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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated,)	Case:
Plaintiff,)	CLASS ACTION COMPLAINT FOR
)	VIOLATIONS OF THE FEDERAL
)	SECURITIES LAWS
v.)	JURY TRIAL DEMANDED
NEVRO CORP., RAMI ELGHANDOUR and ANDREW GALLIGAN,)	
Defendants)	
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)	

CLASS ACTION COMPLAINT

1 Plaintiff Oklahoma Police Pension and Retirement System (“Plaintiff”), by and through
2 its attorneys, alleges the following upon information and belief, except as to those allegations
3 concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and
4 belief is based upon, among other things, its counsel’s investigation, which includes without
5 limitation: (a) review and analysis of public filings made by Nevro Corp. (“Nevro” or the
6 “Company”) with the United States Securities and Exchange Commission (“SEC”); (b) review
7 and analysis of press releases and other publications disseminated by Defendants and other
8 related non-parties; (c) review of news articles, shareholder communications, conference call
9 transcripts, and postings on Nevro’s website concerning the Company’s public statements; and
10 (d) review of other publicly available information concerning Nevro and the Individual
11 Defendants.

12 **NATURE OF THE ACTION**

13 1. This is a class action on behalf of persons and entities that acquired Nevro
14 common stock between January 8, 2018 and July 12, 2018, inclusive (the “Class Period”),
15 against Defendants Nevro, its Chief Executive Officer, Rami Elghandour (“Elghandour”), and its
16 Chief Financial Officer Andrew Galligan (“Galligan”) (collectively, “Defendants”), seeking to
17 pursue remedies under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et. seq. (the
18 “Exchange Act”).

19 2. Nevro, headquartered in Redwood City, California, designs, develops and
20 manufactures medical device treatments for patients suffering from debilitating chronic pain.
21 The Company’s principal products and revenue-drivers are its HF10 therapies delivered by its
22 Senza I and Senza II spinal cord stimulation (“SCS”) systems, which Defendants regularly touted
23 as “novel,” “proprietary” and the lifeline of its business and sales growth.

24 3. On April 27, 2018, Nevro’s stock price began to decline after it was revealed that
25 Boston Scientific Corp. (“Boston Scientific”) had filed an action against Nevro asserting claims
26 of patent infringement, theft of trade secrets, and tortious interference with contract alleging that,

1 as early as 2009, Nevro had been recruiting and hiring dozens of former Boston Scientific
2 employees and was using trade secrets contained in more than 34,000 documents stolen from
3 Boston Scientific by those former employees to develop and improve Nevro's Senza I and Senza
4 II SCS systems. On this news, Nevro's share price declined \$1.46 per share, wiping out \$44
5 million of the Company's market capitalization in one trading day.

6 4. Just a week later, on May 7, 2018, the Company stunned investors when it
7 reported first quarter 2018 financial results that fell drastically short of estimates. The shortfall
8 was blamed in large part on a 31% increase in quarterly operating expenses, driven primarily by
9 legal expenses associated with the Company's patent infringement litigation with Boston
10 Scientific. On this news, Nevro's share price plummeted \$14.67 per share, or 16%, wiping out
11 another \$450 million in the Company's market capitalization.

12 5. On July 2, 2018, Morgan Stanley & Co analysts downgraded the Company's
13 stock to "Equal Weight," explaining that Nevro's patent litigation had become a "key risk" and
14 that the Company's claims of "clinical superiority" of its treatments were not to be believed as
15 competitors had gained traction and blunted Nevro's share gains. On this news, Nevro's stock
16 price dropped another \$6.62 per share, or 8.29%, wiping out \$200 million in market
17 capitalization.

18 6. Then, on July 10, 2018, multiple analysts reported on a tentative ruling issued by
19 Judge Vincent Chhabria of the Northern District of California on the parties' cross-motions for
20 summary judgment in Nevro's ongoing patent litigation against Boston Scientific. The tentative
21 ruling invalidated at least five of the patents related to Nevro's purportedly "proprietary" HF10
22 therapy and Senza systems. As a result, analysts, including Northland Securities, downgraded
23 Nevro, citing the Company's patent litigation concerns and cautioning investors to pay closer
24 attention to the ongoing litigation because the tentative ruling, "if finalized, could require a
25 recalibration vis-à-vis Nevro's hold" on the space. On this news, Nevro's stock price declined
26 \$11.43 per share, or 15%, wiping out another \$342 million in market capitalization.

