



IN THE CHANCERY COURT OF THE STATE OF DELAWARE

\_\_\_\_\_  
NUVASIVE, INC.,  
a Delaware Corporation,

Plaintiff,

v.

PATRICK MILES,  
an individual,

Defendant.  
\_\_\_\_\_

C.A. No.

**VERIFIED COMPLAINT**

Plaintiff NuVasive, Inc. (“NuVasive” or “Company”), by its undersigned attorneys, files this Verified Complaint against Defendant Patrick Miles (“Defendant” or “Miles”) alleging as follows:

**NATURE OF THE ACTION**

1. Miles is a former high-level executive and member of the Board of Directors (the “Board”) of NuVasive. He schemed for over a year to secure a massive equity stake in a struggling competitor, Alphatec Holdings, Inc. (“Alphatec”), and then steal NuVasive’s employees, distributors, customers, medical partners, product developments, and business strategies to revitalize Alphatec, causing the value of his equity stake to skyrocket.

2. This scheme included, most damningly, a \$500,000 investment into Alphatec months before Miles resigned from NuVasive, which was not disclosed to NuVasive, was in direct breach of its conflicts-of-interest policy, and was a violation of Miles' fiduciary duties as a Board member and as an executive of NuVasive's management team. Further, Miles actively concealed his investment by purchasing his shares in Alphatec through an entity called "MOM." Alphatec aided his concealment by not disclosing that Miles was the beneficial owner of MOM.

3. To maximize the damage to NuVasive, Miles began soliciting NuVasive's employees and customers while an employee and a Board member of NuVasive, and then abruptly resigned on a Sunday afternoon with no advance notice and no opportunity for NuVasive to take action to enforce the terms of Miles' Letter Agreement with NuVasive, which included specific, negotiated restrictive covenants, including non-competition and non-solicitation provisions.

4. Immediately after submitting his resignation, Miles began executing on his plan to convert NuVasive's customers, distributors, medical partners, and employees to Alphatec. He has been in contact with over two dozen of NuVasive's current and former customers and employees; one NuVasive employee has already resigned to join Alphatec; Miles has overseen the spread false threats to NuVasive's distributors in an effort to convince them to terminate their

relationships with NuVasive; and one distributor representative has already terminated her relationship with NuVasive to accept a position with Alphatec.

### **THE PARTIES**

5. NuVasive is a publicly-traded company incorporated in Delaware, with a current market capitalization in excess of \$2.7 billion. It is a pioneer and leader in the spine surgery industry. Critical to its success is its continuous development of new and innovative products and services across a variety of spaces, including access instruments, implantable hardware, biologics, software systems for surgical planning, navigation and imaging solutions, magnetically adjustable implant systems for spine and orthopedics, and intraoperative monitoring service offerings.

6. NuVasive has employees, operations, and customers nationwide and internationally, including in the State of Delaware. Its annual global revenues are in excess of \$960 million, with a 2,300 person workforce serving surgeons, hospitals, and patients in more than 40 countries. This includes offices and operations across all major international business regions, including North America, Europe, Asia-Pacific, and Latin America, with plans for additional expansion.

7. Miles was one of NuVasive's most senior and trusted executives. During his 17-year tenure with NuVasive, he held a variety of key leadership positions. These included President of Global Products and Services, President of the Americas, and Senior Vice President of Marketing. More recently, from 2011 through January, 2015, he was NuVasive's Executive Vice President, Global Products and Services. From February 2015 through September 2016, he was NuVasive's President and Chief Operating Officer. On August 1, 2016, he was appointed to NuVasive's Board. And in September, 2016, he was appointed to the position of Vice Chairman.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over the claims set forth in this Complaint under 10 *Del. C.* § 341.

9. This Court has personal jurisdiction over the parties because the parties consented to an exclusive Delaware forum selection clause and consented to the jurisdiction of the Delaware courts. (Ex. A at 3.)

