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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 SERGIO VAZQUEZ, Individually and
11 on Behalf of All Others Similarly
12 Situated,

13 Plaintiff,

14 v.

15 MASIMO CORPORATION, JOSEPH
16 KIANI, MICAH YOUNG
17

18 Defendants.

Master File No. '23CV1546 L DEB

CLASS ACTION

**COMPLAINT FOR
VIOLATION OF THE
FEDERAL SECURITIES
LAWS**

DEMAND FOR JURY TRIAL

Judge:

19
20 Plaintiff Sergio Vazquez (“Plaintiff”), individually and on behalf of all other
21 persons similarly situated, by their undersigned attorneys, alleges in this Complaint
22 for violations of the federal securities laws (the “Complaint”) the following based
23 upon knowledge with respect to their own acts, and upon facts obtained through an
24 investigation conducted by his counsel, which included, *inter alia*: (a) review and
25 analysis of relevant filings made by Masimo Corporation. (“Masimo” or the
26 “Company”) with the United States Securities and Exchange Commission (the
27

1 “SEC”); (b) review and analysis of Masimo’s public documents, conference calls,
2 press releases, and stock chart; (c) review and analysis of securities analysts’ reports
3 and advisories concerning the Company; and (d) information readily obtainable on
4 the internet.

5 Plaintiff believes that further substantial evidentiary support will exist for the
6 allegations set forth herein after a reasonable opportunity for discovery. Most of the
7 facts supporting the allegations contained herein are known only to the defendants
8 or are exclusively within their control.

9 **NATURE OF THE ACTION**

10 1. This is a federal securities class action on behalf of all investors who
11 purchased or otherwise acquired Masimo common stock between February 28,
12 2023 and July 17, 2023, inclusive (the “Class Period”), seeking to recover damages
13 caused by Defendants’ violations of the federal securities laws (the “Class”).

14 2. Defendants provided investors with material information concerning
15 Masimo’s revenue and sales for the second quarter of fiscal 2023 and expected
16 revenue for the full-year 2023. Defendants’ statements included, among other
17 things, Masimo’s ability to deliver clinically proven new products to the healthcare
18 markets thereby supporting Defendants’ decision to forecast revenue of \$550
19 million to \$565 million for the quarter and *increase* its earnings-per-share estimates
20 to between \$3.59 per share and \$3.69 per share. Defendants’ statements in this
21 regard prompted an immediate and dramatic increase in the price of Masimo’s
22 common stock. From a closing price of \$167.31 per share on February 28, 2023 at
23 the start of the Class Period, Masimo’s stock price climbed to \$184.97 per share the
24 following day on March 1, 2023 on unusually high volume.

25 3. Defendants provided these overwhelmingly positive statements to
26 investors while, at the same time, disseminating materially false and misleading
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1 statements and/or concealing material adverse facts. This caused Plaintiff and other
2 shareholders to purchase Masimo's securities at artificially inflated prices.

3 4. The truth emerged on July 17, 2023, when Masimo issued a press
4 release announcing its second quarter 2023 earnings. Defendants announced lower
5 than expected revenue for the second quarter of fiscal 2023 and preliminarily
6 decreased full-year revenue estimates for both healthcare and non-healthcare
7 segments.

8 5. Investors and analysts reacted immediately to Masimo's revelation.
9 The price of Masimo's common stock declined dramatically. From a closing market
10 price of \$147.16 per share on July 17, 2023, Masimo's stock price fell to \$117.73
11 per share on July 18, 2023, a decline of nearly 20% in the span of just a single day.

12 **JURISDICTION AND VENUE**

13 6. Plaintiff brings this action, on behalf of himself and other similarly
14 situated investors, to recover losses sustained in connection with Defendants' fraud.

15 7. The claims asserted herein arise under and pursuant to §§10(b) and
16 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5
17 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

18 8. This Court has jurisdiction over the subject matter of this action
19 pursuant to 28 U.S.C. §§1331 and 1337, and Section 27 of the Exchange Act, 15
20 U.S.C. §78aa.

21 9. Venue is proper in this District pursuant to §27 of the Exchange Act
22 and 28 U.S.C. §1391(b), as Defendant Masimo is headquartered in this District and
23 a significant portion of its business, actions, and the subsequent damages to Plaintiff
24 and the Class, took place within this District.

25 10. In connection with the acts, conduct and other wrongs alleged in this
26 Complaint, Defendants, directly or indirectly, used the means and instrumentalities
27 of interstate commerce, including but not limited to, the United States mail,

1 interstate telephone communications and the facilities of the national securities
2 exchange.

3 **THE PARTIES**

4 11. Plaintiff purchased Masimo common stock at artificially inflated
5 prices during the Class Period and was damaged upon the revelation of the
6 Defendants' fraud. Plaintiff's certification evidencing his transaction(s) in Masimo
7 is attached hereto.

