
21 **Defendants' False Or Misleading Statements Buoyed Eargo's Stock**  
22 **Price**

23 64. The Class Period begins shortly after the IPO, as Eargo continued to report apparent  
24 success in penetrating the insurance market. Specifically, following market close on November  
25 19, 2020, Eargo issued a press release announcing its third quarter 2020 financial results. The  
26 Company reported \$18.2 million in net revenue, an increase of 135.5% year-over-year. In an  
27 earnings call later that day, Defendant Gormsen described the applicable insurance market as  
28 comprising “approximately 12 million consumers in the U.S. over 50, who have both hearing loss  
and access to hearing aid benefits under certain health insurance plans.” Gormsen stated that



1 “Eargo has identified and started to rapidly penetrate pockets of consumers with hearing insurance  
2 benefits that cover most or all of the cost of an Eargo.” As one example, Gormsen explained that  
3 the company gained access to “a database through a partnership that allowed us to mail directly  
4 retired federal employees,” which “was a great opportunity” and “worked well for us.” Further,  
5 Gormsen stated that Eargo’s “positive mix shift toward more insurance and repeat customers  
6 [would] be a key driver of growth and scalability going forward.”

7 65. The next day, November 20, 2020, Eargo filed its Form 10-Q for third quarter 2020.  
8 Eargo reported net revenue of \$18.2 million for the third quarter 2020 and \$46.8 million for the  
9 first nine months of the year, which was year-over-year growth of 135.3% and 110.9%,  
10 respectively. The Company attributed its revenue success in part “to growth in customers with  
11 health insurance coverage for hearing aids and repeat customers[.]”

12 66. Analysts reacted positively to Eargo’s third quarter 2020 results. In a report dated  
13 November 19, 2020, Wells Fargo touted Eargo’s “record first quarter out of the gates” and rated  
14 the stock as “Overweight.” On November 20, 2020, J.P. Morgan issued a report stating that  
15 Eargo’s “Direct-to-Consumer Model Continues to be Validated,” and that “[w]e remain bullish on  
16 the outlook and reiterate our Overweight rating here.” That same day, William Blair issued a  
17 report applauding Eargo’s “Strong Third Quarter,” positing that “Eargo is on track to see strong  
18 growth in 2021 as advertising spend increases awareness, insurance drives growth, and its next-  
19 gen product launches.”

20 67. Eargo stock continued to rise through year-end, from \$34.14 at market open on  
21 November 20, 2020; reaching a peak of \$59.80 on December 14, 2020; and closing at \$44.82 on  
22 December 31, 2020.

23 **5. After Announcing Year-End 2020 Results, Eargo Stock Rises To**  
24 **Record Highs**

25 68. On January 11, 2021, Eargo announced that its preliminary unaudited fourth quarter  
26 net revenue was expected to be \$22.2 million, reflecting year-over-year growth of 109%; and that  
27 its preliminary unaudited full year 2020 net revenue was expected to be \$69.0 million, representing  
28 year-over-year growth of 110%.

1           69.     The next day, January 12, 2021, Eargo presented at the annual J.P. Morgan  
2 Healthcare Conference. Defendant Gormsen stated that Eargo was “targeting right now federal  
3 employees” who have access to a hearing benefit. He added that, “We deal with all the claims  
4 processing on the back end, directly with the administrators of the FEHB program.” Defendant  
5 Gormsen claimed that Eargo saw “a huge opportunity long term to expand this” to FEHBP  
6 customers, who represent 1.3 million of the 12 million in potential customers over the age of 50  
7 with a hearing aid benefit.

8           70.     Defendant Gormsen also told investors that the Company “went in specifically to  
9 this Q4 holiday buying season” focusing on “the opportunity for federal employees” and “the fact  
10 that we can help you as a federal employee access your benefits,” and that “what we saw is a lot  
11 of people are not aware that they have access to benefits.” He stated that the Company’s marketing  
12 efforts “helped drive and accelerate all of our customer types, cash pay as well as insurance as well  
13 as repeat.” Defendant Laponis confirmed these points, noting the “natural tailwind” Eargo  
14 experienced from its ability to convert benefits for insurance customers.

15           71.     Analysts seized on Eargo’s positive news. A January 11, 2021 J.P. Morgan report,  
16 touting Eargo’s “impressive” fourth quarter 2020 results, rated Eargo as “outperform.” Noting the  
17 Company’s “stronger-than-expected benefit on Insurance sales,” J.P. Morgan stated that Eargo’s  
18 “results bode well for Eargo’s 2021 outlook[.]” A Wells Fargo report dated January 12, 2021,  
19 increased the Company’s 2021 revenue projections. Referencing Eargo’s “robust insurance  
20 volumes,” Wells Fargo stated that it “expect[ed] insurance to continue meaningfully to EAR’s  
21 overall growth[.]” Likewise, a William Blair report dated January 12, 2021, rated Eargo as  
22 “outperform,” finding that “[i]nsurance continues to outperform and likely again was the biggest  
23 driver of the beat this quarter.” The report stated that “[w]ith approximately 9 million FEHB  
24 patients and roughly 5,000 insurance units being shipped per quarter, we continue to see significant  
25 opportunity in the FEHBP channel today and Medicare Advantage or other payor partnerships  
26 over time.” William Blair predicted that “further expansion into insurance” positioned the  
27 Company for continued growth.

28           72.     Between January 11, 2021 and January 13, 2021, Eargo’s stock price rose

1 approximately \$10, from an opening price of \$49.80 to a closing price of \$59.78. The stock price  
2 continued to soar throughout the next month, rising to a record high of \$75.37 at market close on  
3 February 10, 2021.

4 **6. Eargo’s Insurance-Focused Growth Strategy Was Predicated On**  
5 **Fraud**

6 73. The Company’s record stock price, however, was built on a fraud: Eargo hearing  
7 aids were not covered under FEHBP insurance plans, and the Company misrepresented to insurers  
8 that its insurance customers had received an actual hearing loss diagnosis—

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] Rather than creating a system in which customers received a bona fide  
12 diagnosis before submitting a claim, Eargo systematically submitted false payment claims to  
13 FEHBP insurers misrepresenting that the customers had received bona fide hearing loss diagnoses  
14 that its customers did not actually receive.

15 74. The Company continued to submit false claims and improperly book revenue  
16 throughout 2021—even after completing “an internal review of its billing and coding practices”  
17 that further confirmed its improper diagnosis claims practices and after learning of a separate,  
18 insurer-driven audit that resulted in BCBS FEP refusing to pay any Eargo claims as of March 1,  
19 2021. [REDACTED]

20 75. By way of background, FEHBP carriers that offer a hearing aid benefit require that  
21 reimbursement claims for hearing aid devices include a hearing loss-related diagnosis code, which  
22 is set by the International Statistical Classification of Diseases, 10th Edition, Clinical  
23 Modification/Procedure Coding System (ICD-10-CM/PCS). ICD-10 is a uniform diagnosis  
24 coding system of diseases and signs, symptoms, abnormal findings, complaints, social  
25 circumstances and external causes of injury or diseases. ICD-10 codes, which are used in virtually  
26 all health care settings, provide a standardized approach to categorize disease and patient  
27 conditions. These codes are used to communicate information about a patient’s medical condition  
28 between healthcare providers, insurance companies, and other entities involved in the healthcare

1 system.

2 76. Two relevant ICD-10 codes used by audiologists to diagnose patients following an  
3 evaluation of hearing loss are ICD-10 diagnosis codes H90.5 and H91.93, which relate to the  
4 following:

- 5 • H90.5 refers to “Sensorineural hearing loss, unspecified,” which is a diagnosis of hearing loss  
6 following damage to the inner ear. Sensorineural hearing loss is the most common type of  
7 permanent hearing loss. A patient suffering from such condition may be unable to hear soft  
8 sounds and may experience louder sounds as unclear or muffled.
- 9 • H91.93 refers to “Unspecified hearing loss, bilateral,” which is a diagnosis of hearing loss in  
10 both ears that cannot be attributed to a particular type of hearing loss (e.g., Sensorineural,  
11 conductive (outer or middle ear), or mixed (outer and/or middle ear and inner ear).

12 77. Insurers use diagnosis codes to determine if the treatment or procedure is covered  
13 under the patient’s insurance plan. Unless the insurance company has reason to believe the  
14 treatment or procedure is not covered, the insurance company will reimburse the healthcare  
15 provider for the cost of the service, typically without any individualized investigation of the  
16 particular claim. In some cases, insurance companies may require that providers make available  
17 upon request additional information, such as medical records or documentation of the patient’s  
18 symptoms, to verify the medical necessity of the treatment or procedure.

19 78. Insurers that participate in the FEHBP also include language in their Policy  
20 Manuals that condition the reimbursement of claims on a determination of “medical necessity.”  
21 For example, the BCBS FEP has had a longstanding requirement that all benefits are subject to a  
22 determination of “medical necessity.” Both the 2020 and 2021 Standard and Basic Option BCBS  
23 FEP Manuals provide:

24 All benefits are subject to the definitions, limitations, and exclusions in this  
25 brochure and are payable only when we determine that the criteria for medical  
26 necessity are met. Medical necessity shall mean healthcare services that a  
27 physician, hospital, or other covered professional or facility provider, exercising  
28 prudent clinical judgment, would provide to a patient for the purpose of preventing,  
evaluating, diagnosing, or treating an illness, injury, disease, or its symptoms, and  
that are:

- 1 1. In accordance with generally accepted standards of medical practice
- 2 in the United States; and
- 3 2. Clinically appropriate . . .
- 4 3. Not primarily for the convenience of the patient . . .

5 **The fact that one of our covered physicians, hospitals, or other professional or**  
6 **facility providers has prescribed, recommended, or approved a service or**  
7 **supply does not, in itself, make it medically necessary or covered under this**  
8 **Plan.**

8 (emphasis in original).

9 79. Similar to the medical necessity requirement, BCBS FEP’s 2021 Plan and a related  
10 BCBS FEP Utilization Management Guideline—both issued in October 2020—stated that “over-  
11 the-counter” hearing aids were “Not covered” by the Plan. As set forth in §115, *infra*, [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED].  
15 80. Notwithstanding the requirement that a medical professional make a bona fide  
16 determination of medical necessity through an actual hearing loss diagnosis, over [REDACTED]

17 [REDACTED] Despite this, [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 [REDACTED] Investors, who were not privy to Eargo’s claims  
23 submissions practices, and in particular, the manner in which Eargo purported to satisfy insurance  
24 claims requirements even though it could not support such a diagnosis, and who were assuaged by  
25 Defendants’ statements that Eargo verified insurance eligibility and reimbursement amounts, were  
26 left in the dark as to Eargo’s systematic submission of false claims.

27 81. Eargo knew that neither its online screening nor a customer self-assessment could  
28 support a hearing loss diagnosis. [REDACTED]

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[REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED]

83. Given that Eargo’s online hearing screening was in place prior to and throughout the Class Period, without any change between November 2020 and January 2021, Eargo and the Executive Defendants knew or had every reason to know that Eargo’s insurance claims practices were deficient and that its insurance claims were false.

84. [REDACTED]

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<sup>1</sup> Unless otherwise indicated, all emphasis in quotations is added.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 87. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 88. Eargo’s undisclosed practices, including false billing representing that the  
5 Company had satisfied medical necessity requirements when it had not, led to Eargo’s entry into  
6 a Settlement Agreement with the Department of Justice on April 29, 2022 “to pay \$34.37 Million  
7 to settle common law and False Claims Act Allegations for unsupported diagnosis codes.” As the  
8 DOJ concluded, “Eargo included unsupported hearing loss-related diagnosis codes on claims for  
9 hearing aid devices that Eargo submitted to the FEHBP and on invoices—called superbills—that  
10 Eargo provided to FEHBP beneficiaries to obtain reimbursement for such devices from the  
11 FEHBP.” The DOJ further concluded that “Eargo continued to include these unsupported hearing  
12 loss-related diagnosis codes on claims and superbills—even after completing an internal review of  
13 its billing and coding practices in January 2021—resulting in Eargo knowingly submitting or  
14 causing the submission of false claims for payment to the FEHBP.”

15 89. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 90. That Eargo received reimbursement for such claims for a period of time before the  
19 fraud came to light is neither exculpatory nor particularly unusual given typical insurance  
20 reimbursement practices, as insurers receive voluminous reimbursement claims from providers,  
21 rely on the claimants’ good faith in submitting such claims, and routinely pay them without  
22 investigating absent information uncovered during an audit or through allegations of FWA.

23 91. Former Employees (“FE”) of Eargo corroborate the documentary evidence and  
24 DOJ’s conclusions.<sup>2</sup> FE1, a former Director in Eargo’s Audiology Group who worked at Eargo  
25 prior to the Class Period, explained that Eargo stopped requiring prescriptions or even audiograms

26 \_\_\_\_\_

27 <sup>2</sup> The terms “Former Employees” and “FE” refer to the former employees of Eargo whose reports  
28 are discussed in this Complaint. In order to preserve the Former Employees’ anonymity, while  
maintaining readability, the Complaint uses the pronouns “he,” “his,” and “him” to refer to all of  
the Former Employees, regardless of their gender.



1 by 2017. FE1 explained that the processes Eargo put in place, like getting a valid hearing test,  
2 became too cumbersome to follow and eventually got dropped from the sales process.  
3 Specifically, FE1 described that when he began working for the Company, the process for  
4 prescribing Eargo's hearing aids was specific to each state and what they each consider to be a  
5 valid hearing evaluation or test, whether this was an audiogram or otherwise, and what made it  
6 legal in each state. But, he explained, this process turned into a "big bottleneck," and the Company  
7 ran the risk of telling customers to go get tested, without the guarantee that they would come back  
8 to Eargo. The Company realized that this was not efficient and dropped the requirement. FE1  
9 understood why the Company did this—it was because the amount of time it took to get a valid  
10 audiogram was too long. What he did not understand was how the Company was able to do this.

11 92. FE1 explained that he voiced concerns regarding Eargo's dropping the whole  
12 audiogram requirement process, which, he noted, was not the right process. FE1 explained further  
13 that Eargo's product was being sold by non-licensed, non-expert "hearing professionals," and his  
14 issue with this was a matter of how these people know they are selling the appropriate device to a  
15 person without the experience to make such a decision. The requirement for selling a class one  
16 hearing aid is that a licensed professional needs to prescribe this medical device. FE1 reiterated  
17 that the Company stopped requiring an audiogram "early on"—specifically, there was an internal  
18 retooling of the product around 2016, followed by a relaunch, and at the time of the relaunch, the  
19 Company decided to stop taking audiograms.

20 93. The prescription was only the "beginning part" of FE1's concerns because then  
21 there is the issue of how Eargo supports the product and the customer. The support would vary  
22 because it was all done over the phone, and Eargo didn't consider if this was appropriate for the  
23 individual or not—the lack of physical observation made Eargo's dealings with customers  
24 "generic." FE1 noted that Eargo's attitude was "how do we keep people from returning the device"  
25 not "how can we support people to get the best hearing result from it." Everything begins "on the  
26 wrong foot" without knowing the anatomy of an individual's ear, which is so important in making  
27 a good fitting. Further, FE1 explained that Eargo was not doing any type of self-assessment, just  
28 asking customers, "Do you have hearing loss?" and giving customers a questionnaire over the

1 phone where they were asked to rate their hearing in different settings and situations on a scale of  
2 1 to 5. If they scored too poorly, they had to speak to an audiologist before continuing. But this  
3 process never actually materialized, and the salespeople who were being trained on how to conduct  
4 this process ended up selling the hearing aids no matter what. Eargo's attitude was, "we only have  
5 one size, and we hope like hell it fits you," which was how sales began, but, according to FE1, this  
6 is not true for hearing aid users.

7 94. Critically, FE1 explained that in its transactions with the federal employees, Eargo  
8 would have had to have customers' insurance verified and have medical codes, which state how  
9 they received devices or what type of hearing loss the product was provided for. For insurance to  
10 be satisfied, the insurance company needs to see the customer needed hearing aids. In normal  
11 practice, FE1 would need to provide an audiogram that shows the severity of hearing loss and  
12 justifies the need for a hearing aid with his state license on all documentation. Eargo couldn't have  
13 provided this for each customer, but likely still stated "bi-neural hearing loss" without providing  
14 an audiogram. FE1 clarified that this was not limited to "bi-neural" hearing loss, as the Company  
15 was using other codes too. He explained that hearing loss is one part of it, but understanding if  
16 hearing loss is sensory, neural, or conductive is a big part of medical coding. You can't just say  
17 someone has bi-neural hearing loss without specifying; they go hand in hand. If hearing loss is  
18 conductive, it can be medically corrected if it's within a certain range, and FE1 would be required  
19 to send the patient to an Ear, Nose and Throat doctor for clearance for a hearing aid. FE1 noted,  
20 "When I'm looking in someone's ear and see a disorder, it's the biggest thing they (Eargo) are not  
21 doing."

22 95. Specifically, FE1 explained, Eargo used "super bills" which showed a statement of  
23 what was received from Eargo along with medical codes. A super bill is a document that is  
24 generated so that a customer can submit for reimbursement to its own insurance provider. But if  
25 a customer had on their super bill a medical code for having been fitted with bi-neural aids with  
26 hearing loss and sensory neurology, this was false, because such a medical code indicates that the  
27 customer was tested and/or received results to determine this. The problem, according to FE1,  
28 was that Eargo was using medical codes that insurers would pay off, and the codes would indicate

1 that there was bi-neural hearing loss and that a physical exam of the ear was performed along with  
2 fitting and training the patient on how to use the product. The reality is that Eargo doesn't do this,  
3 doesn't require an audiogram or testing, or merely provided training for the customer over the  
4 phone and emailed the customer videos on device cleaning. FE1 explained that for some  
5 customers, this was inadequate: how would you know over the phone if someone knows how to  
6 properly clean or put in a hearing aid just because they are answering "yes" to questions on a  
7 phone?

8 96. Finally, FE1 explained, Eargo was representing and delivering its service as a  
9 legitimate process, while providing no visual inspection and no physical meeting with a licensed  
10 person.

11 97. FE2, who worked as an audiologist at Eargo from January 2017 to December 2019  
12 similarly described that the salespeople who were encouraging customers to buy Eargo's hearing  
13 aids without an audiogram were not qualified to do so. FE2 explained further that some customers  
14 were told not to get a hearing test done for fear that the salesperson might lose out on the  
15 commission from possible sales.

16 98. FE3 was a licensed audiologist who worked at Eargo in a variety of roles between  
17 July 2018 and June 2022. In FE3's experience, audiologists assess hearing loss through diagnostic  
18 testing. Insurance companies require diagnostic testing for the purpose of identifying the type and  
19 degree of hearing loss, which is performed through a diagnostic hearing evaluation. Eargo used a  
20 diagnostic code stating that all customers had the same type of hearing loss—which could not be  
21 determined through an online hearing screening. For example, the diagnostic code sensorineural  
22 hearing loss (unspecified) signified hearing loss in both ears (and was used by the Company to  
23 justify the purchase of two hearing aids, not one, where it may not have necessary). But there are  
24 a variety of hearing loss diagnoses, which the online screening could not determine. Further, an  
25 online screening is not properly calibrated and cannot provide specific information to support an  
26 audiological diagnosis. FE3 stated that Eargo's online hearing tool "should have never been used  
27 for insurance purposes" because it could not determine the type or degree of hearing loss.

28 99. FE3 indicated that it was well-known within Eargo that the Company listed blanket

1 diagnosis codes on its claims forms and superbills provided to customers, with the only difference  
2 being the customer’s name and address. Further, audiologists employed by Eargo were “not  
3 signing off on people’s insurance claims.” That audiologists had no involvement in diagnosing  
4 Eargo customers was contrary to FE3’s experience and industry standards. FE3 stated that Eargo  
5 elevated sales professionals who lacked any experience in billing insurance companies over  
6 licensed audiologists, who knew what proper insurance practices entailed.

7 100. FE3 stated that FE3 had many conversations with managers and Vice Presidents  
8 at Eargo—including managers who reported to CEO Christian Gormsen and COO William  
9 Brownie— in which FE3 asked how the Company was able to bill insurance companies without  
10 requiring a hearing test administered within the past six months, as well as an actual diagnosis by  
11 an audiologist. FE3 explained that Eargo managers told FE3 “not to worry about it.”

12 101. It is FE3’s understanding that even after the onset of the DOJ investigation, an  
13 online Company platform, setting forth processes and scripts for the Eargo sales team, did not  
14 require sales professionals to inform prospective customers that they needed to take an online  
15 screening prior to accessing their insurance benefits.

16 102. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 7. **Eargo Misleads Investors In Announcing 2020 Financial Results And**  
25 **2021 Revenue Guidance**

26 103. On February 25, 2021, Eargo announced its fourth quarter and full year 2020  
27 financial results. The Company reported “net revenues of \$22.4 million in the fourth quarter and  
28 \$69.2 million for the full year of 2020, representing 110.8% and 110.9% increases, respectively,

1 over the corresponding periods of 2019.” Eargo stated that its full year 2021 guidance would be  
2 in a range of \$87 million to \$93 million. In a press release, Defendant Gormsen attributed Eargo’s  
3 2020 momentum, in part, to “better than expected sales to customers with insurance coverage[.]”

4 104. That same day, Eargo held an earnings call to present its fourth quarter and full year  
5 2020 performance. During the earnings call, held [REDACTED]

6 [REDACTED]  
7 [REDACTED] Defendants spoke repeatedly about the growth of  
8 insurance customers and the importance of continuing that growth in the future. For example, in  
9 referencing sales to insurance customers, Defendant Gormsen stated that “we typically target  
10 insurance customers with call-outs on our national advertising, building awareness that consumers  
11 may be eligible for a hearing aid at low or no cost. However, the magnitude of insurance orders  
12 we received as a result of holiday advertising was ahead of our expectations, particularly in a  
13 quarter that is seasonally more cash-pay weighted.” He described Eargo’s “insurance  
14 opportunity,” calling it “a multiyear runway for continued efficient growth.” Defendant Gormsen  
15 explained that Eargo “opened a new channel for consumers to acquire hearing aids at low or no  
16 cost through insurance, driving down our return rates and improving the efficiency of our  
17 business.”

18 105. An accompanying slide in the presentation cited “[f]urther penetration of insurance  
19 market” as a key “4Q20 Revenue Driver.” Another slide listing “A Large, Untapped Insurance  
20 Market Opportunity,” stated that there were approximately 12 million people in the United States  
21 over the age of 50 who have both hearing loss and access to hearing aid benefits under certain  
22 health insurance plans. Gormsen’s presentation further depicted a “Future Opportunity” of  
23 approximately 10.7 million members represented and that approximately 1.3 million members  
24 were in a “Current Addressable Insurance Market.” Those figures vastly overstated the number  
25 of Eargo customers who could establish eligibility for insurance reimbursement by using Eargo’s  
26 online hearing screening or no screening at all.

27 106. Likewise, Defendants Gormsen and Laponis based Eargo’s 2021 revenue guidance  
28 on the Company’s past insurance “sales.” Defendant Gormsen stated that the Company’s

1 “accomplishments in 2020 give us high confidence in our ability to deliver our 2021 business plan  
2 and financial objectives.” In response to an analyst question regarding Eargo’s 2021 guidance,  
3 Gormsen responded, “I think we’ve been pretty clear in our communication that all our guidance  
4 is based on what we have already done.” In particular, he said that the guidance is “driven off” of  
5 “[h]ow we can continue to penetrate the Federal insurance opportunity, that’s driving a big part of  
6 our growth.” Defendant Laponis stated that “in the back half of 2020 . . . roughly 45% of the  
7 volume came from insurance, a little bit more than that in Q3, a little bit less in Q4.” Eargo was  
8 “modeling 2021 . . . to basically [be] a continuation of that similar behavior in terms of the  
9 insurance to a mixed percentage of the business. So we expect it to continue to grow in all three  
10 segments, as Christian said, and we expect the mix to be kind of weighted towards about 45%  
11 insurance throughout the year.”

12 107. Analysts applauded Eargo’s results. On February 25, 2021, Wells Fargo issued a  
13 report raising its 2021 revenue estimate and its price per share by \$8 to \$68. Wells Fargo referenced  
14 the Company’s “higher than expected demand from insurance customers” and the “under-tapped  
15 market segment” of insurance customers. On February 25, 2021, J.P. Morgan issued a report  
16 entitled Eargo’s “Strong 2021 Guidance and Eargo 5 Launch Give us Confidence in Continued  
17 Outperformance.” The report repeated Eargo’s statement that “insurance should be about 45% of  
18 total shipments in 2021, similar to what we saw in the back half of 2020.” William Blair, which  
19 rated the stock as “Outperform,” issued a report on February 26, 2021, stating that Eargo’s fourth  
20 quarter momentum “sets up for a strong 2021.” The report stated that there was a “large runway  
21 ahead for the company in terms of volume growth” within the insurance channel, and that  
22 “[m]anagement expects insurance to continue to represent approximately 45% of the product mix  
23 in 2021[.]”

24 108. On February 26, 2021, Eargo participated in the SVB Leerink Global Healthcare  
25 Conference. During the conference, Defendant Gormsen stated that the Company’s “initial focus”  
26 was on the “largest subset” of customers, federal employees, whose “program basically offers  
27 \$2,500 of hearing coverage, allowing people to get hearing aids or Eargos at no money out of  
28 pocket. Not in the clinic, but with Eargo.” Gormsen emphasized that the Company built

1 “verification as well as [insurance] claims processing in-house,” and that once customers provide  
2 a medical record number, “we’ll verify your coverage and we’ll ship your product. We’ll focus  
3 you on hearing and we’re dealing on the back end with all the integrations on the payer side.”  
4 During the question-and-answer portion of the conference, the host asked Gormsen how far Eargo  
5 could penetrate the insurance market. Gormsen stated that 45% of Eargo’s business was with  
6 insurance customers and that “we absolutely see growth opportunity in insurance as well.”  
7 Gormsen explained that because Eargo is a “national provider” it “can build the verification  
8 infrastructure and the claims processing.”

9 109. Left unsaid was that the “integrations on the payer side” and the “verification  
10 infrastructure and the claims processing” involved Eargo’s submission of false claims forms listing  
11 diagnoses of sensorineural hearing loss the Company knew it had not and could not actually  
12 substantiate.

13 110. On March 18, 2021, J.P. Morgan issued a report entitled “Bullish Investor Meetings  
14 Highlight Continued Momentum and Long Runway for Growth,” which described a meeting the  
15 prior week with Defendants Gormsen and Laponis. The report stated that Gormsen and Laponis  
16 “took the opportunity to provide a broad overview of the company’s strategy and outlook going  
17 forward,” which included “highlighting” “the success the company has seen in the insurance  
18 market, with a significant runway for growth in the federal employee population and Medicare  
19 Advantage . . . .” Citing Eargo’s “push into the insurance market,” which “only just began in  
20 earnest,” J.P. Morgan came away from the meeting believing that here was “upside to Eargo’s  
21 ~45% mix target” between insurance and cash pay customers. J.P. Morgan issued a price target  
22 of \$68 by December 2021, which outpaced the March 17, 2021 share price of \$55.14.

23 111. In so doing, J.P. Morgan referenced Eargo’s ability “to capture share in the largely  
24 untapped insurance market,” repeating Eargo’s own misleading estimate that it could access  
25 approximately 12 million customers over the age of 50 with hearing loss have some form of  
26 insurance benefit. J.P. Morgan specifically noted that Eargo was “currently focusing its efforts on  
27 driving adoption within the 1.3M federal employees with \$2,500 in hearing aid benefits and zero  
28 out-of-pocket for the patient.” These representations to J.P. Morgan analysts were materially false

1 or misleading because, in highlighting Eargo's purported success in the insurance market,  
2 Defendants knew, but failed to disclose, that Eargo was falsifying required codes on the  
3 reimbursement forms.

4 **8.** [REDACTED]

6 112. [REDACTED]

11 113. [REDACTED]



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115. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

116. Typically, when an audit is conducted, payment continues. A prepayment review occurs when an insurer stops payment and does not approve any reimbursement claims unless and

1 until it is satisfied that payment on specific claims is consistent with the policy and medical and  
2 billing guidelines. For example, OPM’s “FEHB Fraud and Abuse Definitions” have identified  
3 prepayment review as a type of “Fraud Identification” and notes that “Fraudulent Schemes” relate  
4 to, *inter alia*, “[b]illing for services that were never rendered,” “misrepresenting services that were  
5 not medically necessary as medically necessary,” “misrepresenting non-covered treatments as  
6 covered,” and “falsifying diagnoses.” Similarly, in describing a prepayment review in the context  
7 of the federal Medicare program, the Medicare Program Integrity Manual notes that “100 percent  
8 prepayment review of claims” represents “serious problems using the most substantial  
9 administrative actions available.” Thus, the prepayment review (including the payment freeze) by  
10 BCBS FEP was unusual and a red flag of a significant issue relating to an insurer who processed  
11 approximately [REDACTED] of Eargo’s insurance claims.

12 117. [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 118. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
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1           **9.     Defendants Continue To Make False Or Misleading Statements About**  
2           **Eargo’s Insurance Coverage**

3           119. As the BCBS FEP audit and payment freeze continued, Defendants continued to  
4 make false or misleading statements.

5           120. As one example, on April 16, 2021, BofA Securities held a “2021 CEO Call Series  
6 Conference Call” with Defendants Gormsen and Laponis. During the call, the moderator asked  
7 Defendant Gormsen to discuss Eargo’s targeting of federal employees and describe “how  
8 confident are you right now that you’ve got the right strategy for going after that federally insured  
9 patient population that your awareness is increasing because it’s just such an obviously large pool  
10 of patients that are in a super unique situation in that the hearing aids are paid for.” Gormsen  
11 responded that “the federal program offers and allows a hearing benefit of 2,500 dollars” and that  
12 “[w]e can offer a no money out of pocket solution to the federal employees.”

13           121. Referring to “all the success we had in 2020,” Gormsen said “that we’re doing a  
14 pretty good job of addressing” customers with federal insurance. “That’s a great scenario and that  
15 gives us absolutely the confidence of the guidance we put out for 21-22.” Gormsen emphasized  
16 that “the federal is the *only* part that’s included in our guidance. So, we’re not counting on  
17 additional insurance markets to come in and that’s not included in our guidance.” Defendant  
18 Laponis further explained that “[j]ust to clarify the numbers, we did about 45% spot on in the back  
19 half of 2020 with our nexus federal. As we built the guidance, we assumed it would be in a similar  
20 type of range and that’s what we talked about back second call, but clearly, it’s an area where we  
21 see future opportunity.” In making these statements about building the Company’s guidance—  
22 which was built *solely* on sales to federal insurance customers—Defendants did not disclose that  
23 their leading insurer had undertaken a prepayment review and payment freeze of all claims, placing  
24 into severe peril whether Eargo would ever receive any reimbursement on its claims to BCBS-  
25 FEP.

26           122. As on previous earnings and investor calls, Gormsen defined the “huge insured  
27 population” of “12 million total people out there who have some level of benefits of which federal  
28 is only a subset of 1.3 million,” which falsely overestimated the actual pool of potential Eargo

1 customers who could access an insurance benefit under Eargo’s practices.

2 123. On April 22, 2021, BofA Securities issued a report regarding the CEO Conference  
3 Call. The report stated that BofA Securities believed that “EAR is on track to beat estimates all  
4 year long, including in Q1” and that “EAR is one of the most interesting SMID caps we cover,  
5 given the \$20bn potential market and EAR’s first-mover advantage.”

6 **10.** [REDACTED]

8 124. [REDACTED]

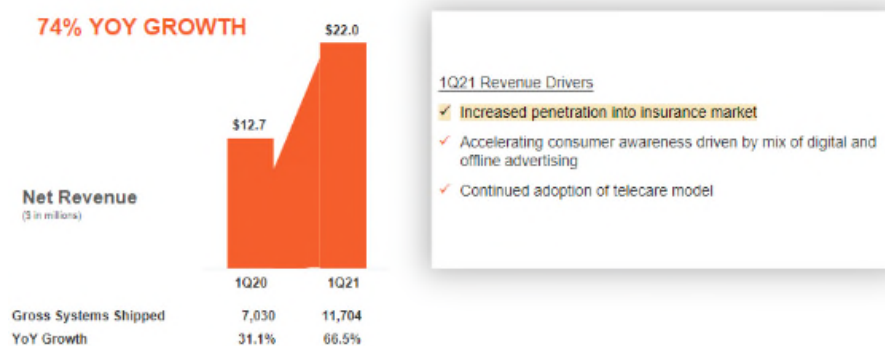
11 125. [REDACTED]

23 126. [REDACTED]

1 **11. Eargo Misleads Investors in its First Quarter of 2021 Earnings Call and**  
 2 **Form 10-Q**

3 127. Eargo reported its first quarter earnings on May 12, 2021. Its press release quoted  
 4 Defendant Gormsen as stating that Eargo’s marketing program continued to “drive demand across  
 5 multiple customer types, including both cash pay and insurance customers producing 74% year-  
 6 over-year growth.” Eargo also announced that it had increased its net revenue guidance for 2021  
 7 to a range of \$89 million to \$93 million, up from the previous range of \$87 million to \$93 million.

