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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

DANNY POPOV, Individually and on)
 Behalf of All Other Persons Similarly)
 Situated,)
)
 Plaintiff,)
)
 v.)
)
 NUVASIVE, INC., ALEXIS V.)
 LUKIANOV, KEVIN C. O'BOYLE, and)
 MICHAEL J. LAMBERT,)
)
 Defendants.)

Case No.: '13CV2005 W WMC

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

JURY TRIAL DEMANDED

1 Plaintiff Danny Popov (“Plaintiff”), individually and on behalf of all other persons
2 similarly situated, by his undersigned attorneys, for his complaint against defendants,
3 alleges the following based upon personal knowledge as to himself and his own acts, and
4 information and belief as to all other matters, based upon, *inter alia*, the investigation
5 conducted by and through his attorneys, which included, among other things, a review of
6 the defendants’ public documents, conference calls and announcements made by
7 defendants, United States Securities and Exchange Commission (“SEC”) filings, wire
8 and press releases published by and regarding NuVasive, Inc. (“NuVasive” or the
9 “Company”), analysts’ reports and advisories about the Company, and information
10 readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support
11 will exist for the allegations set forth herein after a reasonable opportunity for discovery.
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16 **NATURE OF THE ACTION**

17 1. This is a federal securities class action on behalf of a class consisting of all
18 persons other than defendants who purchased NuVasive securities between October 22,
19 2008 and July 30, 2013, inclusive (the “Class Period”), seeking to recover damages
20 caused by defendants’ violations of the federal securities laws and to pursue remedies
21 under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange
22 Act”) and Rule 10b-5 against the Company and certain of its top officials.
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25 2. NuVasive designs, develops, and markets products for the surgical
26 treatment of spine disorders. The Company’s products include Maximum Access
27 Surgery (“MAS”) and Fusion products.
28

1 3. On July 30, 2013, the Company disclosed in its Form 10-Q for its second
2 quarter 2013 that it had “received a federal administrative subpoena from the Office of
3 the Inspector General of the U.S. Department of Health and Human Services (OIG) in
4 connection with an investigation into possible false or otherwise improper claims
5 submitted to Medicare and Medicaid. The subpoena seeks discovery of documents for
6 the period January 2007 through April 2013.”
7

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9 4. On this news, NuVasive securities declined \$3.28 per share or over 12%, to
10 close at \$22.84 per share on July 31, 2013.
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12 5. Throughout the Class Period, Defendants made false and/or misleading
13 statements, as well as failed to disclose material adverse facts about the Company's
14 business, operations, and prospects. Specifically, Defendants made false and/or
15 misleading statements and/or failed to disclose that: (1) the Company improperly
16 submitted false claims to Medicare and Medicaid in violation of federal and state laws
17 and regulations; and (2) as a result of the foregoing, the Company's statements were
18 materially false and misleading at all relevant times.
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21 6. As a result of Defendants' wrongful acts and omissions, and the precipitous
22 decline in the market value of the Company's securities, Plaintiff and other Class
23 members have suffered significant losses and damages.
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JURISDICTION AND VENUE

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2 7. The claims asserted herein arise under and pursuant to Sections 10(b) and
3 20(a) of the Exchange Act (15 U.S.C. §78j(b) and 78t(a)) and Rule 10b-5 promulgated
4 thereunder (17 C.F.R. §240.10b-5).
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6 8. This Court has jurisdiction over the subject matter of this action pursuant to
7 §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1331.
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9 9. Venue is proper in this District pursuant to §27 of the Exchange Act, 15
10 U.S.C. §78aa and 28 U.S.C. §1391(b), as the securities of NuVasive were publicly
11 traded in this District.
12

13 10. In connection with the acts, conduct and other wrongs alleged in this
14 Complaint, defendants, directly or indirectly, used the means and instrumentalities of
15 interstate commerce, including but not limited to, the United States mail, interstate
16 telephone communications and the facilities of the national securities exchange.
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19 **PARTIES**

20 11. Plaintiff, as set forth in the attached certification, purchased NuVasive
21 securities at artificially inflated prices during the Class Period and suffered damages
22 upon the announcement of the alleged corrective disclosure.
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24 12. Defendant NuVasive is a Delaware corporation with its headquarters
25 located at 7475 Lusk Boulevard, San Diego, CA 92121.
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27 13. Defendant Alexis V. Lukianov (“Lukianov”) at all relevant times has been
28 the Company’s Chairman of the Board of Directors and Chief Executive Officer.

1 14. Defendant Kevin C. O’Boyle (“O’Boyle”) was the Company’s Executive
2 Vice President and Chief Financial Officer through November 2009.

3 15. Defendant Michael J. Lambert (“Lambert”) has been the Company’s Chief
4 Financial Officer since November 9, 2009.