8 12. Masimo Corporation is a Delaware corporation with its principal
9 executive offices located at 52 Discovery, Irvine, California 92618. During the
10 Class Period, the Company's common stock traded on the NASDAQ Stock Market
11 (the "NASDAQ") under the symbol "MASI."

12 13. Defendant Joseph Kiani ("Kiani") was, at all relevant times, the
13 Chairman of the Board and Chief Executive Officer of Masimo.

14 14. Defendant Micah Young ("Young") was, at all relevant times, the
15 Executive Vice President, Chief Administrative Officer and Chief Financial Officer
16 of Masimo.

17 15. Defendants Kiani and Young are sometimes referred to herein as the
18 "Individual Defendants." Masimo together with the Individual Defendants are
19 referred to herein as the "Defendants."

20 16. The Individual Defendants, because of their positions with the
21 Company, possessed the power and authority to control the contents of Masimo's
22 reports to the SEC, press releases, and presentations to securities analysts, money
23 and portfolio managers, and institutional investors, *i.e.*, the market. Each Individual
24 Defendant was provided with copies of the Company's reports and press releases
25 alleged herein to be misleading prior to, or shortly after, their issuance and had the
26 ability and opportunity to prevent their issuance or cause them to be corrected.
27 Because of their positions and access to material non-public information available

1 to them, each of these Individual Defendants knew that the adverse facts specified
2 herein had not been disclosed to, and were being concealed from, the public, and
3 that the positive representations which were being made were then materially false
4 and/or misleading. The Individual Defendants are liable for the false statements
5 pleaded herein, as those statements were each “group-published” information, the
6 result of the collective actions of the Individual Defendants.

7 17. Masimo is liable for the acts of the Individual Defendants, and its
8 employees under the doctrine of respondeat superior and common law principles of
9 agency as all the wrongful act complained of herein were carried out within the
10 scope of their employment with authorization.

11 18. The scienter of the Individual Defendants, and other employees and
12 agents of the Company are similarly imputed to Masimo under respondeat superior
13 and agency principles.

14 **SUBSTANTIVE ALLEGATIONS**

15 **A. Company Background**

16 19. Masimo is a global medical technology company that develops,
17 manufactures, and markets a variety of noninvasive monitoring technologies. In
18 2022, the Company announced a change in its organizational structure creating two
19 reportable segments, healthcare and non-healthcare, designed to accelerate growth
20 strategies and strengthen its focus on patient care.

21 20. The Company’s healthcare business segment consists of patient-
22 monitoring technologies, hospital automation and connectivity solutions, remote
23 monitoring devices, and consumer health products. These products are sold to
24 hospitals, emergency medical providers, home care providers, physician offices,
25 veterinarians, long-term care facilities, and consumers through the company’s
26 direct sales force, distributors, and original equipment manufacturer partners.

1 21. Masimo’s non-healthcare business segment consists of premium and
2 luxury audio, and related integration technologies. These consumer audio products
3 are sold direct-to-consumers or through authorized retailers and wholesalers.

4 **B. The Defendants Materially Misled Investors Concerning Masimo’s**
5 **Second Quarter Earnings and 2023 Full Year Guidance**

6 *February 28, 2023*

7 22. On February 28, 2023, before the market opened, Masimo issued a
8 press release announcing its fourth quarter and full-year 2022 financial results. The
9 press release also provided Masimo’s first quarter and full-year financial guidance
10 for 2023, stating in pertinent part:

11 Joe Kiani, Chairman and Chief Executive Officer of Masimo, said,
12 “2022 was a momentous year for Masimo. Our healthcare business
13 outperformed expectations. We continued to innovate and deliver
14 clinically proven new products in our professional healthcare markets.
15 In addition, we accelerated our strategy to capture the vast consumer
16 health market opportunity with the acquisition of Sound United and the
17 introduction of new wearable technologies such as our W1™ biosensing
18 watch. The acquisition has provided us with immediate scale across
19 consumer engineering, sales, marketing and distribution that would
20 have otherwise taken many years of dilutive investment to build.
21 Instead, we’ve already completed the integration and are working to
22 realize the tremendous potential of the hearables, wearables and
23 telemonitoring markets unlocked by our unique combination of
24 healthcare and consumer technology capabilities.”

25 . . .
26
27

First Quarter 2023 and Full-Year 2023 Financial Guidance

The Company provided the following estimates for its full-year 2023 guidance:

(in millions, except earnings per diluted share)	Q1 2023 Guidance ⁽¹⁾		Updated Full-Year 2023 Guidance ⁽¹⁾	
	GAAP	Non-GAAP	GAAP	Non-GAAP
Consolidated revenue	\$550 to \$565	\$550 to \$565	\$2,415 to \$2,460	\$2,415 to \$2,460
Healthcare revenue	\$340 to \$345	\$340 to \$345	\$1,450 to \$1,465	\$1,450 to \$1,465
Non-healthcare revenue	\$210 to \$220	\$210 to \$220	\$965 to \$995	\$965 to \$995
Consolidated operating profit	\$43 to \$46	\$72 to \$75	\$319 to \$324	\$400 to \$405
Consolidated earnings per diluted share	\$0.41 to \$0.46	\$0.81 to \$0.86	\$3.59 to \$3.69	\$4.70 to \$4.80

(1) Updated guidance provided February 28, 2023.

