

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Form 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2021

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 000-50744

**NUVASIVE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**33-0768598**

(I.R.S. Employer  
Identification No.)

**7475 Lusk Boulevard**

**San Diego, CA 92121**

(Address of principal executive offices)

**(858) 909-1800**

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	NUVA	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period than the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of May 3, 2021 there were 51,648,864 shares of the registrant's common stock (par value \$0.001 per share) outstanding.

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NuVasive, Inc.  
Quarterly Report on Form 10-Q  
March 31, 2021

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**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**NUVASIVE, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except par value data)

<b>ASSETS</b>	<b>March 31, 2021</b>	<b>December 31, 2020</b>
	<b>(Unaudited)</b>	
<b>Current assets:</b>		
Cash and cash equivalents	\$ 233,857	\$ 856,869
Short-term marketable securities	—	173,145
Accounts receivable, net of allowances of \$22,011 and \$20,631, respectively	205,026	207,071
Inventory, net	315,749	300,623
Prepaid income taxes	5,033	4,727
Prepaid expenses and other current assets	21,895	19,749
Total current assets	781,560	1,562,184
Property and equipment, net	286,156	286,369
Intangible assets, net	296,514	152,264
Goodwill	636,422	559,553
Operating lease right-of-use assets	101,980	102,270
Deferred tax assets	47,301	15,755
Restricted cash and investments	1,494	1,494
Other assets	13,358	13,193
Total assets	\$ 2,164,785	\$ 2,693,082
<b>LIABILITIES AND EQUITY</b>		
<b>Current liabilities:</b>		
Accounts payable and accrued liabilities	\$ 106,576	\$ 110,401
Contingent consideration liabilities	50,166	7,289
Accrued payroll and related expenses	58,620	63,421
Operating lease liabilities	8,288	7,875
Income tax liabilities	1,226	2,073
Senior convertible notes	—	645,303
Total current liabilities	224,876	836,362
Long-term senior convertible notes	879,473	766,226
Deferred tax liabilities	3,042	2,807
Operating lease liabilities	111,200	111,634
Contingent consideration liabilities	91,000	29,752
Other long-term liabilities	19,807	22,686
Commitments and contingencies		
Redeemable equity component of senior convertible notes	—	4,697
<b>Stockholders' equity:</b>		
Preferred stock, \$0.001 par value; 5,000 shares authorized, none outstanding	—	—
Common stock, \$0.001 par value; 150,000 shares authorized at March 31, 2021 and December 31, 2020; 57,949 shares issued and 51,379 outstanding at March 31, 2021; 57,945 shares issued and 51,376 outstanding at December 31, 2020	62	62
Additional paid-in capital	1,411,170	1,550,001
Accumulated other comprehensive loss	(9,139)	(7,585)
Retained earnings	102,284	45,322
Treasury stock at cost; 6,570 shares and 6,569 shares at March 31, 2021 and December 31, 2020, respectively	(668,990)	(668,882)
Total equity	835,387	918,918
Total liabilities and equity	\$ 2,164,785	\$ 2,693,082

See accompanying Notes to Unaudited Consolidated Financial Statements.

**NUVASIVE, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share amounts)

(unaudited)	Three Months Ended March 31,	
	2021	2020
<b>Net sales:</b>		
Products	\$ 245,451	\$ 234,687
Services	25,798	25,194
Total net sales	271,249	259,881
<b>Cost of sales (excluding below amortization of intangible assets):</b>		
Products	53,302	51,645
Services	18,509	20,220
Total cost of sales	71,811	71,865
Gross profit	199,438	188,016
<b>Operating expenses:</b>		
Selling, general and administrative	145,954	130,231
Research and development	22,224	18,257
Amortization of intangible assets	13,337	12,649
Business transition costs	5,584	(1,440)
Total operating expenses	187,099	159,697
<b>Interest and other expense, net:</b>		
Interest income	87	731
Interest expense	(8,030)	(11,517)
Other (expense) income, net	(12,526)	(7,408)
Total interest and other expense, net	(20,469)	(18,194)
(Loss) income before income taxes	(8,130)	10,125
Income tax benefit (expense)	620	(4,827)
Consolidated net (loss) income	\$ (7,510)	\$ 5,298
<b>Net (loss) income per share:</b>		
Basic	\$ (0.15)	\$ 0.10
Diluted	\$ (0.15)	\$ 0.10
<b>Weighted average shares outstanding:</b>		
Basic	51,379	51,837
Diluted	51,379	53,727

See accompanying Notes to Unaudited Consolidated Financial Statements.

**NUVASIVE, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME**  
(in thousands)

(unaudited)	<u>Three Months Ended March 31,</u>	
	<u>2021</u>	<u>2020</u>
Consolidated net (loss) income	\$ (7,510)	\$ 5,298
Other comprehensive loss:		
Unrealized loss on marketable securities, net of tax	(13)	—
Translation adjustments, net of tax	(1,541)	(3,809)
Other comprehensive loss	(1,554)	(3,809)
Total consolidated comprehensive (loss) income	<u>\$ (9,064)</u>	<u>\$ 1,489</u>

See accompanying Notes to Unaudited Consolidated Financial Statements.

**NUVASIVE, INC.**  
**CONSOLIDATED STATEMENTS OF EQUITY**  
(in thousands)

(unaudited)	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Treasury Stock		Total Stockholders' Equity
	Shares	Amount				Shares	Amount	
<b>Balance at December 31, 2020</b>	57,945	\$ 62	\$ 1,550,001	\$ (7,585)	\$ 45,322	(6,569)	\$ (668,882)	\$ 918,918
Adjustment for modified retrospective adoption of accounting standard	—	—	(147,161)	—	64,472	—	—	(82,689)
Issuance of common stock under employee and director equity option and purchase plans	4	—	(6)	—	—	(1)	(55)	(61)
Stock-based compensation expense	—	—	7,709	—	—	—	—	7,709
Settlement of convertible note hedge	(1)	—	53	—	—	—	(53)	—
Equity component of convertible note settlement	1	—	574	—	—	—	—	574
Consolidated net loss	—	—	—	—	(7,510)	—	—	(7,510)
Other comprehensive loss	—	—	—	(1,554)	—	—	—	(1,554)
<b>Balance at March 31, 2021</b>	<u>57,949</u>	<u>\$ 62</u>	<u>\$ 1,411,170</u>	<u>\$ (9,139)</u>	<u>\$ 102,284</u>	<u>(6,570)</u>	<u>\$ (668,990)</u>	<u>\$ 835,387</u>

See accompanying Notes to Unaudited Consolidated Financial Statements.

NUVASIVE, INC.  
**CONSOLIDATED STATEMENTS OF EQUITY – (Continued)**  
(in thousands)

(unaudited)	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Treasury Stock		Total Stockholders' Equity
	Shares	Amount				Shares	Amount	
<b>Balance at December 31, 2019</b>	57,525	\$ 62	\$ 1,429,854	\$ (9,418)	\$ 82,475	(5,380)	\$ (587,766)	\$ 915,207
Issuance of common stock under employee and director equity option and purchase plans	167	—	119	—	—	(59)	(3,937)	(3,818)
Stock-based compensation expense	—	—	2,786	—	—	—	—	2,786
Tax benefits related to convertible note issuance	—	—	484	—	—	—	—	484
Shares repurchased	—	—	—	—	—	(1,085)	(75,000)	(75,000)
Sale of warrants	—	—	47,070	—	—	—	—	47,070
Convertible note hedge	—	—	(78,300)	—	—	—	—	(78,300)
Equity component of convertible note issuance	—	—	78,268	—	—	—	—	78,268
Debt issuance costs attributable to convertible feature	—	—	(1,987)	—	—	—	—	(1,987)
Consolidated net income	—	—	—	—	5,298	—	—	5,298
Other comprehensive loss	—	—	—	(3,809)	—	—	—	(3,809)
<b>Balance at March 31, 2020</b>	<u>57,692</u>	<u>\$ 62</u>	<u>\$ 1,478,294</u>	<u>\$ (13,227)</u>	<u>\$ 87,773</u>	<u>(6,524)</u>	<u>\$ (666,703)</u>	<u>\$ 886,199</u>

See accompanying Notes to Unaudited Consolidated Financial Statements.

**NUVASIVE, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

(unaudited)	Three Months Ended March 31,	
	2021	2020
<b>Operating activities:</b>		
Consolidated net (loss) income	\$ (7,510)	\$ 5,298
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization	36,432	34,972
Amortization of non-cash interest	2,660	7,143
Stock-based compensation	7,709	(2,858)
Reserves on current assets	4,002	5,232
Net loss on strategic investments	—	1,411
Net loss from foreign currency adjustments	12,547	5,858
Other non-cash adjustments	6,397	(455)
Deferred income taxes	(3,535)	9,105
Changes in operating assets and liabilities, net of effects from acquisitions:		
Accounts receivable	(1,544)	22,409
Inventory	(12,464)	(21,135)
Prepaid expenses and other current assets	(2,057)	(2,042)
Accounts payable and accrued liabilities	(5,663)	(5,271)
Accrued payroll and related expenses	(4,271)	(45,927)
Income taxes	(1,064)	(8,515)
Net cash provided by operating activities	31,639	5,225
<b>Investing activities:</b>		
Acquisition of Simplify Medical, net of cash acquired	(149,408)	—
Purchases of intangible assets	(1,200)	(2,490)
Purchases of property and equipment	(25,070)	(28,116)
Proceeds from sales and maturities of marketable securities	173,023	—
Net cash used in investing activities	(2,655)	(30,606)
<b>Financing activities:</b>		
Purchases of treasury stock	(55)	(78,818)
Payment of contingent consideration	(3)	(346)
Proceeds from issuance of convertible debt, net of issuance costs	—	437,686
Proceeds from sale of warrants	—	47,070
Purchases of convertible note hedges	—	(78,300)
Payments upon settlement of senior convertible notes	(649,426)	—
Other financing activities	(341)	(1,233)
Net cash (used in) provided by financing activities	(649,825)	326,059
Effect of exchange rate changes on cash	(2,171)	(1,736)
(Decrease) increase in cash, cash equivalents and restricted cash	(623,012)	298,942
Cash, cash equivalents and restricted cash at beginning of period	858,363	214,528
Cash, cash equivalents and restricted cash at end of period	\$ 235,351	\$ 513,470

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported on our Unaudited Consolidated Statements of Cash Flows for the periods presented:

	Three Months Ended March 31,	
	2021	2020
Cash and cash equivalents	\$ 233,857	\$ 511,976
Restricted cash	1,494	1,494
Total cash, cash equivalents and restricted cash shown in the Unaudited Consolidated Statement of Cash Flows	\$ 235,351	\$ 513,470

See accompanying Notes to Unaudited Consolidated Financial Statements.

**NUVASIVE, INC.**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

**1. Description of Business and Basis of Presentation**

*Description of Business*

NuVasive, Inc. (the “Company” or “NuVasive”) was incorporated in Delaware on July 21, 1997, and began commercializing its products in 2001. Since its incorporation in 1997, the Company has grown from a small developer of specialty spinal implants into a global medical technology company delivering procedurally integrated solutions for spine surgery. Underlying the Company’s procedurally integrated solutions for spine surgery are technologies designed to enable better clinical, financial, and operational outcomes, including:

- its surgical access instruments, including its Maxcess integrated split-blade retractor system, designed to enable less invasive surgical techniques by minimizing soft tissue disruption during spine surgery;
- its neuromonitoring systems, which use proprietary software-driven nerve detection and avoidance technology, and its intraoperative neuromonitoring (“IONM”) services and support;
- its Advanced Materials Science portfolio of specialized spinal implants, designed to advance spinal fusion by enhancing the osseointegration and biomechanical properties of implant materials, including porous titanium and porous polyetheretherketone;
- its Reline fixation system, designed to facilitate the preservation and restoration of patient alignment, while addressing a vast array of spinal pathologies from an open or less-invasive approach across all spinal procedures; and
- its Integrated Global Alignment platform, which is comprised of procedurally based technologies that help increase the predictability of achieving global alignment in spinal procedures, including its Bendini spinal rod bending system that assist with manual rod manipulation for spinal fixation.

The Company has also invested in enabling technologies, including the development of capital equipment designed to further improve clinical, financial, and operational outcomes of spine surgery. The Company’s capital equipment portfolio currently consists of Lessray and the Pulse platform. Lessray is an image enhancement platform designed to reduce radiation exposure in the operating room by allowing surgeons to take low-quality, low-dose images and improve them to look like conventional full-dose images. Pulse, which is pending regulatory clearance in the U.S. and in Europe, integrates multiple enabling technologies within a single, expandable platform and is engineered to improve workflow, reduce variability, and increase the reproducibility of surgical outcomes. The Pulse platform’s modular architecture is designed to incorporate applications for neuromonitoring, surgical planning, patient-specific rod bending, smart imaging, navigation, and integration with robotics and other smart tools in the future. Selling and leasing of capital equipment do not make up a material portion of the Company’s total net sales.

In addition to the Company’s procedurally integrated solutions for spine surgery, it also designs and sells expandable growing rod implant systems that can be non-invasively lengthened following implantation with precise, incremental adjustments via an external remote controller using magnetic technology called MAGnetic External Control (“MAGEC”), which allows for the minimally invasive treatment of early-onset and adolescent scoliosis. This technology is also the basis for the Company’s Precice limb lengthening system, which allows for the correction of long bone limb length discrepancy, as well as other products for treating specialized orthopedic procedures.

In December 2019, a novel strain of coronavirus, which causes COVID-19, was identified. Due to the rapid and global spread of the virus, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. To slow the proliferation of COVID-19, governments have implemented extraordinary measures, which include the mandatory closure of businesses, restrictions on travel and gatherings, and quarantine and physical distancing requirements. In addition, many government agencies in conjunction with hospitals and healthcare systems have, to varying degrees, deferred or suspended elective surgical procedures. While certain spine surgeries are deemed essential and certain surgeries, like in cases of trauma, cannot be delayed, the Company has seen and may continue to see a significant reduction in procedural volumes as hospital systems and/or patients elect to defer spine surgery procedures. The cumulative effect of these disruptions had a significant impact on the Company’s business during the year ended December 31, 2020 and the three months ended March 31, 2021, and it is not possible to accurately predict the length or severity of the COVID-19 pandemic or the timing for a broad and sustained resumption of elective surgical procedures.

### *Basis of Presentation and Principles of Consolidation*

The accompanying Unaudited Consolidated Financial Statements include the accounts of the Company and its majority-owned or controlled subsidiaries, collectively referred to as either NuVasive or the Company. The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities and average exchange rates during each reporting period for results of operations. When there is a portion of equity in an acquired subsidiary not attributable, directly or indirectly, to the respective parent entity, the Company records the fair value of the non-controlling interest at the acquisition date and classifies the amounts attributable to non-controlling interest separately in equity in the Company's Consolidated Financial Statements. Any subsequent changes in a parent's ownership interest while the parent retains its controlling financial interest in its subsidiary are accounted for as equity transactions. All intercompany balances and transactions have been eliminated in consolidation.

The accompanying Unaudited Consolidated Financial Statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). Pursuant to these rules and regulations, the Company has condensed or omitted certain information and footnote disclosures it normally includes in its annual Consolidated Financial Statements prepared in accordance with generally accepted accounting principles in the United States ("GAAP"). Operating results for the three months ended March 31, 2021 are not necessarily indicative of the results that may be expected for any other interim period or for the full year. These Unaudited Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements and notes thereto for the year ended December 31, 2020 included in the Company's Annual Report on Form 10-K filed with the SEC. In the opinion of management, the Unaudited Consolidated Financial Statements and notes thereto include all adjustments that are of a normal and recurring nature that are necessary for the fair presentation of the Company's financial position and of the results of operations and cash flows for the periods presented.

### *Use of Estimates*

To prepare financial statements in conformity with GAAP, management must make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

### *Recently Adopted Accounting Standards*

In January 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2020-01, *Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815)—Clarifying the Interactions between Topic 321, Topic 323, and Topic 815 (a consensus of the Emerging Issues Task Force)* ("ASU 2020-01"), which clarifies the interaction of the accounting for equity securities, investments accounted for under the equity method, and certain forward contracts and purchased options. The Company adopted ASU 2020-01 as of January 1, 2021. The adoption did not have any material impact on the Company's Consolidated Financial Statements.

In August 2020, the FASB issued ASU No. 2020-06, *Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)* ("ASU 2020-06"), which simplifies the accounting for convertible instruments. The guidance removes certain accounting models that separate the embedded conversion features from the host contract for convertible instruments. The guidance also modifies how certain convertible instruments, that may be settled in cash or shares, impact the calculation of diluted earnings per share. ASU 2020-06 allows for a modified or full retrospective method of transition. This update is effective for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years, and early adoption is permitted. The Company early adopted ASU 2020-06 on January 1, 2021, electing the modified transition method that allows for a cumulative-effect adjustment in the period of adoption, and did not restate prior periods. As a result of the adoption, the Company increased its senior convertible debt liabilities and retained earnings on January 1, 2021 by \$115.4 million and \$64.5 million, respectively, and decreased its deferred tax liabilities and additional paid-in capital by \$28.0 million and \$147.2 million, respectively. In addition, as a result of the adoption, dilutive net loss per share decreased by \$0.15 for the three months ended March 31, 2021. See Note 7 to the Unaudited Consolidated Financial Statements for further discussion on the adoption of ASU 2020-06.

### Revenue Recognition

In accordance with Accounting Standards Codification 606 *Revenue from Contracts with Customers* (“ASC 606”), the Company recognizes revenue upon the transfer of goods or services to a customer at an amount that reflects the expected consideration to be received in exchange for those goods or services. The principles in ASC 606 are applied using the following five steps: (i) identify the contract with a customer; (ii) identify the performance obligation(s) in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligation(s) in the contract; and (v) recognize revenue when (or as) the Company satisfies its performance obligation(s). Specifically, revenue from the sale of implants, fixation products and disposables is generally recognized at an amount that reflects the expected consideration upon notice that the Company’s products have been used in a surgical procedure or upon shipment to a third-party customer assuming control of the products. Revenue from IONM services is recognized in the period the service is performed for the amount of consideration expected to be received. Revenue from the sale of surgical instrument sets is generally recognized upon receipt of a purchase order and the subsequent shipment to a customer who assumes control. Revenue from the sale of capital equipment is recognized when the Company transfers control of the capital equipment to the customer, which is generally at the point when acceptance occurs that indicates customer acknowledgment of delivery or installation, depending on the terms of the arrangement. In certain cases, the Company does offer the ability for customers to lease surgical instrumentation and capital equipment, primarily on a non-sales type basis. Selling and leasing of surgical instrument sets and capital equipment represents an immaterial amount of the Company’s total net sales in all periods presented. Revenue associated with products holding rights of return or trade-in are recognized when the Company concludes there is not a risk of significant revenue reversal in future periods for the expected consideration in the transaction. Costs incurred by the Company associated with sales contracts with customers are deferred over the performance obligation period and recognized in the same period as the related revenue, with the exception of contracts that complete within one year or less, in which case the associated costs are expensed as incurred.

### Allowance for Credit Losses

The Company maintains an allowance for credit losses resulting from the inability of its customers, including hospitals, ambulatory surgery centers, and distributors, to make required payments. The allowance for credit losses is calculated quarterly, and is estimated on a region-by-region basis considering a number of factors including age of account balances, collection history, historical account write-offs, third party credit reports, identified trends, current economic conditions, and supportable forecasted economic expectations. The allowance is adjusted on a specific identification basis for certain accounts as well as pooling of accounts with similar characteristics. An increase in the provision for credit losses may be required when the financial condition of the Company’s customers or its collection experience deteriorates. An increase to the allowance for credit losses results in a corresponding charge to selling, general and administrative expenses. The Company has a diverse customer base and no single customer represented greater than ten percent of net sales or accounts receivable. Historically, the Company’s reserves have been adequate to cover credit losses.

The Company’s exposure to credit losses may increase if its customers are adversely affected by changes in healthcare laws, coverage and reimbursement, economic pressures or uncertainty associated with local or global economic recessions, disruption associated with the current COVID-19 pandemic, or other customer-specific factors. It is possible that there could be a material adverse impact from potential adjustments of the carrying amount of trade receivables as customers’ cash flows are impacted by their response to the COVID-19 pandemic and the deferral of elective surgical procedures.

The following table summarizes the changes in the allowance for credit losses:

<i>(in thousands)</i>	March 31, 2021	March 31, 2020
Allowance for credit losses at beginning of period	\$ 9,646	\$ 9,423
Current-period provision for expected losses	589	37
Write-offs charged against the allowance	(195)	(319)
Recoveries of amounts previously written off	5	23
Changes resulting from foreign currency fluctuations	(100)	(95)
Allowance for credit losses at end of period	\$ 9,945	\$ 9,069

### Inventory, Net

Net inventory as of March 31, 2021 consisted of \$296.2 million of finished goods, \$8.8 million of work in progress and \$10.7 million of raw materials. Net inventory as of December 31, 2020 consisted of \$285.4 million of finished goods, \$7.3 million of work in progress and \$7.9 million of raw materials.

Finished goods primarily consists of specialized implants, fixation products and disposables and are stated at the lower of cost or net realizable value determined by utilizing a standard cost method, which includes capitalized variances, which approximates the weighted average cost. Work in progress and raw materials represent the underlying material, and labor for work in progress, that ultimately yield finished goods upon completion and are subject to lower of cost or net realizable value. The Company reviews the components of its inventory on a periodic basis for excess and obsolescence and adjusts inventory to its net realizable value as necessary.

The Company records an inventory reserve for estimated excess and obsolete inventory based upon historical turnover and assumptions about future demand for its products and market conditions, such as product life cycles and timing of the introduction and development of new or enhanced products. The Company's allograft products have shelf lives ranging from two to five years and are subject to demand fluctuations based on the availability and demand for alternative products. The Company's inventory, which consists primarily of disposables, specialized implants and fixation products, is at risk of obsolescence following the introduction and development of new or enhanced products. One of the Company's strategic objectives is to continue to rapidly develop and commercialize new products and product enhancements which increases the risk that products will become obsolete prior to the end of their anticipated useful life. The Company's estimates and assumptions for excess and obsolete inventory are reviewed and updated on a quarterly basis. The estimates the Company uses for demand are also used for near-term capacity planning and inventory purchasing and are consistent with its net sales forecasts. Increases in the reserve for excess and obsolete inventory result in a corresponding charge to cost of sales.

For the three months ended March 31, 2021 and 2020, the Company recorded a reserve for excess and obsolete inventory of \$2.7 million and \$5.3 million, respectively. The decrease during the three months ended March 31, 2021 is primarily attributable to updates to the Company's estimates and assumptions about future product demand and product life cycles which have been affected by multiple factors, including the COVID-19 pandemic and general market conditions.

#### *Derivative Financial Instruments*

The Company recognizes all derivative instruments as assets or liabilities in its Unaudited Consolidated Balance Sheets and measures these instruments at fair value by revaluing these assets and liabilities at the end of each reporting period. Gains and losses are recorded as a component of other (expense) income, net in the Unaudited Consolidated Statements of Operations.

#### *Comprehensive Income*

Comprehensive income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Comprehensive income includes net of tax, unrealized gains or losses on the Company's marketable securities and foreign currency translation adjustments. The cumulative translation adjustments included in accumulated other comprehensive loss were \$9.1 million and \$7.6 million at March 31, 2021 and December 31, 2020, respectively.

#### *Product Shipment Costs*

Product shipment costs, included in selling, general and administrative expense in the accompanying Unaudited Consolidated Statements of Operations, were \$7.1 million and \$6.4 million for the three months ended March 31, 2021 and March 31, 2020, respectively. The majority of the Company's shipping costs are associated with providing instrument sets to hospitals for use in individual surgical procedures. Amounts billed to customers for shipping and handling of products are reflected in net sales and are not material for any period presented.

