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17

18 **UNITED STATES DISTRICT COURT**

19 **SOUTHERN DISTRICT OF CALIFORNIA - SAN DIEGO DIVISION**

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

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

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

**DECLARATION OF BRIAN J.  
NISBET IN SUPPORT OF  
ALPHATEC’S OPPOSITION TO  
MOTION TO STRIKE**

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 pages Bates numbered NUVA\_  
7 ATEC0115139–153.

8 3. **Exhibit 2** is a true and correct copy of the pages Bates numbered  
9 NUVA\_ATEC0338292–294.

10 4. **Exhibit 3** is a true and correct copy of the page Bates numbered  
11 NUVA\_ATEC0340873.

12 5. **Exhibit 4** is a true and correct copy of the pages Bates numbered  
13 NUVA\_ATEC0341150–153.

14 6. **Exhibit 5** is a true and correct copy of the page Bates numbered  
15 NUVA\_ATEC0341168.

16 7. **Exhibit 6** is a true and correct copy of the pages Bates numbered  
17 NUVA\_ATEC0341176–177.

18 8. **Exhibit 7** is a true and correct copy of the pages Bates numbered  
19 NUVA\_ATEC0341182–183.

20 9. **Exhibit 8** is a true and correct copy of the pages Bates numbered  
21 NUVA\_ATEC0341357–358.

22 10. **Exhibit 9** is a true and correct excerpt (without exhibits) of Alphatec’s  
23 October 30, 2018 preliminary invalidity contentions for U.S. patent nos. 9,924,859;  
24 9,974,531; and 8,187,334.

25 11. **Exhibit 10** is a true and correct excerpt (without exhibits) of Alphatec’s  
26 December 7, 2018 amended invalidity contentions for U.S. patent nos. 7,819,801;  
27 8,355,780; 8,439,832; 9,833,227; 8,753,270; and 8,361,156.  
28

1           12.   **Exhibit 11** is a true and correct excerpt (without exhibits) of Alphatec’s  
2 January 15, 2019 supplemental amended invalidity contentions for U.S. patent nos.  
3 7,819,801; 8,355,780; 8,439,832; 9,833,227; 8,753,270; and 8,361,156.

4           13.   **Exhibit 12** is a true and correct excerpt (without exhibits) of Alphatec’s  
5 January 16, 2019 amended invalidity contentions for U.S. patent nos. 9,924,859;  
6 9,974,531; and 8,187,334.

7           14.   **Exhibit 13** is a true and correct copy (without exhibits) of Alphatec’s  
8 November 12, 2020 final invalidity contentions for U.S. patent nos. 8,361,156; and  
9 8,187,334.

10          15.   **Exhibit 14** is a true and correct excerpt of NuVasive’s September 4, 2018  
11 responses to Alphatec’s first set of interrogatories (nos. 1–12).

12          16.   **Exhibit 15** is a true and correct excerpt of NuVasive’s November 2, 2018  
13 supplemental responses to Alphatec’s second set of interrogatories (nos. 13–15).

14          17.   **Exhibit 16** is a true and correct excerpt of NuVasive’s September 18, 2020  
15 supplemental responses to Alphatec’s interrogatory nos. 1–7 and 9–16.

16          18.   **Exhibit 17** is a true and correct copy of a letter dated September 28, 2020  
17 that I wrote to NuVasive’s counsel.

18          19.   **Exhibit 18** is a true and correct excerpt of NuVasive’s October 16, 2020  
19 fourth supplemental responses to Alphatec’s interrogatory nos. 3 and 13.

20          20.   **Exhibit 19** is a true and correct highlighted copy of an email exchange  
21 between Alphatec’s counsel and NuVasive’s counsel between October 12, 2020 and  
22 November 10, 2020.

23          21.   **Exhibit 20** is a true and correct highlighted copy of an email exchange  
24 between Alphatec’s counsel and NuVasive’s counsel between October 26, 2020 and  
25 November 6, 2020.

26          22.   **Exhibit 21** is a true and correct excerpt of the transcript for the November  
27 6, 2020 deposition of Ryan Donahoe.  
28



**TABLE OF EXHIBITS**

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