- For our healthcare segment, our first quarter and full-year 2023 revenue guidance includes year-over-year foreign currency headwinds of \$5.0 million and \$3.0 million, respectively.

23. On the same day, Defendants held an earnings call that included Defendants Kiani and Young on behalf of Masimo. During the call, Defendants Kiani and Young provided analysts with detailed information concerning the Company's ability to deliver clinically proven new products in the professional healthcare markets and insight into the Company's projections for the upcoming fiscal year. These statements misled investors by failing to disclose material information concerning Defendants' inability to accurately project sales and revenue.

24. During opening remarks, Young stated as follows:

Fiscal year 2022 was a dynamic year as we position our company for success in capturing profitable share within the massive new markets for wearables, hearables, and telemonitoring. We achieved reported revenues of \$2.036 billion and pro forma revenues of \$2.293 billion, representing 11% constant currency growth.

We also delivered operating profit dollar growth of 23% and EPS growth of 15%. Considering we are integrating the new consumer business over the past year, we view these results as a great achievement for the Masimo team around the world.

Now, I'd like to provide an update on our full year 2023 financial guidance that we initially outlined at our Investor Day back on

1 December 13th. For the full year 2023, we are now projecting a
2 consolidated revenue range of \$2.415 billion to \$2.460 billion,
3 representing 6% to 8% growth on a pro forma and constant currency
4 basis.

5 Compared to our prior guidance, this represents an increase of \$73
6 million at the midpoint of the range which is comprised of an increase
7 of \$58 million due to foreign exchange improvement and an increase
8 of \$15 million due to our improved sales expectations.

9 For our Healthcare segment, we are now projecting revenues of \$1.450
10 billion to \$1.465 billion, representing 8% to 10% constant currency
11 growth. This represents an increase of \$23 million at the midpoint of
12 our guidance range.

13 For the Consumer Non-Healthcare segment, we are projecting -- we are
14 now projecting revenues of \$965 million to \$995 million, representing
15 2% to 5% constant currency growth. This represents an increase of \$50
16 million at the midpoint of our guidance range.

17 We are also projecting consolidated non-GAAP operating profit
18 ranging from \$400 million to \$405 million, representing 10% to 12%
19 growth. This represents an increase of \$35 million at the midpoint of
20 our guidance range due to foreign exchange improvement and
21 improved operational expectations.

22 Moving further down the P&L. We are now projecting non-operating
23 expense of \$46 million to \$48 million which reflects higher interest
24 expense on the portion of our debt that has a floating rate and we are
25 projecting a tax rate of 26.5% and weighted average shares outstanding
26 of 55 million.

27 Based on these assumptions, we are projecting a non-GAAP EPS range
of \$4.70 to \$4.80. Compared to prior guidance, this represents an
increase of \$0.40 at the midpoint of the range due to foreign exchange
improvement and improved operational expectations partially offset by
the higher interest expense.

...

1 As you can see our outlook for 2023 reflects solid growth in the business,
2 while incorporating the strategic investments required to deliver on our
3 consumer health initiatives and build a strong foundation for sustainable
4 growth.

5 25. During the question-and-answer segment of the call, Defendant Young
6 perpetuated the false impression they gave to several analysts investors during their
7 opening remarks. Defendant Young stated in pertinent part as follows:

8 <Q: Marie Thibault -BTIG- analyst> Okay. That's very good to hear.
9 Thanks for that helpful detail. Like Rick said, there's a lot of good topics
10 here, but maybe I'll leave some juicy ones for my peers. And just try to
11 better understand, the \$15 million that you called out that you increased
12 guidance by in addition to the FX benefit or the FX lesser headwind,
13 what really drove that improved sales expectation? It certainly sounds
14 like you had a really strong finish to the year, but was there something
15 more to it? Thanks for taking the questions.

16 <A: Micah Young> No, I think as we start to look, Marie, we had a
17 strong finish to the year. So we basically are holding our top-line
18 guidance from a standpoint of growth rate. So, we're still feeling very
19 good about 2023. It's going to be an exciting year for us, and as we get
20 closer to these product launches, it's giving us more confidence. ***So***
21 ***we're holding that overall growth rate of 6% to 8%, 8% to 10% for***
22 ***healthcare and about 2% to 5% for non-healthcare.*** And on the non-
23 healthcare side, the Consumer Audio we're just being thoughtful that
24 we mentioned at Investor Day. We – thoughtful and prudent about the
25 guidance. We'll see how things play out but right now those premium
26 and luxury brands of Bowers & Wilkins Denon and Marantz are
27 holding up very well.

(Emphasis added.)

