

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SCOTT PHILLIPS, derivatively on behalf of)
ALPHATEC HOLDINGS, INC. and)
individually on behalf of himself and all other)
similarly situated shareholders of ALPHATEC)
HOLDINGS, INC.,)

Plaintiff,)

v.)

LESLIE H. CROSS, MORTIMER)
BERKOWITZ III, JOHN H. FOSTER, R. IAN)
MOLSON, STEPHEN E. O'NEIL, JAMES R.)
GLYNN, ROHIT M. DESAI, SIRI S.)
MARSHALL, LUKE T. FAULSTICK,)
STEPHEN H. HOCHSCHULER, DIRK)
KUYPER, MICHAEL O'NEILL, WILLIAM)
PATRICK RYAN AND THOMAS MCLEER,)

Defendants,)

and)

ALPHATEC HOLDINGS, INC., a Delaware)
Corporation,)

Nominal Defendant.)

Civil Action No. 1:13-cv-00948-RGA

**NOTICE OF PENDENCY AND PROPOSED
SETTLEMENT OF ALPHATEC ACTION**

TO: ALL OWNERS OF ALPHATEC HOLDINGS, INC. (“ALPHATEC”) COMMON STOCK AS OF APRIL 23, 2013 THROUGH JUNE 21, 2013, THE DATE OF THE CONSUMMATION OF THE 2013 ANNUAL MEETING (“CLASS MEMBER”)

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED.

This notice has been disseminated pursuant to an Order of the United States District Court for the District of Delaware (the “Court”). The purpose of the notice is to advise you of the proposed settlement (“Settlement”), as set forth in a Stipulation of Settlement dated as of September 20, 2013 (“Stipulation”), of the above-captioned action pending before the Court (“Action”), and of the hearing on final approval of the proposed Settlement contemplated by the Stipulation (“Settlement Hearing”). The Settlement will fully resolve the Action on the terms set forth in the Stipulation and summarized in this notice, including the dismissal of the Action with prejudice. For a more detailed statement of the matters involved in the Action, the Settlement, and the terms discussed in this notice, the Stipulation may be inspected at the Office of the Clerk of the United States District Court for the District of Delaware, located at the United States District Court, 844 N. King Street, Wilmington, Delaware 19801, during regular business hours of each business day. A copy of the Stipulation is also available on the website of Alphatec Holdings, Inc. (“Alphatec” or the “Company”) at <http://investors.alphatecspine.com>.

You may have the right to object to the Settlement in the manner provided in this Notice. If you fail to object in the manner provided at least fourteen (14) calendar days before the Settlement Hearing, you will be deemed to have waived your objections and will be bound by the Judgment to be entered and the releases to be given, unless otherwise ordered by the Court.

This notice is not intended to be an expression of any opinion by the Court with respect to the merits of the claims made in the Action, but is merely to advise you of the pendency and settlement of the Action.

I. DEFINITIONS USED IN THIS NOTICE

1. “Action” means the above-captioned action pending before the Court.
2. The “Class” (to be composed of “Class Members”) means all record and beneficial owners of Alphatec common stock during the period beginning on April 23, 2013 through June 21, 2013, the date of the 2013 annual meeting of stockholders, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns, or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them. Excluded from the Class are Defendants, members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, and the legal representatives, heirs, successors or assigns of any such excluded person. Also excluded from the Class are those record and beneficial owners of Alphatec common stock who validly request exclusion from the Class, to the extent that they are able to do so under Rule 23 of the Federal Rules of Civil Procedure, pursuant to Section IX herein.
3. “Defendants” means, collectively, nominal defendant Alphatec and the Director Defendants and Officer Defendants as defined herein.
4. “Effective Date” means the first date by which all of the events and conditions specified in Section 5.1 of the Stipulation have been met and have occurred.
5. “Fee and Expense Award” means the award of attorneys’ fees and reimbursement of expenses incurred in the Action for which Plaintiff’s Counsel intends to make an application

to the Court, as defined below, for and in recognition of the benefit conferred on Alphatec by the agreed-to corporate governance reforms, and which the Defendants reserve the right to oppose.

6. “Director Defendants” means, collectively, Leslie H. Cross, Mortimer Berkowitz III, John H. Foster, R. Ian Molson, Stephen E. O’Neil, James R. Glynn, Rohit M. Desai, Siri S. Marshall, Luke T. Faulstick, Stephen H. Hochschuler, and Dirk Kuyper.