5 16. The defendants referenced above in ¶¶ 13 - 15 are sometimes referred to
6 herein as the “Individual Defendants.”
7

8 **SUBSTANTIVE ALLEGATIONS**

9 **Background**

10 17. NuVasive is a medical device company focused on developing minimally
11 disruptive surgical products and procedurally integrated solutions for the spine. The
12 Company focuses on applications for spine fusion surgery, including biologics, a
13 combined market estimated to exceed \$8.2 billion globally in 2013. The Company’s
14 principal product offering includes a minimally disruptive surgical platform called
15 Maximum Access Surgery (“MAS”) which combines three categories of solutions that
16 collectively minimize soft tissue disruption during spine fusion surgery, provide
17 maximum visualization and are designed to enable reproducible outcomes for the
18 surgeon and the patient. The platform includes a proprietary software-driven nerve
19 detection and avoidance systems, NVM5 and NVJJB, and Intra-Operative Monitoring
20 (“IOM”) support; MaXcess, a unique and integrated split-blade retractor system; and a
21 wide variety of specialized implants.
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**Materially False and Misleading
Statements Issued During the Class Period**

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3 18. On October 22, 2008, the Company issued a press release announcing its
4 financial results for the quarter ended September 30, 2012. For the quarter, the
5 Company reported a net loss of \$23.1 million, or (\$0.64) diluted earnings per share
6 (“EPS”) and revenue of \$66.9 million, compared to a net loss of \$2.3 million or (\$0.07)
7 diluted EPS and revenue of \$38.5 million for the same period a year ago.
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10 19. On November 7, 2008, the Company filed a quarterly report for the period
11 ended September 30, 2008 on a Form 10-Q with the SEC signed by Defendants
12 Lukianov and O’Boyle, where it reiterated the Company’s previously reported financial
13 results and financial position. In addition, the Form 10-Q contained signed
14 certifications pursuant to SOX by Defendants Lukianov and O’Boyle stating that the
15 financial information contained in the Form 10-Q was accurate, and disclosed any
16 material changes to the Company’s internal control over financial reporting.
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20 20. On February 25, 2009, the Company issued a press release announcing its
21 financial results for the quarter and year ended December 31, 2008. For the quarter, the
22 Company reported net income of \$3.7 million, or \$0.10 diluted EPS and revenue of
23 \$74.6 million, compared to a net loss of \$1.1 million or (\$0.03) diluted EPS and revenue
24 of \$46.9 million for the same period a year ago. For the year, the Company reported net
25 loss of \$27.5 million, or (\$0.77) diluted EPS and revenue of \$250.1 million, compared
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1 to net loss of \$11.3 million, or (\$0.32) diluted EPS and revenue of \$154.3 million for
2 the same period a year ago.

3 21. On March 2, 2009, the Company filed an annual report for the year ended
4 December 31, 2008 on a Form 10-K with the SEC signed by, among others, Defendants
5 Lukianov and O'Boyle, where it reiterated the Company's previously reported financial
6 results and financial position. In addition, the Form 10-K contained signed
7 certifications pursuant to SOX by Defendants Lukianov and O'Boyle stating that the
8 financial information contained in the Form 10-K was accurate, and disclosed any
9 material changes to the Company's internal control over financial reporting.
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13 22. The Form 10-K represented the following in relevant part concerning third-
14 party reimbursement:
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16 We expect that sales volumes and prices of our products will continue to be
17 largely dependent on the availability of reimbursement from third-party
18 payers, such as governmental programs, for example, Medicare and
19 Medicaid, private insurance plans and managed care programs.

20 23. On April 22, 2009, the Company issued a press release announcing its
21 financial results for the quarter ended March 31, 2009. For the quarter, the Company
22 reported a net loss of \$4.3 million, or (\$0.12) diluted EPS and revenue of \$80 million,
23 compared to a net loss of \$7.7 million or (\$0.22) diluted EPS and revenue of \$51.2
24 million for the same period a year ago.
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26 24. On May 8, 2009, the Company filed a quarterly report for the period ended
27 March 31, 2009 on a Form 10-Q with the SEC signed by Defendants Lukianov and
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1 O'Boyle, where it reiterated the Company's previously reported financial results and
2 financial position. In addition, the Form 10-Q contained signed certifications pursuant
3 to SOX by Defendants Lukianov and O'Boyle stating that the financial information
4 contained in the Form 10-Q was accurate, and disclosed any material changes to the
5 Company's internal control over financial reporting.
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8 25. On July 23, 2009, the Company issued a press release announcing its
9 financial results for the quarter ended June 30, 2009. For the quarter, the Company
10 reported net income of \$2.8 million, or \$0.07 diluted EPS and revenue of \$88.5 million,
11 compared to a net loss of \$495,000 or (\$0.01) diluted EPS and revenue of \$57.4 million
12 for the same period a year ago.
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15 26. On August 6, 2009, the Company filed a quarterly report for the period
16 ended June 30, 2009 on a Form 10-Q with the SEC signed by Defendants Lukianov and
17 O'Boyle, where it reiterated the Company's previously reported financial results and
18 financial position. In addition, the Form 10-Q contained signed certifications pursuant
19 to SOX by Defendants Lukianov and O'Boyle stating that the financial information
20 contained in the Form 10-Q was accurate, and disclosed any material changes to the
21 Company's internal control over financial reporting.
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25 27. On October 20, 2009, the Company issued a press release announcing its
26 financial results for the quarter ended September 30, 2009. For the quarter, the
27 Company reported net income of \$5.1 million, or \$0.13 diluted EPS and revenue of
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1 \$94.9 million, compared to net loss of \$23.1 million, or (\$0.64) diluted EPS and
2 revenue of \$66.9 million for the same period a year ago.

