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Attorneys for Plaintiffs
ALPHATEC SPINE, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALPHATEC SPINE, INC.

Plaintiff,

v.

BIOMET, INC.,

Defendant.

Case No. **'11CV0089 JLS JMA**

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

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1 Plaintiff Alphatec Spine, Inc. ("Alphatec"), for its complaint against defendant Biomet, Inc.
2 ("Biomet") alleges, upon its own knowledge as to itself and otherwise upon information and belief,
3 as follows:

4 **NATURE OF THE CASE**

5 1. This is an action for patent infringement of United States Patent No. 5,290,312. This
6 action arises out of Biomet's infringing manufacture, marketing, use, sale, and offer to sell its TPS-
7 TL System.

8 **THE PARTIES**

9 2. Plaintiff Alphatec Spine, Inc. is a Delaware corporation with its principal place of
10 business at 5818 El Camino Real, Carlsbad, California 92008.

11 3. Upon information and belief, Defendant Biomet, Inc. is an Indiana corporation with
12 its principal place of business at 56 East Bell Drive, Warsaw, Indiana 46582.

13 **JURISDICTION AND VENUE**

14 4. This is a civil action for patent infringement arising under the patent laws of the
15 United States 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over this action
16 pursuant to, *inter alia*, 28 U.S.C. §§ 1331 and 1338(a).

17 5. This Court has personal jurisdiction over Biomet by virtue, on information and
18 belief, of its continuous and systematic contacts with California in the normal course of its business.

19 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)-(c) and 1400(b)
20 because a substantial part of the events or omissions giving rise to the claims herein occurred in,
21 and Biomet does business in, this judicial district.

22 **FACTUAL BACKGROUND**

23 7. On March 1, 1994, the United States Patent and Trademark Office duly and legally
24 issued U.S. Patent No. 5,290,312 (the "'312 Patent") to Alphatec as the assignee. A true and correct
25 copy of the '312 Patent is attached hereto as Exhibit A.

26 8. Upon information and belief, Biomet has been manufacturing, marketing, selling,
27 offering to sell and distributing a system of products called the TPS-TL.
28

CLAIM FOR RELIEF

Infringement of U.S. Patent No. 5,290,312

9. Alphatec realleges and incorporates by reference the paragraphs 1-8 above as if fully set forth herein.

10. Without Alphatec's authority, Biomet has and continues to directly infringe one or more claims of the '312 Patent by making, using, marketing, selling, and offering for sale the TPS-TL system.

11. Without Alphatec's authority, Biomet has and continues to knowingly and intentionally induce members of the medical community, who include but are not limited to, physicians, nurses, hospitals, medical clinics and medical facilities, for whom Biomet manufactures, markets, offers to sell, sells, and distributes its TPS-TL system, to directly infringe one or more claims of the '312 Patent (for example, by providing instructions and/or manuals regarding its TPS-TL system).

12. Through the sale, marketing, and distribution of its TPS-TL system, Biomet, without Alphatec's authority, has been contributing and continues to contribute to the direct infringement of one or more claims of the '312 Patent by members of the medical community, who include but are not limited to, physicians, nurses, hospitals, medical clinics and medical facilities, for whom Biomet manufactures, markets, offers to sell, sells, and distributes its TPS-TL system, through the medical community's treatment of patients using its TPS-TL system. Biomet manufactures, uses, actively markets, promotes, offers for sale and sells its TPS-TL system in the United States and will continue to do so, knowing the same to be a material component for practicing the patented methods of the '312 Patent and knowing that it is especially made or adapted for use in the patented methods of the '312 Patent and knowing that it is not a staple article of commerce suitable for substantial non-infringing use.

13. Biomet's infringement of the '312 Patent has caused and continues to cause damage to Alphatec in an amount to be determined at trial.

1 14. Biomet's infringement of the '312 Patent has caused and will continue to cause
2 immediate and irreparable harm to Alphatec for which there is no adequate remedy at law, unless
3 this Court enjoins and restrains such activities.

4 15. On information and belief, Biomet knew of the '312 Patent and Biomet's
5 infringement of the '312 Patent is willful and deliberate.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Alphatec prays for relief as follows:

8 1. For judgment that Biomet has infringed, contributed to the infringement of, and/or
9 induced the infringement of one or more claims of the '312 Patent;

10 2. For a preliminary and permanent injunctions enjoining Biomet, its subsidiaries,
11 affiliates, officers, directors, agents, employees, licensees, representatives, OEMs, dealers,
12 distributors, customers, and any persons acting in concert or participation with any of them, from
13 further infringement of the '312 Patent;

14 3. For a judgment awarding Alphatec damages in an amount sufficient to compensate it
15 for Biomet's infringement of the '312 Patent, together with an accounting, pre-judgment and post-
16 judgment interest and costs under 35 U.S.C. § 284, but in no event less than a reasonable royalty,
17 and an increase of such damages pursuant to 35 U.S.C. § 284 because of the knowing, willful and
18 wanton nature of Biomet's conduct;

19 4. For a judgment declaring that this is an "exceptional case" pursuant to 35 U.S.C. §
20 285, and all other applicable law, and awarding Alphatec all costs of suit and attorneys' fees
21 pursuant to those provisions; and

22 5. For all other and further relief deemed just and proper by the Court.

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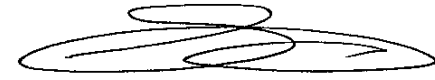
JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Alphatec hereby demands trial by jury of all issues so triable.

Dated: January 14, 2011

MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO

By: _____



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