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

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[REDACTED] Individually and on )  
Behalf of All Other Persons Similarly )  
Situating, )  
 )  
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 [REDACTED] (“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.”  
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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.  
11

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).  
5

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.  
8

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.  
23

24 12. Defendant NuVasive is a Delaware corporation with its headquarters  
25 located at 7475 Lusk Boulevard, San Diego, CA 92121.  
26

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

6 16. The defendants referenced above in ¶¶ 13 - 15 are sometimes referred to  
7 herein as the “Individual Defendants.”  
8

9 **SUBSTANTIVE ALLEGATIONS**

10 **Background**

11 17. NuVasive is a medical device company focused on developing minimally  
12 disruptive surgical products and procedurally integrated solutions for the spine. The  
13 Company focuses on applications for spine fusion surgery, including biologics, a  
14 combined market estimated to exceed \$8.2 billion globally in 2013. The Company’s  
15 principal product offering includes a minimally disruptive surgical platform called  
16 Maximum Access Surgery (“MAS”) which combines three categories of solutions that  
17 collectively minimize soft tissue disruption during spine fusion surgery, provide  
18 maximum visualization and are designed to enable reproducible outcomes for the  
19 surgeon and the patient. The platform includes a proprietary software-driven nerve  
20 detection and avoidance systems, NVM5 and NVJJB, and Intra-Operative Monitoring  
21 (“IOM”) support; MaXcess, a unique and integrated split-blade retractor system; and a  
22 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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19  
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.  
25

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  
28

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.  
6

7  
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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14  
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.  
5

6 31. The Form 10-K represented the following in relevant part concerning third-  
7 party reimbursement:  
8

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:  
5

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.

22 \*\*\*

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:  
15

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.

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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.  
18  
19

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

12 57. On February 27, 2013, the Company filed an annual report for the year  
13 ended December 31, 2012 on a Form 10-K with the SEC signed by, among others,  
14 Defendants Lukianov and Lambert, where it reiterated the Company's previously  
15 reported financial results and financial position. In addition, the Form 10-K contained  
16 signed certifications pursuant to SOX by Defendants Lukianov and Lambert stating that  
17 the financial information contained in the Form 10-K was accurate, and disclosed any  
18 material changes to the Company's internal control over financial reporting.  
19

20 58. The Form 10-K represented the following in relevant part concerning its  
21 Compliance Program and third-party reimbursement:  
22

23 The federal government has recommended that healthcare companies,  
24 among others, develop and maintain an effective compliance program to  
25  
26  
27  
28

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  
25  
26  
27  
28

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
- 27
- 28

- 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.  
25  
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28

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.  
24  
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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  
26  
27  
28

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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