

EXHIBIT 4

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA - SAN DIEGO DIVISION

NUVASIVE, INC., a Delaware)
corporation,)
Plaintiff,)
vs.) 3:18-CV-00347-CAB-MDD
ALPHATEC HOLDINGS, INC., a)
Delaware corporation and)
ALPHATEC SPINE, INC., a)
California corporation,)
Defendants.)
_____)

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VIDEO DEPOSITION OF PAUL McCLINTOCK

DECEMBER 9, 2021

Reported by: Rosalie A. Kramm, CSR No. 5469, RPR, CRR

1 MR. CARLSON: Eric Carlson, also from Wilson
2 Sonsini on behalf of plaintiff, and with us today we have
3 Mike Doyle and Kate Corlew from NuVasive, in-house.

4 MR. LOMBARDI: George Lombardi from Winston &
5 Strawn on behalf of Alphatec.

6 THE VIDEOTAPE OPERATOR: Would the reporter
7 please swear in the witness.

8 * * *

9 PAUL McCLINTOCK,
10 having been first duly sworn, testified as follows:

11

12 EXAMINATION

13 BY MS. WICKRAMASEKERA:

14 Q. Good morning, Mr. McClintock.

15 A. Good morning.

16 MR. FODEMAN: Before you start, just one thing
17 I want to put on the record, and then I -- as I raised
18 with Mr. Hunsaker before we started, I informed him that
19 he had previously represented the witness in his personal
20 individual capacity many, many years ago, 2008. I don't
21 view it as a problem at all. I simply reminded him in
22 case he had forgotten. I don't anticipate there will be
23 questioning that implicates any privileged information
24 related to that representation, but to the extent we
25 stray into those topics, we can revisit the issue at that

1 BY MS. WICKRAMASEKERA:

2 Q. At the time did you believe that was one of the
3 reasons that they would want to purchase from you?

4 MR. FODEMAN: Objection. Form.

5 THE WITNESS: At the time I am sure I would
6 believe, yes, that was one of the reasons.

7 BY MS. WICKRAMASEKERA:

8 Q. Did you see your relationship with these
9 surgeons as critical to being -- to enabling you to sell
10 products while you were at the distributorship?

11 A. "Critical" meaning?

12 Q. Critical to making the sale.

13 MR. FODEMAN: Objection. Form.

14 THE WITNESS: I mean, again, I would say, like
15 we said earlier, just a second ago, I think one of the
16 reasons that it would potentially be critical, yes.

17 BY MS. WICKRAMASEKERA:

18 Q. Do you think it was one of the more important
19 reasons?

20 MR. FODEMAN: Objection. Form.

21 THE WITNESS: I think converting -- yes, if
22 they were going to be things driving a surgeon to
23 convert, I think the things that drive that are
24 important, and one of the reasons is the relationship,
25 and I would say, yes.

1 BY MS. WICKRAMASEKERA:

2 Q. So is it your testimony that you do believe
3 that the relationship with the surgeon is one of the
4 important reasons that drives a surgeon to convert?

5 MR. FODEMAN: Objection. Form.

6 THE WITNESS: Yes.

7 BY MS. WICKRAMASEKERA:

8 Q. In fact, you are aware that NuVasive is taking
9 that identical position in other lawsuits today, correct?

10 MR. FODEMAN: Objection.

11 THE WITNESS: I'm sorry. What position?

12 BY MS. WICKRAMASEKERA:

13 Q. That relationships with surgeons drive sales.

14 MR. FODEMAN: Objection. Form.

15 THE WITNESS: I don't think I can speak to
16 NuVasive's motivation for a lawsuit.

17 BY MS. WICKRAMASEKERA:

18 Q. Well, in fact you've testified in one of these
19 lawsuits, correct?

20 A. Right. I mean I -- I feel like it was a little
21 bit open-ended. So I was answering generally speaking.
22 And I -- I'm not aware of all of the lawsuits, I wouldn't
23 be, that we have going on at any given time.

24 Q. Do you have a lot of lawsuits going on right
25 now?

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