

EXHIBIT 13
TO TRENT TANNER DECLARATION ISO
NUVASIVE'S COMBINED MOTIONS IN LIMINE

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3 SAN DIEGO DIVISION

4 NUVASIVE, INC., a Delaware)
corporation,)
5)
 Plaintiff,)
6)
 vs.)
7) Case No.
) 3:18-CV-00347-
8 ALPHATEC HOLDINGS, INC., a) CAB-MDD
Delaware corporation and)
9 ALPHATEC SPINE, INC., a)
California corporation,)
10)
 Defendants.)
_____)
11
12
13 HIGHLY CONFIDENTIAL
14 PURSUANT TO PROTECTIVE ORDER
15 VIDEOTAPED DEPOSITION OF
16 NUVASIVE, INC.
17 MATTHEW LINK
18
19 December 3, 2019
20 9:02 a.m.
21
22 3580 Carmel Mountain Road, Suite 300
23 San Diego, California
24
25 Lorie Rhyne, CSR No. 12905

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On Behalf of the Plaintiff:</p> <p>4 PAUL D. TRIPODI II, ESQ.</p> <p>5 Wilson Sonsini Goodrich & Rosati P.C.</p> <p>6 633 West Fifth Street, Suite 1550</p> <p>7 Los Angeles, California 90071</p> <p>8 (323) 210-2900</p> <p>9 ptripodi@wsgr.com</p> <p>10</p> <p>11 On Behalf of the Defendants:</p> <p>12 BRIAN J. NISBET, ESQ.</p> <p>13 Winston & Strawn LLP</p> <p>14 35 W. Wacker Drive</p> <p>15 Chicago, Illinois 60601</p> <p>16 (312) 558-3254</p> <p>17 bnisbet@winston.com</p> <p>18 -and-</p> <p>19 NIMALKA R. WICKRAMASEKERA, ESQ.</p> <p>20 Winston & Strawn LLP</p> <p>21 333 South Grand Avenue, Suite 3800</p> <p>22 Los Angeles, California 90071-1543</p> <p>23 (213) 615-1700</p> <p>24 nwickramasekera@winston.com</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 Videographer: GIANNI ORTIZ</p> <p>2 Also Present: MICHAEL DOYLE, in-house counsel,</p> <p>3 NuVasive</p> <p>4 CRAIG HUNSAKER, Executive Vice</p> <p>5 President and General Counsel</p> <p>6 at Alphatec Spine</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 INDEX OF EXAMINATION</p> <p>2 WITNESS: MATTHEW LINK</p> <p>3 EXAMINATION PAGE</p> <p>4 By Mr. Nisbet 7</p> <p>5</p> <p>6 INDEX TO EXHIBITS</p> <p>7 DEFENDANTS DESCRIPTION PAGE</p> <p>8 Exhibit 1 E-mail dated 10/3/2017,</p> <p>9 NUVA_ATEC0317796 to 61</p> <p>10 NUVA_ATEC0317797</p> <p>11 Exhibit 2 Consulting Agreement Memo</p> <p>12 dated December 6, 2017,</p> <p>13 NUVA_ATEC0236179 to 162</p> <p>14 NUVA_ATEC0236192</p> <p>15 Exhibit 3 Consulting Agreement Memo</p> <p>16 dated November 28, 2017,</p> <p>17 NUVA_ATEC0235939 to 162</p> <p>18 NUVA_ATEC0235951</p> <p>19 Exhibit 4 Declaration of Matthew Link in</p> <p>20 Support of Motion for Preliminary</p> <p>21 Injunction 191</p> <p>22 Exhibit 5 Defendants' Notice of Deposition</p> <p>23 of Nuvasive Inc. Pursuant to</p> <p>24 Rule 30(b)(6) 198</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Exhibit 6 E-mail dated 6/13/2017, NUVA_ATEC0303243</p> <p>2 to NUVA_ATEC0303244 206</p> <p>3 Exhibit 7 Reply Declaration of Matthew Link</p> <p>4 in Support of Motion For</p> <p>5 Preliminary Injunction 243</p> <p>6 Exhibit 8 E-mail dated 4/12/2018, NUVA_ATEC0302800</p> <p>7 to NUVA_ATEC0302801 258</p> <p>8 Exhibit 9 E-mail dated 5/11/2018,</p> <p>9 NUVA_ATEC0302812 264</p> <p>10 Exhibit 10 E-mail dated 7/24/2018,</p> <p>11 NUVA_ATEC0302819 267</p> <p>12 Exhibit 11 E-mail dated 4/2/2019,</p> <p>13 NUVA_ATEC0312120 to 273</p> <p>14 NUVA_ATEC0312129</p> <p>15 Exhibit 12 E-mail dated 4/28/2019,</p> <p>16 NUVA_ATEC0302834 287</p> <p>17 Exhibit 13 US Commercial Business Review -</p> <p>18 Q1, April 29, 2019, NUVA_ATEC0302901</p> <p>19 to NUVA_ATEC0302923 287</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 30

1 litigation against Alphatec?