26 26. Defendants' false and/or materially misleading statements were
27 material. Indeed, Defendants' statements on February 28, 2023 prompted an
immediate rise in the price of Masimo's stock. From a closing price of \$167.31 per
share on February 28, 2023, Masimo's stock price climbed to \$175.93 the following
day on March 1, 2023 on unusually high volume. The truth about Masimo's revenue

1 shortfall and Defendants' forecasting processes would have altered the total mix of
2 information available to investors. Defendants failed to disclose this information
3 and, in so doing, allowed the statements they made to be materially misleading.

4 May 9, 2023

5 27. On May 9, 2023 before the market opened, Masimo issued a press
6 release announcing its first quarter 2023 financial results. The press release stated,
7 in pertinent part, that:

8
9 Joe Kiani, Chairman and Chief Executive Officer of Masimo, said, "We
10 started 2023 with solid performance. New hospital wins and strong
11 uptake of rainbow[®] Pulse CO-Oximetry, Nomoline[®] Capnography,
12 Sedline[®] and O3[®] brain monitoring drove double-digit constant
13 currency growth in our healthcare segment and helped us beat
14 expectations. Our consumer business also came in ahead of
15 expectations due to higher-than-expected demand for our hearables.
16 Our consumer health strategy is building momentum, with Opioid
17 Halo[™], Stork[™] and Freedom[™] now available for pre-order. ***Our strong
18 performance this quarter reflects our long track record of innovation
19 in our professional healthcare business, our thoughtful stewardship
20 of our established luxury and premium consumer audio brands, and
21 our progress marrying the two to build a trusted, clinically proven
22 consumer health business.***"

19 (Emphasis added.)

20 28. The press release further stated the Company's updated full-year
21 financial guidance for 2023:
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Updated Full-Year 2023 Financial Guidance

The Company provided the following estimates for its updated full-year 2023 guidance:

(in millions, except earnings per diluted share)	Updated Full-Year 2023 Guidance ⁽¹⁾	
	GAAP	Non-GAAP
Consolidated revenue	\$2,415 to \$2,460	\$2,415 to \$2,460
Healthcare revenue	\$1,450 to \$1,465	\$1,450 to \$1,465
Non-healthcare revenue	\$965 to \$995	\$965 to \$995
Consolidated operating income	\$309 to \$314	\$400 to \$405
Consolidated earnings per diluted share	\$3.46 to \$3.55	\$4.70 to \$4.80

⁽¹⁾ Guidance provided May 9, 2023.

- For our healthcare segment, full-year 2023 revenue guidance includes year-over-year foreign currency headwinds of \$3 million.

29. On the same day the Company released its first quarter 2023 earnings, Masimo hosted an earnings call that included Defendants Kiani and Young. During the call, Young commented on the Company's financial strength and continuing growth:

For the first quarter, we achieved consolidated revenue of \$565 million and non-GAAP earnings per share of \$0.87. For our healthcare segment, first quarter revenues were \$347 million, representing 16% constant currency growth For our non-healthcare segment, first quarter revenues were \$218 million, representing an expected decline of 9% on a pro forma and constant currency basis. This was in line with our guidance as this business faced a tough year-over-year comparison due to the fulfillment of backordered products in the prior year quarter that drove 22% constant currency growth, right before the acquisition closed.

. . .

To summarize, we delivered first quarter results at the high end of our guidance as our healthcare business again realized steady gains in market share across the portfolio. In our non-healthcare segment, we saw impressive growth from our hearables products despite a difficult year-over-year comparison. And we have an exciting lineup of new products rolling out this year, that will help us advance our strategy, drive long-term growth and improve lives whether in the home or in the hospital.

1 (Emphasis added.)

2 30. During the question-and-answer segment of the call, Defendants Kiani
3 and Young reaffirmed Masimo's projection for the 2023 full-year guidance, stating
4 in part:

5 <Q: Mike Matson -Needham & Company- analyst> So I know there
6 was an earlier question but I guess I want to get more specific the
7 consensus I'm looking at it's \$591 million of revenue a \$1.11 on EPS.
8 Is that -- are you guys comfortable with that? Do you think the street
has analysts have modeled it correctly for the second quarter?

9 <A: Joe Kiani> Yeah. I think Mike when I look at the numbers right
10 now, it looks like there was a consideration for the seasonality of both
11 businesses where they traditionally stepped down in Q2. And the comps
12 from last year if you -- as I mentioned before healthcare is up against a
13 19% comp on the growth rate last year in Q2 and non-healthcare is up
against a 10% comp in Q2 last year.

14 So I think you've got to look at that consider that we still will see pretty
15 heavy year-over-year currency headwinds as well similar to what we
16 saw in Q1. And then of course the -- it starts to turn I believe into more
17 of a tailwind in the back half on currency. So make sure that you're
thinking through that as well.

18 <A: Micah Young> Yes. But we reiterated the full year guidance. So
19 while the quarters might not be exactly the way you guys have put out
there we feel really good about the whole year.