#### *Business Transition Costs*

The Company incurs certain costs related to acquisition, integration and business transition activities, which include severance, relocation, consulting, leasehold exit costs, third-party merger and acquisition costs, contingent consideration fair value adjustments and other costs directly associated with such activities. Contingent consideration is accrued based on the fair value of the expected payment, and such accruals are subject to increase or decrease based on the assessment of the likelihood that the contingent milestones will be achieved resulting in payment. If an accrual for contingent consideration decreases during a particular period, it results in a reduction of costs during such period.

During the three months ended March 31, 2021, the Company recorded \$5.6 million of costs related to acquisition, integration and business transition activities, which included \$0.9 million of fair value adjustments on contingent consideration liabilities associated with the Company's 2017 and 2016 acquisitions. The Company incurred \$3.9 million of costs associated with the acquisition of Simplify Medical in the first quarter of 2021.

During the three months ended March 31, 2020, the Company recorded a reduction of costs of \$(1.4) million related to acquisition, integration and business transition activities, which included \$(2.1) million of fair value adjustments on contingent consideration liabilities associated with the Company's 2017 and 2016 acquisitions.

## 2. Net (Loss) Income Per Share

The following table sets forth the computation of basic and diluted consolidated net (loss) income per share:

(in thousands, except per share data)	Three Months Ended March 31,	
	2021	2020
<b>Numerator:</b>		
Net (loss) income	\$ (7,510)	\$ 5,298
<b>Denominator for basic and diluted net (loss) income per share:</b>		
Weighted average common shares outstanding for basic	51,379	51,837
<b>Dilutive potential common stock outstanding:</b>		
Stock options and employee stock purchase plan	—	37
Restricted stock units	—	658
Senior Convertible Notes	—	1,195
Weighted average common shares outstanding for diluted	51,379	53,727
Basic net (loss) income per share	\$ (0.15)	\$ 0.10
Diluted net (loss) income per share	\$ (0.15)	\$ 0.10

The following weighted average outstanding common stock equivalents were not included in the calculation of net (loss) income per diluted share because their effects were anti-dilutive:

(in thousands)	Three Months Ended March 31,	
	2021	2020
Stock options, employee stock purchase plan, and restricted stock units	1,355	131
Warrants	21,034	15,689
Senior Convertible Notes	10,169	4,824
Total	32,558	20,644

## 3. Marketable Securities

### Short-Term Marketable Securities

The Company invests in available-for-sale marketable debt securities consisting of corporate notes and commercial paper. The Company has the ability, if necessary, to liquidate without penalty any of its marketable debt securities to meet its liquidity needs in the next 12 months. As such, those investments with contractual maturities greater than one year from the date of purchase are classified as short-term on the accompanying Unaudited Consolidated Balance Sheets.

The Company did not hold any investments in marketable debt securities as of March 31, 2021. The Company's marketable debt securities as of December 31, 2020 all had contractual maturities due within one year. The carrying value and amortized cost of the Company's marketable debt securities, summarized by major security type, consisted of the following:

(in thousands)	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
<b>December 31, 2020:</b>				
Debt securities, available for sale:				
Corporate notes	\$ 54,197	\$ 6	\$ (15)	\$ 54,188
Commercial paper	118,932	25	—	118,957
Total debt securities, available for sale	\$ 173,129	\$ 31	\$ (15)	\$ 173,145

At each reporting date, the Company performs an evaluation of impairment to determine if any unrealized losses are the result of credit losses. Impairment is assessed at the individual security level. Factors considered in determining whether a loss resulted from a credit loss or other factors include the Company's intent and ability to hold the investment until the recovery of its amortized cost basis, the extent to which the fair value is less than the amortized cost basis, the length of time and extent to which fair value has been less than the cost basis, the financial condition of the issuer, any historical failure of the issuer to make scheduled interest or principal payments, any changes to the rating of the security by a rating agency, any adverse legal or regulatory events affecting the issuer or issuer's industry, and any significant deterioration in economic conditions.

The credit-related portion of unrealized losses, and any subsequent improvements, are recorded in interest income in the Consolidated Statement of Operations through an allowance for credit losses. Unrealized gains and losses that are not credit-related are included in accumulated other comprehensive (loss) income. Unrealized losses on available-for-sale debt securities as of December 31, 2020 were not significant and were primarily due to changes in interest rates, including market credit spreads, and not due to increased credit risks associated with specific securities. Accordingly, the Company did not record an allowance for credit losses with these investments as of December 31, 2020.

#### 4. Business Combinations

The Company recognizes the assets acquired, liabilities assumed, and any non-controlling interest at fair value at the date of acquisition. Certain acquisitions contain contingent consideration arrangements that require the Company to assess the acquisition date fair value of the contingent consideration liabilities. Such liabilities are recorded as part of the purchase price allocation of the acquisition, with subsequent fair value adjustments to the contingent consideration recorded in the Unaudited Consolidated Statements of Operations. See Note 5 to the Unaudited Consolidated Financial Statements for further discussion on contingent consideration liabilities.

##### *Acquisition of Simplify Medical Pty Limited*

On February 24, 2021, the Company, through its indirect wholly-owned subsidiary, NuVasive (AUST/NZ) Pty Limited, acquired all of the stock interest in Simplify Medical Pty Limited (“Simplify Medical”), a developer of cervical artificial disc technology for cervical total disc replacement procedures. Simplify Medical now operates as a wholly-owned subsidiary of the Company. The Company agreed to make an upfront payment of \$150.0 million, subject to customary purchase price adjustments, plus additional future payments contingent upon milestones related to regulatory approval and net sales from products incorporating the Simplify Medical cervical artificial disc technology. In April 2021, the Simplify Cervical Artificial Disc received approval from the U.S. Food and Drug Administration for two-level cervical total disc replacement, resulting in the achievement of the regulatory milestone. See Note 14 to the Unaudited Consolidated Financial Statements for further discussion of the milestone payment. Additional milestone payments, which are uncapped and contingent upon net sales from products incorporating the Simplify Medical cervical artificial disc technology, will become payable in calendar years 2023, 2024 and 2025. In connection with the closing, the Company paid \$151.0 million, which included additional amounts for customary purchase price adjustments, using available cash on hand.

The Company is in the process of finalizing the purchase price allocation given the timing of the acquisition. While the Company does not expect material changes in the valuation of the assets and liabilities, certain changes in assumptions and findings that were in place at the date of acquisition could result in changes in the purchase price allocation. The preliminary allocation of the purchase price to the assets acquired and liabilities assumed based on their fair values is as follows:

(in thousands)

Cash paid for purchase	\$ 150,971
Cash	1,563
Accounts receivable	203
Inventory	6,710
Other current assets	568
Property, plant and equipment, net	381
Definite-lived intangible assets:	
Developed technology	142,400
Patents	19,000
Trade names	3,500
Goodwill	80,619
Other assets	7
Contingent consideration liabilities	(103,400)
Accounts payable, accrued expenses and other	(580)
	<u>\$ 150,971</u>

Goodwill recognized in this transaction is not deductible for tax purposes. Goodwill largely consists of expected net sales synergies resulting from the combination of product portfolios, use of the Company’s existing commercial infrastructure to expand sales of Simplify Medical’s products, and the assembled workforce. The intangible assets acquired will be amortized on a straight-line basis over useful lives of seventeen years, ten years, and fifteen years for developed technology-based intangible assets, patent-related intangible assets, and trade name related intangible assets, respectively. The estimated fair values of the intangible assets acquired were primarily determined using the income approach based on significant inputs that were not observable.

In connection with the acquisition, contingent consideration liabilities of \$103.4 million were recorded for the potential regulatory and net sales-based milestone payments. The fair value of the contingent liability related to the regulatory milestone payment was determined using the probability approach based on the probability of the approval being achieved as of various periods. The fair value of the contingent liability relating to the net sales-based milestone payments was determined using the Monte Carlo simulation based on specific net sales achievement scenarios and discount factors. Changes in fair value of the contingent liabilities over the measurement period will be recorded in the results of operations in the Consolidated Statements of Operations.

Acquisition costs of \$3.9 million were included in the Unaudited Consolidated Statement of Operations as business transition costs. The Company's results of operations for the three months ended March 31, 2021 include the operating results of Simplify Medical since the date of acquisition, within the Unaudited Consolidated Statement of Operations. Net sales of acquired products represent an immaterial amount of the Company's total net sales for the three months ended March 31, 2021.

The following table presents the unaudited pro forma results for the three months ended March 31, 2021 and March 31, 2020. The unaudited pro forma financial information combines the results of operations of the Company and Simplify Medical as though the companies had been combined as of January 1, 2020, and the pro forma information is presented for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place at such times. The unaudited pro forma results presented for the three months ended March 31, 2021 include non-recurring adjustments directly attributable to the business combination, including adjustments for increased fair value of acquired inventory of \$0.4 million, amortization charges for acquired intangible assets of \$1.7 million, and related tax effects. The unaudited pro forma results presented for the three months ended March 31, 2020 include non-recurring adjustments directly attributable to the business combination, including amortization charges for acquired intangible assets of \$2.3 million, acquisition related expenses of \$17.5 million, and related tax effects. Simplify Medical's net sales represent an immaterial amount of the combined net sales for the three months ended March 31, 2021 and 2020. The pre-acquisition accounting policies of Simplify Medical were materially similar to the Company.

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
<i>(in thousands, except per share amounts)</i>	<b>(unaudited)</b>	<b>(unaudited)</b>
Net loss	\$ (11,054)	\$ (14,271)
Net loss per share:		
Basic	\$ (0.22)	\$ (0.28)
Diluted	\$ (0.22)	\$ (0.28)

#### *Variable Interest Entities*

The Company provides IONM services through various subsidiaries, which conduct business as NuVasive Clinical Services. In providing IONM services to surgeons and healthcare facilities across the United States, the Company maintains contractual relationships with several physician practices ("PCs"). In accordance with authoritative guidance, the Company has determined that the PCs are variable interest entities and therefore, the accompanying Unaudited Consolidated Financial Statements include the accounts of the PCs from the date of acquisition. During the periods presented, the results of the PCs were immaterial to the Company's financial statements. The creditors of the PCs have claims only to the assets of the PCs, which are not material, and the assets of the PCs are not available to the Company.

## **5. Financial Instruments and Fair Value Measurements**

### *Foreign Currency and Derivative Financial Instruments*

The Company translates the financial statements of its foreign subsidiaries using end-of-period exchange rates for assets and liabilities, and average exchange rates during each reporting period for results of operations.

Some of the Company's reporting entities conduct a portion of their business in currencies other than the entity's functional currency. These transactions give rise to receivables and payables that are denominated in currencies other than the entity's functional currency. The value of these receivables and payables is subject to changes in currency exchange rates from the point at which the transactions are originated until the settlement in cash. Both realized and unrealized gains and losses in the value of these receivables and payables are included in the determination of net income or loss. Net currency exchange losses, which include gains and losses from derivative instruments, were \$(8.5) million and \$(5.9) million for the three months ended March 31, 2021 and March 31, 2020, respectively, and are included in other (expense) income, net in the Unaudited Consolidated Statements of Operations.

To manage foreign currency exposure risks, the Company uses derivatives for activities in entities that have short-term intercompany receivables and payables denominated in a currency other than the entity's functional currency. The fair value is based on a quoted market price (Level 1). As of March 31, 2021 and December 31, 2020, a notional principal amount of \$19.3 million and \$14.0 million, respectively, was outstanding to hedge currency risk relative to the Company's foreign receivables and payables. Derivative instrument net gains on the Company's forward exchange contracts were \$1.3 million and \$0.2 million for the three months ended March 31, 2021 and March 31, 2020, respectively, and are included in other (expense) income, net in the Unaudited

Consolidated Statements of Operations. The fair value of the forward contract exchange derivative instrument asset (liability) was \$0.1 million and de minimis as of March 31, 2021 and December 31, 2020, respectively. The derivative instruments are recorded in other current assets or other current liabilities in the Unaudited Consolidated Balance Sheets commensurate with the nature of the instrument at period end.

#### Fair Value Measurements

The Company measures certain assets and liabilities in accordance with authoritative guidance, which requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities.

Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.

Level 3: Unobservable inputs are used when little or no market data is available.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. The Company did not have any transfers of assets and liabilities between the levels of the fair value measurement hierarchy during the periods presented.

The fair values of the Company's assets and liabilities, including cash equivalents, marketable debt securities, restricted investments, derivatives, and contingent consideration are measured at fair value on a recurring basis. As of March 31, 2021 and December 31, 2020, the Company held investments in securities classified as cash equivalents. During the periods presented, the Company did not hold any such investments that were in a significant unrealized loss position and no impairment charges were recorded on such investments. Realized gains and losses and interest income related to marketable securities were immaterial during all periods presented. Cash equivalents and marketable debt securities are determined under the fair value categories as follows:

<i>(in thousands)</i>	<u>Total</u>	<u>Quoted Price in Active Market (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Unobservable Inputs (Level 3)</u>
<b>March 31, 2021:</b>				
Cash equivalents:				
Money market funds	\$ 156,501	\$ 156,501	\$ —	\$ —
Total cash equivalents	<u>156,501</u>	<u>156,501</u>	<u>—</u>	<u>—</u>
<b>December 31, 2020:</b>				
Cash equivalents:				
Money market funds	\$ 725,108	\$ 725,108	\$ —	\$ —
Commercial paper	35,996	—	35,996	—
Total cash equivalents	<u>761,104</u>	<u>725,108</u>	<u>35,996</u>	<u>—</u>
Debt securities, available for sale:				
Corporate notes	54,188	—	54,188	—
Commercial paper	118,957	—	118,957	—
Total debt securities, available for sale	<u>173,145</u>	<u>—</u>	<u>173,145</u>	<u>—</u>
<b>Total assets measured at fair value</b>	<u>\$ 934,249</u>	<u>\$ 725,108</u>	<u>\$ 209,141</u>	<u>\$ —</u>

The carrying amounts of certain financial instruments such as cash and cash equivalents, accounts receivable, prepaid expenses, other current assets, accounts payable, accrued expenses, and other current liabilities as of March 31, 2021 and December 31, 2020 approximate their related fair values due to the short-term maturities of these instruments.

The fair value of certain financial instruments was measured and classified within Level 1 of the fair value hierarchy based on quoted prices. Certain financial instruments classified within Level 2 of the fair value hierarchy include the types of instruments that trade in markets that are not considered to be active, but are valued based on quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency.

#### *Fair Value of Senior Convertible Notes*

On March 15, 2021, the Company's Senior Convertible Notes due 2021 were settled upon maturity. The fair value, based on a quoted market price (Level 1), of the Company's outstanding \$650.0 million principal amount of Senior Convertible Notes due 2021 at December 31, 2020 was approximately \$651.6 million. The fair value, based on a quoted market price (Level 1), of the Company's outstanding \$450.0 million principal amount of Senior Convertible Notes due 2023 at March 31, 2021 and December 31, 2020 was approximately \$477.1 million and \$461.9 million, respectively. The fair value, based on a quoted market price (Level 1), of the Company's outstanding \$450.0 million principal amount of Senior Convertible Notes due 2025 at March 31, 2021 and December 31, 2020 was approximately \$468.0 million and \$436.7 million. See Note 7 to the Unaudited Consolidated Financial Statements for further discussion on the carrying value of the Company's outstanding Senior Convertible Notes.

#### *Fair Value of Convertible Note Hedge and Embedded Conversion Derivatives*

On June 1, 2020, the Company issued \$450.0 million principal amount of 1.00% Senior Convertible Notes due 2023 (the "2023 Notes"). The 2023 Notes were initially required to be settled in cash as the Company did not have enough available shares and was unable to reserve the maximum number of shares issuable under the 2023 Notes ("sufficient reserved shares"). On September 10, 2020, the Company held a Special Meeting of Stockholders and received stockholder approval to amend the Company's Restated Certificate of Incorporation to increase the number of shares of its common stock authorized for issuance from 120,000,000 shares to 150,000,000 shares. As a result of the increase in the number of shares of the Company's common stock authorized for issuance the Company has sufficient reserved shares and therefore may settle conversions of the 2023 Notes in cash, stock, or a combination thereof, solely at the Company's discretion. At the time of issuance of the 2023 Notes and in accordance with authoritative guidance, the cash conversion feature of the 2023 Notes required bifurcation from the 2023 Notes and was initially accounted for as a derivative liability ("Embedded Conversion Derivative"), which was included in long-term liabilities in the Company's Unaudited Consolidated Balance Sheet. On September 10, 2020, as a result of the increase in the number of shares of the Company's common stock authorized for issuance, the Company had sufficient reserved shares to settle conversions of the 2023 Notes in cash, stock, or a combination thereof, and in accordance with authoritative literature, the Embedded Conversion Derivative was marked to fair value and reclassified to stockholders' equity.

In connection with the issuance of the 2023 Notes, the Company entered into convertible note hedge transactions (the "2023 Hedge") entitling the Company to purchase up to 5,345,010 shares of the Company's common stock at an initial stock price of \$84.19 per share, each of which is subject to adjustment. The 2023 Hedge was initially required to be settled in cash as the Company did not have sufficient reserved shares with respect to the 2023 Notes. As a result, the 2023 Hedge was accounted for as a derivative asset ("Convertible Note Hedge Derivative"), which was included in long-term assets in the Company's Unaudited Consolidated Balance Sheet. On September 10, 2020, as a result of the increase in the number of shares of the Company's common stock authorized for issuance, the Company had sufficient reserved shares to settle the 2023 Notes, which therefore allows for the 2023 Hedge to be settled in cash, stock, or a combination thereof. In accordance with authoritative literature, the Convertible Note Hedge Derivative was marked to a fair value of \$37.3 million, and reclassified to stockholders' equity on September 10, 2020.

The Convertible Note Hedge Derivative and Embedded Conversion Derivative were initially recorded on the Company's Consolidated Balance Sheet as of June 30, 2020 at \$69.5 million and \$57.2 million, respectively. During 2020, the Company recorded fair value adjustments to its Convertible Note Hedge Derivative and Embedded Conversion Derivative of \$32.2 million and \$19.9 million, respectively.

Prior to their reclassification to stockholders' equity on September 10, 2020, the Embedded Conversion Derivative and Convertible Note Hedge Derivative were classified as Level 3 of the fair value hierarchy as these derivative instruments were not actively traded and were valued using significant unobservable inputs.

#### *Contingent Consideration Liabilities*

The fair value of contingent consideration liabilities assumed in business combinations is recorded as part of the purchase price consideration of the acquisition, and is determined using a discounted cash flow model or probability simulation model. The significant inputs of such models are not observable in the market, such as certain financial metric growth rates, volatility rates, projections associated with the applicable milestone, the interest rate, and the related probabilities and payment structure in the contingent consideration arrangement. Fair value adjustments to contingent consideration liabilities are recorded through operating expenses in the Unaudited Consolidated Statement of Operations. Contingent consideration arrangements assumed by an asset purchase will be measured and accrued when such contingency is resolved.

The recurring Level 3 fair value measurements of contingent consideration liabilities associated with regulatory and commercial sales milestones include the following significant unobservable inputs as of March 31, 2021:

	<u>2021</u>
Valuation Technique	Discounted cash flow, Monte Carlo, Probability Simulation
Discount Rate Range	2.6% - 4.2%
Weighted Average Discount Rate	3.4%
Expected Years	2021 - 2025

Contingent consideration liabilities at March 31, 2021 and December 31, 2020 were \$141.2 million and \$37.0 million, respectively, and were recorded in the Unaudited Consolidated Balance Sheet commensurate with the respective payment terms. The following table sets forth the changes in the estimated fair value of the Company's liabilities measured on a recurring basis using significant unobservable inputs (Level 3):

<i>(in thousands)</i>	<u>Three Months Ended March 31,</u>	
	<u>2021</u>	<u>2020</u>
Fair value measurement at beginning of period	\$ 37,041	\$ 42,559
Contingent consideration liability recorded upon acquisition	103,400	—
Change in fair value measurement	881	(2,011)
Contingent consideration paid or settled	(156)	(438)
Fair value measurement at end of period	<u>\$ 141,166</u>	<u>\$ 40,110</u>

During the three months ended March 31, 2021, the Company recorded \$103.4 million in contingent consideration liabilities as part of the Simplify Medical acquisition, of which \$42.8 million and \$60.6 million relate to the regulatory approval and net sales milestones, respectively. The liabilities are recorded in the Unaudited Consolidated Balance Sheet, commensurate with the respective payable terms. See Notes 4 and 14 to the Unaudited Consolidated Financial Statements for further discussion regarding the contingent consideration liabilities incurred in connection with the acquisition of Simplify Medical.

*Non-financial assets and liabilities measured on a nonrecurring basis*

Certain non-financial assets and liabilities are measured at fair value, usually with Level 3 inputs including the discounted cash flow method or cost method, on a nonrecurring basis in accordance with authoritative guidance. These include items such as non-financial assets and liabilities initially measured at fair value in a business combination and non-financial long-lived assets measured at fair value for an impairment assessment. In general, non-financial assets, including goodwill, right-of-use assets, intangible assets and property and equipment, are measured at fair value when there is an indication of impairment and are recorded at fair value only when any impairment is recognized. The carrying values of the Company's financing lease obligations approximated their estimated fair value as of March 31, 2021 and December 31, 2020.

## 6. Goodwill and Intangible Assets

Goodwill and intangible assets consisted of the following:

(in thousands, except years)

**March 31, 2021:**

	Weighted-Average Amortization Period (in years)	Gross Amount	Accumulated Amortization	Intangible Assets, net
Intangible assets subject to amortization:				
Developed technology	11	\$ 381,310	\$ (182,089)	\$ 199,221
Patents	10	58,611	(27,489)	31,122
Manufacturing know-how and trade secrets	12	21,437	(20,842)	595
Trade name and trademarks	9	25,316	(17,603)	7,713
Customer relationships	9	155,936	(98,073)	57,863
Total intangible assets subject to amortization	10	<u>\$ 642,610</u>	<u>\$ (346,096)</u>	<u>\$ 296,514</u>
Intangible assets not subject to amortization:				
Goodwill				\$ 636,422
Total goodwill and intangible assets, net				<u>\$ 932,936</u>

**December 31, 2020:**

	Weighted-Average Amortization Period (in years)	Gross Amount	Accumulated Amortization	Intangible Assets, net
Intangible assets subject to amortization:				
Developed technology	8	\$ 244,360	\$ (174,257)	\$ 70,103
Patents	9	40,338	(26,299)	14,039
Manufacturing know-how and trade secrets	12	21,482	(20,481)	1,001
Trade name and trademarks	8	21,950	(16,911)	5,039
Customer relationships	9	156,436	(94,354)	62,082
Total intangible assets subject to amortization	8	<u>\$ 484,566</u>	<u>\$ (332,302)</u>	<u>\$ 152,264</u>
Intangible assets not subject to amortization:				
Goodwill				\$ 559,553
Total goodwill and intangible assets, net				<u>\$ 711,817</u>

During the three months ended March 31, 2021, in connection with acquisition of Simplify Medical, the Company recorded additional amounts to definite-lived intangible assets and goodwill of \$164.9 million and \$80.6 million, respectively.

The following table summarizes the changes in the carrying value of the Company's goodwill:

(in thousands)

<b>December 31, 2020</b>	
Gross goodwill	\$ 567,853
Accumulated impairment loss	(8,300)
	<u>559,553</u>
<b>Changes to gross goodwill</b>	
Increases recorded in business combinations	80,619
Changes resulting from foreign currency fluctuations	(3,750)
	<u>76,869</u>
<b>March 31, 2021</b>	
Gross goodwill	644,722
Accumulated impairment loss	(8,300)
	<u>\$ 636,422</u>

Total expense related to the amortization of intangible assets, which is recorded in both cost of sales and operating expenses in the Unaudited Consolidated Statements of Operations depending on the functional nature of the intangible asset, was \$14.2 million and \$13.5 million for the three months ended March 31, 2021 and March 31, 2020, respectively.

