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12 *Attorneys for Plaintiff NuVasive, Inc.*

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15 SAN DIEGO DIVISION

16 NUVASIVE, INC., a Delaware corporation,) Case No. 18-cv-00347-CAB-MDD
17 Plaintiff,) **DECLARATION OF WENDY L. DEVINE IN SUPPORT OF**
18 v.) **NUVASIVE, INC.'S OPPOSITION**
19) **TO DEFENDANTS' MOTION FOR**
20) **SUMMARY JUDGMENT OR, IN**
ALPHATEC HOLDINGS, INC., a) **THE ALTERNATIVE, SUMMARY**
21 Delaware corporation, and ALPHATEC) **ADJUDICATION**
SPINE, INC., a California corporation,)
22 Defendants.) PER CHAMBERS RULES, NO
23) ORAL ARGUMENT UNLESS
24) SEPARATELY ORDERED BY THE
25) COURT
26)
27) Judge: Hon. Cathy Ann Bencivengo
28) Courtroom: 4C

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1 I, Wendy L. Devine, declare the following:

2 1. I am an attorney at Wilson Sonsini Goodrich & Rosati, counsel for
3 Plaintiff NuVasive, Inc. (“NuVasive”). I submit this Declaration in support of
4 NuVasive’s Opposition to Defendants’ Motion for Summary Judgment or, in the
5 Alternative, Summary Adjudication. I have personal knowledge of the following
6 facts and, if called as a witness, I could and would testify competently thereto.

7 2. Previously lodged as **Exhibit 55**, as indicated in Doc. No. 258, is a
8 true and correct copy of a video bearing Bates number NUVA_ATEC0332291.

9 3. Attached as **Exhibit 55A** is a true and correct copy of the Appendix to
10 video lodged with the Court as Exhibit 55.

11 4. Attached hereto as **Exhibit 56** is a true and correct copy of an e-mail
12 from counsel for Alphatec to counsel for NuVasive regarding Election of
13 Claims/Prior Art References, dated January 9, 2020.

14 5. Attached hereto as **Exhibit 57** is a true and correct copy of excerpts of
15 the Corrected Opening Expert Report of Jim Youssef, dated November 1, 2019.

16 6. Attached hereto as **Exhibit 58** is a true and correct copy of excerpts of
17 the Expert Report of Blake English, dated November 8, 2019.

18 7. Attached hereto as **Exhibit 59** is a true and correct copy of an
19 Assignment of Patent Rights for Application No. 10/789,797, bearing Bates
20 numbers NUVA_ATEC0015736-NUVA_ATEC0015740, recorded May 20, 2005.

21 8. Attached hereto as **Exhibit 60** is a true and correct copy of the
22 Assignment of Patent Application for Application No. 11/137,169 bearing Bates
23 numbers NUVA_ATEC0015695-NUVA_ATEC0015696, recorded December 10,
24 2009.

25 9. Attached hereto as **Exhibit 61** is a true and correct copy of the
26 Assignment of Patent Application for Application No. 10/759,811, bearing Bates
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1 numbers NUVA_ATEC0015815-NUVA_ATEC0015820, recorded January 5,
2 2011.

3 10. Attached hereto as **Exhibit 62** is a true and correct copy of the
4 Assignment of Patent Application for Application No. 10/608,362, bearing Bates
5 numbers NUVA_ATEC0015615-NUVA_ATEC0015620, recorded August 17,
6 2017.

7 11. Attached hereto as **Exhibit 63** is a true and correct copy of the
8 Assignment of Patent Application for Application No. 10/759,811, bearing Bates
9 numbers NUVA_ATEC0015895-NUVA_ATEC0015896, recorded August 8,
10 2013.

11 12. Attached hereto as **Exhibit 64** is a true and correct copy of the
12 Assignment of Patent Application for Application No. PCT/US2011/001489,
13 bearing Bates numbers NUVA_ATEC0040542-NUVA_ATEC0040545, recorded
14 October 25, 2016.

15 13. Attached hereto as **Exhibit 65** is a true and correct copy of Alphatec's
16 Executive Team biographies, bearing Bates numbers ATEC_LLIF000845756-
17 NUVA_ATEC000845761.

18 14. Attached hereto as **Exhibit 66** is a true and correct copy of excerpts of
19 Patrick S. Miles' Deposition Transcript, dated December 19, 2019.

20 15. Attached hereto as **Exhibit 67** is a true and correct copy of excerpts of
21 the Project Safari, bearing Bates numbers ATEC_LLIF000943157-
22 ATEC_LLIF000943173, dated December 19, 2017.

