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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 Defendants.

Master File No. '23CV1546 L DEB

CLASS ACTION

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

DEMAND FOR JURY TRIAL

Judge:

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
27

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.

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

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

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

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

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

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

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

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.*

4 (Emphasis added.)

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

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.

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

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

25 (Emphasis added.)

1 2023 and expected revenue for the full-year. The press release stated, in pertinent
2 part, that:

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

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

- 12 • Large orders that were anticipated for the second quarter were
13 delayed to the second half of the year.
- 14 • *Single-patient use sensor sales were down due to:*
 - 15 ○ *Lower than expected U.S. hospital inpatient census, which
16 drives usage of single-patient use sensors; and*
 - 17 ○ *Elevated sensor inventory levels at some customers due to
18 discounting in prior quarters, which was discontinued during
19 the second quarter, and the abnormally early end of the flu
20 season, which faded quickly in the first quarter this year.*
- 21 • *Conversions of new customers who have contracted to switch to
22 Masimo were less than expected due to labor shortages in
23 hospitals, and our OEM partners not being able to provide the
24 patient monitoring equipment needed to complete the installations
25 in a timely manner.*
- 26 • Continued increased hospital labor costs have strained hospital
27 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.

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.

27

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.

3
4 **DEMAND FOR TRIAL BY JURY**

5 Plaintiff hereby demands a trial by jury.

6 Dated: August 22, 2023

7 Respectfully Submitted,

8 **LEVI & KORSINSKY, LLP**

9
10 /s/ Adam M. Apton

11 Adam M. Apton

12 Email: aapton@zlk.com

13 445 South Figueroa Street, 31st Floor

14 Los Angeles, CA 90071

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16 *Attorneys for Plaintiff Sergio Vazquez*
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SERGIO VAZQUEZ

(b) County of Residence of First Listed Plaintiff Outside US (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) LEVI & KORSINSKY LLP, 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071; (213) 985-7290

DEFENDANTS

MASIMO CORPORATION, JOSEPH KIANI, MICAH YOUNG

County of Residence of First Listed Defendant Orange County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'23CV1546 L DEB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 78j(b) and 78t(a); 17 C.F.R. §240.10b-5. Brief description of cause: Violations of the Exchange Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 8/22/2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Adam M. Apton

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

CERTIFICATION OF NAMED PLAINTIFF PURSUANT TO FEDERAL SECURITIES LAWS

I, Sergio Vazquez, duly certify and say, as to the claims asserted under the federal securities laws, that:

1. I have reviewed the complaint and authorized its filing.
2. I did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this action.
3. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
4. My transaction(s) in Masimo Corporation which are the subject of this litigation during the class period set forth in the complaint are set forth in the chart attached hereto.
5. Within the last 3 years, I have not sought to serve nor have I served as a class representative in any federal securities fraud case.
6. I will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except as ordered or approved by the court, including any award for reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this

Date: 2023.08.07

Name: Sergio Vazquez

Signature:

A handwritten signature in black ink, appearing to be 'S. Vazquez', written over a horizontal line.