Total future amortization expense related to intangible assets subject to amortization at March 31, 2021 is set forth in the table below:

(in thousands)

Remaining 2021	\$ 46,109
2022	53,898
2023	28,752
2024	22,586
2025	21,797
Thereafter through 2038	123,372
Total future amortization expense	<u>\$ 296,514</u>

## 7. Indebtedness

The carrying values of the Company's Senior Convertible Notes are as follows:

(in thousands)	March 31, 2021	December 31, 2020
<b>2.25% Senior Convertible Notes due 2021:</b>		
Principal amount	\$ —	\$ 650,000
Unamortized debt discount	—	(3,945)
Unamortized debt issuance costs	—	(752)
	—	645,303
<b>1.00% Senior Convertible Notes due 2023:</b>		
Principal amount	450,000	450,000
Unamortized debt discount	—	(46,837)
Unamortized debt issuance costs	(10,046)	(11,049)
	439,954	392,114
<b>0.375% Senior Convertible Notes due 2025:</b>		
Principal amount	450,000	450,000
Unamortized debt discount	—	(66,346)
Unamortized debt issuance costs	(10,481)	(9,542)
	439,519	374,112
<b>Total Senior Convertible Notes</b>	<b>\$ 879,473</b>	<b>\$ 1,411,529</b>
Less: Current portion	—	(645,303)
<b>Long-term Senior Convertible Notes</b>	<b>\$ 879,473</b>	<b>\$ 766,226</b>

### 2.25% Senior Convertible Notes due 2021

In March 2016, the Company issued \$650.0 million principal amount of unsecured Senior Convertible Notes with a stated interest rate of 2.25% and a maturity date of March 15, 2021 (the "2021 Notes"). On March 15, 2021 the Company settled in full the 2021 Notes at their scheduled maturity as further discussed below.

The net proceeds from the offering of the 2021 Notes, after deducting initial purchasers' discounts and costs directly related to the offering, were approximately \$634.1 million. Prior to September 14, 2020, the 2021 Notes provided for settlement in cash, stock, or a combination thereof, solely at the Company's discretion. As of September 14, 2020, combination settlement was deemed to have been elected by the Company. The initial conversion rate of the 2021 Notes was 16.7158 shares per \$1,000 principal amount, which was equivalent to a conversion price of approximately \$59.82 per share, subject to adjustments. For the year ended December 31, 2020, the Company used the treasury share method for assumed conversion of the 2021 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share. The Company also entered into transactions for a convertible notes hedge (the "2021 Hedge") and warrants (the "2021 Warrants") concurrently with the issuance of the 2021 Notes.

At the time of issuance and in accordance with Accounting Standards Codification Topic 470, the embedded conversion feature of the 2021 Notes required bifurcation from the notes and was accounted for as an equity instrument classified to stockholders' equity, which resulted in recognizing \$84.8 million in additional paid-in-capital during 2016. As of January 1, 2021, the Company early adopted ASU 2020-06, which removed the requirement of separating the embedded conversion feature classified within stockholders' equity from the 2021 Notes. The standard also required the Company to use the if-converted method in the calculation of diluted earnings per share. Accordingly, the Company reclassified the unamortized debt discount and corresponding debt issuance costs from its additional paid-in capital to its senior convertible notes within current liabilities in the Unaudited Consolidated Balance Sheet. The impact of the adoption of ASU 2020-06 as of January 1, 2021, resulted in an increase in senior convertible notes and retained earnings of \$3.9 million and \$47.8 million, respectively, and a decrease in deferred tax liabilities and additional paid-in capital by \$0.9 million and \$46.1 million, respectively.

The interest expense recognized on the 2021 Notes during the three months ended March 31, 2021 includes \$3.0 million and \$0.8 million for the contractual coupon interest and the amortization of the debt issuance costs, respectively. The interest expense recognized on the 2021 Notes during the three months ended March 31, 2020 includes \$3.7 million, \$4.5 million and \$0.8 million for the contractual coupon interest, the accretion of the debt discount and the amortization of the debt issuance costs, respectively. Prior to the adoption of ASU 2020-06, the effective interest rate on the 2021 Notes was 5.8%, which included the interest on the notes, amortization of the debt discount and debt issuance costs. Subsequent to the adoption of ASU 2020-06, the effective interest rate on the 2021 Notes was 2.9%, which included the interest on the notes and debt issuance costs. Interest on the 2021 Notes began accruing upon issuance and was payable semi-annually.

Prior to September 15, 2020, holders could have converted their 2021 Notes only under the following conditions: (a) during any calendar quarter beginning June 30, 2016, if the reported sale price of the Company's common stock for at least 20 days out of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter was greater than 130% of the conversion price on each applicable trading day; (b) during the five business day period in which the trading price of the 2021 Notes fell below 98% of the product of (i) the last reported sale price of the Company's common stock and (ii) the conversion rate on that date; and (c) upon the occurrence of specified corporate events, as defined in the 2021 Notes. From September 15, 2020 and until the close of business on the second scheduled trading day immediately preceding March 15, 2021, holders could have converted their 2021 Notes at any time (regardless of the foregoing circumstances). The Company had the ability to redeem the 2021 Notes, at its option, in whole or in part beginning on March 20, 2019 until the close of business on the business day immediately preceding September 15, 2020 if the last reported sale price of the Company's common stock had been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company delivers written notice of a redemption. No principal payments were due on the 2021 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2021 Notes did not contain any financial covenants and did not restrict the Company from paying dividends or issuing or repurchasing any of its other securities.

As of September 15, 2020, holders could have converted their 2021 Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date. As a result, the 2021 Notes were considered redeemable as of December 31, 2020. A portion of the equity component that was recorded upon the issuance of the 2021 Notes was reclassified to temporary equity in the Consolidated Balance Sheet. Such amount was determined based on the cash considerations to be paid upon conversion and the carrying amount of the debt. The reclassification into temporary equity as of December 31, 2020 was \$4.7 million based on the 2021 Notes principal of \$650.0 million and the carrying value of \$645.3 million.

#### *2021 Hedge*

In connection with the offering of the 2021 Notes, the Company entered into the hedge transaction with the initial purchasers of the 2021 Notes and/or their affiliates (the "2021 Counterparties") entitling the Company to purchase up to 10,865,270 shares of the Company's common stock at an initial stock price of \$59.82 per share, each of which was subject to adjustment. The cost of the 2021 Hedge was \$111.2 million and accounted for as an equity instrument by recognizing \$111.2 million in additional paid-in-capital during 2016. The 2021 Hedge expired on March 15, 2021 and was put in place to reduce the potential equity dilution upon conversion of the 2021 Notes if the daily volume-weighted average price per share of the Company's common stock exceeded the strike price of the 2021 Hedge. Prior to its expiration, an assumed exercise of the 2021 Hedge by the Company was considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share.

#### *2021 Warrants*

The Company sold warrants to the 2021 Counterparties to acquire up to 10,865,270 shares of the Company's common stock. The 2021 Warrants will expire on various dates from June 2021 through December 2021 and may be settled in cash or net shares. It is the Company's current intent and policy to settle all conversions in shares of the Company's common stock. The Company received \$44.9 million in cash proceeds from the sale of the 2021 Warrants, which was recorded in additional paid-in-capital. The 2021 Warrants could have a dilutive effect on the Company's earnings per share to the extent that the price of the Company's common stock during a given measurement period exceeds the strike price of the 2021 Warrants, which is \$80.00 per share. The Company uses the treasury share method for assumed conversion of its 2021 Warrants to compute the weighted average common shares outstanding for diluted earnings per share.

#### *Settlement of the 2021 Notes and 2021 Hedge*

On March 15, 2021, the 2021 Notes reached maturity and the Company settled in full the 2021 Notes. The Company received conversion notices from the holders of 1.4% of the 2021 Notes, representing \$9.1 million outstanding principal amount thereof (the "Conversions"). The Company paid an aggregate of \$649.4 million in cash for the settlement of the 2021 Notes, which included \$640.9 million in satisfaction of the outstanding principal of the 2021 Notes and \$8.5 million in cash in connection with the settlement of the Conversions. Additionally, in satisfaction of the Conversions, and pursuant to combination settlement, the Company issued 837 shares of common stock in the aggregate to the holders who elected to convert their outstanding notes. The Company funded the repayment of the outstanding principal amount of the 2021 Notes, accrued interest thereon, and the cash component of the Conversions using available cash on hand.

In connection with the settlement of the 2021 Notes, the Company exercised its rights under the convertible note hedge transactions with the 2021 Counterparties on March 15, 2021 and received 842 shares of its own common stock.

### 1.00% Senior Convertible Notes due 2023

In June 2020, the Company issued \$450.0 million principal amount of unsecured Senior Convertible Notes with a stated interest rate of 1.00% and a maturity date of June 1, 2023 (the “2023 Notes”). The net proceeds from the offering of the 2023 Notes, after deducting initial purchasers’ discounts and costs directly related to the offering, were approximately \$436.7 million. The 2023 Notes were initially required to be settled in cash as the Company did not have sufficient reserved shares. On September 10, 2020, the Company held a Special Meeting of Stockholders and received stockholder approval to amend the Company’s Restated Certificate of Incorporation to increase the number of shares of its common stock authorized for issuance from 120,000,000 shares to 150,000,000 shares. As a result of the increase in the number of shares of the Company’s common stock authorized for issuance, as of September 10, 2020, the Company had sufficient reserved shares and therefore may settle conversions of the 2023 Notes in cash, stock, or a combination thereof, solely at the Company’s discretion. It is the Company’s current intent and policy to settle all conversions through combination settlement, which involves satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of the Company’s common stock. The initial conversion rate of the 2023 Notes is 11.8778 shares per \$1,000 principal amount, which is equivalent to a conversion price of approximately \$84.19 per share, subject to adjustments. In addition, following certain corporate events that occur prior to the maturity date, the Company will increase the conversion rate for a holder who elects to convert its 2023 Notes in connection with such a corporate event in certain circumstances. As of September 10, 2020, the Company used the treasury share method for assumed conversion of the 2023 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share. The Company also entered into transactions for a convertible notes hedge and warrants concurrently with the issuance of the 2023 Notes.

As discussed in Note 5 to the Unaudited Consolidated Financial Statements, at the time of issuance the Embedded Conversion Derivative required bifurcation from the 2023 Notes and was initially accounted for as a liability, which was included in long-term liabilities in the Company’s Unaudited Consolidated Balance Sheet. The fair value of the 2023 Notes Embedded Conversion Derivative was \$57.2 million, and was recorded as the original debt discount for purposes of accounting for the debt component of the 2023 Notes. On September 10, 2020, as a result of the increase in the number of shares of the Company’s common stock authorized for issuance, the Company had sufficient reserved shares to settle conversions of the 2023 Notes in cash, stock, or a combination thereof, and in accordance with authoritative literature, the Embedded Conversion Derivative was marked to fair value and reclassified to stockholders’ equity, which resulted in recognizing \$37.3 million in additional paid-in-capital during 2020. The original issue discount is recognized as interest expense using the effective interest method.

As of January 1, 2021, the Company early adopted ASU 2020-06, which removed the requirement of separating the embedded conversion feature classified within stockholders’ equity from the 2023 Notes. The standard also required the Company to use the if-converted method in the calculation of diluted earnings per share. Accordingly, the Company reclassified the unamortized debt discount from its additional paid-in capital to its senior convertible notes within long-term liabilities in the Unaudited Consolidated Balance Sheet. The impact of the adoption of ASU 2020-06 as of January 1, 2021 resulted in an increase in senior convertible notes and retained earnings of \$46.8 million and \$7.9 million, respectively, and a decrease in deferred tax liabilities and additional paid-in capital by \$11.2 million and \$43.5 million, respectively.

The interest expense recognized on the 2023 Notes during the three months ended March 31, 2021 includes \$1.1 million and \$1.0 million for the contractual coupon interest and the amortization of the debt issuance costs, respectively. Prior to the adoption of ASU 2020-06, the effective interest rate on the 2023 Notes was 6.8%, which included the interest on the notes, amortization of the debt discount and debt issuance costs. Subsequent to the adoption of ASU 2020-06, the effective interest rate on the 2023 Notes is 2.0%, which includes the interest on the notes and debt issuance costs. Interest on the 2023 Notes began accruing upon issuance and is payable semi-annually.

Prior to February 1, 2023, holders may convert their 2023 Notes only under the following conditions: (a) during any calendar quarter commencing after the calendar quarter ending on September 30, 2020 (and only during such calendar quarter), if the last reported sale price of the Company’s common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (b) during the five business day period after any five consecutive trading day period (the “measurement period”) in which the trading price of the 2023 Notes per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company’s common stock and the conversion rate on such trading day; or (c) upon the occurrence of specified corporate events, as defined in the 2023 Notes. On or after February- 1, 2023, until the close of business on the second scheduled trading day immediately preceding June 1, 2023, holders may convert their 2023 Notes at any time, regardless of the foregoing conditions.

The Company may not redeem the 2023 Notes prior to the maturity date and no principal payments are due on the 2023 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2023 Notes do not contain any financial covenants and do not restrict the Company from conducting significant restructurings, paying dividends or issuing or repurchasing any of its other securities. As of March 31, 2021, the Company is unaware of any current events or market conditions that would allow holders to convert the 2023 Notes.

### *2023 Hedge*

In connection with the sale of the 2023 Notes, the Company entered into privately negotiated call option transactions with certain dealers, which included affiliates of certain of the initial purchasers of the 2023 Notes and other financial institutions (the “2023 Counterparties”), entitling the Company to purchase up to 5,345,010 shares of the Company’s common stock at an initial stock price of \$84.19 per share, each of which is subject to adjustment. The 2023 Hedge was initially required to be settled in cash as the Company did not have sufficient reserved shares with respect to the 2023 Notes. As a result, the 2023 Hedge was accounted for as a derivative asset, which was included in long-term assets in the Company’s Unaudited Consolidated Balance Sheet. The cost of the 2023 Hedge was \$69.5 million. On September 10, 2020, as a result of the increase in the number of shares of the Company’s common stock authorized for issuance, the Company had sufficient reserved shares to settle the 2023 Notes, which therefore allows for the 2023 Hedge to be settled in cash, stock, or a combination thereof. In accordance with authoritative literature, the Convertible Note Hedge Derivative was marked to fair value and reclassified to stockholders’ equity, which resulted in recognizing a reduction of \$37.3 million in additional paid-in-capital during 2020. The 2023 Hedge will expire on the second scheduled trading day immediately preceding June 1, 2023. The 2023 Hedge is expected to reduce the potential equity dilution upon conversion of the 2023 Notes if the daily volume-weighted average price per share of the Company’s common stock exceeds the strike price of the 2023 Hedge. An assumed exercise of the 2023 Hedge by the Company is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share.

### *2023 Warrants*

In connection with the sale of the 2023 Notes, the Company sold warrants to the 2023 Counterparties (the “2023 Warrants”) to acquire up to 5,345,010 shares of the Company’s common stock. The 2023 Warrants initially limited the amount of shares the Company was required to reserve for issuance under the 2023 Warrants to an aggregate of 3,093,500 shares of the Company’s common stock, subject to adjustment upon the Company having a sufficient amount of authorized and unissued shares which are not reserved for other transactions. As a result of the Company receiving stockholder approval to increase the number of shares of the Company’s common stock authorized for issuance on September 10, 2020, the Company subsequently entered into amendment agreements with each of the 2023 Counterparties to increase the number of authorized shares of the Company’s common stock required to be reserved under the 2023 Warrants to the aggregate amount of 6,948,512 shares. The 2023 Warrants will expire on various dates from September 2023 through November 2023 and may be settled in net shares or cash, subject to certain conditions. It is the Company’s current intent and policy to settle all conversions in shares of the Company’s common stock. The Company received \$46.8 million in cash proceeds from the sale of the 2023 Warrants, which was recorded in additional paid-in-capital. The 2023 Warrants could have a dilutive effect on the Company’s earnings per share to the extent that the price of the Company’s common stock during a given measurement period exceeds the strike price of the 2023 Warrants, which is \$104.84 per share. The Company uses the treasury share method for assumed conversion of its 2023 Warrants to compute the weighted average common shares outstanding for diluted earnings per share.

### *0.375% Senior Convertible Notes due 2025*

In March 2020, the Company issued \$450.0 million principal amount of unsecured Senior Convertible Notes with a stated interest rate of 0.375% and a maturity date of March 15, 2025 (the “2025 Notes”). The net proceeds from the offering of the 2025 Notes, after deducting initial purchasers’ discounts and costs directly related to the offering, were approximately \$437.0 million. The 2025 Notes may be settled in cash, stock, or a combination thereof, solely at the Company’s discretion. It is the Company’s current intent and policy to settle all conversions through combination settlement, which involves satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of the Company’s common stock. The initial conversion rate of the 2025 Notes is 10.7198 shares per \$1,000 principal amount, which is equivalent to a conversion price of approximately \$93.29 per share, subject to adjustments. In addition, following certain corporate events that occur prior to the maturity date or if the Company issues a notice of redemption, the Company will increase the conversion rate for a holder who elects to convert its 2025 Notes in connection with such a corporate event or in connection with such redemption in certain circumstances. For the year ended December 31, 2020, the Company used the treasury share method for assumed conversion of the 2025 Notes to compute the weighted average shares of common stock outstanding for diluted earnings per share. The Company also entered into transactions for a convertible notes hedge (the “2025 Hedge”) and warrants (the “2025 Warrants”) concurrently with the issuance of the 2025 Notes.

At the time of issuance and in accordance with Accounting Standards Codification Topic 470, the embedded conversion feature of the 2025 Notes required bifurcation from the notes and was initially accounted for as an equity instrument classified to stockholders’ equity, which resulted in recognizing \$78.3 million in additional paid-in-capital during 2020. As of January 1, 2021, the Company early adopted ASU 2020-06, which removed the requirement of separating the embedded conversion feature classified within stockholders’ equity from the 2025 Notes. The standard also required the Company to use the if-converted method in the calculation of diluted earnings per share. Accordingly, the Company reclassified the unamortized debt discount and corresponding debt issuance costs from its additional paid-in capital to its senior convertible notes within long-term liabilities in the Unaudited Consolidated Balance Sheet. The impact of the adoption of ASU 2020-06 as of January 1, 2021 resulted in an increase in senior convertible notes and retained earnings of \$64.7 million and \$8.8 million, respectively, and a decrease in deferred tax liabilities and additional paid-in capital by \$15.9 million and \$57.6 million, respectively.

The interest expense recognized on the 2025 Notes during the three months ended March 31, 2021 includes \$0.4 million and \$0.7 million for the contractual coupon interest and the amortization of the debt issuance costs, respectively. The interest expense recognized on the 2025 Notes during the three months ended March 31, 2020 includes \$0.1 million, \$1.2 million and \$0.1 million for the contractual coupon interest, the accretion of the debt discount and the amortization of the debt issuance costs, respectively. Prior to the adoption of ASU 2020-06, the effective interest rate on the 2025 Notes was 4.9%, which included the interest on the notes, amortization of the debt discount and debt issuance costs. Subsequent to the adoption of ASU 2020-06, the effective interest rate on the 2025 Notes is 1.0%, which includes the interest on the notes and debt issuance costs. Interest on the 2025 Notes began accruing upon issuance and is payable semi-annually.

Prior to September 15, 2024, holders may convert their 2025 Notes only under the following conditions: (a) during any calendar quarter commencing after the calendar quarter ending on June 30, 2020 (and only during such calendar quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (b) during the five business day period after any five consecutive trading day period (the "measurement period") in which the trading price of the 2025 Notes per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on such trading day; (c) if the Company calls any or all of the 2025 Notes for redemption, at any time prior to the close of business on the second scheduled trading day preceding the redemption date; or (d) upon the occurrence of specified corporate events, as defined in the 2025 Notes. On or after September 15, 2024, until the close of business on the second scheduled trading day immediately preceding March 15, 2025, holders may convert their 2025 Notes at any time, regardless of the foregoing conditions.

The Company may not redeem the 2025 Notes prior to March 20, 2023. The Company may redeem the 2025 Notes, at its option, in whole or in part, on or after March 20, 2023 until the close of business on the business day immediately preceding September 15, 2024, if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company delivers written notice of a redemption. The redemption price will be equal to 100% of the principal amount of such 2025 Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date. No principal payments are due on the 2025 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2025 Notes do not contain any financial covenants and do not restrict the Company from conducting significant restructurings, paying dividends or issuing or repurchasing any of its other securities. As of March 31, 2021, the Company is unaware of any current events or market conditions that would allow holders to convert the 2025 Notes.

#### *2025 Hedge*

In connection with the sale of the 2025 Notes, the Company entered into privately negotiated call option transactions with certain dealers, which included affiliates of certain of the initial purchasers of the 2025 Notes and other financial institutions (the "2025 Counterparties"), entitling the Company to purchase up to 4,823,910 shares of the Company's common stock at an initial stock price of \$93.29 per share, each of which is subject to adjustment. The cost of the 2025 Hedge was \$78.3 million and accounted for as an equity instrument by recognizing \$78.3 million in additional paid-in-capital during 2020. The 2025 Hedge will expire on the second scheduled trading day immediately preceding March 15, 2025. The 2025 Hedge is expected to reduce the potential equity dilution upon conversion of the 2025 Notes if the daily volume-weighted average price per share of the Company's common stock exceeds the strike price of the 2025 Hedge. An assumed exercise of the 2025 Hedge by the Company is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share.

#### *2025 Warrants*

The Company sold warrants to the 2025 Counterparties to acquire up to 4,823,910 shares of the Company's common stock. The 2025 Warrants will expire on various dates from June 2025 through October 2025 and may be settled in net shares or cash, subject to certain conditions. It is the Company's current intent and policy to settle all conversions in shares of the Company's common stock. The Company received \$47.1 million in cash proceeds from the sale of the 2025 Warrants, which was recorded in additional paid-in-capital. The 2025 Warrants could have a dilutive effect on the Company's earnings per share to the extent that the price of the Company's common stock during a given measurement period exceeds the strike price of the 2025 Warrants, which is \$127.84 per share. The Company uses the treasury share method for assumed conversion of its 2025 Warrants to compute the weighted average common shares outstanding for diluted earnings per share.

### *Revolving Senior Credit Facility*

In February 2020, the Company entered into a Second Amended and Restated Credit Agreement (the “2020 Credit Agreement”) for a revolving senior credit facility (the “2020 Facility”), which replaced the previous Amended and Restated Credit Agreement the Company had entered into in April 2017. The 2020 Credit Agreement was further amended in May 2020 to, among other things, provide additional flexibility in determining the financial covenant leverage ratios for the second and third fiscal quarters of 2020 and to adjust certain margin and benchmark rates used to determine interest under the 2020 Facility. The 2020 Credit Agreement provides for secured revolving loans, multicurrency loan options and letters of credit in an aggregate amount of up to \$550.0 million. The 2020 Credit Agreement also contains an expansion feature, which allows the Company to increase the aggregate principal amount of the 2020 Facility provided the Company remains in compliance with the underlying financial covenants on a pro forma basis, including but not limited to, compliance with the consolidated interest coverage ratio and certain consolidated leverage ratios.

The 2020 Facility matures in February 2025 (subject to an earlier springing maturity date), and includes a sublimit of \$50.0 million for standby letters of credit, a sublimit of \$250.0 million for multicurrency borrowings, and a sublimit of \$5.0 million for swingline loans. All assets of the Company and its material domestic subsidiaries continue to be pledged as collateral under the 2020 Facility (subject to customary exceptions) pursuant to the terms set forth in the Second Amended and Restated Security and Pledge Agreement executed in favor of the administrative agent by the Company. Each of the Company’s material domestic subsidiaries guarantee the 2020 Facility. In connection with the 2020 Facility, the Company incurred issuance costs which will be amortized over the term of the 2020 Facility. The Company did not carry any outstanding revolving loans under the 2020 Facility as of March 31, 2021 and December 31, 2020.