### **FACTUAL BACKGROUND**

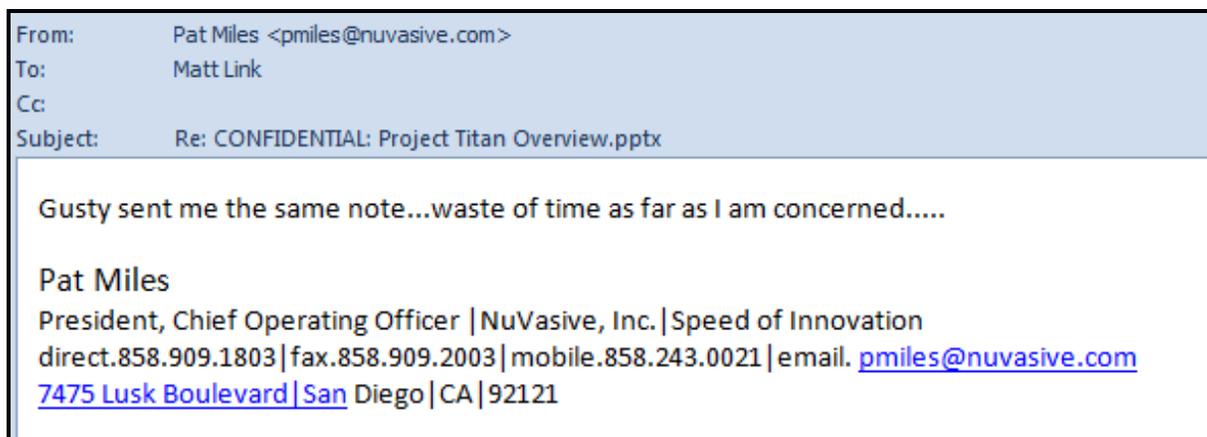
#### **A. Miles Disparages Alphatec as a Potential Business Opportunity**

10. Through September 2016, Miles was employed as NuVasive's President and Chief Operating Officer. In that capacity, Miles owed fiduciary duties of loyalty and due care to NuVasive.

11. In January, 2016, NuVasive was contacted by UBS Financial Services Inc. to explore NuVasive’s interest in pursuing an acquisition of Alphatec. At the time, Alphatec had both domestic and international operations, with the international operations being a potentially attractive business opportunity (the international operations were later sold to Globus Medical, Inc.).

12. As NuVasive’s President and Chief Operating Officer, Miles was heavily involved in the potential acquisition process. In particular, Miles had long been a key leader and “visionary” in the product development side of NuVasive’s business, and his evaluation and recommendation as to the attractiveness of Alphatec’s product portfolio was given substantial weight by NuVasive.

13. According to Miles, the Alphatec acquisition opportunity was a “waste of time”:



14. NuVasive conducted its analysis over the following month. Throughout this time, Miles was adamant that Alphatec was a poor acquisition target and agreed that it had an “aged, undifferentiated portfolio”:

Pat,  
Please see the draft of Project Titan summary attached. Please let me know if you have a minute to chat.  
The major assumptions that effect the US business projections are:  
? ~50% erosion in current business based on sales dis-synergies [REDACTED]  
? Aged, undifferentiated portfolio  
? [REDACTED]  
Want to capture any additional feedback and confirm your recommendation as PASS.  
I am available.  
Best,  
Gusty

This is dead on the mark. No changes and you are being kind with 50% erosion [REDACTED]. Thanks for packaging and putting away. Hope you and family are having good Presidents' Day weekend....PM  
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15. Consistent with Miles' recommendation, NuVasive passed on the Alphatec acquisition opportunity at the time. However, NuVasive's Board continued to consider investment opportunities in Alphatec as late as November 2016.

**B. Miles Uses Alphatec to Secure a Generous Compensation Package**

16. In 2016, Miles expressed his desire to have more input and control in the "big picture" strategic direction of the Company. Consistent with that desire, NuVasive appointed Miles to the Company's Board in August 2016.

