

EXHIBIT 16

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13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION

15 NUVASIVE, INC., a Delaware
16 corporation,

17 Plaintiff,

18 v.

19 ALPHATEC HOLDINGS, INC., a
20 Delaware corporation, and ALPHATEC
21 SPINE, INC., a California corporation,

22 Defendants.

Case No. 18-cv-00347-CAB-MDD

**PLAINTIFF NUVASIVE, INC.’S
SUPPLEMENTAL RESPONSES
TO DEFENDANTS’
INTERROGATORY NOS. 1-7
AND 9-16 (IMPLANT PATENT
PHASE)**

Judge: Cathy A. Bencivengo

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NUVASIVE, INC.’S SUPPLEMENTAL RESPONSES TO DEFENDANTS’ INTERROGATORY NOS. 1-7 AND 9-16 (IMPLANT PATENT PHASE)

1 Pursuant to Rule 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff
2 NuVasive, Inc. (“NuVasive”), by and through its undersigned counsel, hereby
3 responds to Defendants Alphatec Holdings, Inc. and Alphatec Spine, Inc.’s
4 (collectively “Alphatec” or “Defendants”) First Set of Interrogatories (Nos. 1 – 7
5 and 9 – 12) and Second Set of Interrogatories (Nos. 13 - 15) and Third Set of
6 Interrogatories (No. 16) as follows:

7 **GENERAL OBJECTIONS**

8 In addition to any specifically stated objections, NuVasive’s responses
9 herein are subject to and incorporate the following general objections:

10 1. NuVasive asserts each of the following General Objections and
11 expressly incorporates them into each response set forth below. By providing a
12 response to any interrogatory, NuVasive does not waive or otherwise limit these
13 General Objections. Furthermore, reference to any of these General Objections in
14 any specific response shall not waive or otherwise limit the applicability of all of
15 these General Objections to each and every response.

16 2. NuVasive objects to all definitions, instructions, and interrogatories to
17 the extent that they are unduly burdensome and oppressive, overly broad, vague,
18 ambiguous and/or to the extent they are inconsistent with and/or seek to impose
19 upon NuVasive obligations beyond those required by the Federal Rules of Civil
20 Procedure, the Local Rules of the United States District Court for the Southern
21 District of California, or any Court Order in this matter, including this Court’s
22 Scheduling Order. In responding to these interrogatories, NuVasive will only
23 comply with the obligations imposed on it by the Federal Rules of Civil Procedure,
24 the Local Rules of the United States District Court for the Southern District of
25 California, any applicable orders of this Court, and any stipulation or agreement
26 between the parties.

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- 1 • DHF-10-005 (re implants): NUVA_ATEC0181087 –
2 NUVA_ATEC0181097;
- 3 • DHF-10-009 (re access system): NUVA_ATEC0182802 –
4 NUVA_ATEC0183485;
- 5 • DHF-11-012 (re implants): NUVA_ATEC0190887 –
6 NUVA_ATEC0190950;
- 7 • DHF-11-013 (re implants): NUVA_ATEC0181098 –
8 NUVA_ATEC0181916;
- 9 • DHF-11-017 (re implants): NUVA_ATEC0181917 –
10 NUVA_ATEC0182500;
- 11 • DHF-13-002 (re shims and XLIF kit components): NUVA_ATEC0182501 –
12 NUVA_ATEC0182515;
- 13 • DHF-14-001 (re implants): NUVA_ATEC0182516 –
14 NUVA_ATEC0182801;
- 15 • DHF-14-020 (re dilators): NUVA_ATEC0012927 –
16 NUVA_ATEC0012935.

17 Discovery is ongoing and NuVasive reserves its right to amend or
18 supplement its response to this interrogatory.

19 **THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

20 Pursuant to the Court’s scheduling order (Doc. No. 293), NuVasive affirms
21 its prior response and confirms it has no new information to supplement at this
22 time.

23 **INTERROGATORY NO. 3:**

24 For each asserted claim of the patents-in-suit, describe in detail the facts and
25 circumstances relating to the first written description, offer for sale, sale, public
26 disclosure, public use, or disclosure to any person other than a named inventor of
27

1 the claimed invention, including, without limitation, the identities of the persons
2 involved in each such event, the identities of the persons most knowledgeable
3 regarding each such event, the date on which each such event occurred, and the
4 identification of each document that reflects or relates to such facts and
5 circumstances.

6 **RESPONSE TO INTERROGATORY NO. 3:**

7 NuVasive incorporates by reference each of the General Objections.
8 NuVasive objects to this interrogatory on the grounds that it contains at least three
9 discrete subparts, is compound, and constitutes at least three interrogatories.
10 NuVasive objects to this interrogatory as vague and ambiguous with respect to the
11 term “the circumstances.” NuVasive objects to this interrogatory on the grounds
12 and to the extent it is overly broad, unduly burdensome, not proportional to the
13 needs of the case, and not relevant to any claim or defense in this case.

14 Specifically, NuVasive objects to the interrogatory to the extent it calls for
15 NuVasive to “describe in detail” the circumstances relating to the first descriptions,
16 disclosures and sales of the claimed inventions. NuVasive objects to this
17 interrogatory to the extent it seeks “Privileged Information.” NuVasive objects to
18 this interrogatory to the extent it calls for legal conclusions. NuVasive objects to
19 this interrogatory to the extent it attempts the shift the burden of proof regarding
20 invalidity to NuVasive. NuVasive objects to this interrogatory to the extent it seeks
21 information no longer in NuVasive’s possession, custody, or control.

22 Subject to and without waiving the foregoing objections, NuVasive responds
23 as follows: the first written description for each of the patents-in-suit is at least as
24 early as the earliest priority date of the respective patent-in-suit based on the
25 earliest filed parent patent application.

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