Any borrowings under the 2020 Facility are intended to be used by the Company to provide financing for working capital and other general corporate purposes, including potential mergers and acquisitions and to refinance indebtedness. Borrowings under the 2020 Facility bear interest, at the Company’s option, at a rate equal to an applicable margin plus: (a) the applicable Eurocurrency Rate (as defined in the 2020 Credit Agreement), or (b) a base rate determined by reference to the highest of (1) the federal funds effective rate plus 0.50%, (2) the Bank of America prime rate, and (3) the Eurocurrency Rate for an interest period of one month plus 1.00%. The margin for the 2020 Facility ranges, based on the Company’s consolidated total net leverage ratio, from 0.50% to 1.25% in the case of base rate loans and from 1.50% to 2.25% in the case of Eurocurrency Rate loans. The 2020 Facility includes an unused line fee ranging, based on the Company’s consolidated total net leverage ratio, from 0.35% to 0.50% per annum on the revolving commitment.

The 2020 Credit Agreement contains affirmative, negative, permitted acquisition and financial covenants, and events of default customary for financings of this type. The financial covenants require the Company to maintain a consolidated interest coverage ratio and certain consolidated leverage ratios, which are measured on a quarterly basis. The 2020 Facility grants the lenders preferred first priority liens and security interests in capital stock, intercompany debt and all of the present and future property and assets of the Company and each guarantor. The Company is currently in compliance with the 2020 Credit Agreement covenants.

## **8. Shareholders’ Equity**

In October 2017, the Company announced that the Board of Directors approved a share repurchase program authorizing the repurchase of up to \$100 million of the Company’s common stock over a three-year period. Under this program, the Company is authorized to repurchase common stock in open market purchases, privately negotiated purchases or other transactions through October 2020. In February 2020, the Company announced that the Board of Directors increased the share repurchase authorization from \$100 million to \$150 million of the Company’s common stock through December 31, 2021. In March 2020, in connection with the issuance of the 2025 Notes, the Company repurchased approximately 1,085,000 shares of its common stock for \$75.0 million. As of March 31, 2021, \$75.0 million remained authorized under the share repurchase program.

On September 10, 2020, upon obtaining stockholder approval, the Company filed a Certificate of Amendment to its Restated Certificate of Incorporation with the Secretary of State of the State of Delaware to increase the number of authorized shares of the Company’s common stock from 120,000,000 shares to 150,000,000 shares.

## 9. Stock-Based Compensation

The compensation cost (benefit) that has been included in the Unaudited Consolidated Statements of Operations for the Company's stock-based compensation plans was as follows:

(in thousands)	Three Months Ended March 31,	
	2021	2020
Selling, general and administrative expense (benefit)	\$ 5,975	\$ (4,161)
Research and development expense	1,651	1,323
Cost of sales	83	(20)
Stock-based compensation expense (benefit) before taxes	7,709	(2,858)
Related income tax (benefit) expense	(1,409)	1,078
Stock-based compensation expense (benefit), net of taxes	<u>\$ 6,300</u>	<u>\$ (1,780)</u>

At March 31, 2021, there was \$60.6 million of unamortized compensation expense for restricted stock units ("RSUs") and performance-based restricted stock units ("PRSUs") to be recognized over a weighted average period of 2.6 years.

### *Restricted Stock Units and Performance-Based Restricted Stock Units*

The Company issued approximately 3,000 shares of common stock, before net share settlement, upon vesting of RSUs during the three months ended March 31, 2021. The Company did not have any PRSUs vest during the three months ended March 31, 2021. The Company issued approximately 270,000 shares of common stock, before net share settlement, upon vesting of RSUs and PRSUs during the year ended December 31, 2020.

### *Stock Options and Employee Stock Purchase Plan*

The weighted average assumptions used to estimate the fair value of stock purchase rights under the employee stock purchase plan ("ESPP") are as follows:

ESPP	Three Months Ended March 31,	
	2021	2020
Volatility	49%	30%
Expected term (years)	0.5	0.5
Risk free interest rate	0.1%	1.6%
Expected dividend yield	—%	—%

Under the terms of the ESPP, the Company's employees can elect to have up to 15% of their annual compensation, up to a maximum of \$21,250 per year, withheld to purchase shares of the Company's common stock for a purchase price equal to 85% of the lower of the fair market value per share (at closing) of the Company's common stock on (i) the commencement date of the six-month offering period, or (ii) the respective purchase date.

The Company has not granted any options since 2011. As of December 31, 2020, the Company did not have any outstanding stock options. The Company issued approximately 16,000 shares of common stock, before net share settlement, upon the exercise of outstanding stock options during the year ended December 31, 2020.

## 10. Income Taxes

Income taxes are determined using an estimated annual effective tax rate applied against income, and then adjusted for the tax impacts of certain significant and discrete items. For the three months ended March 31, 2021, the Company treated the tax impact of the following as discrete events for which the tax effect was recognized separately from the application of the annual effective tax rate: tax expense from return to provision adjustments, tax benefit related to disqualified disposition of share-based payments, valuation allowance adjustments, cancellation of debt on settlement of convertible debt, uncertain tax reserves and miscellaneous tax payments, net of refunds. The Company's effective tax rate recorded for the three months ended March 31, 2021 was 8%.

In accordance with the disclosure requirements as described in ASC 740, the Company has classified unrecognized tax benefits as non-current income tax liabilities, or a reduction in deferred tax assets, unless expected to be paid within one year. The Company's continuing practice is to recognize interest and/or penalties related to income tax matters in income tax expense. The Company had an increase in gross unrecognized tax benefits of approximately \$0.6 million during the three months ended March 31, 2021, primarily related to research and development credits. The Company believes it is reasonably possible that approximately \$0.8 million of its remaining unrecognized tax positions may be recognized within the next twelve months as certain statute of limitations expire, the amount of which is primarily attributable to tax positions involving the valuation of intercompany transactions.

The Company is subject to routine compliance reviews on various tax matters around the world in the ordinary course of business. Currently, the only active audits are with the U.S. Internal Revenue Service for the 2014 – 2016 tax years, Florida for the 2016 – 2018 tax years and Massachusetts for the 2017 – 2018 tax years. California income tax returns are subject to examination in all years due to prior year net operating losses and research and development credits. Income tax returns of other major state and foreign jurisdictions remain subject to examination from 2016 and 2013 forward, respectively.

## 11. Business Segment, Product and Geographic Information

The Company operates in one segment based upon the Company’s organizational structure, the way in which the operations and investments are managed and evaluated by the chief operating decision maker (“CODM”) as well as the lack of availability of discrete financial information at a lower level. The Company’s CODM reviews net sales at the product line offering level, and manufacturing, operating income and expenses, and net income at the Company wide level to allocate resources and assess the Company’s overall performance. The Company shares common, centralized support functions, including finance, human resources, legal, information technology, and corporate marketing, all of which report directly to the CODM. Accordingly, decision-making regarding the Company’s overall operating performance and allocation of Company resources is assessed on a consolidated basis. The Company has disclosed the net sales for each of its product line offerings to provide the reader of the financial statements transparency into the operations of the Company.

The Company reports under two distinct product lines; spinal hardware and surgical support. The Company’s spinal hardware product line offerings include implants and fixation products. The Company’s surgical support product offerings include IONM services, disposables and biologics, and our capital equipment, all of which are used to aid spinal surgery.

Net sales by product line was as follows:

<i>(in thousands)</i>	Three Months Ended March 31,	
	2021	2020
Spinal hardware	\$ 204,558	\$ 190,869
Surgical support	66,691	69,012
Total net sales	<u>\$ 271,249</u>	<u>\$ 259,881</u>

Net sales and property and equipment, net, by geographic area were as follows:

<i>(in thousands)</i>	Net Sales		Property and Equipment, Net	
	Three Months Ended March 31,		March 31,	December 31,
	2021	2020	2021	2020
United States	\$ 208,098	\$ 204,032	\$ 238,175	\$ 239,802
International (excludes Puerto Rico)	63,151	55,849	47,981	46,567
Total	<u>\$ 271,249</u>	<u>\$ 259,881</u>	<u>\$ 286,156</u>	<u>\$ 286,369</u>

## 12. Commitments

### Leases

At the inception of a contractual arrangement, the Company determines whether the contract contains a lease by assessing whether there is an identified asset and whether the contract conveys the right to control the use of the identified asset in exchange for consideration over a period of time. If both criteria are met, the Company records the associated lease liability and corresponding right-of-use asset upon commencement of the lease using a discount rate based on a credit-adjusted secured borrowing rate commensurate with the term of the lease.

The Company records lease liabilities within current liabilities or long-term liabilities based upon the length of time associated with the lease payments. The Company records its operating lease right-of-use assets as long-term assets. Right-of-use assets for financing leases are recorded within property and equipment, net in the Unaudited Consolidated Balance Sheet. Leases with an initial term of 12 months or less are not recorded in the Unaudited Consolidated Balance Sheet. The Company recognizes lease expense on a straight-line basis over the lease term. In connection with certain operating leases, the Company has security deposits recorded and maintained as restricted cash totaling \$1.5 million as of March 31, 2021 and December 31, 2020.

The Company leases office and storage facilities and equipment under various operating and financing lease agreements. The initial terms of these leases range from 1 to 17 years and generally provide for periodic rent increases, and renewal and termination options. The Company’s lease agreements do not contain any material variable lease payments, residual value guarantees or material restrictive covenants.

Certain leases require the Company to pay taxes, insurance, and maintenance. Payments for the transfer of goods or services such as common area maintenance and utilities represent non-lease components. The Company elected the package of practical expedients and therefore does not separate non-lease components from lease components.

The table below summarizes the Company's right-of-use assets and lease liabilities as of March 31, 2021 and December 31, 2020:

<i>(in thousands)</i>	<u>March 31, 2021</u>	<u>December 31, 2020</u>
<b>Assets</b>		
Operating	\$ 101,980	\$ 102,270
Financing	2,636	2,956
<b>Total leased assets</b>	<b>\$ 104,616</b>	<b>\$ 105,226</b>
<b>Liabilities</b>		
<b>Current:</b>		
Operating	\$ 8,288	\$ 7,875
Financing	1,371	1,355
<b>Long-term:</b>		
Operating	111,200	111,634
Financing	1,466	1,812
<b>Total lease liabilities</b>	<b>\$ 122,325</b>	<b>\$ 122,676</b>
<b>Supplemental non-cash information:</b>		
Weighted-average remaining lease term (years) - operating leases	12.5	12.8
Weighted-average remaining lease term (years) - finance leases	2.0	2.2
Weighted-average discount rate - operating leases	5.4%	5.4%
Weighted-average discount rate - finance leases	4.9%	4.9%

The table below summarizes the Company's lease costs, cash payments, and operating lease liabilities arising from obtaining right-of-use assets under its operating and financing lease obligations:

<i>(in thousands, except years and rates)</i>	<u>Three Months Ended March 31,</u>	
	<u>2021</u>	<u>2020</u>
<b>Lease expense:</b>		
Operating lease expense	\$ 3,911	\$ 3,507
<b>Finance lease expense:</b>		
Depreciation of right-of-use assets	327	258
Interest expense on lease liabilities	32	28
<b>Total lease expense</b>	<b>\$ 4,270</b>	<b>\$ 3,793</b>
<b>Consolidated Statements of Cash Flows information:</b>		
Operating cash flows used for operating leases	\$ 3,619	\$ 3,296
Operating cash flows used for financing leases	32	28
Financing cash flows used for financing leases	334	247
<b>Total cash paid for amounts included in the measurement of lease liabilities</b>	<b>\$ 3,985</b>	<b>\$ 3,571</b>
<b>Supplemental non-cash information:</b>		
Operating lease liabilities arising from obtaining right-of-use assets	\$ 2,231	\$ 39,262

The Company's future minimum annual lease payments under operating and financing leases at March 31, 2021 are as follows:

<i>(in thousands)</i>	<u>Financing Leases</u>	<u>Operating Leases</u>
Remaining 2021	\$ 1,098	\$ 10,900
2022	1,396	14,186
2023	465	13,448
2024	8	12,269
2025	—	10,907
Thereafter	—	106,694
<b>Total minimum lease payments</b>	<b>\$ 2,967</b>	<b>\$ 168,404</b>
Less: amount representing interest	(130)	(48,916)
<b>Present value of obligations under leases</b>	<b>2,837</b>	<b>119,488</b>
Less: current portion	(1,371)	(8,288)
<b>Long-term lease obligations</b>	<b>\$ 1,466</b>	<b>\$ 111,200</b>

#### *Executive Severance Plans*

The Company has employment contracts with key executives and maintains severance plans that provide for the payment of severance and other benefits if such executives are terminated for reasons other than cause, as defined in those agreements and plans. Certain agreements call for payments that are based on historical compensation, and accordingly, the amount of the contractual commitment will change over time commensurate with the executive's applicable earnings. At March 31, 2021, future commitments for such key executives were approximately \$16.4 million. In certain circumstances, the agreements call for the acceleration of equity vesting. Those figures are not reflected in the above information.

### **13. Contingencies**

The Company is subject to potential liabilities under government regulations and various claims and legal actions that are pending or may be asserted from time-to-time. These matters arise in the ordinary course and conduct of the Company's business and include, for example, commercial, intellectual property, environmental, securities and employment matters. The Company intends to continue to defend itself vigorously in such matters and when warranted, take legal action against others. Furthermore, the Company regularly assesses contingencies to determine the degree of probability and range of possible loss for potential accrual in its financial statements.

An estimated loss contingency is accrued in the Company's financial statements if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Based on the Company's assessment, it has adequately accrued an amount for contingent liabilities currently in existence. The Company does not accrue amounts for liabilities that it does not believe are probable. Litigation is inherently unpredictable, and unfavorable resolutions could occur. As a result, assessing contingencies is highly subjective and requires judgment about future events. The amount of ultimate loss may exceed the Company's current accruals, and it is possible that its cash flows or results of operations could be materially affected in any particular period by the unfavorable resolution of one or more of these contingencies.

### **14. Subsequent Events**

On April 1, 2021, the Simplify Cervical Artificial Disc received approval from the U.S. Food and Drug Administration for two-level cervical total disc replacement. This approval resulted in the achievement of the regulatory milestone pursuant to the terms of the Company's February 2021 acquisition of Simplify Medical. The Company made a payment of \$45.8 million on April 20, 2021 for the regulatory milestone using available cash on hand. Additional milestone payments, which are contingent upon net sales from products incorporating the Simplify Medical cervical artificial disc technology, will become payable in calendar years 2023, 2024 and 2025.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**Forward-Looking Statements May Prove Inaccurate**

This quarterly report on Form 10-Q ("Quarterly Report"), including the following discussion and analysis, may contain forward-looking statements that involve risks, uncertainties, assumptions and other factors which, if they do not materialize or prove correct, could cause our results to differ from historical results or those expressed or implied by such forward-looking statements. In some cases, you can identify these forward-looking statements by words like "may", "will", "should", "could", "expect", "plan", "anticipate", "believes", "estimates", "predicts", "potential", "intends", or "continues" (or the negative of those words and other comparable words). Forward-looking statements include, but are not limited to, statements about:

- the value proposition of our products and procedural solutions;
- our intentions, beliefs and expectations regarding our expenses, sales, operations and future financial performance;
- our operating results;
- our plans for future product developments and enhancements of existing products;
- anticipated growth and trends in our business;
- third party reimbursement policies and practices;
- the timing of and our ability to maintain and obtain regulatory clearances or approvals;
- our belief that our cash and cash equivalents and investments will be sufficient to satisfy our anticipated cash requirements;
- the impact of global economic conditions and public health crises and epidemics, such as the COVID-19 pandemic, on our business;
- our expectations regarding our customers and the adoption of our products and procedures;
- our beliefs and expectations regarding our market penetration and expansion efforts;
- our expectations regarding the benefits and integration of recently-acquired businesses and our ability to make future acquisitions and successfully integrate any such future-acquired businesses;
- our anticipated trends, product pricing pressure, competitive tactics and other challenges in the markets in which we operate; and
- our expectations and beliefs regarding and the impact of policy changes, investigations, claims and litigation.

These statements are not guarantees of future performance or events. Our actual results may differ materially from those discussed here. The potential risks and uncertainties that could cause actual results to differ materially include, but are not limited to those set forth under the heading "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2020, and this Quarterly Report on Form 10-Q, and similar discussions in our other Securities and Exchange Commission (the "SEC") filings. We assume no obligation to update any forward looking statements to reflect new information, future events or circumstances or otherwise.

This information should be read in conjunction with the Unaudited Consolidated Financial Statements and the notes thereto included in Part I, Item 1 of this Quarterly Report and with Management's Discussion and Analysis of Financial Condition and Results of Operations for the year ended December 31, 2020 contained in our 2020 Annual Report on Form 10-K.

## Overview

We are a global medical technology company focused on developing, manufacturing, selling and providing procedural solutions for spine surgery, with a guiding purpose to transform surgery, advance care and change lives. We offer a comprehensive portfolio of procedurally integrated spine surgery solutions, including surgical access instruments, spinal implants, fixation systems, biologics, and enabling technologies, as well as systems and services for intraoperative neuromonitoring. In addition, we develop and sell magnetically adjustable implant systems for spine and specialized orthopedic procedures.

Since our incorporation in 1997, we have grown from a small developer of specialty spinal implants into a leading medical technology company delivering procedurally integrated solutions for spine surgery. A key driver of our growth has been our focus on innovative products and technologies that drive reproducible outcomes for patients, surgeons and providers. In 2003, we introduced the eXtreme Lateral Interbody Fusion procedure, or XLIF, a lateral access spine surgery technique that is less-invasive than traditional, open surgical procedures and clinically proven to enable better patient outcomes. Building off the success of XLIF, we have continued to develop innovative less-invasive techniques and technologies for spine surgery, and we have broadened our portfolio of solutions for traditional, open surgical procedures. Our comprehensive portfolio of solutions can be utilized in procedures for the cervical, thoracic and lumbar spine, supporting surgical approaches from the anterior, including lateral, and posterior. Our solutions are used to treat degenerative conditions and for complex spinal surgery, including adult and pediatric deformities, as well as trauma and tumors.

Underlying our procedurally integrated solutions for spine surgery are innovative technologies designed to enable better clinical, financial, and operational outcomes, including:

- our differentiated surgical access instruments, including our Maxcess integrated split-blade retractor system, designed to enable less-invasive surgical techniques by minimizing soft tissue disruption during spine surgery;
- our neuromonitoring systems, which use proprietary software-driven nerve detection and avoidance technology, and our intraoperative neuromonitoring, or IONM, services and support;
- our Advanced Materials Science portfolio of specialized spinal implants, designed to advance spinal fusion by enhancing the osseointegration and biomechanical properties of implant materials, including porous titanium and porous polyetheretherketone, or PEEK;
- our comprehensive Reline fixation system, designed to facilitate the preservation and restoration of patient alignment, while addressing a vast array of spinal pathologies from an open or less-invasive approach across all spinal procedures; and
- our Integrated Global Alignment platform, or iGA, which is comprised of procedurally-based technologies that help increase the predictability of achieving global alignment in spinal procedures, including our Bendini spinal rod bending system that expedites manual rod manipulation for spinal fixation.

We have also invested in enabling technologies, including the development of capital equipment designed to further improve clinical, financial, and operational outcomes of spine surgery. Our capital equipment portfolio currently consists of Lessray and the Pulse platform. Lessray is an image enhancement platform designed to reduce radiation exposure in the operating room by allowing surgeons to take low-quality, low-dose images and improve them to look like conventional full-dose images. Pulse, which is pending regulatory clearance in the U.S. and in Europe, integrates multiple enabling technologies within a single, expandable platform and is engineered to improve workflow, reduce variability, and increase the reproducibility of surgical outcomes. The Pulse platform's modular architecture is designed to incorporate applications for neuromonitoring, surgical planning, patient-specific rod bending, smart imaging, navigation, and integration with robotics and other smart tools in the future.

In addition to our procedurally integrated solutions for spine surgery, we also design and sell expandable growing rod implant systems that can be non-invasively lengthened following implantation with precise, incremental adjustments via an external remote controller using magnetic technology called MAGnetic External Control, or MAGEC, which allows for the minimally invasive treatment of early-onset and adolescent scoliosis. This technology is also the basis for our Precice limb lengthening system, which allows for the correction of long bone limb length discrepancy, as well as other products for treating specialized orthopedic procedures.

We intend to continue development on a wide variety of innovation projects to advance our leadership position in less-invasive spine surgery, increase our product offerings and solutions for traditional spine surgery procedures, and further our enabling technologies portfolio. We expect to continue to invest in the Pulse platform to support a full global launch of the technology and to develop and expand its application offerings, including investments related to surgical automation and robotics. In addition, we expect to continue to pursue business and technology acquisition targets and strategic relationships to identify opportunities to broaden participation along the spine care continuum. Top priorities include opportunities that complement our technology leadership position in spine, targeted geographic expansion, technology that makes procedures even safer, as well as opportunities for surgical automation.

In December 2019, a novel strain of coronavirus, which causes COVID-19, was identified. Due to the rapid and global spread of the virus, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. To slow the proliferation of COVID-19, governments have implemented extraordinary measures, which include the mandatory closure of businesses, restrictions on travel and gatherings, and quarantine and physical distancing requirements. In addition, many government agencies in conjunction with hospitals and healthcare systems have, to varying degrees, deferred or suspended elective surgical procedures. While certain spine surgeries are deemed essential and certain surgeries, like in cases of trauma, cannot be delayed, we have seen and may continue to see a significant reduction in procedural volumes as hospital systems and/or patients elect to defer spine surgery procedures. The cumulative effect of these disruptions had a significant impact on our business during the year ended December 31, 2020 and the three months ended March 31, 2021, and it is not possible for us to accurately predict the length or severity of the COVID-19 pandemic or the timing for a broad and sustained resumption of elective surgical procedures. Further discussion of the potential impacts on our business from the COVID-19 pandemic is provided under Item 1A of Part I of our Annual Report on Form 10-K for the year ended December 31, 2020.

#### *Net Sales and Operations*

The majority of our net sales are derived from the sale of implants and fixation products, biologics, disposables and IONM services and we expect this trend to continue for the foreseeable future. Our implants and fixation products, biologics, and disposables are currently sold and shipped from our distribution and warehousing operations. We generally recognize net sales from implants and fixation products, biologics and disposables upon notice that our products have been used in a surgical procedure or upon shipment to a third-party customer who has assumed control of the products. Net sales from IONM services are recognized in the period the service is performed for the amount of payment we expect to receive. We make available surgical access instrument sets and neuromonitoring systems to hospitals to facilitate surgeon access to the spine to perform restorative and fusion procedures using our implants and fixation products. We sell surgical instrument sets and our proprietary software-driven neuromonitoring systems, however this does not make up a material part of our business. Selling or leasing of capital equipment does not make up a material portion of our total net sales.

A substantial portion of our operations are located in the United States, and the majority of our net sales and cash generation have been made in the United States. We sell our products in the United States through a sales force comprised primarily of directly employed and independent sales representatives. Our sales force provides a delivery and consultative service to surgeon and hospital customers and is compensated based on sales and product placements in their territories. Sales force commissions are reflected in the selling, general and administrative operating expense line item within our Consolidated Statements of Operations. We continue to invest in international expansion with a focus on European, Asia-Pacific and Latin American markets. Our international sales force is comprised of directly-employed sales personnel, independent sales representatives, as well as exclusive and non-exclusive independent third-party distributors.