17. A few weeks later, out of the blue, Miles disclosed that he was considering accepting an employment offer from Alphatec. While this was surprising given that he had just disparaged Alphatec as a potential business opportunity and had just joined NuVasive's Board, Miles leveraged this offer to negotiate a rich compensation package to remain with NuVasive as its Vice Chairman, including (1) a \$500,000 per year salary; (2) an equity award with a value in excess of \$3.7 million; and (3) continued vesting of earlier equity grants. (Ex. A.) Miles also remained on the Board.

18. As the Vice Chairman, Miles would remain heavily involved in NuVasive's high-level business strategy, product development initiatives, and in maintaining key customer and partner relationships, but would largely be relieved of day-to-day management responsibilities.

19. According to Miles, he wanted reduced day-to-day responsibilities in order to spend more time with his family; he did not want the huge workload associated with a high-level management position with NuVasive or Alphatec.

20. In light of Miles' disclosure that he had considered joining a direct competitor, and that Miles would continue to receive unfiltered access to NuVasive's most high-level and confidential business plans and strategies, NuVasive was justifiably concerned about ensuring that Miles would not turn around and use that information for the benefit of a competitor. Nevertheless,

Miles represented that he was happy with NuVasive and its senior management; that he was looking forward to his new position; and that he was firmly committed to NuVasive going forward.

21. Accordingly, after heavy negotiations while represented by his own personal, independent attorney, Miles agreed to the following restrictive covenants:

(a) “[F]or a one year period following the termination of your employment for any reason, you will not provide any services to any business operating in any line or type of business conducted by NuVasive or its subsidiaries.” (*Id.* at 2.)

(b) “For that same one year period, you will not hire or solicit, directly or indirectly, any former or current employees of NuVasive, its subsidiaries and/or distributors, or solicit the business of any customers, clients, medical partners (including physicians utilizing NuVasive’s products and services) of NuVasive, its subsidiaries and/or distributors.” (*Id.*)

22. The Letter Agreement provides that it “shall be governed by the laws of the State of Delaware, without regard for choice of law provisions.” (*Id.* at 3.)

23. It also contains an exclusive Delaware venue provision and provides that both NuVasive and Miles consent to the jurisdiction of the Delaware courts. (*Id.*)

24. Although represented by an independent attorney, Miles did not object to the restrictive covenants contained in the Letter Agreement nor to the Delaware choice of law and choice of venue provisions.

25. Given that he had just disclosed that he was considering joining a competitor, NuVasive would never have: (a) allowed Miles to remain on the Board; (b) appointed him to the position of Vice Chairman; or, most importantly, (c) given him continued access to NuVasive's most confidential and proprietary business secrets, absent Miles' agreement and representation that he intended to abide by the restrictive covenants in the Letter Agreement.

26. Upon information and belief, Miles never actually intended to comply with his restrictive covenants, but agreed to them in order to ensure his continued access to NuVasive's confidential business information as part of his plan to convert NuVasive's business and employees to Alphatec.

27. Based on his fiduciary role and contractual obligations and commitments to NuVasive, NuVasive continued to entrust Miles with its most confidential business information. This included acquisition targets, product development timelines and launch windows, domestic and international growth and expansion plans, key customer and surgeon relationships, and NuVasive's 5-year strategic plan, among a host of other information.

28. Miles continued to have unrestricted access to this information up until the date of his resignation.

**C. Miles Continues to Breach his Fiduciary Duties to NuVasive**

29. As NuVasive's Vice Chairman and a member of NuVasive's Board, Miles continued to owe fiduciary duties to NuVasive. Miles also assured NuVasive of his loyalty to the Company, going so far as to tell the Board of Directors that he "bleeds purple" (the color purple is a core part of NuVasive's image, branding, and marketing). Unfortunately, these assurances were false.

30. In December 2016, Miles e-mailed Stephen Hochschuler, a key surgeon within the spinal surgery field, and a substantial Alphatec shareowner, praising the appointment of former NuVasive employee Terry Rich as Alphatec's CEO and assured Hochshuler that "you will like him as he is a hardass."

