1 **WILSON SONSINI GOODRICH & ROSATI P.C.**
PAUL D. TRIPODI II (SBN 162380)
2 ptripodi@wsgr.com
WENDY L. DEVINE (SBN 246337)
3 wdevine@wsgr.com
NATALIE J. MORGAN (SBN 211143)
4 nmorgan@wsgr.com
633 West Fifth Street, Suite 1550
5 Los Angeles, CA 90071
Telephone: 323-210-2900
6 Fax: 866-974-7329

7 **Hilgers Graben PLLC**
MICHAEL T. HILGERS (*Pro Hac Vice*)
8 mhilgers@hilgersgraben.com
575 Fallbrook Blvd, Suite 202
9 Lincoln, NE 68521
Telephone: 402-218-2106
10 Fax: 402-413-1880

11 *Attorneys for Plaintiff NuVasive, Inc.*

12   UNITED STATES DISTRICT COURT

13   SOUTHERN DISTRICT OF CALIFORNIA

14   SAN DIEGO DIVISION

15 NUVASIVE, INC., a Delaware   ) Case No. 18-cv-00347-CAB-MDD
   corporation,   )
16   ) **DECLARATION OF TRENT D.**
) **TANNER IN SUPPORT OF**
        Plaintiff,   ) **NUVASIVE, INC.'S OPPOSITION**
17   ) **TO DEFENDANTS' MOTIONS IN**
        v.   ) **LIMINE NOS. 1-10**
18   )
19 ALPHATEC HOLDINGS, INC., a   ) PER CHAMBERS RULES, NO
   Delaware corporation, and ALPHATEC   ) ORAL ARGUMENT UNLESS
20 SPINE, INC., a California corporation,) SEPARATELY ORDERED BY THE
) COURT
21   Defendants.   )
) Judge: Hon. Cathy Ann Bencivengo
22   ) Courtroom: 15A
)
23   ) Hearing: November 12, 2021
)
24 _____) Trial: December 8. 2021

25

26

27

28

DECLARATION OF TRENT D. TANNER ISO   18-cv-00347-CAB-MDD

1   I, Trent D. Tanner, declare the following:

2   1.   I am a partner with Hilgers Graben PLLC, and counsel for Plaintiff,

3   NuVasive, Inc. ("NuVasive"). I submit this Declaration in support NuVasive's

4   Opposition to Defendants' Motions in Limine Nos. 1-10. I have personal

5   knowledge of the facts set forth herein based on information made available to me,

6   and if called as a witness, I would competently testify to those facts.

7   2.   Attached hereto as **Exhibit 1** is a true and correct copy of excerpts of

8   a Draft Proposed Pretrial Order with Alphatec's positions.

9   3.   Attached hereto as **Exhibit 2** is a true and correct copy of excerpts of

10   *Apple v. Samsung,* No. 12-cv-00630-LHK, Dkt. 1622 Trial Tr. (N.D. Cal. Apr. 7,

11   2014).

12   4.   Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of

13   *Univ. of Pittsburgh v. Varian Med. Sys., Inc.*, 2:08-cv-1307-AJS, Dkt. 569, Trial

14   Tr. (W.D. Pa. Feb. 6, 2012).

15   5.   Attached hereto as **Exhibit 4** is a true and correct copy of excerpts to

16   the Deposition Transcript of Scott Robinson's 30(b)(6) Deposition, dated October

17   29, 2019.

18   6.   Attached hereto as **Exhibit 5** is a true and correct copy of excerpts of

19   the Supplemental Expert Report of Blake Inglish, dated November 20, 2020 with

20   Supplemental Schedules 4, 5, and 15.

21   7.   Attached hereto as **Exhibit 6** is a true and correct copy of excerpts of

22   the Supplemental Expert Report of Blake Inglish – Update, dated January 11, 2021

23   with Updated Supplemental Schedules 1F, 2F, 4 and 5.

24   8.   Attached hereto as **Exhibit 7** is a true and correct copy of a Minute

25   Entry in *Trading Technologies International, Inc. v. BCG Partners, Inc.*, Dkt.

26   2004, dated July 29, 2021.

27

28

DECLARATION OF TRENT D. TANNER ISO   1   18-cv-00347-CAB-MDD

9.   Attached hereto as **Exhibit 8** is a true and correct copy of excerpts of the Expert Report of Blake Inglish with Schedule 4, dated November 18, 2019.

