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OF THE
STATE OF DELAWARE**

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Re: *NuVasive, Inc., v. Lanx, Inc.*
Civil Action No. 7266-VCG

Dear Counsel:

This Letter Opinion addresses the outstanding Motion to Compel filed by Plaintiff NuVasive, Inc. (“NuVasive”). Briefly, Defendant Lanx, Inc. (“Lanx”) is a competitor of NuVasive. NuVasive alleges that Lanx has lured away a number of NuVasive employees to work for Lanx, in breach of various duties owed to

NuVasive by these employees. NuVasive seeks damages from and injunctive relief against Lanx.

In the Motion to Compel, NuVasive seeks the identities of NuVasive employees, past and current, with whom Lanx has communicated in the past year about possible employment with Lanx, together with documents exchanged with those employees in furtherance of that purpose. Lanx resists discovery on two grounds. First, Lanx points out that discovery of only relevant material may be compelled. It is clear to me that, in this case, where NuVasive seeks injunctive relief from Lanx's allegedly tortious efforts to hire NuVasive employees, the discovery requests at issue seek relevant information, ". . . reasonably calculated to lead to the discovery of admissible evidence."¹

Next, Lanx argues that NuVasive's real purpose in requesting the names of solicited employees is to identify employees who have spoken to Lanx and to coerce them into staying with NuVasive. I have the authority, under Chancery Court Rule 26(c), to tailor discovery to prevent undue prejudice or oppression;² Lanx asks me to use that power here to prevent what it believes is an attempt to prejudice Lanx in hiring employees and to oppress the rights of those potential employees. Lanx has offered to produce the documents sought with the names and identifying characteristics of the employees redacted, and then to provide a

¹ Ct. Ch. R. 26(b)(1).

² *E.g., Pfizer Inc. v. Warner-Lambert Co.*, 1999 WL 33236240, at *2 (Del. Ch. Dec. 8, 1999).

30(b)(6) witness to testify about Lanx's interaction with respect to these anonymous employees. I find that a protective order of the kind suggested is unnecessary, and the proposed substitute discovery insufficient.

The very issue here is whether Lanx's dealings with NuVasive employees are unlawful. NuVasive is seeking to enjoin Lanx from such dealings. As a result, NuVasive is entitled to discovery of the details of Lanx's contacts with its employees and entitled to test that information through a direct examination of the individuals involved. Since NuVasive has an interest in retaining its employees, and since the employees at issue are those who have elected to stay with NuVasive, the employees themselves are unlikely to suffer from this disclosure. To the extent Lanx is concerned that NuVasive employees' ardor to join Lanx will be chilled, and that Lanx will be less successful in hiring NuVasive employees during this litigation's pendency, I note that this matter is moving briskly, trial is scheduled for the spring, and any prejudice speculated by Lanx is outweighed by NuVasive's interests in a complete record at trial.

Finally, Lanx suggests that the documents requested and the depositions that may result will involve disclosure of confidential information. To the extent that Lanx believes that the current stipulated confidentiality order is insufficient, the parties should discuss amendment, and I am available to resolve any issues in that regard.

For the foregoing reasons, NuVasive's Motion to Compel is granted. To the extent the above requires an order to take effect,

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III