31. On March 22, 2017, Miles executed a securities purchase agreement to purchase \$500,000 of Alphatec stock in a private placement. His substantial capital investment into a direct competitor of NuVasive was never disclosed to NuVasive. Had he disclosed that investment, NuVasive would have objected to such a blatant conflict of interest and breach of his fiduciary duties, and immediately terminated his positions with the Company and cut off his access to NuVasive's confidential information.

32. Alphatec's press release announcing the private placement sale confirmed that its purpose was to enable Alphatec to more effectively compete in the spinal surgery business:

“We appreciate the support of our new and existing investors and the confidence this conveys in our strategy to build a high-growth company,” said Terry Rich, Alphatec Spine’s Chief Executive Officer. “We believe the additional capital will allow us to execute on our plans to expand our surgeon customer base, drive growth through the launch of our new products . . . as well as support the transformation of our distribution channel.”

33. In other words, Miles knew that his investment was directly contrary to NuVasive’s interests, and his own fiduciary duties to NuVasive. The investment was a clear breach of the conflict-of-interest policy in NuVasive’s Code of Conduct, which provides:

**FINANCIAL INVESTMENTS IN OTHER COMPANIES**

To be sure we are keeping NuVasive’s best interests at heart, we should not have a significant investment in a customer, supplier or competitor. Large investments in these organizations could divide our interests and make it difficult for us to act in the best interests of our Company. . . .

34. Miles concealed his investment by purchasing shares in Alphatec through an entity called “MOM.” Further, Alphatec aided his concealment by not disclosing that Miles was the beneficial owner of the shares.

35. During this time, Miles was engaged in surreptitious discussions to become Alphatec’s “leader.” Miles concealed these discussions from NuVasive

and made no effort to recuse himself from ongoing discussions and disclosures of NuVasive's most confidential business strategies and other information.

36. NuVasive has also learned that, throughout his tenure as Vice Chairman, Miles disparaged NuVasive and key members of its management to critical NuVasive customers, medical partners, and employees, in order to lay the groundwork to transition them to Alphatec.

37. In June 2017, in the midst of these ongoing contacts with Alphatec, Miles sold 15,000 shares of NuVasive stock, for proceeds in excess of \$1 million.

38. In September 2017, Miles contacted a NuVasive customer and respected spinal surgeon, informed the surgeon that Miles was considering an offer to join Alphatec, and sought the surgeon's advice.

39. While actively scheming against NuVasive and assisting its direct competitor, Miles continued to draw his \$500,000 salary, and continued to vest equity awards worth well in excess of \$1 million.

**D. Miles Abruptly Resigns from NuVasive**

40. While still employed by NuVasive, Miles negotiated with Alphatec to secure an additional equity stake in the company. According to its later press release, Alphatec – a struggling company with a current market capitalization under \$35 million – granted Miles 1,000,000 Restricted Stock Units (a market value of \$3,220,000 at Alphatec's closing price as of October 2, 2017) to assume

the position as Alphatec’s “leader.” (Ex. B.) This was such a large grant that Alphatec was required to amend its “2016 Employment Inducement Award Plan to increase the shares reserved for issuance thereunder by 1 million shares.” The press release also disclosed that Miles “agreed to purchase” 1.3 million Alphatec shares at \$2.26 per share (a \$2,938,000 investment, in addition to the \$500,000 in shares Miles had previously purchased). Miles will also receive warrants to purchase up to an additional 1.3 million shares of Alphatec stock.