### **Results of Operations**

#### *Net Sales*

(in thousands, except %)

	<b>March 31,</b>		<b>\$ Change</b>	<b>% Change</b>
	<b>2021</b>	<b>2020</b>		
<b>Three Months Ended</b>				
Net sales				
Spinal hardware	\$ 204,558	\$ 190,869	\$ 13,689	7%
Surgical support	66,691	69,012	(2,321)	(3)%
<b>Total net sales</b>	<b>\$ 271,249</b>	<b>\$ 259,881</b>	<b>\$ 11,368</b>	<b>4%</b>

Our spinal hardware product line offerings include our implants and fixation products. Our surgical support product line offerings include IONM services, disposables and biologics, and our capital equipment, all of which are used to aid spine surgery.

We expect continued adoption of our innovative minimally invasive procedures and deeper penetration into existing accounts and international markets as our sales force executes on our strategy of selling the full mix of our products and services. However, the continued consolidation and increased purchasing power of our hospital customers and group purchasing organizations, continued changes in the public and private insurance markets regarding reimbursement, and ongoing policy and legislative changes in the United States have created less predictability. Although the market for procedurally-integrated spine surgery solutions is expected to continue to grow over the long term, economic, political and regulatory influences are subjecting our industry to significant changes that may slow the growth rate of the spine surgery market. Further, the COVID-19 pandemic has led to a significant reduction in procedural volumes in 2021, and it is not possible for us to accurately predict the length or severity of the COVID-19 pandemic or the timing for a broad and sustained resumption of elective surgical procedures.

Net sales from our spinal hardware product line offerings increased \$13.7 million, or 7%, during the three months March 31, 2021, compared to the same period in 2020. Product volume in spinal hardware increased our net sales by approximately 6%, offset by unfavorable pricing changes of approximately 1% during the three months ended March 31, 2021, compared to the same period in 2020. Foreign currency fluctuation increased our spinal hardware net sales by approximately 2% during the three months ended March 31, 2021, compared to the same period in 2020.

Net sales from our surgical support product line offerings decreased \$2.3 million, or 3%, during the three months ended March 31, 2021, compared to the same period in 2020. Product and service volume in surgical support decreased our net sales by approximately 2% for the three months ended March 31, 2021 compared to the same period in 2020, primarily due to varying recovery rates of certain procedures as a result of the COVID-19 pandemic. Additionally, we experienced unfavorable pricing impacts of approximately 1% for the three months ended March 31, 2021, compared to the same period in 2020. Foreign currency fluctuation had an insignificant impact on net sales from surgical support for the periods presented.

### Cost of Sales, Excluding Below Amortization of Intangible Assets

(in thousands, except %)	March 31,		\$ Change	% Change
	2021	2020		
<b>Three Months Ended</b>				
Cost of sales	\$ 71,811	\$ 71,865	\$ (54)	(0)%
% of total net sales	26%	28%		(2)%

Cost of sales consists primarily of purchased goods, raw materials, labor and overhead associated with product manufacturing, inventory-related costs and royalty expenses, as well as the cost of providing IONM services, which includes personnel and physician oversight costs. We primarily procure and manufacture our goods in the United States, and accordingly, foreign currency fluctuations have not materially impacted our cost of sales.

Cost of sales remained consistent during the three months ended March 31, 2021, compared to the same period in 2020. However, cost of sales as a percentage of net sales decreased by 2% compared to same period in 2020. This decrease was due to a reduction in cost of sales as a result of favorable manufacturing absorption from in-sourced products and improved throughput and plant efficiencies, offset by higher costs associated with higher net sales during the three months ended March 31, 2021, compared to the prior year period. Additionally, our reserve for excess and obsolete inventory declined by \$2.6 million, compared to the same period in 2020, which is primarily attributable to updates to our estimates and assumptions about future demand for certain spinal hardware products associated with market conditions affected by the COVID-19 pandemic.

### Operating Expenses

(in thousands, except %)	Three Months Ended		\$ Change	% Change
	March 31,			
	2021	2020		
Selling, general and administrative	\$ 145,954	\$ 130,231	\$ 15,723	12%
% of total net sales	54%	50%		
Research and development	22,224	18,257	3,967	22%
% of total net sales	8%	7%		
Amortization of intangible assets	13,337	12,649	688	5%
Business transition costs	5,584	(1,440)	7,024	488%

### *Selling, General and Administrative*

Selling, general and administrative expenses consist primarily of compensation costs, commissions and training costs for our employees engaged in sales, marketing and customer support functions. The expense also includes commissions to sales representatives, freight expenses, surgeon training costs, depreciation expense for property and equipment such as surgical instrument sets, and administrative expenses for both employees and third-party service providers.

Selling, general and administrative expenses increased by \$15.7 million, or 12%, during the three months ended March 31, 2021, compared to the same period in 2020. The increase during the three months ended March 31, 2021 is primarily due to increased compensation costs, including stock-based compensation, partially offset by reduced travel and legal expenses associated with certain ongoing litigation matters during the three months ended March 31, 2021, compared to the same period in 2020.

### *Research and Development*

Research and development expense consists primarily of product research and development, clinical trial and study costs, regulatory and clinical functions, and compensation and other employee related expenses. In the last several years, we have introduced numerous new products and product enhancements that have significantly expanded our technology platforms and our comprehensive product portfolio. We have also acquired complementary and strategic assets and technology, particularly in the area of spinal hardware products. We continue to invest in research and development programs related to our core product portfolio, as well as in our capital equipment.

Research and development expense increased by \$4.0 million, or 22%, during the three months ended March 31, 2021, compared to the same period in 2020. The increase in spending is primarily due to higher compensation-related costs and further development, enhancement and functionality of our current and future product offerings, including capital equipment.

### *Business Transition Costs*

We incur certain costs related to acquisition, integration and business transition activities, which include severance, relocation, consulting, leasehold exit costs, third-party merger and acquisition costs, contingent consideration fair value adjustments and other costs directly associated with such activities. Contingent consideration is accrued based on the fair value of the expected payment, and such accruals are subject to increase or decrease based on assessment of the likelihood and amount of contingent milestone achievement, resulting in payment. If an accrual for contingent consideration decreases during a particular period, it results in a reduction of costs during such period.

During the three months ended March 31, 2021, we recorded \$5.6 million of costs related to acquisition, integration and business transition activities, which included \$0.9 million of fair value adjustments on contingent consideration liabilities associated with our 2017 and 2016 acquisitions. We incurred \$3.9 million of costs associated with the acquisition of Simplify Medical in the first quarter of 2021.

During the three months ended March 31, 2020, we recorded a reduction of costs of \$(1.4) million related to acquisition, integration and business transition activities, which included \$(2.1) million of fair value adjustments on contingent consideration liabilities associated with our 2017 and 2016 acquisitions.

### *Interest and Other Expense, Net*

(in thousands, except %)

	<b>March 31,</b>		<b>\$ Change</b>	<b>% Change</b>
	<b>2021</b>	<b>2020</b>		
<b>Three Months Ended</b>				
Interest income	\$ 87	\$ 731	\$ (644)	(88)%
Interest expense	(8,030)	(11,517)	3,487	(30)%
Other income (expense), net	(12,526)	(7,408)	(5,118)	69%
<b>Total interest and other expense, net</b>	<b>\$ (20,469)</b>	<b>\$ (18,194)</b>	<b>\$ (2,275)</b>	<b>13%</b>

Total interest and other expense, net for the periods presented included gains and losses from strategic investments, our pro rata allocation of net income or loss from our equity method investments, and net foreign currency exchange gains and losses. Total interest and other expense, net increased by \$2.3 million during the three months ended March 31, 2021, as compared to the same period in 2020. The increase is primarily due to an increase in unrealized foreign currency losses of \$6.8 million for the three months ended March 31, 2021, primarily associated with intercompany receivables and payables established upon the acquisition of Simplify Medical. Offsetting this increase is a \$1.4 million loss recognized from strategic investments during the three months ended March 31, 2020 and a reduction in interest expense for the three months ended March 31, 2021, associated with our accretion of the debt discount for our Senior Convertible Notes due 2021 and 2025 due to the adoption of ASU 2020-06.

### ***Income Tax (Benefit) Expense***

<i>(in thousands, except %)</i>	<b>March 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Three Months Ended</b>		
Income tax (benefit) expense	\$ (620)	\$ 4,827
Effective income tax rate	8%	48%

The provision for income tax (benefit) expense as a percentage of pre-tax income from continuing operations was 8% for the three months ended March 31, 2021, compared with 48% for the three months ended March 31, 2020. The reduced rate during the three months ended March 31, 2021 was primarily due to a decrease in income tax credits, an increase in limitations on executive compensation deductions, and increased non-deductible acquisition costs, offset by a decrease in valuation allowances, non-deductible meals and entertainment deductions and an increase in windfall tax benefits on share-based payments.

### **Liquidity, Cash Flows and Capital Resources**

#### ***Liquidity and Capital Resources***

Our principal sources of liquidity are our existing cash, cash equivalents and marketable securities, cash generated from operations, proceeds from our convertible notes issuances, and access to our revolving line of credit. We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, which include impacts from the COVID-19 pandemic, working capital requirements and capital deployment decisions. We have historically invested our cash primarily in U.S. treasuries and government agencies, corporate debt, and money market funds. Certain of these investments are subject to general credit, liquidity and other market risks. The general condition of the financial markets and the economy may increase those risks and may affect the value and liquidity of investments and restrict our ability to access the capital markets.

Our future capital requirements will depend on many factors including our growth rate in net sales, the timing and extent of spending to support development efforts, the expansion of selling, general and administrative activities, the timing of introductions of new products and enhancements to existing products, successful insourcing of our manufacturing process, the continuing market acceptance of our products, the expenditures associated with possible future acquisitions or other business combination transactions, the outcome of current and future litigation, international expansions of our business, and impacts from the COVID-19 pandemic. We expect our cash flows from operations to continue to fund the ongoing core business. As borrowings become due, we may be required to access the capital markets or draw upon our line of credit for additional funding. As we assess inorganic growth strategies, we may need to supplement our internally generated cash flow with outside sources. As part of our liquidity strategy, we will continue to monitor our current level of earnings and cash flow generation as well as our ability to secure additional credit facilities, term loans, or other similar arrangements and access the capital markets in light of those earning levels and general financial market conditions.

A substantial portion of our operations are located in the United States, and the majority of our net sales and cash generation have been made in the United States. Accordingly, we do not have material net cash flow exposures to foreign currency rate fluctuations from operations. However, as our business in markets outside of the United States continues to increase, we will be exposed to foreign currency exchange risk related to our foreign operations. Fluctuations in the rate of exchange between the United States dollar and foreign currencies, primarily in the pound sterling, the euro, the Australian dollar, the Brazilian real, the Singapore dollar, and the yen, could adversely affect our financial results, including our net sales, growth rates in net sales, gross margins, gains and losses as well as assets and liabilities. In particular, as a result of our acquisition of Simplify Medical, we have additional exposure to fluctuations in the Australian dollar. We established intercompany receivables and payables in Australian dollars in connection with the acquisition of Simplify Medical, a proprietary limited company registered in Australia. Additionally, we have future contingent consideration liabilities denominated in United States dollars, in connection with the acquisition of Simplify Medical, which are the financial obligation of NuVasive (AUST/NZ) Pty Limited, an Australian dollar denominated company. Both the intercompany receivables and payables and contingent consideration liabilities are subject to foreign currency remeasurement. While we enter into forward currency contracts for certain currencies to partially offset the impact from fluctuations of the foreign currency rates on our third-party and short-term intercompany receivables and payables between our domestic and international operations, we have not entered into hedges with respect to the Australian dollar. In addition, we currently do not hedge future forecasted transactions but will continue to assess whether that strategy is appropriate. As of March 31, 2021, the cash balance held by our foreign subsidiaries with currencies other than the United States dollar was approximately \$51.8 million and it is our intention to indefinitely reinvest all of our current foreign earnings to increase working capital within our international business and to expand our existing operations outside the United States. As of March 31, 2021, our account receivable balance held by our foreign subsidiaries with currencies other than the United States dollar was approximately \$47.8 million. We have operations in markets in which there is governmental financial instability which could impact funds that flow into the medical reimbursement system. In addition, loss of financial stability within these markets could lead to delays in reimbursement or inability to remit payment due to currency controls. Specifically, we have operations and/or sales in Puerto Rico, Brazil and Argentina. We do not have any material financial exposure to one customer or one country that would significantly hinder our liquidity.

We are currently, and in the future could be, involved in legal actions and investigations arising out of the normal course of our business. Due to the inherent uncertainties associated with pending legal actions and investigations, we cannot predict the outcome, and, with respect to certain pending litigation or claims where no liability has been accrued, to make a meaningful estimate of the reasonably possible loss or range of loss that could result from an unfavorable outcome, other than those matters disclosed in this Quarterly Report. We have no material accruals for pending litigation or claims that are not disclosed in our Unaudited Consolidated Financial Statements. It is reasonably possible, however, that an unfavorable outcome that exceeds our accrual estimate for a particular legal proceeding or investigation could have a material adverse effect on our liquidity and access to capital resources. Additionally, it is possible that in connection with a legal proceeding or investigation we are required to pay fees and expenses of the other party or set aside funds in an escrow or purchase a performance bond, regardless of our assessment of the probability of a loss. These requirements to pay fees and expenses or escrow funding in connection with a legal proceeding or investigation could have an adverse impact on our liquidity or affect our access to additional capital resources.

On September 12, 2016, we completed an acquisition of an imaging software and technology platform known as Lessray. In connection with the acquisition, we recorded a purchase accounting fair value estimate of \$34.1 million for contingent consideration liabilities related to the achievement of certain regulatory and commercial milestones. In January 2018, we paid \$9.0 million of the outstanding contingent consideration liabilities for the achievement of a commercial milestone. In July 2018, we paid \$10.0 million of the outstanding contingent consideration liabilities for the achievement of a regulatory approval milestone. We anticipate the remaining sales-based milestones will become payable at varying times by 2024.

On September 7, 2017, we completed an acquisition of a medical device company that developed interbody implants for spinal fusion using patented porous PEEK technology. In connection with the acquisition, we recorded a purchase accounting fair value estimate of \$31.4 million for contingent consideration liabilities related to the achievement of certain manufacturing and commercial milestones. In May 2020, we paid \$7.5 million toward the successful achievement of a milestone. We anticipate the remaining milestones will become payable at varying times between 2021 and 2024, but are subject to change based on the achievement of those manufacturing and commercial milestones.

On February 24, 2021, we completed the acquisition of Simplify Medical, a developer of cervical artificial disc technology for cervical total disc replacement procedures. In connection with the acquisition, we recorded a purchase accounting fair value estimate of \$103.4 million for contingent consideration liabilities related to the achievement of milestones related to regulatory approval and net sales from products incorporating the Simplify Medical cervical artificial disc technology. On April 1, 2021, the Simplify Cervical Artificial Disc received approval from the U.S. Food and Drug Administration for two-level cervical total disc replacement, resulting in the achievement of the regulatory milestone. We made a payment of \$45.8 million on April 20, 2021 for the regulatory milestone using available cash. Additional milestone payments, which are contingent upon net sales from products incorporating the Simplify Medical cervical artificial disc technology, will become payable in calendar years 2023, 2024 and 2025.

Cash, cash equivalents and short-term investments were \$233.9 million and \$1.0 billion at March 31, 2021 and December 31, 2020, respectively. While the unprecedented public health and governmental efforts to contain the spread of COVID-19 have created significant disruptions to the healthcare system and the global economy, as of the filing date of this report, we believe our existing cash, cash equivalents, short-term investments, projected future cash flows from operations and access to external financing sources are sufficient to satisfy our current and reasonably anticipated requirements for funds to conduct our operations in the ordinary course of our business and pay our obligation as they become due for the next twelve months. Given the impact the COVID-19 pandemic has had on demand for elective surgical procedures, we took temporary actions during 2020 to reduce operating expenses and preserve liquidity, such as reducing compensation for our directors and executive officers, limiting discretionary spend, and adjusting manufacturing capacity based upon demand. Additionally, we have varying needs for cash in connection with our Senior Convertible Notes, and also as a result of certain acquisition-related obligations and milestone achievements. Future litigation or requirements to escrow funds could also materially impact our liquidity and our ability to invest in and operate our business on an ongoing basis. Although we have no cash borrowings under our existing revolving senior credit facility as of the date of this report, we expect to use our cash resources or cash borrowings under our senior credit facility to support our business within the context of prevailing market and economic conditions, which, given the COVID-19 crisis, could rapidly and materially deteriorate or otherwise change. During this time, we may seek other sources of liquidity through capital market or bank loan transactions to support our business needs. In addition, we may seek to further adjust or amend the terms of and/or expand the capacity of our existing senior credit facility, or enter into additional credit facilities, term loans, or other similar arrangements. However, with the uncertainty surrounding the COVID-19 crisis, our ability to engage in such transactions may be constrained by volatile financial market conditions, reduced investor and/or lender interest or capacity, as well as our liquidity, leverage, and general creditworthiness and we can provide no assurance as to successfully completing such transactions. Furthermore, our ability to borrow under our existing revolving senior credit facility is subject to remaining in compliance with underlying financial covenants which may be difficult to satisfy if the COVID-19 pandemic continues to adversely impact the healthcare system and our business. Further discussion of the potential impacts on our business from the COVID-19 pandemic is provided under Item 1A of Part I of our Annual Report on Form 10-K for the year ended December 31, 2020.

The decrease in liquidity during the three months ended March 31, 2021 of \$796.2 million was primarily a result of cash outflows of \$649.4 million related to the settlement of our Senior Convertible Notes due 2021, and the acquisition of Simplify Medical for \$149.4 million (net of cash acquired). At March 31, 2021, we had cash totaling \$1.5 million in restricted accounts which is not available to us to meet any ongoing capital requirements if and when needed.

#### ***Cash Flows from Operating Activities***

Cash provided by operating activities was \$31.6 million for the three months ended March 31, 2021, compared to \$5.2 million for the same period in 2020. The \$26.4 million increase in cash provided by operating activities was primarily due to increased operational cash flows in 2021 related primarily to a reduction in payments for compensation related accruals and timing of spending for inventory purchases during the three months ended March 31, 2021, compared to the same period in 2020.

#### ***Cash Flows from Investing Activities***

Cash used in investing activities was \$2.7 million for the three months ended March 31, 2021, compared to \$30.6 million used for the same period in 2020. The \$27.9 million decrease in cash used in investing activities was primarily due to proceeds of \$173.0 million from the sales and maturities of marketable securities, partially offset by a \$149.4 million cash payment (net of cash received) for the acquisition of Simplify Medical during the three months ended March 31, 2021.

#### ***Cash Flows from Financing Activities***

Cash used in financing activities was \$649.8 million for the three months ended March 31, 2021, compared to \$326.1 million provided from financing activities for the same period in 2020. The \$975.9 million increase in cash used in financing activities was primarily due to the \$649.4 million payment to settle our Senior Convertible Notes due 2021 during the three months ended March 31, 2021. In the first quarter of 2020, we issued \$450.0 million of Senior Convertible Notes due 2025, receiving net proceeds of \$437.7 million, which were offset by \$47.1 million of net cash used for the call spreads on the sales and purchases of our warrants and bond hedges issued in connection with the Senior Convertible Notes due 2025. Additionally, treasury stock purchases decreased by \$78.8 million during the three months ended March 31, 2021, compared to the same period in 2020.

Treasury stock purchases related to equity award vesting totaled \$0.1 million during the three months ended March 31, 2021. We use net share settlement on stock issuances, which results in cash tax payments. Net share settlement is generally used in lieu of cash payments by employees for minimum tax withholding for equity awards. The net share settlement is accounted for as a treasury share repurchase transaction, with the cost of any deemed repurchased shares included in treasury stock and reported as a reduction in total equity at the time of settlement. Additionally, net share settlement for tax withholding requires us to fund a significant amount of cash for certain tax payment obligations from time-to-time with respect to the employee tax obligations for vested equity awards. We anticipate using cash generated from operating activities to fund such payments.

## Senior Convertible Notes

### 2.25% Senior Convertible Notes due 2021

In March 2016, we issued \$650.0 million principal amount of unsecured senior convertible notes with a stated interest rate of 2.25% and a maturity date of March 15, 2021, which we refer to as the 2021 Notes. The net proceeds from the offering, after deducting initial purchasers' discounts and costs directly related to the offering, were approximately \$634.1 million. Interest on the 2021 Notes began accruing upon issuance and was payable semi-annually. Prior to September 14, 2020, the 2021 Notes provided for settlement in cash, stock, or a combination thereof, solely at our discretion. As of September 14, 2020, combination settlement was deemed to have been elected by us and the 2021 Notes will be settled by satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of our common stock. The initial conversion rate of the 2021 Notes was 16.7158 shares per \$1,000 principal amount, which was equivalent to a conversion price of approximately \$59.82 per share, subject to adjustments. Prior to September 15, 2020, holders could have converted their 2021 Notes only under the following conditions: (a) during any calendar quarter beginning June 30, 2016, if the reported sale price of our common stock for at least 20 days out of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter was greater than 130% of the conversion price on each applicable trading day; (b) during the five business day period in which the trading price of the 2021 Notes fell below 98% of the product of (i) the last reported sale price of our common stock and (ii) the conversion rate on that date; and (c) upon the occurrence of specified corporate events, as defined in the 2021 Notes. From September 15, 2020 and until the close of business on the second scheduled trading day immediately preceding March 15, 2021, holders could have converted their 2021 Notes at any time (regardless of the foregoing circumstances). The 2021 Notes can no longer be redeemed by us. We previously had the ability to redeem the 2021 Notes, at our option, in whole or in part beginning on March 20, 2019 until the close of business on the business day immediately preceding September 15, 2020 if the last reported sale price of our common stock had been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which we deliver written notice of a redemption. No principal payments were due on the 2021 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2021 Notes did not contain any financial covenants and did not restrict us from paying dividends or issuing or repurchasing any of our other securities. As of September 15, 2020, holders could have converted their 2021 Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date.

In connection with the offering of the 2021 Notes, we entered into transactions for convertible notes hedge, which we refer to as the 2021 Hedge, and warrants, which we refer to as the 2021 Warrants. The 2021 Hedge was entered into with the initial purchasers of the 2021 Notes and/or their affiliates, which we refer to as the 2021 Counterparties, entitling us to purchase up to 10,865,270 shares of our own common stock at an initial stock price of \$59.82 per share, each of which was subject to adjustment. The cost of the 2021 Hedge was \$111.2 million. The 2021 Hedge expired on March 15, 2021 and was put in place to reduce the potential equity dilution upon conversion of the 2021 Notes when the daily volume-weighted average price per share of our common stock exceeded the strike price of the 2021 Hedge. Prior to its expiration, an assumed exercise of the 2021 Hedge was considered anti-dilutive since the effect of the inclusion is always anti-dilutive with respect to the calculation of diluted earnings per share. On March 15, 2021, we exercised our rights under certain convertible note hedge transactions and received 842 shares of our common stock.

In addition, we sold the 2021 Warrants to the 2021 Counterparties to acquire up to 10,865,270 common shares of our stock. The 2021 Warrants will expire on various dates from June 2021 through December 2021 and may be settled in cash or net shares. It is our current intent and policy to settle all conversions in shares of our common stock. We received \$44.9 million in cash proceeds from the sale of the 2021 Warrants. The 2021 Warrants could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given measurement period exceeds the strike price of the 2021 Warrants, which is \$80.00 per share.

On March 15, 2021, the 2021 Notes reached maturity and we settled in full the 2021 Notes. We received conversion notices from the holders of 1.4% of the 2021 Notes, representing \$9.1 million outstanding principal amount thereof, which we refer to as the Conversions. We paid an aggregate of \$649.4 million in cash for the settlement of the 2021 Notes, which included \$640.9 million in satisfaction of the outstanding principal of the 2021 Notes and \$8.5 million in cash in connection with the settlement of the Conversions. Additionally, in satisfaction of the Conversions, and pursuant to combination settlement, we issued 837 shares of common stock in the aggregate to the holders who elected to convert their outstanding notes. We funded the repayment of the outstanding principal amount of the 2021 Notes, accrued interest thereon, and the cash component of the Conversions using available cash on hand.

