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: Kate Aufses

On November 10, 2021, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") filed a class action lawsuit for violations of the federal securities laws in the U.S. District Court for the Northern District of California against Eargo, Inc. ("Eargo" or the "Company"), 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") (collectively, "Defendants"). The complaint expands the class period that was asserted in a previously filed related securities class action pending against Eargo captioned *Fazio v. Eargo, Inc.*, No. 4:21-cv-07848 (N.D. Cal.), and is brought on behalf of investors that incurred damages on their purchases 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.

BLB&G filed this action on behalf of its client, IBEW Local 353 Pension Plan, and the case is captioned *IBEW Local 353 Pension Plan v. Eargo, Inc.*, No. 3:21-cv-8747 (N.D. Cal.). The complaint is based on an extensive investigation and a careful evaluation of the merits of this case. To view the complaint, see the Case Documents section of this page.

<u>Eargo's Alleged Fraud</u>

Headquartered 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. Eargo advertises heavily through various media outlets, touting the availability of insurance coverage for its products as a primary selling point and offering to process insurance claims on behalf of its customers. In October 2020, the Company conducted its IPO, in which it ultimately offered and sold over 9 million shares of Eargo common stock at a price of $18.00 per share, reaping nearly $163 million in gross proceeds.

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.

In reality, however, insurance coverage could not drive Eargo's revenues and growth because insurers do not cover claims for Eargo's products at the level the Company represented to investors. Moreover, contrary to representations that insurance customers were a sustainable driver of Eargo's financial results, a substantial portion of insurance claims Eargo submitted were likely improper and may have constituted a fraud on the U.S. federal government, which has triggered a criminal investigation of the Company by the U.S. Department of Justice ("DOJ"). As a result of these misrepresentations, Eargo shares traded at artificially inflated prices during the Class Period.

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.

The filing of this action does not alter the previously established deadline to seek appointment as Lead Plaintiff. Pursuant to the October 6, 2021 notice published in connection with the *Fazio* action, under the Private Securities Litigation Reform Act of 1995, investors who purchased or otherwise acquired Eargo securities during the Class Period may, no later than December 6, 2021, seek to be appointed as Lead Plaintiff for the Class. Any member of the proposed Class may seek to serve as Lead Plaintiff through counsel of their choice, or may choose to do nothing and remain a member of the proposed Class.

If you wish to discuss this action or have any questions concerning this notice or your rights or interests, please contact Scott R. Foglietta of BLB&G at 212-554-1903, or via e-mail at scott.foglietta@blbglaw.com.

Case Documents

- May 20, 2022 - Amended Class Action Complaint
- November 10, 2021 - Initial Complaint
- November 10, 2021 - PSLRA Notice