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1 12. This Court has jurisdiction over the subject matter of this action pursuant to 28
2 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

3 13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and
4 Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the
5 alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts
6 charged herein, including the dissemination of materially false and/or misleading information,
7 occurred in substantial part in this Judicial District. In addition, the Company’s principal place
8 of business is located in this District at 1800 Bridge Parkway, Redwood City, California, 94065.

9 14. In connection with the acts, transactions, and conduct alleged herein, Defendants
10 directly and indirectly used the means and instrumentalities of interstate commerce, including the
11 United States mail, interstate telephone communications, and the facilities of a national securities
12 exchange.

13 **PARTIES**

14 15. Plaintiff Oklahoma Police Pension and Retirement System, as set forth in the
15 accompanying certification, incorporated by reference herein, purchased Nevro common stock
16 during the Class Period, and suffered damages as a result of the federal securities law violations
17 and false and/or misleading statements and/or material omissions alleged herein.

18 16. Defendant Nevro Corp. is a corporation organized under the laws of the State of
19 Delaware and maintains its principal executive offices at 1800 Bridge Parkway, Redwood City,
20 California, 94065. Redwood City, California. Nevro’s common stock trades on the New York
21 Stock Exchange (“NYSE”) under the symbol “NVRO.”

22 17. Defendant Rami Elghandour (“Elghandour”) was the CEO of Nevro at all
23 relevant times.

24 18. Defendant Andrew Galligan (“Galligan”) was the CFO of Nevro at all relevant
25 times.

1 19. Defendants Elghandour and Galligan (collectively the “Individual Defendants”),
2 because of their positions with the Company, possessed the power and authority to control the
3 contents of Nevro’s reports to the SEC, press releases and presentations to securities analysts,
4 money and portfolio managers and institutional investors, *i.e.*, the market. The Individual
5 Defendants were provided with copies of the Company’s reports and press releases alleged
6 herein to be misleading prior to, or shortly after, their issuance and had the ability and
7 opportunity to prevent their issuance or cause them to be corrected. Because of their positions
8 and access to material non-public information available to them, the Individual Defendants knew
9 that the adverse facts specified herein had not been disclosed to, and were being concealed from,
10 the public, and that the positive representations which were being made were then materially
11 false and/or misleading. The Individual Defendants are liable for the false statements pled herein.

12 SUBSTANTIVE ALLEGATIONS

13 Background

14 20. Nevro develops and manufactures medical device treatment for patients suffering
15 from chronic pain. The Company’s principal products and revenue-drivers are its Senza I and
16 Senza II spinal cord stimulation systems.

17 21. The Company describes Senza I as a neuromodulation device designed to deliver
18 electrical stimulation to spinal cord nerves for the treatment of chronic intractable pain. The
19 Senza I System delivers stimulation using percutaneous leads and a rechargeable, implantable
20 pulse generator (“IPG”). The percutaneous leads are implanted within the spinal column and
21 deliver stimulation to nerves through electrodes located on the back of the leads.

22 22. Nevro launched Senza I commercially in the United States in May 2015 after
23 receiving approval from the U.S. Food and Drug Administration (“FDA”). In January 2018,
24 Nevro received FDA approval for the Company’s next generation Senza II system, which
25 provides the same treatment as Senza I but includes a next-generation IPG.

26 23. Nevro’s Senza I and Senza II SCS systems deliver to patients what Nevro calls its
27 HF10 therapy. According to the Company, “compared to traditional SCS therapy which

1 typically operates at 50 Hz to 60 Hz, HF10 therapy delivers spinal cord stimulation at a lower
2 amplitude and a higher frequency waveform of 10,000 Hz and relies on consistent anatomical
3 placement of the stimulation leads across patients, thus reducing procedure variability relative to
4 traditional SCS therapy.”

5 24. In November 2016, Nevro filed a lawsuit for patent infringement against Boston
6 Scientific in the United States District Court for the Northern District of California alleging that
7 Boston Scientific was infringing Nevro’s patents covering inventions related to its HF10 therapy
8 and Senza I system. According to the Company’s 2016 Annual Report, filed on Form 10-K with
9 the SEC on February 23, 2017, Nevro stated that:

10 We believe we have built competitive advantages through our proprietary
11 technology, clinical evidence base, strong track record of execution with over
12 15,000 patients implanted with Senza, extensive intellectual property and a
13 proven management team with substantial neuromodulation experience. With the
14 well-demonstrated superior efficacy of our HF10 therapy, we aim to continue to
drive adoption and penetration in the U.S. market, which represents the largest
opportunity in SCS, and expand patient access to HF10 therapy by investing in
the development of evidence for new indications such as chronic upper limb and
neck pain, painful neuropathies and non-surgical refractory back pain.

