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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 BRENT T. ROBINSON, BOYD DEEL,)	Case No. 1:12-cv-232227
DOROTHY KASIAN, DAREN NOWAK,)	
11 Individually and on Behalf of All Others)	<u>CLASS ACTION</u>
Similarly Situated,)	
)	FIRST AMENDED COMPLAINT FOR
)	VIOLATION OF §§11 AND 15 OF THE
)	SECURITIES ACT OF 1933
)	
12 Plaintiffs,)	DATE ACTION FILED: 09/13/12
)	
13 vs.)	
)	
14 AUDIENCE, INC., et al.,)	
)	
)	
15 Defendants.)	
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16)	

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1 **INTRODUCTION**

2 1. Plaintiffs make the following allegations, except as to allegations specifically pertaining
3 to plaintiffs and plaintiffs’ counsel, based upon the investigation undertaken by plaintiffs’ counsel,
4 including analysis of publicly available news articles and reports, public filings, securities analysts’
5 reports and advisories about Audience, Inc. (“Audience” or the “Company”), press releases and other
6 public statements issued by the Company, and media reports about the Company. Plaintiffs believe that
7 substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable
8 opportunity for discovery.

9 **NATURE OF THE ACTION**

10 2. This is a securities class action on behalf of all persons who purchased or otherwise
11 acquired Audience common stock issued pursuant or traceable to the Company’s false and misleading
12 registration statement and prospectus filed in connection with its May 9, 2012 initial public offering
13 (“IPO”), seeking to pursue remedies under the Securities Act of 1933 (“1933 Act”).

14 3. Audience provides voice and audio solutions that improve voice quality and the user
15 experience in mobile devices.

16 4. On or about May 10, 2012, Audience filed its Prospectus (“Prospectus”), which forms
17 part of the May 8, 2012 Form S-1/A Registration Statement for the IPO (the “Registration Statement”),
18 which became effective on May 9, 2012. At least 6,060,707 shares of Audience common stock were
19 sold to the public at \$17 per share (sold by the Company and certain selling shareholders, including an
20 over-allotment of 790,527 shares exercised by the underwriters), raising over \$103 million in gross
21 proceeds for the Company and the selling shareholders.

22 5. After the market closed on September 6, 2012, however, Audience issued a press release
23 announcing that it was unlikely that Apple, Inc. (“Apple”), its key client, would use Audience’s
24 earSmart voice isolation/noise cancellation technology in Apple’s much anticipated iPhone 5, which
25 was expected to launch in mid-to-late September 2012.

26 6. On this news, Audience common stock dropped quickly, falling \$11.96 per share to close
27 at \$6.90 per share on September 7, 2012, a one-day decline of more than 63%, on extremely high
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1 volume. This represented a nearly 60% decline in Audience’s stock price from the IPO price of \$17 per
2 share.

3 7. The true facts, omitted from the Registration Statement, were that:

4 (a) Audience’s relationship with its most important original equipment manufacturer
5 (“OEM”) was not as close as indicated by its statements in the IPO Prospectus, and Audience did not
6 have a unique understanding of Apple’s products, as would ultimately be revealed when defendants
7 referred to important parallel efforts by Apple of which Audience was unaware; and

8 (b) As demonstrated by the advanced technology required and the alterations to
9 hardware and software necessary for the improved audio capabilities of the iPhone 5, together with the
10 short lead-time between the IPO and the leaking of information revealing significant changes in the
11 relationship with Apple, Apple had decided to replace Audience’s earSmart technology in the iPhone 5
12 and had decided to handle the function in-house, integrating its own voice isolation/noise cancellation
13 technology into its mobile devices.

14 **JURISDICTION AND VENUE**

15 8. The claims alleged herein arise under §§11 and 15 of the 1933 Act, 15 U.S.C. §§77k,
16 77l(a)(2) and 77o. Jurisdiction is conferred by §22 of the 1933 Act and venue is proper pursuant to §22
17 of the 1933 Act. Section 22 of the 1933 Act explicitly states that “[e]xcept as provided in section 16(c),
18 no case arising under this title and brought in any State court of competent jurisdiction shall be removed
19 to any court of the United States.” Section 16(c) refers to “covered class actions,” which are defined as
20 certain lawsuits brought as class actions under state or common law. This is an action asserting federal
21 law claims. Thus, it does not fall within the definition of a “covered class action” under §16(b)-(c) and
22 therefore is not removable to federal court under the Securities Litigation Uniform Standards Act of
23 1998.