41. Only after negotiating to secure a massive equity stake in Alphatec (about 15% of the outstanding shares, with the potential to control up to 23% if the warrants are exercised) did Miles disclose to NuVasive – late on a Sunday afternoon – that he was resigning, effective immediately. Incredibly, Miles also notified the Company that he would assume the position of Executive Chairman of Alphatec the following day and would not honor the restrictive covenants he had negotiated a year earlier:

<p>Greg,</p> <p>As we discussed, I am writing to resign from my at-will position as Vice-Chairman of NuVasive, and from the Company’s Board of Directors, effective immediately. Beginning tomorrow, I will assume the role of Executive Chairman of Alphatec Spine, Inc.</p>
<p>Finally, I do not believe the post-employment non-compete and no hire restrictions in my current contract are enforceable against me (as a California resident and employee); however, out of an abundance of caution, I note that the contractual penalty is repayment of the value of all Share Purchase Matching Performance Restricted Stock Units that have vested, which equates to zero (i.e., no such units vest until September 2021).</p>

42. Miles' last-minute disclosure left NuVasive with no notice or opportunity to respond to Miles' expressed intent to violate his restrictive covenants before he could commence employment with Alphatec.

43. The next day, October 2, 2017, Alphatec issued its press release announcing that "Miles will lead the organization" and that Alphatec's current CEO will report to Miles. (Ex. B.) Alphatec anticipates that "Pat's influence on daily operations, product development decisions, and surgeon engagement will accelerate [Alphatec's] business transformation." Miles "will be fully engaged, focusing primarily on further defining and implementing Alphatec's strategic initiatives, expanding and fortifying the Company's relationships with surgeon customers, and leading Alphatec's new technology development." (*Id.*) And he will do so with complete, up-to-date information about its direct competitor's most confidential business plans and strategies.

44. Miles' equity investments into Alphatec appreciated more than 40% on the day of the announcement.

**E. Miles Immediately Transitions NuVasive's Business to Alphatec**

45. As noted above, even before informing NuVasive of his intent to resign, Miles had laid the groundwork to transition NuVasive's customers, medical partners, and employees to Alphatec by disparaging NuVasive and its

management, and disclosing his plans to join Alphatec to at least one (if not substantially more) NuVasive customers.

46. Immediately upon assuming his position with Alphatec, Miles recruited NuVasive's employees, customers, and medical partners to terminate their relationships with NuVasive and join Alphatec.

47. For instance, on the day of the announcement, Miles was in contact with at least six NuVasive customers and medical partners (if not substantially more).

48. He was also in contact with over a dozen current and former NuVasive employees and consultants. At least one NuVasive employee – Elizabeth Lukianov, a Senior Associate Product Manager – has already left to join Miles at Alphatec.

49. NuVasive has also learned that, immediately following Miles' hire, Alphatec has contacted NuVasive's distributors, falsely claiming that NuVasive intends to terminate their contracts or convert them into direct employees. Upon information and belief, these contacts were directed by Miles. One distributor representative, Ashley Warwick, has already resigned to accept a position as a Regional Manager with Alphatec.

50. Upon information and belief, Miles has and is using his knowledge of NuVasive's business strategies, product development timelines and objectives, and key customer, employee, and partner relationships, to shape Alphatec's strategic direction and compete more effectively with NuVasive.

### **COUNT I – BREACH OF CONTRACT**

51. The allegations contained in the above paragraphs are hereby incorporated by reference as if fully set forth herein.

52. There is a valid, enforceable agreement between NuVasive and Miles, governed by Delaware law, which contains, among other restrictive covenants, a one-year non-compete agreement and a one year non-solicitation covenant.

53. All conditions precedent to NuVasive's recovery under the Letter Agreement have been performed, excused, waived, or otherwise satisfied.

54. Miles breached the Letter Agreement by abruptly resigning from NuVasive to accept an executive-level position with one of NuVasive's direct competitors, in violation of his restrictive covenants, and by soliciting NuVasive's employees, customers, distributors, and medical partners to terminate their relationships with NuVasive and affiliate with Alphatec.

55. As a direct and proximate result of Miles' breaches, NuVasive has suffered and continues to suffer damages in an amount to be determined at trial.

56. NuVasive further seeks to disgorge all compensation paid to Miles, including but not limited to his salary and the fair value market of his equity awards, an amount that exceeds \$1 million as of today's date.

