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14 *Attorneys for Plaintiff NuVasive, Inc.*

15 UNITED STATES DISTRICT COURT
 16 DISTRICT OF CALIFORNIA
 17 SAN DIEGO DIVISION

18 NUVASIVE, INC., a Delaware corporation,

19 Plaintiff,

20 v.

21 ALPHATEC HOLDINGS, INC., a
 22 Delaware corporation, and ALPHATEC
 23 SPINE, INC., a California corporation,

24 Defendants.

25 Case No. 18-cv-00347-CAB-MDD
 26 **PLAINTIFF’S OPPOSITION TO
 27 DEFENDANTS’ MOTION FOR
 28 FEES AND COSTS**

PER CHAMBERS RULES, NO
 ORAL ARGUMENT UNLESS
 SEPARATELY ORDERED BY
 THE COURT

Judge: Hon. Cathy Ann Bencivengo
 Courtroom: 4C

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGE(S)

LEGAL STANDARDS2

ARGUMENT3

 A. Alphatec Has Not Demonstrated Its Hours Are Reasonable3

 B. Alphatec Has Not Demonstrated Its Rates Are Reasonable.....9

 C. No Extenuating Circumstances Justify Alphatec’s Unreasonable
 Hours or Rates..... 14

CONCLUSION..... 17

TABLE OF AUTHORITIES

PAGE(S)

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

California Bd. Sports, Inc. v. Vans, Inc.,
06-cv-2365-IEG (AJB) (S.D. Cal. Apr. 2, 2007) (magistrate order
aff’d June 5, 2007) (unpublished) 15

Daimler AG v. A-Z Wheels LLC,
No. 16CV875-JLS-MDD, 2018 WL 3413863 (S.D. Cal. Apr. 23,
2018) 5

Democratic Party of Washington State v. Reed,
388 F.3d 1281 (9th Cir. 2004) 5

Endurance Am. Specialty Ins. Co. v. WFP Sec. Corp.,
No. 11CV2611-JAH(KSC), 2013 WL 12068651 (S.D. Cal. Mar. 29,
2013) 17

Flowerider Surf Ltd v. Pacific Surf Designs, Inc.,
No. 15cv1879-BEN(BLM), 2017 WL 2212029 (S.D. Cal. May 18,
2017) *passim*

G-1 Holdings, Inc. v. Baron & Budd,
199 F.R.D. 529 (S.D.N.Y. 2001) 15

Gonzalez v. City of Maywood,
729 F.3d 1196 (9th Cir. 2013) 2

Grain v. Trinity Health,
No. 03-72486, 2009 WL 3270584 (E.D. Mich. Oct. 5, 2009) 6, 9

Hensley v. Eckerhart,
461 U.S. 424 (1983) 3

LG Corp. v. Huang Xiaowen,
No. 16-cv-1162 JLS (NLS), 2017 WL 3877741 (S.D. Cal. Nov. 5,
2017) 11, 12

Matlink, Inc. v. Home Depot USA, Inc.,
No. 07cv1994-DMS(BLM), 2008 WL 8504767 (S.D. Cal. Oct. 28,
2008) 8, 11

1 *Midamines Sprl Ltd. v. KBC Bank NV*,
2 No. 12-CV-8089(RJS), 2016 WL 1071028 (S.D.N.Y. Mar. 16,
3 2016), *aff'd sub nom. Midamines SPRL Ltd. v. KBC Bank N.V.*, 719
4 F. App'x 41 (2d Cir. 2017)..... 7, 8

5 *Mogck v. Unum Life Ins. Co. of Am.*,
6 289 F. Supp. 2d 1181 (S.D. Cal. 2003) 6

7 *Redding v. ProSight Specialty Mgmt. Co.*,
8 90 F. Supp. 3d 1109 (D. Mont. 2015) 6, 7

9 *Youngevity Int'l, Corp. v. Smith*,
10 No. 16-cv-00704-BTM-JLB, 2018 WL 2113238 (S.D. Cal. May 7,
11 2018)..... 3

12 *Zest IP Holdings, LLC v. Implant Direct Mfg., LLC*,
13 No. 10-CV-0541-GPC(WVG), 2014 WL 6851612 (S.D. Cal. Dec.
14 3, 2014).....*passim*

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1 On December 6, 2019, NuVasive filed an *Ex Parte* Motion for Protective
2 Order and Appointment of Special Master (“PO Motion” or “Protective Order
3 Motion”). Doc. No. 218. Less than a week later, on December 12, the Court denied
4 the PO Motion and authorized Alphatec to file a motion seeking its attorney’s fees
5 against NuVasive. Doc. No. 232. During the Court’s hearing on the PO Motion, the
6 Court instructed Alphatec to “[b]e conservative” in its request for fees. Doc. No.
7 254-3 at 22.

8 The following day, counsel for NuVasive reached out to counsel for Alphatec
9 to attempt to resolve the fees and costs without further involvement from the Court.
10 *See* Doc. No. 254-2 at ¶ 7. On or about January 7, 2020, Alphatec responded that its
11 fees for the motion approximated nearly \$260,000, and additionally requested
12 payment to be presented to Alphatec in the form of an oversized novelty check.
13 Hilgers Ex. 2;¹ Doc. No. 254-2 at ¶ 8. NuVasive respectfully submits this was
14 neither a “conservative” nor a reasonable fee request. NuVasive was ready and
15 willing to make a reasonable offer to resolve the fee issue and avoid motion
16 practice, but Alphatec’s fee demand, and the resulting discussion, made clear that
17 the parties were too far apart for resolution. Hilgers Decl. ¶ 4.

18 In its motion, Alphatec seeks from the Court \$242,118.80 in fees and costs,
19 which comprises over 300 hours’ work performed largely over the course of less
20 than one week. Doc. No. 254-4; Doc No. 254-2. More than half of this time was
21 billed by four partner-level² attorneys charging between \$860-\$1,005/hour, often
22 performing redundant or low-level tasks. As a result, not only are Alphatec’s hours
23 inflated by the duplication of efforts, but its average billing rate for its entire
24

25 ¹ “Hilgers Ex.” refers to the exhibits attached to the Declaration of Michael
26 Hilgers, filed herewith.

27 ² Mr. David Dalke is *Of Counsel* for Winston & Strawn. For purposes of this
28 motion, NuVasive will refer to him, along with the three Winston & Strawn
partners, as “partner-level” attorneys.

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