24 9. The violations of law complained of herein occurred in this County, including the
25 dissemination of materially false and misleading statements complained of herein into this County.
26 Audience is located and conducts business in this County.

1 **PARTIES**

2 10. Plaintiffs Brent T. Robinson, Boyd Deel, Dorothy Kasian and Daren Nowak acquired the
3 common stock of Audience pursuant or traceable to the IPO and have been damaged thereby.

4 11. Defendant Audience develops and markets audio solutions that improve voice quality
5 and the user experience in mobile devices.

6 12. Defendant Peter B. Santos (“Santos”) is, and at all relevant times was, President, Chief
7 Executive Officer (“CEO”) and a director of Audience. Defendant Santos signed the false and
8 misleading Registration Statement. Defendant Santos sold 20,000 shares of his Audience stock in the
9 IPO for net proceeds of \$340,000.

10 13. Defendant Mohan S. Gyani (“Gyani”) is, and at all relevant times was, Chairman of the
11 Board of Audience. Defendant Gyani signed the false and misleading Registration Statement.

12 14. Defendant Kevin S. Palatnik (“Palatnik”) is, and at all relevant times was, Chief
13 Financial Officer of Audience. Defendant Palatnik signed the false and misleading Registration
14 Statement.

15 15. Defendant Forest Baskett (“Baskett”) is, and at all relevant times was, a director of
16 Audience. Defendant Baskett signed the false and misleading Registration Statement.

17 16. Defendant Marvin D. Burkett (“Burkett”) is, and at all relevant times was, a director of
18 Audience. Defendant Burkett signed the false and misleading Registration Statement.

19 17. Defendant Barry L. Cox (“Cox”) is, and at all relevant times was, a director of Audience.
20 Defendant Cox signed the false and misleading Registration Statement.

21 18. Defendant Rich Geruson (“Geruson”) is, and at all relevant times was, a director of
22 Audience. Defendant Geruson signed the false and misleading Registration Statement.

23 19. Defendant George A. Pavlov (“Pavlov”) is, and at all relevant times was, a director of
24 Audience. Defendant Pavlov signed the false and misleading Registration Statement.

25 20. The defendants referenced above in ¶¶12-19 are referred to herein as the “Individual
26 Defendants.”

27 21. Defendant J.P. Morgan Securities LLC (“JP Morgan”) is the U.S. investment banking
28 arm of financial services giant JPMorgan Chase & Co. JP Morgan provides debt and equity

1 underwriting, acquisitions and corporate restructuring advisory, securities dealing and brokerage, and
2 trade execution services for large-market companies and institutional investors. JP Morgan acted as an
3 underwriter for Audience’s IPO, helping to draft and disseminate the offering documents.

4 22. Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) operates as an
5 investment bank in the United States. Its businesses include securities underwriting, sales and trading,
6 investment banking, private equity, alternative assets, financial advisory services, investment research
7 and asset management. Credit Suisse acted as an underwriter for Audience’s IPO, helping to draft and
8 disseminate the offering documents.

9 23. Defendant Deutsche Bank Securities Inc. (“Deutsche Bank”) is the U.S. investment
10 banking and securities arm of Deutsche Bank AG. Deutsche Bank provides investment banking
11 products and services. Deutsche Bank acted as an underwriter for Audience’s IPO, helping to draft and
12 disseminate the offering documents.

13 24. Defendant Pacific Crest Securities LLC (“Pacific Crest”) provides investment banking
14 products and services. Pacific Crest acted as an underwriter for Audience’s IPO, helping to draft and
15 disseminate the offering documents.

16 25. The defendants named in ¶¶21-24 are referred to herein as the “Underwriter
17 Defendants.”

18 26. Defendant Audience and the defendants who signed the Registration Statement are liable
19 for the false and misleading statements incorporated into the Registration Statement. The Underwriter
20 Defendants drafted and disseminated the offering documents and were paid an estimated \$6.3 million in
21 connection therewith. The Underwriter Defendants’ failure to conduct adequate due diligence
22 investigations was a substantial factor leading to the harm complained of herein.

