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16 Attorneys for Defendants
 17 ALPHATEC HOLDINGS, INC. AND ALPHATEC SPINE, INC.

18 **UNITED STATES DISTRICT COURT**
 19 **SOUTHERN DISTRICT OF CALIFORNIA**
 20 **SAN DIEGO DIVISION**

21 NUVASIVE, INC., a Delaware
 22 corporation,
 23 Plaintiff,
 24 v.
 25 ALPHATEC HOLDINGS, INC., a
 26 Delaware corporation and ALPHATEC
 SPINE, INC., a California corporation,
 27 Defendants.

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

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

**DECLARATION OF BRIAN J.
 NISBET IN SUPPORT OF
 DEFENDANTS’ MOTION FOR
 SUMMARY JUDGMENT OR, IN THE
 ALTERNATIVE, SUMMARY
 ADJUDICATION**

1 I, Brian J. Nisbet, declare as follows:

2 1. I am a partner with the law firm of Winston & Strawn LLP, counsel of
3 record for Defendants Alphatec Holdings, Inc. and Alphatec Spine, Inc. (individually
4 and collectively, “Alphatec”). I have personal knowledge of the following facts and, if
5 called as a witness, I could and would testify competently thereto.

6 2. Attached hereto as **Exhibit 1** is a true and correct copy of an email from
7 Pat Miles and Greg Lucier et al. dated October 1, 2017, bearing production number
8 NUVA_ATEC0318549.

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of an email chain
10 between Pete Leddy and Greg Lucier dated October 2, 2017, bearing production number
11 NUVA_ATEC0318491.

12 4. Attached hereto as **Exhibit 3** is a true and correct copy of an email between
13 Sean Freeman and Paul McClintock dated October 3, 2017, bearing production numbers
14 NUVA_ATEC0318499–500.

15 5. Attached hereto as **Exhibit 4** is a true and correct copy of a NuVasive
16 Consulting Agreement Memo to Jason Hannon dated March 27, 2017, bearing
17 production numbers NUVA_ATEC0318321–330.

18 6. Attached hereto as **Exhibit 5** is a true and correct copy of a NuVasive
19 Consulting Agreement Memo to Matt Link dated October 26, 2017, bearing production
20 numbers NUVA_ATEC0318408–421.

21 7. Attached hereto as **Exhibit 6** is a true and correct copy of an email from
22 Greg Lucier to Quentin Blackford dated September 7, 2016, bearing production
23 numbers NUVA_ATEC0332186–187.

24 8. Attached hereto as **Exhibit 7** is a true and correct copy of Battalion, LLIF
25 Intradiscal Shim Schematic, bearing production numbers ATEC_LLIF00154049–050

26 9. Attached hereto as **Exhibit 8** is a true and correct copy of
27 OPenPaymentDataCMS.gov, 2018 General Payments re Jim A. Youssef.

28

1 10. Attached hereto as **Exhibit 9** is a true and correct copy of the NuVasive
2 XLIF Surgical Technique, bearing production numbers NUVA_ATEC0015567–614.

3 11. Attached hereto as **Exhibit 10** is a true and correct copy of Declaration of
4 Dr. Jim Youssef Under 37 C.F.R. 1.132 for *Inter Partes* Application No. 95/001,888
5 dated June 4, 2012, as filed in *NuVasive, Inc. v. Matal*, Case No. 17-1666 (Fed. Cir.)
6 Doc. No. 411 page 211-221 and bearing Appx numbers APPX00356–366.

7 12. Attached hereto as **Exhibit 11** is a true and correct copy of NuVasive,
8 Inc.’s Opening Brief dated August 1, 2017, as filed in *NuVasive, Inc. v. Matal*, Case
9 No. 17-1666 (Fed. Cir.) Doc. No. 25.

10 13. Attached hereto as **Exhibit 12** is a true and correct copy of ATEC LIF
11 Lateral Interbody Fusion: Lateral Approach Surgical Guide, bearing production
12 numbers ATEC_LLIF000167276–293.

13 14. Attached hereto as **Exhibit 13** is a true and correct copy of ATEC
14 Squadron Lateral Access System: Anterior Column, Surgical Technical Guide, bearing
15 production numbers ATEC_LLIF000167230–257.

16 15. Attached hereto as **Exhibit 14** is a true and correct copy of Battalion
17 Lateral: Lumbar Spacer System, bearing production numbers ATEC_LLIF000167294–
18 322.

19 16. Attached hereto as **Exhibit 15** is a true and correct copy of Scripps
20 Memorial Hospital Encinitas: Operative Report, Dict. Phys. Neville Alleyne, MD dated
21 February 14, 2017, bearing production numbers ALLEYNE000013–017.

22 17. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from
23 the File History of U.S. Patent No. 7,819,801 regarding International Publication No.
24 WO 2006/042241 A2, bearing production numbers ATEC_LLIF000849101–050.

25 18. Attached hereto as **Exhibit 17** is a true and correct copy of U.S. Patent No.
26 8,753,270 titled “Surgical Access System and Related Methods” to Patrick Miles et al.,
27 bearing production numbers ATEC_LLIF000848888–919.

28

1 19. Attached hereto as **Exhibit 18** is a true and correct copy of ATEC
2 Squadron Lateral Access System: Anterior Column, Sales Sheet, bearing production
3 numbers ATEC_LLIF000189938–953.

4 20. Attached hereto as **Exhibit 19** is a true and correct copy of Pivot,
5 Dictionary.com, <https://www.dictionary.com/browse/pivot> (last visited December 3,
6 2019).

7 21. Attached hereto as **Exhibit 20** is a true and correct copy of excerpts from
8 the Deposition Transcript of Mike Aleali dated December 19, 2019.

9 22. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from
10 the Deposition Transcript of Neville Alleyne, M.D. dated November 4, 2019.

11 23. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from
12 the Deposition Transcript of John A. English, Jr. dated November 15, 2019.

13 24. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts from
14 the Deposition Transcript of Eric Finley dated November 15, 2019.

15 25. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from
16 the Deposition Transcript of Blake English dated December 20, 2019.

17 26. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts from
18 the Deposition Transcript of Matthew Link dated December 3, 2019.

19 27. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from
20 the Deposition Transcript of Kyle Malone dated November 8, 2019.

21 28. Attached hereto as **Exhibit 27** is a true and correct copy of excerpts from
22 the Deposition Transcript of Patrick Miles dated November 8, 2019.

23 29. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts from
24 the Deposition Transcript of Payam Moazzaz, M.D. dated November 11, 2019.

25 30. Attached hereto as **Exhibit 29** is a true and correct copy of excerpts from
26 the Deposition Transcript of Scott Robinson dated October 29, 2019.

27 31. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from
28 the Deposition Transcripts of Jim A. Youssef, M.D. dated April 27, 2018.