2 A. I don't recall a specific conversation with

3 Mr. Lucier about why to bring this lawsuit outside of

4 questions that were related to my knowledge of -- of

5 what the offering was. I don't remember any specific

6 conversations beyond that, and I -- I don't recall even

7 a specific individual conversation or date.

8 My general recollection is that at some

9 point, he had asked me if I had familiarity with the

10 offering -- I'm sorry -- the -- the lateral product

11 offering, which I think is characterized under

12 Battalion.

13 Q. And when was that conversation?

14 A. I don't -- I don't remember the specifics of

15 when that conversation was.

16 Q. In the aftermath of Mr. Miles' departure,

17 did you ever hear or see Greg Lucier say anything

18 negative about Mr. Miles?

19 A. To the best of my recollection, Mr. Lucier

20 expressed frustration around his departure and I guess

21 general disappointment on his decision to leave.

22 Q. Tell me about that conversation.

23 A. Again, I don't remember a specific

24 individual conversation. I'm just thinking generally

25 of commentary around the time of the departure was

Page 32

1 A. My -- my direct knowledge or understanding

2 of any comments around his disappointment or

3 frustration would be closer to five than a hundred.

4 Q. In your view, did -- did Mr. Lucier's

5 feelings of frustration and dis- -- disappointment have

6 anything to do with NuVasive deciding to bring this

7 litigation against Alphatec?

8 A. I -- I do not have firsthand knowledge to

9 that effect.

10 Q. I -- right. I guess I'm asking for your

11 view, your -- your -- your impression, your perception.

12 In your view, did -- did Mr. Lucier's frustration with

13 Mr. Miles have anything to do with NuVasive's decision

14 to bring this litigation against Alphatec?

15 MR. TRIPODI: Objection. Form.

16 THE WITNESS: I -- I would be -- without

17 having had firsthand knowledge of him, you know,

18 stating that -- anything to that effect, I'd be

19 speculating.

20 BY MR. NISBET:

21 Q. You never heard him say anything like that?

22 A. I do not recall hearing him say that he was

23 bringing this lawsuit around the potential IP

24 infringement of products and technology as a result of

25 his personal frustration. I do not recall ever hearing

Page 31

1 frustration based on a belief that -- at least as I

2 recall, Greg Lucier stating that there was an agreement

3 for Pat to stay with the organization in the capacity

4 that he was at the time of his departure.

5 Q. Okay. What -- when did that conversation

6 take place?

7 A. Again, I don't remember two and a half years

8 ago specific dates of conversations -- I guess a little

9 over two years ago. Again, it's just a -- a general --

10 again, as best I recall -- commentary around the time

11 of -- of the departure.

12 Q. How often did you hear Mr. Lucier say things

13 like that?

14 MR. TRIPODI: Objection. Form.

15 THE WITNESS: I -- I -- I don't know that I

16 can define a -- a specific frequency.

17 BY MR. NISBET:

18 Q. Well, was it more than once?

19 A. I -- it would be fair to characterize it as

20 more than once, yes.

21 Q. Was it more than five times?

22 A. Again, at this point, I'd be speculating on

23 the specifics of that.

24 Q. Well, was it -- is it -- was it closer to a

25 hundred or closer to five?

Page 33

1 him say that directly.

2 Q. Okay. Did you ever hear him say that sort

3 of indirectly, conversations about Mr. Miles and --

4 MR. TRIPODI: Objection.

5 BY MR. NISBET:

6 Q. -- coincided with conversations about this

7 litigation?

8 MR. TRIPODI: Objection. Form.

9 THE WITNESS: My recollection of the

10 conversations were, you know, again, relate -- related

11 to the product and the technology. Those were my

12 involvement.

13 BY MR. NISBET:

14 Q. Did you have any one-on-one meetings with

15 Mr. Lucier while he was the CEO?

16 A. Yes, I did.

17 Q. Okay. And at -- at any point in those

18 one-on-one meetings, did Mr. Lucier raise this

19 litigation with Alphatec?

20 MR. TRIPODI: Objection. Vague.

21 THE WITNESS: I don't recall a specific

22 discussion around this litigation with Alphatec in any

23 one-on-one meeting.