15 **Defendants Issued Materially False and Misleading Statements**
16 **and Omissions During the Class Period**

17 25. The Class Period begins on January 8, 2018, when Nevro issued a press release,
18 filed with the SEC attached to Form 8-K that was signed by Defendant Galligan, announcing its
19 preliminary unaudited Fourth Quarter and Fiscal Year 2017 financial results. In addition to
20 reporting fourth quarter 2017 revenue to be in the range of \$97.4 to \$97.9 million and unaudited
full year 2017 revenue in the range of \$326.1 to \$326.6 million, the 8-K stated:

21 Nevro has developed and commercialized the SENZA® spinal cord stimulation
22 (SCS) system, an evidence-based, non-pharmacologic neuromodulation platform
23 for the treatment of chronic pain. The SENZA® system is the only SCS system
that delivers Nevro’s *proprietary* HF10™ therapy.

24 26. On February 22, 2018, the Company filed its Annual Report on SEC Form 10-K
25 (the “2017 10-K”). The 2017 10-K was signed by Defendants Elghandour and Galligan. The
26 2017 10-K touted the proprietary nature of Nevro’s chronic pain therapies as delivered by its
27 Senza I system:

1 We are a global medical device company focused on providing innovative
2 products that improve the quality of life of patients suffering from chronic
3 pain. We have developed and commercialized the Senza[®] spinal cord stimulation
4 (SCS) system, an evidence-based neuromodulation platform for the treatment of
5 chronic pain. Our proprietary paresthesia-free HF10TM therapy, delivered by our
6 Senza system, was demonstrated in our SENZA-RCT study to be superior to
7 traditional SCS therapy with it being nearly twice as successful in treating back
8 pain and 1.5 times as successful in treating leg pain when compared to traditional
9 SCS therapy. Comparatively, traditional SCS therapy has limited efficacy in
10 treating back pain and is used primarily for treating leg pain, limiting its market
11 adoption. Our SENZA-RCT study, along with our European studies, represents
12 what we believe is the most robust body of clinical evidence for any SCS
13 therapy. We believe the superiority of HF10 therapy over traditional SCS
14 therapies will allow us to capitalize on and expand the approximately \$2.0 billion
15 existing global SCS market by treating both back and leg pain without
16 paresthesia.

17 27. The 2017 10-K further assured investors that the Company's growth strategy
18 relied heavily on sales of the Senza system in the United States:

19 **Invest in research and development to drive innovation:** We are extending our
20 novel and proprietary technologies into a series of product enhancements with the
21 goal of improving the treatment of chronic pain. Product enhancements have
22 recently included a next-generation IPG and enhanced MRI capability, both of
23 which were approved in Europe in 2017, with the next-generation IPG, or Senza
24 II, gaining approval by the FDA in January 2018. Further, we have commercially
25 launched our surgical leads, marketed as the Surpass surgical lead, which we
26 believe will give access to approximately 30% of the U.S. SCS market that we
27 previously did not address fully without the surgical lead. We also expect to
continue developing enhancements to Senza to further increase performance and
introduce new benefits including next generation IPGs and enhanced MRI
capabilities. We believe that further product enhancements if and when
completed will drive continued adoption of our technology platform and further
validate the advantages and benefits of our HF10 therapy.

Scale our business to achieve cost and production efficiencies: We plan to
improve the efficiency of our third-party manufacturing processes, which we
believe will lower our per unit manufacturing cost. We expect to continue to scale
our manufacturing operations as we expand Senza sales volumes in the United
States.

28. The 2017 10-K further stated:

We believe we have built competitive advantages through our proprietary
technology, clinical evidence base, strong track record of execution with over
28,000 patients implanted with Senza, extensive intellectual property and a
proven management team with substantial neuromodulation experience. With the
well-demonstrated superior efficacy of our HF10 therapy, we aim to continue to
drive adoption and penetration in the U.S. market, which represents the largest
opportunity in SCS, and expand patient access to HF10 therapy by investing in

1 the development of evidence for new indications such as chronic upper limb and
2 neck pain, painful neuropathies and non-surgical refractory back pain.

3 29. During the Company's earnings call with investors on February 22, 2018,
4 Defendant Elghandour touted the Company's growing sales revenue

5 Worldwide revenue for the fourth quarter was 98 million, an increase of 39% as
6 reported compared to the same period of the prior year. U.S. revenue for the
7 quarter was 81.1 million, an increase of 45%. Fourth quarter international revenue
8 was 16.9 million, representing an increase of 10% on a constant currency basis.
9 These results are driven by continued adoption and demand for HF10 globally
10 and consistent execution by our sales team.