10.   Attached hereto as **Exhibit 9** is a true and correct copy of excerpts of the Corrected Opening Expert Report of Jim Youssef, M.D., re U.S. Patent Nos. 8,361,156 and 8,187,334, dated November 20, 2020.

11.   Attached hereto as **Exhibit 10** is a true and correct copy of a November 21, 2016 e-mail bearing bates number NUVA_ATEC0331859.

12.   Attached hereto as **Exhibit 11** is a true and correct copy of a January 9, 2012 email and attachment bearing bates number NUVA_ATEC0299006-008 and NUVA_ATEC0299381-400.

13.   Attached hereto as **Exhibit 12** is a true and correct copy of Appendix A re Alphatec's Rule 26 Disclosures.

14.   Attached hereto as **Exhibit 13** is a true and correct copy of excerpts of Mr. Paul McClintock's arbitration testimony transcript in *NuVasive, Inc. v. Rival Medical, LLC*, in 01-190001, dated September 28, 2020.

15.   Attached hereto as **Exhibit 14** is a true and correct copy of excerpts of the NuVasive, Inc.'s 2019 Section 14(a) Proxy Statement.

16.   Attached hereto as **Exhibit 15** is a true and correct copy of a printout of Eric Finley's LinkedIn Profile Page, last visited on November 5, 2021.

17.   Attached hereto as **Exhibit 16** is a true and correct copy of a printout of Matthew Link's LinkedIn Profile Page, last visited on November 1, 2021.

18.   Attached hereto as **Exhibit 17** is a true and correct copy of an email exchange between Billy Wardlaw and Trent Tanner (among others), dated October 22-28, 2021.

19.   Attached hereto as **Exhibit 18** is a true and correct copy of a printout of NuVasive, Inc.'s "Leadership Team" webpage, http://www.nuvasive.com/about/leadership/, last visited on November 3, 2021.

20.   Attached hereto as **Exhibit 19** is a true and correct copy of excerpts the Deposition Transcript of Kyle Malone, dated November 8, 2019.

21.   Attached hereto as **Exhibit 20** is a true and correct copy of a June 29, 2012 email and attachment bearing bates numbers NUVA_ATEC0313306-08 and NUVA_ATEC0313708-16.

22.   Attached hereto as **Exhibit 21** is a true and correct copy of excerpts of Warsaw's Patent Owner Response, in *NuVasive, Inc. v. Warsaw Orthopedic, Inc.*, IPR2013-00206, bearing bates numbers ATEC_LLIF000062136-2209.

23.   Attached hereto as **Exhibit 22** is a true and correct copy of excerpts of the Deposition Transcript of Barton Sachs, M.D., in IPR2013-00206 and IPR2013-00208, bearing bates numbers NUVA_ATEC0108864-9048, dated February 25, 2014.

24.   Attached hereto as **Exhibit 23** is a true and correct copy of the Supplement to Expert Reports of Jim Youssef, dated January 8, 2020.

25.   Attached hereto as **Exhibit 24** is a true and correct copy of excerpts of the Rebuttal Report of Barton L. Sachs, M.D., M.B.A., F.A.C.P.E., F.A.C.H.E., dated November 22, 2019.

26.   Attached hereto as **Exhibit 25** is a true and correct copy of excerpts of the Supplemental Rebuttal Expert Report of Keith R. Ugone, Ph.D., dated December 18, 2020.

27.   Attached hereto as **Exhibit 26** is a true and correct copy of excerpts of the 30(b)(6) Deposition Transcript of Robert Judd, dated November 5, 2019.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 5th day of November 2021, in Lincoln, Nebraska.

By: /s/ *Trent D. Tanner*
          Trent D. Tanner

DECLARATION OF TRENT D. TANNER ISO   3   18-cv-00347-CAB-MDD

1

TABLE OF EXHIBITS

EXHIBIT NOS.	PAGE NOS.
1.	1 – 5
2.	6 – 17
3.	18 – 27
4.	28 – 38
5.	39 – 248
6.	249 – 269
7.	270
8.	271 – 387
9.	388 – 416
10.	417
11.	418 – 440
12.	441
13.	442 – 449
14.	450 – 453
15.	454 – 455
16.	456 – 460
17.	461 – 465
18.	466 – 473
19.	474 – 496
20.	497 – 508
21.	509 – 514
22.	515 – 525
23.	526 – 539
24.	540 – 549

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF TRENT D. TANNER ISO   4   18-cv-00347-CAB-MDD

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.