24 BY MR. NISBET:

25 Q. So in any meeting that you've ever had with

Page 34

1 Mr. Lucier, do you ever recall him identifying the
 2 reasons why he decided to -- to green light this
 3 litigation against Alphatec?
 4 MR. TRIPODI: Objection. Form.
 5 THE WITNESS: My recollection of
 6 conversations with Greg around this litigation, again,
 7 was related to, I guess, the -- whether or not there
 8 were similarities in the technology that provided merit
 9 to this. And those were the discussions that I had.
 10 BY MR. NISBET:
 11 Q. Did Mr. Lucier -- in any of your
 12 conversations -- in any meeting that you ever had with
 13 Mr. Lucier, did he ever talk about what his goals were
 14 for NuVasive in authorizing this litigation?
 15 MR. TRIPODI: Counsel, I assume you're
 16 excluding any meetings that involved counsel in your
 17 question?
 18 MR. NISBET: Well, excluding any privileged
 19 communications. Just because a meeting involves
 20 counsel doesn't necessarily mean it's a privileged
 21 communication.
 22 MR. TRIPODI: Well, I don't think the
 23 witness can -- can -- we'd -- we'd have to -- I'd have
 24 to prep his knowledge before -- you're asking questions
 25 about meetings he had with counsel present.

Page 36

1 litigation against Alphatec?
 2 MR. TRIPODI: All right. Let's take that
 3 break.
 4 THE VIDEOGRAPHER: We're going off the
 5 record at 9:43 a.m.
 6 (A recess is taken.)
 7 THE VIDEOGRAPHER: We are back on the record
 8 at 9:58 a.m.
 9 MR. TRIPODI: So based on my discussions
 10 with the witness, I don't believe that he is able to
 11 answer the question without invading the
 12 attorney-client privilege or work product privilege.
 13 Instruct him not to answer.
 14 MR. NISBET: Okay.
 15 BY MR. NISBET:
 16 Q. In any conversations that you ever had with
 17 Mr. Lucier in a meeting or otherwise, did you ever hear
 18 him state that he wanted to bring litigation generally
 19 against Mr. Miles or Alphatec?
 20 MR. TRIPODI: Objection. Vague. Objection
 21 to form.
 22 Instruct the witness to take caution with
 23 respect to any meetings or conversations that included
 24 counsel.
 25 THE WITNESS: So in discussion outside of

Page 35

1 MR. NISBET: That's fine. We can take a
 2 break if there is a privilege concern.
 3 MR. TRIPODI: I'd ask you just qualify your
 4 question.
 5 BY MR. NISBET:
 6 Q. Yeah. I'm not looking for any privileged
 7 communications. Just because a -- a meeting has a
 8 lawyer in it doesn't mean that it's a privileged
 9 communication. So if you have any questions about
 10 whether or not something may or may not be privileged,
 11 we can take a break after I ask a question, and you're
 12 free to discuss it with counsel. Okay?
 13 A. Yeah, it's probably appropriate, then, to
 14 take a break, if that's okay.
 15 MR. NISBET: Sure. We can do that. We can
 16 do that now. I'm fine with that.
 17 MR. TRIPODI: Unless you'd like to -- to
 18 move on and come back to it after we take our first
 19 break.
 20 MR. NISBET: No, let's -- let's stick on it.
 21 MR. TRIPODI: Okay. So what is the specific
 22 question that you'd like him to answer?
 23 MR. NISBET: In -- in any -- in any meeting
 24 with Mr. Lucier, did he ever identify his
 25 goals/reasons/desired outcomes in -- for bringing this

Page 37

1 attorney-client privilege, yes, I did hear Greg Lucier
 2 make some general -- general commentary on litigation.
 3 BY MR. NISBET:
 4 Q. Okay. When were those comments made?
 5 A. Again, I don't remember specific
 6 conversations or exact dates. To the best of my
 7 recollection, it would have been around the time of
 8 Mr. Miles' departure; so let's call it early fall of
 9 2017.
 10 Q. Okay. Who else was involved in those
 11 conversations?
 12 A. Again, I don't remember any one specific
 13 conversation. It's just my general recollection of,
 14 you know, discussions that may have happened at that
 15 time.
 16 Q. Where did those conversations take place?
 17 A. Again, I -- I don't have a specific
 18 recollection of -- of the discussions or the individual
 19 conversations. It's just a general recollection.
 20 Q. Is it -- is it -- I mean, is it fair to
 21 characterize Mr. Miles' departure as somewhat of a
 22 momentous event at NuVasive?
 23 MR. TRIPODI: Objection to form.
 24 THE WITNESS: I -- I would -- for myself
 25 personally, would characterize his departure as

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