

EXHIBIT L

TO TANNER DECLARATION

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Attorneys for Plaintiff NuVasive, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION

NUVASIVE, INC., a Delaware
corporation,

Plaintiff,

v.

ALPHATEC HOLDINGS, INC., a
Delaware corporation, and ALPHATEC
SPINE, INC., a California corporation,

Defendants.

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

**PLAINTIFF NUVASIVE, INC.'S
FOURTH SUPPLEMENTAL
RESPONSES TO DEFENDANTS'
INTERROGATORY NOS. 3 AND
13 (IMPLANT PATENT PHASE)**

Judge: Cathy A. Bencivengo

1 burdensome, and inconsistent with and/or seek to impose upon NuVasive
2 obligations beyond those required by the Federal Rules of Civil Procedure.

3 24. NuVasive objects to the definition of the terms “concerning” or
4 “concern” as being overly broad, unduly burdensome, vague, ambiguous, and not
5 proportional to the needs of this case. In particular, these terms are defined as
6 “relating to, referring to,” which are terms included in the previous definition.
7 NuVasive believes that including a previously defined term as the definition for a
8 different term makes the definition overly broad.

9 25. NuVasive objects to the term “identify” as being overly broad and
10 unduly burdensome in that it seeks to impose obligations beyond those imposed by
11 the Federal Rules of Civil Procedure, because it necessarily results in compound
12 interrogatories that, when counted according to their discrete subparts, exceed the
13 number of interrogatories allowed by the Federal Rules. NuVasive will only
14 provide responses to 25 interrogatories, counting separately all discrete subparts.
15 By answering the following Interrogatories, NuVasive does not consent in any way
16 to answering more than the 25 interrogatories, counting separately all discrete
17 subparts, nor does it waive its objection to the number of discrete subparts
18 contained within the present Interrogatories. Should Defendant seek further
19 response to the below Interrogatories, NuVasive reserves its right to object on the
20 basis that the present Interrogatories already contain well-over 25 discrete subparts.

21 **SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

22 **INTERROGATORY NO. 3:**

23 For each asserted claim of the patents-in-suit, describe in detail the facts and
24 circumstances relating to the first written description, offer for sale, sale, public
25 disclosure, public use, or disclosure to any person other than a named inventor of
26 the claimed invention, including, without limitation, the identities of the persons
27 involved in each such event, the identities of the persons most knowledgeable
28 regarding each such event, the date on which each such event occurred, and the

1 identification of each document that reflects or relates to such facts and
2 circumstances.

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

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

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

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

23 Additionally, Alphatec has admitted that NuVasive’s “eXtreme Lateral
24 Interbody Fusion” product (or “XLIF”), which includes the MaXcess access
25 system and CoRoent XL implants, embodies the asserted claims of the patents-in-
26 suit. Doc. No. 48 at 16. Based on information available to NuVasive at this time,
27 NuVasive states that it launched aspects of XLIF in October 2003 at the North
28 American Spine Society (NASS) Annual Meeting, including its MaXcess access

1 system, and specifically MaXcess I. Persons involved in this this launch include
2 Pat Miles, Eric Finley, and Scot Martinelli. In addition, MaXcess III launched on
3 September 12, 2006, and MaXcess III Solid launched on November 13, 2008.

4 In October 2004, at NASS, NuVasive launched the CoRoent XL implant as
5 part of XLIF. The persons involved in the launch of CoRoent XL are Matthew
6 Curran, Matthew Copp, Scot Martinelli, Patrick Miles, and David Ivanko.

7 In addition, pursuant to Local Patent Rule 3.2(b) and Fed. R. Civ. P. 33(d),
8 NuVasive further states that it will produce and has produced non-privileged
9 documents from which the information requested can be ascertained, including
10 documents bearing the following Bates numbers:

11 NUVA_ATEC0000001 – NUVA_ATEC0000290;

12 NUVA_ATEC0000544 – NUVA_ATEC0014446;

13 NUVA_ATEC0014504 – NUVA_ATEC0015487;

14 NUVA_ATEC0016164 – NUVA_ATEC0016948;

15 NUVA_ATEC0016949 – NUVA_ATEC0039458;

16 NUVA_ATEC0039459 – NUVA_ATEC0040421;

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

19 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

20 In addition to its previously asserted General and Specific Objections,
21 NuVasive continues to object that this interrogatory is overly broad, unduly
22 burdensome, and not proportional to the needs of the case because it seeks a
23 “detailed” description of information spanning nearly two decades that is no longer
24 readily accessible to NuVasive due to the passage of time and relevant personnel
25 departing the company over the intervening 15-plus years. In light of this,
26 NuVasive maintains that its previous response and citation to documents pursuant
27 to Fed. R. Civ. P. 33(d) is proper at least because the burden of deriving the
28

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