23 27. The true names and capacities of defendants sued herein under California Code of Civil
24 Procedure §474 as Does 1 through 25, inclusive, are presently not known to plaintiffs, who therefore
25 sue these defendants by such fictitious names. Plaintiffs will seek to amend this complaint and include
26 these Doe defendants’ true names and capacities when they are ascertained. Each of the fictitiously
27 named defendants is responsible in some manner for the conduct alleged herein and for the injuries
28 suffered by the Class (as defined below).

1 **BACKGROUND**

2 28. Audience develops and markets voice and audio solutions that improve voice quality and
3 the user experience in mobile devices. The Company’s solutions include digital service processors
4 (“DSPs”), algorithms for voice isolation and noise suppression and its design tools and support
5 capabilities. These processors enable noise suppression and improved sound quality for real-time
6 communications, speech-based applications and multimedia.

7 29. Audience supplies voice isolation/noise cancellation technology that makes spoken
8 words easier to hear and reduces background noises. Audience’s flagship product is the earSmart Voice
9 Processor. Audience has been a supplier to Apple since 2008, delivering noise-cancelling technology to
10 Apple’s popular iPhones and other mobile devices. Initially, Audience provided Apple with stand-
11 alone Audience chips for its iPhones, including for the iPhone 4. Thereafter, Apple integrated
12 Audience’s earSmart voice and audio circuitry in the A5 chip that powers the iPhone 4S. In the iPhone
13 4s, Apple relied on Audience’s earSmart technology to improve the hearing of Siri, the iPhone’s virtual
14 assistant.

15 30. Audience is heavily reliant on its relationship with Apple. For fiscal years 2010 and
16 2011, Apple represented 82% and 75% of Audience’s revenue, respectively.

17 31. On April 19, 2012, the www.slashgear.com webpage predicted an October 2012 iPhone
18 5 introduction based on statements made by an Apple parts supplier:

19 iPhone 5 LTE release date tipped via Qualcomm shortage

20 This week it appears that the next generation iPhone 5 may have been
21 inadvertently tipped by Qualcomm’s quarterly earnings call via a supply issue warning
22 for analysts tracking their mobile chipsets. The chipsets that are, in particular, seeing a
23 strain on supply at the moment are their new 28-nm modem chips made to power the
24 next generation of LTE speed devices. Qualcomm Chief Executive Paul Jacobs spoke
25 to analysts saying that “demand went so far ahead of availability that we’ve decided to
26 start spending more money to get more supply as soon as possible.”

27 32. On May 3, 2012, the Wall Street Journal accurately reported the following information
28 concerning the iPhone 5:

Will Apple Make the iPhone Leaner and Meaner?

The new iPhone can’t arrive sooner for Apple (NASDAQ:AAPL) fans looking
for upgrades, but in the meantime, apparent leaks and rumors keep coming thick and

1 strong. The latest is that the next-generation device will be thinner and longer than its
2 previous versions, with an elongated 4-inch screen and a metallic back.

3 * * *

4 The site is also expecting Apple to add a new, smaller dock connector that is
5 only slightly larger than the existing speaker and microphone openings on the iPhone 4S
6 and includes fewer pins than the existing 30-pin connector. The new dock connector is
7 expected to be universal on all new iOS devices, including the next-generation iPod
8 touch.

9 33. On May 17, 2012, *The Wall Street Journal* correctly reported that the new iPhone 5
10 would have a larger screen, at least 4 inches diagonally, and further reported that production was set to
11 begin next month, *i.e.*, in June 2012.

12 34. On or about May 29, 2012, photographs of and information concerning the iPhone 5 and
13 the existence of a third microphone were published on the internet stating that “[n]otable changes to the
14 design of the device include placing the camera and LED flash farther apart, with what appears to be a
15 microphone between them.” *See* Exhibit A, attached hereto.

16 35. A June 4, 2012 J.P. Morgan analyst report provided the following information
17 concerning Audience and its technology:

18 Its technology significantly improves the user experience in mobile communications and
19 enhances speech recognition. . . . We estimate ADNC has an 18-24 month lead over
20 competitors and its proprietary/scalable technology based on the science of human
21 hearing should allow it to maintain high barriers to entry, in our view.