20 June 8, 2023

21 31. Masimo presented at the Jefferies Healthcare Conference on June 8,
22 2023. During the call, Eli Kammerman, Masimo's VP of Business Development &
23 Investor Relations, was asked about the "materiality" of Masimo's hospital
24 automation product line and its growing potential. Kammerman stated:

25 Yes. Hospital automation today accounts for roughly 2 to 3 percentage
26 points of our Healthcare segment sales. *And it's growing in a*
27

1 *somewhat lumpy fashion because of the long-term nature of the*
2 *selling cycle, but the growth rate is in the neighborhood of 20% to*
3 *40%.* So it is a meaningful chunk of the business, and it will become a
4 meaningful contributor to growth over the next few years.

5 (Emphasis added.)

6 32. During the question-and-answer segment of the call, Kammerman
7 discussed Masimo's sensor sales growth for the upcoming year:

8 <Q: Matthew Charles Taylor -Jefferies LLC- analyst> And we're
9 almost out of time, but maybe I'll just ask you for some thoughts on the
10 current health care environment because your sensors are kind of a
11 proxy for utilization in some ways. And so maybe you could talk about
12 any trends that you've seen throughout the first part of the year here.
13 And how you expect that to continue to evolve as it relates to both your
14 sensor growth but also your OEM partners and how they can place
15 boxes and help you to pull through more sensors.

16 <A: Eli Kammerman> Yes, you're right in saying that our sensor sales
17 are tied to overall sensors in the hospitals. Our sensors are used with
18 both surgery patients as well as medical treatment patients. And so you
19 can see that hospital traffic is really the key variable there. Hospital
20 traffic now has basically gotten back to trend line growth as you can
21 see in the hospital reports coming out quarterly. *We're looking at*
22 *sensors growth in the range of 1% to 3% nowadays.*

23 So it's made a nice recovery from the levels during COVID when
24 people were postponing a lot of elective surgeries. *For us, the key*
25 *metric to look at for forecasting our growth is the installed base*
26 *growth. And there, we're tracking very much on trend at about 7%.*
27 Some of the OEM monitoring companies had some hiccups with
installations over the past 18 months. But a lot of those have now been
addressed. They had supply chain problems themselves. *So at this*
stage, I would say, things have gotten largely back to normal.

(Emphasis added.)

33. Further, Jefferies analyst key takeaways from the conference include, in part, “1) Hospital traffic has returned to trendline growth with census growth at 1-3%, good for sensors and MASI's HC business; 2) MASI is excited about new consumer offerings including hearables, baby monitor, and watches. 3) Sound high-end brands are holding up well so far...”

34. The above statements in Paragraphs 22 to 33 were false and/or materially misleading because Defendants misled investors by creating the false impression that they possessed reliable information pertaining to the Company's sales pipeline. This was false. Defendants' forecasting processes failed to adequately account for potential loss of sensor sales among Masimo's customers, as well as the potential decline in demand for premium and luxury audio categories. Alternatively, Defendants deliberately ignored the decline in sales. In either event, Defendants misled investors by providing the public with materially flawed revenue guidance for fiscal 2023.

35. The truth about Masimo's sales forecasts was material to investors. Revenue is one of the most important metrics relied upon by investors when evaluating a company. Had investors known that Masimo's projections were inaccurate and that Defendants were incapable of developing accurate projections, investors would have taken different actions with regard to their positions in Masimo stock. The truth about Masimo's projections and forecasting capabilities would have altered the total mix of information concerning Masimo stock available to investors.

C. Masimo Reveals that Second Quarter Earnings Will Fall Significantly Below Previous Estimates

July 17, 2023

36. On July 17, 2023, after the market closed, Masimo issued a press release announcing its preliminary earnings results for the second quarter of fiscal

2023 and expected revenue for the full-year. The press release stated, in pertinent part, that:

Masimo expects its consolidated revenue for the second quarter 2023 to range from \$453 million to \$457 million, with healthcare revenue expected to range from \$280 million to \$282 million and non-healthcare revenue expected to range from \$173 million to \$175 million.

Though the healthcare business made significant market share gains through new contracting in the second quarter, *healthcare revenue for the second quarter 2023 was lower than expected due to multiple factors*, including the following:

- Large orders that were anticipated for the second quarter were delayed to the second half of the year.
- *Single-patient use sensor sales were down due to:*
 - *Lower than expected U.S. hospital inpatient census, which drives usage of single-patient use sensors; and*
 - *Elevated sensor inventory levels at some customers due to discounting in prior quarters, which was discontinued during the second quarter, and the abnormally early end of the flu season, which faded quickly in the first quarter this year.*
- *Conversions of new customers who have contracted to switch to Masimo were less than expected due to labor shortages in hospitals, and our OEM partners not being able to provide the patient monitoring equipment needed to complete the installations in a timely manner.*
- Continued increased hospital labor costs have strained hospital budgets, lowering demand for capital equipment in the second quarter.