7. “Officer Defendants” means, collectively, Michael O’Neill, William Patrick Ryan, and Thomas McLeer.

8. “Judgment” means the judgment to be rendered by the Court , substantially in the form attached as Exhibit D to the Stipulation, or as modified pursuant to the agreement of the Settling Parties.

9. “Plaintiff” means Scott Phillips, individually on behalf of himself and derivatively on behalf of Alphatec.

10. “Plaintiff’s Counsel” means the Plaintiff’s counsel of record.

12. “Settling Parties” means, collectively, the Plaintiff and the Defendants.

II. THE ACTION

Plaintiff Scott Phillips filed his Stockholder Derivative Complaint (“Complaint”) in this Court on May 28, 2013, instituting the above-captioned action (“Action”). The Complaint alleged, among other things, that the Defendants breached their fiduciary duties to the Company by granting option awards in excess of the amount allowed by the Amended and Restated 2005 Employee, Director, and Consultant Stock Plan (“Plan”); the Director Defendants engaged in a waste of corporate assets; the Officer Defendants received unjust enrichment as a result of the excess awards; and the Board breached its fiduciary duty of candor by making materially false and misleading statements in the 2013 Proxy. The Complaint sought, among other things, to

rescind the excess grants awarded to the Officer Directors and to require Alphatec to take all necessary actions to reform and improve its corporate governance to ensure compliance with the Plan. On May 28, 2013, Plaintiff filed a Motion for Preliminary Injunction, which sought an order preliminarily enjoining Alphatec's annual meeting of stockholders scheduled to be held on June 17, 2013, until the Board corrected the false and misleading statements in the 2013 Proxy. The Court set a hearing on the Motion for Preliminary Injunction for June 12, 2013. On September 15, 2013, after arm's-length negotiations, the Settling Parties entered into a Memorandum of Understanding, which memorialized an agreement in principle providing for the settlement of all claims in the Action ("Memorandum of Understanding").

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

The Defendants deny any liability in connection with the Action and the claims asserted by Plaintiff in the Complaint. Nonetheless, the Defendants have concluded that litigating the Action to conclusion could be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. The Defendants also have taken into account the uncertainty and risks inherent in any litigation. The Defendants have, therefore, determined that it is desirable and beneficial for them that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation. By agreeing to the Settlement and entering into the Stipulation, the Defendants do not admit or concede any alleged fact, wrongdoing, liability, and/or violations of any laws.

IV. PLAINTIFF'S CLAIMS AND THE BENEFITS OF SETTLEMENT

Plaintiff believes that the claims asserted in the Action have merit. However, Plaintiff's Counsel recognizes and acknowledges the risk, expense, and length of continued proceedings necessary to prosecute the Action against the Defendants through trial and, potentially, through

appeals. Plaintiff's Counsel has also taken into account the uncertain outcome inherent in any litigation, as well as the difficulties and delays of such litigation. Plaintiff's Counsel is mindful of the inherent problems of proof under, and possible defenses to, the claims asserted in the Action. Plaintiff's Counsel believes that the proposed Settlement set forth in the Stipulation confers benefits, through the provision and adoption of corporate governance reforms and remedial measures, upon the Company and its stockholders. Based on a thorough investigation and evaluation of the facts and analysis of applicable law, Plaintiff's Counsel has determined that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Company and the Company's stockholders.

V. THE SETTLEMENT HEARING

The Settlement Hearing will be held before the Honorable Richard G. Andrews on March 17, 2014 at 3:00 p.m. for the purpose of determining: (i) whether the Settlement is fair, reasonable, and adequate, and should be finally approved by the Court; (ii) whether a Judgment should be entered dismissing the Action with prejudice; and (iii) whether the Fee and Expense Award should be approved. The Settlement Hearing may be continued by the Court at the Settlement Hearing or at any adjourned session thereof without further notice to Class Members.

VI. THE SETTLEMENT

The terms and conditions of the Settlement are fully set forth in the Stipulation. The Stipulation has been filed with the Court and is also available for viewing on the Company's website at <http://investors.alphatecspine.com>. The following is only a summary of its terms.

Without admitting any wrongdoing, Defendants acknowledge that they were aware of and considered the commencement of the Action, and that the Action was a contributory factor in Alphatec's decision to adopt and implement the Correction of Prior Equity Awards

(“Corrective Actions”) and Corporate Governance Reforms (“Reforms”) detailed in Section 2 of the Stipulation, and that these Corrective Actions and Reforms confer a benefit upon Alphatec and its stockholders and are designed to improve the overall corporate governance of Alphatec, with the intent of increasing stockholder value.