23 16. Attached hereto as **Exhibit 68** is a true and correct copy excerpts of
24 Alphatec Holding's Q4 2017 Financial Results and SafeOp Acquisition Call,
25 bearing Bates numbers ATEC_LLIF000944296-ATEC_LLIF000944310, dated
26 March 7, 2018.

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1 17. Attached hereto as **Exhibit 69** is a true and correct copy of Project
2 Titan Analysis (Miles Dep. Ex. 1), bearing Bates numbers NUVA_ATEC0319007-
3 NUVA_ATEC0319013, dated February 13, 2016.

4 18. Attached hereto as **Exhibit 70** is a true and correct copy of email from
5 Patrick Miles, bearing Bates numbers NUVA_ATEC0319051, dated January 26,
6 2016.

7 19. Attached hereto as **Exhibit 71** is a true and correct copy of excerpts of
8 an email from Q. Blackford, bearing Bates numbers ATEC_Blackford_00001-
9 ATEC_Blackford_00976, dated April 18, 2016.

10 20. Attached hereto as **Exhibit 72** is a true and correct copy of J.
11 McCormick email (Miles Dep. Ex. 5), bearing Bates numbers
12 ATEC_LLIF000857059-ATEC_LLIF000857063.

13 21. Attached hereto as **Exhibit 73** is a true and correct copy of an email
14 from J. McCormick (Miles Dep. Ex. 3), bearing Bates numbers
15 ATEC_LLIF000857176-ATEC_LLIF000857197, dated May 4, 2016.

16 22. Attached hereto as **Exhibit 74** [INTENTIONALLY OMITTED].

17 23. Attached hereto as **Exhibit 75** [INTENTIONALLY OMITTED].

18 24. Attached hereto as **Exhibit 76** is a true and correct copy of email from
19 T. Berkowitz, bearing Bates numbers ATEC_LLIF000857054-
20 ATEC_LLIF000857057, dated July 26, 2016.

21 25. Attached hereto as **Exhibit 77** is a true and correct copy of Alphatec
22 Holding's Announcement, bearing Bates numbers ATEC_LLIF000713149-
23 ATEC_LLIF000713150, dated March 23, 2017.

24 26. Attached hereto as **Exhibit 78** is a true and correct copy of excerpts of
25 the H.C. Wainwright & Co., LLC Agreement, bearing Bates numbers
26 ATEC_LLIF000710506-ATEC_LLIF000710519, dated March 1, 2017.

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1 27. Attached hereto as **Exhibit 79** is a true and correct copy of excerpts of
2 Alphatec's Supplemental Responses to NuVasive's Second Set of Interrogatories
3 (Nos.13 and 15), dated September 27, 2019.

4 28. Attached hereto as **Exhibit 80** is a true and correct copy of P. Miles'
5 Employment Agreement, bearing Bates numbers ATEC_LLIF000855361-
6 ATEC_LLIF000855376, dated September 30, 2017.

7 29. Attached hereto as **Exhibit 81** is a true and correct copy of the
8 Nominating, Governance and Compensation Committee for Alphatec bearing
9 Bates numbers ATEC_LLIF000510496-ATEC_LLIF000510501.

10 30. Attached hereto as **Exhibit 82** is a true and correct copy of a
11 Securities Purchase Agreement, bearing Bates numbers ATEC_LLIF000857030-
12 ATEC_LLIF000857035.

13 31. Attached hereto as **Exhibit 83** is a true and correct copy of Alphatec's
14 Accelerates Business Transformation with Additional Spine-Experienced
15 Leadership Appointments, bearing Bates numbers ATEC_LLIF000857036, dated
16 October 2, 2017.

17 32. Attached hereto as **Exhibit 84** is a true and correct copy of excerpts of
18 Alphatec's Forward Looking Statements and Guidance, bearing Bates numbers
19 ATEC_LLIF000711994-ATEC_LLIF000712017.

20 33. Attached hereto as **Exhibit 85** is a true and correct copy of Alphatec
21 Holdings' Report 3Q 2017, bearing Bates numbers ATEC_LLIF000617746-
22 ATEC_LLIF000617754.

23 34. Attached hereto as **Exhibit 86** is a true and correct copy of Dr. Iezza's
24 course programs/travel itinerary, bearing Bates numbers ATEC_LLIF000627235.

25 35. Attached hereto as **Exhibit 87** are a true and correct copies of
26 surgeons Course Programs and Itineraries (Miles Dep. Ex. 6), dated November
27 2017-June 2018.

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