11 30. Defendant Elghandour further continued to tout the Company's continued success
12 with its Senza systems as Defendants reaffirmed Nevro's full year 2018 guidance.

13 Our R&D and regulatory team secured three key approvals; our Surpass surgical
14 lead, Senza II CE Mark and Senza I Full Body MRI CE Mark. Our clinical team
15 continued to advance the platform applicability of HF10 with outstanding
16 research demonstrating the long-term potential for our therapy in a number of
17 new pain areas.

18 31. As a result of Defendants' glowing statements to the public, Nevro stock gained
19 \$4.13 per share, from a close of \$79.65 on February 22, 2018 to a close of \$83.78 on February
20 23, 2018, increasing the Company's market capitalization by \$124 million. Over the next
21 several weeks, Nevro's stock price continued to increase, trading in the low \$90s by mid-April
22 2018.

23 32. The above statements identified in ¶¶25-30 were materially false and/or
24 misleading and failed to disclose material adverse facts about the Company's business,
25 operations, and prospects, which were known to Defendants or recklessly disregarded by them.
26 Specifically, Defendants failed to disclose: (1) that Nevro had engaged in a fraudulent scheme by
27 using protected confidential and proprietary trade secrets and stolen documents to develop and
enhance Nevro's Senza I and Senza II systems; (2) that as a result, the Company's Senza I and
Senza II systems were not "novel" or "proprietary;" (3) that these practices caused the Company
to be vulnerable to increased litigation expenses and adverse legal and regulatory action; (4) that,
as a result, Nevro's U.S. sales growth was not sustainable; and (5) that, as a result of the

1 foregoing, Defendants' statements about Nevro's business, operations, and prospects, were
2 materially false and/or misleading and/or lacked a reasonable basis.

3 **The Truth Emerges**

4 33. On April 27, 2018, the truth began to emerge when it was revealed that Boston
5 Scientific had filed its own action against Nevro asserting claims of patent infringement, theft of
6 trade secrets, and tortious interference with contract. In addition to alleging that Nevro's Senza
7 systems had violated no less than nine of Boston Scientific's U.S. patents, the complaint detailed
8 a long-running fraudulent scheme by Nevro dating back to at least 2009, whereby Nevro actively
9 recruited and hired dozens of former Boston Scientific employees, and then stole Boston
10 Scientific's confidential, proprietary trade secrets to develop Nevro's Senza I and Senza II
11 systems, with the full knowledge and awareness of Defendants.

12 34. As Boston Scientific's Complaint alleges, Nevro hired dozens of former Boston
13 Scientific employees who were intimately involved in Boston Scientific's development of its own
14 SCS technology.

15 35. Among those former employees was Jim Thacker ("Thacker"), Nevro's Director
16 of Field Engineering, who worked at Boston Scientific from 2000 to 2006 as Manager of Field
17 Clinical Engineering. As a condition of his employment with Boston Scientific, Thacker signed a
18 confidentiality agreement that required him to keep confidential during the term of his
19 employment and thereafter, all trade secrets developed or learned during the course of his
20 employment. When Thacker left Boston Scientific voluntarily in 2006, he represented to the
21 Company that he did not have in his possession any Boston-Scientific owned property, including
22 proprietary or trade secret documents.

23 36. However, unbeknownst to Boston Scientific or Nevro investors, Thacker had
24 taken more than 34,000 Boston Scientific documents with him, including five of his own
25 laboratory notebooks detailing the work performed on Boston Scientific's Precision SCS system,
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1 Boston Scientific-owned thumb drives, actual Precision SCS demonstration devices, lead
2 manuals, and media kits all related to Boston Scientific’s SCS system.

3 37. Thacker sent to Nevro employees in which Thacker attached Boston Scientific
4 documents that were explicitly and undeniably marked “Confidential” and “Proprietary.” As the
5 Complaint explains:

6 *Nevro’s possession of Boston Scientific’s internal clinical investigation protocol*
7 *for its Precision™ SCS product would have been of value to Nevro, who during*
8 *the relevant time period was developing its own SCS system, and conducting its*
9 *own clinical investigations. Since Nevro had never developed an SCS product*
10 *before, the Stimulus Confirmatory Study disclosed by Mr. Thacker provided*
11 *Nevro with a necessary tool to develop its own clinical investigation*
12 *protocol....Nevro has used the information provided by Mr. Thacker in*
13 *connection with its business activities, including in its research and development,*
14 *design, clinical investigation, and testing of the Senza Systems.*

15 38. On this news, Nevro’s share price declined \$1.46 per share, from a close of
16 \$90.82 per share on April 27, 2018 to a close of \$89.36 per share on April 30, 2018 – wiping out
17 \$44 million in the Company’s market capitalization in one trading day.