### *1.00% Senior Convertible Notes due 2023*

In June 2020, we issued \$450.0 million principal amount of unsecured Senior Convertible Notes with a stated interest rate of 1.00% and a maturity date of June 1, 2023, which we refer to as the 2023 Notes. The net proceeds from the offering, after deducting initial purchasers' discounts and costs directly related to the offering, were approximately \$436.7 million. The 2023 Notes were initially required to be settled in cash as we did not have enough available shares and were unable to reserve the maximum number of shares issuable under the 2023 Notes ("sufficient reserved shares"). On September 10, 2020, we held a Special Meeting of Stockholders and received stockholder approval to amend our Restated Certificate of Incorporation to increase the number of shares of our common stock authorized for issuance from 120,000,000 shares to 150,000,000 shares. As a result of the increase in the number of shares of our common stock authorized for issuance, we currently have sufficient reserved shares and therefore may settle conversions of the 2023 Notes in cash, stock, or a combination thereof, solely at our discretion. It is our current intent and policy to settle all conversions through combination settlement, which involves satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of our common stock. The initial conversion rate of the 2023 Notes is 11.8778 shares per \$1,000 principal amount, which is equivalent to a conversion price of approximately \$84.19 per share, subject to adjustments. In addition, following certain corporate events that occur prior to the maturity date or if we issue a notice of redemption, we will increase the conversion rate for a holder who elects to convert its 2023 Notes in connection with such a corporate event or in connection with such redemption in certain circumstances. Prior to February 1, 2023, holders may convert their 2023 Notes only under the following conditions: (a) during any calendar quarter commencing after the calendar quarter ending on September 30, 2020 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (b) during the five business day period after any five consecutive trading day period, referred to as the measurement period, in which the trading price of the 2023 Notes per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on such trading day; (c) if we call any or all of the 2023 Notes for redemption, at any time prior to the close of business on the second scheduled trading day preceding the redemption date; or (d) upon the occurrence of specified corporate events, as defined in the 2023 Notes. On or after February 1, 2023, until the close of business on the second scheduled trading day immediately preceding June 1, 2023, holders may convert their 2023 Notes at any time, regardless of the foregoing conditions. We may not redeem the 2023 Notes prior to the maturity date. No principal payments are due on the 2023 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2023 Notes do not contain any financial covenants and do not restrict us from conducting significant restructurings, paying dividends or issuing or repurchasing any of our other securities. As of March 31, 2021, we are unaware of any current events or market conditions that would allow holders to convert the 2023 Notes.

In connection with the sale of the 2023 Notes, we entered into transactions for convertible notes hedge, which we refer to as the 2023 Hedge, and warrants, which we refer to as the 2023 Warrants. The 2023 Hedge was entered into with certain dealers, which included affiliates of certain of the initial purchasers of the 2023 Notes and other financial institutions, which we refer to as the 2023 Counterparties, entitling us to purchase up to 5,345,010 shares of our own common stock at an initial stock price of \$84.19 per share, each of which is subject to adjustment. The cost of the 2023 Hedge was \$69.5 million. The 2023 Hedge will expire on the second scheduled trading day immediately preceding June 1, 2023. The 2023 Hedge is expected to reduce the potential equity dilution upon conversion of the 2023 Notes if the daily volume-weighted average price per share of our common stock exceeds the strike price of the 2023 Hedge. Our assumed exercise of the 2023 Hedge is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share.

In addition, we sold the 2023 Warrants to the 2023 Counterparties to acquire up to 5,345,010 common shares of our stock. The 2023 Warrants initially limited the amount of shares we were required to reserve for issuance under the 2023 Warrants to an aggregate of 3,093,500 shares of our common stock, subject to adjustment upon having a sufficient amount of authorized and unissued shares which are not reserved for other transactions. As a result of receiving stockholder approval to increase the number of shares of our common stock authorized for issuance on September 10, 2020, we subsequently entered into amendment agreements with each of the 2023 Counterparties to increase the number of authorized shares of our common stock required to be reserved under the 2023 Warrants to the aggregate amount of 6,948,512 shares. The 2023 Warrants will expire on various dates from September 2023 through November 2023 and may be settled in net shares or cash, subject to certain conditions. It is our current intent and policy to settle all conversions in shares of our common stock. We received \$46.8 million in cash proceeds from the sale of the 2023 Warrants. The 2023 Warrants could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given measurement period exceeds the strike price of the 2023 Warrants, which is \$104.84 per share.

### *0.375% Senior Convertible Notes due 2025*

In March 2020, we issued \$450.0 million principal amount of unsecured senior convertible notes with a stated interest rate of 0.375% and a maturity date of March 15, 2025, which we refer to as the 2025 Notes. The net proceeds from the offering, after deducting initial purchasers' discounts and costs directly related to the offering, were approximately \$437.0 million. Interest on the 2025 Notes began accruing upon issuance and is payable semi-annually. The 2025 Notes may be settled in cash, stock, or a combination thereof, solely at our discretion. It is our current intent and policy to settle all conversions through combination settlement, which involves satisfying the principal amount outstanding with cash and any note conversion value over the principal amount in shares of our common stock. The initial conversion rate of the 2025 Notes is 10.7198 shares per \$1,000 principal amount, which is equivalent to a conversion price of approximately \$93.29 per share, subject to adjustments. In addition, following certain corporate events that occur prior to the maturity date or if we issue a notice of redemption, we will increase the conversion rate for a holder who elects to convert its 2025 Notes in connection with such a corporate event or in connection with such redemption in certain circumstances. Prior to September 15, 2024, holders may convert their 2025 Notes only under the following conditions: (a) during any calendar quarter commencing after the calendar quarter ending on June 30, 2020 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (b) during the five business day period after any five consecutive trading day period, referred to as the measurement period, in which the trading price of the 2025 Notes per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on such trading day; (c) if we call any or all of the 2025 Notes for redemption, at any time prior to the close of business on the second scheduled trading day preceding the redemption date; or (d) upon the occurrence of specified corporate events, as defined in the 2025 Notes. On or after September 15, 2024, until the close of business on the second scheduled trading day immediately preceding March 15, 2025, holders may convert their 2025 Notes at any time, regardless of the foregoing conditions. We may not redeem the 2025 Notes prior to March 20, 2023. We may redeem the 2025 Notes, at our option, in whole or in part, on or after March 20, 2023 until the close of business on the business day immediately preceding September 15, 2024, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which we deliver written notice of a redemption. The redemption price will be equal to 100% of the principal amount of such 2025 Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date. No principal payments are due on the 2025 Notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the 2025 Notes do not contain any financial covenants and do not restrict us from conducting significant restructurings, paying dividends or issuing or repurchasing any of our other securities. As of March 31, 2021, we are unaware of any current events or market conditions that would allow holders to convert the 2025 Notes.

In connection with the sale of the 2025 Notes, we entered into transactions for convertible notes hedge, which we refer to as the 2025 Hedge, and warrants, which we refer to as the 2025 Warrants. The 2025 Hedge was entered into with certain dealers, which included affiliates of certain of the initial purchasers of the 2025 Notes and other financial institutions, which we refer to as the 2025 Counterparties, entitling us to purchase up to 4,823,910 shares of our own common stock at an initial stock price of \$93.29 per share, each of which is subject to adjustment. The cost of the 2025 Hedge was \$78.3 million. The 2025 Hedge will expire on the second scheduled trading day immediately preceding March 15, 2025. The 2025 Hedge is expected to reduce the potential equity dilution upon conversion of the 2025 Notes if the daily volume-weighted average price per share of our common stock exceeds the strike price of the 2025 Hedge. Our assumed exercise of the 2025 Hedge is considered anti-dilutive since the effect of the inclusion would always be anti-dilutive with respect to the calculation of diluted earnings per share.

In addition, we sold the 2025 Warrants to the 2025 Counterparties to acquire up to 4,823,910 common shares of our stock. The 2025 Warrants will expire on various dates from June 2025 through October 2025 and may be settled in net shares or cash, subject to certain conditions. It is our current intent and policy to settle all conversions in shares of our common stock. We received \$47.1 million in cash proceeds from the sale of the 2025 Warrants. The 2025 Warrants could have a dilutive effect on our earnings per share to the extent that the price of our common stock during a given measurement period exceeds the strike price of the 2025 Warrants, which is \$127.84 per share.

### **Revolving Senior Credit Facility**

In February 2020, we entered into a Second Amended and Restated Credit Agreement, or the 2020 Credit Agreement, for a revolving senior credit facility, referred to as the 2020 Facility, which replaced the previous Amended and Restated Credit Agreement we had entered into in April 2017. The 2020 Credit Agreement was further amended in May 2020 to, among other things, provide additional flexibility in determining the financial covenant leverage ratios for the second and third fiscal quarters of 2020 and to adjust certain margin and benchmark rates used to determine interest under the 2020 Facility. The 2020 Credit Agreement provides for secured revolving loans, multicurrency loan options and letters of credit in an aggregate amount of up to \$550.0 million. The 2020 Credit Agreement also contains an expansion feature, which allows us to increase the aggregate principal amount of the 2020 Facility provided we remain in compliance with the underlying financial covenants on a pro forma basis, including but not limited to, compliance with the consolidated interest coverage ratio and certain consolidated leverage ratios. The 2020 Facility matures in February 2025 (subject to an earlier springing maturity date), and includes a sublimit of \$50.0 million for standby letters of credit, a sublimit of \$250.0 million for multicurrency borrowings, and a sublimit of \$5.0 million for swingline loans. All of our assets including the assets of our material domestic subsidiaries continue to be pledged as collateral under the 2020 Facility (subject to customary exceptions) pursuant to the terms set forth in the Second Amended and Restated Security and Pledge Agreement executed in favor of the administrative agent. Each of our material domestic subsidiaries guarantee the 2020 Facility. In connection with the 2020 Facility, we incurred issuance costs which will be amortized over the term of the 2020 Facility. We did not carry any outstanding revolving loans under the 2020 Facility as of March 31, 2021 and December 31, 2020.

Borrowings under the 2020 Facility bear interest, at our option, at a rate equal to an applicable margin plus: (a) the applicable Eurocurrency Rate (as defined in the 2020 Credit Agreement), or (b) a base rate determined by reference to the highest of (1) the federal funds effective rate plus 0.50%, (2) the Bank of America prime rate, and (3) the Eurocurrency Rate for an interest period of one month plus 1.00%. The margin for the 2020 Facility ranges, based on our consolidated total net leverage ratio, from 0.50% to 1.25% in the case of base rate loans and from 1.50% to 2.25% in the case of Eurocurrency Rate loans. The 2020 Facility includes an unused line fee ranging, based on our consolidated total net leverage ratio, from 0.35% to 0.50% per annum on the revolving commitment.

The 2020 Credit Agreement contains affirmative, negative, permitted acquisition and financial covenants, and events of default customary for financings of this type. The financial covenants require us to maintain a consolidated interest coverage ratio and certain consolidated leverage ratios, which are measured on a quarterly basis. The 2020 Facility grants the lenders preferred first priority liens and security interests in capital stock, intercompany debt and all of our present and future property and assets including each guarantor. As of March 31, 2021, we are in compliance with the 2020 Credit Agreement covenants.

### **Critical Accounting Policies**

Our discussion and analysis of our financial condition and results of operations is based upon our Unaudited Consolidated Financial Statements, which have been prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate our estimates including those related to credit losses, inventories, valuation of goodwill, intangibles, other long-term assets, stock-based compensation, income taxes, and legal proceedings. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities not readily apparent from other sources. Actual results may differ from these estimates. Our critical accounting policies and estimates are discussed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 and there have been no material changes during the three months ended March 31, 2021.

### **Off-Balance Sheet Arrangements**

As of March 31, 2021, we did not have any off-balance sheet arrangements.

### **Contractual Obligations and Commitments**

As of March 31, 2021, other than the aforementioned settlement of the 2021 Notes, there were no material changes outside of the ordinary course of business, in our outstanding contractual obligations from those disclosed within “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

As of March 31, 2021, other than the aforementioned additional exposure to fluctuations to the Australian dollar as a result of our acquisition of Simplify Medical, there has been no material change in our assessment of our sensitivity to market risk since our presentation set forth in Item 7A, “Quantitative and Qualitative Disclosures About Market Risk”, in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

#### **Item 4. Controls and Procedures**

##### **Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized and reported within the time lines specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of the effectiveness of the Company's disclosure controls and procedures (as defined in SEC Rules 13a - 15(e) and 15d - 15(e)) as of March 31, 2021. Based on such evaluation, our management has concluded that as of March 31, 2021, the Company's disclosure controls and procedures are effective.

##### **Changes in Internal Control Over Financial Reporting**

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we carried out an evaluation of any potential changes in our internal control over financial reporting during the fiscal quarter covered by this Quarterly Report.

There has been no change to our internal control over financial reporting during our most recent fiscal quarter that our certifying officers concluded materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

For a description of our material pending legal proceedings, refer to Note 13 "Contingencies" of the Notes to Unaudited Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report, which is incorporated herein by reference.

### **Item 1A. Risk Factors**

There were no material changes to the risk factors previously disclosed and included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020. An investment in our common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described under Item 1A of Part I of our Annual Report on Form 10-K, together with all other information contained or incorporated by reference in this report before you decide to invest in our common stock. If any of the Risk Factors were to actually occur, our business, financial condition, results of operations and our future growth prospects could be materially and adversely affected. Under the circumstances, the trading price of our common stock could decline, and you may lose all or part of your investment.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

On March 15, 2021, the 2021 Notes reached maturity and we settled in full the 2021 Notes. In connection with the settlement of the 2021 Notes, we received conversion notices from the holders of 1.4% of the 2021 Notes, representing \$9.1 million outstanding principal amount thereof, which we refer to as the Conversions. In satisfaction of the Conversions, and pursuant to combination settlement, we paid \$8.5 million in cash and issued 837 shares of common stock in the aggregate to the holders who elected to convert their outstanding notes. The shares of common stock were issued in reliance on the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended.

Additionally, in connection with the settlement of the 2021 Notes, we exercised our rights under certain convertible note hedge transactions on March 15, 2021 and received 842 shares of our common stock. The convertible note hedge transactions were previously entered into between us and the initial purchasers of the 2021 Notes and/or their affiliates in connection with the offering of the 2021 Notes.

Periods	Total Number of Shares Purchased (1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans or Programs
January 1, 2021 – January 31, 2021	—	—	—	—
February 1, 2021 – February 28, 2021	—	—	—	—
March 1, 2021 – March 31, 2021	842	\$ 62.38	—	—

- (1) All share purchases were made pursuant to the convertible note hedge transactions previously entered into between us and the initial purchasers of the 2021 Notes and/or their affiliates in connection with the offering of the 2021 Notes.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

None.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
3.1	<a href="#">Restated Certificate of Incorporation (incorporated by reference to our Quarterly Report on Form 10-Q filed with the SEC on August 13, 2004)</a>
3.2	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation (incorporated by reference to our Current Report on Form 8-K filed with the SEC on September 28, 2011)</a>
3.3	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation (incorporated by reference to our Current Report on Form 8-K filed with the SEC on September 10, 2020)</a>
3.4	<a href="#">Restated Bylaws (incorporated by reference to our Current Report on Form 8-K filed with the SEC on January 6, 2012)</a>
3.5	<a href="#">Amendment No. 1 to the Restated Bylaws (incorporated by reference to our Current Report on Form 8-K filed with the SEC on May 19, 2014)</a>
3.6	<a href="#">Amendment No. 2 to the Restated Bylaws (incorporated by reference to our Current Report on Form 8-K filed with the SEC on August 1, 2016)</a>
10.1#	<a href="#">Form of Performance Restricted Stock Unit Agreement (with accompanying Notice of Grant) for grants on or after March 1, 2021</a>
10.2 #	<a href="#">Form of Restricted Stock Unit Agreement (with accompanying Form Notice of Grant) for grants on or after March 1, 2021</a>
31.1*	<a href="#">Certification of the Chief Executive Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. section 1350</a>
31.2*	<a href="#">Certification of the Chief Financial Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. section 1350</a>
32.1*	<a href="#">Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase
104	Cover Page Interactive Data File (formatted as Inline XBRL with applicable taxonomy extension information contained in Exhibit 101.INS)
#	Indicates management contract or compensatory plan.
*	These certifications are being furnished solely to accompany this annual report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of NuVasive, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**NUVASIVE, INC.**

Date: May 5, 2021

By: /s/ J. Christopher Barry

J. Christopher Barry  
Chief Executive Officer

Date: May 5, 2021

By: /s/ Matthew K. Harbaugh

Matthew K. Harbaugh  
Executive Vice President and Chief Financial Officer

[FORM OF] NUVASIVE, INC.  
NOTICE OF GRANT OF PERFORMANCE RESTRICTED STOCK UNITS

NuVasive, Inc. (the “*Company*”) has granted to the participant identified below (the “*Participant*”) an award (the “*Award*”) of the number of performance restricted stock units specified below in this Grant Notice (each, a “*Performance Restricted Stock Unit*” or “*PRSU*”) pursuant to the [2014 Equity Incentive Plan of NuVasive, Inc.] [Ellipse Technologies, Inc. 2015 Incentive Award Plan] (the “*Plan*”). This Award is subject to all of the terms and conditions set forth in the Performance Restricted Stock Unit Agreement attached hereto (together with this Notice of Grant, the “*Agreement*”) and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Plan or the Agreement, as appropriate, and, in the event of any inconsistency between the Plan and the Agreement, the terms of the Plan shall control.

**Participant:** [FIRST\_NAME\_MIDDLE\_NAME\_LAST\_NAME]

**Participant ID:** [EMPLOYEE\_IDENTIFIER]

**Date of Grant:** [March 1, 2021]

**Number of PRSUs:** [TOTAL\_SHARES\_GRANTED], subject to adjustment as provided by the Agreement.

**Payment:** The actual amount of any payment made pursuant to this Award shall range from 0% - 200% of the Number of PRSUs, to be determined pursuant to Section 3 of the Performance Restricted Stock Unit Agreement. The maximum payment that may be made to the Participant is equal to 200% of the Number of PRSUs.

**Vesting Date:** Subject to the terms and conditions of the Agreement (including, without limitation, conditions requiring continued Service with the Company through the applicable date), this Award vests on [March 1, 2024] (the “*Scheduled Vesting Date*”).

By electronically accepting the Award according to the instructions in the Participant’s E\*TRADE account (pursuant to which the Participant received this Notice of Grant), the Participant agrees that the Award is governed by this Notice of Grant and by the provisions of the Plan and the Agreement, both of which are made a part of this document.

The Participant acknowledges that copies of the Plan, the Agreement, and the prospectus for the Plan are available via the Participant’s E\*TRADE account.

The Participant represents that the Participant has read and is familiar with the provisions of the Plan and the Agreement, and hereby accepts the Award subject to all of their terms and conditions.

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**[FORM OF] NUVASIVE, INC.  
PERFORMANCE RESTRICTED STOCK UNIT AGREEMENT**

NuVasive, Inc. has granted to the Participant named in the *Notice of Grant of Performance Restricted Stock Units* (the “**Grant Notice**”) to which this Performance Restricted Stock Unit Agreement is attached (together, the Performance Restricted Stock Unit Agreement and the Grant Notice being referred to collectively herein as this “**Agreement**”) an Award consisting of Performance Restricted Stock Units (“**PRSUs**”) subject to the terms and conditions set forth in this Agreement. The Award has been granted pursuant to the terms and conditions of the [2014 Equity Incentive Plan of NuVasive, Inc.] [Ellipse Technologies, Inc. 2015 Incentive Award Plan] (the “**Plan**”), as amended from time-to-time, the provisions of which are incorporated herein by reference. By electronically accepting the Award, the Participant: (a) acknowledges receipt of, and represents that the Participant has read and is familiar with, this Agreement, the Plan and the prospectus for the Plan prepared in connection with the registration with the Securities and Exchange Commission of the shares of Stock issuable pursuant to the Award (the “**Plan Prospectus**”), (b) accepts the Award subject to all of the terms and conditions of this Agreement and the Plan, and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee or its delegate (to the extent delegation is permitted under the Plan) in the event any questions arise (and/or interpretation may be required) regarding this Agreement or the Plan.

1. **DEFINITIONS AND CONSTRUCTION.**

1.1 **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan.

(a) “**Baseline Net Sales**” means \$1,168.1 million.

(b) “**Net Sales**” means the Company’s GAAP net sales as publicly reported by the Company in its earnings press release for a completed fiscal year, adjusted to exclude the effect of currency fluctuations.

(c) “**Net Sales Growth**” means the amount of growth, measured as a percentage, in the Company’s Net Sales for a completed fiscal year as compared to the prior completed fiscal year (except that Net Sales Growth for the fiscal year ending December 31, 2021 shall be measured as compared to the Baseline Net Sales instead of Net Sales for the fiscal year ended December 31, 2020); provided, however, that when determining Net Sales Growth, the Net Sales impact of any acquisition and divestiture transaction (a “**Transaction**”) shall be treated as follows: (i) for the first four fiscal quarters following the closing of a Transaction, the Net Sales impact of the Transaction shall be excluded from the calculation of Net Sales Growth (except for any Transaction with less than \$6.0 million in annualized run rate Net Sales that is deemed *de minimis* and not excluded; provided that the aggregate value of all Transactions deemed *de minimis* does not exceed \$12.0 million in annualized run rate Net Sales), and (ii) commencing with the fifth fiscal quarter following the closing of a Transaction and thereafter, the Net Sales impact of any Transaction shall be included in the Net Sales for all financial periods (i.e., the current year and the base year comparison).

(d) “**Net Sales Performance Multiplier**” means the percentage calculated based on the respective Net Sales Growth set forth in the table below:

<b>Net Sales Growth</b>	<b>Net Sales Performance Multiplier</b>
Threshold 0.00%	0.00%
1.00%	20.0%
2.00%	40.0%
3.00%	60.0%
4.00%	80.0%
<b>Target 5.00%</b>	<b>100.0%</b>
6.00%	120.0%
7.00%	140.0%
8.00%	160.0%
9.00%	180.0%
Maximum 10.00%	200.0%

If the Company achieves Net Sales Growth that falls between the foregoing levels, the Net Sales Performance Multiplier will be determined by linear interpolation between the applicable levels noted above and using the following guiding principles:

- a 20% decrease in funding for every 1% of Net Sales Growth achieved below Target; and
- a 20% incremental increase in funding for every 1% of Net Sales Growth achieved above 100%, up to a maximum funding of 200% of target.

When calculating Net Sales Growth relative to two completed financial periods, the Committee shall have the authority to make appropriate adjustments to Net Sales to account for changes in accounting standards and adopted changes in accounting principles. In each case, the Net Sales Growth shall be rounded up to the nearest hundredth of a percent and the Net Sales Performance Multiplier shall be rounded up to the nearest tenth of a percent.

(e) **“Non-GAAP Operating Margin”** means the Company’s non-GAAP operating margin as publicly reported by the Company in its earnings press release for a completed fiscal year, consistent with the Company’s non-GAAP policy, adjusted to exclude the effect of any Transaction that closes after January 1, 2023.

(f) **“Non-GAAP Operating Margin Improvement”** means the amount of improvement, measured in basis points, in the Company’s Non-GAAP Operating Margin for the fiscal year ending December 31, 2023 as compared to the Company’s Non-GAAP Operating Margin for the fiscal year ended December 31, 2020.