8 **1Q21 FINANCIAL PERFORMANCE**



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16 128. Also on May 12, 2021, Defendants Gormsen and Laponis participated in Eargo’s  
 17 First Quarter 2021 Earnings Call. During the earnings call, Defendant Gormsen delivered prepared  
 18 remarks and referred to an accompanying slide presentation—specifically “Slide 5,” reproduced  
 19 below—stating that Eargo generated \$22.0 million in net revenue, which constituted year-over-  
 20 year growth of 74%. That same slide stated that one of the “1Q21 Revenue Drivers” was  
 21 “Increased penetration into the insurance market.” Gormsen further stated that “[b]oth revenue  
 22 and volume growth in the first quarter was supported by several factors,” the first of which was  
 23 “the further penetration into the insurance market.”

24 129. In addition, during the earnings call Defendant Gormsen and Defendant Laponis  
 25 each expressed their “confidence” in Eargo’s ability to meet its revenue guidance based upon  
 26 Eargo’s prior quarterly results and its existing “momentum.” Gormsen, referring to the past  
 27 quarter’s results, stated: “I’m pleased to report that we again delivered outstanding performance  
 28 in the first quarter of 2021, further increasing our confidence in our 2021 guidance and longer term

1 financial objectives.” Laponis also stated: “Due to our high degree of confidence and our ability  
2 to drive growth and capitalize on the momentum in our business, we are raising full year 2021 net  
3 revenue guidance to \$89 million to \$93 million, up from \$87 million to \$93 million.”

4 130. Eargo disclosed that an unnamed insurer was conducting what Eargo characterized  
5 as a “routine audit”—which Defendant Laponis called “pretty common” in August 2021 and  
6 Defendant Gormsen described in September 2021 as something that “happen[s] all the time.” This  
7 audit was, in truth, anything but routine—it was prompted by Eargo’s submission of thousands of  
8 false reimbursement requests. [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 131. [REDACTED] Eargo actually recorded a *lower* (and  
21 false) allowance for doubtful accounts than at year-end 2020 (\$1.6 million allowance compared to  
22 \$1.9 million at year-end 2020 and prior to the audit).

23 132. Analysts reacted positively to Eargo’s first quarter 2021 results. In a May 12, 2021  
24 report, J.P. Morgan highlighted Eargo’s “good 1Q21 results.” Reiterating its “Overweight” rating,  
25 J.P. Morgan stated that Eargo experienced “another strong performance from the insurance  
26 segment” and that the Company’s return rate “continued to trend downward due to a better-than-  
27 expected insurance mix.” Likewise, William Blair issued a report on May 13, 2021, characterizing  
28 Eargo’s first quarter 2021 performance as “another strong beat,” which was “driven by growth in

1 both the DTC cash-pay and insurance segments.” William Blair viewed the Company’s decision  
2 to raise the low-end of its full year guidance by only \$2 million to be “related to conservatism”  
3 and stated that “[w]ith continued momentum within the insurance channel, success and investment  
4 in the targeting marketing, and the upcoming launch of Eargo 5 driving both the cash pay and  
5 repeat segments in the second half of the year, we view guidance as achievable and beatable.”

6 **12.** [REDACTED]

8 133. [REDACTED]

10 134. [REDACTED]

17 135. [REDACTED]

21 136. [REDACTED]



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[REDACTED]

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137. [REDACTED]

[REDACTED]

[REDACTED]

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141. [REDACTED]

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[REDACTED]

1           **13. Eargo Belatedly Issues More Information About an Audit But**  
2           **Continues To Mislead Investors To Stem A Sharper Stock Price**  
3           **Decline**

4           142. In connection with announcing Eargo’s second quarter 2021 earnings on August  
5 12, 2021, Eargo told investors that the Company’s accounts receivable rose “primarily due to a  
6 claims audit by an insurance company that is our largest third-party payor, who accounted for  
7 approximately 80% of our gross accounts receivable as of June 30, 2021.” The Company further  
8 stated that claims submitted to this unidentified insurer had not been paid as of March 1, 2021. In  
9 response to the information disclosed on this day, the price of Eargo’s common stock declined  
10 over 24%, from a close of \$32.70 on August 12, 2021 to a close of \$24.70 the following day.

11           143. [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14           144. Further, to mitigate the impact of the scant information that was disclosed,  
15 Defendants made a number of false statements designed to ease the market’s concerns. For  
16 instance, despite the claims audit, and the Company’s undisclosed internal review demonstrating  
17 its submission of false claims to FEHBP insurers, the Company doubled down and raised its full-  
18 year 2021 net revenue guidance again “from between \$89 million and \$93 million to between \$93  
19 million and \$96 million,” citing “the continued momentum in our business and confidence in Eargo  
20 5 driving consumer demand.”

21           145. Later that same day, Eargo held its second quarter 2021 earnings call. An analyst  
22 asked Defendants for additional information about the audit. The analyst asked, “I assume this is  
23 government. Can you disclose any more on why they’re not paying or you’re in this  
24 negotiation? And do you think you can resolve this in 2021?” Defendant Gormsen responded first  
25 by minimizing the audit, which he described as an opportunity to educate the insurer. He  
26 stated, “[T]his is more as I see it an education of our business model and how our business model  
27 works differently from the classic way of distributing hearing aids. Given that we’re in an active  
28 discussion and it’s a very constructive discussion, we’re not disclosing the name, but it is a large  
payor that’s basically administrating on behalf of the federal government.”

1 146. Gormsen explained that, given Eargo’s method of distributing hearing devices, the  
2 audit was necessary for the Company to explain to the payor how Eargo’s business operates, and  
3 how it fits into the landscape of the hearing industry. He stated:

4 We are providing all over America, right? So, we’re one single provider with a  
5 high volume and hence a lot of dollars flowing through. So we see this more as—  
6 they’re actually doing their diligence by auditing everything we do, because we do  
7 it in a different way. We don’t do it through a clinic, right? We do it through  
8 telecare, online experiences, and phone experiences. So, it’s really this process of  
9 seeing how that fits into sort of the traditional way of providing documentations  
10 and so on for benefits.

9 147. Gormsen claimed that not only would the audit allow the Company to educate its  
10 third-party payors, but would ultimately help the Company to expand its business. He stated,  
11 “[W]e see this more as an educational process that gives us the opportunity to further broaden our  
12 insurance coverage.”

13 148. [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 149. Analysts accepted Defendants’ misleading reassurances regarding the Company’s  
23 insurance practices and the nature of the claims audit. For example, Bank of America stated that  
24 it saw “no reason to believe the audit will end up impacting coverage. It makes sense that a totally  
25 new way of doing things would be reviewed in our view.” Likewise, Wells Fargo cited  
26 management’s confidence that “this is a routine diligence effort where the payor simply needs to  
27 change how they process claims, and expect it to be resolved without issue.” And in an analyst  
28 report issued after a roadshow at the Company in mid-August, William Blair stated that:

1 Management provided additional clarity around its recently announced insurance  
2 claims audit, suggesting the discussions were advanced (resolvable this year) and  
3 they (Eargo and the payer) are jointly creating a proposal for future claims  
4 processes. There does not appear to be an issue with the benefit amount, the device  
5 delivered, or a dispute/denial. Though there is some chance of that changing,  
6 management walked through why it has no indication that is the case today,  
7 commenting that the discussion with the C-suite of the payer is largely forward-  
8 looking with “light lifts” on potential new processes to be introduced. Given the  
9 size of the insurance business, this is a key area to watch for the company, though  
10 we believe that based on the data we have today, this is something that should be  
11 resolved with time.

12 150. Based on meetings with Eargo executives, William Blair concluded: “The audit  
13 does not appear to be tied to coverage or the coverage amount but was triggered by the rapid  
14 growth from zero claims per quarter to 5,000 claims per quarter by Eargo in a matter of two years.”

15 151. Of course, the audit had already impacted coverage, was not a routine diligence  
16 effort that would be resolved without issue, indeed concerned “a dispute denial,” and had the  
17 ability to upend several years of prior claims payments and decimate Eargo’s business. [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 152. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 **14. Eargo Continues to Mislead About the Audits**

24 153. Defendants continued to make misleading statements about the audits over the next  
25 few weeks.

26 154. On September 9, 2021, Defendants Gormsen and Laponis attended the 2021 Virtual  
27 Wells Fargo Healthcare Conference, during which Defendant Gormsen stated that the unnamed  
28 insurer was “not questioning claims, so we are not denying claims, they are not questioning  
product. . . . They’re not questioning our delivery of audiology there either. . . . It’s more, how do  
we define a process that allows for them to approve our claims in a more streamlined manner,  
right.” Gormsen claimed that the audit did not impact the Company’s guidance, stating “We feel  
good about the guidance we’ve given. That doesn’t keep us sleepless.”

1 155. The next day, September 10, 2021, Wells Fargo issued a report echoing Eargo’s  
2 optimistic assessment of the audit, stating that a “key takeaway” from Defendants Gormsen and  
3 Laponis was that “[t]he insurer audit seems likely to resolve positively potentially in 2021.”  
4 Referring to Defendants comments during the conference, Wells Fargo stated: “Management has  
5 stressed that this is a routine audit which is common in the hearing aid industry and that they are  
6 not questioning claims or product, but instead helping to define a process to approve claims in a  
7 more streamlined manner.” Further, Wells Fargo emphasized that Defendants “feel confident the  
8 audit will resolve without issue, and it is more a question of when, not if, it gets resolved and the  
9 claims paid. They noted they are aiming to complete within the calendar year.” As a result, Wells  
10 Fargo maintained its “Overweight” rating for the stock.

11 156. [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 **15. Defendants’ Misconduct Triggers A Government Investigation,**  
19 **Causing Eargo’s Stock Price To Plummet**

20 157. On September 22, 2021—less than two weeks after Defendants had assured  
21 investors that the audit was routine, had nothing to do with whether the claims were valid, and was  
22 a growth “opportunity”—Eargo filed a Form 8-K with the SEC disclosing that the Department of  
23 Justice had begun conducting a criminal investigation into the matter.

24 158. Specifically, Defendants announced:

25 On September 21, 2021, Eargo, Inc. (the “Company”) was informed that it is the  
26 target of a criminal investigation by the U.S. Department of Justice (the “DOJ”) related to insurance reimbursement claims the Company has submitted on behalf  
27 of its customers covered by federal employee health plans. The Company is cooperating with the investigation. In addition, the Company intends to work with  
28 the government with the objective of validating the process to support any future claims that the Company may submit for reimbursement.

1 As previously disclosed, the Company has been the subject of an ongoing claims  
2 audit by an insurance company that is the Company's largest third-party payor. The  
3 Company has been informed by the insurance company that the DOJ is now the  
principal contact related to the subject matter of the audit.

4 159. Defendants additionally disclosed that the Company was withdrawing its net  
5 revenue guidance for the fiscal year ending December 31, 2021—which had been built based on  
6 sales to customers with a federal insurance benefit.

7 160. In response to this news, Eargo's stock plummeted from a closing price of \$21.86  
8 on September 22, 2021 to a closing price of \$6.86 on September 23, 2021—a staggering 68% drop  
9 in a single trading day.

10 161. Analysts responded to the Company's news with surprise. A Wells Fargo analyst  
11 noted in a September 23, 2021 report that the DOJ investigation directly impacted Eargo's business  
12 model and stated that it suspected that “establishing medical necessity may be one area that is  
13 being looked at, as both insurance and cash pay customers can order an Eargo device online  
14 without consulting an audiologist by instead signing a waiver acknowledging they haven't  
15 received a medical examination.” Wells Fargo downgraded Eargo's stock to “equal weight,”  
16 assuming that “EAR is unable to continue selling into the insurance business”—a remarkable  
17 assumption given Defendants' months of assurances that Eargo's penetration of the insurance  
18 market would be the cornerstone of the Company's business model.

19 162. Following the close of trading on November 16, 2021, Defendants disclosed more  
20 disappointing news relating to the DOJ's ongoing investigation. Specifically, the Company filed  
21 with the SEC a Form 12b-25 Notification of Late Filing disclosing: “Eargo, Inc. (the “Company”)  
22 has determined that it is unable to file its Quarterly Report on Form 10-Q for the quarterly period  
23 ended September 30, 2021 (the “Form 10-Q”) within the prescribed time period without  
24 unreasonable effort and expense due to the circumstances described below.”

25 163. Defendants elaborated on the “circumstances” relating to the DOJ's ongoing  
26 investigation and provided new information about the investigation to the market. The Form 12b-  
27 25 explained that the investigation “related to insurance reimbursement claims the Company  
28 submitted on behalf of its customers covered by various federal employee health plans under the

1 Federal Employee Health Benefits (“FEHB”) program.” The Company added, “The investigation  
2 also pertains to the Company’s role in customer reimbursement claim submissions to federal  
3 employee health plans.” Finally, Defendants announced that the inquiry had expanded to include  
4 more of Eargo’s payors than originally disclosed: “Two additional third-party payor audits related  
5 to claims submitted for customers with FEHB plans are also in process.” These audits, relating to  
6 GEHA and UMR, commenced in May and August 2021, respectively; yet, Defendants waited  
7 months to disclose their existence to investors.

8 164. Defendants provided certain additional financial metrics in the Form 12b-25,  
9 explaining, “Total payments the Company has received to date from the government in relation to  
10 claims submitted under the FEHB program, net of any product returns and associated refunds, are  
11 approximately \$44 million,” and “During the three months ended September 30, 2021, the  
12 Company shipped 13,117 gross hearing aid systems, approximately 48% of which were to  
13 customers with potential insurance coverage.

14 165. As a result of Eargo’s outsized reliance on FEHBP customers, Defendants  
15 concluded, “The Company has not yet completed its assessment of the accounting impact of the  
16 DOJ investigation and the ongoing claims audits on its financial statements for the three months  
17 ended September 30, 2021 and prior periods, and is therefore unable to file the Form 10-Q on a  
18 timely basis.”

19 166. Eargo’s disappointments continued to mount over the next several days. On  
20 November 22, 2021, the Company filed a Form 8-K and accompanying press release announcing  
21 that “the Company received a letter from The Nasdaq Stock Market LLC (“Nasdaq”) indicating  
22 that, since the Company has not yet filed its Quarterly Report on Form 10-Q for the period ended  
23 September 30, 2021 (the “Form 10-Q”), the Company no longer complies with Nasdaq Listing  
24 Rule 5250(c)(1) for continued listing.”

25 167. Defendants disclosed further, “Under the Nasdaq Listing Rules, the Company has  
26 60 calendar days to submit a plan to regain compliance (the “Plan”) and, if Nasdaq accepts the  
27 Plan, Nasdaq may grant an exception of up to 180 calendar days from the Form 10-Q original  
28 filing due date, or until May 16, 2022, to regain compliance. The Company intends to submit the



1 Plan within the 60-calendar day period.”

2 168. Following this news, Eargo’s share price declined from a closing price of \$6.27 on  
3 November 19, 2021 to a close of \$5.88 on November 22, 2021. The stock continued to decline  
4 the following day, closing at \$5.56 on November 23, 2021.

5 **16. Eargo Dramatically Cuts Its Workforce, Exits The Insurance Market,**  
6 **And Announces A Settlement With The Government For \$34.4 Million**

7 169. On December 7, 2021, Eargo announced via a Form 8-K “a plan to reduce its  
8 employee workforce by 25 percent to 30 percent to streamline its organization in response to  
9 declines in customer orders since the Company announced the investigation of the Company by  
10 the U.S. Department of Justice.”

11 170. Then, on January 6, 2022, the Company disclosed, “On January 4, 2022, the DOJ  
12 confirmed to the Company that the investigation has been referred to the Civil Division of the DOJ  
13 and the U.S. Attorney’s Office for the Northern District of Texas and the criminal investigation is  
14 no longer active.” The Company noted that it was “continuing to cooperate with the investigation.”

15 171. On March 2, 2022, Eargo filed a Form 12b-25 Notification of Late Filing with the  
16 SEC. The purpose of the Form 12b-25 was to inform investors as to why Eargo was unable to file  
17 required SEC Reports (such as its Third Quarter 2021 Report on Form 10-Q and its Annual Report  
18 for 2021 on Form 10-K) within the prescribed period. Eargo stated that it was unable to file its  
19 Annual Report for 2021 on Form 10-K based on a DOJ investigation “related to insurance  
20 reimbursement claims the Company submitted on behalf of its customers covered by various  
21 federal employee health plans under the Federal Employee Health Benefits (“FEHBP”) program,”  
22 as well as “the Company’s role in customer reimbursement claim submissions to federal employee  
23 health plans.” Eargo further disclosed that “the Company is currently subject to a number of other  
24 ongoing audits of insurance reimbursement claims submitted to additional third-party payors. One  
25 of these claims audits does not relate to claims submitted under the FEHB program.”

26 172. For the first time, Eargo disclosed that as of September 21, 2021 (when it  
27 announced the government investigation), the Company had “offered affected customers (i.e.,  
28 customers using insurance benefits as a method of direct payment for transactions prior to

1 December 8, 2021) the option to return their hearing aids or purchase their hearing aids without  
2 the use of their insurance benefits in case their claim is denied or ultimately not submitted by the  
3 Company to their insurance plan for payment.” The Company further stated that the ongoing  
4 investigation and the ongoing audits of insurance reimbursement claims had prevented Eargo from  
5 “complet[ing] its assessment of the accounting impact of these matters on its financial statements  
6 for the year ended December 31, 2021 and the three-month and nine-month periods ended  
7 September 30, 2021, complet[ing] and finaliz[ing] the preparation of its financial statements and  
8 related disclosures, or conclud[ing] the assessment of its internal controls over financial reporting  
9 pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002.”

10 173. On April 29, 2022, the Department of Justice issued a Press Release announcing a  
11 \$34.37 million settlement with Eargo “to settle common law and False Claims Act allegations of  
12 unsupported diagnosis codes.”

13 174. The DOJ made clear that Eargo’s conduct was both longstanding and knowing.  
14 The DOJ Press Release issued in connection with the Settlement Agreement explained that FEHBP  
15 carriers “that offer a hearing aid benefit require that claims for hearing aid devices include a  
16 hearing loss-related diagnosis code. These diagnosis codes must be supported by a hearing loss  
17 diagnosis, which is typically based on a hearing test.” Despite this requirement, the DOJ stated  
18 that “during the period from January 1, 2017 through January 31, 2021, Eargo submitted or caused  
19 the submission of claims for payment to the FEHBP using unsupported hearing loss-related  
20 diagnosis codes (ICD-10 diagnosis codes H90.5 and H91.93) on claims for hearing aid devices  
21 that Eargo submitted to the FEHBP and on superbills Eargo provided to FEHBP participants to  
22 obtain reimbursement from the FEHBP.”

23 175. Further, the DOJ stated that “between Feb. 1, 2021, and Sept. 22, 2021, Eargo  
24 continued to include these unsupported hearing loss-related diagnosis codes on claims and  
25 superbills—even after completing an internal review of its billing and coding practices in January  
26 2021—resulting in Eargo knowingly submitting or causing the submission of false claims for  
27 payment to the FEHBP.” The \$34.4 million settlement was more than Eargo’s reported revenue  
28 in 2021 (\$32.1 million) and over eight times the Company’s gross profit. Further, Eargo’s 2021

1 revenue was over \$57 million less than the low end of the Company’s 2021 revenue guidance.

2 176. The misconduct described herein has fundamentally devastated Eargo and caused  
3 its shareholders significant harm.

4 177. *First*, in the aftermath of the DOJ settlement, Eargo was forced to conduct a highly  
5 dilutive financing which ultimately resulted in a private equity company, Patient Square Capital,  
6 owning 76.3% of Eargo’s outstanding common stock.

7 178. *Second*, because the value of Eargo’s stock had fallen so dramatically, the company  
8 was also forced to conduct a 20-for-1 reverse split on January 17, 2023. Thus, Eargo’s March 15,  
9 2023 closing price of \$4.60 per share actually reflects a pre-split share price of just 23 cents per  
10 share. Eargo’s market capitalization is now just \$111.9 million, but 76% of that market  
11 capitalization is now owned by Patient Square Capital because of the highly dilutive financing  
12 transaction described above.

13 179. *Third*, the Company began reaccepting FEHB insurance claims in September 2022,  
14 but, in a tacit admission of the impropriety of their prior processes, now requires customers paying  
15 with FEHB insurance to “undergo[] additional testing by an independent licensed health care  
16 provider with supporting documentation.” Eargo acknowledges that customers seeking to use  
17 insurance “are required to receive in person hearing evaluations before [Eargo] can accept an order  
18 or submit an insurance plan for reimbursement.” Notwithstanding this new policy, Eargo also said  
19 that it did not expect to see “significant volume for insurance orders.”

20 180. As of close of trading on March 15, 2023, Eargo stock was trading at \$4.60 per  
21 share—a tiny fraction of its Class Period high of more than \$75.37 per share.

22 **E. DEFENDANTS’ VIOLATIONS OF GENERALLY ACCEPTED**  
23 **ACCOUNTING PRINCIPLES AND MISSTATEMENTS OF FINANCIAL**  
24 **METRICS**

25 181. Each quarter throughout the Class Period, Defendants reported and discussed  
26 Eargo’s net revenue and other financial results in earnings releases, SEC filings, and during  
27 earnings calls and presentations to investors.

28 182. Defendants claimed that Eargo’s financial statements were prepared in accordance  
with Generally Accepted Accounting Principles (“GAAP”), and Defendants Gormsen and Laponis

1 executed Sarbanes-Oxley Certifications that the information presented in SEC filings fairly  
2 presented, in all material respects, the financial condition and results of the Company.

3 183. Yet, at each reporting period end, Eargo's reported revenue was false and in  
4 violation of GAAP. The Company's reported revenue was artificially inflated because Eargo's  
5 FEHBP customers (including BCBS FEP customers) were ineligible for a hearing aid benefit, and  
6 Eargo falsified claims submissions with unsupported diagnosis codes.

7 **1. GAAP Governs Eargo's Reporting Of Financial Statements**

8 184. Financial statements (including footnote disclosures) are a central feature of  
9 financial reporting and are a principal means of communicating financial information to investors.  
10 For companies such as Eargo, the accounting profession (and the SEC) recognize GAAP as the  
11 uniform rules, conventions, and procedures necessary to define and reflect accepted accounting  
12 practices at a particular time. SEC Regulation S-X states that financial statements filed with the  
13 SEC that are not prepared and presented in accordance with GAAP "will be presumed to be  
14 misleading or inaccurate, despite footnotes or other disclosures." 17 C.F.R. § 210.4-01(a)(1).  
15 GAAP violations, therefore, bear on whether SEC regulations for publicly-traded companies, such  
16 as Eargo, have been properly followed and satisfied.

17 185. GAAP are primarily promulgated by the Financial Accounting Standards Board  
18 ("FASB") and are codified into a system that has been accepted by the SEC as the framework by  
19 which public companies must report their financial position and the results of their operations  
20 (among other things)—i.e., SEC regulations require that public company financial statements be  
21 prepared in conformity with GAAP. Beginning with the year 2009, the FASB codified its  
22 accounting standards into a system whereby pertinent sections are organized by topic and  
23 referenced by the acronym ASC ("Accounting Standards Codification"). These ASCs represent  
24 the source of authoritative GAAP for nongovernmental entities, including Eargo. (ASC 105,  
25 Generally Accepted Accounting Principles, section 10-05-1).

26 186. The framework for the accounting standards that make up the ASCs within GAAP  
27 is set out in, among other places, Statements of Financial Accounting Concepts ("FASCON"). To  
28 that end, FASCON 8, Conceptual Framework for Financial Reporting ("FASCON 8"), states:

1 Financial reports represent economic phenomena in words and numbers. To be  
2 useful, financial information not only must represent relevant phenomena, but it  
3 also must faithfully represent the phenomena it purports to represent. To be a  
4 perfectly faithful representation, a depiction would have three characteristics. It  
5 would be complete, neutral, and free from error.

6 FASCON 8, ¶QC12.

7 **2. Defendants Violated GAAP Provision ASC 606 By Improperly**  
8 **Recognizing Revenue That Was Not Reimbursable**

9 **(a) GAAP Provision ASC 606 Governs Recognition Of Revenue**

10 187. Eargo incorporated GAAP Provision ASC 606 into its SEC Reports during the  
11 Class Period, defined the specific requirements of ASC 606, and described how Eargo complied  
12 with ASC 606. The Executive Defendants signed each SEC Report on Forms 10-Q and 10-K  
13 during the Class Period and certified that the information in each of the Company's SEC Reports  
14 fairly presented, in all material respects, the financial condition and result of operations of the  
15 Company.

16 188. As Eargo itself has disclosed, GAAP provision ASC 606, "Revenue from  
17 Contracts with Customers," governs Eargo's recognition of revenue from its sales of hearing aids.

18 189. Specifically, under ASC 606, revenue is recognized when promised goods or  
19 services are transferred to customers in an amount that reflects the consideration to which the entity  
20 expects to be entitled in exchange for those goods or services by following a five-step process:

21 190. First, the business must identify the contract with its customer.

22 191. Second, the business must identify the performance obligations in the contract.

23 192. Third, the business must determine the transaction price and allocation to  
24 performance obligations.

25 193. Fourth, the business must allocate the transaction price to the performance  
26 obligations in the contract.

27 194. Fifth, the business must recognize the revenue when or as it satisfies its  
28 performance obligations.

1                   **3.     Eargo Purported To Recognize Revenue In Accordance With ASC 606**

2                   195.    In Eargo’s Form 10-K for 2020, the Company described how it recognizes revenue  
3 in accordance with ASC 606:

4                   For product sales, control is transferred upon shipment to the customer. . . . Revenue  
5 is recognized when a customer obtains control of promised goods or services, in an  
6 amount that reflects the consideration which the entity expects to receive in  
exchange for those goods or services.

7                   196.    Eargo also disclosed how it interpreted and applied each of the five required steps  
8 in ASC 606.

9                   197.    First, to identify the contract with a customer, Eargo “generally considers  
10 completion of an Eargo sales order . . . as a customer contract provided that collection is considered  
11 probable . . . . *For payments involving insurance payors, the Company validates customer  
12 eligibility and reimbursement amounts prior to shipping the product.*”

13                   198.    Second, with respect to performance obligations in the contract, Eargo considers  
14 “product performance obligations” to “include hearing aid systems and related accessories,” and  
15 it considers “service performance obligations” to “include extended warranty coverage.”

16                   199.    Third, to determine the transaction price and allocation to performance obligations,  
17 Eargo considers both “fixed consideration,” which “includes amounts to be contractually billed to  
18 the customer,” and “variable consideration,” which includes the 45-day right of return that applies  
19 to all products.” To estimate returns, “the Company analyzes historical return levels, current  
20 economic trends, and changes in customer demand. Based on this information, the Company  
21 reserves a percentage of product sale revenue and accounts for the estimated impact as a reduction  
22 in the transaction price.”

23                   200.    Fourth, to allocate the transaction price to the performance obligations in the  
24 contract, “the Company allocates the transaction price to the performance obligations on a relative  
25 standalone selling price basis,” which is “based on multiple factors including, but not limited to  
26 historical discounting trends for products and services, gross margin objectives, internal costs,  
27 competitor pricing strategies, and industry technology lifecycles.”

28                   201.    Finally, the Company recognizes “revenue for products . . . at a point in time, which

1 is generally upon shipment.”

2 202. [REDACTED]

5 203. [REDACTED]

10 204. [REDACTED]

1 205. [REDACTED]

2 [REDACTED]

3 **4. Defendants Violated ASC 606 By Knowingly or Recklessly Recognizing**  
4 **Revenue That Was Not Reimbursable**

5 206. As described in §§ I.D.6-12 & § I.F, Defendants knew, or were deliberately reckless  
6 in not knowing, that Eargo submitted false claims to FEHBP insurers by misrepresenting a hearing  
7 loss diagnosis that had not actually occurred, and Eargo failed to confirm that customers with a  
8 BCBS-FEP hearing aid benefits were actually covered under the terms of the BCBS-FEP policy.

9 207. While the Company touted its online screening process, the Company did not  
10 inform investors that neither the online screening nor a customer self-assessment could provide a  
11 valid hearing loss diagnosis, as required under the federal insurance plans.

12 208. Despite this, Eargo’s accounting system automatically recognized revenue upon  
13 shipment of Eargo hearing aids. As a result, this source of payment for its products—  
14 reimbursement from FEBHP insurers, like the BCBS—never met the requirements of ACS 606.  
15 Specifically, ASC 606 states:

16 An entity shall account for a contract with a customer that is within the scope of  
17 this Topic only when all of the following criteria are met:

- 18 a. The parties to the contract have approved the contract (in writing, orally, or in  
19 accordance with other customary business practices) and are committed to  
20 perform their respective obligations.
- 21 b. The entity can identify each party’s rights regarding the goods or services to be  
22 transferred.
- 23 c. The entity can identify the payment terms for the goods or services to be  
24 transferred.
- 25 d. The contract has commercial substance (that is, the risk, timing, or amount of  
26 the entity’s future cash flows is expected to change as a result of the contract).
- 27 e. *It is probable that the entity will collect substantially all of the consideration*  
28 *to which it will be entitled in exchange for the goods or services that will be*  
*transferred to the customer.*

In evaluating whether collectability of an amount of consideration is probable, an  
entity shall consider only the customer’s ability and intention to pay that amount of  
consideration when it is due. The amount of consideration to which the entity will



1 be entitled may be less than the price stated in the contract if the consideration is  
2 variable because the entity may offer the customer a price concession.

3 209. The final requirement in the aforementioned list of criteria is obviously not met  
4 given that in this case, the claims submitted by Eargo were not reimbursable because they lacked  
5 a proper medical necessity determination, as described above and BCBS FEP had no intention to  
6 reimburse such claims.

7 210. The Company also failed to comply with its own disclosures regarding the timing  
8 and propriety of its revenue recognition—particularly with respect to “assess[ing] insurance  
9 eligibility” prior to recognizing revenue—and thus should not have recognized as revenue the  
10 shipments to FEHBP customers even under its own disclosed policies. This was especially true  
11 given that the Company [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 211. During the Class Period, Eargo informed investors that the split between insurance  
15 and cash pay customers was approximately 45%—the percentage split upon which the Company  
16 determined its public guidance. In fact, in an April 22, 2021 BofA Healthcare Conference,  
17 Defendant Laponis confirmed that the percentage related to FEHBP customers: “[W]e did about  
18 45% spot on in the back half of 2020 *with our nexus federal*. As we built the guidance, we  
19 assumed it would be in a similar type of range and that’s what we talked about back second call,  
20 but clearly, it’s an area where we see future opportunity.”

21 212. Based on that revenue split of approximately 45%, Eargo caused its reported  
22 revenue to be materially inflated as reflected in the chart below:  
23  
24  
25  
26  
27  
28

Period	Reported Revenue	Insurance Mix	Revenue Inflation
3Q2020 Nov. 20, 2020	\$18.1 million	≈45%	≈\$7.6-\$8.1 million
4Q2020 Feb. 25, 2021	\$22.4 million	≈45%	≈\$9.4-10.08 million
1Q2021 May 12, 2021	\$22.0 million	≈45%	≈\$9.3-9.9 million
2Q2021 Aug. 12, 2021	\$22.9 million	≈45%	≈\$9.6-10.3 million
<b>Total 3Q20-2Q21</b>	<b>\$85.4 million</b>	<b>≈45%</b>	<b>≈\$36.0-38.4 million</b>

Even if Defendants had some theoretical basis to believe before January 2021 that Eargo’s products were reimbursable by FEHBP insurers—and they did not—there is no question that Defendants violated ASC 606 by continuing to recognize revenue for sales of hearing aids after January 2021—

a finding consistent with the DOJ settlement papers stating that Eargo completed its internal review of its improper insurance billing practices that same month. By no later than this point at the very latest, Defendants should have discontinued recognizing revenue from sales to customers covered by FEHBP insurance plans. Indeed, as the DOJ determined, Defendants knowingly submitted or caused the submission of false claims for payment to the FEHBP.

