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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **SAN DIEGO DIVISION**

12 NUVASIVE, INC., a Delaware
corporation

13 Plaintiff,

14 v.

15 ALPHATEC HOLDINGS, INC., a
16 Delaware corporation and ALPHATEC
SPINE, INC., a California corporation,

17 Defendants.
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Case No. 3:18-CV-00347-CAB-MDD

*[Assigned to Courtroom 4C – Honorable
Cathy Ann Bencivengo]*

[Magistrate: Hon. Mitchell D. Dembin]

**DEFENDANTS’ RESPONSE TO
PLAINTIFF’S NOTICE OF INTENT
TO SEEK PRELIMINARY
INJUNCTION AND REQUEST FOR
EXPEDITED CASE MANAGEMENT
CONFERENCE WITH DISTRICT
COURT JUDGE**

Complaint Filed: February 13, 2018

1 Defendants Alphatec Holdings, Inc. and Alphatec Spine, Inc. (collectively,
2 “Alphatec”) respectfully submit this response to Plaintiff’s Notice of Intent to Seek
3 Preliminary Injunction and Request for Expedited Case Management Conference with
4 District Court Judge (Dkt. 10). NuVasive has made no showing that would justify
5 altering the normal schedule dictated by the Federal Rules of Civil Procedure and the
6 Civil Local Rules of this Court for this case. Alphatec will timely respond to the
7 Complaint without seeking an extension of time and believes the parties should
8 engage in the meet and confer process and prepare for and participate in the Early
9 Neutral Evaluation (“ENE”) Conference under CivLR 16.1(c)(1) in the normal course.
10 Indeed, holding the ENE Conference after Alphatec responds to the Complaint and
11 NuVasive files its threatened motion for preliminary injunction (if it still intends to do
12 so) would put the parties in the best position to attempt to make progress on an early
13 resolution of this case.

14 Moreover, NuVasive provides no reason to alter the normal briefing schedule if
15 it ultimately files a preliminary injunction motion. While Alphatec disagrees there is
16 any basis for NuVasive to seek a preliminary injunction, NuVasive’s own delay
17 demonstrates no urgency that warrants an expedited schedule. Specifically, according
18 to its own Complaint, NuVasive waited almost a year after the allegedly infringing
19 Battalion Lateral System™ was publicly launched on a limited basis in April 2017
20 (Dkt. 1, ¶¶ 43, 131) and nearly 6 months after the Battalion Lateral System™ was
21 fully launched in October 2017 (Dkt. 1, ¶43) before filing this suit. In fact, it did so at
22 least two years after NuVasive investigated Alphatec’s product portfolio in January
23 2016 as a result of NuVasive’s interest in acquiring Alphatec (Dkt. 1, ¶¶116-119). It
24 has now been nearly two weeks since NuVasive filed this suit (Dkt. 1), and almost one
25 week since it notified this Court that it “intends to promptly seek a preliminary
26 injunction.” (Dkt. 10 at 2.) To date, NuVasive has not filed its motion. Asking this
27 Court to hold a conference on an urgent basis before Alphatec has responded to the
28 Complaint (due in just over one week) is not justified in light of NuVasive’s

1 continued willingness to sit on its hands.

2 For at least these reasons, Alphatec respectfully requests that this Court deny
3 NuVasive's request and allow the case to proceed in the normal course under the
4 Federal Rules of Civil Procedure and the Local Rules of this Court.

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6 Dated: February 28, 2018

WINSTON & STRAWN LLP

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8 By: /s/Nimalka R. Wickramasekera
9 NIMALKA R. WICKRAMASEKERA
10 STEPHEN R. SMEREK
11 Attorneys for Defendants
12 ALPHATEC HOLDINGS, INC. AND
13 ALPHATEC SPINE, INC.
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1 **CERTIFICATE OF SERVICE**

2 I, Mina Tunson, certify and declare as follows:

3 I am over the age of 18 years and not a party to this action. My business
4 address is 333 South Grand Avenue, 38th Floor, Los Angeles, California 90071. On
5 February 28, 2018, I electronically filed **DEFENDANTS' RESPONSE TO**
6 **PLAINTIFF'S NOTICE OF INTENT TO SEEK PRELIMINARY**
7 **INJUNCTION AND REQUEST FOR EXPEDITED CASE MANAGEMENT**
8 **CONFERENCE WITH DISTRICT COURT JUDGE** with the Clerk of the court
9 by using the CM/ECF system which then sent a notification of such filing to the
10 following:

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12 Wilson Sonsini Goodrich & Rosati P.C.
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26 I declare under penalty of perjury under the laws of the State of California and
27 the United States that the foregoing is true and correct.

28 Executed on February 28, 2018 at Los Angeles, California.

By: s/s Mina Tunson
Mina Tunson