When calculating Non-GAAP Operating Margin Improvement, the Committee shall have the authority to make appropriate adjustments to Non-GAAP Operating Margin to account for changes in accounting standards and adopted changes in accounting principles issued by the accounting bodies to the extent necessary or appropriate to maintain consistency and comparability between periods. The Non-GAAP Operating Margin Improvement shall be rounded up to the nearest one hundredth of a percent.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

## 2. **ADMINISTRATION.**

2.1 **Committee Actions.** The Committee shall be responsible for determining and certifying whether the performance conditions associated with the Award have been achieved; provided, however, that in the event of a Change in Control, the Committee shall make such determination and certification no later than the date immediately preceding the date of the Change in Control. All questions of interpretation concerning this Agreement, the Plan or any other form of agreement or other document employed by the Company in the administration of the Plan or the Award shall be determined by the Committee or its delegate. All such determinations by the Committee or its delegate shall be final, binding and conclusive upon all persons having an interest in the Award, unless fraudulent or made in bad faith. Any and all actions, decisions and determinations taken or made by the Committee in the exercise of its discretion pursuant to the Plan or the Award or other agreement thereunder (other than determining questions of interpretation pursuant to the preceding sentence) shall be final, binding and conclusive upon all persons having an interest in the Award.

2.2 **Express Authority Required.** Only individuals expressly designated by the Committee shall have the authority to act on behalf of the Committee with respect to certain of the matters, rights, obligations, modifications, or elections allocated to the Company herein (or in the Plan).

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3.1 **Grant of PRSUs.** On the Date of Grant, the Participant shall acquire, subject to the provisions of this Agreement, the Number of PRSUs set forth in the Grant Notice, subject to (a) determination as set forth in Section 3.2, Section 3.3 or Section 3.4 of this Agreement, as applicable, and (b) adjustment as provided in [Section 4.4 (Adjustments for Changes in Capital Structure)] [Article VIII (Adjustments for Changes in Common Stock and Certain Other Events)] or [Section 4.5 (Assumption or Substitution of Awards)] [Section 4.4 (Substitute Awards)] of the Plan.

3.2 **Amount of Payment.** Subject to satisfaction of the vesting requirements of Section 4 of this Agreement, and except as otherwise specified in Section 3.3 or Section 3.4 below, the number of shares of Stock that shall be issued in settlement of this Award on the date specified in Section 5.1 of this Agreement, shall be equal to the Aggregate PRSU Payout, calculated as follows:

(a) **2021 Financial Performance Component.** Following the completion of the Company's annual financial statements for the fiscal year ending December 31, 2021, the Company will compare Net Sales for the fiscal year ending December 31, 2021 ("**2021 Net Sales**") against the Baseline Net Sales. To the extent the 2021 Net Sales grows such that it exceeds the Baseline Net Sales, the 2021 financial performance component will be equal to the Number of PRSUs (as set forth in the Grant Notice) multiplied by the Net Sales Performance Multiplier associated with such Net Sales Growth, and further multiplied by a weighting of 33 1/3%, rounding up to the nearest whole number of shares (the "**2021 Component**"). If such Net Sales Growth is zero (or negative), the 2021 Component shall be zero.

(b) **2022 Financial Performance Component.** Following the completion of the Company's annual financial statements for the fiscal year ending December 31, 2022, the Company will compare Net Sales for the fiscal year ending December 31, 2022 ("**2022 Net Sales**") against the 2021 Net Sales. To the extent the 2022 Net Sales grows such that it exceeds the 2021 Net Sales, the 2022 financial performance component will be equal to the Number of PRSUs (as set forth in the Grant Notice) multiplied by the Net Sales Performance Multiplier associated with such Net Sales Growth, and further multiplied by a weighting of 33 1/3%, rounding up to the nearest whole number of shares (the "**2022 Component**"). If such Net Sales Growth is zero (or negative), the 2022 Component shall be zero.

(c) **2023 Financial Performance Component.** Following the completion of the Company's annual financial statements for the fiscal year ending December 31, 2023, the Company will compare Net Sales for the fiscal year ending December 31, 2023 ("**2023 Net Sales**") against the 2022 Net Sales. To the extent the 2023 Net Sales grows such that it exceeds the 2022 Net Sales, the 2023 financial performance component will be equal to the Number of PRSUs (as set forth in the Grant Notice) multiplied by the Net Sales Performance Multiplier associated with such Net Sales Growth, and further multiplied by a weighting of 33 1/3%, rounding up to the nearest whole number of shares (the "**2023 Component**"). If such Net Sales Growth is zero (or negative), the 2023 Component shall be zero.

For purposes hereof, the "**Aggregate PRSU Payout**" shall mean the number of shares of Stock equal to the sum of the 2021 Component, the 2022 Component and the 2023 Component; provided that, the Aggregate PRSU Payout shall be capped so as not to exceed 200% of the Number of PRSUs (as set forth in the Grant Notice). Notwithstanding the foregoing, if Non-GAAP Operating Margin Improvement is zero (or negative), the Aggregate PRSU Payout shall be capped so as not to exceed 100% of the Number of PRSUs (as set forth in the Grant Notice) (such cap, the "**Operating Margin Cap**").

3.3 **Death or Disability.** Notwithstanding any other provision of this Section 3 to the contrary, upon the Participant's death or termination of Service due to Disability, the number of shares of Stock that shall be issued in settlement of this Award shall be the Number of PRSUs (as set forth in the Grant Notice), without regard to the Net Sales Performance Multiplier.

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3.4 **Change in Control.** Notwithstanding any other provision of this Section 3 to the contrary, in the event of a Change in Control, the number of shares of Stock that shall be issued in settlement of this Award shall be the greater of (i) the Number of PRSUs (as set forth in the Grant Notice), without regard to the Net Sales Performance Multiplier and (ii) the Aggregate PRSU Payout, without regard to the Operating Margin Cap; provided, however, that in the event that one or more of the 2021 Component, the 2022 Component and the 2023 Component has not yet been determined because the associated Net Sales Performance Multiplier has not yet been calculated, the Aggregate PRSU Payout for purposes of this Section 3.4 shall be equal to the sum of all such components that have been determined plus, for any components that have not yet been determined, the amount of any such component calculated using a Net Sales Performance Multiplier of 100% (rounding up to the nearest whole number of shares). In the event of a Change in Control, this Award shall continue to vest subject to the terms and conditions of this Agreement, with respect to the number of shares of Stock determined pursuant to this Section 3.4. If the Participant's Service by the Company (or Company's successor) is terminated without Cause (as defined in Section 4.1 below) after a Change in Control, then this Award shall become vested upon such termination.

3.5 **No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the PRSUs or any shares of Stock issued upon settlement of Vested PRSUs (as defined in Section 4.1 of this Agreement), the consideration for which shall be the Participant rendering Service as provided in this Agreement to a Participating Company or for its benefit.

3.6 **Dividend Equivalent Units.** On the date that the Company pays a cash dividend to holders of Stock generally, if any, the Participant shall be credited with a number of additional whole Dividend Equivalent Units determined by dividing (a) the product of (i) the dollar amount of the cash dividend paid per share of Stock on such date, and (ii) the number of PRSUs which have not been settled as of such date, by (b) the Fair Market Value per share of Stock on such date. Any resulting fractional Dividend Equivalent Unit shall be rounded to the nearest whole number. Any such additional Dividend Equivalent Units shall be added to the Number of PRSUs specified in the Grant Notice and shall be subject to the same terms and conditions, and shall be settled or forfeited in the same manner and at the same time, as the PRSUs with respect to which they have been credited.

#### 4. **VESTING; FORFEITURE.**

4.1 **Vesting of PRSUs.** Provided that the Participant's Service has not terminated prior to the applicable date, any PRSUs subject to this Award shall become vested upon the earliest date to occur of the following (the "**Vesting Date**") (such PRSUs, when so vested, being referred to herein as "**Vested PRSUs**"):

- (a) the Scheduled Vesting Date (as provided in the Grant Notice);
  - (b) the Participant's death;
  - (c) termination of the Participant's Service due to Disability;
  - (d) immediately before any Change in Control in which the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be, elects not to assume or substitute for this Award; and
  - (e) termination of the Participant's Service by the Company (or Company's successor) without Cause (as defined below) after a Change in Control.
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For purposes hereof, “**Cause**” shall mean the following: (A) the Participant’s repeated failure to satisfactorily perform the Participant’s job duties; (B) refusal or failure to follow the lawful directions of the Participant’s direct supervisor, the Company’s Chief Executive Officer or the Board, as applicable; (C) conviction of a crime involving moral turpitude; or (D) engaging in acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of the Participant with respect to the Participant’s obligations or otherwise relating to the business of the Company, its Affiliates or customers; except that if the Participant is a party to a Change in Control Agreement with the Company, the definition of “Cause” therein shall apply. Notwithstanding the foregoing, following a Change in Control, any determination as to whether “Cause” exists under the terms of this Agreement shall be subject to *de novo* review by a court of competent jurisdiction.

#### 4.2 **Leaves of Absence.**

(a) If Participant takes an approved medical, FMLA (or other statutorily protected leave), or military leave (each, an “**Approved Leave**”) and returns from such leave for at least thirty calendar days, then Participant shall be treated as if the period of such Approved Leave had been a period of continuous Service with the Company or Affiliate, and such Vested PRSUs shall be settled in accordance with Section 5 of this Agreement.

(b) In the event the Participant takes a leave of absence other than an Approved Leave, any shares of Stock that are determined to be payable pursuant to Section 3 above shall be prorated by multiplying the Vested PRSUs by a fraction, the numerator of which is the number of whole months during the period commencing on January 1, 2021, and ending on the earlier of the date of a Change in Control or December 31, 2023, as applicable (the “**Vesting Period**”), that Participant had been in continuous Service with the Company or an Affiliate, and the denominator of which is the number of months the Vesting Period spans, rounding up to the nearest whole number.

(c) In the event of Participant’s termination of Service during any leave of absence, then the PRSUs shall expire in accordance with the provisions set forth in Section 4.4 below.

4.3 **Vesting of Dividend Equivalent Units.** Any Dividend Equivalent Units shall become vested (and also constitute Vested PRSUs) at the same time as the PRSUs with respect to which they have been credited.

4.4 **Forfeiture of PRSUs That Are Not Vested PRSUs Upon Termination of Service.** Except as otherwise provided in Section 4.1 above, any PRSUs that are not Vested PRSUs will terminate automatically without any further action by the Company and be forfeited without further notice and at no cost to the Company upon Participant’s termination of Service.

### 5. SETTLEMENT OF VESTED PRSUs.

#### 5.1 **Distribution of Shares in Settlement of Vested PRSUs.**

(a) Subject to the terms and conditions of the Plan and this Agreement, any shares of Stock that are determined to be payable pursuant to Section 3 above shall be distributed to Participant (or Participant’s estate in the event of death) with respect to Participant’s Vested PRSUs within 30 days following the Vesting Date for such PRSUs, except as otherwise provided in Section 6.3 or Section 9.1 of this Agreement (the “**Settlement Date**”).

(b) All distributions of shares of Stock with respect to Participant’s Vested PRSUs shall be made by the Company in the form of whole shares. In lieu of any fractional share of Stock, the Company shall make a cash payment to Participant equal to the Fair Market Value of such fractional share on the date the PRSUs are settled as provided herein. The Company shall not be required to issue fractional shares of Stock upon the settlement of Vested PRSUs.

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(c) Shares of Stock issued in settlement of Vested PRSUs shall not be subject to any restriction on transfer other than any such restriction as may be required pursuant to Section 5.3 of this Agreement or the Company's Insider Trading Policy.

5.2 **Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit any or all shares of Stock acquired by the Participant pursuant to the settlement of Vested PRSUs with the Company's transfer agent, including any successor transfer agent, to be held in book entry form, or to deposit such shares for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice. Except as provided by the foregoing, a certificate for the shares of Stock acquired by the Participant shall be registered in the name of the Participant, or, if applicable, in the name of the Participant's estate.

5.3 **Restrictions on Grant of the Award and Issuance of Shares.** The grant of the Award and issuance of shares of Stock upon settlement of Vested PRSUs shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. No shares of Stock may be issued hereunder if the issuance of such shares would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance of any shares of Stock subject to the Award shall relieve the Company of any liability in respect of the failure to issue such shares as to which such requisite authority shall not have been obtained. As a condition to the settlement of Vested PRSUs, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

6. **TAX WITHHOLDING.**

6.1 **In General.** By electronically accepting the Award (as provided in the Grant Notice), the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, including withholding of shares of Stock otherwise issuable to the Participant in settlement of Vested PRSUs, and otherwise agrees to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax (including any social insurance) withholding obligations of the Participating Company, if any, which arise in connection with the Award, the vesting of PRSUs or the issuance of shares of Stock in settlement of Vested PRSUs. The Company shall have no obligation to deliver shares of Stock until the tax withholding obligations of the Participating Company have been satisfied by the Participant.

6.2 **Withholding in Shares.** The Company shall have the right, but not the obligation, to require the Participant to satisfy all or any portion of a Participating Company's tax withholding obligations by deducting from the shares of Stock otherwise deliverable to the Participant in settlement of Vested PRSUs a number of whole shares of Stock having a Fair Market Value, as determined by the Company as of the date on which the tax withholding obligations arise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates (and subsequently making a payment of Company cash equal to the amount of any such tax obligation to the respective tax authorities).

6.3 **Assignment of Sale Proceeds.** Subject to compliance with applicable law and the Company's Insider Trading Policy, if permitted by the Company, the Participant may satisfy the Participating Company's tax withholding obligations in accordance with procedures established by the Company providing for delivery by the Participant to the Company or a broker approved by the Company of properly executed instructions, in a form approved by the Company, providing for the assignment to the Company of the proceeds of a sale with respect to some or all of the shares of Stock being acquired upon settlement of Vested PRSUs. If the Settlement Date would occur on a date on which a sale of the shares of Stock by the Participant would violate the Insider Trading Policy of the Company, the Settlement Date for such Vested PRSUs shall be deferred until the earlier of (a) the next day on which the sale of shares by the Participant would not violate the Insider Trading Policy, or (b) the 15<sup>th</sup> day of the third calendar month following calendar year of the Settlement Date.

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7. **RIGHTS AS A STOCKHOLDER, DIRECTOR, EMPLOYEE OR CONSULTANT.**

The Participant shall have no rights as a stockholder with respect to any shares of Stock which may be issued in settlement of Vested PRSUs until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares of Stock are issued, except as provided in Section 3.6 of this Agreement and [Section 4.4 of the Plan (Adjustments for Changes in Capital Structure)] [Article VIII (Adjustments for Changes in Common Stock and Certain Other Events) of the Plan]. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue in the Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Participant's Service at any time.

8. **LEGENDS.**

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of Stock issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares of Stock acquired pursuant to this Award in the possession of the Participant in order to carry out the provisions of this Section.

9. **COMPLIANCE WITH SECTION 409A.**

It is intended that the settlement of Vested PRSUs as set forth in this Agreement qualify for exemption from, or comply with, the requirements of Section 409A, and any ambiguities herein will be interpreted to so qualify or comply. Notwithstanding the foregoing, if it is determined that the PRSUs fail to satisfy the requirements of the "short-term deferral" exemption and are otherwise Section 409A Deferred Compensation, it is intended that any payment or benefit which is made or provided pursuant to or in connection with this Award shall comply in all respects with the applicable requirements of Section 409A (including applicable regulations or other administrative guidance thereunder, as determined by the Committee in good faith) to avoid the unfavorable tax consequences provided therein for non-compliance. In connection with effecting such compliance with Section 409A, the following shall apply:

9.1 **Separation from Service; Required Delay in Payment to Specified Employee.** Notwithstanding anything set forth herein to the contrary, no amount payable pursuant to this Agreement on account of the Participant's termination of Service which constitutes a "deferral of compensation" within the meaning of the Treasury Regulations issued pursuant to Section 409A of the Code (the "**Section 409A Regulations**") shall be paid unless and until the Participant has incurred a "separation from service" within the meaning of the Section 409A Regulations. Furthermore, to the extent that the Participant is a "specified employee" within the meaning of the Section 409A Regulations as of the date of the Participant's separation from service, no amount that constitutes a deferral of compensation which is payable on account of the Participant's separation from service shall be paid to the Participant before the date (the "**Delayed Payment Date**") which is first day of the seventh month after the date of the Participant's separation from service or, if earlier, the date of the Participant's death following such separation from service. All such amounts that would, but for this Section, become payable prior to the Delayed Payment Date will be accumulated and paid on the Delayed Payment Date.

9.2 **Other Changes in Time of Payment.** Neither the Participant nor the Company shall take any action to accelerate or delay the payment of any benefits under this Agreement in any manner which would not be in compliance with the Section 409A Regulations.

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9.3 **Amendments to Comply with Section 409A; Indemnification.** Notwithstanding any other provision of this Agreement to the contrary, the Company is authorized to amend this Agreement, to void or amend any election made by the Participant under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with the Section 409A Regulations without prior notice to or consent of the Participant. The Participant hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Participant in connection with the Award, including as a result of the application of Section 409A.

9.4 **Advice of Independent Tax Advisor.** The Company has not obtained a tax ruling or other confirmation from the Internal Revenue Service with regard to the application of Section 409A to the Award, and the Company does not represent or warrant that this Agreement will avoid adverse tax consequences to the Participant, including as a result of the application of Section 409A to the Award. The Participant hereby acknowledges that he or she has been advised to seek the advice of his or her own independent tax advisor prior to entering into this Agreement and is not relying upon any representations of the Company or any of its agents as to the effect of or the advisability of entering into this Agreement.

10. **MISCELLANEOUS PROVISIONS.**

10.1 **Termination or Amendment.** The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that no such termination or amendment may have a materially adverse effect on the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with applicable law or government regulation, including, but not limited to, Section 409A. No amendment or addition to this Agreement shall be effective unless in writing.

10.2 **Nontransferability of the Award.** Prior to the issuance of shares of Stock on the applicable Settlement Date, neither this Award nor any PRSUs subject to this Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to the Award shall be exercisable during the Participant's lifetime only by the Participant or the Participant's guardian or legal representative.

10.3 **Repayment/Forfeiture.** By accepting this Award, the Participant specifically agrees that any and all payments or benefits the Participant or any other person may be entitled to receive under or as a result of this Award shall be immediately forfeited, and that the aggregate amount of any payments or benefits the Participant or any other person has received under or as a result of this Award (determined without regard to any taxes or other amounts withheld from such payments or benefits), shall be repaid to the Company within 30 days following written notice from the Company (or such shorter period as may be required by applicable law), (1) as the Company in its discretion determines may be required to comply with any applicable listing standards of a national securities exchange adopted in accordance with Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (regarding recovery of erroneously awarded compensation) and any implementing rules and regulations of the U.S. Securities and Exchange Commission adopted thereunder or similar rules under the laws of any other jurisdiction, (2) to the extent provided pursuant to the Company's Incentive Compensation Recoupment Policy, and (3) in the event the Committee or its delegate determines that the Participant has engaged in Prohibited Conduct (as defined below) at any time during the Recoupment Period (as defined below). For purposes of this Section 10.3.

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(a) **“Prohibited Conduct”** means (1) violation of the Company’s Code of Ethical Business Conduct, Insider Trading Policy, or any Proprietary Information, Inventions Agreement, Non-Compete Agreement (or similar agreement) signed by the Participant; (2) unethical behavior (such as, without limitation, fraud, dishonesty, or misrepresentation of product benefits); (3) engaging in Competition; (4) disclosing or using in any capacity other than as necessary in the performance of duties assigned by the Company or its Affiliates any confidential information, trade secrets or other business sensitive information or material concerning the Company or its Affiliates, customers, suppliers or partners; (5) directly or indirectly employing, contacting concerning employment, or participating in any way in the recruitment for employment of (whether as an employee, officer, director, agent, consultant or independent contractor), any person who was or is an employee, representative, officer or director of the Company or any of its Affiliates at any time within the 12 months prior to termination of Participant’s employment; (6) any action or statement by Participant and/or his or her representatives that either does or could reasonably be expected to disparage the Company, its Affiliates, or their officers, employees, or directors, or undermines, diminishes or otherwise damages the relationship between the Company or any of its Affiliates and any of their respective customers, potential customers, vendors and/or suppliers that were known to Participant; or (7) breach of any provision of any employment or severance agreement with the Company or any Affiliate. Any determination of Prohibited Conduct shall be made by the Committee or its delegate in its sole discretion and shall be binding on all parties. Notwithstanding anything contained herein to the contrary, Prohibited Conduct shall not include communication by Participant with any government agency, commission or regulator or participation by Participant in any investigation or proceeding that may be conducted by any government agency, commission or regulator, but only to the extent that such communication is required or permitted by law.

(b) **“Competition”** means, either during Participant’s employment with the Company or any of its Affiliates, or within 12 months following termination of such employment, accepting employment with, or serving as a consultant or advisor or in any other capacity to a competitor of the Company, including but not limited to the DePuy Synthes division of Johnson & Johnson, Stryker Corporation, Globus Medical, Inc., Medtronic, Inc., Zimmer Biomet Holdings, Inc., SeaSpine Holdings Corporation; Orthofix Medical, Inc., Alphatec Holdings, Inc., or any subsidiary or Affiliate of the foregoing (a **“Competitor”**), including, but not limited to, employment or another business relationship with any Competitor if Participant has been introduced to trade secrets, confidential information or business sensitive information during Participant’s employment with the Company or any of its Affiliates and such information would aid the Competitor because the threat of disclosure of such information is so great that it must be assumed that such disclosure would occur.

(c) **“Recoupment Period”** means the period beginning on the Date of Grant and ending on the date that is 12 months after the date on which the Participant or any other person received any payment or benefit pursuant to this Award, provided, however, that if the Prohibited Conduct resulted in the Participant or any other person receiving any payment or benefit pursuant to this Award in excess of the payment or benefit that would have been received absent such Prohibited Conduct, the Recoupment Period shall end on the date that is 36 months after the date on which such payment or benefit was received.

10.4 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

10.5 **Binding Effect.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant’s heirs, executors, administrators, successors and assigns. If all or any part of any section or clause of this Agreement is determined to be invalid or unenforceable in any respect or to any degree, that section or clause shall be interpreted and enforced to the maximum extent allowed by law and shall not invalidate or impact any other sections and/or clauses that remain.

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10.6 **Delivery of Documents and Notices.** Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The Plan documents, which may include but do not necessarily include: the Plan, this Agreement, the Plan Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, if permitted by the Company, the Participant may deliver electronically the Grant Notice to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery.** The Participant acknowledges that the Participant has read Section 10.6(a) of this Agreement and consents to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the Grant Notice, as described in Section 10.6(a). The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 10.6(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 10.6(a) but has nevertheless knowingly and voluntarily chosen to do so by electronically accepting the Award (as provided in the Grant Notice).

10.7 **Integrated Agreement.** This Agreement and the Plan shall constitute the entire understanding and agreement of the Participant and the Participating Company Group with respect to the subject matter contained herein or therein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and the Participating Company Group with respect to such subject matter. To the extent contemplated herein or therein, the provisions of this Agreement and the Plan shall survive any settlement of Vested PRSUs and shall remain in full force and effect.

10.8 **Applicable Law.** This Agreement shall be governed by the laws of the State of Delaware as such laws are applied to agreements between Delaware residents entered into and to be performed entirely within the State of Delaware.

10.9 **Terms and Conditions Subject to Change in the Event the Participant Transfers Outside of the United States.** Should the Participant transfer his or her residence and/or employment with the Company to another country, the Company, in its sole discretion, shall determine whether application of certain additional and/or supplemental terms and conditions is necessary or advisable in order to comply with respective laws, rules and regulations or to facilitate the operation and administration of the Award and the Plan. In all circumstances, the Company will provide the Participant with its ordinary-course terms and conditions for such country(ies) in the form of an amendment and/or addendum, which shall thereafter be part of this Agreement.