Non-healthcare revenue for the second quarter 2023 fell below expectations as the decline in demand previously seen in lower-end

1 consumer audio categories extended into the premium and luxury audio
2 categories and across more geographies.

3 (Emphasis added.)

4 37. Investors and analysts reacted immediately to Masimo's revelation.
5 The price of Masimo's common stock declined dramatically. From a closing market
6 price of \$147.16 per share on July 17, 2023, Masimo's stock price fell to \$117.73
7 per share on July 18, 2023, a decline of nearly 20% in the span of just a single day.
8 Masimo's stock price continued to fall on July 19, 2023 declining to \$112.28 per
9 share. Trading volume for both days was unusually high, reaching 7 million shares
10 on July 18, 2023 and 2.5 million shares on July 19, 2023.

11 38. A number of well-known analysts who had been following Masimo
12 downgraded the Company's stock and/or lowered their price targets in response to
13 Masimo's disclosures. For example, Jefferies lowered its price target for Masimo's
14 stock, as well as sales estimates and EPS estimates "to reflect the 2Q pre and some
15 ongoing softness in HC through '23 and non-HC through early '24." Jefferies also
16 identified Masimo's "pipeline setbacks, regulatory delays, increased competition,
17 and macro headwinds" as a basis for lowering its price target.

18 39. BTIG similarly lowered its price target for Masimo stock. In its report,
19 BTIG acknowledged "a loss of management credibility and think the stock price,
20 down 25% after market, may take months to regain footing."

21 40. Piper Sandler reported it was planning to "re-evaluate" Masimo's price
22 target. The report stated "we're not often left flummoxed, but today's pre-
23 announcement certainly qualifies. For the second time in five quarters, MASI
24 meaningfully missed sensor revenue expectations (today's announced shortfall is
25 >2x that of 1Q-22), and the multitude of factors cited for a business with a strong
26 history of predictability raises several questions. The most relevant are: 1) the
27 persistence of elevated channel inventory (and secondarily how/why this inventory

1 managed to move as high as it did), and 2) whether hospital census is finally
2 ‘normalizing’ after experiencing a multi-year benefit from COVID-related
3 hospitalizations.”

4 41. Raymond James further reported “we did not expect a 2Q shortfall of
5 this magnitude (-17% miss), as over two-thirds of the HC business is recurring and
6 historically, MASI has been very good at forecasting the business.”

7 42. The fact that these analysts, and others, discussed Masimo’s revenue
8 shortfall and missed projection shows that the investing public placed great weight
9 upon Masimo’s prior revenue and sales estimates. The frequent, in-depth discussion
10 of Masimo’s guidance confirms that Defendants’ statements during the Class Period
11 were material.

12 **D. Loss Causation and Economic Loss**

13 43. During the Class Period, as detailed herein, Masimo and the
14 Defendants made materially false and misleading statements and engaged in a
15 scheme to deceive the market and a course of conduct that artificially inflated the
16 price of Masimo’s common stock and operated as a fraud or deceit on Class Period
17 purchasers of Masimo’s common stock by materially misleading the investing
18 public. Later, when Masimo and Defendants’ prior misrepresentations and
19 fraudulent conduct became apparent to the market, the price of Masimo’s common
20 stock materially declined, as the prior artificial inflation came out of the price over
21 time. As a result of their purchases of Masimo’s common stock during the Class
22 Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*,
23 damages under federal securities laws.

24 44. Masimo’s stock price fell in response to the corrective event on July
25 17, 2023, as alleged *supra*. On July 17, 2023, Defendants disclosed information that
26 was directly related to their prior misrepresentations and material omissions
27 concerning Masimo’s forecasting processes and 2023 full-year financial guidance.

1 45. In particular, on July 17, 2023, Masimo reduced the lower end of full
2 year revenue guidance for the healthcare business to \$1.30 billion from \$1.45
3 billion. The Company also announced a reduction in annual revenue guidance for
4 the non-healthcare business to \$800 million to \$850 million from \$965 million to
5 \$995 million.

6 **E. Presumption of Reliance; Fraud-On-The-Market**

7 46. At all relevant times, the market for Masimo's common stock was an
8 efficient market for the following reasons, among others:

9 (a) Masimo's common stock met the requirements for listing and was
10 listed and actively traded on the NASDAQ during the Class Period, a highly
11 efficient and automated market;

12 (b) Masimo communicated with public investors via established market
13 communication mechanisms, including disseminations of press releases on the
14 national circuits of major newswire services and other wide-ranging public
15 disclosures, such as communications with the financial press and other similar
16 reporting services;

17 (c) Masimo was followed by several securities analysts employed by
18 major brokerage firms who wrote reports that were distributed to the sales force and
19 certain customers of their respective brokerage firms during the Class Period. Each
20 of these reports was publicly available and entered the public marketplace; and

21 (d) Unexpected material news about Masimo was reflected in and
22 incorporated into the Company's stock price during the Class Period.