18 39. Then, just one week later, on May 7, 2018, after the close of trading, Defendants
19 stunned the market when they announced Nevro’s first quarter 2018 financial results in a press
20 release that was filed as an attachment to Form 8-K with the SEC. Although the Company
21 reported a 33% increase in U.S. revenue over the same period the prior year, the Company also
22 disclosed that its operating expenses had increased by almost the same margin, driven primarily
23 by “legal expenses associated with intellectual property litigation” with Boston Scientific.

24 40. During the Company’s earnings call with analysts that evening, Defendant
25 Elghandour explained that:

26 Operating expenses for the first quarter of 2018 were \$77.7 million, an increase of
27 31% compared to the first quarter of 2017. The increase in operating expenses
was driven primarily by increased headcount and related personnel costs, *as well*
as legal expenses associated with the Boston Scientific intellectual property
litigations.

Legal expense in connection with those litigations was \$8.6 million for the
quarter, as compared to \$2.4 million in the same quarter of last year. Net loss
from operations for the period was \$15.7 million compared to \$13.1 million for
the first quarter of 2017. Excluding the effect of the IP litigation spend in each

1 period. We saw \$3.5 million decrease or 33% improvement and net operating loss
2 this quarter as compared to Q1 of 2017.

3 41. On this news, Nevro's share price plummeted \$14.67 per share, or 16%, from a
4 close of \$92.26 per share on May 7, 2018 to a close of \$77.59 per share on May 8, 2018, on
5 heavy trading volume of more than 4 million shares – wiping out another \$450 million in market
6 capitalization.

7 42. On July 2, 2018, Nevro investors were shocked again when Morgan Stanley &
8 Co. downgraded Nevro to “Equal Weight” explaining that the Company was facing a “key risk”
9 with its patent litigation, and questioning its ongoing claims of “superiority”:

10 Nevro's commercial message around clinically superiority has not resonated as
11 well since those initial concerns as competitors have gained traction and blunted
12 Nevro's share gains since NANS 2017. Our channel diligence has shifted in
13 recent months as doctors have highlighted lower real-world efficacy vs SENZA-
14 RCT, the subjectivity of pain score reductions, and durable relief with alternate
15 therapies (particularly Medtronic's Intellis/Evolve workflow), all suggesting the
16 commercial path from here is likely to get harder for Nevro.

17 43. On this news, Nevro's stock price dropped another \$6.62 per share, or 8.29%,
18 from a close of \$79.85 per share on June 29, 2018 to a close of \$73.23 per share on July 2, 2018,
19 on high trading volume of more than 2 million shares, wiping out \$200 million in market
20 capitalization.

21 44. Then, on July 5, 2018, Judge Vincent Chhabria of the Northern District of
22 California issued a tentative ruling on cross-motions for summary judgment in Nevro's own
23 patent infringement action against Boston Scientific. Judge Chhabria's tentative ruling
24 threatened to end Nevro's case by invalidating the lion's share of Nevro's patents. The tentative
25 ruling was reported to the market on July 10, 2018, when analysts from several investment firms,
26 including Canaccord Genuity, Wells Fargo Securities, LLC, Morgan Stanley & Co., JMP
27 Securities and Northland Securities, Inc. all issued reports describing the ruling.

45. Morgan Stanley explained in its July 10, 2018 analyst note that the “draft ruling
on the Nevro/Boston IP litigation is likely pressuring shares this morning. The IP debate was a
component of our recent downgrade.” Following suit, Northland Securities issued its own

1 downgrade of Nevro stock, citing the Company's patent litigation and cautioning investors to
2 pay closer attention to the ongoing litigation because the tentative ruling, "if finalized could
3 require a recalibration vis-à-vis Nevro's hold" on the space.

4 46. On this news, Nevro's stock price declined \$11.43 per share, or 15%, from a close
5 of \$75.47 per share on July 9, 2018 to \$64.04 per share on July 10, 2018, again on exceptionally
6 high trading volume of nearly 4 million shares, wiping out \$342 million in market capitalization.

7 47. Finally, on July 13, 2018, prior to market open, Nevro filed a Form 8-K with the
8 SEC announcing without explanation or warning, that the Company had "determined to
9 terminate James Alexih's, Vice President Worldwide Sales, employment with the Company."

10 48. On this news, the stock price fell another \$10.27 per share, or 15%, from a close
11 of \$68.04 on July 12, 2018, to a close of \$57.77 on July 13, 2018 on trading volume of 6.5
12 million shares, wiping out an additional \$309 million in market capitalization.