22 * * *

23 ADNC’s unparalleled technology is backed by 131 patents issued/pending and
24 holds a two-generation lead.

25 * * *

26 **Audience’s advanced engineering capabilities and proprietary technology**
27 **has created high barriers to entry**

28 ADNC’s proprietary technology replicates the human hearing system and is
superior to competitive chip solutions and has at least a two-generation lead over its
nearest competitors, in our view. Additionally, this proprietary chip and advance
software architecture is protected by over 131 patents issued/pending covering its analog
and digital signal processing building blocks, programmable DSP architectures,
multimedia processing, audio algorithms, audio CODECs and amplifiers, embedded
firmware and operating systems, tools and audio tuning capabilities. We believe that
Audience’s proprietary voice and audio processing architecture, combined with a
growing IP portfolio and continued feature and functionality integration will help
maintain its market leadership, in our view.

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2 We note that wider frequency range with wideband calling, speech recognition
3 and multimedia poses more challenges and requires broader, more robust processing
4 capabilities. One of the drawbacks of wider frequency range is that it lets through more
5 noise – the noise energy compared to voice is relatively louder at higher frequency. As
6 such, wideband architecture requires greater computation and analytical techniques to
7 distinguish voice at higher frequencies. An even larger challenge is when a microphone
8 is farther from the talker’s mouth such as in video communications and multimedia
9 recording. And for the most important usage of speech recognition, keyboard
10 replacement, the user holds the device away so they can see the search result and touch
11 it.

12 These two factors often will combine to make noise a much bigger problem for
13 these key applications turning a moderately quiet environment into a challenging
14 acoustic problem.

15 36. The J.P. Morgan analyst report also referred to Audience’s “[d]eep relationships with
16 [c]arriers, OEMs, and OS vendors” including Apple:

17 Audience partners with innovators and leading market OEMs in the smartphone
18 market. The company’s two largest customers Apple and Samsung are the top two
19 smartphone vendors in the world. According to Gartner, both of these customers hold
20 leading market share: Apple at 19% of market share and Samsung with 18% of market
21 share in 2011

22 Audience’s solutions and expertise have enabled these OEMs to differentiate
23 their products in the highly competitive mobile devices market. The unique offering by
24 Audience has enabled it to expand its existing engagements and increase its solutions’
25 penetration across an OEM’s multiple product platforms. For example, since its initial
26 agreement with Apple, Audience has collaborated with Apple to integrate its IP solution
27 in Apple’s next-generation products. The company also provides significant OEM
28 design support capabilities and works closely with OEMs throughout their design
processes. For instance, ADNC’s proprietary AuViD graphical design tools enable it to
integrate its solutions into OEMs’ mobile devices, thus improving design efficiency and
productivity.

37. Deutsche Bank also issued a report shortly after the IPO, rating the stock a “buy” with a
price target of \$23.00 per share, and highlighting its conversations with Audience management and the
Company’s relationship with Apple. “As Apple shifts to a royalty-based model, it will lower overall
sales from Apple but expand Audience’s margins. For 2012, management expects that Apple will
account for 49% of sales.”

38. On June 11, 2012, Apple announced its Retina MacBook Pro (“RMBP”) at the
Worldwide Developers Conference in San Francisco. The RMBP was advertised as including new
noise suppression and voice enhancement technology based on the inclusion of an extra microphone, as
well as the use of an “adaptive beam-forming algorithm” to cancel out background noise.

1 Our OEMs['] products are complex and require significant time to design, launch and
2 ramp to volume production. As a result, our sales cycle is lengthy. We typically
3 commence commercial shipments of our products nine months to one year following a
4 design win. Because the sales cycle for our products is long, we incur expenses to
develop and sell our products, regardless of whether we achieve a design win and well
in advance of generating revenue

* * *

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6 In 2010, 2011 and the three months ended March 31, 2012, our largest OEM [Apple]
and Foxconn and Protek, its CMs, represented 82%, 75% and 62% of our revenue,
7 respectively

* * *

8
9 Since we began generating revenue in 2008, Apple, through its CMs, Foxconn
and Protek, HTC, LG, Pantech, Samsung, Sharp and Sony have incorporated our
10 products into certain smartphones and feature phones, and, in the case of HTC, media
tablets. Apple accounted for 38% of our total revenue in the three months ended March
11 31, 2012. Foxconn accounted for 81%, 65% and 18% of our total revenue in 2010,
2011 and the three months ended March 31, 2012, respectively. Protek accounted for
12 10% and 6% and Samsung accounted for 20% and 36% of our total revenue in 2011 and
the three months ended March 31, 2012, respectively. . . . We expect that our
13 relationships with Foxconn and Protek, [Apple] and Samsung will continue to account
for a substantial portion of our total revenue for 2012. No other OEM, CM or
14 distributor accounted for 10% or more of our total revenue in 2009, 2010, 2011 or the
three months ended March 31, 2012.