3 28. On November 6, 2009, the Company filed a quarterly report for the period
4 ended September 30, 2009 on a Form 10-Q with the SEC signed by Defendants
5 Lukianov and O'Boyle and where it reiterated the Company's previously reported
6 financial results and financial position. In addition, the Form 10-Q contained signed
7 certifications pursuant to SOX by Defendants Lukianov and O'Boyle stating that the
8 financial information contained in the Form 10-Q was accurate, and disclosed any
9 material changes to the Company's internal control over financial reporting.
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13 29. On February 25, 2010, the Company issued a press release announcing its
14 financial results for the quarter and year ended December 31, 2009. For the quarter, the
15 Company reported net income of \$2.3 million, or \$0.06 diluted EPS and revenue of
16 \$106.9 million, compared to net income of \$3.7 million or \$0.10 diluted EPS and
17 revenue of \$74.6 million for the same period a year ago. For the year, the Company
18 reported net income of \$5.8 million, or \$0.15 diluted EPS and revenue of \$370.3
19 million, compared to a net loss of \$27.5 million, or (\$0.77) diluted EPS and revenue of
20 \$250.9 million for the same period a year ago.
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24 30. On February 26, 2010, the Company filed an annual report for the year
25 ended December 31, 2009 on a Form 10-K with the SEC signed by, among others,
26 Defendants Lukianov and Lambert and where it reiterated the Company's previously
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1 reported financial results and financial position. In addition, the Form 10-K contained
2 signed certifications pursuant to SOX by Defendants Lukianov and Lambert stating that
3 the financial information contained in the Form 10-K was accurate, and disclosed any
4 material changes to the Company's internal control over financial reporting.
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6 31. The Form 10-K represented the following in relevant part concerning third-
7 party reimbursement:
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9 We expect that sales volumes and prices of our products will continue to be
10 largely dependent on the availability of reimbursement from third-party
11 payers, such as governmental programs, for example, Medicare and
12 Medicaid, private insurance plans and managed care programs.
13 Reimbursement is contingent on established coding for a given procedure,
14 coverage of the codes by the third-party payers, and adequate payment for
15 the resources used.

16 32. On April 20, 2010, the Company issued a press release announcing its
17 financial results for the quarter ended March 31, 2010. For the quarter, the Company
18 reported net income of \$1.1 million, or \$0.03 diluted EPS and revenue of \$109.1
19 million, compared to net loss of \$4.3 million or (\$0.12) diluted EPS and revenue of \$80
20 million for the same period a year ago.

21 33. On May 10, 2010, the Company filed a quarterly report for the period ended
22 March 31, 2010 on a Form 10-Q with the SEC signed by Defendants Lukianov and
23 Lambert and where it reiterated the Company's previously reported financial results and
24 financial position. In addition, the Form 10-Q contained signed certifications pursuant
25 to SOX by Defendants Lukianov and Lambert stating that the financial information
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1 contained in the Form 10-Q was accurate, and disclosed any material changes to the
2 Company's internal control over financial reporting.

3 34. On July 27, 2010, the Company issued a press release announcing its
4 financial results for the quarter ended June 30, 2010. For the quarter, the Company
5 reported net income of \$6.7 million, or \$0.17 diluted EPS and revenue of \$119.6
6 million, compared to net income of \$2.8 million, or \$0.07 diluted EPS and revenue of
7 \$88.5 million for the same period a year ago.
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10 35. On August 6, 2010, the Company filed a quarterly report for the period
11 ended June 30, 2010 on a Form 10-Q with the SEC signed by Defendants Lukianov and
12 Lambert and where it reiterated the Company's previously reported financial results and
13 financial position. In addition, the Form 10-Q contained signed certifications pursuant
14 to SOX by Defendants Lukianov and Lambert stating that the financial information
15 contained in the Form 10-Q was accurate, and disclosed any material changes to the
16 Company's internal control over financial reporting.
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20 36. On October 28, 2010, the Company issued a press release announcing its
21 financial results for the quarter ended September 30, 2010. For the quarter, the
22 Company reported net income of \$8.5 million, or \$0.21 diluted EPS and revenue of
23 \$120.3 million, compared to net income of \$5.1 million, or \$0.13 diluted EPS and
24 revenue of \$94.9 million for the same period a year ago.
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1 37. On November 5, 2010, the Company filed a quarterly report for the period
2 ended September 30, 2010 on a Form 10-Q with the SEC signed by Defendants
3 Lukianov and Lambert where it reiterated the Company's previously reported financial
4 results and financial position. In addition, the Form 10-Q contained signed
5 certifications pursuant to SOX by Defendants Lukianov and Lambert stating that the
6 financial information contained in the Form 10-Q was accurate, and disclosed any
7 material changes to the Company's internal control over financial reporting.
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10 38. On February 23, 2011, the Company issued a press release announcing its
11 financial results for the quarter and year ended December 31, 2010. For the quarter, the
12 Company reported net income of \$61.9 million, or \$1.39 diluted EPS and revenue of
13 \$129.3 million, compared to net income of \$2.3 million, or \$0.06 diluted EPS and
14 revenue of \$106.9 million for the same period a year ago. For the year, the Company
15 reported net income of \$78.3 million, or \$1.85 diluted EPS and revenue of \$478.3
16 million, compared to net income of \$5.8 million, or \$0.15 diluted EPS and revenue of
17 \$370.3 million for the same period a year ago.
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21 39. On February 25, 2011, the Company filed an annual report for the year
22 ended December 31, 2010 on a Form 10-K with the SEC signed by, among others,
23 Defendants Lukianov and Lambert, where it reiterated the Company's previously
24 reported financial results and financial position. In addition, the Form 10-K contained
25 signed certifications pursuant to SOX by Defendants Lukianov and Lambert stating that
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1 the financial information contained in the Form 10-K was accurate, and disclosed any
2 material changes to the Company's internal control over financial reporting.