213.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 **F. ADDITIONAL SCIENTER ALLEGATIONS**

11 214. As set forth above and further below, numerous facts demonstrate that the  
12 Executive Defendants and Eargo knew or were deliberately reckless in not knowing that  
13 Defendants’ statements identified in § I.G were materially false or misleading when made. The  
14 scienter of Eargo as a corporate entity is derived from the scienter of its executives, including but  
15 not limited to the Executive Defendants.

16 215. *First*, the nature of the misconduct supports a strong inference of scienter.

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 and the DOJ determined, following an investigation, that the Company undertook an internal  
22 review of its claims process in January 2021 that confirmed its billing practices were improper—  
23 yet continued “knowingly submitting or causing the submission of false claims for payment to the  
24 FEHBP.”

25 216. [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED] This is not the kind of conduct that occurs by mistake. Rather,  
3 it was intentional or at least deliberately reckless in nature.

4 217. *Second*, it was at minimum deliberately reckless for Defendants to embark on this  
5 critical insurance growth initiative and speak about it in glowing terms to the market without  
6 actually pre-clearing whether the Company’s online screening tool or customer self-assessment  
7 was sufficient to support a hearing loss diagnosis that could satisfy medical necessity requirements.  
8 BCBS FEP’s Policy Manual and UM Guidelines issued in October 2020 also indicated that sales  
9 of Eargo devices to BCBS FEP customers, Eargo’s largest third-party payor, may be ineligible for  
10 reimbursement given the manner in which Eargo sold its hearing aids. I [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 218. If Defendants had doubts about reimbursement in light of Eargo’s sales practices  
14 or concerns about the acknowledged risk, Defendants should have simply asked BCBS FEP and  
15 other insurers, which would have answered any questions about the scope of their coverage and  
16 medical necessity requirements as applied to Eargo’s sales practices. Rather than simply  
17 confirming with BCBS FEP and other FEHBP insurers whether Eargo’s devices were truly  
18 covered, or that the Company could demonstrate medical necessity—which is what a prudent,  
19 good faith actor would have done—Eargo simply submitted thousands of false claims. Eargo’s  
20 failure to confirm that its claims met the requirements is particularly probative of scienter given  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 [REDACTED] Defendants repeatedly assured the market that they verified  
25 eligibility and reimbursement amounts before submitting claims and booking revenue—when they  
26 clearly had not done so. In light of Eargo’s business model and practices, it was at minimum  
27 deliberately reckless for Defendants to submit tens of thousands of claims, book substantial  
28 amounts of revenue upon product shipment, and assure investors that Eargo was successfully

1 penetrating the insurance market, without actually confirming with FEHBP insurers like BCBS  
2 FEP that Eargo’s customers were, in fact, eligible for reimbursement under Eargo’s business  
3 model.

4 219. *Third*, the scale and severity of Eargo’s misconduct establishes that this was not a  
5 “close call” or a gray area. The conduct began in 2017 and lasted for nearly five years. [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] At one point, Eargo was under criminal investigation for the practices set forth above,  
9 and the DOJ civil investigation ended with a \$34.4 million settlement in which the government  
10 asserted that Defendants violated the False Claims Act. Approximately \$30.3 million of the  
11 settlement constituted restitution to the FEHBP program. Eargo elected to record the settlement  
12 amount as a one-time charge to net revenue in the Third Quarter of 2021, along with an additional  
13 \$13.3 million of estimated sales returns as a reduction in revenue that same quarter. The total  
14 reduction in revenue (including the penalties associated with the settlement) actually *exceeds*  
15 Eargo’s \$44 million total life-to-date FEHBP payments. While Defendants may assert that the  
16 settlement did not include an admission of liability, the magnitude of the settlement demonstrated  
17 that the Company had no credible argument regarding its ability to satisfy reimbursement  
18 requirements. The nature of the settlement represented a complete capitulation to the DOJ  
19 investigation, causing Eargo to retreat from the insurance market entirely, potentially permanently.  
20 Even now, the Company cannot satisfy the fundamental requirement of participating in the  
21 FEHBP, that is, that its customers’ claims are medically necessary. The nature, scope, and severity  
22 of the misconduct thus supports a strong inference of scienter.

23 220. [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

28 [REDACTED] For instance, in its  
financial results for the second and third quarters of 2021, after which BCBS FEP refused to pay

1 claims, Eargo booked over \$20 million in revenue related to insurance customers (~45% of  
2 reported revenue for those quarters). Over \$15 million of that revenue related to BCBS FEP  
3 customers, which represented approximately 53% of Eargo's net revenue in the second quarter or  
4 2021. The fact that Eargo booked this revenue [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] is highly-indicative of an intent to deceive. Given this information,  
10 Defendants knew or had reason to know that it was not probable that Eargo would collect revenue  
11 from sales to approximately [REDACTED] of its FEHBP customers.

12 221. *Fifth*, Defendants repeatedly omitted key information about the ongoing audit  
13 conducted by BCBS FEP, Eargo's largest third-party payor, and then, later, repeatedly  
14 mischaracterized the nature and severity of the audit. *See, e.g.*, §§ I.D.6-10; I.G.3-4. As described  
15 in more detail *supra*, between March 17, 2021 and August 12, 2021, Eargo filed numerous reports  
16 with the SEC, and the Executive Defendants otherwise spoke publicly about the Company's net  
17 revenues and accounts receivable attributed to insurance sales. Eargo further raised its revenue  
18 projections in the first and second quarters of 2021 on the purported strength of insurance sales  
19 and revenue. Yet, the Exchange Act Defendants failed to disclose the very existence of this  
20 significant audit until May 2021, and then, until August 2021, continued to conceal the critical fact  
21 that the Company's largest third-party payor had imposed a pre-payment review, requested patient  
22 medical records Eargo could not provide, and declined to pay *any* of Eargo's claims as of March  
23 1, 2021. In addition, the Company did not even submit a "larger volume" of claims following the  
24 onset of the pre-payment review. Nor did Defendants disclose the existence of the GEHA audit,  
25 which requested the same types of documents from Eargo to satisfy medical necessity that the  
26 Company clearly could not provide.

27 222. Instead of promptly and fully disclosing the relevant facts, the Exchange Act  
28 Defendants continued to make false and misleading statements regarding the nature and severity

1 [REDACTED]

2 Specifically, in response to questions by investors and securities analysts, Defendants emphatically  
3 denied that the third-party payor’s audit was serious, instead mischaracterizing it as a “routine  
4 diligence effort” and an opportunity to “educate” the third-party payor to “defin[e] a process  
5 forward.”

6 223. For instance, on Eargo’s August 12, 2021 earnings call, during which the Company  
7 reported an increase in accounts receivables due to the audit, an analyst asked, “[D]o you feel  
8 comfortable on the amount of cash you have coming in?” Defendant Laponis responded: “These  
9 kind of audits are—on claims are pretty common, particularly given the growth in our business.  
10 We believe all the claims we submitted are valid, reimbursable and we have had a very productive  
11 call even this week with the payor and we’re confident we’re able to provide them all the requested  
12 documentation.” In response to another analyst’s question about the audit, Gormsen responded,  
13 “[T]his is more as I see it an education of our business model and how our business model works  
14 differently from the classic way of distributing hearing aids.”

15 224. Critically, the Executive Defendants conveyed to analysts during an August 16,  
16 2021 meeting that there was not “an issue with the benefit amount, the device delivered, or a  
17 dispute denial.” Similarly, during their appearance at the September 9, 2021 Virtual Wells Fargo  
18 Healthcare Conference, Defendants Gormsen and Laponis reiterated these assurances in response  
19 to analysts’ questions. For example, the conference host asked Defendant Gormsen, “[A]re there  
20 any updates since the earnings call in August and when do you think it will be resolved?” Gormsen  
21 responded, “[A]udits in the hearing aid industry happen all the time, right. You’re audited by large  
22 customers. . . . [W]e are not denying claims, they are not questioning product. . . . They’re not  
23 questioning our delivery of audiology there either. So it’s really about—it’s more, how do we  
24 define a process that allows for them to approve our claims in a more streamlined manner, right.”  
25 The host later asked bluntly, “What are they auditing?”, to which Gormsen replied, “So it’s not  
26 that we have auditors running around the company looking at things, it’s more is a how do we  
27 make sure we validate all your claims.” At that same conference, Laponis responded to a question  
28 about the impact of the audit on revenue recognition by stating, “[W]e haven’t had any dispute

1 raised at this point by the payor.”

2 225. The Executive Defendants’ statements about the audit support scienter not only  
3 because they were blatantly false, [REDACTED]

4 [REDACTED].  
5 In an August 16, 2021 William Blair’s analyst note, the analyst stated, “Management provided  
6 more details around the insurance claims audit disclosed on the second-quarter earnings call  
7 regarding its largest third-party payor. Eargo described the discussions as advanced, with frequent  
8 C-suite dialogue on process details/evidence documentation and creating guidelines for future  
9 claims (rather than discussions about a dispute or denial).”

10 226. Defendants’ mischaracterization of the audits directly contradicted information that  
11 Defendants knew or had reason to know. [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 227. Indeed, just 12 days after Defendants’ misrepresentations at the September 9, 2021  
21 Wells Fargo conference, the Company announced that it had been named a target of a federal  
22 criminal investigation, a designation under Department of Justice Guidelines meaning that the DOJ  
23 believed it had substantial evidence linking the Company to the commission of a crime and was,  
24 in the judgment of the prosecutors, a putative defendant. *See* Department of Justice Manual,  
25 Section 9-11.151, Advice of “Rights” of Grand Jury Witnesses, available at  
26 <https://www.justice.gov/jm/jm-9-11000-grand-jury#9-11.151>. This made clear that the Exchange  
27 Act Defendants’ repeated statements downplaying the severity of the audit— [REDACTED]

28 [REDACTED] were knowingly or



1 deliberately recklessly false.

2       228. *Sixth*, as noted above, the DOJ’s findings support a strong inference of scienter.  
3 The DOJ concluded that, between January 1, 2017 and January 31, 2021, “Eargo included  
4 unsupported hearing loss-related diagnosis codes on claims for hearing aid devices that Eargo  
5 submitted to the FEHBP and on invoices—called superbills—that Eargo provided to FEHBP  
6 beneficiaries to obtain reimbursement for such devices from the FEHBP.” The DOJ further  
7 concluded that, between February 1, 2021 and September 22, 2021, “Eargo continued to include  
8 these unsupported hearing loss-related diagnosis codes on claims and superbills—even after  
9 completing an internal review of its billing and coding practices in January 2021—resulting in  
10 Eargo *knowingly* submitting or causing the submission of false claims for payment to the FEHBP.”  
11 Based on its criminal, and then civil, investigations of Eargo, the DOJ determined that Eargo’s  
12 conduct was intentional, which supports a strong inference of scienter.

13       229. *Seventh*, the Executive Defendants held themselves out as knowledgeable about  
14 Eargo’s ability to penetrate the federal employee insurance market and the status of the audit. As  
15 detailed above, Defendants Gormsen and Laponis, healthcare industry veterans, spoke regularly  
16 to investors and securities analysts about the importance of the insurance market to Eargo’s  
17 business and growth and the nature of the audit, professing to know what they were speaking about.

18       230. Throughout the Class Period, Defendants Gormsen and Laponis demonstrated  
19 specific familiarity with the overall insurance market, the Company’s insurance-based growth  
20 strategy, and the Company’s claims filing and verification of insurance eligibility, which they  
21 discussed in multiple SEC filings, on multiple earning calls, and at multiple investor conferences.  
22 *See generally* §§ I.D & I.G. These statements demonstrate that the Executive Defendants had  
23 actual access to information about which they made false and misleading statements to the market.

24       231. Further, after announcing the audit being conducted by an unnamed insurer,  
25 Defendants described their personal involvement in that process, mischaracterized the nature of  
26 that process, and communicated the likely resolution.

27       232. The fact that the Executive Defendants held themselves out as knowledgeable about  
28 these subjects and discussed these subjects in detail with investors and securities analysts, supports

1 a strong inference of their scienter.

2 233. *Eighth*, sales to insurance customers and penetration of the insurance market was  
3 a “core operation” of Eargo’s, which supports the inference of scienter. Selling hearing aids to  
4 insured customers comprised at least 45% of Eargo’s total net revenues and was what the  
5 Executive Defendants identified as the largest category of Eargo’s sales growth.

6 234. As set forth in detail above, §§ I.D.2 & I.G, the Exchange Act Defendants directly  
7 attributed the Company’s growth to increased sales to customers with an insurance benefit.  
8 Further, as discussed in detail above, §§ I.D.6 & I.G, the Executive Defendants repeatedly referred  
9 to customers with a federal insurance benefit as a “huge opportunity” and “key drivers” for growth.  
10 In fact, potential customers with a federal insurance benefit were so important that the Company  
11 priced its hearing aids based on the amount of the federal benefit, and the Company’s net revenue  
12 guidance was “driven off” of “[h]ow [it] can continue to penetrate the Federal insurance  
13 opportunity, that’s driving a big part of [the Company’s] growth.”

14 235. For example, in the fourth quarter 2020 and full-year 2020 earnings call, Laponis  
15 described that 45% of the Company’s sales volume “came from insurance” and that, as a result,  
16 the Company was “modeling 2021 . . . to basically [be] a continuation of that similar behavior in  
17 terms of the insurance to a mixed percentage of business.” At the SVB Leerink Global Healthcare  
18 Conference a few days later, Gormsen explained that 45% of Eargo’s sales were to insurance  
19 customers and that “we absolutely see growth opportunity in insurance as well.”

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1           236. The magnitude of the settlement and its impact on Eargo confirms that sales to  
2 insurance customers was a core operation of the Company. Eargo's settlement and related sales  
3 return allowance essentially negated the entirety of the revenue the Company had booked over the  
4 years regarding sales to insurance customers. Eargo exited its largest growth segment completely,  
5 causing the stock price to crater. Further, Eargo was forced to conduct a highly dilutive financing  
6 round which ultimately resulted in private equity firm Patient Square Capital owning 76% of  
7 Eargo's common stock, and the firm now controlling three-quarters of Eargo's Board. Eargo  
8 thereafter concluded a 1-for-20 reverse stock split.

9           237. The fact that insurance sales and further growth through sales to federal employees  
10 and retirees with insurance benefits was a core operation of Eargo's—and the Executive  
11 Defendants touted its importance and the Company's focus on it—supports a strong inference of  
12 the Executive Defendants' scienter with respect to their misleading statements on the subject. At  
13 the very least, given the Executive Defendants' intimate knowledge of Eargo's insurance sales and  
14 the nature of the audit, it was deliberately reckless not to investigate the accuracy of their  
15 statements regarding net revenues from insurance sales and the nature and seriousness of the  
16 ongoing audit.

17           238. *Ninth*, Defendants Gormsen and Laponis engaged in suspicious insider stock sales  
18 during the Class Period. These stock sales were suspiciously timed: each Defendant sold shares  
19 after March 15, 2021—that is, after Eargo's largest third-party payor commenced an audit,

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]—but before Eargo disclosed that it was  
24 the target of the DOJ investigation involving insurance reimbursement claims submitted to FEHBP  
25 insurers. These sales were also suspicious in amount.

26           239. Defendant Laponis, Eargo's CFO, sold over \$405,000 worth of his personally-held  
27 Eargo stock between May 2021-August 2021 on dates following the onset of the audit and BCBS-  
28 FEP communications that Eargo was violating billing requirements and was likely not a covered

1 service under the BCBS-FEP plan. Specifically, Laponis sold 362 shares of Eargo stock on May  
2 17, 2021 for proceeds of \$12,302; he sold 10,000 shares of Eargo stock on June 29, 2021 for  
3 proceeds of \$384,300; and he sold 359 shares of Eargo stock on August 17, 2021 for proceeds of  
4 \$8,808. Laponis’s first and second sales were made between the dates in which BCBS-FEP  
5 [REDACTED] halted payments on Eargo’s  
6 reimbursement claims for customers under the BCBS FEP and Eargo’s mischaracterization of the  
7 audit’s pre-payment review as a chance to educate the insurer and unlikely to impact insurance  
8 coverage (August 12, 2021). Laponis’s third sale was made several weeks before Eargo disclosed  
9 additional bad news relating to the audit on September 22, 2021—namely that Eargo was the target  
10 of a criminal investigation by the Department of Justice for its claims for reimbursement under the  
11 BCBS FEP. Laponis’s May, June, and August 2021 sales comprised 18% of his total holdings of  
12 Eargo stock.

13 240. Defendant Gormsen, Eargo’s CEO, also sold over \$65,000 worth of his personally-  
14 held Eargo stock between May 2021-August 2021 on dates following the onset of the audit and  
15 [REDACTED]  
16 [REDACTED] Specifically, Gormsen sold 1,114 shares of Eargo  
17 stock on May 17, 2021 for proceeds of \$37,865, and he sold 1,102 shares on August 17, 2021 for  
18 proceeds of \$27,139.

19 241. Neither of these sales was made pursuant to a Rule 10b5-1 trading plan.

20 242. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 243. Given these facts, the importance and falsity of Eargo's misleading statements is  
 6 readily apparent. The Company informed investors that sales to customers with federal health  
 7 insurance benefits was the most integral part of Eargo's growth strategy, was the foundation upon  
 8 which the Company built its public guidance, and was responsible for over 45% of the Company's  
 9 net revenue. [REDACTED]

10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] Indeed, Eargo nearly collapsed once investors learned the true scope  
 14 of Eargo's insurance practices, as the Company surrendered almost all of its insurance revenue to  
 15 the government. All these facts thus plausibly allege corporate scienter.

16 **G. THE EXCHANGE ACT DEFENDANTS' ADDITIONAL FALSE AND**  
 17 **MATERIALLY MISLEADING STATEMENTS AND OMISSIONS**

18 **1. Materially False And Misleading Statements In Eargo's Third Quarter**  
**2020 Earnings Call And Form 10-Q**

19 244. In addition to misstating the financial metrics noted above, Defendants made a  
 20 number of other false or misleading statement or omissions. As detailed further below, these  
 21 misstatements generally concerned: (i) Eargo's progress and success in penetrating the insurance  
 22 market; (ii) the fact that Eargo's successful penetration of the insurance market was a driver of  
 23 revenue growth; (iii) Eargo's assurance that it verified customer eligibility and reimbursement  
 24 amounts prior to shipping the product and recoding revenue; (iv) the size of the insurance market  
 25 that Eargo could access; [REDACTED] and (vi) Eargo's guidance, which was  
 26 expressly based on its purported historical sales to FEHBP customers.

27 **(a) Eargo's Third Quarter 2020 Earnings Call**

28 245. On November 20, 2020, Eargo filed a Form 8-K with the SEC and published a press

1 release entitled “Eargo Reports Third Quarter 2020 Financial Results.” The 8-K was signed by  
 2 Defendant Laponis. The press release reported that Eargo earned net revenues of \$18.2 million  
 3 for the quarter, which was up 135.3% year-over-year. The reported revenue was materially  
 4 misstated for the reasons set forth above in § I.E.

5 246. On November 19, 2020, Defendants Gormsen and Laponis held an earnings call to  
 6 discuss Eargo’s third quarter 2020 financial results, during which they repeated the materially  
 7 misstated financial results noted above. During the call, Defendant Gormsen also stated that Eargo  
 8 estimated there are “approximately 12 million consumers in the U.S. over 50, who have both  
 9 hearing loss and access to hearing aid benefits under certain health insurance plans.” Gormsen  
 10 continued: “Eargo has identified and started to rapidly penetrate pockets of consumers with hearing  
 11 insurance benefits that cover most or all of the cost of an Eargo.”

12 247. The statements regarding Eargo’s addressable insurance market were false and  
 13 misleading when made. The total insured consumers accessible to Eargo was not approximately  
 14 12 million consumers [REDACTED]

15 [REDACTED]  
 16 [REDACTED].

17 **(b) Eargo’s Third Quarter 2020 Form 10-Q**

18 248. On November 20, 2020, Eargo filed its Form 10-Q, which was signed by  
 19 Defendants Gormsen and Laponis. The Form 10-Q contained the same materially misstated  
 20 financial results noted above for the third quarter of 2020.

21 249. The third quarter 2020 Form 10-Q stated, “Changes in third-party coverage and  
 22 reimbursement may impact our ability to grow and sell our products” and that “A payor’s decision  
 23 to provide coverage for a product does not imply that an adequate reimbursement rate will be  
 24 approved . . . . Third-party coverage and reimbursement may never become available to us at  
 25 sufficient levels.”

26 250. It was misleading for Defendants to describe generic, abstract risks regarding  
 27 potential “changes in third-party coverage” without disclosing that [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] The Company's  
4 generic description of risks also concealed the risks involving insurance customers had already  
5 occurred, [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 251. The Form 10-Q further stated that the "Company generally considers completion  
10 of an Eargo sales order . . . as a customer contract provided that collection is considered probable,"  
11 and that "[f]or payments that are not made upfront by credit card, the Company assesses insurance  
12 eligibility . . . as appropriate."

13 252. This statement was materially false and misleading. Contrary to this statement,  
14 Eargo did not "assess[] insurance eligibility," but it instead [REDACTED]  
15 [REDACTED] automatically booked revenue upon shipment of hearing aids to  
16 insurance customers, all the while submitting false claims to FEHBP insurers (including BCBS  
17 FEP).

18 253. Eargo further stated that Defendants attributed the Company's increased revenue  
19 in the third quarter of 2020, in part, to "growth in sales to customers with health insurance  
20 coverage, as such customers generally have lower return rates." Defendants further stated that the  
21 Company's increased sales volume was "largely driven," in part, by a "growth in customers with  
22 health insurance coverage for hearing aids . . . ."

23 254. It was materially misleading to state that Eargo's "increase in [sales] volume was  
24 largely driven by . . . growth in sales to customers with health insurance coverage" without  
25 disclosing that: (i) most FEHBP customers [REDACTED] were not eligible for  
26 reimbursement for the purchase of Eargo hearing aids; and (ii) Eargo had been submitting false  
27 claims to FEHBP insurers (including BCBS FEP) to obtain reimbursement.

28 255. Further, the Form 10-Q included a section on Eargo's compliance with "U.S. or

1 foreign federal and state healthcare regulatory laws,” stating that “if” Eargo failed to comply with  
2 such laws “we could be subject to penalties, including, but not limited to, administrative, civil and  
3 criminal penalties, damages, fines, disgorgement, exclusion from participation in governmental  
4 healthcare programs and the curtailment of our operations, any of which could adversely impact  
5 our reputation.” That section listed as an example of such laws “the U.S. federal false claims laws,  
6 including the False Claims Act, which can be enforced through whistleblower actions, and civil  
7 monetary penalties laws, which, among other things, impose criminal and civil penalties against  
8 individuals or entities for knowingly presenting, or causing to be presented, to the U.S. federal  
9 government, claims for payment or approval that are false or fraudulent, knowingly making, using  
10 or causing to be made or used, a false record or statement material to a false or fraudulent claim,  
11 or from knowingly making a false statement to avoid, decrease or conceal an obligation to pay  
12 money to the U.S. federal government.”

13 256. It was misleading to describe generic and abstract risks that “could” render Eargo  
14 subject to penalties and fines, without disclosing that, in fact, those risks had already occurred  
15 because Eargo’s FEHBP customers (including BCBS FEP customers) were not eligible for  
16 reimbursement for the purchase of Eargo hearing aids, and Eargo had submitted numerous false  
17 unsupported claims to BCBS and other insurers that were not eligible for payment at all.

18 **2. Materially False And Misleading Statements In Eargo’s Fourth**  
19 **Quarter And Full Year 2020 Press And Earnings Releases, Investor**  
20 **Presentations, And 2020 Form 10-K**

21 **(a) J.P. Morgan Healthcare Conference And Investor Presentation**  
22 **On January 12, 2021**

23 257. On January 12, 2021, after disclosing preliminary unaudited financial results for  
24 the fourth quarter and full year 2020, Defendants, Gormsen and Laponis participated in the J.P.  
25 Morgan Healthcare Conference. During the conference, when asked about the company’s  
26 profitability potential, Defendant Laponis represented that “a natural tailwind” existed in the  
27 company’s ability to drive awareness for insurance customer segment for insurance customers to  
28 “convert better” and as a result, Eargo could grow its customer base at a “lower cost of  
acquisition.” Regarding insurance benefits, Defendant Gormsen stated that the Company was



1 “targeting right now federal employees” who have access to a hearing benefit. He stated that “our  
 2 focus and the reason we’re focused on federal employees initially is you give us your medical  
 3 record number, we have APIs built that will verify your coverage. Upon acceptance of that, which  
 4 is typically instantaneous, we will actually ship you your products. You don’t have to worry about  
 5 the credit card, anything. We deal with all the claims processing on the back end, directly with  
 6 the administrators of the FEHB program.” Gormsen further claimed that Eargo saw “a huge  
 7 opportunity long term to expand this” to FEHBP customers, who represent 1.3 million of the 12  
 8 million in potential customers over the age of 50 with a hearing aid benefit.

9 258. These statements were false or misleading when made. It was misleading for  
 10 Defendants to describe Eargo’s “claims processing on the back end” with FEHBP insurers [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]—thus engaging in the systematic submission of false  
 15 insurance claims for reimbursement.

16 259. The statements regarding Eargo’s insurance opportunity were also false or  
 17 misleading when made. The total insured consumers accessible to Eargo was not approximately  
 18 12 million consumers (including 5.5 million BCBS FEP customers) [REDACTED]  
 19 [REDACTED] Eargo could not provide  
 20 a hearing loss diagnosis and did not require customers to obtain one independently.

21 **(b) Eargo’s Fourth Quarter 2020 And Full Year 2020 Press Release**

22 260. On February 25, 2021, Eargo filed a Form 8-K with the SEC and published a press  
 23 release entitled “Eargo Reports Fourth Quarter and Full Year 2020 Financial Results.” The 8-K  
 24 was signed by Defendant Laponis. The press release reported that Eargo earned net revenues of  
 25 \$22.4 million for the quarter, which was up 110.8% year-over-year. The press release also reported  
 26 that Eargo earned net revenues of \$69.2 million for the year, which was up 110.9% year-over-year.  
 27 The reported revenue was materially misstated for the reasons set forth above in § I.E.

28 261. Regarding the Company’s growth in 2021, Defendant Gormsen stated, “Our

1 performance in 2020 and the continued consumer acceptance of using telecare to solve for hearing  
2 loss gives us a high degree of confidence we can continue to help more people hear better in 2021.  
3 This is reflected in our full year 2021 revenue guidance of between \$87 million and \$93 million.”

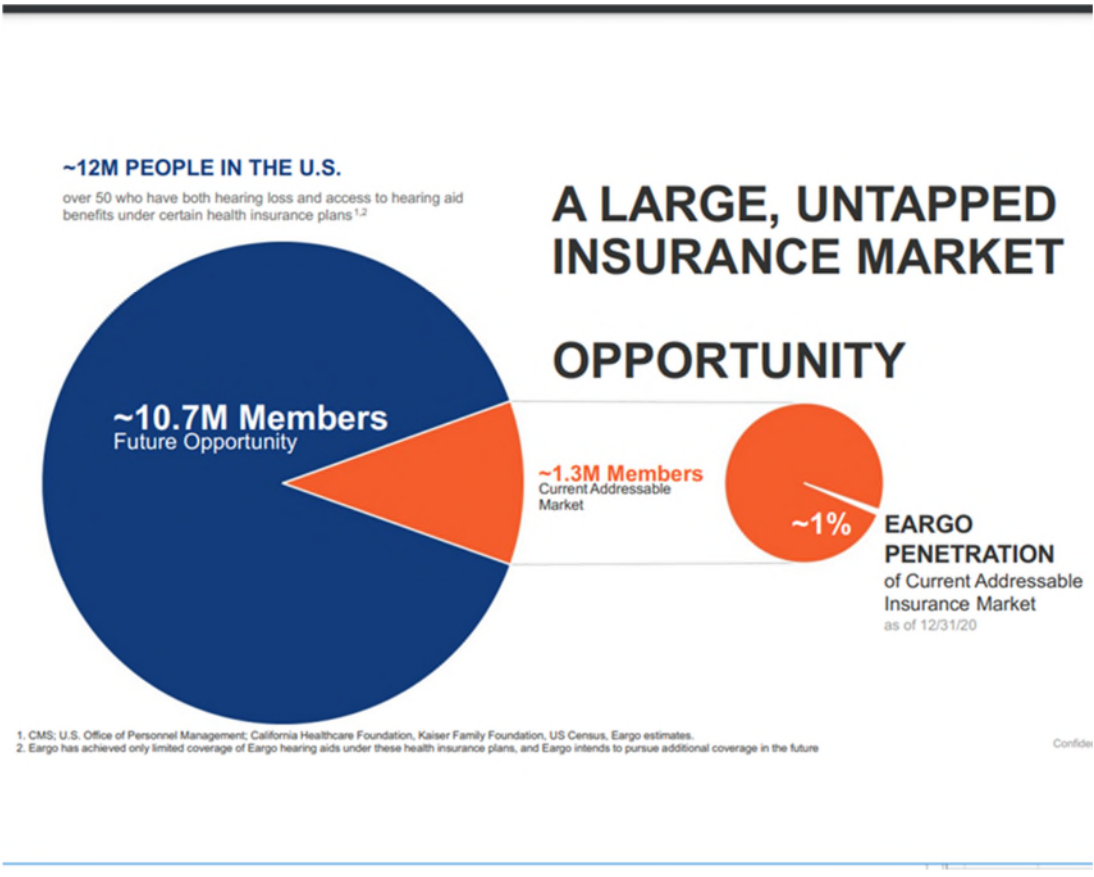
4 262. Defendants’ statements regarding Eargo’s revenue guidance for 2021 were  
5 materially false or misleading when made. The guidance was misleading because: (i) it was based  
6 on a false premise, namely, that Eargo’s historical penetration of the insurance market was  
7 legitimate and would continue, particularly [REDACTED]

8 [REDACTED]  
9 [REDACTED] it omitted to disclose material facts, namely, that FEHBP  
10 customers (including BCBS FEP customers) were ineligible for reimbursement benefits on  
11 Eargo’s product, causing Eargo to systemically falsify claims to obtain reimbursement. Given that  
12 insurance customers comprised approximately 45% of Eargo’s customer base (which the Company  
13 expected would continue in 2021), Defendants knew or were deliberately reckless in not knowing  
14 that the Company’s guidance was baseless and impossible for Eargo to legitimately achieve.

15 (c) **February 25, 2021 Fourth Quarter 2020 And Full Year 2020**  
16 **Earnings Call And Investor Presentation**

17 263. Also on February 25, 2021, Defendants Gormsen and Laponis participated in the  
18 Company’s earnings call for the fourth quarter 2020 and full year 2020. A presentation slide,  
19 reproduced below and entitled “A Large, Untapped Insurance Market,” highlighted Eargo’s  
20 penetration of the insurance market, stating that there were approximately 12 million people in the  
21 United States over the age of 50 who have both hearing loss and access to hearing aid benefits  
22 under certain health insurance plans. Eargo stated that approximately 10.7 million members  
23 represented a “Future Opportunity” and that approximately 1.3 million members were in a  
24 “Current Addressable Insurance Market.”  
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264. These statements regarding Eargo’s insurance opportunity were false and misleading when made. The total insurance “opportunity” accessible to Eargo was not approximately 12 million customers, or 1.3 million customers in the “current addressable insurance market,” [REDACTED] because Eargo could not provide a hearing loss diagnosis and did not require customers to obtain one independently.

265. Defendants made additional false or misleading statements regarding Eargo’s “insurance opportunity,” calling it “a multiyear runway for continued efficient growth.” Defendant Gormsen explained that Eargo “opened a new channel for consumers to acquire hearing aids at low or no cost through insurance, driving down our return rates and improving the efficiency of our business.” As part of his prepared remarks, Defendant Laponis stated that at the end of 2020 “roughly 45% of the volume came from insurance,” and that the company was modeling 2021 as “a continuation of that similar behavior” with an expected mix “kind of weighted

1 towards about 45% insurance throughout the year.”

2 266. These statements were false and misleading. It was misleading to describe Eargo’s  
3 purported performance in the insurance market as a growth driver, and to highlight that 45% of  
4 Eargo’s sales came from the insurance market, without disclosing that such growth was based on  
5 Eargo’s widespread submission of false claims to FEHBP insurers (including BCBS FEP) to obtain  
6 reimbursement.

7 267. A subsequent slide entitled “Strong Platform for 2021 Execution,” listed  
8 “Continued efficient growth driven by improved customer mix” as part of the Company’s “2021  
9 Plan.” Defendant Gormsen stated that the Company’s “accomplishments in 2020 give us high  
10 confidence in our ability to deliver our 2021 business plan and financial objectives.” In response  
11 to an analyst question regarding Eargo’s 2021 guidance, Gormsen responded, “I think we’ve been  
12 pretty clear in our communication that all our guidance is based on what we have already done.”  
13 In particular, he said that the guidance is “driven off” of “[h]ow we can continue to penetrate the  
14 Federal insurance opportunity, that’s driving a big part of our growth.”

15 268. Defendants’ statements tying Eargo’s guidance to its historical and continuing  
16 penetration of the insurance market were materially false and misleading when made because:  
17 (i) they were based on a false premise, namely, that Eargo’s historical penetration of the insurance  
18 market was legitimate and would continue, particularly given that [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] were ineligible for  
22 reimbursement benefits, and Eargo systemically falsified claims to obtain reimbursement. Given  
23 that insurance customers comprised approximately 45% of Eargo’s customer base (which the  
24 Company expected would continue in 2021), Defendants knew or were deliberately reckless in not  
25 knowing that the Company’s guidance was baseless and impossible for Eargo to achieve  
26 legitimately.

(d) **Materially False And Misleading Statements At February 26, 2021 SVB Leerink Global Healthcare Conference And Presentation**

269. On February 26, 2021, Defendants Gormsen and Laponis participated in the SVB Leerink Global Healthcare Conference. During the conference, Defendant Gormsen delivered prepared remarks and referred to an accompanying slide presentation. Referencing the insurance market as a growth driver for the Company, Gormsen stated that Eargo was “starting to enter into insurance as well as repeat purchasers.” Gormsen continued that the company has seen “a lot of successes with our insurance offering.” Gormsen further indicated that the Company’s “initial focus” was on the “largest subset” of customers, federal employees, whose “program basically offers \$2,500 of hearing coverage, allowing people to get hearing aids or Eargos at no money out of pocket. Not in the clinic, but with Eargo.”

270. These statements were false and misleading. It was misleading for Eargo to discuss the impact of sales to insurance customers without disclosing that: [REDACTED]

(ii) hearing aids for Eargo’s BCBS-FEP customers were not covered; and (ii) Eargo had been submitting false claims to FEHBP insurers (including BCBS FEP) to obtain reimbursement.

271. Gormsen also emphasized that the Company built “verification as well as [insurance] claims processing in-house,” and that once customers provide a medical record number, “we’ll verify your coverage and we’ll ship your product. We’ll focus you on hearing and we’re dealing on the back end with all the integrations on the payor side.”

272. These statements were false and misleading. Contrary to these statements, Eargo did not verify that its customers were actually eligible for insurance reimbursement or “deal[] on the back end with all the integrations on the payor side.” Instead, [REDACTED]

[REDACTED] automatically booked revenue upon shipment of hearing aids to insurance customers, all the while submitting false claims to FEHBP insurers (including BCBS FEP) to obtain reimbursement based on that false hearing loss diagnosis.

273. During the same conference, Gormsen stated, “I would say what we’re guiding is basically a continuation of what we’ve done.” Gormsen also characterized the Company’s

1 guidance as a “conservative stance” and stated that the Company was “only guiding within the  
 2 federal [insurance] segment.” These statements about Eargo’s revenue guidance, predicated on  
 3 the Company’s historical and continuing performance in the insurance market, were misleading  
 4 because: (i) they were based on a false premise, namely, that Eargo’s historical penetration of the  
 5 insurance market was legitimate and would continue, particularly given that [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] were ineligible for reimbursement benefits, causing Eargo to  
 9 systemically falsify claims to obtain reimbursement. Given that insurance customers comprised  
 10 approximately 45% of Eargo’s customer base (which the Company expected would continue in  
 11 2021), Defendants knew or were deliberately reckless in not knowing that the Company’s guidance  
 12 was baseless and impossible for Eargo to achieve legitimately.

13 (e) **March 16, 2021 Form 10-K For The Fiscal Year Ended**  
 14 **December 31, 2020**

15 274. On March 16, 2021, Eargo issued its Annual Report for the fiscal year ended 2020  
 16 on Form 10-K. The Form 10-K was signed by Defendants Gormsen and Laponis. The Form 10-  
 17 K reported revenue of \$69.2 million for the year. The revenue was materially misstated for the  
 18 reasons set forth above at § I.E.

19 275. The Form 10-K was issued approximately two months after the [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED] The Form  
 23 10-K contained several additional statements that were materially false and misleading when  
 24 made.

25 276. First, the Form 10-K included a section entitled “Accounting and Revenue  
 26 Recognition,” which stated: “For payments involving insurance payors, the Company validates  
 27 customer eligibility and reimbursement amounts prior to shipping the product.”

28 277. Contrary to these statements, Eargo did not validate customer eligibility prior to

1 shipping hearing aids to FEHBP customers. [REDACTED]

2 [REDACTED] automatically booked revenue upon shipment of hearing aids to  
3 insurance customers, all the while submitting false claims to FEHBP insurers (including BCBS  
4 FEP) to obtain reimbursement based on the false hearing loss diagnosis.

5 278. Second, as part of the Form 10-K, Eargo stated, “Changes in third-party coverage  
6 and reimbursement may impact our ability to grow and sell our products” and that “A payor’s  
7 decision to provide coverage for a product does not imply that an adequate reimbursement rate  
8 will be approved . . . Third-party coverage and reimbursement may never become available to us  
9 at sufficient levels.” It was misleading for Defendants to describe generic, abstract risks regarding  
10 potential “changes in third-party coverage” while concealing that the risks that had already  
11 occurred, i.e., that [REDACTED]

12 [REDACTED] BCBS  
13 FEP had instituted an audit requesting documentation that Eargo could not provide.

14 279. Third, the Form 10-K included a section on Eargo’s compliance with “U.S. or  
15 foreign federal and state healthcare regulatory laws,” stating that “if” Eargo failed to comply with  
16 such laws “we could be subject to penalties, including, but not limited to, administrative, civil and  
17 criminal penalties, damages, fines, disgorgement, exclusion from participation in governmental  
18 healthcare programs and the curtailment of our operations, any of which could adversely impact  
19 our reputation.” That section listed as an example of such laws “the U.S. federal false claims laws,  
20 including the False Claims Act, which can be enforced through whistleblower actions, and civil  
21 monetary penalties laws, which, among other things, impose criminal and civil penalties against  
22 individuals or entities for knowingly presenting, or causing to be presented, to the U.S. federal  
23 government, claims for payment or approval that are false or fraudulent, knowingly making, using  
24 or causing to be made or used, a false record or statement material to a false or fraudulent claim,  
25 or from knowingly making a false statement to avoid, decrease or conceal an obligation to pay  
26 money to the U.S. federal government.”

27 280. It was misleading to describe generic and abstract risks that “could” render Eargo  
28 subject to penalties and fines, without disclosing that, in fact, those risks had already occurred

1 because Eargo’s FEHBP customers (including BCBS FEP customers) were not eligible for  
2 reimbursement for the purchase of Eargo hearing aids, and Eargo had submitted numerous false  
3 and unsupported claims to BCBS and other insurers that were not eligible for payment at all.

4 281. Further, the Form 10-K described Eargo’s increase in revenue during the fourth  
5 quarter and over the full year of 2020. Defendants attributed the Company’s increased revenue,  
6 in part, to “growth in sales to customers with health insurance coverage, as such customers  
7 generally have lower return rates.” Defendants further stated that the Company’s increased sales  
8 volume was “largely driven,” in part, by a “growth in customers with health insurance coverage  
9 for hearing aids . . . .”

10 282. It was materially misleading to state that Eargo’s “increase in [sales] volume was  
11 largely driven by . . . growth in sales to customers with health insurance coverage” without  
12 disclosing that: [REDACTED]

13 [REDACTED] such growth was based on Eargo’s widespread submission of  
14 false claims to FEHBP insurers (including BCBS FEP) to obtain reimbursement.

15 (f) **Materially False And Misleading Statements At The BofA**  
16 **Securities “2021 CEO Call Series Conference Call” On April 16,**  
**2021**

17 283. On April 16, 2021, Defendant Gormsen participated in the Bank of America 2021  
18 CEO Call Series conference. During the call, Gormsen spoke at length about the Company’s  
19 targeting of federal insurance customers, stating, “just to be clear, hearing aids are not paid for  
20 through the federal program, but the federal program offers and allow a hearing benefit of 2,500  
21 dollars.” He continued that Eargo could offer a “no money out of pocket solution to federal  
22 employees.”

23 284. Regarding further penetration of the insurance market (after BSCA had  
24 implemented the pre-payment review [REDACTED]  
25 [REDACTED] Gormsen further touted the “enormous head room and long-term growth.” Referring to  
26 “all the success we had in 2020,” Gormsen said “that we’re doing a pretty good job of addressing”  
27 customers with federal insurance. “That’s a great scenario and that gives us absolutely the  
28 confidence of the guidance we put out for 21-22.” Gormsen emphasized that “the federal is the



1 only part that's included in our guidance. So, we're not counting on additional insurance markets  
2 to come in and that's not included in our guidance." Defendant Laponis further explained that  
3 "[j]ust to clarify the numbers, we did about 45% spot on in the back half of 2020 with our nexus  
4 federal. As we built the guidance, we assumed it would be in a similar type of range and that's  
5 what we talked about back second call, but clearly, it's an area where we see future opportunity."

6 285. Defendants' statements concerning Eargo's performance, revenue guidance, and  
7 expected performance for 2021 were materially false or misleading when made. Defendants  
8 concealed that, at the time Defendants made these statements, [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 286. These statements were also misleading because they were based on a false premise,  
15 namely, that Eargo's historical penetration of the insurance market was legitimate and would  
16 continue. As noted above, [REDACTED]

17 [REDACTED]  
18 [REDACTED] Eargo also omitted to disclose other material facts, namely,  
19 [REDACTED] were ineligible for  
20 reimbursement benefits, and that Eargo systemically falsified claims to obtain reimbursement.  
21 Given that insurance customers comprised approximately 45% of Eargo's customer base (which  
22 the Company expected would continue in 2021), Defendants knew or were deliberately reckless  
23 in not knowing that the Company's guidance was baseless and impossible for Eargo to achieve  
24 legitimately.

25 287. As on previous earnings and investor calls, Gormsen also defined the "huge insured  
26 population" of "12 million total people out there who have some level of benefits of which federal  
27 is only a subset of 1.3 million," which were false and material when made given that [REDACTED]

28 [REDACTED] Eargo could not

1 provide a hearing loss diagnosis and did not require its customers to obtain one independently.

2 **3. Materially False And Misleading Statements In Eargo’s First Quarter**  
3 **2021 Press And Earnings Release, Form 10-Q, And Investor**  
4 **Presentation**

5 **(a) Eargo’s First Quarter 2021 Press Release**

6 288. On May 12, 2021, Eargo filed a Form 8-K with the SEC and published a press  
7 release entitled “Eargo Reports First Quarter 2021 Financial Results.” The Form 8-K was signed  
8 by Defendant Laponis. The press release reported that Eargo earned net revenues of \$22.0 million  
9 for the quarter, which was up 74.0% year-over-year. The revenue was materially misstated for the  
10 reasons set forth above in § I.E.

11 289. The release quoted Defendant Gormsen as stating that Eargo’s marketing program  
12 continued to “drive demand across multiple customer types, including both cash pay and insurance  
13 customers producing 74% year-over-year growth.”

14 290. Eargo’s reported revenue and statements regarding Eargo’s growth were false and  
15 misleading when made. At the time Defendants made these statements, [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] thus falsely included in its reported revenue for the First Quarter  
22 of 2021 revenue for an entire month in which it had not received any payment due to [REDACTED]  
23 [REDACTED]—and Eargo  
24 knew that the revenues it had received were in extremely serious jeopardy.

25 291. [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

28 292. It was materially misleading to state that Eargo’s success with insurance customers

1 was a driver of its growth without disclosing those facts noted above, and that [REDACTED]

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 293. The release further quoted Defendant Gormsen: “Our strong start to the year gives  
6 us increased confidence to deliver our full year revenue and gross margin guidance...” As part of  
7 the press release, Eargo announced that it had increased its net revenue guidance for 2021 to a  
8 range of \$89 million to \$93 million, up from the previous range of \$87 million to \$93 million.

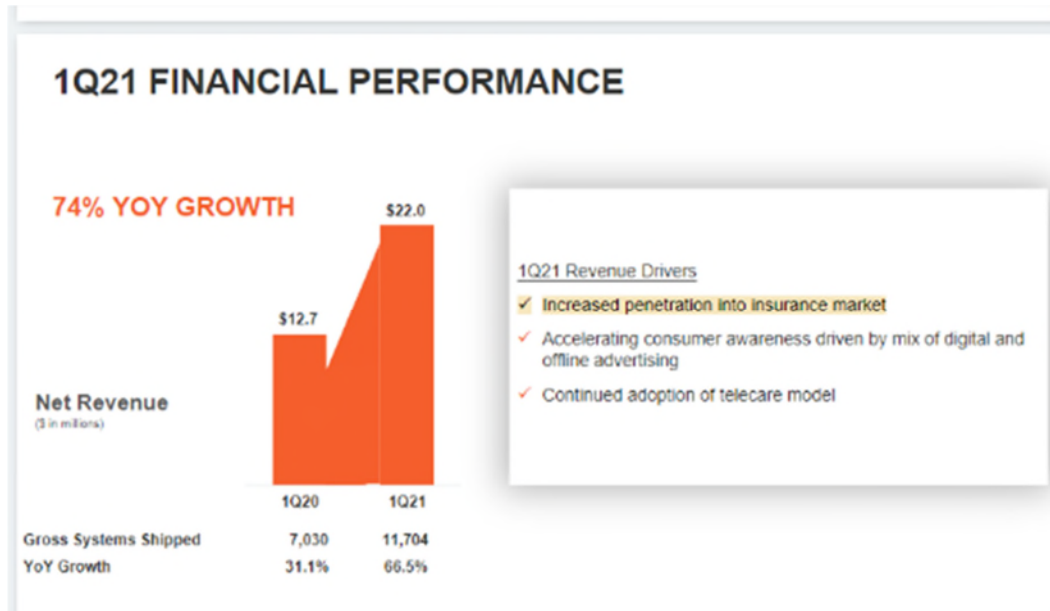
9 294. Defendants’ statements concerning Eargo’s performance, revenue guidance, and  
10 expected performance for 2021 were materially false or misleading when made. These statements  
11 were misleading because: (i) they were based on a false premise, namely, that Eargo’s historical  
12 penetration of the insurance market was legitimate and would continue, [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] causing  
17 Eargo to systemically falsify claims to obtain reimbursement. Given that insurance customers  
18 comprised approximately 45% of Eargo’s customer base (which the Company expected would  
19 continue in 2021), Defendants knew or were deliberately reckless in not knowing that the  
20 Company’s guidance was baseless and impossible for Eargo to legitimately achieve.

21 **(b) May 12, 2021 Earnings Call And Investor Presentation**

22 295. Also on May 12, 2021, Defendants Gormsen and Laponis participated in Eargo’s  
23 First Quarter 2021 Earnings Call. During the earnings call, Defendant Gormsen delivered prepared  
24 remarks and referred to an accompanying slide presentation—specifically “Slide 5,” reproduced  
25 below—stating that Eargo generated \$22.0 million in net revenue, which constituted year-over-  
26 year growth of 74%. That same slide stated that one of the “1Q21 Revenue Drivers” was  
27 “Increased penetration into the insurance market.” In his remarks, Defendant Gormsen stated that  
28 Eargo “delivered strong first quarter net revenue growth of approximately 74%.” He further stated

that “[b]oth revenue and volume growth in the first quarter was supported by several factors,” the first of which was “the further penetration into the insurance market.”



296. A subsequent slide titled “Comparison of 1Q21 and 1Q20 Results,” listed Eargo’s First Quarter 2021 “Net Revenue” of \$22.0 million and its year-over-year growth of 74%. The slide stated that Eargo experienced “increased insurance market penetration” and had a “[s]trong mix of insurance customers” in First Quarter 2021. In his prepared remarks, Defendant Laponis stated that Eargo’s return rate “was driven primarily by a higher mix of insurance customers.” It was materially misleading to discuss Eargo’s First Quarter of 2021 revenue without disclosing essential facts regarding the circumstances of the pre-payment review audit and Eargo’s internal awareness that the Company could not satisfy a hearing loss diagnosis through its online hearing screening or a customer self-assessment. At the time Defendants made these statements, they knew the Company [REDACTED]

[REDACTED] imposed a [REDACTED], and denied payment as to all Eargo insurance claims as of March 1, 2021—making it improbable that Eargo would receive insurance reimbursement for hearing aids

1 it booked as revenue upon shipment. Eargo thus included in its reported revenue for the First  
2 Quarter of 2021 revenue for an entire month in which it had not received any payment [REDACTED]  
3 [REDACTED]—and Eargo  
4 knew that these revenues it had received were in extremely serious jeopardy.

5 297. It was further misleading to state that Eargo’s success with insurance customers  
6 was a driver of its growth without disclosing those facts. [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 298. In addition, Defendant Gormsen and Defendant Laponis each expressed their  
10 “confidence” in Eargo’s ability to meet its revenue guidance based upon Eargo’s prior quarterly  
11 results and its existing “momentum.” Defendant Gormsen, referring to the past quarter’s results,  
12 stated: “I’m pleased to report that we again delivered outstanding performance in the first quarter  
13 of 2021, further increasing our confidence in our 2021 guidance and longer-term financial  
14 objectives.” Defendant Laponis also stated: “Due to our high degree of confidence and our ability  
15 to drive growth and capitalize on the momentum in our business, we are raising full year 2021 net  
16 revenue guidance to \$89 million to \$93 million, up from \$87 million to \$93 million.”

17 299. Defendants’ statements reaffirming Eargo’s guidance based on its prior and  
18 continuing sales to insurance customers were materially false or misleading when made. These  
19 statements were misleading because: (i) they were based on a false premise, namely, that Eargo’s  
20 historical penetration of the insurance market was legitimate and would continue, particularly  
21 given that [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 [REDACTED] were ineligible for reimbursement  
26 benefits, causing Eargo to systemically falsify claims to obtain reimbursement. Given that  
27 insurance customers comprised approximately 45% of Eargo’s customer base (which the Company  
28 expected would continue in 2021), Defendants knew or were deliberately reckless in not knowing  
that the Company’s guidance was baseless and impossible for Eargo to achieve legitimately.

1 (c) May 13, 2021 Form 10-Q

2 300. On May 13, 2021, Eargo issued its First Quarter 2021 Form 10-Q, signed by  
3 Defendants Gormsen and Laponis. The First Quarter 2021 Form 10-Q stated that Eargo generated  
4 \$22.0 million in net revenue, which constituted year-over-year growth of 74%. The revenue was  
5 materially misstated for the reasons set forth in § I.E.

6 301. The Form 10-Q further touted that Eargo’s increased revenue of “\$9.4 million, or  
7 74.0%, from \$12.7 million during the three months ended March 31, 2021 to \$22.0 million during  
8 the three months ended March 31, 2021.” Defendants attributed the Company’s increased revenue,  
9 in part, to “growth in sales to customers with health insurance coverage, as such customers  
10 generally have lower return rates.” Defendants further stated that the Company’s increased sales  
11 volume was “largely driven,” in part, by a “growth in customers with health insurance coverage  
12 for hearing aids . . . .”

13 302. At the time Defendants made these statements, they knew the Company was  
14 approximately two months into a payment audit in [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 [REDACTED] Eargo thus included in its reported revenue for the First Quarter of 2021  
21 revenue for an entire month in which it had not received any payment [REDACTED]  
22 [REDACTED]—and knew that the revenues  
23 it had received were in extremely serious jeopardy.

24 303. The Form 10-Q also included a section entitled “Revenue Recognition,” which  
25 stated: “For payments involving insurance payors, the Company validates customer eligibility and  
26 reimbursement amounts prior to shipping the product.”

27 304. The Company’s description of revenue recognition was also false or misleading.  
28 Contrary to this statement, Eargo did not “validate[] customer eligibility and reimbursement

1 amounts prior to shipping the product.” Instead, Eargo [REDACTED]  
2 [REDACTED] booked revenue upon shipment of hearing aids to  
3 insurance customers, all the while submitting false claims to FEHBP insurers (including BCBS  
4 FEP) to obtain reimbursement based on that false hearing loss diagnosis. This was demonstrated  
5 by, among many other things, the fact that [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 [REDACTED] It was impossible for Eargo to “validate” the eligibility of  
9 customers when its primary insurance payer refused coverage due to [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 305. It was also materially misleading to state that Eargo’s “increase in [sales] volume  
13 was largely driven by . . . growth in sales to customers with health insurance coverage” without  
14 disclosing that: (i) FEHBP customers (including BCBS FEP customers) were not eligible for  
15 reimbursement for the purchase of Eargo hearing aids as of the date of the Form 10-K; and  
16 (ii) Eargo had been submitting misleading false claims to FEHBP insurers (including BCBS FEP)  
17 with a false hearing loss diagnosis to obtain reimbursement.

18 306. Additionally, Eargo also included a “Risk Factor” in the Form 10-Q which stated  
19 that, “A significant portion of our revenue is dependent upon reimbursement from third-party  
20 payors. Any material changes to third-party coverage or reimbursement could significantly impact  
21 our business and our ability to grow and sell our products.” The Risk Factor further stated that  
22 Eargo was subject to a “routine” audit with its “largest third-party payor, who accounted for  
23 approximately 57% of the Company’s gross accounts receivable as of March 31, 2021,” and that  
24 such reviews and audit “could in the future result significant delays in payments and could result  
25 in material recoupments of previous claims paid or denials of pending or future claims. . . .” The  
26 Risk Factor also stated that Eargo “cannot predict whether, under what circumstances, or at what  
27 payment levels third-party payors will cover and reimburse our products.”

28 307. These statements regarding third-party coverage and the insurance audit were false

1 and misleading when made because, among other things, they did not identify that Eargo’s hearing  
2 aids were not reimbursable under the BCBS FEP’s 2021 Plan and that there had been a “material  
3 change” in third-party coverage—namely, that BCBS FEP had refused to reimburse Eargo for any  
4 insurance claims as of March 1, 2021 [REDACTED]

5 [REDACTED] It was further false and misleading to  
6 characterize the audit and pre-payment review as “routine” and to state that it “could in the future”  
7 result in payment delays, because, as of the date of the Form 10-Q (May 13, 2021), BCBS FEP  
8 had refused to pay any reimbursement claims as of March 1, 2021 (over two and one-half months)

9 [REDACTED]  
10 [REDACTED]  
11 308. The Form 10-Q also included a section on Eargo’s compliance with “U.S. or foreign  
12 federal and state healthcare regulatory laws,” stating that “if” Eargo failed to comply with such  
13 laws “we could be subject to penalties, including, but not limited to, administrative, civil and  
14 criminal penalties, damages, fines, disgorgement, exclusion from participation in governmental  
15 healthcare programs and the curtailment of our operations, any of which could adversely impact  
16 our reputation.” That section listed as an example of such laws “the U.S. federal false claims laws,  
17 including the False Claims Act, which can be enforced through whistleblower actions, and civil  
18 monetary penalties laws, which, among other things, impose criminal and civil penalties against  
19 individuals or entities for knowingly presenting, or causing to be presented, to the U.S. federal  
20 government, claims for payment or approval that are false or fraudulent, knowingly making, using  
21 or causing to be made or used, a false record or statement material to a false or fraudulent claim,  
22 or from knowingly making a false statement to avoid, decrease or conceal an obligation to pay  
23 money to the U.S. federal government.”

24 309. It was misleading to describe generic and abstract risks that “could” render Eargo  
25 subject to penalties and fines, without disclosing that, in fact, those risks had already occurred.

26 Eargo [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



1 [REDACTED] Company had been submitting insurance claims based on its  
2 misrepresentation of a hearing loss diagnosis that Eargo could not substantiate.

3 (d) June 2, 2021 Fireside Chat At William Blair’s 41st Annual  
4 Growth Stock Conference With The CEO, CFO, And VP Of  
5 Investor Relations

6 310. On June 2, 2021, Defendants Gormsen and Laponis participated in the William  
7 Blair 41st Annual Growth Stock Conference. Regarding the insurance market, Defendant Gormsen  
8 stated, “over the last year had a lot of success penetrating into insurance, but predominately  
9 through what we call federal employee. So federal employees have a \$2,500 hearing benefit. But  
10 it was not just about tapping into a benefit, it was really about making the benefit available to the  
11 end user.”

12 311. At the time Defendants made these statements, [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 [REDACTED] It  
20 was thus misleading for Defendants to describe Eargo’s insurance practices without disclosing  
21 these material facts known to Defendants about the audit’s impact on Eargo and the likelihood that  
22 an insurance benefit was not—and never had been—available to Eargo’s FEHB customers.

23 312. In describing the Eargo device purchase process for customers with insurance  
24 coverage, Gormsen continued: “So the way it works with Eargo is, if you give us your medical  
25 record number, we will verify your coverage as a federal employee and at this moment and we  
26 have APIs built and the data integrations. The moment we verify, which is real time, we can then  
27 shift you to the box, focus you want hearing everything that happens in the back end and so it’s a  
28 (inaudible) processing and medical billing, all of that we’re dealing with that, so you as a user can  
focus on hearing better.”

1           313. This statement was false and misleading. Contrary to this statement, Eargo did not  
 2 “verify” coverage for its products or legitimately deal with “everything that happens on the back  
 3 end”. Instead, Eargo [REDACTED]  
 4 automatically booked revenue upon shipment of hearing aids to insurance customers, all the while  
 5 submitting false claims to FEHBP insurers (including BCBS FEP) to obtain reimbursement based  
 6 on that false hearing loss diagnosis. This was demonstrated by, among many other things, [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED] It was

10 impossible for Eargo to “verify” the eligibility of customers when its primary insurance payer  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] It was further misleading to discuss Eargo’s back end  
 14 claims processing with disclosing these material facts known to Defendants but not known to  
 15 investors.

16           **4. Materially False And Misleading Statements In Eargo’s Second**  
 17           **Quarter 2021 Press And Earnings Release, Form 10-Q, and Investor**  
 18           **Presentations**

19           **(a) August 12, 2021 Earnings Call And Investor Presentation**

20           314. On August 12, 2021, Eargo filed a Form 8-K with the SEC and published a press  
 21 release entitled “Eargo Reports Second Quarter 2021 Financial Results.” The 8-K was signed by  
 22 Defendant Laponis. The press release reported that Eargo earned net revenues of \$22.9 million  
 23 for the quarter, which was up 43.7% year-over-year. The release further reported net accounts  
 24 receivable of \$15.4 million.

25           315. These financial metrics were materially misstated for the reasons set forth above in  
 26 § I.E. Further, at the time Defendants made these statements, they knew the Company was  
 27 approximately five months into a payment audit in which Eargo [REDACTED]  
 28 [REDACTED]  
 [REDACTED]

1 [REDACTED]  
2 [REDACTED]—making it  
3 quite improbable that Eargo would receive insurance reimbursement for hearing aids it booked as  
4 revenue upon shipment. [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 316. [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 317. [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 318. [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

28 319. The release also stated:

1 The increase in accounts receivable from March 31, 2021 was primarily due to a  
2 claims audit by an insurance company that is our largest third-party payor, who  
3 accounted for approximately 80% of our gross accounts receivable as of June 30,  
4 2021. During the audit, claims since March 1, 2021 have not been paid. The  
5 Company is in active discussions with the payor and continues to work toward  
6 conclusion of the audit.

7 320. As part of the press release, Eargo announced that it had further increased its net  
8 revenue guidance for 2021 to a range of \$93 million to \$96 million, up from the previous range of  
9 \$87 million to \$93 million.

10 321. Defendants' statements concerning Eargo's revenue guidance for 2021 were  
11 materially false or misleading when made. These statements were misleading because:  
12 (i) they were based on a false premise, namely, that Eargo's historical penetration of the insurance  
13 market was legitimate and would continue, particularly given that [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 [REDACTED] Given that insurance customers comprised approximately 45%  
18 of Eargo's customer base (which the Company expected would continue in 2021), Defendants  
19 knew or were deliberately reckless in not knowing that the Company's guidance was baseless and  
20 impossible for Eargo to achieve legitimately.

21 322. That same day, August 12, 2021, Defendants Gormsen and Laponis participated in  
22 an earnings call regarding Eargo's second quarter 2021 financial results. Defendant Gormsen  
23 reiterated that an insurance company that was Eargo's "largest third-party payor, who accounted  
24 for approximately 80% of the Company's gross accounts receivable as of June 30, 2021," was  
25 conducting a claims audit and had not paid Eargo on any claims since March 1, 2021. Defendant  
26 Laponis described the claims audit as "pretty common" and assured investors that "all the claims  
27 we submitted are valid and reimbursable," and the insurer—identified only as "a large payor that's  
28 basically administrating on behalf of the federal government"—was only focused on "requested  
documentation," and not the propriety of the claims. Moreover, Defendant Gormsen stated that

1 the claims audit merely represented “an educational process” for the insurer that gave the Company  
2 “the opportunity to further broaden” its “insurance coverage.”

3 323. Defendants’ statements regarding the claims audit were materially false and  
4 misleading when made. [REDACTED]

5 [REDACTED]  
6 [REDACTED] If  
7 anything, BSCA “educated” Eargo that its claims were a sham: the insurer would not reimburse  
8 the Company’s insurance claims, pending as of March 1, 2021 [REDACTED]

9 [REDACTED]  
10 [REDACTED].  
11 **(b) August 12, 2021 Form 10-Q**

12 324. On August 12, 2021, Eargo filed its Second Quarter 2021 Form 10-Q, signed by  
13 Defendants Gormsen and Laponis. The Second Quarter 2021 Form 10-Q stated that Eargo  
14 generated \$22.9 million in net revenue. The revenue was materially misstated for the reasons set  
15 forth in § I.E and in ¶¶315-18, *supra*.

16 325. The Form 10-Q further touted “Revenue increased by \$7.0 million, or 43.7%, from  
17 \$15.9 million during the three months ended June 30, 2020 to \$22.9 million during the three  
18 months ended June 30, 2021.” Defendants attributed the Company’s increased revenue, in part,  
19 to “growth in sales to customers with health insurance coverage, as such customers generally have  
20 lower return rates.” Defendants further stated that the Company’s increased sales volume was  
21 “largely driven,” in part, by a “growth in customers with health insurance coverage for hearing  
22 aids . . . .”

23 326. It was materially misleading to state that Eargo’s “increase in [sales] volume was  
24 largely driven by . . . growth in sales to customers with health insurance coverage” without  
25 disclosing that: (i) FEHBP customers (including BCBS FEP customers) were not eligible for  
26 reimbursement for the purchase of Eargo hearing aids; and (ii) Eargo had been submitting false  
27 claims to FEHBP insurers (including BCBS FEP) to obtain reimbursement.

28 327. The Form 10-Q also included a section entitled “Revenue Recognition,” which

1 stated: “For payments involving insurance payors, the Company validates customer eligibility and  
2 reimbursement amounts prior to shipping the product.” This statement was false or misleading  
3 because Eargo had not validated customer eligibility and reimbursement amounts from its largest  
4 third-party payor prior to shipping the product. Instead, [REDACTED]  
5 [REDACTED] automatically booked revenue upon shipment of hearing  
6 aids to insurance customers, all the while submitting false claims to FEHBP insurers (including  
7 BCBS FEP) to obtain reimbursement based on that false hearing loss diagnosis. This was  
8 demonstrated by, among many other things, [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] It was impossible for Eargo to “validate” the  
12 eligibility of customers when its primary insurance payer refused coverage [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 328. In the Form 10-Q, Eargo also included a “Risk Factor,” which stated “A significant  
17 portion of our revenue is dependent upon reimbursement from third-party payors. Any material  
18 changes to third-party coverage or reimbursement could significantly impact our business and our  
19 ability to grow and sell our products.” The Risk Factor further disclosed that an insurance  
20 company that was Eargo’s “largest third-party payor, who accounted for approximately 80% of  
21 the Company’s gross accounts receivable as of June 30, 2021,” was conducting a claims audit and  
22 had not paid Eargo on any claims since March 1, 2021. This statement was materially false and  
23 misleading when made because it omitted and did not disclose that, in fact, Eargo’s federal  
24 employee insurance customers were not eligible for reimbursement of Eargo’s product and Eargo  
25 had been falsifying claims to obtain reimbursement. [REDACTED]

1           329. The Form 10-Q also included a section on Eargo’s compliance with “U.S. or foreign  
2 federal and state healthcare regulatory laws,” stating that “if” Eargo failed to comply with such  
3 laws “we could be subject to penalties, including, but not limited to, administrative, civil and  
4 criminal penalties, damages, fines, disgorgement, exclusion from participation in governmental  
5 healthcare programs and the curtailment of our operations, any of which could adversely impact  
6 our reputation.” That section listed as an example of such laws “the U.S. federal false claims laws,  
7 including the False Claims Act, which can be enforced through whistleblower actions, and civil  
8 monetary penalties laws, which, among other things, impose criminal and civil penalties against  
9 individuals or entities for knowingly presenting, or causing to be presented, to the U.S. federal  
10 government, claims for payment or approval that are false or fraudulent, knowingly making, using  
11 or causing to be made or used, a false record or statement material to a false or fraudulent claim,  
12 or from knowingly making a false statement to avoid, decrease or conceal an obligation to pay  
13 money to the U.S. federal government.”

14           330. It was misleading to describe generic and abstract risks that “could” render Eargo  
15 subject to penalties and fines, without disclosing that, in fact, those risks had already occurred

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21                           (c)     **August 16, 2021 William Blair Nondeal Roadshow**

22           331. On August 16, 2021, Defendant Gormsen and Laponis participated in the William  
23 Blair Virtual Nondeal Roadshow. A subsequent William Blair analyst report summarized  
24 management’s statements as follows:

25           Management provided more details around the insurance claims audit disclosed on  
26 the second-quarter earnings call regarding its largest third-party payor. Eargo  
27 described the discussions as advanced, with frequent C-suite dialogue on process  
28 details/evidence documentation and creating guidelines for future claims (rather than discussions about a dispute or denial). The audit does not appear to be tied to coverage or the coverage amount but was triggered by the rapid growth from zero claims per quarter to 5,000 claims per quarter by Eargo in a matter of two years.

1 Management suggested that based on its dialog the payor wants to ensure that it  
2 develops the proper claims processing procedures for the future.

3 332. These statements regarding the audit were false and misleading when made. It was  
4 false and misleading for Defendants to downplay the nature and risks of the audit and characterize  
5 it as “creating guidance for future claims” and not “tied to coverage or the coverage amount,”  
6 when, in truth and in fact: (i) the audit was absolutely tied to coverage and eligibility; (ii) Eargo’s  
7 federal insurance customers were not eligible for reimbursement; (iii) Eargo had been submitting  
8 false claims to obtain reimbursement; and [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 (d) **September 9, 2021 Conference Call—Wells Fargo’s 2021**  
13 **Virtual Healthcare Conference Fireside Chat**

14 333. On September 9, 2021, Defendants Gormsen and Laponis participated in the Wells  
15 Fargo 20201 Virtual Healthcare Conference Fireside chat. During the call, Defendant’s provided  
16 additional details about the audit. Gormsen downplayed the audit by stating that audits in the  
17 hearing aid industry “happen all the time,” the insurer was “not questioning claims . . . denying  
18 claims . . .” and that the audit was focused on allowing the insurer to approve Eargo’s “claims in  
19 a more streamlined manner” and “defining a process moving forward.” Gormsen further touted  
20 that there was “nothing sort of punitive in the discussion” and that the auditors had even given  
21 Eargo “applauses for product and delivery and price points.”

22 334. It was false and misleading for Defendants to downplay the nature and risks of the  
23 audit and characterize it as “creating guidance for future claims,” as not “tied to coverage or the  
24 coverage amount,” and as “not punitive in nature,” when, in truth and in fact: (i) the audit was  
25 absolutely tied to coverage and eligibility, with BSCA informing Eargo that it could not satisfy  
26 medical necessity and that BSCA expressed concerns that Eargo’s hearing aids were a covered  
27 product under the insurance policy; (ii) Eargo’s federal insurance customers were not eligible for  
28 reimbursement; (iii) Eargo had been submitting false claims to obtain reimbursement; and (iv) [REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 335. Regarding future growth with insurance customers, Gormsen expressed confidence  
6 by stating that the Company saw “a lot of future growth within federal employees” and mentioned  
7 the possibility collaborating with the auditor “in terms of educating and targeting members to  
8 continue to drive growth, an outsized growth.”

9 336. It was false and misleading for Defendants to tout Eargo’s continuing growth in the  
10 federal insurance segment because: (i) it was based on a false premise, namely, that Eargo’s  
11 historical penetration of the insurance market was legitimate and would continue; and (ii) it  
12 omitted to disclose material facts, namely, that FEHBP customers (including BCBS FEP  
13 customers) were ineligible for reimbursement benefits on Eargo’s product, and Eargo was  
14 systemically falsifying claims to obtain reimbursement. Given that insurance customers  
15 comprised approximately 45% of Eargo’s customer base, Defendants knew the Company’s  
16 continuing growth was baseless and impossible for Eargo to legitimately achieve.

17 **H. LOSS CAUSATION**

18 337. The fraud described herein was the proximate cause of declines in Eargo’s stock  
19 price and resulting losses suffered by the Class. *See Mineworkers Pension Scheme v. First Solar*  
20 *Inc.*, 881 F.3d 750 (9th Cir. 2018). Defendants’ materially false and misleading statements and  
21 omissions artificially inflated and/or maintained the price of Eargo’s stock. The artificial inflation  
22 in Eargo’s stock price was removed through a series of partial disclosures concerning the facts  
23 concealed and/or misrepresented by the misstatements and omissions, described below. These  
24 partial disclosures reduced the amount of inflation in the price of Eargo’s publicly traded stock,  
25 causing economic injury to Plaintiffs and other members of the Class.

26 338. Specifically, on August 12, 2021, Eargo issued a Form 8-K, signed by Defendant  
27 Laponis, as well as a press release, which disclosed an increase in the Company’s accounts  
28 receivable “primarily due to a claims audit by an insurance company that is our largest third-party

1 payor, who accounted for approximately 80% of our gross accounts receivable as of June 30,  
2 2021.” The Company also disclosed, “During the audit, claims since March 1, 2021 have not been  
3 paid. The Company is in active discussions with the payor and continues to work toward  
4 conclusion of the audit.” The Company’s Form 10-Q the same day disclosed the same information,  
5 as well as the fact that “another insurance company” was also auditing reimbursement claims  
6 submitted by Eargo. The Form 10-Q stated, “we have received some denials to date,” and that it  
7 was “possible that they may seek recoupments of previous claims paid and deny any future  
8 claims.”

9 339. The market connected the decline in Eargo’s stock price to the news of the audit  
10 disclosed on August 12, 2021. For example, J.P. Morgan’s analyst described the audit as a  
11 “disappointment.” Wells Fargo described it as a “big risk,” and William Blair’s analyst noted that  
12 the audit “overshadow[ed]” Eargo’s other positive results.

13 340. In response to this news, the price of Eargo’s common stock declined over 24%,  
14 from a close of \$32.70 on August 12, 2021 to a close of \$24.70 the following day. This decline  
15 caused Plaintiffs and Class members to suffer loss as the artificial inflation in Eargo’s stock price  
16 was partially removed.

17 341. Nevertheless, Defendants falsely assured investors that the audit was no cause for  
18 concern, and the market accepted Defendants’ comforting statements. For example, Defendant  
19 Laponis described “these kind of audits” as “pretty common,” Gormsen described the audit as an  
20 “education on our business model” for the payor. He also described the audit as merely concerning  
21 “documentation.” In addition, the Company soothed the market by raising its 2021 full year  
22 revenue guidance.

23 342. On September 22, 2021, the Company filed a Form 8-K with the SEC, signed by  
24 Defendant Laponis, in which Defendants disclosed, “On September 21, 2021, Eargo, Inc. (the  
25 “Company”) was informed that it is the target of a criminal investigation by the U.S. Department  
26 of Justice (the “DOJ”) related to insurance reimbursement claims the Company has submitted on  
27 behalf of its customers covered by federal employee health plans.” Defendants additionally  
28 disclosed that the Company was withdrawing its guidance for the fiscal year ending December 31,

1 2021.

2 343. Analysts reacted negatively to Eargo's September 22, 2021 disclosures. For  
3 example, Wells Fargo's analyst noted in a September 23, 2021 report that "we see risk that the  
4 company can no longer sell into the insurance channel due to the DOJ investigation," and that the  
5 Company was "working through if there will be immediate changes in business operations or  
6 revenue recognition."

7 344. In response to this news, Eargo's stock plummeted from a closing price of \$21.67  
8 on September 22, 2021 to a closing price of \$6.86 on September 23, 2021—a 68% drop. This  
9 decline caused Plaintiffs and Class members to suffer loss as the artificial inflation in Eargo's stock  
10 price was partially removed.

11 345. Following the close of trading on November 16, 2021, the Company filed with the  
12 SEC a Form 12b-25 Notification of Late Filing, signed by Defendant Laponis, in which the  
13 Company disclosed, "Eargo, Inc. (the "Company") has determined that it is unable to file its  
14 Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021 (the "Form 10-  
15 Q") within the prescribed time period without unreasonable effort and expense due to the  
16 circumstances described below." Specifically, the Form 12b-25 explained that the investigation  
17 "related to insurance reimbursement claims the Company submitted on behalf of its customers  
18 covered by various federal employee health plans under the Federal Employee Health Benefits  
19 ("FEHBP") program." The Company added, "The investigation also pertains to the Company's  
20 role in customer reimbursement claim submissions to federal employee health plans."

21 346. Finally, Defendants announced that the inquiry had expanded to include more of  
22 Eargo's payors than previously disclosed: "Two additional third-party payor audits related to  
23 claims submitted for customers with FEHB plans are also in process." Defendants also disclosed,  
24 "Total payments the Company has received to date from the government in relation to claims  
25 submitted under the FEHB program, net of any product returns and associated refunds, are  
26 approximately \$44 million," and "During the three months ended September 30, 2021, the  
27 Company shipped 13,117 gross hearing aid systems, approximately 48% of which were to  
28 customers with potential insurance coverage." Defendants disclosed, "The Company has not yet

1 completed its assessment of the accounting impact of the DOJ investigation and the ongoing claims  
2 audits on its financial statements for the three months ended September 30, 2021 and prior periods,  
3 and is therefore unable to file the Form 10-Q on a timely basis.”

4 347. Analysts reacted negatively to Eargo’s November 16, 2021 disclosures. J.P.  
5 Morgan’s analyst noted, “[W]e’re increasingly concerned about . . . the company’s ability to serve  
6 the insurance market moving forward.”

7 348. In response to this news, the price of Eargo shares dropped from a closing price of  
8 \$7.18 on November 16, 2021 to close at \$6.79 the following day, a decline of over 5%. This  
9 decline caused Plaintiffs and Class members to suffer loss as the artificial inflation in Eargo’s stock  
10 price was partially removed.

11 349. On November 22, 2021, the Company filed a Form 8-K and accompanying press  
12 release with the SEC, signed by Defendant Laponis, which disclosed that “the Company received  
13 a letter from The Nasdaq Stock Market LLC (“Nasdaq”) indicating that, since the Company has  
14 not yet filed its Quarterly Report on Form 10-Q for the period ended September 30, 2021 (the  
15 “Form 10-Q”), the Company no longer complies with Nasdaq Listing Rule 5250(c)(1) for  
16 continued listing.” Defendants disclosed further, “Under the Nasdaq Listing Rules, the Company  
17 has 60 calendar days to submit a plan to regain compliance (the “Plan”) and, if Nasdaq accepts the  
18 Plan, Nasdaq may grant an exception of up to 180 calendar days from the Form 10-Q original  
19 filing due date, or until May 16, 2022, to regain compliance. The Company intends to submit the  
20 Plan within the 60-calendar day period.”

21 350. In response to this news, Eargo’s share price declined from a closing price of \$5.88  
22 on November 22, 2021 to a closing price of \$5.56 the following day, a decline of over 5%. This  
23 decline caused Plaintiffs and Class members to suffer loss as the artificial inflation in Eargo’s stock  
24 price was partially removed.

25 351. On March 2, 2022, Eargo filed a Form 12b-25 Notification of Late Filing with the  
26 SEC, in which the Company disclosed that it was unable to file its Annual Report for 2021 on  
27 Form 10-K based on a DOJ investigation “related to insurance reimbursement claims the Company  
28 submitted on behalf of its customers covered by various federal employee health plans under the

1 Federal Employee Health Benefits (‘FEHBP’) program,” as well as “the Company’s role in  
2 customer reimbursement claim submissions to federal employee health plans.” The Company  
3 further disclosed that “the Company is currently subject to a number of other ongoing audits of  
4 insurance reimbursement claims submitted to additional third-party payors. One of these claims  
5 audits does not relate to claims submitted under the FEHBP program.”

6 352. Eargo further stated that it had “reached an understanding in principle with the DOJ  
7 with respect to certain material terms of a potential settlement and resolution of the investigation  
8 and can now reasonably estimate a probable loss of approximately \$34.4 million in connection  
9 with the investigation.” The Company noted that “discussions are continuing,” and that “there can  
10 be no assurance as to the terms or timing of a final resolution with respect to the investigation.  
11 Further, any such settlement of the investigation may not resolve the ongoing audits of insurance  
12 reimbursement claims by additional third-party payors, nor has the Company begun working with  
13 the government and third-party payors to potentially validate processes to support any future  
14 claims that it may submit for reimbursement, and there are no guarantees that the Company will  
15 be able to arrive at any such acceptable processes or submit any future claims.”

16 353. Eargo further disclosed, “Beginning on December 8, 2021, the Company made the  
17 decision to stop accepting insurance benefits as a method of direct payment and it is uncertain  
18 when, if ever, the Company will resume accepting insurance benefits as a method of direct  
19 payment.” Eargo also stated that “[w]hile the Company intends to work with the government and  
20 third-party payors at the appropriate time with the objective of validating processes to support any  
21 future claims that it may submit for reimbursement, the Company may not be able to arrive at  
22 acceptable processes or submit any future claims.”

23 354. Finally, Eargo disclosed that it had “offered affected customers (i.e., customers  
24 using insurance benefits as a method of direct payment for transactions prior to December 8, 2021)  
25 the option to return their hearing aids or purchase their hearing aids without the use of their  
26 insurance benefits in case their claim is denied or ultimately not submitted by the Company to their  
27 insurance plan for payment.”

28 355. In response to this news, Eargo’s share price declined from a close of \$4.77 on

1 March 2, 2022 that day to a close of \$4.02 the following day—a decline of over 15%. This decline  
2 caused Plaintiffs and Class members to suffer loss as the artificial inflation in Eargo’s stock price  
3 was partially removed.

4 356. The declines in Eargo’s stock price were a direct and proximate result of the fraud  
5 described herein. The timing and magnitude of Eargo’s stock-price declines negate any inference  
6 that the economic losses and damages suffered by Plaintiffs and the other members of the Class  
7 were caused by changed market conditions, macroeconomic factors, or Eargo-specific facts  
8 unrelated to Defendants’ fraudulent conduct.

9 **I. PRESUMPTION OF RELIANCE**

10 357. At all relevant times, the market for Eargo’s common stock was efficient for the  
11 following reasons, among others:

12 (a) Eargo’s stock met the requirements for listing, and was listed and actively  
13 traded on the Nasdaq Stock Market, a highly efficient and automated market;

14 (b) As a regulated issuer, Eargo filed periodic reports with the SEC and the  
15 Nasdaq Stock Market;

16 (c) Eargo regularly communicated with public investors via established market  
17 communication mechanisms, including through regular dissemination of press  
18 releases on the national circuits of major newswire services and through other wide-  
19 ranging public disclosures, such as communications with the financial press and  
20 other similar reporting services; and

21 (d) Eargo was followed by numerous securities analysts employed by major  
22 brokerage firms who wrote reports which were distributed to those brokerage firms’  
23 sales force and certain customers. Each of these reports was publicly available and  
24 entered the public marketplace.

25 358. As a result of the foregoing, the market for Eargo’s common stock reasonably  
26 promptly digested current information regarding Eargo from all publicly available sources and  
27 reflected such information in the price of Eargo’s common stock. All purchasers of Eargo common  
28 stock during the Class Period suffered similar injury through their purchase of Eargo common

1 stock at artificially inflated prices, and a presumption of reliance applies.

2 359. A Class-wide presumption of reliance is also appropriate in this action under the  
3 United States Supreme Court holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S.  
4 128 (1972), because the claims asserted herein against Defendants are predicated upon omissions  
5 of material fact for which there is a duty to disclose.

6 **J. THE INAPPLICABILITY OF THE STATUTORY SAFE HARBOR AND**  
7 **BESPEAKS-CAUTION DOCTRINE**

8 360. The statutory safe harbor or bespeaks caution doctrine applicable to forward-  
9 looking statements under certain circumstances does not apply to any of the false or misleading  
10 statements pleaded in this Complaint. None of the statements complained of herein was a forward-  
11 looking statement. Rather, the statements were historical statements or statements of purportedly  
12 current facts and conditions at the time the statements were made, including statements about  
13 among other things, the eligibility of Eargo's FEHBP customers for a hearing aid insurance  
14 benefit, Eargo's success in penetrating the insurance market, the drivers of Eargo's revenue  
15 growth, Eargo's revenues and guidance, the size of the applicable insurance market, the nature of  
16 a claims audit, and risks regarding insurance reimbursement and the submission of false claims.

17 361. To the extent that any of the false or misleading statements alleged herein can be  
18 construed as forward-looking, those statements were not accompanied by meaningful cautionary  
19 language identifying important facts that could cause actual results to differ materially from those  
20 in the statements. As set forth above in detail, then-existing facts contradicted Defendants'  
21 statements regarding, among other things, the eligibility of Eargo's FEHBP customers for a  
22 hearing aid insurance benefit, Eargo's success in penetrating the insurance market, the drivers of  
23 Eargo's revenue growth, Eargo's revenues and guidance, the size of the applicable insurance  
24 market, the nature of the claims audits, risks regarding insurance reimbursement, and the  
25 submission of false claims. Given the then-existing facts contradicting Defendants' statements,  
26 any generalized risk disclosures made by Eargo were not sufficient to insulate Defendants from  
27 liability for their false or misleading statements.

28 362. To the extent that the statutory safe harbor does not apply to any forward-looking

1 statements pleaded herein, Defendants are liable for those false forward-looking statements  
2 because at the time each of those statements was made, the particular speaker knew that the  
3 particular forward-looking statement was false, and the false forward-looking statement was  
4 authorized and approved by an executive officer of Eargo who knew that the statement was false  
5 when made.

6 **K. CLASS ACTION ALLEGATIONS APPLICABLE TO THE EXCHANGE**  
7 **ACT CLAIMS**

8 363. Lead Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23(a)  
9 and 23(b)(3) on behalf of a Class consisting of all those who purchased or otherwise acquired the  
10 common stock of Eargo between November 20, 2020 and March 2, 2022, inclusive, and who were  
11 damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors  
12 of Eargo at all relevant times, members of their immediate families and their legal representatives,  
13 heirs, agents, affiliates, successors or assigns, Defendants’ liability insurance carriers and any  
14 affiliates or subsidiaries thereof, and any entity in which Defendants or their immediate families  
15 have or had a controlling interest.

16 364. The members of the Class are so numerous that joinder of all members is  
17 impracticable. Throughout the Class Period, Eargo shares were actively traded on the Nasdaq  
18 Stock Market. As of September 14, 2021, Eargo had over 39 million shares of common stock  
19 outstanding, owned by hundreds or thousands of investors. While the exact number of Class  
20 members is unknown to Lead Plaintiffs at this time and can only be ascertained through appropriate  
21 discovery, Lead Plaintiffs believe that there are at least tens of thousands of members of the  
22 proposed Class. Class members who purchased Eargo common stock may be identified from  
23 records maintained by Eargo or its transfer agent(s), and may be notified of this class action using  
24 a form of notice similar to that customarily used in securities class actions.

25 365. Lead Plaintiffs’ claims are typical of Class members’ claims, as all members of the  
26 Class were similarly affected by Defendants’ wrongful conduct in violation of federal laws as  
27 complained of herein.

28 366. Lead Plaintiffs will fairly and adequately protect Class members’ interests and have



1 retained competent counsel experienced in class actions and securities litigation.

2 367. Common questions of law and fact exist as to all Class members and predominate  
3 over any questions solely affecting individual Class members. Among the questions of fact and  
4 law common to the Class are:

5 (a) whether the federal securities laws were violated by Defendants' acts and  
6 omissions as alleged herein;

7 (b) whether the Defendants made statements to the investing public during the  
8 Class Period that were false, misleading, or omitted material facts;

9 (c) whether Defendants acted with scienter; and

10 (d) the proper way to measure damages.

11 368. A class action is superior to all other available methods for the fair and efficient  
12 adjudication of this action because joinder of all Class members is impracticable. Additionally,  
13 the damage suffered by some individual Class members may be relatively small so that the burden  
14 and expense of individual litigation make it impossible for such members to individually redress  
15 the wrong done to them. There will be no difficulty in the management of this action as a class  
16 action.

17 **L. CAUSES OF ACTION UNDER THE EXCHANGE ACT**

18 **COUNT I**

19 **For Violations Of Section 10(b) Of The Exchange Act**  
20 **And SEC Rule 10b-5 Promulgated Thereunder**  
**(Against All Exchange Act Defendants)**

21 369. Lead Plaintiffs repeat and re-allege each and every allegation set forth above as if  
22 fully set forth herein.

23 370. This Count is asserted on behalf of all members of the Class against Defendant  
24 Eargo and the Executive Defendants for violations of Section 10(b) of the Exchange Act, 15 U.S.C.  
25 § 78j(b) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

26 371. During the Class Period, Defendants disseminated or approved the false statements  
27 specified above, which they knew were, or they deliberately disregarded as, misleading in that they  
28 contained misrepresentations and failed to disclose material facts necessary in order to make the

1 statements made, in light of the circumstances under which they were made, not misleading.

2 372. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they:  
3 (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material  
4 facts or omitted to state material facts necessary in order to make the statements made, in light of  
5 the circumstances under which they were made, not misleading; and/or (c) engaged in acts,  
6 practices, and a course of business that operated as a fraud or deceit upon Lead Plaintiffs and others  
7 similarly situated in connection with their purchases of Eargo common stock during the Class  
8 Period.

9 373. Defendants, individually and in concert, directly and indirectly, by the use of means  
10 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a  
11 continuous course of conduct that operated as a fraud and deceit upon Lead Plaintiffs and the Class;  
12 made various untrue and/or misleading statements of material facts and omitted to state material  
13 facts necessary in order to make the statements made, in light of the circumstances under which  
14 they were made, not misleading; made the above statements intentionally or with deliberate  
15 recklessness; and employed devices and artifices to defraud in connection with the purchase and  
16 sale of Eargo common stock, which were intended to, and did:

17 (a) deceive the investing public, including Lead Plaintiffs and the Class,  
18 regarding, among other things, the eligibility of Eargo's FEHBP customers for a  
19 hearing aid insurance benefit, Eargo's success in penetrating the insurance market,  
20 the drivers of Eargo's revenue growth, Eargo's revenues and guidance, the size of  
21 the applicable insurance market, the nature of a claims audit, and risks regarding  
22 insurance reimbursement and the submission of false claims;

23 (b) artificially inflate and maintain the market price of Eargo common stock;  
24 and

25 (c) cause Lead Plaintiffs and other members of the Class to purchase Eargo  
26 common stock at artificially inflated prices and suffer losses when the true facts  
27 became known.

28 374. Defendant Eargo and the Executive Defendants are liable for all materially false or

1 misleading statements made during the Class Period, as alleged above.

2 375. As described above, Defendants acted with scienter throughout the Class Period, in  
3 that they acted either with intent to deceive, manipulate, or defraud, or with deliberate recklessness.  
4 The misrepresentations and omissions of material facts set forth herein, which presented a danger  
5 of misleading buyers or sellers of Eargo stock, were either known to the Defendants or were so  
6 obvious that the Defendants should have been aware of them.

7 376. Lead Plaintiffs and the Class have suffered damages in that, in direct reliance on  
8 the integrity of the market, they paid artificially inflated prices for Eargo common stock, which  
9 inflation was removed from its price when the true facts became known. Lead Plaintiffs and the  
10 Class would not have purchased Eargo common stock at the prices they paid, or at all, if they had  
11 been aware that the market price had been artificially and falsely inflated by these Defendants'  
12 materially misleading statements.

13 377. As a direct and proximate result of these Defendants' wrongful conduct, Lead  
14 Plaintiffs and the other members of the Class suffered damages attributable to the material  
15 misstatements and omissions alleged herein in connection with their purchases of Eargo common  
16 stock during the Class Period.

17 **COUNT II**

18 **For Violations Of Section 20(a) Of The Exchange Act**  
19 **(Against The Executive Defendants)**

20 378. Lead Plaintiffs repeat and re-allege each and every allegation set forth above as if  
21 fully set forth herein.

22 379. This count is asserted on behalf of all members of the Class against the Executive  
23 Defendants for violations of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

24 380. The Executive Defendants acted as controlling persons of Eargo within the meaning  
25 of Section 20(a) of the Exchange Act, as alleged herein.

26 381. By reasons of their high-level positions of control and authority as the Company's  
27 most senior officers, the Executive Defendants had the authority to influence and control, and did  
28 influence and control, the decision-making and the activities of the Company and its employees,

1 and to cause the Company to engage in the wrongful conduct complained of herein. The Executive  
2 Defendants were able to influence and control, and did influence and control, directly and  
3 indirectly, the content and dissemination of the public statements made by Eargo during the Class  
4 Period, thereby causing the dissemination of the materially false or misleading statements and  
5 omissions of material facts as alleged herein. The Executive Defendants were provided with, or  
6 had unlimited access to, copies of the Company's press releases, public filings, and other  
7 statements alleged by Lead Plaintiffs to be misleading prior to and/or shortly after these statements  
8 were issued and had the ability to prevent the issuance of the statements or to cause the statements  
9 to be corrected.

10 382. Each of the Executive Defendants spoke to investors on behalf of the Company  
11 during the Class Period. Therefore, each of the Executive Defendants was able to influence and  
12 control, and did influence and control, directly and indirectly, the content and dissemination of the  
13 public statements made by Eargo during the Class Period, thereby causing the dissemination of  
14 the materially false or misleading statements and omissions of material facts as alleged herein.

15 383. As set forth above, Eargo violated Section 10(b) of the Exchange Act by its acts  
16 and omissions as alleged in this Complaint.

17 384. By virtue of their positions as controlling persons of Eargo and as a result of their  
18 own aforementioned conduct, the Executive Defendants are liable pursuant to Section 20(a) of the  
19 Exchange Act, jointly and severally with, and to the same extent as, the Company is liable under  
20 Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, to Lead Plaintiffs and  
21 the other members of the Class who purchased or otherwise acquired Eargo securities. As detailed  
22 above, during the respective times, these Executive Defendants served as officers and/or directors  
23 of Eargo.

24 385. As a direct and proximate result of the Executive Defendants' conduct, Lead  
25 Plaintiffs and the other members of the Class suffered damages in connection with their purchase  
26 or acquisition of Eargo common stock.

## 1 **II. VIOLATIONS OF THE SECURITIES ACT**

2 386. In this part of the Complaint, Plaintiff IBEW Local 353 Pension Plan (“IBEW Local  
3 353”) asserts a series of strict liability and negligence claims under Sections 11, 12(a)(2), and 15  
4 of the Securities Act on behalf of all persons or entities who purchased Eargo common stock in or  
5 traceable to Eargo’s initial public offering (the “IPO” or the “Offering”), conducted on or about  
6 October 16, 2020, and were damaged thereby.

7 387. Plaintiff expressly disclaims any allegations of fraud or intentional misconduct in  
8 connection with these non-fraud claims, which are pleaded separately in this Complaint from  
9 Plaintiffs’ Exchange Act claims. For the avoidance of doubt, Plaintiff disclaims all allegations of  
10 fraud or intentional misconduct in Section I of this Complaint (¶¶1-385). No portion of the  
11 Exchange Act allegations are realleged or incorporated herein.

12 388. The Securities Act claims are based on statements made by Eargo in connection  
13 with its IPO. Notably, the IPO, which pre-dates the Class Period for the Exchange Act claims.  
14 Eargo conducted the Offering pursuant to the Company’s Registration Statement and Preliminary  
15 Prospectus filed with the SEC on September 25, 2020, as updated by amendments dated October  
16 1, 9, and 13, 2020, and a Form S-1MEF filed October 15, 2020 (the “Registration Statement”); a  
17 Preliminary Prospectus dated October 13, 2020; and a Prospectus dated October 15, 2020 (the  
18 “Prospectus” and collectively with the “Registration Statement,” and all documents incorporated  
19 by reference, the “Offering Documents”).

20 389. As explained herein, the Offering Documents were negligently prepared and, as a  
21 result, contained untrue statements of material fact, omitted material facts necessary to make the  
22 statements contained in them not misleading, and failed to make adequate disclosures required  
23 under the statute, rules, and regulations governing the preparation of public offering documents  
24 for securities.

25 390. To the extent that any challenged statement is construed as a statement of opinion  
26 or projection made in connection with the Offering, any such statement is alleged to have been a  
27 materially misstated statement of opinion or projection when made at and at the time of the  
28 Offering.

1           391. This action was brought within one year after the discovery of the untrue statements  
2 and omissions (and within one year after such discovery should have been made in the exercise of  
3 reasonable diligence) and within three years of the Offering.

4           **A. Securities Act Plaintiff**

5           392. Lead Plaintiff IBEW Local 353 is a multi-employer defined benefit pension plan  
6 located in Canada. IBEW Local 353 manages nearly CAD\$2 billion in assets on behalf of its  
7 active members, retirees, and beneficiaries, who are members of the International Brotherhood of  
8 Electrical Workers working in a variety of electrical disciplines across central Ontario. As set  
9 forth in the certification previously filed with the Court (ECF No. 24-2), IBEW Local 353  
10 purchased shares of Eargo common stock in and/or traceable to the IPO, and suffered damages as  
11 a result of the violations of the federal securities laws alleged herein. Specifically, on October 16,  
12 2020, IBEW Local 353 purchased 6,777 shares of Eargo common stock at \$18 per share.

13           **B. Securities Act Defendants**

14           393. Each of the following Defendants is statutorily liable under Sections 11, 12, and/or  
15 15 of the Securities Act for the materially untrue statements or omissions contained in and  
16 incorporated (and thereby made anew) in the Offering Documents.

17           394. Securities Act Defendant Eargo is a medical device company that manufacturers  
18 hearing aids, which it sells direct to consumers. Incorporated in Delaware, the Company maintains  
19 its corporate headquarters at 1600 Technology Drive, San Jose, California. The Company is the  
20 issuer of the shares sold in the IPO. Eargo's common stock trades on Nasdaq under ticker symbol  
21 "EAR." As of September 14, 2021, Eargo had over 39 million shares of common stock  
22 outstanding, owned by hundreds or thousands of investors.

23           395. The Securities Act Defendants listed in the table below are the "Securities Act  
24 Individual Defendants." The Securities Act Individual Defendants served, at times relevant to the  
25 claims alleged in the Complaint, as officers or directors of the Company. The Securities Act  
26 Individual Defendants signed (or authorized their signatures to be affixed to) the Registration  
27 Statement as directors of officers of Eargo in the positions stated below:  
28

<u>Name</u>	<u>Position</u>
Christian Gormsen	Chief Executive Officer (Principal Executive Officer)
Adam Laponis	Chief Financial Officer (Principal Financial and Accounting Officer)
Josh Makower, M.D.	Director (Chairman of the Board of Directors)
Juliet Bakker	Director
Peter Tuxen Bisgaard	Director
Doug Hughes	Director
Geoff Pardo	Director
Nina Richardson	Director
Brooke Seawell	Director
David Wu	Director

396. Each of the Securities Act Individual Defendants, either personally or by attorney-in-fact, signed the Registration Statement.

397. Each of the Securities Act Individual Defendants, by virtue of his or her management or directorship positions, had the duty to exercise due care and diligence and the duty of full and candid disclosure of all material facts related to the Company. The Securities Act Individual Defendants were required to exercise reasonable care and prudent supervision over the dissemination of information concerning the business, operations, and financial reporting of Eargo. By virtue of these duties, these officers and directors were required to supervise the preparation of and dissemination of the Offering Documents, and ensure that they were accurate and complete.

398. All of the Securities Act Individual Defendants were control persons of Eargo within the meaning of Section 15 of the Securities Act by reason of their own involvement in the daily business of Eargo and as senior executives or directors of Eargo. The Securities Act Individual Defendants, at the time they held positions with Eargo, were able to, and did, exercise substantial control over the operations of Eargo, including control of the materially false and misleading statements, omissions, and course of conduct complained of herein.

399. As officers, directors, and/or controlling persons of a publicly held company and under the federal securities laws, the Securities Act Individual Defendants had a duty (a) to disseminate promptly complete, accurate, and truthful information with respect to Eargo; (b) to

1 correct any previously issued statements that had become materially misleading or untrue; and (c)  
 2 to disclose any trends, events, and uncertainties that would materially affect Eargo’s earnings and  
 3 present and future operating results, so that the market price of Eargo publicly traded securities  
 4 would be based upon truthful and accurate information.

5 400. Securities Act Defendants J.P. Morgan Securities LLC (“J.P. Morgan”), Bank of  
 6 America Securities, Inc. (“BofA”), Wells Fargo Securities, LLC (“Wells Fargo”), and William  
 7 Blair & Company, LLC (“Wm. Blair”) are collectively referred to as the “Underwriter  
 8 Defendants.” The Underwriter Defendants served as the underwriters for the Offering, as well as  
 9 Eargo’s financial advisors. The Underwriter Defendants assisted in the preparation and  
 10 dissemination of the materially untrue and incomplete Offering Documents. The Underwriter  
 11 Defendants were responsible for ensuring the truthfulness and accuracy of the various statements  
 12 contained in or incorporated by reference into the Offering Documents.

<b><u>Underwriter</u></b>	<b><u>Shares Underwritten</u></b>
J.P. Morgan	2,944,446
BofA	2,551,852
Wells Fargo	1,177,777
Wm. Blair	1,177,777

13  
 14  
 15  
 16  
 17 401. The Underwriter Defendants were eligible to purchase 1,177,777 additional shares  
 18 of Eargo common stock in an overallotment option, which they exercised in full.

19 402. In connection with the IPO, including the underwriters’ option, the Company issued  
 20 and sold an aggregate of 9,029,629 shares of common stock at \$18.00 per share, raising  
 21 approximately \$148.1 million in proceeds, net of underwriting discounts and commissions of \$11.4  
 22 million and estimated offering costs of \$3.1 million.

23 403. Eargo, the Securities Act Individual Defendants, and the Underwriter Defendants  
 24 are collectively referred to herein as the “Securities Act Defendants.”

### 25 **C. Summary Of The Securities Act Violations**

#### 26 **1. The Offering Documents Describe Eargo’s “Consumer-First” Business** 27 **Model**

28 404. Eargo, founded in 2010, produces hearing aids for customers with mild to moderate



1 hearing loss.

2 405. As expressed in the Offering Documents, the Company claimed that its hearing aids  
3 offered several advantages over existing products, including that they are “virtually invisible.”

4 406. Eargo characterized itself as a disruptor of a “relatively mature industry” based on  
5 its non-traditional business model. The traditional hearing aid sales model requires customers to  
6 make one or more in-person visits to hearing aid professionals, in order to be examined, have an  
7 audiogram performed, have hearing aids prescribed, and then have hearing aids tested and fitted.  
8 In contrast, Eargo emphasized its direct-to-consumer business model. Eargo stated that it was able  
9 to reduce the cost of hearing devices by avoiding a “business-to-business model in which hearing  
10 aid manufacturers rely on a fragmented network of independent hearing clinics to sell their devices  
11 to consumers.” According to Eargo, “the separation of the manufacturer from the consumer is not  
12 necessary, adds an incremental layer of cost and has contributed to the lack of consumer.” Thus,  
13 Eargo marketed and sold hearing aids direct to consumers through “a team of inside sales  
14 consultants and a dedicated customer support team of licensed hearing professionals” who  
15 interacted with the customer online and/or over the phone.

16 407. Eargo experienced growth from 2015 through the IPO in October 2020. The  
17 Company’s revenue increased from \$6.6 million at year-end 2017 to \$32.8 million in year-end  
18 2019.

19 408. The promise of Eargo’s medical technology was, in fact, enticing to private  
20 investors. Between 2016 to July 2020, Eargo raised approximately \$187 million in private  
21 financing. By the fall of 2020, Eargo undertook plans to initiate an IPO of Eargo common stock.

22 409. Eargo’s rapid growth coincided with intense marketing efforts to penetrate the  
23 hearing aid market. Consistent with its “consumer-first business model” and “consumer-first  
24 marketing efforts,” Eargo sought to accelerate customer adoption by “driving customers to our  
25 website by optimizing our mix of digital and traditional media[.]” Eargo focused its direct  
26 marketing efforts on the “approximately 14 million people in the United States with mild to  
27 moderate hearing loss who have annual household income above the national median[.]” Eargo  
28 claimed that its model allowed these customers “to complete their purchase over the phone with

1 their sales consultant or directly on our website, without the need to navigate multiple visits to the  
2 hearing clinic for tests and fittings.” These services, according to Eargo, “allow[] us to deliver  
3 clinical support in an efficient and streamlined manner without the burden of in-clinic visits.”

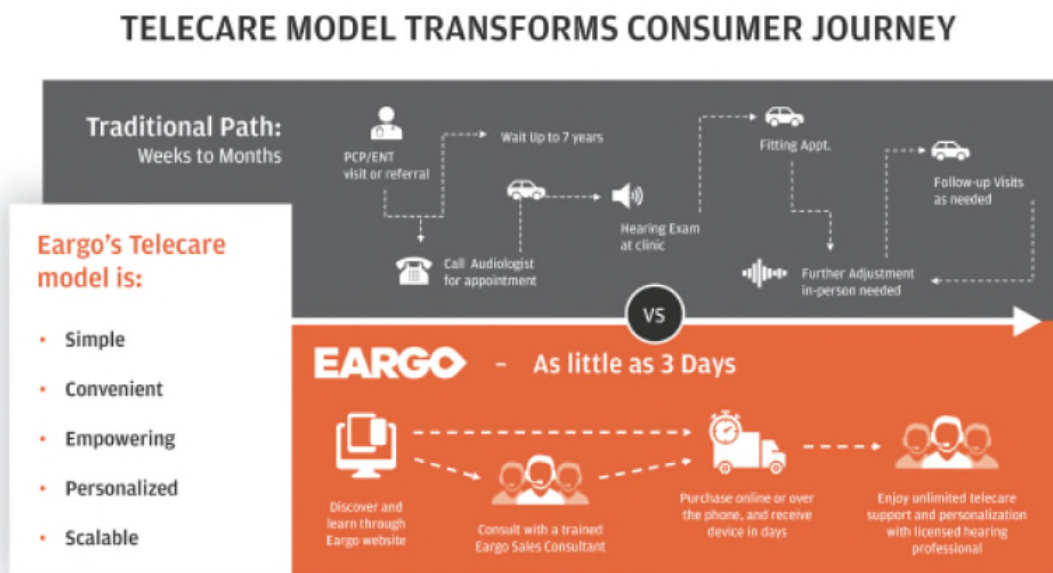
4 410. Defendant Gormsen addressed Eargo’s sales and marketing strategy in a February  
5 2019 *New York Times* article about the “increasingly tantalizing field” of medical technology. That  
6 article, which suggested that health care appeared to be the “next big thing” to be supported by  
7 Silicon Valley venture capitalists, described Eargo as “a new company that walks the line between  
8 medical firm and tech start-up.” The article stated that Eargo’s “support team consists of hearing  
9 aid dispensers licensed in one or more states to advise customers on their hearing aid needs.  
10 Because Eargo sells its products online, rather than in physical stores, a dispenser that’s licensed  
11 in one state can sell to customers in all of them.” The article quoted Defendant Gormsen, who  
12 stated that the existing sales model of employing dispensers who are licensed by state-level boards  
13 and can only operate within their state was “archaic.” Gormsen further stated: “I believe in a  
14 professional that’s certified. I don’t care whether that person is certified in California or Colorado  
15 . . . It’s like saying you can’t drive your car outside the state where you got your driver’s license.  
16 It doesn’t make any sense.” Based on an interview with Gormsen, the *New York Times* declared  
17 that Eargo “envisions that shopping for a hearing aid would look more like buying a phone than  
18 the more rigorous (but also time consuming) search for a medical device.” As Gormsen stated,  
19 “We’ve been talking to the likes of Best Buy or so on where maybe you go and talk to a blue shirt  
20 and then a blue shirt could show you how the product works. And we could train them.” Eargo’s  
21 website stated that it sought to draw customers “to our website with landing pages where they can  
22 learn more about us, submit their contact information for phone-based follow-up or purchase  
23 immediately.” A page on Eargo’s website entitled “The Eargo Difference” touted its team of  
24 hearing professionals who would contact prospective customers and provide “unlimited support”  
25 to established customers.

26 411. The Offering Documents stated that Eargo’s website “offer[s] an online, do-it-  
27 yourself hearing test for prospective customers who are interested in an assessment.” According  
28 to Eargo, that “potential customers are not required to have a hearing test to order the Eargo hearing

1 solution, . . . simplifies the purchasing experience and improves the accessibility of hearing aids  
2 relative to the traditional hearing clinic channel.”

3 412. A page of “frequently asked questions” on Eargo’s website included the question,  
4 “Do I need to see an audiologist before calling or buying Eargo?” The answer stated: “Nope, no  
5 need to call an audiologist before calling or buying Eargo. Our team of pros here will work closely  
6 with you to understand your hearing situation and determine if Eargo is right for you.” Another  
7 question asked, “Do I need an audiogram to buy Eargo?” The answer stated: “Nope, you don’t  
8 need an audiogram to buy Eargo. Our team of pros here will work closely with you to understand  
9 your hearing situation and determine if Eargo is right for you. If you’re more of a do-it-yourself  
10 kind of person, you can take our hearing check to get a better understanding of your hearing.”

11 413. A chart in Eargo’s October 2020 Offering Documents depicted the difference  
12 between Eargo’s “consumer-centric experience” and the “traditional path”:



23

24 **2. In The Offering Documents, Eargo Reports Rapidly Rising Revenue**  
25 **Driven By Its Purportedly Successful Penetration Of The Insurance**  
26 **Market**

27 414. The Federal Employees Health Benefits Program (“FEHBP”) is a federally funded  
28 health care program that governs the health benefits of more than *8 million* federal civilian  
employees, retirees, and their eligible family members. Established by Congress in 1959, pursuant

1 to the Federal Employees Health Benefits Act. 5 U.S.C. § 8901 *et seq.*, it is the largest employer-  
2 sponsored healthcare program in the world, The Office of Personnel Management (“OPM”)  
3 administers this program and contracts with various health insurance carriers to provide services  
4 and offer a range of healthcare plans to FEHBP members. *Id.* at § § 8902, 8909(a). FEHBP funds  
5 are maintained in the Employees’ Health Benefits Fund (“Treasury Fund”), which OPM  
6 administers and is the source of all relevant payments to FEHBP insurance carriers for services  
7 rendered to members. *Id.* at § 8909.

8 415. At set forth in greater detail *infra*, benefits under the FEHBP program are payable  
9 only when medically necessary to prevent, diagnose, or treat an illness, disease, injury or condition.

10 416. Given the volume of claims data, FEHBP relies on a decentralized self-certifying  
11 process that depends on the good faith and accuracy of the party submitting the claims for  
12 reimbursement. Simply because FEHBP administratively reimburses a claim, does not mean that  
13 the claim is proper and meets the reimbursement requirements. In that respect, FEHBP is similar  
14 to Medicare, in that, for reasons of administrative efficiency, carriers typically authorize payment  
15 on claims immediately upon receipt of the claims. Individual insurers, such as BCBS-FEP, may  
16 later conduct audits to ensure that payments were made in accordance with criteria.

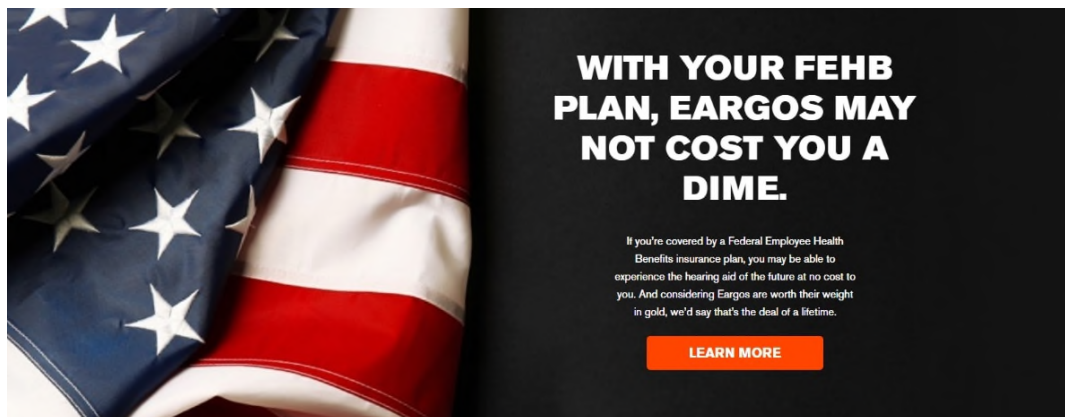
17 417. Periodic audits conducted by insurers, like BCBS FEP, of samples taken from  
18 submissions for reimbursement by particular providers, as well as the threat of civil and criminal  
19 liability, serve as procedural safeguards for the submission of improper claims for reimbursement  
20 with unsupported billing codes. But, on a day-to-day basis, the insurance reimbursement system  
21 for healthcare providers operates predominantly on a presumption that the providers’ claims are  
22 accurate and well-supported. Providers willing to adopt the risk of potential liability in order to  
23 secure revenues from the submission of improper claims for reimbursement often go undetected  
24 for long periods of time. It is simply not practical or, indeed, feasible for insurers processing  
25 thousands of facially sufficient claims for reimbursement to scrutinize them and their underpinning  
26 before payments go out.

27 418. In its infancy, Eargo marketed its product primarily to cash-pay customers.  
28 Beginning in the fourth quarter of 2019, however, Eargo began to switch its focus and increasingly

1 target insurance customers in order to open up a large new pool of customers and supercharge its  
2 growth. In very short order, the most critical factor driving the growth of Eargo’s business was  
3 increasing the Company’s customers with a hearing aid insurance benefit—particularly federal  
4 employees and retirees covered by the FEHBP.

5 419. Thus, prior to the IPO, Eargo “began targeting a more diverse mix of consumers,  
6 including those with hearing aid health insurance benefits and repeat customers.” The Company  
7 explained in the Offering Documents that “consumers with hearing aid insurance benefits typically  
8 convert at higher rates and return their devices at lower rates, due in part to having reduced or, in  
9 some cases, no out of pocket cost for an Eargo hearing aid.” Eargo claimed that its strategy of  
10 focusing on insurance and repeat customers led to a “more optimized mix of customers” that “has  
11 the potential to further improve the efficiency of our sales and marketing spend.” Further, to ease  
12 the purchasing process and control the insurance reimbursement process, Eargo stated that it  
13 “provides insurance claims processing for consumers, eliminating in most cases the need for  
14 consumers to interface with their insurance providers.”

15 420. Eargo also constructed specific website pages for prospective customers with a  
16 hearing aid insurance benefit. For example, Eargo’s website stated that “Eargos May Not Cost  
17 You a Dime” with FEHBP benefits, which was “the deal of a lifetime.”



25 421. Eargo also informed investors that it verified insurance customer eligibility prior to  
26 booking a sale to an insurance customer as revenue. For example, in the Offering Documents,  
27 Eargo stated that it assessed “insurance eligibility” as appropriate prior to recording revenue. This  
28 was important to investors in the IPO because Eargo booked a sale as revenue upon shipment—

1 before the reimbursement claim was actually granted and paid by the insurer. Contrary to this  
2 statement, however, Eargo did not “validate[] customer eligibility and reimbursement amounts  
3 prior to shipping the product.” Nor could it because, as set forth in §448, *infra*, Eargo never  
4 confirmed with insurers that its online screening test or a customer self-assessment was sufficient  
5 to satisfy insurers’ medical necessity requirements if challenged by an insurer. Further, Eargo  
6 employees recognized [REDACTED]

7 [REDACTED]  
8 422. Eargo’s strategy of targeting customers with hearing aid insurance benefits was  
9 successful. In the Offering Documents, the Company reported \$28.6 million in revenue for the six  
10 months ended June 30, 2020—nearly doubling reported revenue of \$14.4 million for the six  
11 months ended June 30, 2019. In addition, Eargo’s full-time employees increased from 115 as of  
12 December 31, 2017, to approximately 196 full-time employees as of June 30, 2020.

13 423. In the October 2020 Offering Documents, Eargo reported that its insurance  
14 customers represented a “significant driver” of its growth, and the Company stated its “inten[t] to  
15 pursue additional coverage in the future.” Commensurate with its insurance growth strategy,  
16 Eargo priced most of its hearing aids to cover the \$2,500 benefit provided by the BCBS FEP, the  
17 FEHBP’s largest insurer.

18 424. In fact, by in or around the end of the third quarter 2020, when the IPO occurred,  
19 approximately 45% of Eargo customers were customers with a FEHBP hearing aid benefit, the  
20 vast majority of which were insured by BCBS FEP. Defendants tracked Eargo’s insurance  
21 customer mix closely, as it was an essential metric prior and subsequent to the IPO to determine  
22 Eargo’s sales forecast and revenue guidance. For example, Defendant Laponis told investors in  
23 February 2021 that “in the back half of 2020 have roughly 45% of the volume came from  
24 insurance, a little bit more than that in Q3, a little bit less in Q4.” Defendant Gormsen confirmed,  
25 “I think we’ve been pretty clear in our communication that all our guidance is based on what we  
26 have already done.” In particular, he said that the guidance is “driven off” of “[h]ow we can  
27 continue to penetrate the Federal insurance opportunity, that’s driving a big part of our growth.”

28 425. Likewise, at an April 2021 Conference, Defendant Laponis explained: “[W]e did

1 about 45% spot on in the back half of 2020 with our nexus federal. As we built the guidance, we  
2 assumed it would be in a similar type of range and that’s what we talked about back second call,  
3 but clearly, it’s an area where we see future opportunity.” Defendant Gormsen emphasized the  
4 importance of tracking sales to FEHBP customers, stating “the federal is the only part that’s  
5 included in our guidance. So, we’re not counting on additional insurance markets to come in and  
6 that’s not included in our guidance.”

7 **3. Eargo Launches A Successful IPO On The Strength Of Its Revenue**  
8 **Growth And Seemingly Successful Insurance Initiatives**

9 426. On October 16, 2020, Eargo conducted its initial public offering of 9,029,629  
10 shares of its common stock at the price of \$18.00 per share, raising over \$162.5 million in gross  
11 proceeds and \$148.1 million in net proceeds for the benefit of Eargo.

12 427. Eargo’s stock opened at \$36 per share, doubling the IPO price of \$18, and closed  
13 at \$33.68—a premium of 87%. Eargo’s market value rose to about \$1.2 billion, which was  
14 approximately five times its valuation by private investors several months earlier. Defendant  
15 Gormsen stated that Eargo would use the IPO proceeds “to invest in our technology department  
16 and build out our tele-care model,” which was “resonating as we have seen strong growth during  
17 the pandemic.”

18 428. Analysts—including most notably those of the Underwriter Defendants—reacted  
19 positively to Eargo’s IPO and its growth focus on insurance customers, and recommended Eargo  
20 stock to investors. For example, on November 10, 2020, J.P. Morgan initiated coverage of Eargo  
21 with an “Overweight” rating, predicting a December 2021 price target of \$41 on the strength of  
22 Eargo’s “differentiated direct-to-consumer business model, which has been validated by its strong  
23 market presence and brand recognition.” Referencing “the generous coverage policy” of the  
24 FEHB program relative to Eargo’s average selling price, J.P. Morgan found that Eargo “has seen  
25 tremendous success so far in penetrating this target market with greater sales of the company’s  
26 premium products and lower return rates.” Its model forecast “rapid growth in the insurance  
27 channel.” Eargo’s shares continued to trade in a range of \$33 to \$36 through November 19, 2020.

28 429. In the several ensuing months, Eargo continued to report rapidly rising revenue

1 driven by its purportedly successful penetration of the federal insurance market. Analysts—again,  
2 including those of the Underwriter Defendants—continued to underscore this growth driver as  
3 critical to the value of Eargo stock. As one example, on November 19, 2020, Eargo announced its  
4 third quarter 2020 financial results, including \$18.2 million in net revenue, an increase of 135.5%  
5 year-over-year. In an earnings call later that day, Defendant Gormsen described the applicable  
6 insurance market as comprising “approximately 12 million consumers in the U.S. over 50, who  
7 have both hearing loss and access to hearing aid benefits under certain health insurance plans.”  
8 Gormsen stated that “Eargo has identified and started to rapidly penetrate pockets of consumers  
9 with hearing insurance benefits that cover most or all of the cost of an Eargo.” Gormsen stated  
10 that Eargo’s “positive mix shift toward more insurance and repeat customers [would] be a key  
11 driver of growth and scalability going forward.” In response, on November 20, 2020, William  
12 Blair issued a report applauding Eargo’s “Strong Third Quarter,” positing that “Eargo is on track  
13 to see strong growth in 2021 as advertising spend increases awareness, insurance drives growth,  
14 and its next-gen product launches.”

15 430. Similarly, on January 11, 2021, Eargo announced its preliminary results for the  
16 fourth quarter and year-end 2020. Eargo announced that its preliminary unaudited fourth quarter  
17 net revenue was expected to be \$22.2 million, reflecting year-over-year growth from the fourth  
18 quarter 2019 of 109%. Further, the Company announced that its preliminary unaudited full year  
19 2020 net revenue was expected to be \$69.0 million, which represented year-over-year growth of  
20 110%.

21 431. The next day, January 12, 2021, Eargo presented at the annual J.P. Morgan  
22 Healthcare Conference. Defendant Gormsen told conference participants that the Company was  
23 “targeting right now federal employees” who have access to a hearing benefit. He added that, “We  
24 deal with all the claims processing on the back end, directly with the administrators of the FEHB  
25 program.” Defendant Gormsen also told investors that the Company “went in specifically to this  
26 Q4 holiday buying season” focusing on “the opportunity for federal employees” and “the fact that  
27 we can help you as a federal employee access your benefits,” and that “what we saw is a lot of  
28 people are not aware that they have access to benefits.” He stated that the Company’s marketing



1 efforts “helped drive and accelerate all of our customer types, cash pay as well as insurance as well  
2 as repeat.” Defendant Laponis confirmed these points, noting the “natural tailwind” Eargo  
3 experienced from its ability to convert benefits for insurance customers.

4 432. A Wells Fargo report dated January 12, 2021, increased the Company’s 2021  
5 revenue projections, noting that Eargo’s new hearing aid “is expected to drive repeat customer  
6 volume higher as users upgrade” and that Eargo “is focused on bringing more users from the  
7 sideline to use hearing aids given the significantly underpenetrated nature of the industry.”  
8 Referencing Eargo’s “robust insurance volumes,” Wells Fargo stated that it “expect[ed] insurance  
9 to continue meaningfully to EAR’s overall growth[.]” Likewise, a William Blair report dated  
10 January 12, 2021, rated Eargo as “outperform,” finding that “[i]nsurance continues to outperform  
11 and likely again was the biggest driver of the beat this quarter.” The report stated that “[w]ith  
12 approximately 9 million FEHB patients and roughly 5,000 insurance units being shipped per  
13 quarter, we continue to see significant opportunity in the FEHB channel today and Medicare  
14 Advantage or other payer partnerships over time.”

15 **4. Unknown to Investors in the IPO, Eargo Was Submitting Unsupported**  
16 **and Invalid Claims For Reimbursement and Improperly Recognizing**  
**Revenue**

17 433. FEHBP carriers that offer a hearing aid benefit require that claims for hearing aid  
18 devices include a hearing loss-related diagnosis code, which is set by the International Statistical  
19 Classification of Diseases, 10th Edition, Clinical Modification/Procedure Coding System (ICD-  
20 10-CM/PCS). ICD-10 is a uniform diagnosis coding system of diseases and signs, symptoms,  
21 abnormal findings, complaints, social circumstances and external causes of injury or diseases.  
22 ICD-10 codes, which are used in virtually all health care settings, provide a standardized approach  
23 to categorize disease and patient conditions. These codes are used to communicate information  
24 about a patient’s medical condition between healthcare providers, insurance companies, and other  
25 entities involved in the healthcare system.

26 434. Two relevant ICD-10 codes used by audiologists to diagnose patients following an  
27 evaluation of hearing loss are ICD-10 diagnosis codes H90.5 and H91.93, which relate to the  
28 following:

- 1           • H90.5 refers to “Sensorineural hearing loss, unspecified,” which is a diagnosis of  
2           hearing loss following damage to the inner ear. Sensorineural hearing loss is the  
3           most common type of permanent hearing loss. A patient suffering from such  
4           condition may be unable to hear soft sounds and may experience louder sounds as  
5           unclear or muffled.
- 6           • H91.93 refers to “Unspecified hearing loss, bilateral,” which is a diagnosis of  
7           hearing loss in both ears that cannot be attributed to a particular type of hearing loss  
8           (e.g., Sensorineural, conductive (outer or middle ear), or mixed (outer and/or  
9           middle ear and inner ear).

10           435. Insurers use diagnosis codes to determine if the treatment or procedure is covered  
11 under the patient's insurance plan. If the treatment or procedure is covered, the insurance company  
12 will reimburse the healthcare provider for the cost of the service, often without any individualized  
13 investigation of the particular claim. In some cases, insurance companies may require that  
14 providers make available upon request additional information, such as medical records or  
15 documentation of the patient’s symptoms, to verify the medical necessity of the treatment or  
16 procedure.

17           436. Insurers that participate in the FEHBP also include language in their Policy  
18 Manuals that condition the reimbursement of claims on a determination of “medical necessity.”  
19 For example, the BCBS FEP has had a longstanding requirement that all benefits are subject to a  
20 determination of “medical necessity.” Both the 2020 and 2021 Standard and Basic Option BCBS  
21 FEP Manuals, which were published prior to the Offering, provided:

22           All benefits are subject to the definitions, limitations, and exclusions in this  
23 brochure and are payable only when we determine that the criteria for medical  
24 necessity are met. Medical necessity shall mean healthcare services that a  
25 physician, hospital, or other covered professional or facility provider, exercising  
26 prudent clinical judgment, would provide to a patient for the purpose of preventing,  
27 evaluating, diagnosing, or treating an illness, injury, disease, or its symptoms, and  
28 that are:

1. In accordance with generally accepted standards of medical practice in  
the United States; and
2. Clinically appropriate . . .

1 3. Not primarily for the convenience of the patient . . .

2 **The fact that one of our covered physicians, hospitals, or other professional or**  
3 **facility providers has prescribed, recommended, or approved a service or**  
4 **supply does not, in itself, make it medically necessary or covered under this**  
5 **Plan.**

6 (emphasis in original).

7 437. Similar to the medical necessity requirement, BCBS FEP’s 2021 Plan and a related  
8 BCBS FEP Utilization Management Guideline and the BCBS FEP Policy Manual—both issued in  
9 October 2020 prior to the Offering—stated that “over-the-counter” hearing aids were “Not  
10 covered” by the Plan.

11 438. Other insurers, including GEHA, Anthem BCBS, and Aetna had similar medical  
12 necessity requirements.

13 439. Unknown to investors in the IPO, neither Eargo’s online hearing screening nor  
14 customer self-evaluations were sufficient to diagnose hearing loss. Yet, Eargo systematically  
15 misrepresented to FEHBP insurers that its customers had actually been diagnosed with hearing  
16 loss—when Eargo’s online hearing tool could not provide a hearing loss diagnosis and the  
17 customer had no other independent diagnosis of hearing loss to satisfy the medical necessity  
18 requirement.

19 440. Indeed, despite the requirement that a medical professional make a bona fide  
20 determination of medical necessity through an actual hearing loss diagnosis, over [REDACTED]

21 [REDACTED] Despite this, [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 [REDACTED] Investors, who were not privy to Eargo’s claims submissions practices,  
26 and in particular, the manner in which Eargo purported to satisfy insurance claims requirements  
27 through an online screening tool that could not support such a diagnosis, and who were assuaged  
28 by Defendants’ statements that Eargo verified insurance eligibility and reimbursement amounts,

1 were left in the dark as to Eargo’s systematic submission of false claims.

2 441. Eargo had the ability to contemporaneously track whether insurance customers had  
3 received an actual hearing loss diagnosis. [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 442. [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1           **5.** [REDACTED]

2 [REDACTED]

3 [REDACTED]

4           443. Prior to the IPO, Eargo recognized that the Company could not satisfy the

5 requirement of a prescription or hearing test if its documentation was scrutinized in an audit, and

6 the Company's inability to support claims that it nevertheless submitted to insurers.

7           444. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10          445. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14          446. [REDACTED]

1 447. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 448. Despite identifying these facts [REDACTED]

7 [REDACTED] Eargo did not pre-clear with BCBS FEP whether the Company's online screening tool  
8 or customer self-assessment was sufficient to support a hearing loss diagnosis that could satisfy  
9 medical necessity requirements. Rather than simply confirming with BCBS FEP and other  
10 FEHBP insurers whether Eargo's devices were truly covered, or that the Company could  
11 demonstrate medical necessity, Eargo simply submitted thousands of unsupported claims.

