

EXHIBIT 19

TO THE DECLARATION OF BRIAN J.
NISBET IN SUPPORT OF DEFENDANTS'
OPPOSITION TO NUVASIVE'S MOTION
FOR PARTIAL SUMMARY JUDGMENT
AND MOTION TO EXCLUDE

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17 ALPHATEC HOLDINGS, INC. and ALPHATEC SPINE, INC.

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

22 NUVASIVE, INC., a Delaware
23 corporation,

24 Plaintiff,

25 v.

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

Defendants.

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

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

[Magistrate: Hon. Mitchell D. Dembin]

**DEFENDANTS’ RESPONSE TO
PLAINTIFF NUVASIVE, INC.’S FIFTH
SET OF INTERROGATORIES (NO. 23)**

Complaint filed: February 13, 2018

1 PROPOUNDING PARTY: PLAINTIFF NUVASIVE, INC.
2 RESPONDING PARTY: DEFENDANTS ALPHATEC HOLDINGS, INC.
3 AND ALPHATEC SPINE, INC.
4 SET NO.: FIVE (NO. 23)

5 Defendants Alphatec Holdings, Inc., and Alphatec Spine, Inc. (collectively,
6 “Defendants” or “Alphatec”), hereby provide their response to Plaintiff NuVasive,
7 Inc.’s (“Plaintiff”) Fifth Set of Interrogatories (No. 23) under Rules 26 and 33 of the
8 Federal Rules of Civil Procedure and the applicable rules of this Court. Defendants
9 reserve the right to amend and/or supplement these responses as necessary.

10 **GENERAL OBJECTIONS**

11 The following general objections apply to each of Plaintiff’s Interrogatories and
12 are incorporated by reference into each response made herein as though fully set forth
13 in each and every following Interrogatory response. The assertion of the same, similar,
14 or additional objections or the provision of partial answers in the individual responses
15 to these Interrogatories does not waive any of Defendants’ General Objections as set
16 forth below.

17 1. Defendants’ responses are made solely for the purpose of the above-
18 captioned litigation. Defendants expressly reserve the right to object to the admissibility
19 or otherwise seek exclusion of the information disclosed in its responses.

20 2. Defendants have not completed their investigation, discovery, or analysis
21 of all the facts of this case and have not completed preparation for trial. Accordingly,
22 all of the following responses are provided without prejudice to Defendants’ right to
23 introduce at trial any evidence that is subsequently discovered relating to proof of
24 presently known facts and to produce and introduce all evidence, whenever discovered,
25 relating to the proof of subsequently discovered material facts. Moreover, facts,
26 documents, and things now known may be imperfectly understood; and, accordingly
27 such facts, documents, and things may not be included in the following responses.
28 Defendants reserve the right to reference, discover, or offer into evidence at the time of

1 trial any and all facts, documents, and things notwithstanding the initial answers and
2 objections interposed herein. Defendants further reserve the right to reference,
3 discover, or offer into evidence at the time of trial any and all facts, documents, and
4 things that they do not presently recall but may recall at some time in the future.

5 3. The Interrogatories may use isolated terms that have many possible
6 meanings. Defendants have attempted to respond to the best of their ability, but object
7 to this ambiguity. Similarly, many of the ambiguous terms are legal in nature so that,
8 in effect, they require Defendants to draw legal conclusions in responding. Defendants
9 reserve the right to supplement or revise these responses if the Interrogatories and/or
10 responses later are used in contexts that tend to give them a particular meaning.

11 4. No incidental or implied admissions are intended in these responses. The
12 fact that Defendants have responded to these Interrogatories (i) should not be taken as
13 an admission that Defendants accept or admit the existence of any facts set forth or
14 assumed by the Interrogatories or that such response constitutes admissible evidence,
15 and (ii) is not intended to and shall not be construed to be a waiver by Defendants of all
16 or any part of any objection to the Interrogatories.

17 5. Defendants object to each Interrogatory to the extent it seeks information,
18 documentation, or things protected by the attorney-client privilege, the work product
19 doctrine, or any other applicable privilege or immunity, including the common interest
20 doctrine. To the extent such information is inadvertently produced, Defendants have
21 not authorized such production, and no waiver of any privilege shall be inferred from
22 it.

23 6. Defendants object to each Interrogatory to the extent it seeks information
24 that Defendants are not permitted to disclose pursuant to confidentiality agreements
25 with third parties, or obligations under court order.

26 7. Defendants object to each Interrogatory to the extent it is directed at
27 private, confidential, trade secret, proprietary, financial, or commercially sensitive
28 information, the disclosure of which would result in substantial competitive injury to

1 Defendants, or a breach by Defendants of an obligation to a third party to maintain the
2 confidentiality of information. Defendants further object to each Interrogatory to the
3 extent it would seek disclosure of information where such information would violate
4 any constitutional, statutory, or common-law privacy right of any individual or entity.
5 Defendants will produce such information only after agreement by the parties to and
6 entry of a protective order governing the disclosure confidential information.

7 8. Defendants object to each Interrogatory to the extent it seeks information:
8 (a) not relevant to the claims or defenses of this case and/or not proportional to the needs
9 of the case; (b) that is unreasonably cumulative or duplicative, or obtainable from some
10 other source that is more convenient, less burdensome, or less expensive; or (c) that
11 Plaintiff has had the opportunity to obtain from other sources.

12 9. Defendants object to each Interrogatory to the extent it purports to impose
13 discovery obligations beyond those required under the Federal Rules of Civil Procedure,
14 the Local Rules for the Southern District of California, or any applicable rule or order
15 of this Court.

16 10. Defendants object to each Interrogatory to the extent it attempts to require
17 production of things not within Defendants' possession, custody, or control.

18 11. Defendants object to each Interrogatory to the extent it seeks information
19 without a time limitation, and is therefore overly broad, unduly burdensome, not
20 relevant to the claims or defenses of the parties, beyond the scope of the pleadings, and
21 not relevant to the claims or defenses of this case and/or not proportional to the needs
22 of the case.

23 12. Defendants object to each Interrogatory to the extent it seeks premature
24 disclosure of information that is properly the subject of expert discovery.

25 13. Defendants object to each Interrogatory to the extent it implies an act, or
26 acts, of infringement by Defendants.

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