13 **CLASS ACTION ALLEGATIONS**

14 49. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
15 Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that
16 acquired Nevro common stock between January 8, 2018 and July 12, 2018, inclusive, and who
17 were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and
18 directors of the Company, at all relevant times, members of their immediate families and their
19 legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or
20 had a controlling interest.

21 50. The members of the Class are so numerous that joinder of all members is
22 impracticable. Throughout the Class Period, Nevro's common stock actively traded on the
23 NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can
24 only be ascertained through appropriate discovery, Plaintiff believes that there are at least
25 hundreds or thousands of members in the proposed Class. Millions of Nevro shares were traded
26 publicly during the Class Period on the NYSE. During the Class Period, Nevro had over 30
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1 million shares of common stock outstanding. Record owners and other members of the Class
2 may be identified from records maintained by Nevro or its transfer agent and may be notified of
3 the pendency of this action by mail, using the form of notice similar to that customarily used in
4 securities class actions.

5 51. Plaintiff's claims are typical of the claims of the members of the Class as all
6 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
7 federal law that is complained of herein.

8 52. Plaintiff will fairly and adequately protect the interests of the members of the
9 Class and has retained counsel competent and experienced in class and securities litigation.

10 53. Common questions of law and fact exist as to all members of the Class and
11 predominate over any questions solely affecting individual members of the Class. Among the
12 questions of law and fact common to the Class are:

- 13 a. whether the federal securities laws were violated by Defendants' acts as alleged
14 herein;
- 15 b. whether statements made by Defendants to the investing public during the Class
16 Period omitted and/or misrepresented material facts about the business,
17 operations, and prospects of Nevro; and
- 18 c. to what extent the members of the Class have sustained damages and the proper
19 measure of damages.

20 54. A class action is superior to all other available methods for the fair and efficient
21 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
22 the damages suffered by individual Class members may be relatively small, the expense and
23 burden of individual litigation makes it impossible for members of the Class to individually
24 redress the wrongs done to them. There will be no difficulty in the management of this action as
25 a class action.

26 **UNDISCLOSED ADVERSE FACTS**

1 55. The market for Nevro's common stock was open, well-developed and efficient at
2 all relevant times. As a result of these materially false and/or misleading statements, and/or
3 failures to disclose, Nevro common stock traded at artificially inflated prices during the Class
4 Period. Plaintiff and other members of the Class purchased or otherwise acquired Nevro's
5 common stock relying upon the integrity of the market price of the Company's common stock
6 and market information relating to Nevro, and have been damaged thereby.

7 56. During the Class Period, Defendants materially misled the investing public,
8 thereby inflating the price of Nevro's common stock, by publicly issuing false and/or misleading
9 statements and/or omitting to disclose material facts necessary to make Defendants' statements,
10 as set forth herein, not false and/or misleading. The statements and omissions were materially
11 false and/or misleading because they failed to disclose material adverse information and/or
12 misrepresented the truth about Nevro's business, operations, and prospects as alleged herein.

13 57. At all relevant times, the material misrepresentations and omissions particularized
14 in this Complaint directly or proximately caused or were a substantial contributing cause of the
15 damages sustained by Plaintiff and other members of the Class. As described herein, during the
16 Class Period, Defendants made or caused to be made a series of materially false and/or
17 misleading statements about Nevro's business, practices and prospects. These material
18 misstatements and/or omissions had the cause and effect of creating in the market an
19 unrealistically positive assessment of the Company and its business, thus causing the Company's
20 common stock to be overvalued and artificially inflated or maintained at all relevant times.
21 Defendants' materially false and/or misleading statements during the Class Period resulted in
22 Plaintiff and other members of the Class purchasing the Company's common stock at artificially
23 inflated prices, thus causing the damages complained of herein when the truth was revealed.

24 **LOSS CAUSATION**

25 58. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
26 the economic loss suffered by Plaintiff and the Class.

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1 59. During the Class Period, Plaintiff and the Class purchased Nevro’s common stock
2 at artificially inflated prices and were damaged thereby. The price of the Company’s common
3 stock significantly declined when the misrepresentations made to the market, and/or the
4 information alleged herein to have been concealed from the market, and/or the effects thereof,
5 were revealed, causing investors’ losses.

6 **APPLICABILITY OF PRESUMPTION OF RELIANCE**
7 **(FRAUD-ON-THE-MARKET DOCTRINE)**

8 60. The market for Nevro’s common stock was open, well-developed and efficient at
9 all relevant times. As a result of the materially false and/or misleading statements and/or failures
10 to disclose, Nevro’s common stock traded at artificially inflated prices during the Class Period.
11 Plaintiff and other members of the Class purchased or otherwise acquired the Company’s
12 common stock relying upon the integrity of the market price of Nevro’s common stock and
13 market information relating to Nevro, and have been damaged thereby.