23
24 47. As a result of the foregoing, the market for Masimo's common stock
25 promptly digested current information regarding the Company from all publicly
26 available sources and reflected such information in Masimo's stock price. Under
27 these circumstances, all purchasers of Masimo's common stock during the Class

1 Period suffered similar injury through their purchase of Masimo's common stock
2 at artificially inflated prices, and a presumption of reliance applies.

3 48. Alternatively, reliance need not be proven in this action because the
4 action involves omissions and deficient disclosures. Positive proof of reliance is not
5 a prerequisite to recovery pursuant to ruling of the United States Supreme Court in
6 *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is
7 necessary is that the facts withheld be material in the sense that a reasonable
8 investor might have considered the omitted information important in deciding
9 whether to buy or sell the subject security.

10 **F. No Safe Harbor; Inapplicability of Bespeaks Caution Doctrine**

11 49. The statutory safe harbor provided for forward-looking statements
12 under certain circumstances does not apply to any of the material misrepresentations
13 and omissions alleged in this Complaint. As alleged above, Defendants' liability
14 stems from the fact that they provided investors with revenue projections while at
15 the same time failing to maintain adequate forecasting processes. Defendants
16 provided the public with forecasts that failed to account for this decline in sales
17 and/or adequately disclose the fact that the Company at the current time did not
18 have adequate forecasting processes.

19 50. To the extent certain of the statements alleged to be misleading or
20 inaccurate may be characterized as forward looking, they were not identified as
21 "forward-looking statements" when made and there were no meaningful cautionary
22 statements identifying important factors that could cause actual results to differ
23 materially from those in the purportedly forward-looking statements.

24 51. Defendants are also liable for any false or misleading "forward-
25 looking statements" pleaded because, at the time each "forward-looking statement"
26 was made, the speaker knew the "forward-looking statement" was false or
27 misleading and the "forward-looking statement" was authorized and/or approved

1 by an executive officer of Masimo who knew that the “forward-looking statement”
2 was false. Alternatively, none of the historic or present-tense statements made by
3 Defendants were assumptions underlying or relating to any plan, projection, or
4 statement of future economic performance, as they were not stated to be such
5 assumptions underlying or relating to any projection or statement of future
6 economic performance when made, nor were any of the projections or forecasts
7 made by the defendants expressly related to or stated to be dependent on those
8 historic or present-tense statements when made.

9 **CLASS ACTION ALLEGATIONS**

10 52. Plaintiff brings this action as a class action pursuant to Federal Rule of
11 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
12 purchased or otherwise acquired Masimo’s common stock during the Class Period
13 (the “Class”); and were damaged upon the revelation of the alleged corrective
14 disclosure. Excluded from the Class are defendants herein, the officers and directors
15 of the Company, at all relevant times, members of their immediate families and
16 their legal representatives, heirs, successors or assigns and any entity in which
17 defendants have or had a controlling interest.

18 53. The members of the Class are so numerous that joinder of all members
19 is impracticable. Throughout the Class Period, Masimo’s common stock were
20 actively traded on the NASDAQ. While the exact number of Class members is
21 unknown to Plaintiff at this time and can be ascertained only through appropriate
22 discovery, Plaintiff believes that there are hundreds or thousands of members in the
23 proposed Class. Record owners and other members of the Class may be identified
24 from records maintained by Masimo or its transfer agent and may be notified of the
25 pendency of this action by mail, using the form of notice similar to that customarily
26 used in securities class actions. As of May 10, 2023, the date of the Company’s last
27 quarterly or annual report within the Class Period, there were 52.7 million shares of

1 the Company's common stock outstanding. Upon information and belief, these
2 shares are held by thousands, if not millions, of individuals located throughout the
3 country and possibly the world. Joinder would be highly impracticable.

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

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

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

- 14 (a) whether the federal securities laws were violated by Defendants' acts
15 as alleged herein;
- 16 (b) whether statements made by Defendants to the investing public during
17 the Class Period misrepresented material facts about the business,
18 operations and management of Masimo;
- 19 (c) whether the Individual Defendants caused Masimo to issue false and
20 misleading financial statements during the Class Period;
- 21 (d) whether Defendants acted knowingly or recklessly in issuing false and
22 misleading financial statements;
- 23 (e) whether the prices of Masimo's common stock during the Class Period
24 were artificially inflated because of the Defendants' conduct
25 complained of herein; and
- 26 (f) whether the members of the Class have sustained damages and, if so,
27 what is the proper measure of damages.

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

COUNT I

Against All Defendants

for Violations of Section 10(b) and Rule 10b-5 Promulgated Thereunder

58. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

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

60. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon. Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Masimo common stock; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Masimo's securities at

1 artificially inflated prices. In furtherance of this unlawful scheme, plan and course
2 of conduct, Defendants, and each of them, took the actions set forth herein.

3 61. Pursuant to the above plan, scheme, conspiracy and course of conduct,
4 each of the defendants participated directly or indirectly in the preparation and/or
5 issuance of the quarterly and annual reports, SEC filings, press releases and other
6 statements and documents described above, including statements made to securities
7 analysts and the media that were designed to influence the market for Masimo's
8 securities. Such reports, filings, releases and statements were materially false and
9 misleading in that they failed to disclose material adverse information and
10 misrepresented the truth about the Company.