3 40. The Form 10-K represented the following in relevant part concerning its
4 Compliance Program and third-party reimbursement:
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6 The federal government has recommended, in the federal sentencing
7 guidelines, that health care companies develop and maintain an effective
8 compliance program to reduce the likelihood of noncompliance by the
9 company, its employees, agents and contractors. A compliance program is a
10 set of internal controls established by a company to prevent and/or detect
11 any non-compliant activities and to address properly those issues that may
12 be discovered. In addition, some states, such as Massachusetts and
13 California now require certain health care companies to have a formal
14 compliance program in place in order to do business within the state. For
15 years, NuVasive has maintained a compliance program structured to meet
16 the requirements of the federal sentencing guidelines for an effective
17 compliance program and the model compliance programs promulgated by
18 HHS over the years and includes, but is not limited to, a Code of Ethical
19 Business Conduct, designation of a compliance officer, a confidential
20 disclosure method (a "hotline"), and conducting periodic audits to ensure
21 compliance.

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23 We expect that sales volumes and prices of our products will continue to be
24 largely dependent on the availability of reimbursement from third-party
25 payers, such as governmental programs, for example, Medicare and
26 Medicaid, private insurance plans and managed care programs.
27 Reimbursement is contingent on established coding for a given procedure,
28 coverage of the codes by the third-party payers, and adequate payment for
the resources used.

41. On May 4, 2011, the Company issued a press release announcing its
financial results for the quarter ended March 31, 2011. For the quarter, the Company
reported net income of \$2.4 million, or \$0.06 diluted EPS and revenue of \$124.5

1 million, compared to net income of \$1.1 million, or \$0.03 diluted EPS and revenue of
2 \$109.1 million for the same period a year ago.

3 42. On May 6, 2011, the Company filed a quarterly report for the period ended
4 March 31, 2011 on a Form 10-Q with the SEC signed by Defendants Lukianov and
5 Lambert, where it reiterated the Company's previously reported financial results and
6 financial position. In addition, the Form 10-Q contained signed certifications pursuant
7 to SOX by Defendants Lukianov and Lambert stating that the financial information
8 contained in the Form 10-Q was accurate, and disclosed any material changes to the
9 Company's internal control over financial reporting.
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13 43. On July 25, 2011, the Company issued a press release announcing its
14 financial results for the quarter ended June 30, 2011. For the quarter, the Company
15 reported net income of \$5.4 million, or \$0.13 diluted EPS and revenue of \$133 million,
16 compared to net income of \$6.7 million, or \$0.17 diluted EPS and revenue of \$119.6
17 million for the same period a year ago.
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20 44. On August 5, 2011, the Company filed a quarterly report for the period
21 ended June 30, 2011 on a Form 10-Q with the SEC signed by Defendants Lukianov and
22 Lambert, where it reiterated the Company's previously reported financial results and
23 financial position. In addition, the Form 10-Q contained signed certifications pursuant
24 to SOX by Defendants Lukianov and Lambert stating that the financial information
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1 contained in the Form 10-Q was accurate, and disclosed any material changes to the
2 Company's internal control over financial reporting.

3 45. On October 27, 2011, the Company issued a press release announcing its
4 financial results for the quarter ended September 30, 2011. For the quarter, the
5 Company reported a net loss of \$67.6 million, or (\$1.69) diluted EPS and revenue of
6 \$132.9 million, compared to net income of \$8.5 million, or \$0.21 diluted EPS and
7 revenue of \$120.3 million for the same period a year ago.
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10 46. On November 4, 2011, the Company filed a quarterly report for the period
11 ended September 30, 2011 on a Form 10-Q with the SEC signed by Defendants
12 Lukianov and Lambert, where it reiterated the Company's previously reported financial
13 results and financial position. In addition, the Form 10-Q contained signed
14 certifications pursuant to SOX by Defendants Lukianov and Lambert stating that the
15 financial information contained in the Form 10-Q was accurate, and disclosed any
16 material changes to the Company's internal control over financial reporting.
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20 47. On February 22, 2012, the Company issued a press release announcing its
21 financial results for the quarter and year ended December 31, 2011. For the quarter, the
22 Company reported a net loss of \$10 million, or (\$0.24) diluted EPS and revenue of
23 \$150.2 million, compared to net income of \$61.9 million, or \$1.39 diluted EPS and
24 revenue of \$129.3 million for the same period a year ago. For the year, the Company
25 reported a net loss of \$69.8 million, or (\$1.73) diluted EPS and revenue of \$540.5
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1 million, compared to net income of \$78.3 million, or \$1.85 diluted EPS and revenue of
2 \$478.2 million for the same period a year ago.

3 48. On February 27, 2012, the Company filed an annual report for the year
4 ended December 31, 2011 on a Form 10-K with the SEC signed by, among others,
5 Defendants Lukianov and Lambert and where it reiterated the Company's previously
6 reported financial results and financial position. In addition, the Form 10-K contained
7 signed certifications pursuant to SOX by Defendants Lukianov and Lambert stating that
8 the financial information contained in the Form 10-K was accurate, and disclosed any
9 material changes to the Company's internal control over financial reporting.
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13 49. The Form 10-K represented the following in relevant part concerning its
14 Compliance Program and third-party reimbursement:
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16 The federal government has recommended, in the federal sentencing
17 guidelines, that healthcare companies develop and maintain an effective
18 compliance program to reduce the likelihood of non-compliance by the
19 company, its employees, agents and contractors. A compliance program is a
20 set of internal controls established by a company to prevent and/or detect
21 any non-compliant activities and to address properly those issues that may
22 be discovered. In addition, some states, such as Massachusetts and
23 California now require certain healthcare companies to have a formal
24 compliance program in place in order to do business within the state. For
25 years, we have maintained a compliance program structured to meet the
26 requirements of the federal sentencing guidelines for an effective
27 compliance program and the model compliance programs promulgated by
28 HHS over the years and includes, but is not limited to, a Code of Ethical
Business Conduct, designation of a compliance officer, compliance
committee, policies and procedures, a confidential disclosure method (a
hotline), and conducting periodic audits to ensure compliance.

1 We expect that sales volumes and prices of our products and services will
2 continue to be largely dependent on the availability of reimbursement from
3 third-party payers, such as governmental programs, for example, Medicare
4 and Medicaid, private insurance plans and managed care programs.
5 Reimbursement is contingent on established coding for a given procedure,
6 coverage of the codes by the third-party payers, and adequate payment for
7 the resources used.

8 50. On April 30, 2012, the Company issued a press release announcing its
9 financial results for the quarter ended March 31, 2012. For the quarter, the Company
10 reported net income of \$673,000, or \$0.02 diluted EPS and revenue of \$151.7 million,
11 compared to net income of \$2.4 million, or \$0.06 diluted EPS and revenue of \$124.5
12 million for the same period a year ago.

13 51. On May 1, 2012, the Company filed a quarterly report for the period ended
14 March 31, 2012 on a Form 10-Q with the SEC signed by Defendants Lukianov and
15 Lambert, where it reiterated the Company's previously reported financial results and
16 financial position. In addition, the Form 10-Q contained signed certifications pursuant
17 to SOX by Defendants Lukianov and Lambert stating that the financial information
18 contained in the Form 10-Q was accurate, and disclosed any material changes to the
19 Company's internal control over financial reporting.
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23 52. On July 25, 2012, the Company issued a press release announcing its
24 financial results for the quarter ended June 30, 2012. For the quarter, the Company
25 reported net income of \$2.9 million, or \$0.06 diluted EPS and revenue of \$154.4
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1 million, compared to net income of \$5.4 million, or \$0.13 diluted EPS and revenue of
2 \$133 million for the same period a year ago.

3 53. On July 26, 2012, the Company filed a quarterly report for the period ended
4 June 30, 2012 on a Form 10-Q with the SEC signed by Defendants Lukianov and
5 Lambert, where it reiterated the Company's previously reported financial results and
6 financial position. In addition, the Form 10-Q contained signed certifications pursuant
7 to SOX by Defendants Lukianov and Lambert stating that the financial information
8 contained in the Form 10-Q was accurate, and disclosed any material changes to the
9 Company's internal control over financial reporting.
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13 54. On October 24, 2012, the Company issued a press release announcing its
14 financial results for the quarter ended September 30, 2012. For the quarter, the
15 Company reported net income of \$2.4 million, or \$0.05 diluted EPS and revenue of
16 \$148.4 million, compared to a net loss of \$67.6 million, or (\$1.69) diluted EPS and
17 revenue of \$132.9 million for the same period a year ago.
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20 55. On October 25, 2012, the Company filed a quarterly report for the period
21 ended September 30, 2012 on a Form 10-Q with the SEC signed by Defendants
22 Lukianov and Lambert, where it reiterated the Company's previously reported financial
23 results and financial position. In addition, the Form 10-Q contained signed
24 certifications pursuant to SOX by Defendants Lukianov and Lambert stating that the
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1 financial information contained in the Form 10-Q was accurate, and disclosed any
2 material changes to the Company's internal control over financial reporting.

3 56. On February 26, 2013, the Company issued a press release announcing its
4 financial results for the quarter and year ended December 31, 2012. For the quarter, the
5 Company reported a net loss of \$2.7 million, or (\$0.06) diluted EPS and revenue of
6 \$165.8 million, compared to a net loss of \$10 million, or (\$0.24) diluted EPS and
7 revenue of \$150.2 million for the same period a year ago. For the year, the Company
8 reported net income of \$3.1 million, or \$0.07 diluted EPS and revenue of \$620.3
9 million, compared to a net loss of \$69.8 million, or (\$1.73) diluted EPS and revenue of
10 \$540.5 million for the same period a year ago.

11 57. On February 27, 2013, the Company filed an annual report for the year
12 ended December 31, 2012 on a Form 10-K with the SEC signed by, among others,
13 Defendants Lukianov and Lambert, where it reiterated the Company's previously
14 reported financial results and financial position. In addition, the Form 10-K contained
15 signed certifications pursuant to SOX by Defendants Lukianov and Lambert stating that
16 the financial information contained in the Form 10-K was accurate, and disclosed any
17 material changes to the Company's internal control over financial reporting.

18 58. The Form 10-K represented the following in relevant part concerning its
19 Compliance Program and third-party reimbursement:

20 The federal government has recommended that healthcare companies,
21 among others, develop and maintain an effective compliance program to
22

1 reduce the likelihood of non-compliance by the company, its employees,
2 agents and contractors. A compliance program is a set of internal controls
3 established by a company to prevent and/or detect any non-compliant
4 activities and to address properly those issues that may be discovered. In
5 addition, some states, such as Massachusetts and California, now require
6 certain healthcare companies to have a formal compliance program in place
7 in order to do business within the state. For years, we have maintained a
8 compliance program structured to meet the requirements of the federal
9 sentencing guidelines for an effective compliance program and the model
10 compliance program guidance promulgated by HHS over the years. Our
11 program includes, but is not limited to, a Code of Ethical Business Conduct,
12 designation of a compliance officer, compliance committee, policies and
13 procedures, a confidential disclosure method (a hotline), and conducting
14 periodic audits to ensure compliance.

15 * * *

16 We expect that sales volumes and prices of our products and services will
17 continue to be largely dependent on the availability of reimbursement from
18 third-party payers, such as governmental programs, for example, Medicare
19 and Medicaid, private insurance plans and managed care programs.
20 Reimbursement is contingent on established coding for a given procedure,
21 coverage of the codes by the third-party payers, and adequate payment for
22 the resources used.

23 59. On April 30, 2013, the Company issued a press release announcing its
24 financial results for the quarter ended March 31, 2013. For the quarter, the Company
25 reported net income of \$851,000, or \$0.02 diluted EPS and revenue of \$159.5 million,
26 compared to net income of \$673,000, or \$0.02 diluted EPS and revenue of \$151.7
27 million for the same period a year ago.

28 60. On May 1, 2013, the Company filed a quarterly report for the period ended
March 31, 2013 on a Form 10-Q with the SEC signed by Defendants Lukianov and
Lambert and where it reiterated the Company's previously reported financial results and

1 financial position. In addition, the Form 10-Q contained signed certifications pursuant
2 to SOX by Defendants Lukianov and Lambert stating that the financial information
3 contained in the Form 10-Q was accurate, and disclosed any material changes to the
4 Company's internal control over financial reporting.
5

6 61. The statements referenced in ¶¶ 18 - 60 above were materially false and/or
7 misleading because they misrepresented and failed to disclose the following adverse
8 facts, which were known to defendants or recklessly disregarded by them that (1) the
9 Company improperly submitted false claims to Medicare and Medicaid in violation of
10 federal and state laws and regulations; (2) the Company's internal compliance program
11 was unable to detect and report False Claims Act and other violations; and (3) as a
12 result of the foregoing, the Company's statements were materially false and misleading
13 at all relevant times.
14
15
16

17 **THE TRUTH EMERGES**

18 62. On July 30, 2013, after the market closed, the Company filed a Form 10-Q
19 for the quarter ended June 30, 2013 where it disclosed the following in relevant part:
20

21 During the three months ended June 30, 2013, the Company received a
22 federal administrative subpoena from the Office of the Inspector General of
23 the U.S. Department of Health and Human Services (OIG) in connection
24 with an investigation into possible false or otherwise improper claims
25 submitted to Medicare and Medicaid. The subpoena seeks discovery of
26 documents for the period January 2007 through April 2013. The Company
27 is working with the OIG to understand the scope of the subpoena and its
28 request for documents, but do not expect to have greater clarity regarding
the request for several months. The Company intends to fully cooperate
with the OIG's request. At June 30 2013, the Company is unable to

1 determine the potential financial impact, if any, that will result from this
2 investigation.

3 63. On this news, NuVasive securities declined \$3.28 per share or over 12%, to
4 close at \$22.84 per share on July 31, 2013.

5
6 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

7 64. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
8 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased
9 or otherwise acquired NuVasive securities during the Class Period (the "Class"); and
10 were damaged thereby. Excluded from the Class are defendants herein, the officers and
11 directors of the Company, at all relevant times, members of their immediate families
12 and their legal representatives, heirs, successors or assigns and any entity in which
13 defendants have or had a controlling interest.
14

15
16 65. The members of the Class are so numerous that joinder of all members is
17 impracticable. Throughout the Class Period, NuVasive securities were actively traded
18 on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at
19 this time and can be ascertained only through appropriate discovery, Plaintiff believes
20 that there are hundreds or thousands of members in the proposed Class. Record owners
21 and other members of the Class may be identified from records maintained by
22 NuVasive or its transfer agent and may be notified of the pendency of this action by
23 mail, using the form of notice similar to that customarily used in securities class actions.
24
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1 66. Plaintiff's claims are typical of the claims of the members of the Class as all
2 members of the Class are similarly affected by defendants' wrongful conduct in
3 violation of federal law that is complained of herein.
4