14 61. During the Class Period, the artificial inflation of Nevro’s common stock was
15 caused by the material misrepresentations and/or omissions particularized in this Complaint
16 causing the damages sustained by Plaintiff and other members of the Class. As described herein,
17 during the Class Period, Defendants made or caused to be made a series of materially false
18 and/or misleading statements about Nevro’s business, operations, and results. These material
19 misstatements and/or omissions created an unrealistically positive assessment of Nevro and its
20 business, operations, and results, thus causing the price of the Company’s common stock to be
21 artificially inflated at all relevant times, and when disclosed, negatively affected the value of the
22 Company stock. Defendants’ materially false and/or misleading statements during the Class
23 Period resulted in Plaintiff and other members of the Class purchasing the Company’s common
24 stock at such artificially inflated prices, and each of them has been damaged as a result.

25 62. At all relevant times, the market for Nevro’s common stock was an efficient
26 market for the following reasons, among others:
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- a. Nevro was listed and actively traded on the NYSE, a highly efficient and automated market;
- b. As a regulated issuer, Nevro filed periodic public reports with the SEC and/or the NYSE;
- c. Nevro regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or
- d. Nevro was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

63. As a result of the foregoing, the market for Nevro’s common stock promptly digested current information regarding Nevro from all publicly available sources and reflected such information in Nevro’s stock price. Under these circumstances, all purchasers of Nevro’s stock during the Class Period suffered similar injury through their purchase of Nevro’s stock at artificially inflated prices and a presumption of reliance applies.

64. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class’s claims are, in large part, grounded on Defendants’ material misstatements and/or omissions. Because this action involves Defendants’ failure to disclose material adverse information regarding the Company’s business operations, sales growth and prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment

1 decisions. Given the importance of the Class Period material misstatements and omissions set
2 forth above, that requirement is satisfied here.

3 **NO SAFE HARBOR**

4 65. The statutory safe harbor provided for forward-looking statements under certain
5 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
6 The statements alleged to be false and misleading herein all relate to then-existing facts and
7 conditions. In addition, to the extent certain of the statements alleged to be false may be
8 characterized as forward looking, they were not identified as “forward-looking statements” when
9 made and there were no meaningful cautionary statements identifying important factors that
10 could cause actual results to differ materially from those in the purportedly forward-looking
11 statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to
12 any forward-looking statements pleaded herein, Defendants are liable for those false forward-
13 looking statements because at the time each of those forward-looking statements was made, the
14 speaker had actual knowledge that the forward-looking statement was materially false or
15 misleading, and/or the forward-looking statement was authorized or approved by an executive
16 officer of Nevro who knew that the statement was false when made.

17 **FIRST CLAIM**
18 **Violation of Section 10(b) of The Exchange Act and**
19 **Rule 10b-5 Promulgated Thereunder**
20 **Against All Defendants**

21 66. Plaintiff repeats and re-alleges each and every allegation contained above as if
22 fully set forth herein.

23 67. During the Class Period, Defendants carried out a plan, scheme and course of
24 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
25 public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and
26 other members of the Class to purchase Nevro’s common stock at artificially inflated and/or
27 maintained prices. In furtherance of this unlawful scheme, plan and course of conduct,
Defendants, and each defendant, took the actions set forth herein.

1 68. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made
2 untrue statements of material fact and/or omitted to state material facts necessary to make the
3 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
4 operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort
5 to maintain artificially high market prices for Nevro's common stock in violation of Section
6 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary
7 participants in the wrongful and illegal conduct charged herein or as controlling persons as
8 alleged below.

9 69. Defendants, individually and in concert, directly and indirectly, by the use, means
10 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
11 continuous course of conduct to conceal adverse material information about Nevro's sales
12 growth, business practices and prospects, as specified herein. Defendants employed devices,
13 schemes and artifices to defraud, while in possession of material adverse non-public information
14 and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure
15 investors of Nevro's value and performance and continued growth, which included the making
16 of, or the participation in the making of, untrue statements of material facts and/or omitting to
17 state material facts necessary in order to make the statements made about Nevro and its business
18 operations and future prospects in light of the circumstances under which they were made, not
19 misleading, as set forth more particularly herein, and engaged in transactions, practices and a
20 course of business which operated as a fraud and deceit upon the purchasers of the Company's
21 common stock during the Class Period.

