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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NUVASIVE, INC.,

Plaintiff,

v.

ALPHATEC HOLDINGS, INC.,

Defendant.

Case No.: 3:18-CV-347-CAB-MDD

**ORDER OVERRULING
OBJECTIONS TO
DETERMINATION OF DISCOVERY
DISPUTE**

[Doc. No. 93]

This matter is before the Court on Plaintiff NuVasive, Inc.’s objections to Magistrate Judge Dembin’s June 22, 2018 discovery order sustaining Defendant Alphatec Holdings, Inc.’s objections to two interrogatories and several document requests. District court review of magistrate judge orders on non-dispositive motions is limited. A district court judge may reconsider a magistrate judge’s ruling on a non-dispositive motion only “where it has been shown that the magistrate’s order is clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); see also Fed. R. Civ. P. 72(a). “A magistrate judge’s legal conclusions are reviewable *de novo* to determine whether they are ‘contrary to law’ and findings of fact are subject to the ‘clearly erroneous’ standard.” *Meeks v. Nunez*, Case No. 13cv973-GPC(BGS), 2016 WL 2586681, *2 (S.D. Cal. May 4, 2016) (citing *Perry v. Schwarzenegger*, 268 F.R.D. 344, 348 (N.D. Cal. Mar. 22, 2010)).

“The ‘clearly erroneous’ standard applies to the magistrate judge’s factual determinations and discretionary decisions” *Computer Econ., Inc. v. Gartner Grp., Inc.*, 50 F. Supp. 2d 980, 983 (S.D. Cal. May 25, 1999) (citations omitted). “Under this

1 standard, ‘the district court can overturn the magistrate judge’s ruling only if the district
2 court is left with the definite and firm conviction that a mistake has been made.’” *Id.*
3 (quoting *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997)).

4 “The ‘contrary to law’ standard ‘allows independent, plenary review of purely legal
5 determinations by the Magistrate Judge.’” *Jadwin v. Cnty. of Kern*, 767 F. Supp. 2d 1069,
6 1110 (E.D. Cal. Jan. 24, 2011) (citing *FDIC v. Fidelity & Deposit Co. of Md.*, 196 F.R.D.
7 375, 378 (S.D. Cal. May 1, 2000)); see also *Computer Econ.*, 50 F. Supp. 2d at 983. A
8 magistrate judge’s order “is contrary to law when it fails to apply or misapplies relevant
9 statutes, case law, or rules of procedure.” *Jadwin*, 767 F. Supp. 2d at 1110-11 (quoting
10 *DeFazio v. Wallis*, 459 F. Supp. 2d 159, 163 (E.D.N.Y Oct. 17, 2006)).

11 Upon review of the discovery requests in question, Magistrate Judge Dembin’s
12 order, NuVasive’s objections, and Alphatec’s response, the Court is not persuaded that
13 Magistrate Judge Dembin’s order was clearly erroneous or contrary to the law. NuVasive’s
14 objections to Magistrate Judge Dembin’s discovery order are therefore **OVERRULED**.
15 Notwithstanding the foregoing, with respect to NuVasive’s representation that it is in
16 possession of documents and information regarding Patrick Miles’ activities that Alphatec
17 produced to NuVasive in other litigation [Doc. No. 93-1 at 14], nothing in this order
18 precludes NuVasive from using such documents and information in this litigation.

19 It is **SO ORDERED**.

20 Dated: August 7, 2018



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22 Hon. Cathy Ann Bencivengo
23 United States District Judge
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