15 On August 6, 2008, we entered into an agreement with Apple. Pursuant to the
16 terms of the agreement, we develop, supply and support a custom version of one of our
processors and related software to Foxconn and Protek for use in certain mobile phones.
17 Pursuant to the terms of the agreement, we also license processor IP for certain mobile
devices. We have entered into statements of work under the agreement that set forth
18 terms and conditions specific to licensing processor IP. While we expect to continue to
sell our processors to Foxconn and Protek for certain mobile phones in 2012, we began
19 to receive royalties for the use of our processor IP in other mobile phones sold by the
same OEM in the three months ended March 31, 2012.

20 We may enter into license agreements with [Apple] two years or more before we
21 begin to receive royalty revenue on shipments of mobile devices incorporating our
processor IP. Under a license agreement we entered into in 2008, we began receiving
22 royalty payments in the three months ended March 31, 2012. As part of our 2008
license, we are entitled to receive a royalty for each mobile device that is sold
23 incorporating and, with respect to mobile devices other than mobile phones, enabling
our processor IP.

24 We entered into an additional license agreement with [Apple] in 2010 relating to
25 a new generation of our processor IP; however, the OEM is not obligated to use this new
processor IP, or previous processor IP we have licensed, in its mobile devices. For the
26 new generation of processor IP, the royalty is subject to a lifetime maximum, after
which we would not receive royalties for shipments of mobile devices into which that
27 processor IP is integrated.

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1 41. The IPO was successful for the Company, the selling shareholders and the underwriters.
2 At least 6,060,707 shares of Audience common stock were sold to the public at \$17 per share (sold by
3 the Company and certain selling shareholders, including 790,527 shares exercised by the underwriters
4 in an over-allotment), raising over \$103 million in gross proceeds for the Company and the selling
5 shareholders, pursuant to the IPO.

6 42. The Registration Statement and Prospectus failed to disclose that Apple had in fact
7 already decided to develop its own technology to replace Audience's product in the iPhone 5.

8 43. Following the IPO, Audience's stock price traded close to the IPO price, roughly
9 between \$16.00 - \$19.00 per share, until September 6, 2012.

10 44. Then, on September 6, 2012, after the market closed, Audience issued a press release
11 announcing that its earSmart technology would not be selected for use in Apple's iPhone 5, which was
12 scheduled to launch in mid-to-late September 2012. The release stated in part:

13 Audience sells processors and licenses its processor IP to Apple Inc. and certain
14 of its subsidiaries (collectively, OEM) for inclusion in the OEM's mobile phones
15 pursuant to a Master Development and Supply Agreement (MDSA). Pursuant to a
16 statement of work under the MDSA, amended in March 2012, Audience developed and
17 licensed a new generation of processor IP for use in the OEM's devices. However, the
18 OEM is not obligated to use Audience's processor IP.

19 Audience now believes that it is unlikely that the OEM will enable Audience's
20 processor IP in its next generation mobile phone. Audience is not aware of any intended
21 changes by this OEM to its use of Audience's processors or processor IP in prior
22 generations of the OEM's mobile phones.

23 45. On this news, Audience common stock dropped quickly, falling \$11.96 per share to close
24 at \$6.90 per share on September 7, 2012, a one-day decline of more than 63%, on extremely high
25 volume. This represented a nearly 60% decline in Audience's stock price from the IPO price of \$17 per
26 share.

27 46. On September 13, 2012, Santos participated in the Deutsche Bank dbAccess Technology
28 Conference and made the following statements:

Brian Modoff - *Deutsche Bank*

 Okay. So I guess, Peter, let's take the bull by the horns on Apple.

Peter Santos - *Audience, Inc. - President, CEO*

 Yes.

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Brian Modoff - Deutsche Bank

What do you think happened with regard to that event? Why did they go with this three microphone technology? We don't know where it's from yet, but what caused them to design you out? And what confidence can you give investors that you're stickier than that would imply –

Peter Santos - Audience, Inc. - President, CEO

Yes.

Brian Modoff - Deutsche Bank

– the technology?

Peter Santos - Audience, Inc. - President, CEO

So just in case, I'll give brief context to Brian's question. We announced last week that it was our belief it was unlikely that Apple would use – enable our technology in their upcoming phone, which as it happens, ended up being announced today. The arrangement that we had with Apple was to collaborate with them on a third phone. The company had revenue on the phone that was launched in 2010 and in the phone that was launched in 2011. That second phone, our engagement was licensing semi conductor IPs to Apple for inclusion into their A5 processor, the only customer for whom we've done that.

We had entered into an agreement to license a semiconductor IP version of our second generation technology for a new phone, the phone that we expected would be launched just this week.

We were working on deliverables with them over the last year and a half, up to and including, actually a renegotiation for different business terms, new deliverables as recently as the middle of March of this year. We continue to do to do work. We had on and off again engagement as we do with all of our customers, leading up to the release of a phone.

What we saw during the last couple of weeks, leading up to our conclusion was that we were not seeing the intensive engagement that is typical immediately before a launch. We reached out to them to understand why that was. The response that we got back was non committal. It was effectively a “we can't tell you.” And so, Audience management made the decision to declare, as we did, we believed we would not be in, because we felt it was important for the market to understand that before today's announcement.

Now what do we think happened? While we've seen how Apple has described this device in their announcement today, we still haven't actually seen the device and understanding its capabilities. You may be aware it has three microphones. We don't know if they're being used simultaneously or in different pairs. So it's essential that we actually get a hold of that device and understand what's there.

Clearly, there was a parallel activity of which we were not aware of. And so, we were unable to detect that there had been a parallel activity. Apple excels broadly in not communicating what they're doing. And that includes their relationships with vendors.

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So that makes us believe it's unlikely that there was a performance issue. Given that they went to a third mic, it seems unlikely that's economic. We do know, and all of you may be aware, that there is – that Apple is a vertically integrated company. And they have, in fact, a demonstrated tendency toward incorporation in particular technologies that are related to user interface. Touch, Siri, fingerprint sensor.

* * *

Unidentified Audience Member

Yes. Thanks. So based on what the sort of the here today stuff from the blog of the launch, and you highlight the three microphone solution, what do you versus, obviously, the capabilities of your own solution set, what could you, and I know it's conjecture, but what could you –

Peter Santos - Audience, Inc. - President, CEO

Yes.

Unidentified Audience Member

– conjecture is perhaps deficient in what that – the five might have versus what you're offering?

Peter Santos - Audience, Inc. - President, CEO

Yes. I wouldn't want to conjecture at this point. Obviously, our engineers have perspectives on what might be accomplished, based upon the representations and the announcement that describe number and arrangement of microphones. And there is some terms to describe the technology that's there. And if that's all we have to go on, we might be able to pick a bit.

But the fact is that we'll be able to see this device within a couple of weeks. And we'll be to evaluate, you know, what it has with really a very short time. So rather than trying to speculate on what's there, I'd like to wait and see.

* * *

Yes. Well, if you look at the aspects of the announcement that related to iTunes, ear buds, and listening to the speaker, there was a fairly heavy emphasis on playback, on someone listening to music. And the capabilities that we typically have brought to Apple and the market at large have really been related to sound capture.

And we believe that that is the harder and more important unsolved problem. If you think of your device understanding you, your environment, what's going on, based upon microphone inputs. De-mixing, if you will with high accuracy, we think that is an important and difficult problem to solve where we have a lead.

* * *

1 **Brian Modoff - Deutsche Bank**

2 I guess my last one is so it clearly was a three microphone design. And you
3 stated that it's not a cost savings event when they do something like that. In your
4 knowledge of the industry, what does a three microphone design tend to imply?

5 **Peter Santos - Audience, Inc. - President, CEO**

6 The classical thing is to use three microphones to be able to use different pairs in
7 different situations.

8 47. On or about September 16, 2012, the following article was posted on iPhonealley.com:

9 iPhone 5's Third Mic: "Intended for Much Improved Siri, Videos, and Calls"

10 As if two microphones were not enough, Apple has gone a step further with
11 iPhone 5 to improve its mic system. Clearer audio and a wideband range of frequencies
12 are just two features that the three-microphone setup brings to the mix.

13 We have heard from a close source that had a chance to try out iPhone 5 that
14 their experience with the new, reworked audio capture is a big improvement. The
15 source tells us that Apple's main reason for adding the third mic was so that Siri can
16 better focus on a user's voice, as well as for the intent of "much cleaner" audio in videos
17 take on iPhone 5.

18 During time spent with Siri on an iPhone 5, it was noted how much more
19 receptive the voice assistant was at recognizing what is being asked; a sharp contrast to
20 Siri's misinterpretation errors that seem common in iOS 5. Siri's additional accuracy
21 seemed to be a mixture of iOS 6 improvements as well as the significantly enhanced
22 audio system.

23 With the main purpose of the third microphone next to the camera flash on the
24 back being to analyze noise, taking the distance of sounds into calculation and
25 comparison with the main microphones, background distractions can be eliminated
26 much more so with the trifecta mic setup.

27 48. On October 25, 2012, Audience held its Third Quarter 2012 Earnings Conference Call.

28 During the call, defendants and analysts made the following statements concerning Apple and the noise
suppression technology incorporated in the iPhone 5:

Peter B. Santos

 Before I update you on recent developments in the markets we serve and in our
business specifically, I'd like to briefly address our business relationship with one of our
large customers, Apple. We announced on September 6 this year that we believed our
technology would not be enabled in Apple's new generation mobile phone. While we
still have no definitive indication from Apple, the information accompanying the release
of this phone in September, as well as the result of standard testing, substantially
support our view that our technology has not been enabled.

 The solution used in this device, in both its marketing description and
performance, appears to be a beamforming solution. Beamforming is a conventional
technology that our CASA technology has consistently beaten in the marketplace since

1 we created the advanced voice category five years ago. Beamformers in mobile devices
2 suffer from poor noise suppression performance, inadequate positional robustness,
directional sensitivity and high latency.

3 While our customer has not informed us of why this solution was chosen, it was
4 clearly not due to performance as evidenced by independent reviews, which found
noticeably inferior voice quality as compared to previous versions of this customer's
5 phones, as well as other Audience enabled devices such as the Samsung Galaxy S III. It
was also not due to microphone considerations as this device utilizes three microphones
6 rather than the two that Audience uses to deliver best-in-class advanced voice.

7 As to the source of this solution, we do not believe, nor do we see any indication,
that this is a merchant voice solution. We're also aware that **Apple has a history of
8 adopting internal solutions in certainty key technology areas such as touch, speech
recognition, fingerprint sensing, and, most recently, map technology.**

9 * * *

10 <Q - Harlan Sur>: Nice job on the quarterly execution. Peter, thanks for your
11 commentary on the iPhone 5. I know you mentioned some of the third-party analysis
that's taken place and I've seen reviews from sources like AnandTech and PCMag that
12 have concluded that the internal solution is pretty inferior relative to your technology,
but I am more interested in your team's analysis of the Apple internal solution and the
13 performance relative to your solution. So, anything you can share with us quantitatively
or qualitatively on your analysis of the solution that's been implemented on the iPhone
14 5?

15 <A - Peter B. Santos>: Sure, Harlan. First, I want to identify that at Audience,
we have a series of standard tests that we perform on all major phones, whether they
16 include our technology or other technology or cases where we're not sure which are
few. So, there's a standard battery of tests that we perform that are based upon industry
17 standards and what we found is that those results are consistent with the independent
reviews, although, of course, at a much greater level of detail. But are also consistent
18 with what we've seen from beam-forming technology over the last several years in
terms of the signature, if you will, of the performance that we see. And those
19 characteristics are a tendency to have poor positional robustness.

20 So, what that means is a tendency to either cut out the voice or permit noise as
the phone is moved, while the user is holding it, especially in far-field mode. A great
21 sensitivity to the direction from which the noise is coming, a tendency to suppress non-
stationary noise like voice and music to a much lesser extent than stationary noise, long
22 latency. So, these are the characteristics that we see in beam-forming technology, which
is the principal competition that we see from a technology standpoint across the market
23 and what you see in the reviews and some of our standard testing shows is really all of
those characteristics.