22 70. Each of the Individual Defendants' primary liability and controlling person
23 liability arises from the following facts: (i) the Individual Defendants were high-level executives
24 and/or directors at the Company during the Class Period and members of the Company's
25 management team or had control thereof; (ii) each of these defendants, by virtue of their
26 responsibilities and activities as a senior officer and/or director of the Company, was privy to and
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1 participated in the creation, development and reporting of the Company's internal budgets, plans,
2 projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and
3 familiarity with the other defendants and was advised of, and had access to, other members of the
4 Company's management team, internal reports and other data and information about the
5 Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants
6 was aware of the Company's dissemination of information to the investing public which they
7 knew and/or recklessly disregarded was materially false and misleading.

8 71. Defendants had actual knowledge of the misrepresentations and/or omissions of
9 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
10 ascertain and to disclose such facts, even though such facts were available to them. Such
11 Defendants' material misrepresentations and/or omissions were done knowingly or recklessly
12 and for the purpose and effect of concealing Nevro's business practices and prospects from the
13 investing public and supporting the artificially inflated and/or maintained price of its stock. As
14 demonstrated by Defendants' overstatements and/or misstatements of the Company's business,
15 operations, practices, and prospects throughout the Class Period, Defendants, if they did not have
16 actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to
17 obtain such knowledge by deliberately refraining from taking those steps necessary to discover
18 whether those statements were false or misleading.

19 72. As a result of the dissemination of the materially false and/or misleading
20 information and/or failure to disclose material facts, as set forth above, the market price of
21 Nevro's common stock was artificially inflated during the Class Period. In ignorance of the fact
22 that market prices of the Company's common stock were artificially inflated, and relying directly
23 or indirectly on the false and misleading statements made by Defendants, or upon the integrity of
24 the market in which the stock trades, and/or in the absence of material adverse information that
25 was known to or recklessly disregarded by Defendants, but not disclosed in public statements by
26 Defendants during the Class Period, Plaintiff and the other members of the Class acquired
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1 Nevro's common stock during the Class Period at artificially high prices and were damaged
2 thereby.

3 73. At the time of said misrepresentations and/or omissions, Plaintiff and other
4 members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff
5 and the other members of the Class and the marketplace known the truth regarding the problems
6 that Nevro was experiencing, which were not disclosed by Defendants, Plaintiff and other
7 members of the Class would not have purchased or otherwise acquired their Nevro common
8 stock, or, if they had acquired such stock during the Class Period, they would not have done so at
9 the artificially inflated prices which they paid.

10 74. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange
11 Act and Rule 10b-5 promulgated thereunder.

12 75. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
13 the other members of the Class suffered damages in connection with their respective purchases
14 and sales of the Company's common stock during the Class Period.

15 **SECOND CLAIM**
16 **Violation of Section 20(a) of The Exchange Act**
17 **Against the Individual Defendants**

18 76. Plaintiff repeats and re-alleges each and every allegation contained above as if
19 fully set forth herein.

20 77. The Individual Defendants acted as controlling persons of Nevro within the
21 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level
22 positions and their ownership and contractual rights, participation in, and/or awareness of the
23 Company's operations and intimate knowledge of the false statements filed by the Company
24 with the SEC and disseminated to the investing public, the Individual Defendants had the power
25 to influence and control and did influence and control, directly or indirectly, the decision-making
26 of the Company, including the content and dissemination of the various statements which
27 Plaintiff contends are false and misleading. Individual Defendants were provided with or had
unlimited access to copies of the Company's reports, press releases, public filings, and other

1 statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements
2 were issued and had the ability to prevent the issuance of the statements or cause the statements
3 to be corrected.

4 78. In particular, the Individual Defendants had direct and supervisory involvement in
5 the day-to-day operations of the Company and, therefore, had the power to control or influence
6 the particular transactions giving rise to the securities violations as alleged herein, and exercised
7 the same.

8 79. As set forth above, Nevro and the Individual Defendants each violated Section
9 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
10 position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the
11 Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
12 other members of the Class suffered damages in connection with their purchases of the
13 Company's common stock during the Class Period.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 16 a. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the
17 Federal Rules of Civil Procedure on behalf of the Class defined herein;
- 18 b. Awarding Plaintiff and the other members of the Class damages in an amount
19 which may be proven at trial, together with interest thereon;
- 20 c. Awarding Plaintiff and the other members of the Class pre-judgment and post-
21 judgment interest, as well as their reasonable attorneys' and experts' witness fees and other
22 costs; and
- 23 d. Awarding such other relief as this Court deems appropriate.
- 24
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27

JURY TRIAL DEMANDED

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2

Plaintiff hereby demands a trial by jury.

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DATED: