

IBEW Local 353 Pension Plan v. Eargo, Inc.

COURT: United States District Court for the Northern District of California
CASE NUMBER: 3:21-cv-8747
CLASS PERIOD: 10/20/2020 - 09/22/2021
CASE LEADERS: Avi Josefson, John Rizio-Hamilton, Hannah Ross, Scott R. Foglietta, Jonathan D. Uslaner
CASE TEAM: Shane Avidan

This securities class action is filed in the U.S. District Court for the Northern District of California on behalf of investors in Eargo, Inc. (“Eargo” or the “Company”), who purchased of Eargo common stock between October 15, 2020 and September 22, 2021, inclusive (the “Class Period”), and/or investors that purchased Eargo common stock in or traceable to the IPO. The case alleges claims under Section 10(b) of the Exchange Act and rule 10b-5 against Eargo and certain of the Company’s senior executives, current and former members of the Company’s Board of Directors, and underwriters of Eargo’s October 15, 2020 initial public offering (“IPO”) (“Individual Defendants” collectively “Defendants”), under Section 20(a) of the Exchange Act against the Defendants, and under sections 10(b) and 20A of the Exchange Act and rule 10b-5 for insider trading against certain of the Individual Defendants. The Honorable Charles Breyer is presiding over the case.

Based in San Jose, California Eargo is a medical device company that manufactures and sells hearing aids directly to consumers with mild to moderate hearing loss.

The Complaint alleges that, in the offering materials issued in connection with the IPO and throughout the Class Period, Eargo made numerous false and misleading representations concerning the extent of available insurance coverage for Eargo’s products and how that coverage purportedly drove the Company’s earnings and growth. In addition, the Company touted its advertising as a key source of growth among insurance customers, including ads directly targeting federal employees and retirees, which purportedly grew Eargo’s customer base at a low marginal cost. Moreover, Eargo directly tied its positive financial guidance to its insurance customer base, touting insurance customers as an important revenue driver.

The truth began to emerge on August 12, 2021, after the market closed, when Eargo revealed that claims Eargo submitted to its largest third-party payor had not been paid since March 1, 2021, while that third-party payor was conducting a claims audit. These deferred payments caused Eargo’s accounts receivable to grow significantly over prior periods. Despite these disclosures, however, Eargo downplayed the significance of the claims audit and provided investors with false assurances about the strength of the Company’s insurance-derived revenues and growth prospects.

Then, on September 22, 2021, after the market closed, Eargo disclosed that insurance claims it submitted on behalf of certain customers may have constituted a fraud on the U.S. federal government. Specifically, Eargo revealed that the DOJ launched a criminal investigation of the Company related to insurance reimbursement claims that Eargo submitted on behalf of customers covered by federal employee health plans. As a result of the DOJ’s criminal investigation of the Company, Eargo withdrew its 2021 financial guidance. As a result of these disclosures, the price of Eargo shares declined precipitously.

On January 5, 2022, the court appointed IBEW Local 353 Pension Plan as co-lead Plaintiff and BLB&G as co-lead Counsel for the Class. On November 10, 2021, Lead Plaintiffs filed the Initial Complaint.

On April 29, 2022, Eargo reached a \$34 million settlement agreement with the Department of Justice ("DOJ") regarding healthcare fraud claims. The government found that the Company "knowingly submit[ed] or cause[ed] the submission of false claims for payment" to federal employee insurance providers.

The Amended Complaint was filed on May 20, 2022.

As a result of the settlement, on June 8, 2022, Lead Plaintiff filed a Motion for Partial Lift of the PSLRA's Discovery Stay for materials produced to the DOJ in connection with the investigation of Eargo, Inc. The motion was granted on June 30, 2022.

Defendants filed their motion to dismiss on July 29, 2022. Lead Plaintiff filed their Opposition to this motion on September 7, 2022. On October 7, 2022, Defendants filed a reply in further support of their motion to dismiss. The hearing on the motion to dismiss took place on January 27, 2023.

On February 14, 2023, Judge Breyer granted Defendants' motion to dismiss the Amended Complaint. On March 16, 2023, Lead Plaintiffs filed the Second Amended Complaint. Defendants filed their motion to dismiss the Second Amended Complaint on April 21, 2023. Lead Plaintiffs filed an Opposition to this motion on May 26, 2023. Defendants filed a reply in further support of their motion to dismiss on June 23, 2023. On August 31, 2023, Judge Breyer granted Defendants' motion to dismiss the Second Amended Complaint.

On January 25, 2024, Lead Plaintiffs appealed Judge Breyer's August 31, 2023 decision before the Court of Appeals for the Ninth Circuit. Defendants' opposition brief is due on March 27, 2024 and Lead Plaintiffs' reply brief is due on April 17, 2024.

Case Documents

- March 16, 2023 - Second Amended Class Action Complaint
- May 20, 2022 - Amended Class Action Complaint
- November 10, 2021 - Initial Complaint
- November 10, 2021 - PSLRA Notice