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16 Attorneys for Defendants
ALPHATEC HOLDINGS, INC. AND ALPHATEC SPINE, INC.
17

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**
20 **SAN DIEGO DIVISION**

21 NUVASIVE, INC., a Delaware
22 corporation,

23 Plaintiff,

24 v.

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

27 Defendants.
28

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

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

**DECLARATION OF BRIAN J.
NISBET IN SUPPORT OF
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT**

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 Provisional Application no.
7 60/557,536.

8 3. **Exhibit 2** is a true and correct copy of the prosecution history for U.S.
9 Patent No. 8,361,156.

10 4. **Exhibits 3** is a true and correct copy of the prosecution history for U.S.
11 Patent No. 8,187,334.

12 5. **Exhibit 4** is a true and correct excerpt of the November 20, 2020 Opening
13 Report of Barton L. Sachs, M.D.

14 6. **Exhibit 5** is a true and correct excerpt of the December 18, 2020 Rebuttal
15 Report of Barton L. Sachs, M.D.

16 7. **Exhibit 6** is a true and correct excerpt of the November 20, 2020 Corrected
17 Opening Expert Report of Jim Youssef, M.D. Regarding U.S. Patent Nos. 8,361,156
18 ('156 Patent) and 8,187,334 ('334 Patent).

19 8. **Exhibit 7** is a true and correct excerpt of the December 18, 2020 Rebuttal
20 Expert Report of Jim Youssef, M.D.

21 9. **Exhibit 8** is a true and correct excerpt of the original Exhibit D to the
22 November 20, 2020 Corrected Opening Expert Report of Jim Youssef, M.D. Regarding
23 U.S. Patent Nos. 8,361,156 ('156 Patent) and 8,187,334 ('334 Patent).

24 10. **Exhibit 9** is a true and correct excerpt of the original Exhibit E to the
25 November 20, 2020 Corrected Opening Expert Report of Jim Youssef, M.D. Regarding
26 U.S. Patent Nos. 8,361,156 ('156 Patent) and 8,187,334 ('334 Patent).

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1 11. **Exhibit 10** is a true and correct excerpt of Corrected Exhibit D (Redline)
2 to the November 20, 2020 Corrected Opening Expert Report of Jim Youssef, M.D.
3 Regarding U.S. Patent Nos. 8,361,156 ('156 Patent) and 8,187,334 ('334 Patent).

4 12. **Exhibit 11** is a true and correct excerpt of Corrected Exhibit E (Redline)
5 to the November 20, 2020 Corrected Opening Expert Report of Jim Youssef, M.D.
6 Regarding U.S. Patent Nos. 8,361,156 ('156 Patent) and 8,187,334 ('334 Patent).

7 13. **Exhibit 12** is a true and correct excerpt of the transcript of the January 13,
8 2021 deposition of Jim Youssef, M.D. Dr. Youssef's testimony regarding '156 patent
9 claim term "at a position proximate to said medial plane" is contained in Exhibit 12.

10 14. **Exhibit 13** is a true and correct excerpt of the transcript of the January 13,
11 2021 deposition of Jim Youssef, M.D. Dr. Youssef's testimony regarding '334 patent
12 claim term "central region" is contained in Exhibit 13.

13 15. **Exhibit 14** is a true and correct excerpt of the transcript of the January 13,
14 2021 deposition of Jim Youssef, M.D. Dr. Youssef's testimony regarding the '334
15 patent claim term "approximately 18 mm" is contained in Exhibit 14.

16 16. **Exhibit 15** is a true and correct copy of Exhibit 6 marked at the January
17 13, 2021 deposition of Jim Youssef, M.D.

18 17. **Exhibit 16** is a true and correct copy of Exhibit 7 marked at the January
19 13, 2021 deposition of Jim Youssef, M.D.

20 18. **Exhibit 17** is a true and correct copy of Exhibit 8 marked at the January
21 13, 2021 deposition of Jim Youssef, M.D.

22 19. **Exhibit 18** is a true and correct copy of Exhibit 9 marked at the January
23 13, 2021 deposition of Jim Youssef, M.D.

24 20. **Exhibit 19** is a true and correct copy of Exhibit 10 marked at the January
25 13, 2021 deposition of Jim Youssef, M.D.

26 21. **Exhibit 20** is a true and correct copy of Exhibit 11 marked at the January
27 13, 2021 deposition of Jim Youssef, M.D.

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