5 67. Plaintiff will fairly and adequately protect the interests of the members of
6 the Class and has retained counsel competent and experienced in class and securities
7 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.
8

9 68. Common questions of law and fact exist as to all members of the Class and
10 predominate over any questions solely affecting individual members of the Class.
11

12 Among the questions of law and fact common to the Class are:

- 13 • whether the federal securities laws were violated by defendants' acts as
14 alleged herein;
- 15 • whether statements made by defendants to the investing public during
16 the Class Period misrepresented material facts about the business,
17 operations and management of NuVasive;
- 18 • whether the Individual Defendants caused NuVasive to issue false and
19 misleading financial statements during the Class Period;
- 20 • whether defendants acted knowingly or recklessly in issuing false and
21 misleading financial statements;
- 22 • whether defendants acted knowingly or recklessly in issuing false and
23 misleading financial statements;
- 24 • whether defendants acted knowingly or recklessly in issuing false and
25 misleading financial statements;
- 26 • whether defendants acted knowingly or recklessly in issuing false and
27 misleading financial statements;
- 28 • whether defendants acted knowingly or recklessly in issuing false and
 misleading financial statements;

- 1 • whether the prices of NuVasive securities during the Class Period were
- 2 artificially inflated because of the defendants' conduct complained of
- 3 herein; and
- 4
- 5 • whether the members of the Class have sustained damages and, if so,
- 6 what is the proper measure of damages.
- 7

8 69. A class action is superior to all other available methods for the fair and
9 efficient adjudication of this controversy since joinder of all members is impracticable.
10 Furthermore, as the damages suffered by individual Class members may be relatively
11 small, the expense and burden of individual litigation make it impossible for members
12 of the Class to individually redress the wrongs done to them. There will be no difficulty
13 in the management of this action as a class action.
14
15

16 70. Plaintiff will rely, in part, upon the presumption of reliance established by
17 the fraud-on-the-market doctrine in that:

- 18
- 19 • defendants made public misrepresentations or failed to disclose material
- 20 facts during the Class Period;
- 21
- 22 • the omissions and misrepresentations were material;
- 23
- 24 • NuVasive securities are traded in efficient markets;
- 25
- 26 • the Company's shares were liquid and traded with moderate to heavy
- 27 volume during the Class Period;
- 28

- 1 • the Company traded on the NASDAQ, and was covered by multiple
- 2 analysts;
- 3
- 4 • the misrepresentations and omissions alleged would tend to induce a
- 5 reasonable investor to misjudge the value of the Company's securities;
- 6 and
- 7
- 8 • Plaintiff and members of the Class purchased and/or sold NuVasive
- 9 securities between the time the defendants failed to disclose or
- 10 misrepresented material facts and the time the true facts were disclosed,
- 11 without knowledge of the omitted or misrepresented facts.
- 12

13 71. Based upon the foregoing, Plaintiff and the members of the Class are
14 entitled to a presumption of reliance upon the integrity of the market.
15

16 **COUNT I**

17 **(Against All Defendants For Violations of**
18 **Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

19 72. Plaintiff repeats and realleges each and every allegation contained above as
20 if fully set forth herein.
21

22 73. This Count is asserted against defendants and is based upon Section 10(b)
23 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the
24 SEC.
25

26 74. During the Class Period, defendants engaged in a plan, scheme, conspiracy
27 and course of conduct, pursuant to which they knowingly or recklessly engaged in acts,
28

1 transactions, practices and courses of business which operated as a fraud and deceit
2 upon Plaintiff and the other members of the Class; made various untrue statements of
3 material facts and omitted to state material facts necessary in order to make the
4 statements made, in light of the circumstances under which they were made, not
5 misleading; and employed devices, schemes and artifices to defraud in connection with
6 the purchase and sale of securities. Such scheme was intended to, and, throughout the
7 Class Period, did: (i) deceive the investing public, including Plaintiff and other Class
8 members, as alleged herein; (ii) artificially inflate and maintain the market price of
9 NuVasive securities; and (iii) cause Plaintiff and other members of the Class to
10 purchase NuVasive securities and options at artificially inflated prices. In furtherance
11 of this unlawful scheme, plan and course of conduct, defendants, and each of them, took
12 the actions set forth herein.

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17 75. Pursuant to the above plan, scheme, conspiracy and course of conduct, each
18 of the defendants participated directly or indirectly in the preparation and/or issuance of
19 the quarterly and annual reports, SEC filings, press releases and other statements and
20 documents described above, including statements made to securities analysts and the
21 media that were designed to influence the market for NuVasive securities. Such reports,
22 filings, releases and statements were materially false and misleading in that they failed
23 to disclose material adverse information and misrepresented the truth about NuVasive's
24 finances and business prospects.
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1 76. By virtue of their positions at NuVasive, defendants had actual knowledge
2 of the materially false and misleading statements and material omissions alleged herein
3 and intended thereby to deceive Plaintiff and the other members of the Class, or, in the
4 alternative, defendants acted with reckless disregard for the truth in that they failed or
5 refused to ascertain and disclose such facts as would reveal the materially false and
6 misleading nature of the statements made, although such facts were readily available to
7 defendants. Said acts and omissions of defendants were committed willfully or with
8 reckless disregard for the truth. In addition, each defendant knew or recklessly
9 disregarded that material facts were being misrepresented or omitted as described
10 above.
11

