

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TRILLIANT HEALTH, INC.)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
NUVASIVE, INC.,)	
)	
Defendant.)	
)	

COMPLAINT

Comes now Plaintiff Trilliant Health, Inc. (“Trilliant” or “Plaintiff”), by and through counsel, and makes the following allegations against NuVasive, Inc. (“NuVasive” or “Defendant”) busted upon its knowledge, information, and belief:

INTRODUCTION

1. This is an action by Trilliant to recover its damages for Defendant’s anticipatory repudiation/breach of the parties’ written contract.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, Trilliant Health, Inc., is a corporation formed under the laws of Tennessee with its principal place of business located at 2 Maryland Way Brentwood, Tennessee 37027.

3. Defendant, NuVasive, Inc., is a corporation formed under the laws of Delaware with its principal place of business located at 7475 Lusk Blvd. San Diego, California 92121.

4. NuVasive is registered with the Tennessee Secretary of State Division of Business Services, Department of State, to transact business in Tennessee. NuVasive’s registered agent for

service of process in Tennessee is Cogency Global, Inc., 992 Davidson Drive, Ste B Nashville, Tennessee, 37205.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy is in excess of \$75,000 exclusive of interest and costs, and this action is between citizens of different states.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions described herein occurred in this district.

FACTUAL ALLEGATIONS

7. On or about April 13, 2021, representatives from NuVasive contacted Trilliant to inquire about access to Trilliant's proprietary data analytics platform which allows customers to explore surgical claims data ("surgical episodes") for procedures performed at facilities in defined geographical markets. Prior to this contact, Trilliant had not solicited business from NuVasive.

8. Trilliant obtains healthcare claims data from certain healthcare claims clearinghouses. Trilliant's data analytics platform allows customers to explore surgical volumes over time by market share, payer type, service line, and surgery type, as well as referral and Primary Care Provider patterns.

9. NuVasive provides minimally invasive, procedurally-integrated spine solutions to surgeons and healthcare facilities that include software systems for surgical planning access instruments and implantable spinal hardware, as well as intraoperative neuromonitoring services to surgeons and healthcare facilities. NuVasive's website represents that it has approximately 2,900 employees in 25 locations worldwide with net sales of \$1.14 billion in 2021.

10. NuVasive wanted access to Trilliant’s surgical data analytics platform so it could identify surgeons (and associated practice groups) that performed certain spine procedures and the facilities where the procedures were performed in order to target these surgeons and facilities as part of their efforts to sell surgical spine implants and related products.

11. On May 20, 2021, Trilliant sales representative Preston Walls traveled to NuVasive’s San Diego offices to provide a live demonstration of the data analytics platform, which in this case consisted of Trilliant’s surgical data asset and Workbench, an interface that allows customers to query the surgical claims data.

12. At the May 20, 2021 live presentation, NuVasive’s Senior Director of Strategic Accounts, Jay Colehour, and his team made specific requests for Mr. Walls to perform certain data queries for two geographic regions Mr. Colehour and his team had previously identified and selected—San Diego and Tampa Bay.

13. Following the presentation, Mr. Colehour asked Mr. Walls to provide him a draft agreement prior to Memorial Day Weekend. Further, Mr. Colehour was so impressed with Trilliant’s data analysis platform he inquired about having exclusive access to Trilliant’s data analytics platform to the exclusion of NuVasive’s competitors.

14. Mr. Colehour also requested that Trilliant provide NuVasive with two separate sample data sets from the San Diego area—a market NuVasive knows well, and thus was well-positioned to analyze—so that Mr. Colehour could “pressure test” the data and confirm that it met NuVasive’s use case before signing a contract. Although it was uncommon for Trilliant to provide the quantity of data requested by Mr. Colehour, Trilliant honored Mr. Colehour’s request.

15. On June 24, 2021, the parties executed a five-year Master Services Agreement giving NuVasive access to Trilliant's surgical data analytics platform and a one-year exclusivity provision preventing Trilliant from offering certain NuVasive competitors access to the platform.

16. Pursuant to the Agreement, NuVasive agreed to pay a \$253,300 annual fee for five years.

17. The Agreement gives NuVasive access to national surgical episode data relating to 23 specific CPT codes identified and selected by NuVasive.

18. NuVasive made the first payment of \$146,650 (including the \$20,000 implementation fee) on August 16, 2021.

19. After NuVasive had signed the Agreement, Mr. Colehour informed Mr. Walls that NuVasive had not tested the two data sets that Trilliant provided at NuVasive's request in early June 2021, which was before the Agreement was signed.

20. In approximately September 2021, Mr. Colehour left NuVasive.

21. In November 2021, months after Mr. Colehour left NuVasive, Andrew Burns, Senior Manager of Commercial Strategy and Analytics for NuVasive, contacted Mr. Walls and requested that the two have a call to discuss the Agreement.

22. During the call, which was held on December 2, 2021, Mr. Burns asked Mr. Walls whether the parties could mutually agree to terminate the Agreement without NuVasive incurring a fee and raised concerns regarding the volume of Trilliant's data but did not identify a particular geographic region that NuVasive regarded as problematic.

23. Trilliant refused to voluntarily terminate the Agreement.

24. The Agreement does not require that Trilliant provide any specific volume of claims in any particular geographic area. Further, Section 10 of the Agreement expressly disclaims

liability as to the completeness or accuracy of the data because Trilliant has no control over the claims data it receives from the third-party claims clearinghouses from which it purchases claims data:

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