**COUNT II – BREACH OF FIDUCIARY DUTY**  
**(Misappropriation Of Business Opportunities)**

57. As the President and Chief Operating Officer of NuVasive, Miles owed NuVasive fiduciary duties of loyalty and due care.

58. Upon information and belief, Miles usurped corporate opportunities which he was obligated to present to the Company.

59. Miles' conduct is malicious, intentional, without legal justification, and is done with the intent to injure NuVasive.

60. As a direct and proximate result of Miles' conduct, NuVasive has suffered and continues to suffer damages in an amount to be determined at trial.

61. NuVasive further seeks to disgorge all compensation paid to Miles, including but not limited to his salary and the fair value market of his equity awards, an amount that exceeds \$1 million as of today's date.

**COUNT III – BREACH OF FIDUCIARY DUTY**  
**(Duty Of Loyalty)**

62. In his capacities as President, Chief Operating Officer, Vice Chairman, and as a member of NuVasive's Board, Miles owed fiduciary duties of loyalty and due care to NuVasive.

63. While employed by NuVasive, Miles breached these duties by: (a) disparaging NuVasive and its management to NuVasive customers, medical partners, and employees; (b) making a massive equity investment into a direct competitor without disclosure to NuVasive and in violation of its “Conflicts of Interest” policy; (c) consulting with Alphatec board members and shareowners about Alphatec-related business; (d) actively misleading NuVasive as to his loyalty to the Company, assuring the Board that he “bleeds purple”; and (e) failing to disclose his continued contacts with Alphatec.

64. Miles failed to disclose his disloyal activities, and particularly his equity investment into Alphatec, because he knew that disclosure of that information would cause NuVasive to immediately terminate its relationship with Miles, cut off his access to its confidential and proprietary business information, and stop paying his salary and permitting his equity awards to continue to vest.

65. Shortly before resigning from NuVasive, Miles disclosed his plans to certain NuVasive customers, medical partners, and key employees, in order to lay the groundwork to convert them to Alphatec following his resignation.

66. Miles’ conduct is malicious, intentional, without legal justification, and is done with the intent to injure NuVasive.

67. As a direct and proximate result of Miles’ conduct, NuVasive has suffered and continues to suffer damages in an amount to be determined at trial.

68. NuVasive further seeks to disgorge all compensation paid to Miles, including but not limited to his salary and the fair value market of his equity awards, as well as the value of the equity gains in his Alphatec stock that he purchased and secured through his disloyal conduct.

#### **COUNT IV – UNFAIR COMPETITION**

69. The allegations contained in the above paragraphs are hereby incorporated by reference as if fully set forth herein.

70. Miles' scheme to gain access to NuVasive's most confidential and proprietary business information by actively misleading NuVasive as to his relationship and personal investment with Alphatec constitutes unfair competition.

71. Upon information and belief, Miles has already begun to use this information to the direct benefit of Alphatec, including but not limited to poaching NuVasive's customers, employees, and medical partners, and using his advance knowledge of NuVasive's business strategies to inform Alphatec's own business strategies and product development objectives.

72. Miles' conduct is malicious, intentional, without legal justification, and is done with the intent to injure NuVasive.

73. As a direct and proximate result of Miles' conduct, NuVasive has suffered and continues to suffer damages in an amount to be determined at trial.

74. NuVasive further seeks to disgorge all compensation paid to Miles, including but not limited to his salary and the fair value market of his equity awards, an amount that exceeds \$1 million as of today's date.

**COUNT V – TORTIOUS INTERFERENCE  
WITH CONTRACTUAL RELATIONS**

75. The allegations contained in the above paragraphs are hereby incorporated by reference as if fully set forth herein.

76. NuVasive and its medical partners are parties to contractual relationships, including but not limited to royalty agreements, confidentiality agreements, and other contracts related to consulting and product development services.

77. NuVasive and its independent distributors are likewise parties to contractual relationships, including but not limited to distributorship agreements.

78. Upon information and belief, Miles has willfully interfered with NuVasive's contractual relationships by soliciting NuVasive's medical partners and distributors to terminate their relationships with NuVasive and accept engagements with Alphatec.

