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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-MDD-CAB

MOVANT GREGORY LUCIER'S UNOPPOSED EX PARTE APPLICATION FOR SHORTENING OF TIME RELATED TO MOTION TO QUASH TRIAL SUBPOENA (DOC NO. 373)

Pursuant to Local Rule 7.1(e)(5), third-party movant Gregory Lucier submits this unopposed *ex parte* application for an order shortening the briefing schedule related to his Motion to Quash Trial Subpoena (Doc. No. 373). Specifically, Mr. Lucier requests an order setting February 23, 2022 as the deadline for Alphatec to respond in opposition to Mr. Lucier's motion to quash, and February 28, 2022 as the deadline for Mr. Lucier to reply in support of the motion to quash.

In support of this Application, Mr. Lucier states as follows:

- On January 4, 2022, Defendants Alphatec Holdings, Inc. and Alphatec Spine, Inc. (collectively, "Alphatec") served Mr. Lucier with a subpoena commanding him to appear to testify at trial on February 28, 2022. *See* Doc. No. 373-2 at 6 (Lucier Decl. ¶ 38).
- Counsel for Mr. Lucier and for Alphatec met and conferred on several

1 occasions regarding Alphatec’s subpoena. Tanner Decl. ¶ 2.¹ During these
2 meet-and-confers, Mr. Lucier raised several objections to the subpoena,
3 including the fact that Alphatec failed to tender payment of his witness fee
4 and mileage allowance concurrently with the subpoena as required by Rule
5 45(b). Tanner Decl. ¶ 3; *see also* Doc. No. __-__ at 6 (Lucier Decl. ¶ 38).

- 6 • As a result of these meet-and-confers, Alphatec agreed to the briefing
7 schedule for Mr. Lucier’s motion to quash, as outlined in this Application,
8 and to provide the witness fee and mileage allowance, in exchange for Mr.
9 Lucier’s agreement to forgo the requirement of concurrent service. Tanner
10 Decl. ¶ 4.
- 11 • On February 9, 2022, Mr. Lucier moved to quash Alphatec’s subpoena.
12 Doc. No. __. Mr. Lucier’s motion is timely. *Odyssey Reinsurance Co. v.*
13 *Nagby*, No. 16-CV-3038-BTM(WVG), 2018 U.S. Dist. LEXIS 70641, at
14 *5 (S.D. Cal. Apr. 26, 2018) (to be “timely,” motion to quash must be filed
15 “before the compliance date designated in the subpoena”); *N. Am. Co. for*
16 *Life & Health Ins. v. Philpot*, No. 08cv270 BEN (NLS), 2010 U.S. Dist.
17 LEXIS 124577, at *6-7 (S.D. Cal. Nov. 24, 2010) (same).
- 18 • Trial is scheduled to begin on March 1, 2022. *See* Doc. No. 368.
- 19 • Although the subpoena that Mr. Lucier has moved to quash commands his
20 appearance at trial on February 28, 2022, counsel for Alphatec has agreed
21 that if the Court denies Mr. Lucier’s motion to quash, Mr. Lucier need not
22 appear to testify at trial until at least March 7, 2022. Tanner Decl. ¶ 5.
- 23 • Mr. Lucier makes this Application to ensure that the Court has a full set of
24

25 ¹ “Tanner Decl.” refers to the “Declaration of Trenton D. Tanner In Support of
26 Movant Gregory Lucier’s *Ex Parte* Application for Shortening of Time Related to
27 Motion to Quash Trial Subpoena,” submitted herewith.

1 briefing before the time set for Mr. Lucier’s compliance with the
2 subpoena.

- 3 • Undersigned counsel has met and conferred with counsel for Alphatec.
4 Counsel for Alphatec indicates that Alphatec does not oppose the relief
5 sought in this Application and has agreed to submit its Response brief on
6 or before February 23, 2022. Tanner Decl. ¶¶ 2-4.

7 WHEREFORE, Movant Mr. Lucier requests an order from the Court shortening the
8 time for Alphatec to submit its Response brief in opposition to Mr. Lucier’s motion
9 to quash on or before February 23, 2022, and for Mr. Lucier to submit his Reply
10 brief in support of his motion to quash on or before February 28, 2022.

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1 Dated: February 9, 2022

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2 By: /s/ Trenton Tanner

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