The Stipulation details the Corrective Actions adopted and implemented by the Board after the commencement of the Action, such as: (1) postponing the annual stockholder meeting until June 21, 2013; (2) adopting the Amended Plan; (3) cancelling the excess grants awarded to the Officer Defendants, as alleged in the Complaint; and (4) filing a supplemental proxy disclosure and Form 8-K on June 11, 2013. The Settlement also details the Reforms regarding stock award processes and procedures to be adopted and implemented by the Board, such as, for a period of at least five years: (1) complying with the law, the committees’ charters, and other governing documents, and any applicable Alphatec equity plan, including the Amended Plan or any successor to the Amended Plan (“Current Plan”); (2) engaging a third party to review the process by which equity award grants are made and delivered; (3) retaining adequate documentation of all awards made under the Current Plan and appointing appropriate individual(s) to monitor compliance with the foregoing compliance procedures and checklist; and (4) reviewing employment agreements with current or prospective executive officers to ensure that the terms are not inconsistent with the terms of the Current Plan or any other applicable compensation plan, provided, the Board, in its sole discretion, may make non-Current Plan based grants to the extent permitted by applicable law.

Each of the above-listed requirements is triggered only upon the Effective Date of the Settlement. The Settlement also provides for an application by Plaintiff’s Counsel for the Fee and Expense Award, which Defendants may oppose.

VII. DISMISSAL AND RELEASES

In connection with the Court's approval of the Settlement, Plaintiff will request a dismissal with prejudice of all claims asserted by Plaintiff on behalf of Alphatec and individually on behalf of himself and all other similarly situated stockholders against the Defendants.

Pursuant to the Judgment, upon the Effective Date, Plaintiff, the Company, the Class Members in their capacity as stockholders or on behalf of any Released Party (defined below) shall have, and by operation of the Judgment shall be deemed to have, released and forever discharged, and shall forever be barred and enjoined from initiating, continuing, filing or otherwise prosecuting "Settled Claims," defined as any and all manner of claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters, and issues known, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including Unknown Claims (as defined in section 3.3), relating to, arising out of, or concerning (i) the Plan, Amended Plan or any options granted thereunder, or any element, term or condition of the Plan, Amended Plan or any options granted thereunder, (ii) Defendants' consideration, evaluation, and/or approval of the Plan, Amended Plan or any options granted thereunder, (iii) the disclosures or any public filings, periodic reports, press releases, proxy statements or other statements issued, made available, filed, or otherwise disclosed or communicated related to the Plan, Amended Plan or any options granted thereunder, (iv) any stockholder vote on the Plan, Amended Plan or any options granted thereunder, (v) payments to any of the Company's directors, executive officers or advisors in connection with the Plan, Amended Plan or any options granted thereunder, and (vi) any fees, costs or expenses incurred by the Class or any member of the Class in prosecuting, defending, or

settling the Settled Claims (other than any award pursuant to section 4 hereof) against Defendants and their respective present and former predecessors, successors-in-interest, parents, subsidiaries, affiliates, officers, directors, employees, trustees, executors, heirs, spouses, marital communities, assigns or transferees and any person or entity acting for or on behalf of any of them and each of them, and each of their respective present and former predecessors, successors-in-interest, parents, subsidiaries, affiliates, officers, directors, employees, representatives, agents, accountants, advisors, attorneys, commercial and investment bankers, insurers, reinsurers, trustees, executors, heirs, spouses, marital communities, assigns or transferees and any person or entity acting for or on behalf of any of them and each of them (collectively, the “Released Parties”). The Settled Claims shall not include any claims to enforce the terms of the Stipulation or the Settlement.

Pursuant to the Judgment, upon the Effective Date, Defendants release Plaintiff, the Class, and their counsel from all claims arising out of the institution, prosecution, settlement or resolution of the Action (“Settled Defendants’ Claims”), provided however, that Defendants and Released Parties shall retain the right to enforce in the Court the terms of the Stipulation or the Settlement.

The Settled Claims and the Settled Defendants’ Claims shall include “Unknown Claims.” The phrase “Unknown Claims” means any Settled Claim that the Company, Plaintiff, or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants’ Claims that any Defendant or any other Released Party does not know or suspect to exist in his, her or its favor at the time of the release of the Plaintiff and the Class Members, which, if known, might have affected the decision to enter into the Settlement. With respect to Unknown Claims, the Settling Parties each expressly

waive any and all provisions, rights, and benefits of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties each shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542.

