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28 Attorneys for Defendants
ALPHATEC HOLDINGS, INC. AND ALPHATEC SPINE, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA - SAN DIEGO DIVISION

20 NUVASIVE, INC., a Delaware
21 corporation,
22
23 Plaintiff,
24
25 v.
26 ALPHATEC HOLDINGS, INC., a
27 Delaware corporation and ALPHATEC
28 SPINE, INC., a California corporation,
29
30 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 FEES
AND COSTS**

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. Exhibit 1 is a true and correct copy of the transcript of the hearing on
7 NuVasive's motion dated December 12, 2019.

8 3. Exhibit 2 is a true and correct copy of the invoice reflecting the fees and
9 costs Alphatec incurred in responding to NuVasive's motion in December 2019 (Doc.
10 No. 218.)

11 4. On December 12, 2019, the Court denied NuVasive's *Ex Parte* Motion for
12 Protective Order and Appointment of Special Master. (Doc. No. 232.) The Court also
13 sanctioned NuVasive and awarded Alphatec its fees and costs associated with
14 responding to NuVasive's motion. (Doc. No. 232.)

15 5. Over the past several weeks, I have attempted in good faith to resolve the
16 fees and costs dispute between Alphatec and NuVasive with Mike Hilgers of Hilgers
17 Graben PLLC. Mr. Hilgers is counsel for NuVasive. Though the dialogue was
18 productive, NuVasive ultimately failed or refused to provide any offer to settle the issue
19 of Alphatec's fees and costs.

20 6. I summarize below the time I have spent negotiating on behalf of Alphatec,
21 which is in addition to the time reflected in Exhibit 2.

22 7. On December 13, 2019, Mr. Hilgers contacted me by telephone on behalf
23 of NuVasive to see whether there would be potential interest in resolving the sanctions
24 dispute between Alphatec and NuVasive. We spoke for approximately 6 minutes.

25 8. On January 6, 2020, I spoke with Mr. Hilgers for approximately 10 minutes
26 to relay the fees and costs Alphatec incurred in responding to NuVasive's motion. I
27 also spoke with Mr. Craig Hunsaker, Alphatec's General Counsel, for approximately
28 25 minutes about resolving the sanctions dispute.

1 9. On January 8, 2020, I spoke with Mr. Hilgers for approximately 17 minutes
2 and continued negotiations over the fees and costs dispute.

3 10. On January 10, 2020, I spoke with Mr. Hilgers for approximately 1 hour
4 and continued negotiations over the fees and costs dispute. I also spoke again with Mr.
5 Hunsaker about this issue for approximately 10 minutes.

6 11. On January 13, 2020, I spoke with Mr. Hilgers for approximately 10
7 minutes and continued negotiations over the fees and costs dispute. I also spoke again
8 with Mr. Hunsaker about this issue for approximately 10 minutes.

9 12. On January 15, 2020, I spoke with Mr. Hilgers for approximately 10
10 minutes about the fees and costs dispute. At that point, Mr. Hilgers and I concluded
11 that it was not likely the parties would be able to resolve the dispute and that Alphatec
12 would have to press forward and seek relief from the Court. NuVasive still has not
13 provided any offer to cover Alphatec's fees and costs associated with responding to
14 NuVasive's motion.

15 13. In addition to these conversations, since the time reflected in Exhibit 2 to
16 Alphatec's motion, I have spent an additional approximately 15 hours reviewing bills,
17 responding to correspondences from Mr. Hilgers, drafting Alphatec's motion for fees
18 and costs, and drafting this declaration.

19 14. My billable rate is \$860.00, as reflected in Exhibit 2.

20 15. Thus, the total time I spent attempting to resolve this dispute with Mr.
21 Hilgers, reviewing bills, drafting Alphatec's motion, and drafting this declaration is
22 approximately 17.6 hours. At an hourly rate of \$860.00, approximately \$15,164.66
23 should be added to the figure in Exhibit 2.

24 16. Also, I understand that Nimalka Wickramasekera, lead counsel for
25 Alphatec, has spent approximately 1.2 hours conferring about and revising Alphatec's
26 motion for fees and costs. Her billable rate is \$1,005.00, as reflected in Exhibit 2. At
27 an hourly rate of \$1,005.00, approximately \$1,206.00 should be added to the figure in
28 Exhibit 2.

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17. In sum, Alphatec’s total fees and costs associated with responding to NuVasive’s motion are \$242,118.80.

18. I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 29th day of January, 2020, at Chicago, Illinois.

/s/Brian J. Nisbet
BRIAN J. NISBET

TABLE OF EXHIBITS

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