79. This solicitation – in breach of Miles' own contractual commitments – constitutes tortious interference.

80. Miles' conduct is malicious, intentional, without legal justification, and is done with the intent to injure NuVasive.

81. As a direct and proximate result of Miles' conduct, NuVasive has suffered and continues to suffer damages in an amount to be determined at trial.

**COUNT VI – TORTIOUS INTERFERENCE  
WITH PROSPECTIVE ECONOMIC ADVANTAGE**

82. The allegations contained in the above paragraphs are hereby incorporated by reference as if fully set forth herein.

83. Due to NuVasive's efforts to establish goodwill in the marketplace, market its products, and deliver innovative and superior product offerings, it has a reasonable expectation of economic advantage and commercial relationships.

84. These commercial relationships are furthered by NuVasive's highly-skilled workforce, its ongoing customer relationships, its sophisticated distributorship network, and its relationships with its medical partners which are integral to its development of new and innovative products.

85. Upon information and belief, Miles has breached his non-competition and non-solicitation covenants by soliciting such persons to terminate their relationships with NuVasive and join Alphatec.

86. Miles' conduct is malicious, intentional, without legal justification, and is done with the intent to injure NuVasive.

87. As a direct and proximate result of Miles' conduct, NuVasive has suffered and continues to suffer damages in an amount to be determined at trial.

## **COUNT VII – FRAUDULENT INDUCEMENT**

88. The allegations contained in the above paragraphs are hereby incorporated by reference as if fully set forth herein.

89. Upon information and belief, Miles never intended to honor his contractual agreements under the Letter Agreement, but failed to disclose this to NuVasive and thereby induced NuVasive to enter into the Letter Agreement.

90. Miles' intent is demonstrated not by his mere failure to live up to his obligations, but rather that: (a) Miles continued to engage in surreptitious contacts and discussions with Alphatec, as well as make a substantial equity investment into Alphatec, despite entering the Letter Agreement; (b) Miles did not merely fail to disclose his ongoing discussions with Alphatec – he actively misled NuVasive by affirming his loyalty to NuVasive; (c) Miles' abrupt resignation with no advance notice was done in a manner designed to intentionally harm NuVasive in the marketplace and prevent it from enforcing the restrictive covenants before Miles could join Alphatec; and (d) although Miles was represented by an independent attorney when negotiating the Letter Agreement, he never raised any of the purported concerns which he now believes justify his contractual breaches – because he never intended to abide by them in the first place.

91. Absent Miles' affirmative omissions and misrepresentations, NuVasive would not have entered into the Letter Agreement and, upon learning of his disloyalty, would have immediately terminated the Letter Agreement. Instead, Miles collected in excess of \$1.5 million in compensation from NuVasive. Miles' omissions and misrepresentations were knowingly false and intended to induce NuVasive to enter into – and not terminate – the Letter Agreement.

92. NuVasive acted in justifiable reliance on Miles' false representations and omissions and, as a direct and proximate result, paid him in excess of \$1.5 million in total compensation that it otherwise would not have paid. Consequently, NuVasive has suffered damages as a direct and proximate result of its reliance on Miles' affirmative misrepresentations and omissions.

93. Miles' conduct was malicious, intentional, without legal justification, and done with the intent to injure NuVasive.

**PRAYER FOR RELIEF**

**WHEREFORE**, NuVasive requests that the Court enter judgment in its favor:

- A. Awarding compensatory damages against Miles;
- B. Disgorging all salary, equity awards, investment gains, and other compensation received by Miles;
- C. Awarding NuVasive its attorneys' fees and costs;
- D. Pursuant to Article IV § 13(2) of the Delaware Constitution, punitive and exemplary damages, and a trial by jury on non-equitable claims; and
- E. Granting such other relief deemed appropriate by the Court.

DATED: October 10, 2017

**DLA PIPER LLP (US)**

*/s/ John L. Reed*

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