11 62. By virtue of their positions at the Company, Defendants had actual
12 knowledge of the materially false and misleading statements and material omissions
13 alleged herein and intended thereby to deceive Plaintiff and the other members of
14 the Class, or, in the alternative, Defendants acted with reckless disregard for the
15 truth in that they failed or refused to ascertain and disclose such facts as would
16 reveal the materially false and misleading nature of the statements made, although
17 such facts were readily available to Defendants. Said acts and omissions of
18 defendants were committed willfully or with reckless disregard for the truth. In
19 addition, each defendant knew or recklessly disregarded that material facts were
20 being misrepresented or omitted as described above.

21 63. Information showing that Defendants acted knowingly or with reckless
22 disregard for the truth is peculiarly within defendants' knowledge and control. As
23 the senior managers and/or directors of the Company, the Individual Defendants
24 had knowledge of the details of Masimo's internal affairs.

25 64. The Individual Defendants are liable both directly and indirectly for
26 the wrongs complained of herein. Because of their positions of control and
27 authority, the Individual Defendants were able to and did, directly or indirectly,

1 control the content of the statements of the Company. As officers and/or directors
2 of a publicly-held company, the Individual Defendants had a duty to disseminate
3 timely, accurate, and truthful information with respect to Masimo's businesses,
4 operations, future financial condition and future prospects. As a result of the
5 dissemination of the aforementioned false and misleading reports, releases and
6 public statements, the market price of Masimo's common stock was artificially
7 inflated throughout the Class Period. In ignorance of the adverse facts concerning
8 the Company which were concealed by Defendants, Plaintiff and the other members
9 of the Class purchased or otherwise acquired Masimo's common stock at artificially
10 inflated prices and relied upon the price of the common stock, the integrity of the
11 market for the common stock and/or upon statements disseminated by Defendants,
12 and were damaged thereby.

13 65. During the Class Period, Masimo's common stock was traded on an
14 active and efficient market. Plaintiff and the other members of the Class, relying on
15 the materially false and misleading statements described herein, which the
16 defendants made, issued or caused to be disseminated, or relying upon the integrity
17 of the market, purchased or otherwise acquired shares of Masimo's common stock
18 at prices artificially inflated by defendants' wrongful conduct. Had Plaintiff and the
19 other members of the Class known the truth, they would not have purchased or
20 otherwise acquired said common stock, or would not have purchased or otherwise
21 acquired them at the inflated prices that were paid. At the time of the purchases
22 and/or acquisitions by Plaintiff and the Class, the true value of Masimo's common
23 stock was substantially lower than the prices paid by Plaintiff and the other
24 members of the Class. The market price of Masimo's common stock declined
25 sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff
26 and Class members.

66. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

67. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's common stock during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

Against The Individual Defendants and Masimo

For Violations of Section 20(a) of the Exchange Act

68. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

69. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information about Masimo's misstatements.

70. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information, and to correct promptly any public statements issued by Masimo which had become materially false or misleading.

71. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Masimo disseminated in the marketplace during the Class Period concerning the misrepresentations. Throughout the Class Period, the Individual Defendants exercised their power and

1 authority to cause Illumina to engage in the wrongful acts complained of herein.
2 The Individual Defendants therefore, were “controlling persons” of the Company
3 within the meaning of Section 20(a) of the Exchange Act. In this capacity, they
4 participated in the unlawful conduct alleged which artificially inflated the market
5 price of Masimo’s common stock.

6 72. Each of the Individual Defendants, therefore, acted as a controlling
7 person of the Company. By reason of their senior management positions and/or
8 being directors of the Company, each of the Individual Defendants had the power
9 to direct the actions of, and exercised the same to cause, Masimo to engage in the
10 unlawful acts and conduct complained of herein. Each of the Individual Defendants
11 exercised control over the general operations of the Company and possessed the
12 power to control the specific activities which comprise the primary violations about
13 which Plaintiff and the other members of the Class complain.

14 73. By reason of the above conduct, the Individual Defendants and/or
15 Masimo are liable pursuant to Section 20(a) of the Exchange Act for the violations
16 committed by the Company.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff demand judgment against defendants as follows:

19 A. Determining that the instant action may be maintained as a class action
20 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as
21 the Class representatives;

22 B. Requiring Defendants to pay damages sustained by Plaintiff and the
23 Class by reason of the acts and transactions alleged herein;

24 C. Awarding Plaintiff and the other members of the Class pre-judgment
25 and post-judgment interest, as well as their reasonable attorneys’ fees, expert fees
26 and other costs; and
27

1 D. Awarding such other and further relief as this Court may deem just and
2 proper.

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4 **DEMAND FOR TRIAL BY JURY**

5 Plaintiff hereby demands a trial by jury.

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