[FORM OF] NUVASIVE, INC.  
NOTICE OF GRANT OF RESTRICTED STOCK UNITS

NuVasive, Inc. (the “**Company**”) has granted to the participant identified below (the “**Participant**”) an award (the “**Award**”) of the number of restricted stock units specified below in this Grant Notice (each, a “**Restricted Stock Unit**” or an “**RSU**”) pursuant to the [2014 Equity Incentive Plan of NuVasive, Inc.] [Ellipse Technologies, Inc. 2015 Incentive Award Plan] (the “**Plan**”), each of which represents the right to receive - on the Settlement Date provided in the Restricted Stock Unit Agreement attached hereto (together with this Notice of Grant, the “**Agreement**”) - one (1) share of Stock as set forth in, and subject to the terms and conditions of, this Agreement. This Award is subject to all of the terms and conditions set forth in the Agreement and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Plan or the Agreement, as appropriate[, and, in the event of any inconsistency between the Plan and the Agreement, the terms of the Plan shall control].

**Participant:** [FIRST\_NAME\_MIDDLE\_NAME\_LAST\_NAME]

**Participant ID:** [EMPLOYEE\_IDENTIFIER]

**Date of Grant:** [March 1, 2021]

**Total Number of RSUs:** [TOTAL\_SHARES\_GRANTED], subject to adjustment as provided by the Agreement.

**Vesting Start Date:** [March 1, 2021]

**Vesting Schedule:** Subject to the terms and conditions of the Agreement (including, without limitation, conditions requiring continued Service with the Company through the applicable date), the RSUs shall vest as follows:

100% of the RSUs shall vest on the third (3rd) anniversary of the Vesting Start Date (such anniversary, the “**Scheduled Vesting Date**”).

By electronically accepting the Award according to the instructions in the Participant’s E\*TRADE account (pursuant to which the Participant received this Notice of Grant), the Participant agrees that the Award is governed by this Notice of Grant and by the provisions of the Plan and the Agreement, both of which are made a part of this document.

The Participant acknowledges that copies of the Plan, the Agreement, and the prospectus for the Plan are available via the Participant’s E\*TRADE account.

The Participant represents that the Participant has read and is familiar with the provisions of the Plan and the Agreement, and hereby accepts the Award subject to all of their terms and conditions.

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**[FORM OF] NUVASIVE, INC.  
RESTRICTED STOCK UNIT AGREEMENT**

NuVasive, Inc. has granted to the Participant named in the *Notice of Grant of Restricted Stock Units* (the “**Grant Notice**”) to which this Restricted Stock Unit Agreement is attached (together with the Grant Notice, this “**Agreement**”) an Award consisting of Restricted Stock Units (“**RSUs**”) subject to the terms and conditions set forth in this Agreement. The Award has been granted pursuant to the terms and conditions of the [2014 Equity Incentive Plan of NuVasive, Inc.] [Ellipse Technologies, Inc. 2015 Incentive Award Plan] (the “**Plan**”), as amended from time-to-time, the provisions of which are incorporated herein by reference. By electronically accepting the Award, the Participant: (a) acknowledges receipt of, and represents that the Participant has read and is familiar with, this Agreement, the Plan and the prospectus for the Plan prepared in connection with the registration with the Securities and Exchange Commission of the shares of Stock issuable pursuant to the Award (the “**Plan Prospectus**”), (b) accepts the Award subject to all of the terms and conditions of this Agreement and the Plan, and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee or its delegate (to the extent delegation is permitted under the Plan) in the event any questions arise (and/or interpretation may be required) regarding this Agreement or the Plan.

1. **DEFINITIONS AND CONSTRUCTION.**

1.1 **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the [Plan] [2014 Equity Incentive Plan of NuVasive, Inc].

(a) “**Dividend Equivalent Units**” mean additional Restricted Stock Units as may be credited pursuant to Section 3.3 of this Agreement.

(b) “**RSUs**” mean the Restricted Stock Units originally granted pursuant to the Award and any Dividend Equivalent Units credited pursuant to the Award, as each may be adjusted from time-to-time pursuant to [Section 4.4 (Adjustments for Changes in Capital Structure)] [Article VIII (Adjustments for Changes in Common Stock and Certain Other Events)] or [Section 4.5 (Assumption or Substitution of Awards)] [Section 4.4 (Substitute Awards)] of the Plan.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

2. **ADMINISTRATION.**

2.1 **Committee Actions.** All questions of interpretation concerning this Agreement, the Plan or any other form of agreement or other document employed by the Company in the administration of the Plan or the Award shall be determined by the Committee or its delegate. All such determinations by the Committee or its delegate shall be final, binding and conclusive upon all persons having an interest in the Award, unless fraudulent or made in bad faith. Any and all actions, decisions and determinations taken or made by the Committee in the exercise of its discretion pursuant to the Plan or the Award or other agreement thereunder (other than determining questions of interpretation pursuant to the preceding sentence) shall be final, binding and conclusive upon all persons having an interest in the Award.

2.2 **Express Authority Required.** Only individuals expressly designated by the Committee shall have the authority to act on behalf of the Committee with respect to certain of the matters, rights, obligations, modifications, or elections allocated to the Company herein (or in the Plan).

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3. **THE AWARD.**

3.1 **Grant of RSUs.** On the Date of Grant, the Participant shall acquire, subject to the provisions of this Agreement, the Total Number of RSUs set forth in the Grant Notice, subject to adjustment as provided in [Section 4.4 (Adjustments for Changes in Capital Structure)] [Article VIII (Adjustments for Changes in Common Stock and Certain Other Events)] or [Section 4.5 (Assumption or Substitution of Awards)] [Section 4.4 (Substitute Awards)] of the Plan. Each RSU represents a conditional right to receive, subject and pursuant to the terms and conditions of the Plan and this Agreement, one (1) share of Stock.

3.2 **No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the RSUs or shares of Stock issued upon settlement of Vested RSUs (as defined in Section 4.1 of this Agreement), the consideration for which shall be the Participant rendering Service as provided in this Agreement to a Participating Company or for its benefit.

3.3 **Dividend Equivalent Units.** On the date that the Company pays a cash dividend to holders of Stock generally, if any, the Participant shall be credited with a number of additional whole Dividend Equivalent Units determined by dividing (a) the product of (i) the dollar amount of the cash dividend paid per share of Stock on such date, and (ii) the number of RSUs which have not been settled as of such date, by (b) the Fair Market Value per share of Stock on such date. Any resulting fractional Dividend Equivalent Unit shall be rounded to the nearest whole number. Any such additional Dividend Equivalent Units shall be subject to the same terms and conditions, and shall be settled or forfeited in the same manner and at the same time, as the RSUs with respect to which they have been credited.

4. **VESTING; FORFEITURE.**

4.1 **Vesting of RSUs.** Provided that the Participant's Service has not terminated prior to the applicable date, RSUs acquired pursuant to the Award shall become vested upon the earliest to occur of the following (such RSUs, when so vested, being referred to herein as "**Vested RSUs**"):

- (a) the Scheduled Vesting Date (as provided in the Grant Notice);
- (b) the Participant's death;
- (c) termination of the Participant's Service due to Disability;
- (d) immediately before any Change in Control in which the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be, elects not to assume or substitute for this Award; and
- (e) termination of the Participant's Service by the Company (or Company's successor) without Cause (as defined below) after a Change in Control.

For purposes hereof, "**Cause**" shall mean the following: (A) the Participant's repeated failure to satisfactorily perform the Participant's job duties; (B) refusal or failure to follow the lawful directions of the Participant's direct supervisor, the Company's Chief Executive Officer or the Board, as applicable; (C) conviction of a crime involving moral turpitude; or (D) engaging in acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of the Participant with respect to the Participant's obligations or otherwise relating to the business of the Company, its Affiliates or customers; except that if the Participant is a party to a Change in Control Agreement with the Company, the definition of "Cause" therein shall apply. Notwithstanding the foregoing, following a Change in Control, any determination as to whether "Cause" exists under the terms of this Agreement shall be subject to *de novo* review by a court of competent jurisdiction.

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(a) Unless otherwise required by applicable law, the RSUs will cease vesting during a leave of absence. If, however, Participant takes an approved medical, FMLA (or other statutorily protected leave), or military leave (each, an “**Approved Leave**”) and returns from such leave for at least thirty calendar days, then (i) Participant shall be treated as if the period of such Approved Leave had been a period of continuous Service with the Company or Affiliate, and (ii) such number of RSUs as would have vested pursuant to the vesting schedule set forth in the Grant Notice during such Approved Leave and the foregoing thirty calendar day-period shall be considered vested as of the end of such thirty calendar day-period (which shall be considered the Scheduled Vesting Date), and such Vested RSUs shall be settled in accordance with Section 5 of this Agreement.

(b) In the event the Participant takes a leave of absence other than an Approved Leave, the vesting of RSUs will be tolled during the period of such leave. Upon return from such leave of absence, the RSUs shall again commence vesting but the period of such leave shall be respectively added to the vesting schedule set forth in the Grant Notice.

(c) In the event of Participant’s termination of Service during any leave of absence, then the RSUs shall expire in accordance with the provisions set forth in Section 4.4 below.

4.3 **Vesting of Dividend Equivalent Units.** Any Dividend Equivalent Units shall become vested (and also constitute “**Vested RSUs**”) at the same time as the RSUs with respect to which they have been credited.

4.4 **Forfeiture of RSUs That Are Not Vested RSUs Upon Termination of Service.** Except as otherwise provided in Section 4.1 above, any RSUs that are not Vested RSUs (“**Unvested RSUs**”) will terminate automatically without any further action by the Company and be forfeited without further notice and at no cost to the Company upon Participant’s termination of Service.

5. **SETTLEMENT OF VESTED RSUs.**

5.1 **Distribution of Shares in Settlement of Vested RSUs.**

(a) Subject to the terms and conditions of the Plan and this Agreement, shares of Stock shall be distributed to Participant (or Participant’s estate in the event of death) with respect to Participant’s Vested RSUs within thirty days following the Scheduled Vesting Date for such RSUs, except as otherwise provided in Section 6.3 or Section 9.1 of this Agreement (the “**Settlement Date**”).

(b) All distributions of shares of Stock with respect to Participant’s Vested RSUs shall be made by the Company in the form of whole shares. In lieu of any fractional share of Stock, the Company shall make a cash payment to Participant equal to the Fair Market Value of such fractional share on the date the RSUs are settled as provided herein. The Company shall not be required to issue fractional shares of Stock upon the settlement of Vested RSUs.

(c) Shares of Stock issued in settlement of Vested RSUs shall not be subject to any restriction on transfer other than any such restriction as may be required pursuant to Section 5.3 of this Agreement or the Company’s Insider Trading Policy.

5.2 **Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit any or all shares of Stock acquired by the Participant pursuant to the settlement of Vested RSUs with the Company’s transfer agent, including any successor transfer agent, to be held in book entry form, or to deposit such shares for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice. Except as provided by the foregoing, a certificate for the shares of Stock acquired by the Participant shall be registered in the name of the Participant, or, if applicable, in the name of the Participant’s estate.

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5.3 **Restrictions on Grant of the Award and Issuance of Shares.** The grant of the Award and issuance of shares of Stock upon settlement of Vested RSUs shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. No shares of Stock may be issued hereunder if the issuance of such shares would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance of any shares of Stock subject to the Award shall relieve the Company of any liability in respect of the failure to issue such shares as to which such requisite authority shall not have been obtained. As a condition to the settlement of Vested RSUs, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

6. **TAX WITHHOLDING.**

6.1 **In General.** By electronically accepting the Award (as provided in the Grant Notice), the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, including withholding of shares of Stock otherwise issuable to the Participant in settlement of Vested RSUs, and otherwise agrees to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax (including any social insurance) withholding obligations of the Participating Company, if any, which arise in connection with the Award, the vesting of RSUs or the issuance of shares of Stock in settlement of Vested RSUs. The Company shall have no obligation to deliver shares of Stock until the tax withholding obligations of the Participating Company have been satisfied by the Participant.

6.2 **Withholding in Shares.** The Company shall have the right, but not the obligation, to require the Participant to satisfy all or any portion of a Participating Company's tax withholding obligations by deducting from the shares of Stock otherwise deliverable to the Participant in settlement of Vested RSUs a number of whole shares of Stock having a Fair Market Value, as determined by the Company as of the date on which the tax withholding obligations arise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates (and subsequently making a payment of Company cash equal to the amount of any such tax obligation to the respective tax authorities).

6.3 **Assignment of Sale Proceeds.** Subject to compliance with applicable law and the Company's Insider Trading Policy, if permitted by the Company, the Participant may satisfy the Participating Company's tax withholding obligations in accordance with procedures established by the Company providing for delivery by the Participant to the Company or a broker approved by the Company of properly executed instructions, in a form approved by the Company, providing for the assignment to the Company of the proceeds of a sale with respect to some or all of the shares of Stock being acquired upon settlement of Vested RSUs. If the Settlement Date would occur on a date on which a sale of the shares of Stock by the Participant would violate the Insider Trading Policy of the Company, the Settlement Date for such Vested RSUs shall be deferred until the earlier of (a) the next day on which the sale of shares by the Participant would not violate the Insider Trading Policy, or (b) the 15<sup>th</sup> day of the third calendar month following calendar year of the Settlement Date.

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7. **RIGHTS AS A STOCKHOLDER, DIRECTOR, EMPLOYEE OR CONSULTANT.**

The Participant shall have no rights as a stockholder with respect to any shares of Stock which may be issued in settlement of Vested RSUs until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares of Stock are issued, except as provided in Section 3.3 of this Agreement and [Section 4.4 of the Plan (Adjustments for Changes in Capital Structure)] [Article VIII (Adjustments for Changes in Common Stock and Certain Other Events) of the Plan]. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue in the Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Participant's Service at any time.

8. **LEGENDS.**

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of Stock issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares of Stock acquired pursuant to this Award in the possession of the Participant in order to carry out the provisions of this Section.

9. **COMPLIANCE WITH SECTION 409A.**

It is intended that the settlement of Vested RSUs as set forth in this Agreement qualify for exemption from, or comply with, the requirements of Section 409A, and any ambiguities herein will be interpreted to so qualify or comply. Notwithstanding the foregoing, if it is determined that the RSUs fail to satisfy the requirements of the "short-term deferral" exemption and are otherwise Section 409A Deferred Compensation, it is intended that any payment or benefit which is made or provided pursuant to or in connection with this Award shall comply in all respects with the applicable requirements of Section 409A (including applicable regulations or other administrative guidance thereunder, as determined by the Committee in good faith) to avoid the unfavorable tax consequences provided therein for non-compliance. In connection with effecting such compliance with Section 409A, the following shall apply:

9.1 **Separation from Service; Required Delay in Payment to Specified Employee.** Notwithstanding anything set forth herein to the contrary, no amount payable pursuant to this Agreement on account of the Participant's termination of Service which constitutes a "deferral of compensation" within the meaning of the Treasury Regulations issued pursuant to Section 409A of the Code (the "**Section 409A Regulations**") shall be paid unless and until the Participant has incurred a "separation from service" within the meaning of the Section 409A Regulations. Furthermore, to the extent that the Participant is a "specified employee" within the meaning of the Section 409A Regulations as of the date of the Participant's separation from service, no amount that constitutes a deferral of compensation which is payable on account of the Participant's separation from service shall be paid to the Participant before the date (the "**Delayed Payment Date**") which is first day of the seventh month after the date of the Participant's separation from service or, if earlier, the date of the Participant's death following such separation from service. All such amounts that would, but for this Section, become payable prior to the Delayed Payment Date will be accumulated and paid on the Delayed Payment Date.

9.2 **Other Changes in Time of Payment.** Neither the Participant nor the Company shall take any action to accelerate or delay the payment of any benefits under this Agreement in any manner which would not be in compliance with the Section 409A Regulations.

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9.3 **Amendments to Comply with Section 409A; Indemnification.** Notwithstanding any other provision of this Agreement to the contrary, the Company is authorized to amend this Agreement, to void or amend any election made by the Participant under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with the Section 409A Regulations without prior notice to or consent of the Participant. The Participant hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Participant in connection with the Award, including as a result of the application of Section 409A.

9.4 **Advice of Independent Tax Advisor.** The Company has not obtained a tax ruling or other confirmation from the Internal Revenue Service with regard to the application of Section 409A to the Award, and the Company does not represent or warrant that this Agreement will avoid adverse tax consequences to the Participant, including as a result of the application of Section 409A to the Award. The Participant hereby acknowledges that he or she has been advised to seek the advice of his or her own independent tax advisor prior to entering into this Agreement and is not relying upon any representations of the Company or any of its agents as to the effect of or the advisability of entering into this Agreement.

10. **MISCELLANEOUS PROVISIONS.**

10.1 **Termination or Amendment.** The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that no such termination or amendment may have a materially adverse effect on the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with applicable law or government regulation, including, but not limited to, Section 409A. No amendment or addition to this Agreement shall be effective unless in writing.

10.2 **Nontransferability of the Award.** Prior to the issuance of shares of Stock on the applicable Settlement Date, neither this Award nor any RSUs subject to this Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to the Award shall be exercisable during the Participant's lifetime only by the Participant or the Participant's guardian or legal representative.

10.3 **Repayment/Forfeiture.** By accepting this Award, the Participant specifically agrees that any and all payments or benefits the Participant or any other person may be entitled to receive under or as a result of this Award shall be immediately forfeited, and that the aggregate amount of any payments or benefits the Participant or any other person has received under or as a result of this Award (determined without regard to any taxes or other amounts withheld from such payments or benefits), shall be repaid to the Company within 30 days following written notice from the Company (or such shorter period as may be required by applicable law), (1) as the Company in its discretion determines may be required to comply with any applicable listing standards of a national securities exchange adopted in accordance with Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (regarding recovery of erroneously awarded compensation) and any implementing rules and regulations of the U.S. Securities and Exchange Commission adopted thereunder or similar rules under the laws of any other jurisdiction, (2) to the extent provided pursuant to the Company's Incentive Compensation Recoupment Policy, and (3) in the event the Committee or its delegate determines that the Participant has engaged in Prohibited Conduct (as defined below) at any time during the Recoupment Period (as defined below). For purposes of this Section 10.3,

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(a) **“Prohibited Conduct”** means (1) violation of the Company’s Code of Ethical Business Conduct, Insider Trading Policy, or any Proprietary Information, Inventions Agreement, Non-Compete Agreement (or similar agreement) signed by the Participant; (2) unethical behavior (such as, without limitation, fraud, dishonesty, or misrepresentation of product benefits); (3) engaging in Competition; (4) disclosing or using in any capacity other than as necessary in the performance of duties assigned by the Company or its Affiliates any confidential information, trade secrets or other business sensitive information or material concerning the Company or its Affiliates, customers, suppliers or partners; (5) directly or indirectly employing, contacting concerning employment, or participating in any way in the recruitment for employment of (whether as an employee, officer, director, agent, consultant or independent contractor), any person who was or is an employee, representative, officer or director of the Company or any of its Affiliates at any time within the 12 months prior to termination of Participant’s employment; (6) any action or statement by Participant and/or his or her representatives that either does or could reasonably be expected to disparage the Company, its Affiliates, or their officers, employees, or directors, or undermines, diminishes or otherwise damages the relationship between the Company or any of its Affiliates and any of their respective customers, potential customers, vendors and/or suppliers that were known to Participant; or (7) breach of any provision of any employment or severance agreement with the Company or any Affiliate. Any determination of Prohibited Conduct shall be made by the Committee or its delegate in its sole discretion and shall be binding on all parties. Notwithstanding anything contained herein to the contrary, Prohibited Conduct shall not include communication by Participant with any government agency, commission or regulator or participation by Participant in any investigation or proceeding that may be conducted by any government agency, commission or regulator, but only to the extent that such communication is required or permitted by law.

(b) **“Competition”** means, either during Participant’s employment with the Company or any of its Affiliates, or within 12 months following termination of such employment, accepting employment with, or serving as a consultant or advisor or in any other capacity to a competitor of the Company, including but not limited to the DePuy Synthes division of Johnson & Johnson, Stryker Corporation, Globus Medical, Inc., Medtronic, Inc., K2M Holdings, Inc., Zimmer Biomet Holdings, Inc., Alphatec Holdings, Inc. or any subsidiary or Affiliate of the foregoing (a **“Competitor”**), including, but not limited to, employment or another business relationship with any Competitor if Participant has been introduced to trade secrets, confidential information or business sensitive information during Participant’s employment with the Company or any of its Affiliates and such information would aid the Competitor because the threat of disclosure of such information is so great that it must be assumed that such disclosure would occur.

(c) **“Recoupment Period”** means the period beginning on the Date of Grant and ending on the date that is 12 months after the date on which the Participant or any other person received any payment or benefit pursuant to this Award, provided, however, that if the Prohibited Conduct resulted in the Participant or any other person receiving any payment or benefit pursuant to this Award in excess of the payment or benefit that would have been received absent such Prohibited Conduct, the Recoupment Period shall end on the date that is 36 months after the date on which such payment or benefit was received.

10.4 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

10.5 **Binding Effect.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant’s heirs, executors, administrators, successors and assigns. If all or any part of any section or clause of this Agreement is determined to be invalid or unenforceable in any respect or to any degree, that section or clause shall be interpreted and enforced to the maximum extent allowed by law and shall not invalidate or impact any other sections and/or clauses that remain.

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10.6 **Delivery of Documents and Notices.** Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The Plan documents, which may include but do not necessarily include: the Plan, this Agreement, the Plan Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, if permitted by the Company, the Participant may deliver electronically the Grant Notice to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery.** The Participant acknowledges that the Participant has read Section 10.6(a) of this Agreement and consents to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the Grant Notice, as described in Section 10.6(a). The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 10.6(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 10.6(a), but has nevertheless knowingly and voluntarily chosen to do so by electronically accepting the Award (as provided in the Grant Notice).

10.7 **Integrated Agreement.** This Agreement and the Plan shall constitute the entire understanding and agreement of the Participant and the Participating Company Group with respect to the subject matter contained herein or therein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and the Participating Company Group with respect to such subject matter. To the extent contemplated herein or therein, the provisions of this Agreement and the Plan shall survive any settlement of Vested RSUs and shall remain in full force and effect.

10.8 **Applicable Law.** This Agreement shall be governed by the laws of the State of Delaware as such laws are applied to agreements between Delaware residents entered into and to be performed entirely within the State of Delaware.

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**Addendum.** Notwithstanding any provisions of this Agreement to the contrary, the Award shall be subject to any special terms and conditions for the Participant's country of residence (and country of employment, if different) set forth in an addendum to this Agreement (an "**Addendum**"). Further, if the Participant transfers his or her residence and/or employment to another country reflected in an Addendum to this Agreement at the time of transfer, the special terms and conditions for such country will apply to the Participant to the extent the Company determines, in its sole discretion, that the application of such terms and conditions is necessary or advisable in order to comply with local law, rules and regulations or to facilitate the operation and administration of the Award and the Plan (or the Company may establish alternative terms and conditions as may be necessary or advisable to accommodate the Participant's transfer). In all circumstances, any applicable Addendum shall constitute part of this Agreement.

## CERTIFICATION

I, J. Christopher Barry, certify that:

1. I have reviewed this Form 10-Q of NuVasive, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2021

By: /s/ J. Christopher Barry  
J. Christopher Barry  
Chief Executive Officer

## CERTIFICATION

I, Matthew K. Harbaugh, certify that:

1. I have reviewed this 10-Q of NuVasive, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2021

By: /s/ Matthew K. Harbaugh  
Matthew K. Harbaugh  
*Executive Vice President and Chief Financial Officer*

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of NuVasive, Inc. (the "Company") on Form 10-Q for the three months ended March 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Quarterly Report"), I, J. Christopher Barry, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Quarterly Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 5, 2021

By: /s/ J. Christopher Barry  
J. Christopher Barry  
*Chief Executive Officer*

In connection with the Quarterly Report, I, Matthew K. Harbaugh, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Quarterly Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 5, 2021

By: /s/ Matthew K. Harbaugh  
Matthew K. Harbaugh  
*Executive Vice President and Chief Financial Officer*