12 **6. Audits and DOJ Settlement Reveals Information Available to Eargo at**  
13 **the Time of the Offering That Rendered Statements in the Offering**  
14 **Document Materially Inaccurate or Incomplete**

15 449. [REDACTED]

16 [REDACTED]

17 [REDACTED]

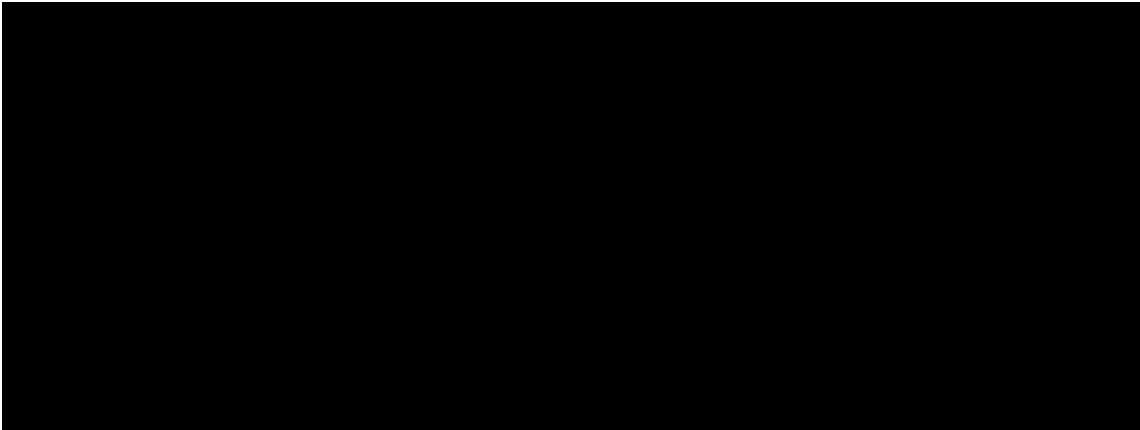
18 [REDACTED]

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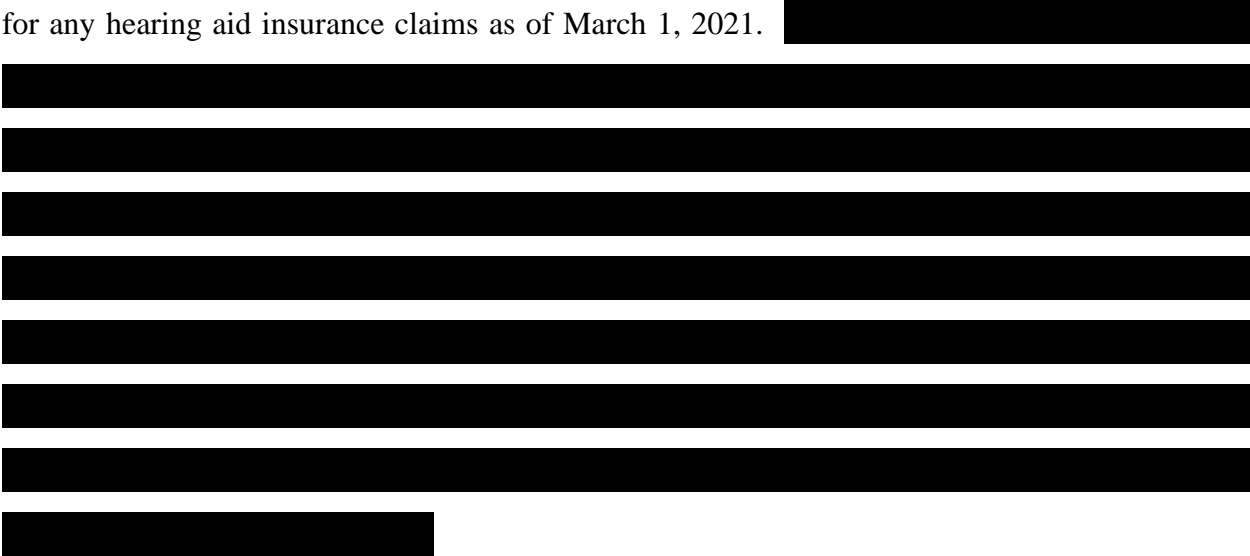
20 [REDACTED]

21 450. [REDACTED]

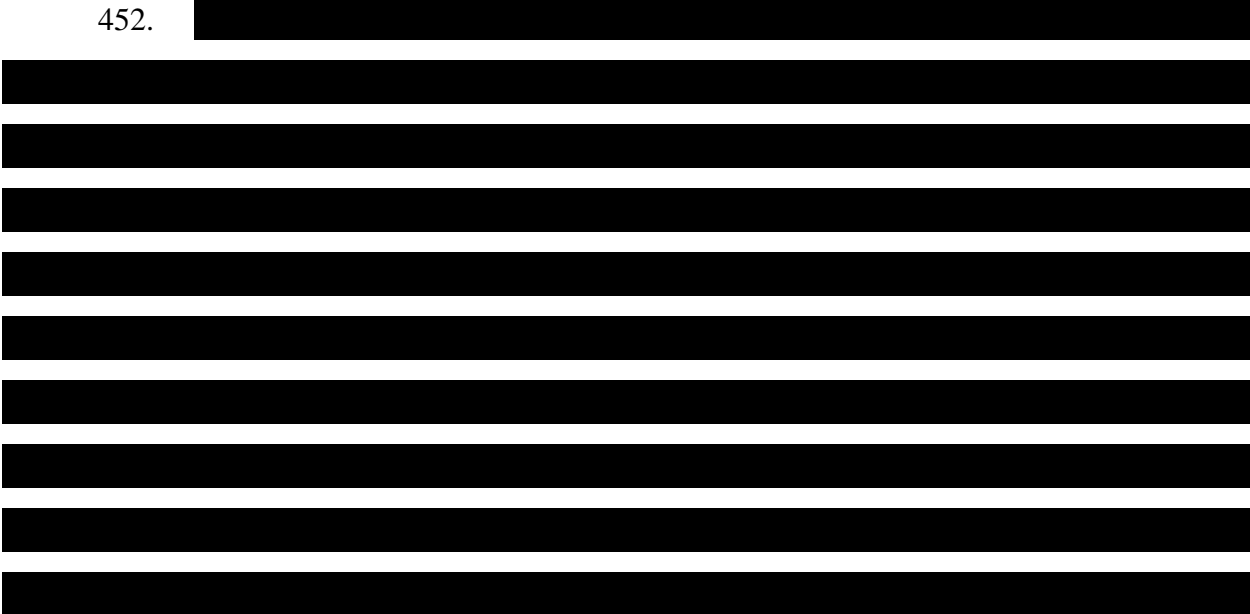
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451. In March 2021, BCBS FEP had become highly suspicious of Eargo’s claims, initiated an audit (including requesting patient medical records), and stopped reimbursing Eargo for any hearing aid insurance claims as of March 1, 2021.



452. [Redacted]



1 BSCA refused to pay *any* claims going forward absent a review of documents submitted by Eargo  
2 or its patients—documentation that Eargo could not provide. [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 453. [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 454. [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 455. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 456. [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
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8 [REDACTED]  
9 [REDACTED]

10 457. [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 458. [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 459. Thereafter, the Department of Justice (“DOJ”) opened an investigation. Eargo  
25 entered into a Settlement Agreement with the DOJ on April 29, 2022 “to pay \$34.37 Million to  
26 Settle Common Law and False Claims Act Allegations for Unsupported Diagnosis Codes.” As  
27 the DOJ concluded, consistent with Eargo’s contemporaneous practices prior to the Offering,  
28 “Eargo included unsupported hearing loss-related diagnosis codes on claims for hearing aid

1 devices that Eargo submitted to the FEHBP and on invoices—called superbills—that Eargo  
2 provided to FEHBP beneficiaries to obtain reimbursement for such devices from the FEHBP.”

3 460. The DOJ further concluded that, shortly after the Offering in January 2021, Eargo  
4 completed an internal review that found the Company had systematically submitted unsupported  
5 insurance claims to the FEHBP: “[B]etween Feb. 1, 2021, and Sept. 22, 2021, Eargo continued to  
6 include these unsupported hearing loss-related diagnosis codes on claims and superbills—even  
7 after completing an internal review of its billing and coding practices in January 2021—resulting  
8 in Eargo knowingly submitting or causing the submission of false claims for payment to the  
9 FEHBP.”

10 461. While the DOJ settlement does not identify t [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 462. Given that Eargo’s online hearing screening was in place throughout the Class  
14 Period, that there was no material change to insurer medical necessity requirements between the  
15 date of the IPO and less than three months later, [REDACTED]  
16 [REDACTED] it was negligent for Eargo to rely upon an online screening (or  
17 a customer self-assessment) to satisfy medical necessity requirements while making the untrue  
18 statements in its Offering Documents, identified below.

19 463. Further, that Eargo received reimbursement for such claims for some time before  
20 the audit came to light is neither exculpatory nor particularly unusual given the nature and the  
21 volume of insurance reimbursements regularly provided to healthcare providers by the large  
22 insurers targeted by Eargo’s scheme.

23 464. Former Employees (“FE”) of Eargo corroborate the documentary evidence and the  
24 DOJ’s conclusions.<sup>3</sup> FE1, a former Director in Eargo’s Audiology Group who worked at Eargo  
25 prior to the Class Period, explained that Eargo stopped requiring prescriptions or even audiograms  
26

27 <sup>3</sup> The terms “Former Employees” and “FE” refer to the former employees of Eargo whose reports  
28 are discussed in this Complaint. In order to preserve the Former Employees’ anonymity, while  
maintaining readability, the Complaint uses the pronouns “he,” “his,” and “him” to refer to all of  
the Former Employees, regardless of their gender.

1 by 2017. FE1 explained that the processes Eargo put in place, like getting a valid hearing test,  
2 became too cumbersome to follow and eventually got dropped from the sales process.  
3 Specifically, FE1 described that when he began working for the Company, the process for  
4 prescribing Eargo's hearing aids was specific to each state and what they each consider to be a  
5 valid hearing evaluation or test, whether this was an audiogram or otherwise, and what made it  
6 legal in each state. But, he explained, this process turned into a "big bottleneck," and the Company  
7 ran the risk of telling customers to go get tested, without the guarantee that they would come back  
8 to Eargo. The Company realized that this was not efficient and dropped the requirement. FE1  
9 understood why the Company did this—it was because the amount of time it took to get a valid  
10 audiogram was too long. What he did not understand was how the Company was able to do this.

11 465. FE1 explained that he voiced concerns regarding Eargo's dropping the whole  
12 audiogram requirement process, which, he noted, was not the right process. FE1 explained further  
13 that Eargo's product was being sold by non-licensed, non-expert "hearing professionals," and his  
14 issue with this was a matter of how these people know they are selling the appropriate device to a  
15 person without the experience to make such a decision. The requirement for selling a class one  
16 hearing aid is that a licensed professional needs to prescribe this medical device. FE1 reiterated  
17 that the Company stopped requiring an audiogram "early on"—specifically, there was an internal  
18 retooling of the product around 2016, followed by a relaunch, and at the time of the relaunch, the  
19 Company decided to stop taking audiograms.

20 466. The prescription was only the "beginning part" of FE1's concerns because then  
21 there is the issue of how Eargo supports the product and the customer. The support would vary  
22 because it was all done over the phone, and Eargo didn't consider if this was appropriate for the  
23 individual or not—the lack of physical observation made Eargo's dealings with customers  
24 "generic." FE1 noted that Eargo's attitude was "how do we keep people from returning the device"  
25 not "how can we support people to get the best hearing result from it." Everything begins "on the  
26 wrong foot" without knowing the anatomy of an individual's ear, which is so important in making  
27 a good fitting. Further, FE1 explained that Eargo was not doing any type of self-assessment, just  
28 asking customers, "Do you have hearing loss?" and giving customers a questionnaire over the

1 phone where they were asked to rate their hearing in different settings and situations on a scale of  
2 1 to 5. If they scored too poorly, they had to speak to an audiologist before continuing. But this  
3 process never actually materialized, and the salespeople who were being trained on how to conduct  
4 this process ended up selling the hearing aids no matter what. Eargo's attitude was, "we only have  
5 one size, and we hope like hell it fits you," which was how sales began, but, according to FE1, this  
6 is not true for hearing aid users.

7 467. Critically, FE1 explained that in its transactions with the federal employees, Eargo  
8 would have had to have customers' insurance verified and have medical codes, which state how  
9 they received devices or what type of hearing loss the product was provided for. For insurance to  
10 be satisfied, the insurance company needs to see the customer needed hearing aids. In normal  
11 practice, FE1 would need to provide an audiogram that shows the severity of hearing loss and  
12 justifies the need for a hearing aid with his state license on all documentation. Eargo couldn't have  
13 provided this for each customer, but likely still stated "bi-neural hearing loss" without providing  
14 an audiogram. FE1 clarified that this was not limited to "bi-neural" hearing loss, as the Company  
15 was using other codes too. He explained that hearing loss is one part of it, but understanding if  
16 hearing loss is sensory, neural, or conductive is a big part of medical coding. You can't just say  
17 someone has bi-neural hearing loss without specifying; they go hand in hand. If hearing loss is  
18 conductive, it can be medically corrected if it's within a certain range, and FE1 would be required  
19 to send the patient to an Ear, Nose and Throat doctor for clearance for a hearing aid. FE1 noted,  
20 "When I'm looking in someone's ear and see a disorder, it's the biggest thing they (Eargo) are not  
21 doing."

22 468. Specifically, FE1 explained, Eargo used "super bills" which showed a statement of  
23 what was received from Eargo along with medical codes. A super bill is a document that is  
24 generated so that a customer can submit for reimbursement to its own insurance provider. But if  
25 a customer had on their super bill a medical code for having been fitted with bi-neural aids with  
26 hearing loss and sensory neurology, this was false, because such a medical code indicates that the  
27 customer was tested and/or received results to determine this. The problem, according to FE1,  
28 was that Eargo was using medical codes that insurers would pay off, and the codes would indicate

1 that there was bi-neural hearing loss and that a physical exam of the ear was performed along with  
2 fitting and training the patient on how to use the product. The reality is that Eargo doesn't do this,  
3 doesn't require an audiogram or testing, or merely provided training for the customer over the  
4 phone and emailed the customer videos on device cleaning. FE1 explained that for some  
5 customers, this was inadequate: how would you know over the phone if someone knows how to  
6 properly clean or put in a hearing aid just because they are answering "yes" to questions on a  
7 phone?

8 469. Finally, FE1 explained, Eargo was representing and delivering its service as a  
9 legitimate process, while providing no visual inspection and no physical meeting with a licensed  
10 person.

11 470. FE2, who worked as an audiologist at Eargo from January 2017 to December 2019  
12 similarly described that the salespeople who were encouraging customers to buy Eargo's hearing  
13 aids without an audiogram were not qualified to do so. FE2 explained further that some customers  
14 were told not to get a hearing test done for fear that the salesperson might lose out on the  
15 commission from possible sales.

16 471. FE3 was a licensed audiologist who worked at Eargo in a variety of roles between  
17 July 2018 and June 2022. In FE3's experience, audiologists assess hearing loss through diagnostic  
18 testing. Insurance companies require diagnostic testing for the purpose of identifying the type and  
19 degree of hearing loss, which is performed through a diagnostic hearing evaluation. Eargo used a  
20 diagnostic code stating that all customers had the same type of hearing loss—which could not be  
21 determined through an online hearing screening. For example, the diagnostic code sensorineural  
22 hearing loss (unspecified) signified hearing loss in both ears (and was used by the Company to  
23 justify the purchase of two hearing aids, not one, where it may not have necessary). But there are  
24 a variety of hearing loss diagnoses, which the online screening could not determine. Further, an  
25 online screening is not properly calibrated and cannot provide specific information to support an  
26 audiological diagnosis. FE3 stated that Eargo's online hearing tool "should have never been used  
27 for insurance purposes" because it could not determine the type or degree of hearing loss. In FE3's  
28 experience, audiologists assess hearing loss through diagnostic testing. Insurance companies

1 require diagnostic testing for the purposes of identifying the type and severity of hearing loss.  
2 Eargo’s online screening, however, did not constitute diagnostic testing. FE3 stated that Eargo’s  
3 online hearing tool “should have never been used for insurance purposes” because it could not  
4 determine the type or severity of hearing loss.

5 472. FE3 indicated that it was well-known within Eargo that the Company listed blanket  
6 diagnosis codes on its claims forms and superbills provided to customers, with the only difference  
7 being the customer’s name and address. Further, audiologists employed by Eargo were “not  
8 signing off on people’s insurance claims.” That audiologists had no involvement in diagnosing  
9 Eargo customers was contrary to FE3’s experience and industry standards. FE3 stated that Eargo  
10 elevated sales professionals who lacked any experience in billing insurance companies over  
11 licensed audiologists, who knew what proper insurance practices entailed.

12 473. FE3 stated that FE3 had many conversations with managers and Vice Presidents at  
13 Eargo—including managers who reported to CEO Christian Gormsen and COO William  
14 Brownie—in which FE3 asked how the Company was able to bill insurance companies without  
15 requiring a hearing test administered within the past six months, as well as an actual diagnosis by  
16 an audiologist. FE3 explained that Eargo managers told FE3 “not to worry about it.”

17 474. It is FE3’s understanding that even after the onset of the DOJ investigation, an  
18 online Company platform, setting forth processes and scripts for the Eargo sales team, did not  
19 require sales professionals to inform prospective customers that they needed to take an online  
20 screening prior to accessing their insurance benefits.

21 475. [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

28 476. Investors were not privy to any of this information regarding Eargo’s claims

1 submissions practices, including that neither Eargo’s hearing screening nor a customer self-  
2 assessment could diagnose a particular type of hearing loss to satisfy medical necessity  
3 requirements even though the Company pre-populated claims forms to represent exactly that.  
4 Unbeknownst to investors, Eargo could only establish medical necessity for its hearing aids for  
5 the relatively few customers who independently obtained an audiogram outside of Eargo’s online  
6 process— [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 477. Nor did Eargo inform investors that it had identified specific risks associated with  
10 its claims submission practices to BCBS-FEP, including prescription requirements and insurer  
11 scrutiny of documents (i.e., a hearing test diagnosing a particular type of hearing loss). Instead,  
12 Eargo systematically submitted unsupported payment claims to FEHBP insurers representing that  
13 bona fide hearing loss diagnoses had occurred, when they had not, with respect to [REDACTED] of Eargo’s  
14 customers through the date of the Offering.

15 **7. Eargo’s Stock Price Declines Due To The Conduct Described Herein**

16 478. Eargo’s stock price declined sharply as a consequence of the untrue statements and  
17 omissions in the Offering Documents. The declines included, but were not necessarily limited to,  
18 the events described below.

19 479. BCBS-FEP was Eargo’s largest and most significant third-party payor. As noted  
20 above, BSCA commenced an audit of Eargo on or about March 15, 2021 [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 480. Eargo had recognized each BCBS-FEP finding [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 481. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 482. On August 12, 2021, Eargo issued a Form 8-K, signed by Defendant Laponis, as  
15 well as a press release, which disclosed an increase in the Company’s accounts receivable  
16 “primarily due to a claims audit by an insurance company that is our largest third-party payor, who  
17 accounted for approximately 80% of our gross accounts receivable as of June 30, 2021.” The  
18 Company also disclosed, “During the audit, claims since March 1, 2021 have not been paid. The  
19 Company is in active discussions with the payor and continues to work toward conclusion of the  
20 audit.” The Company’s Form 10-Q the same day disclosed the same information, as well as the  
21 fact that “another insurance company” was also auditing reimbursement claims submitted by  
22 Eargo. The Form 10-Q stated, “we have received some denials to date,” and that it was “possible  
23 that they may seek recoupments of previous claims paid and deny any future claims.”

24 483. In response to this incomplete news—which failed to describe the nature of the  
25 audit, that Eargo could not satisfy document requests from multiple insurers, and that the hearing  
26 aids being provided by Eargo were not a “covered service” under Eargo’s contract with BCBS-  
27 FEP—the price of Eargo’s common stock declined over 24%, from a close of \$32.70 on August  
28 12, 2021 to a close of \$24.70 the following day.



1           484. On September 22, 2021, the Company filed a Form 8-K with the SEC, signed by  
2 Defendant Laponis, in which Defendants disclosed, “On September 21, 2021, Eargo, Inc. (the  
3 “Company”) was informed that it is the target of a criminal investigation by the U.S. Department  
4 of Justice (the “DOJ”) related to insurance reimbursement claims the Company has submitted on  
5 behalf of its customers covered by federal employee health plans.” Defendants additionally  
6 disclosed that the Company was withdrawing its guidance for the fiscal year ending December 31,  
7 2021.

8           485. Analysts reacted negatively to Eargo’s September 22, 2021 disclosures. For  
9 example, Wells Fargo’s analyst noted in a September 23, 2021 report that “we see risk that the  
10 company can no longer sell into the insurance channel due to the DOJ investigation,” and that the  
11 Company was “working through if there will be immediate changes in business operations or  
12 revenue recognition.”

13           486. In response to this news, Eargo’s stock plummeted from a closing price of \$21.67  
14 on September 22, 2021 to a closing price of \$6.86 on September 23, 2021—a 68% drop.

15           487. Following the close of trading on November 16, 2021, the Company filed with the  
16 SEC a Form 12b-25 Notification of Late Filing, signed by Defendant Laponis, in which the  
17 Company disclosed, “Eargo, Inc. (the “Company”) has determined that it is unable to file its  
18 Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2021 (the “Form 10-  
19 Q”) within the prescribed time period without unreasonable effort and expense due to the  
20 circumstances described below.” Specifically, the Form 12b-25 explained that the circumstances  
21 and investigation at issue “related to insurance reimbursement claims the Company submitted on  
22 behalf of its customers covered by various federal employee health plans under the Federal  
23 Employee Health Benefits (“FEHBP”) program.” The Company added, “The investigation also  
24 pertains to the Company’s role in customer reimbursement claim submissions to federal employee  
25 health plans.”

26           488. Finally, Defendants announced that the inquiry had expanded to include more of  
27 Eargo’s payors than previously disclosed: “Two additional third-party payor audits related to  
28 claims submitted for customers with FEHB plans are also in process.” Defendants also disclosed,

1 “Total payments the Company has received to date from the government in relation to claims  
2 submitted under the FEHB program, net of any product returns and associated refunds, are  
3 approximately \$44 million,” and “During the three months ended September 30, 2021, the  
4 Company shipped 13,117 gross hearing aid systems, approximately 48% of which were to  
5 customers with potential insurance coverage.” Defendants disclosed, “The Company has not yet  
6 completed its assessment of the accounting impact of the DOJ investigation and the ongoing claims  
7 audits on its financial statements for the three months ended September 30, 2021 and prior periods,  
8 and is therefore unable to file the Form 10-Q on a timely basis.”

9 489. Analysts reacted negatively to Eargo’s November 16, 2021 disclosures. J.P.  
10 Morgan’s analyst noted, “[W]e’re increasingly concerned about . . . the company’s ability to serve  
11 the insurance market moving forward.”

12 490. In response to this news, the price of Eargo shares dropped from a closing price of  
13 \$7.18 on November 16, 2021 to close at \$6.79 the following day, a decline of 5.44%.

14 491. On November 22, 2021, the Company filed a Form 8-K and accompanying press  
15 release with the SEC, signed by Defendant Laponis, which disclosed that “the Company received  
16 a letter from The Nasdaq Stock Market LLC (“Nasdaq”) indicating that, since the Company has  
17 not yet filed its Quarterly Report on Form 10-Q for the period ended September 30, 2021 (the  
18 “Form 10-Q”), the Company no longer complies with Nasdaq Listing Rule 5250(c)(1) for  
19 continued listing.” Defendants disclosed further, “Under the Nasdaq Listing Rules, the Company  
20 has 60 calendar days to submit a plan to regain compliance (the “Plan”) and, if Nasdaq accepts the  
21 Plan, Nasdaq may grant an exception of up to 180 calendar days from the Form 10-Q original  
22 filing due date, or until May 16, 2022, to regain compliance. The Company intends to submit the  
23 Plan within the 60-calendar day period.”

24 492. In response to this news, Eargo’s share price declined from a closing price of \$5.88  
25 on November 22, 2021 to a closing price of \$5.56 the following day, a decline of 5%.

26 493. On March 2, 2022, Eargo filed a Form 12b-25 Notification of Late Filing with the  
27 SEC, in which the Company disclosed that it was unable to file its Annual Report for 2021 on  
28 Form 10-K based on a DOJ investigation “related to insurance reimbursement claims the Company

1 submitted on behalf of its customers covered by various federal employee health plans under the  
2 Federal Employee Health Benefits (“FEHB”) program,” as well as “the Company’s role in  
3 customer reimbursement claim submissions to federal employee health plans.” The Company  
4 further disclosed that “the Company is currently subject to a number of other ongoing audits of  
5 insurance reimbursement claims submitted to additional third-party payors. One of these claims  
6 audits does not relate to claims submitted under the FEHB program.”

7 494. Eargo further stated that it had “reached an understanding in principle with the DOJ  
8 with respect to certain material terms of a potential settlement and resolution of the investigation  
9 and can now reasonably estimate a probable loss of approximately \$34.4 million in connection  
10 with the investigation.” The Company noted that “discussions are continuing,” and that “there can  
11 be no assurance as to the terms or timing of a final resolution with respect to the investigation.  
12 Further, any such settlement of the investigation may not resolve the ongoing audits of insurance  
13 reimbursement claims by additional third-party payors, nor has the Company begun working with  
14 the government and third-party payors to potentially validate processes to support any future  
15 claims that it may submit for reimbursement, and there are no guarantees that the Company will  
16 be able to arrive at any such acceptable processes or submit any future claims.”

17 495. Eargo further disclosed, “Beginning on December 8, 2021, the Company made the  
18 decision to stop accepting insurance benefits as a method of direct payment and it is uncertain  
19 when, if ever, the Company will resume accepting insurance benefits as a method of direct  
20 payment.” Eargo also stated that “[w]hile the Company intends to work with the government and  
21 third-party payors at the appropriate time with the objective of validating processes to support any  
22 future claims that it may submit for reimbursement, the Company may not be able to arrive at  
23 acceptable processes or submit any future claims.” In other words, due to the submission of false  
24 and unsupported reimbursement claims, Eargo was forced to abandon what it highlighted as a  
25 significant growth driver in the Offering Documents.

26 496. Finally, Eargo disclosed that it had “offered affected customers (i.e., customers  
27 using insurance benefits as a method of direct payment for transactions prior to December 8, 2021)  
28 the option to return their hearing aids or purchase their hearing aids without the use of their

1 insurance benefits in case their claim is denied or ultimately not submitted by the Company to their  
2 insurance plan for payment.”

3 497. In response to this news, Eargo’s share price declined from a close of \$4.77 that  
4 day to a close of \$4.02 the following day—a 15% decline.

5 498. On April 29, 2022, Eargo and the DOJ entered into the Settlement Agreement  
6 referenced in § II.C.4. In response to this news, Eargo’s share price declined from a close of \$3.78  
7 that day to a close of \$3.64 the following day—a 3.7% decline.

8 499. On May 2, 2022, Eargo filed two press releases titled “Eargo Finalizes Agreement  
9 with the United States to Resolve Investigation With No Admission of Liability,” and “Reached  
10 settlement agreement to resolve DOJ investigation,” as well as a Form 8-K with the SEC in which  
11 it disclosed the terms of its settlement with the DOJ and provided a “Business Update.”

12 500. In the Company’s “Business Update” on May 2, 2022, Defendant Gormsen stated,  
13 “One of our top management priorities is to regain insurance coverage of Eargo for government  
14 employees under the FEHB program, and we are very pleased that . . . the OPM[] has agreed to  
15 not take administrative action seeking the exclusion of Eargo from the FEHB program and has  
16 indicated there will be an opportunity for further dialogue with us. Our goal is to align with the  
17 OPM on and establish processes to support the submission of claims through the FEHB program.”  
18 Eargo also held a business update call with investors that same day.

19 501. Eargo told investors on May 2, 2022 that “[w]e anticipate that we will need to raise  
20 capital over the course of 2022.”

21 502. In response to this news, Eargo’s share price continued to decline from a closing  
22 price of \$3.78 on April 29, 2022 to close at \$3.64 on May 2—a decline of 3.7%.

23 503. On May 11, 2022, Eargo filed a Form 12b-25 Notification of Late Filing of Form  
24 10-Q with the SEC. In this Form 12b-25, Eargo disclosed that it would not be able to timely file  
25 its Form 10-Q for the first quarter of 2022. Eargo further disclosed that the Company may not be  
26 able to file its Form 10-Q for the third quarter of 2021 or its Form 10-K for the year of 2021 by  
27 Nasdaq’s May 16, 2022 deadline.

28 504. In response to this news, Eargo’s share price declined further. The stock closed at

1 \$1.76 on May 10, 2022 and closed at \$1.70—a 3.4% decline—on May 11. The stock continued to  
2 tumble in the aftermarket, falling to \$1.30—a 23% drop—after the close of regular trading.

3 505. The harm to shareholders continued. In the aftermath of the DOJ settlement, Eargo  
4 was forced to conduct a highly dilutive financing which ultimately resulted in a private equity  
5 company, Patient Square Capital, owning 76.3% of Eargo’s outstanding common stock. Because  
6 the value of Eargo’s stock had fallen so dramatically, the company was also forced to conduct a  
7 20-for-1 reverse split on January 17, 2023. Thus, Eargo’s March 15, 2023 closing price of \$4.60  
8 per share actually reflects a share price of just 23 cents per share during the Class Period. Eargo’s  
9 market capitalization is now just \$111.9 million, but 76% of that market capitalization is now  
10 owned by Patient Square Capital because of the highly dilutive financing transaction described  
11 above.

12 506. Finally, the Company began reaccepting FEHB insurance claims in September  
13 2022, but in a tacit admission that its prior processes were not proper, now requires customers  
14 paying with FEHB insurance to “undergo[] additional testing by an independent licensed health  
15 care provider with supporting documentation.” Eargo acknowledges that customers seeking to use  
16 insurance “are required to receive in-person hearing evaluations before [Eargo] can accept an order  
17 or submit an insurance claim for reimbursement.” Notwithstanding this new policy, Eargo also  
18 said that it did not expect to see “significant volume for insurance orders.”

19 507. As of close of trading on March 15, 2023, Eargo stock was trading at \$4.60 per  
20 share—a tiny fraction of its Class Period high of more than \$75.37 per share.

21 **8. Eargo Violated GAAP And Overstated Revenue In The Offering**  
22 **Documents By Improperly Recognizing Revenue Of Sales To FEHBP**  
23 **Customers**

24 508. The Offering Documents described how Eargo recognized revenue for the sale of  
25 its hearing aids, including sales to insurance customers.

26 509. Financial statements (including footnote disclosures) are a central feature of  
27 financial reporting and are a principal means of communicating financial information to external  
28 parties, such as investors. For companies such as Eargo, the accounting profession (and the SEC)  
recognize Generally Accepted Accounting Principles (“GAAP”) as the uniform rules, conventions,

1 and procedures necessary to define and reflect accepted accounting practices at a particular time.  
2 SEC Regulation S-X states that financial statements filed with the SEC that are not prepared and  
3 presented in accordance with GAAP “will be presumed to be misleading or inaccurate, despite  
4 footnotes or other disclosures.” 17 C.F.R. § 210.4-01(a)(1). GAAP violations, therefore, bear on  
5 whether SEC regulations for publicly-traded companies, such as Eargo, have been properly  
6 followed and satisfied.

7 510. GAAP are primarily promulgated by the Financial Accounting Standards Board  
8 (“FASB”) and are codified into a system that has been accepted by the SEC as the framework by  
9 which public companies must report their financial position and the results of their operations  
10 (among other things)—i.e., SEC regulations require that public company financial statements be  
11 prepared in conformity with GAAP. Beginning with the year 2009, the FASB codified its  
12 accounting standards into a system whereby pertinent sections are organized by topic and  
13 referenced by the acronym ASC (“Accounting Standards Codification”). These ASCs represent  
14 the source of authoritative GAAP for nongovernmental entities, including Eargo. (ASC 105,  
15 Generally Accepted Accounting Principles, section 10-05-1).

16 511. The framework for the accounting standards that make up the ASCs within GAAP  
17 is set out in, among other places, Statements of Financial Accounting Concepts (“FASCON”). To  
18 that end, FASCON 8, Conceptual Framework for Financial Reporting (“FASCON 8”), states:

19 Financial reports represent economic phenomena in words and numbers. To be  
20 useful, financial information not only must represent relevant phenomena, but it  
21 also must faithfully represent the phenomena it purports to represent. To be a  
22 perfectly faithful representation, a depiction would have three characteristics. It  
23 would be complete, neutral, and free from error.

24 FASCON 8, ¶QC12.

25 512. Eargo incorporated GAAP Provision ASC 606 into its Offering Documents,  
26 defined the specific requirements of ASC 606, and described how Eargo complied with ASC 606.

27 513. As Eargo itself has disclosed, GAAP provision ASC 606, “Revenue from  
28 Contracts with Customers,” governs Eargo’s recognition of revenue from its sales of hearing aids.

514. Specifically, under ASC 606, revenue is recognized when promised goods or  
services are transferred to customers in an amount that reflects the consideration to which the entity

1 expects to be entitled in exchange for those goods or services by following a five-step process:

2 515. First, the business must identify the contract with its customer.

3 516. Second, the business must identify the performance obligations in the contract.

4 517. Third, the business must determine the transaction price and allocation to  
5 performance obligations.

6 518. Fourth, the business must allocate the transaction price to the performance  
7 obligations in the contract.

8 519. Fifth, the business must recognize the revenue when or as it satisfies its  
9 performance obligations.

10 520. Further, ASC 606 states:

11 An entity shall account for a contract with a customer that is within the scope of  
12 this Topic only when all of the following criteria are met:

13 a. The parties to the contract have approved the contract (in writing, orally, or in  
14 accordance with other customary business practices) and are committed to  
perform their respective obligations.

15 b. **The entity can identify each party's rights regarding the goods or services to**  
16 **be transferred.**

17 c. The entity can identify the payment terms for the goods or services to be  
transferred.

18 d. The contract has commercial substance (that is, the risk, timing, or amount of  
19 the entity's future cash flows is expected to change as a result of the contract).

20 e. **It is probable that the entity will collect substantially all of the consideration**  
21 **to which it will be entitled in exchange for the goods or services that will be**  
**transferred to the customer.**

22 In evaluating whether collectability of an amount of consideration is probable, an  
23 entity shall consider only the customer's ability and intention to pay that amount of  
24 consideration when it is due. The amount of consideration to which the entity will  
25 be entitled may be less than the price stated in the contract if the consideration is  
variable because the entity may offer the customer a price concession.