The Settling Parties each acknowledge that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part. Nothing herein shall, however, bar any action or claim to enforce the terms of the Stipulation, the Settlement, or the Judgment. The Settling Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to fully, finally, and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, heretofore exist, or may hereafter exist, and without regard to the subsequent discovery of such additional or different facts.

VIII. THE FEE AND EXPENSE AWARD

Based on their view of the benefit conferred on Alphatec by the negotiated corporate governance reforms, Plaintiff's Counsel will apply to the Court for the Fee and Expense Award at the Settlement Hearing, which application Defendants may oppose. Any failure by the Court to approve the amount of such fees or reimbursement expenses that Plaintiff's Counsel may seek on behalf of the Plaintiff and Class Members shall not affect the validity of the terms of the Settlement. To date, Plaintiff's Counsel have neither received any payment for their services in

conducting the Action, nor have counsel been reimbursed for their out-of-pocket expenses incurred. Alphatec stockholders are not personally liable for the Fee and Expense Award.

IX. THE RIGHT TO OBJECT AND/OR BE HEARD AT THE HEARING

Any Class Member may object and/or appear and show cause, if he, she, or it has any concern, why the Settlement of the Action should not be approved as fair, reasonable, and adequate, or why the Judgment should not be entered thereon, or why the Fee and Expense Award should not be awarded to Plaintiff's Counsel; provided, however, unless otherwise ordered by the Court, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the Fee and Expense Award to Plaintiff's Counsel unless that Class Member has, *at least fourteen (14) calendar days prior to the Settlement Hearing* (no later than March 3, 2014): (1) filed with the Clerk of the Court a written objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of ownership of Alphatec common stock from April 23, 2013 through June 21, 2013, including the number of shares of Alphatec common stock and the date of purchase; and (c) any documentation in support of such objection; and (2) if a Class Member intends to appear and requests to be heard at the Settlement Hearing, such Class Member must have, in addition to the requirements of (1) above, filed with the Clerk of the Court: (a) a written notice of such Class Member's intention to appear; (b) a statement that indicates the basis for such appearance; and (c) the identities of any witnesses the Class Member intends to call at the Settlement Hearing and the subjects of their testimony. If a Class Member files a written objection and/or written notice of intent to appear, such Class Member must also simultaneously serve copies of such notice, proof, statement, and documentation, together with

copies of any other papers or briefs such stockholder files with the Court (either by hand delivery or by first class mail) upon each of the following:

LEVI & KORSINSKY, LLP

Shane T. Rowley
30 Broad Street, 24th Floor
New York, New York 10004
(212) 363-7500

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Wilmington, DE 19801
(302) 777-0300

Michele D. Johnson
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
(714) 540-1235

Attorneys for Defendants

Attorneys for Plaintiff

The written objections and copies of any papers and briefs in support thereof to be filed in Court shall be delivered by hand or sent by first class mail to:

Clerk of the Court
U.S. District Court, District of Delaware
844 N. King Street
Wilmington, D.E. 19801

Any Class Member who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the Stipulation and to the Fee and Expense Award to Plaintiff's Counsel but shall otherwise be bound by the judgment to be entered and the releases to be given.

X. CONDITIONS FOR SETTLEMENT

The Settlement is conditioned upon the occurrence of certain events described in Section 5.1 of the Stipulation, including, among other things: (1) the approval of the Amended Plan and

any and all options granted thereunder; (2) entry of the requested Judgment by the Court; and (3) the expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Stipulation is not met, the Stipulation might be terminated and, if terminated, will become null and void, and the parties to the Stipulation will be restored to their respective positions in the Action as of the date before the Stipulation was fully executed.

XI. EXAMINATION OF PAPERS AND INQUIRIES

This notice contains only a summary of the terms of the Settlement. For a more detailed statement of the matters involved in the Action, reference is made to the Stipulation which may be inspected at the Office of the Clerk, United States District Court for the District of Delaware located at the United States District Court, 844 N. King Street, Wilmington, Delaware 19801 during business hours of each business day. The Stipulation is also available for viewing on the Company's website at <http://investors.alphatecspine.com>.

Any other inquiries regarding the Settlement or the Action should be addressed in writing to one of the following:

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Attorneys for Defendants

**PLEASE DO NOT TELEPHONE THE COURT OR ALPHATEC REGARDING THIS
NOTICE.**