24 <Q - Harlan Sur>: So, I guess, based on that conclusion and knowing that there
are some of your service provider partners out there that have pretty stringent
25 requirements and specifications for voice quality and noise suppression, how would the
performance of the iPhone 5 perform relative to those specifications you think?
26

27 <A - Peter B. Santos>: Well, Harlan, what I can say is that again we see beam-
forming solutions frequently in the marketplace and they generally are unable to meet
28 the requirements that leading operators like AT&T are putting forward and then indeed
are strengthening. We're actually seeing strengthening of carrier requirements in some

1 common stock pursuant and/or traceable to the false and misleading Registration Statement and
2 Prospectus (Registration No. 333-179016) issued in connection with the Company's May 9, 2012 IPO
3 (the "Class"). Excluded from the Class are defendants and their families, the officers, directors and
4 affiliates of the defendants, at all relevant times, members of their immediate families and their legal
5 representatives, heirs, successors or assigns and any entity in which defendants have or had a
6 controlling interest.

7 52. The members of the Class are so numerous that joinder of all members is impracticable.
8 Audience stock was actively traded on the NASDAQ. While the exact number of Class members is
9 unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiffs
10 believe that there are hundreds of members in the proposed Class. Record owners and other members
11 of the Class may be identified from records maintained by Audience or its transfer agent and may be
12 notified of the pendency of this action by mail, using the form of notice similar to that customarily used
13 in securities class actions. Audience has more than 20.5 million shares of stock outstanding.

14 53. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of
15 the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is
16 complained of herein.

17 54. Plaintiffs will fairly and adequately protect the interests of the members of the Class and
18 has retained counsel competent and experienced in class and securities litigation.

19 55. Common questions of law and fact exist as to all members of the Class and predominate
20 over any questions solely affecting individual members of the Class. Among the questions of law and
21 fact common to the Class are:

- 22 (a) whether defendants violated the 1933 Act;
- 23 (b) whether statements made by defendants to the investing public in the Registration
24 Statement and Prospectus for the IPO misrepresented material facts about the business and prospects of
25 Audience; and
- 26 (c) to what extent the members of the Class have sustained damages and the proper
27 measure of damages.

28

1 56. A class action is superior to all other available methods for the fair and efficient
2 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
3 damages suffered by individual Class members may be relatively small, the expense and burden of
4 individual litigation make it impossible for members of the Class to individually redress the wrongs
5 done to them. There will be no difficulty in the management of this action as a class action.

6 **FIRST CAUSE OF ACTION**

7 **For Violation of Section 11 of the 1933 Act**
8 **Against All Defendants**

9 57. Plaintiffs incorporate ¶¶1-56 by reference.

10 58. This Cause of Action is brought pursuant to §11 of the 1933 Act, 15 U.S.C. §77k, on
11 behalf of the Class, against all defendants. Plaintiffs disclaim all allegations of fraud.

12 59. The Registration Statement for the IPO was inaccurate and misleading, contained untrue
13 statements of material facts, omitted to state other facts necessary to make the statements made not
14 misleading, and omitted to state material facts required to be stated therein.

15 60. Audience is the registrant for the IPO. The defendants named herein were responsible
16 for the contents and dissemination of the Registration Statement.

17 61. As issuer of the shares, Audience is strictly liable to plaintiffs and the Class for the
18 misstatements and omissions.

19 62. None of the defendants named herein made a reasonable investigation or possessed
20 reasonable grounds for the belief that the statements contained in the Registration Statement were true
21 and without omissions of any material facts and were not misleading.

22 63. By reason of the conduct herein alleged, each defendant violated, and/or controlled a
23 person who violated §11 of the 1933 Act.

24 64. Plaintiffs acquired Audience common stock pursuant and/or traceable to the Registration
25 Statement for the IPO.

26 65. Plaintiffs and the Class have sustained damages. The value of Audience common stock
27 has declined substantially subsequent to and due to defendants' violations.

28

1 B. Awarding compensatory damages in favor of the plaintiffs and the other Class members
2 against all defendants, jointly and severally, for all damages sustained as a result of defendants'
3 wrongdoing, in an amount to be proven at trial, including interest thereon;

4 C. Awarding plaintiffs and the Class their reasonable costs and expenses incurred in this
5 action, including counsel fees and expert fees;

6 D. Awarding rescission or a rescissory measure of damages; and

7 E. Awarding such equitable/injunctive or other relief as the Court may deem just and
8 proper.

9 **JURY DEMAND**

10 Plaintiffs hereby demand a trial by jury.

11 DATED: February 25, 2013

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14 s/ John K. Grant

15

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Court's e-service list, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 25, 2013.

s/ John K. Grant
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