12 77. Information showing that defendants acted knowingly or with reckless
13 disregard for the truth is peculiarly within defendants' knowledge and control. As the
14 senior managers and/or directors of NuVasive, the Individual Defendants had
15 knowledge of the details of NuVasive internal affairs.
16

17 78. The Individual Defendants are liable both directly and indirectly for the
18 wrongs complained of herein. Because of their positions of control and authority, the
19 Individual Defendants were able to and did, directly or indirectly, control the content of
20 the statements of NuVasive. As officers and/or directors of a publicly-held company,
21 the Individual Defendants had a duty to disseminate timely, accurate, and truthful
22 information with respect to NuVasive's businesses, operations, future financial
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1 condition and future prospects. As a result of the dissemination of the aforementioned
2 false and misleading reports, releases and public statements, the market price of
3 NuVasive securities was artificially inflated throughout the Class Period. In ignorance
4 of the adverse facts concerning NuVasive's business and financial condition which were
5 concealed by defendants, Plaintiff and the other members of the Class purchased
6 NuVasive securities at artificially inflated prices and relied upon the price of the
7 securities, the integrity of the market for the securities and/or upon statements
8 disseminated by defendants, and were damaged thereby.
9
10

11
12 79. During the Class Period, NuVasive securities were traded on an active and
13 efficient market. Plaintiff and the other members of the Class, relying on the materially
14 false and misleading statements described herein, which the defendants made, issued or
15 caused to be disseminated, or relying upon the integrity of the market, purchased shares
16 of NuVasive securities at prices artificially inflated by defendants' wrongful conduct.
17 Had Plaintiff and the other members of the Class known the truth, they would not have
18 purchased said securities, or would not have purchased them at the inflated prices that
19 were paid. At the time of the purchases by Plaintiff and the Class, the true value of
20 NuVasive securities was substantially lower than the prices paid by Plaintiff and the
21 other members of the Class. The market price of NuVasive securities declined sharply
22 upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class
23 members.
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1 80. By reason of the conduct alleged herein, defendants knowingly or
2 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and
3 Rule 10b-5 promulgated thereunder.
4

5 81. As a direct and proximate result of defendants' wrongful conduct, Plaintiff
6 and the other members of the Class suffered damages in connection with their
7 respective purchases and sales of the Company's securities during the Class Period,
8 upon the disclosure that the Company had been disseminating misrepresented financial
9 statements to the investing public.
10

11
12 **COUNT II**

13 **(Violations of Section 20(a) of the**
14 **Exchange Act Against The Individual Defendants)**

15 82. Plaintiff repeats and realleges each and every allegation contained in the
16 foregoing paragraphs as if fully set forth herein.
17

18 83. During the Class Period, the Individual Defendants participated in the
19 operation and management of NuVasive, and conducted and participated, directly and
20 indirectly, in the conduct of NuVasive's business affairs. Because of their senior
21 positions, they knew the adverse non-public information about NuVasive's
22 misstatement of income and expenses and false financial statements.
23

24 84. As officers and/or directors of a publicly owned company, the Individual
25 Defendants had a duty to disseminate accurate and truthful information with respect to
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1 NuVasive's financial condition and results of operations, and to correct promptly any
2 public statements issued by NuVasive which had become materially false or misleading.

3 85. Because of their positions of control and authority as senior officers, the
4 Individual Defendants were able to, and did, control the contents of the various reports,
5 press releases and public filings which NuVasive disseminated in the marketplace
6 during the Class Period concerning NuVasive's results of operations. Throughout the
7 Class Period, the Individual Defendants exercised their power and authority to cause
8 NuVasive to engage in the wrongful acts complained of herein. The Individual
9 Defendants therefore, were "controlling persons" of NuVasive within the meaning of
10 Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful
11 conduct alleged which artificially inflated the market price of NuVasive securities.
12

13 86. Each of the Individual Defendants, therefore, acted as a controlling person
14 of NuVasive. By reason of their senior management positions and/or being directors of
15 NuVasive, each of the Individual Defendants had the power to direct the actions of, and
16 exercised the same to cause, NuVasive to engage in the unlawful acts and conduct
17 complained of herein. Each of the Individual Defendants exercised control over the
18 general operations of NuVasive and possessed the power to control the specific
19 activities which comprise the primary violations about which Plaintiff and the other
20 members of the Class complain.
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1 87. By reason of the above conduct, the Individual Defendants are liable
2 pursuant to Section 20(a) of the Exchange Act for the violations committed by
3 NuVasive.
4

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff demands judgment against defendants as follows:

7
8 A. Determining that the instant action may be maintained as a class action
9 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the
10 Class representative;

11
12 B. Requiring defendants to pay damages sustained by Plaintiff and the Class
13 by reason of the acts and transactions alleged herein;

14
15 C. Awarding Plaintiff and the other members of the Class prejudgment and
16 post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other
17 costs; and

18
19 D. Awarding such other and further relief as this Court may deem just and
20 proper.
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DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: August 28, 2013

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