26 521. [REDACTED]

27 [REDACTED]

28 [REDACTED]

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522. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

523. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

524. [REDACTED]

[REDACTED]

525. According to the Offering Documents, the Company recognized revenue consistent with GAAP when “promised goods or services are transferred to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services....” Eargo stated that it “generally considers completion of an Eargo sales order (which





1 regarding the “continued trend” portrayed by Eargo’s unaudited revenue results “for the three  
2 months ended September 30, 2020,” which had concluded prior to the Offering. In the Offering  
3 Documents, Defendants stated “we expect preliminary unaudited revenue, net for the three months  
4 ended September 30, 2020 to be approximately \$18.0 million to \$18.3 million . . . .” Defendants  
5 further stated: “We believe that these preliminary, unaudited financial results and operating metrics  
6 for the three months ended September 30, 2020 indicate that our improved operating results for  
7 the three months ended June 30, 2020 were not solely attributable to the initial impact that COVID-  
8 19 had on the process of obtaining a hearing aid through traditional channels and represent a  
9 continued trend through the three months ended September 30, 2020.”

10 530. These statements were materially untrue and misleading. It was misleading for  
11 Eargo to refer to its “improved operating results for the three months ended June 30, 2020,” and  
12 to portray its third quarter 2020 “financial results and operating metrics” as “represent[ing] a  
13 continued trend through the three months ended September 30, 2020,” because Eargo’s revenue  
14 performance was materially untrue and misleading. As described above, approximately 45% of  
15 Eargo’s sales related to FEHBP customers, and Eargo routinely created, submitted, and caused the  
16 submission of unsupported reimbursement requests to FEHBP insurers based on a hearing loss  
17 diagnosis that Eargo could not provide through its online screening tool or a customer self-  
18 assessment. Further, given that Eargo’s FEHBP customers were ineligible for reimbursement (and  
19 thus could not be included, at all, in describing Eargo’s revenue), Defendants’ third quarter 2020  
20 preliminary revenue statement was baseless and impossible for Eargo to achieve properly.

21 **D. The Securities Act Defendants’ Additional Untrue Statements And Omissions**

22 **1. Untrue Statements And Omissions**

23 531. The Offering Documents were negligently prepared and, as a result, contained  
24 untrue statements of material fact, omitted material facts necessary to make the statements  
25 contained in them not misleading, and failed to make adequate disclosures required under the  
26 statute, rules, and regulations governing the preparation of public offering documents for  
27 securities.

28 532. As noted above, Eargo materially misstated its revenue in the Offering Documents.

1 Eargo also made a number of other untrue statements and omissions in the Offering Documents.

2 533. The Offering Documents stated, “Changes in third-party coverage and  
3 reimbursement may impact our ability to grow and sell our products” and that “A payor’s decision  
4 to provide coverage for a product does not imply that an adequate reimbursement rate will be  
5 approved . . . Third-party coverage and reimbursement may never become available to us at  
6 sufficient levels.”

7 534. It was misleading for Defendants to describe generic, abstract risks regarding  
8 potential “changes in third-party coverage” without disclosing that the Company had recognized  
9 specific facts and concerns relating to BCBS FEP claims, [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 [REDACTED] The Company’s  
13 generic description of risks also concealed the risks involving insurance customers had already  
14 occurred, i.e., [REDACTED] FEHBP customers (including BCBS FEP customers) were not eligible for  
15 reimbursement for the purchase of Eargo hearing aids, and that Eargo had submitted numerous  
16 unsupported claims to BCBS and other insurers that were not eligible for payment at all.

17 535. Eargo also stated that “the increase in customers with insurance coverage has been  
18 a significant driver of our growth in 2020, and we intend to pursue additional coverage in the  
19 future.”

20 536. It was materially misleading to state that “the increase in customers with insurance  
21 coverage has been a significant driver of our growth in 2020,” without disclosing that such growth  
22 was based on Eargo’s widespread submission of unsupported and ineligible claims to FEHBP  
23 insurers (including BCBS FEP) to obtain reimbursement.

24 537. It was also materially misleading to state that “we intend to pursue additional  
25 coverage in the future” as a growth strategy without disclosing that the manner of pursuing such  
26 coverage involved submitting unsupported and ineligible claims to FEHBP insurers (including  
27 BCBS FEP) to obtain reimbursement.

28 538. In describing its pool of potential insurance customers, Eargo stated that “there are

1 approximately 12 million adults in the United States over 50 years of age with both hearing loss  
2 and access to an existing hearing aid benefit under these plans.”

3 539. The statements regarding Eargo’s addressable insurance market were untrue and  
4 misleading when made at the time of the IPO given that [REDACTED] Eargo’s FEHBP customers were  
5 ineligible for insurance reimbursement because Eargo could not provide a hearing loss diagnosis,  
6 including 5.5 million BCBS FEP customers.

7 540. Eargo’s Registration Statement also contained a discussion of the Company’s  
8 “growth strategies,” in which Eargo told investors that it planned to “[o]ptimize [its] customer  
9 mix” and touted its success in targeting customers with insurance. Specifically, the Registration  
10 Statement stated: “Beginning in the fourth quarter of 2019, we began targeting a more diverse mix  
11 of customers, including those with hearing aid health insurance benefits and repeat customers. We  
12 believe consumers with hearing aid insurance benefits typically convert at higher rates and return  
13 their devices at lower rates, due in part to having reduced or, in some cases, no out of pocket cost  
14 for an Eargo hearing aid. This more optimized customer mix has resulted in a lower overall  
15 customer acquisition cost. We believe this strategy will continue to further improve the efficiency  
16 of our sales and marketing sped as we scale our business.”

17 541. These statements about Eargo’s customer base and growth strategies were untrue  
18 and misleading, omitted material facts, and lacked a reasonable basis when made because:  
19 (i) such growth was based on Eargo satisfying medical necessity requirements of FEHBP insurers  
20 (including BCBS FEP), when the Company’s online hearing tools and customer self-assessments  
21 were insufficient to provide an acceptable hearing loss diagnosis; (ii) that, as a result, Eargo’s  
22 practices resulted in the submission of unsupported and ineligible claims to FEHBP insurers  
23 (including BCBS FEP) to obtain reimbursement.

24 542. Further, the Offering Documents included a section on Eargo’s compliance with  
25 “U.S. or foreign federal and state healthcare regulatory laws,” stating that “if” Eargo failed to  
26 comply with such laws “we could be subject to penalties, including, but not limited to,  
27 administrative, civil and criminal penalties, damages, fines, disgorgement, exclusion from  
28 participation in governmental healthcare programs and the curtailment of our operations, any of

1 which could adversely impact our reputation.” That section listed as an example of such laws “the  
2 U.S. federal false claims laws, including the False Claims Act, which can be enforced through  
3 whistleblower actions, and civil monetary penalties laws, which, among other things, impose  
4 criminal and civil penalties against individuals or entities for knowingly presenting, or causing to  
5 be presented, to the U.S. federal government, claims for payment or approval that are false or  
6 fraudulent, knowingly making, using or causing to be made or used, a false record or statement  
7 material to a false or fraudulent claim, or from knowingly making a false statement to avoid,  
8 decrease or conceal an obligation to pay money to the U.S. federal government.”

9 543. It was misleading to describe generic and abstract risks that “could” render Eargo  
10 subject to penalties and fines, without disclosing that, in fact, those risks had already occurred  
11 because Eargo’s FEHBP customers (including BCBS FEP customers) were not eligible for  
12 reimbursement for the purchase of Eargo hearing aids, and Eargo had submitted numerous  
13 unsupported claims to BCBS and other insurers that were not eligible for payment at all.

## 14 2. Failure To Disclose Information Required By Regulation S-K

15 544. The Offering Documents also failed to disclose material information required to be  
16 disclosed by Regulation S-K, 17 C.F.R. §§ 229 et seq.

17 545. The Offering Documents failed to disclose material information required by Item  
18 303, 17 C.F.R. § 229.303, which requires disclosure of “material events and uncertainties known  
19 to management that are reasonably likely to cause reported financial information not to be  
20 necessarily indicative of future operating results or of future financial condition.” Specifically,  
21 Item 303 requires a description of “any known trends or uncertainties that have had or that are  
22 reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or  
23 income from continuing operations.” In addition, Item 303 requires disclosure of: “any known . .  
24 . events or uncertainties that will result in or that are reasonably likely to result in the registrant’s  
25 liquidity increasing or decreasing in any material way” and “any known trends or uncertainties  
26 that have had or that the registrant reasonably expects will have a material favorable or unfavorable  
27 impact on net sales or revenues or income from continuing operations.”

28 546. Here, the Offering Documents did not disclose the trend that Eargo had submitted

1 numerous unsupported and ineligible claims for its FEHBP customers. Nor did it disclose the  
2 impact of that trend on Eargos' revenues.

3 547. Further, the Offering Documents did not disclose the uncertainty that Eargo  
4 customers were ineligible for reimbursement by FEHBP insurers. [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] Shortly before the IPO, BCBS-FEP published its Policy Manual for 2021 which  
9 indicated that Eargo hearing aids may not be a "covered service" under the policy—exactly what  
10 BSCA later communicated to Eargo.

11 548. Given the high-volume of BCBS-FEP claims processed through BCBS-FEP, [REDACTED]  
12 [REDACTED] and the language of the BCBS-FEP  
13 Policy Manual, a clear uncertainty existed as to whether Eargo's hearing claims were covered  
14 under the BCBS-FEP policy manual and insurance customers were eligible for reimbursement.  
15 Yet this uncertainty was not disclosed.

16 549. The Offering Documents further failed to describe the manner in which the  
17 FEHBP's exclusion of Eargo hearing aids from coverage and/or denial of claims was reasonably  
18 likely to have a material unfavorable impact on Eargo's net sales or revenue. Prior to the Offering,  
19 FEHBP customers comprised approximately 45% of Eargo's customer base, making this trend and  
20 this uncertainty unquestionably material. Indeed, as of June 30, 2020, BCBS FEP by itself already  
21 comprised approximately 36% of Eargo's gross accounts receivable, a figure that rose through  
22 year-end to approximately 45%. As such, the Company was required to disclose the manner in  
23 which that known uncertainty was reasonably expected to materially affect Eargo's future  
24 performance and have a material unfavorable impact on its sales and net revenue, as it ultimately  
25 did.

26 550. Similarly, the Offering Documents failed to disclose material information required  
27 to be disclosed by Item 105 of SEC Regulation S-K (17 C.F.R. § 229.105), which requires  
28 disclosure of "the most significant factors that make the offering speculative or risky." Here, as

1 set forth in § II.C, the Offering Documents did not disclose any information regarding the acute  
2 risk posed by the exclusion of FEHBP customers (including BCBS FEP customers) from receiving  
3 a hearing aid insurance benefit, and the submission of unsupported claims for such customers,  
4 which threatened to wipe out close to half of the Company's reported and expected revenue.

5 **E. The Securities Act Defendants' Failure To Exercise Reasonable Care Or To**  
6 **Conduct A Reasonable Investigation In Connection With The Offering**

7 551. None of the Securities Act Defendants made a reasonable investigation or  
8 possessed reasonable grounds for the belief that the statements contained in the Offering  
9 Documents were accurate and complete and not misstated in all material respects.

10 552. Due diligence is a critical component of the issuing and underwriting process.  
11 Directors, officers, accountants, and underwriters are able to perform due diligence because of  
12 their expertise and access to the Company's non-public information. Underwriters must not rely  
13 on management statements; instead, they should play a devil's advocate role and conduct a  
14 thorough verification process. At a minimum, due diligence for every public offering should  
15 involve: (1) interviews of upper and mid-level management; (2) a review of the company's sales  
16 practices, revenue recognition practices, and other business practices that are important to its sales,  
17 revenues, and income; (3) a review of the auditor's management letters; (4) a review of items  
18 identified therein; (5) a review of the company's SEC filings (particularly those incorporated by  
19 reference); (6) a critical review of the company's financial statements, including an understanding  
20 of the company's accounting and conversations with the company's auditors without management  
21 present; (7) a review of the company's internal controls; (8) a review of negative facts and concerns  
22 within each underwriter's organization and within the underwriter syndicate; and (9) a review of  
23 critical non-public documents and records forming the basis for the company's assets, liabilities,  
24 earnings, contingent liabilities, and the Company's potential negative trends (or lack thereof) as  
25 required to be disclosed under the securities laws.

26 553. Red flags uncovered through this process must then be investigated. Officers and  
27 auditors must participate in the underwriters' due diligence, and non-officer directors are  
28 responsible for the integrity of the due diligence process in their capacity as the ultimate governing

1 body of the issuer.

2 554. *First*, [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] it was negligent for the Securities Act Defendants  
7 not to confirm specific eligibility requirements in advance of IPO given the fundamental  
8 importance of insurance sales (particularly sales to BCBS-FEP insurance customers) to Eargo’s  
9 business model.

10 555. Simple due diligence would have confirmed that Eargo’s online hearing tool or a  
11 customer self-assessment was insufficient to support a hearing loss diagnosis and that, [REDACTED]  
12 [REDACTED] The  
13 Securities Act Defendants made no attempt to determine whether Eargo’s practices were consistent  
14 with those of the industry or consistent with the BCBS-FEP Policy Manual’s requirement that  
15 practices be “[i]n accordance with generally accepted standards of medical practice in the United  
16 States.” A review of Company practices, including FEHBP insurance requirements and the  
17 reimbursement documentation the Company submitted and caused to be submitted on behalf of its  
18 FEHBP customers, would have revealed that Eargo’s FEHBP customers were ineligible for a  
19 hearing aid benefit and that Eargo’s statements regarding revenue and growth were untrue.

20 556. In addition, the BCBS -FEP Policy Manual, released in October 2020 prior to  
21 Eargo’s IPO, stated that “[o]ver the counter hearing aids, enhancement devices, accessories or  
22 supplies (including remote controls and warranty package)” were “Not covered” by its Plan, and  
23 that Plan Members had to pay “All charges” for such items. Similarly, an October 2020 BCBS  
24 FEP UM Guideline, also issued prior to Eargo’s IPO, stated that “[o]ver-the-counter hearing  
25 aids/hearing assistive devices/personal sound amplification products (PSAPs) available without a  
26 prescription” were “Not covered” by the Plan.

27 557. This information should have triggered investigation into the scope of BCBS-FEP  
28 coverage and into Eargo’s practices with respect to reimbursement requests (including as to



1 additional FEHBP insurers), and in particular how it supported its diagnosis codes.

2 558. A reasonably prudent actor would have required Eargo, prior to embarking on a  
3 multi-million stock offering, to confirm that its hearing aids were covered by its primary third-  
4 party payer, as well as to confirm that its online hearing tool was sufficient to support a hearing  
5 loss diagnosis and finding of medical necessity—particularly given that FEHBP customers  
6 comprised 45% of Eargo’s customers base and the Company’s largest potential for growth.

7 559. Given the stated importance of sales to customers with an FEHBP insurance  
8 benefit, who comprised approximately 45% of Eargo customers at the time of the Offering, it was  
9 incumbent upon the Securities Act Defendants to ensure that such FEHBP customers were actually  
10 eligible for reimbursement given the manner in which Eargo sold its products and submitted (and  
11 caused the submission) of insurance reimbursement claims. Yet none of the Securities Act  
12 Defendants made a reasonable investigation regarding Eargo’s claims process or the eligibility of  
13 Eargo insurance customers for reimbursement (including Eargo’s purported “verification” of  
14 customers with insurance benefits), particularly as to the Company’s largest-yet-undisclosed third-  
15 party payor. By failing to investigate and ensure that Eargo’s insurance customers were actually  
16 eligible for reimbursement, and that Eargo’s claims filings were accurate and supported, the  
17 Securities Act Defendants did not possess reasonable grounds for the belief that the Company’s  
18 statements regarding Eargo’s revenues, compliance with GAAP, loss contingency, accounts  
19 receivable, penetration into the insurance pool, growth strategy, and the overall insurance pool  
20 were accurate and complete and not misstated in material respects.

21 560. **Second**, at the time of Eargo’s IPO, and as the Company disclosed in the Offering  
22 Documents, Eargo had identified a material weakness in its internal controls over financial  
23 reporting. Specifically, the Prospectus disclosed, “In connection with the preparation of our  
24 financial statements, we identified a material weakness in our internal control over financial  
25 reporting . . . . The material weakness related to a lack of qualified supervisory accounting  
26 resources, including those necessary to account for and disclose certain complex transactions and  
27 for which we lacked the technical expertise to identify, analyze and appropriately record those  
28 transactions.” The Prospectus warned that the Company “cannot assure” investors that “the

1 measures we have taken to date, and are continuing to implement, will be sufficient to remediate  
2 the material weakness we have identified or avoid potential future material weaknesses.”

3 561. Weaknesses in internal controls over financial reporting increase the risk of a  
4 misstatement. The Public Companies Accounting Oversight Board (“PCAOB”) highlights the  
5 “employment of ineffective accounting [or] internal audit” and “[i]neffective accounting” as risk  
6 factors relating to—the very internal control deficiencies Eargo acknowledged existed at the time  
7 of the IPO. AS 2401.A2, Opportunities at d. The existence of these material weaknesses, the lack  
8 of any external audit of Eargo’s internal controls, and the lack of audited financial results for the  
9 reported periods in 2020, should have prompted the Underwriter Defendants to scrutinize Eargo’s  
10 internal controls over financial reporting to ensure that Eargo’s statements about its business and  
11 finances were accurate.

12 562. *Third*, Eargo’s designation as an “emerging growth company” is a red flag that the  
13 Underwriter Defendants should not have ignored. The emerging growth company designation,  
14 established under the Jumpstart Our Business Startups (“JOBS”) Act of 2012, makes it easier for  
15 small and growing businesses, specifically those on track to conduct an initial public offering, to  
16 attract investors and access capital by relaxing regulatory requirements and cutting some red  
17 tape. Eargo is such a company, having noted in its Offering Documents, “We are an ‘emerging  
18 growth company’ as defined under the federal securities laws and, as such, have elected to comply  
19 with certain reduced public company reporting requirements for this prospectus and may elect to  
20 do so in future filings.”

21 563. The PCAOB has called attention to the potential for material weaknesses at  
22 companies that designate themselves as emerging growth companies. In a “White Paper on  
23 Characteristics of Emerging Growth Companies” issued in November 2016, the PCAOB noted  
24 that, as of November 2016, among the companies that had filed with the SEC as emerging growth  
25 companies and had provided management reports on internal controls over financial reporting,  
26 47% had identified material weaknesses in internal controls. In another white paper published in  
27 March 2017, the PCAOB found that found that of 1,951 companies reporting as EGCs in the 18  
28 months prior to the reporting period, more than half (51 percent), received an explanatory

1 paragraph in their most recent auditor's report expressing substantial doubt about the company's  
2 ability to continue as a going concern. Further reporting on emerging growth companies since the  
3 passage of the JOBS Act has suggested that emerging growth companies—which can take  
4 advantage of reduced reporting requirements and time and cost reductions in order to go public—  
5 have increased opportunities for misrepresentations in Registration Statements.

6 564. *Fourth*, Eargo disclosed that the Company recognized revenue when its products  
7 are shipped to customers, but that revenue was not, in fact, realized or realizable because Eargo's  
8 products were not, in fact, reimbursable by FEHB insurers. These customers comprised  
9 approximately 45% of Eargo's customer base, and the Company described insurance customers as  
10 an important growth driver. Given the time gap between revenue recognition and actual payment,  
11 the Underwriter Defendants should have conducted adequate due diligence to ascertain that Eargo  
12 was, in fact, verifying its products eligibility to be reimbursed by its third-party payors and  
13 submitting appropriate reimbursement claims before recognizing the revenue from those products,  
14 particularly given that Eargo reported unaudited financial results for the periods in 2020 reported  
15 in the Offering Documents.

16 565. The foregoing red flags should have caused the Underwriter Defendants and all  
17 Securities Act Defendants to conduct additional due diligence before drafting and disseminating  
18 the Offering Documents. By overlooking these red flags, the Securities Act Defendants  
19 negligently failed to conduct reasonable due diligence into the accuracy and completeness of the  
20 representations contained in the Offering Documents, and are liable for the misstatements and  
21 omissions contained in the registration statements.

22 566. Had the Securities Act Defendants exercised reasonable care, they would have  
23 known of the material misstatements and omissions alleged herein.

24 567. The Underwriter Defendants could not simply rely on Eargo or on the work of  
25 Eargo's outside auditors because the investing public relies on the underwriters to obtain and verify  
26 relevant information and then make sure that essential facts are disclosed. As described above,  
27 Eargo included unaudited results for reporting periods in 2020 in its Offering Documents. Thus,  
28 the Underwriter Defendants must each conduct its own, independent (and reasonable)

1 investigation. A reasonable investigation would have disclosed to the Underwriter Defendants  
2 that the Offering Documents contained material misstatements and omissions concerning the  
3 subjects noted above, including Eargo's sales practices and net revenue results.

4 568. Further, given the existence of industry billing standards, it was incumbent upon  
5 the Underwriter Defendants to conduct an independent (and reasonable) investigation as to  
6 whether Eargo's insurance practices were consistent with those industry standards.

7 569. Similarly, the Securities Act Individual Defendants who signed the Registration  
8 Statement failed to conduct a reasonable investigation of the statements contained in the  
9 Registration Statement and documents incorporated therein by reference and did not possess  
10 reasonable grounds for believing that the statements therein were true and not materially misstated.  
11 A reasonable investigation would have disclosed to the Securities Act Individual that the Offering  
12 Documents contained material misstatements and omissions concerning the subjects noted above,  
13 including Eargo's insurance practices, sales, and net revenue.

14 570. These Securities Act Defendants were sophisticated in financing and internal  
15 control issues given their collective industry experience and yet failed to reasonably inquire as to  
16 the Company's misstatements and omissions notwithstanding numerous "red flags" noted above.

17 **F. CLASS ACTION ALLEGATIONS APPLICABLE TO THE SECURITIES**  
18 **ACT CLAIMS**

19 571. Lead Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23(a)  
20 and 23(b)(3) on behalf of a Class consisting of all those who purchased or otherwise acquired the  
21 common stock of Eargo in or traceable to the IPO, and who were damaged thereby (the "Securities  
22 Act Class"). Excluded from the Securities Act Class are Defendants, the officers and directors of  
23 Eargo at all relevant times, members of their immediate families and their legal representatives,  
24 heirs, agents, affiliates, successors or assigns, Defendants' liability insurance carriers and any  
25 affiliates or subsidiaries thereof, and any entity in which Defendants or their immediate families  
26 have or had a controlling interest.

27 572. The members of the Securities Act Class are so numerous that joinder of all  
28 members is impracticable. Eargo shares were actively traded on the Nasdaq Stock Market. As of

1 September 14, 2021, Eargo had over 39 million shares of common stock outstanding, owned by  
2 hundreds or thousands of investors. While the exact number of Securities Act Class members is  
3 unknown to Lead Plaintiffs at this time and can only be ascertained through appropriate discovery,  
4 Lead Plaintiffs believe that there are at least hundreds or thousands of members of the proposed  
5 Securities Act Class. Securities Act Class members who purchased Eargo common stock may be  
6 identified from records maintained by Eargo or its transfer agent(s), and may be notified of this  
7 class action using a form of notice similar to that customarily used in securities class actions.

8 573. Lead Plaintiff's claims are typical of Securities Act Class members' claims, as all  
9 members of the Securities Act Class were similarly affected by Defendants' wrongful conduct in  
10 violation of federal laws as complained of herein.

11 574. Lead Plaintiffs will fairly and adequately protect Securities Act Class members'  
12 interests and have retained competent counsel experienced in class actions and securities litigation.

13 575. Common questions of law and fact exist as to all Securities Act Class members and  
14 predominate over any questions solely affecting individual Securities Act Class members. Among  
15 the questions of fact and law common to the Securities Act Class are:

16 (a) whether the federal securities laws were violated by Defendants' acts and  
17 omissions as alleged herein;

18 (b) whether the Defendants made statements to the investing public in the  
19 Offering Documents that were inaccurate or omitted material facts; and

20 (c) the proper way to measure damages.

21 576. A class action is superior to all other available methods for the fair and efficient  
22 adjudication of this action because joinder of all Securities Act Class members is impracticable.  
23 Additionally, the damage suffered by some individual Securities Act Class members may be  
24 relatively small so that the burden and expense of individual litigation make it impossible for such  
25 members to individually redress the wrong done to them. There will be no difficulty in the  
26 management of this action as a class action.

**COUNT III**

**Against Eargo, The Securities Act Individual Defendants, And  
The Underwriter Defendants For Violations of Section 11 Of The Securities Act**

577. Plaintiff repeats and realleges each allegation contained in the Securities Act Section of the Complaint, namely ¶¶386-576 above.

578. This Count is brought by Plaintiff under Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of all persons and entities that purchased and otherwise acquired Eargo common stock in connection with, and traceable to, the Offering, and does not sound in fraud.

579. The Offering Documents were inaccurate, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and failed adequately to disclose material facts, as alleged above.

580. The Company is the registrant for the Offering. As issuer of the shares, Eargo is strictly liable to Plaintiff and to the members of the Class for the misstatements and omissions in the Offering Documents.

581. As signatories of the Offering Documents, the Securities Act Individual Defendants were responsible for their contents and dissemination.

582. The Underwriter Defendants served as the underwriters for the Offering and each qualifies as the “underwriter” according to the definition contained in Section 2(a)(11) of the Securities Act, 15 U.S.C. § 77b(a)(11). As such, each Underwriter Defendant participated in the solicitation, offering, and sale of the securities to the investing public under the Offering Documents.

583. None of these Securities Act Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Offering Documents were true, did not omit any material facts, and were not misleading.

584. These Securities Act Defendants issued, caused to be issued, and participated in the issuance of materially untrue written statements to the investing public that were contained in the Offering Documents, which misrepresented or failed to disclose, inter alia, the facts alleged above. By reasons of the conduct alleged, each of these Securities Act Defendants violated Section 11 of

1 the Securities Act.

2 585. Plaintiff and other members of the Class acquired Eargo common stock either in or  
3 traceable to the Offering.

4 586. Plaintiff and the Class have sustained damages. The value of Eargo's common  
5 stock has declined substantially after and as a result of the alleged violations.

6 587. At the times when they purchased Eargo common stock, Plaintiff and the other  
7 members of the Class were without knowledge of the facts concerning the wrongful conduct  
8 alleged in this Complaint and could not have reasonably discovered those facts before Eargo's  
9 subsequent announcements. Less than one year has elapsed from the time when Plaintiff  
10 discovered or reasonably could have discovered the facts upon which this Complaint is based to  
11 the time when Plaintiff filed this Complaint. Less than three years have elapsed from the time  
12 when the securities upon which this Count is brought were bona fide offered to the public to the  
13 time when Plaintiff filed this Complaint.

14 **COUNT IV**

15 **Against Eargo And The Underwriter Defendants For**  
16 **Violations Of Section 12(a)(2) Of The Securities Act**

17 588. Plaintiff repeats and realleges each allegation contained in the Securities Act  
18 Section of the Complaint, namely ¶¶386-576 above.

19 589. This Count is brought by Plaintiff under Section 12(a)(2) of the Securities Act, 15  
20 U.S.C. § 771(a)(2), on behalf of all purchasers of Eargo common stock in connection with, and  
21 traceable to, the Offering.

22 590. Eargo and the Underwriter Defendants were sellers, offerors, and solicitors of sales  
23 of the securities offered using the Offering Documents in the Offering.

24 591. The Offering Documents contained untrue statements of material facts, omitted to  
25 state other facts necessary to make the statements made not misleading, and failed to disclose  
26 material facts. The actions of solicitation by Eargo and the Underwriter Defendants included  
27 participating in the preparation and distribution of the false and misleading Offering Documents.

28 592. Eargo and the Underwriter Defendants breached their duty owed to the purchasers

1 of Eargo common stock, including Plaintiff and other Class members, to make a reasonable and  
2 diligent investigation of the statements contained in the Offering Documents and to ensure that the  
3 statements were true and that the Offering Documents did not omit to state a material fact required  
4 to be stated in order to make the statements contained in the Offering Documents not misleading.

5 593. Plaintiff and other members of the Class purchased or otherwise acquired Eargo  
6 securities in or traceable to the Offering. Lead Plaintiff and other members of the Class did not  
7 know, and in the exercise of reasonable diligence could not have known, of the untruths and  
8 omissions contained in the Offering Documents.

9 594. Plaintiff, individually and representatively, offers to tender to Eargo and the  
10 Underwriter Defendants those securities that Plaintiff and other Class members continue to own,  
11 on behalf of all members of the Class who continue to own the securities, in return for the  
12 consideration paid for those securities together with interest on the amount owed to Plaintiff and  
13 the Class under Section 12(a)(2).

14 595. By reason of the conduct alleged in this Complaint, Eargo and the Underwriter  
15 Defendants violated Section 12(a)(2) of the Securities Act. Accordingly, Plaintiff and members  
16 of the Class who hold Eargo securities purchased in the Offering have the right to rescind and  
17 recover the consideration paid for their Eargo shares and elect to rescind and tender their Eargo  
18 securities to Eargo and the Underwriter Defendants. Class members who have sold their Eargo  
19 common stock are entitled to rescissionary damages.

20 596. Less than three years have elapsed from the time when the securities upon which  
21 this Count is brought were sold to the public to the time of the filing of this action. Less than one  
22 year has elapsed from the time when Plaintiff discovered or reasonably could have discovered the  
23 facts upon which this Count is based to the time of the filing of this action.

24 **COUNT V**

25 **Against The Securities Act Individual Defendants For Violations**  
26 **Of Section 15 Of The Securities Act**

27 597. Plaintiff repeats and realleges each allegation contained in the Securities Act  
28 Section of the Complaint, namely ¶¶386-576 above.



1           598. This Count is brought by Plaintiff under Section 15 of the Securities Act, 15 U.S.C.  
2 § 77o, on behalf of all purchasers of Eargo common stock in connection with, and traceable to, the  
3 Offering.

4           599. Each of the Securities Act Individual Defendants was a control person of Eargo by  
5 virtue of his or her position as a director or senior officer of the Company. Each of the Securities  
6 Act Individual Defendants was a control person of Eargo within the meaning of Section 15 of the  
7 Securities Act by reason of his or her own involvement in the daily business of Eargo and as a  
8 senior executive or director of Eargo. The Securities Act Individual Defendants, at the time they  
9 held positions with Eargo, were able to, and did, exercise substantial control over Eargo's  
10 operations, including control of the materially untrue and misleading statements, omissions, and  
11 course of conduct complained of in this action.

12           600. Each of the Securities Act Individual Defendants was a culpable participant in the  
13 violations of Sections 11 and 12(a)(2) of the Securities Act alleged in Counts III and IV above,  
14 based on having signed the Offering Documents and having otherwise participated in the process  
15 that allowed the Offering to be completed.

16           601. As a result of the foregoing, Plaintiff and the other members of the Class have  
17 suffered damages.

18 **III. PRAYER FOR RELIEF**

19           602. WHEREFORE, Lead Plaintiffs pray for relief and judgment as follows:

- 20           (a) Declaring the action to be a proper class action pursuant to Rule 23(a) and  
21           (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;  
22           (b) Awarding all damages and other remedies available under the Securities Act  
23           and the Securities Exchange Act in favor of Lead Plaintiffs and all members of the  
24           Class against Defendants in an amount to be proven at trial, including interest  
25           thereon;  
26           (c) Awarding Lead Plaintiffs and the Class their reasonable costs and expenses  
27           incurred in this action, including attorneys' fees and expert fees; and  
28           (d) Such other and further relief as the Court may deem just and proper.

1 **IV. JURY TRIAL DEMANDED**

2 Lead Plaintiffs demand a trial by jury.

3  
4 Dated: March 16, 2023

Respectfully submitted,

5  
6 **BERNSTEIN LITOWITZ BERGER  
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*Counsel for Lead Plaintiffs IBEW Local 353 Pension  
Plan and Xiaobin Cai and Lead Counsel for the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2023, the foregoing document was served on counsel for Defendants in the above-captioned action.

Executed on March 16, 2023, at Los Angeles, California.

/s/ Jonathan D. Uslaner  
JONATHAN D. USLANER

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