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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WARSAW ORTHOPEDIC, INC.,
et al.,

Plaintiffs,

v.

NUVASIVE, INC.,

Defendant.

CASE NO. 12cv2738-CAB (MDD)
**ORDER ON JOINT MOTION
FOR DETERMINATION OF
DISCOVERY DISPUTE**

[ECF NO. 130]

On November 4, 2013, the parties filed a joint motion for determination of discovery dispute. (ECF No. 130). A hearing was held on November 15, 2013. In dispute were four topics noticed for deposition by Defendant of Plaintiffs under Fed.R.Civ.P. 30(b)(6). At the start of the hearing, counsel for Defendant withdrew the notice for three of the topics. Remaining was topic 39.

Topic 39 requested Plaintiffs to produce a witness to testify regarding:

“[N]egotiations from 1993 to present with Gary K. Michelson and/or Karlin Technology Inc., related to any medical instrument, device, or medical procedure that you claim to be related to [Plaintiff’s Direct Lateral Interbody Fusion

1 technique].”

2 Plaintiffs challenged the topic for relevance and overbreadth.
3 Defendant, prior to the hearing, asserted relevance based almost
4 exclusively upon the fact that Dr. Michelson is the named inventor on
5 one of Plaintiffs’ patents in suit (the “696” patent). Plaintiffs countered
6 that the 696 patent is subject to review and the parties will be filing a
7 joint motion to stay the litigation related to that patent. At the hearing,
8 Defendant also offered that the testimony may be relevant to claims of
9 obviousness raised by Plaintiffs regarding certain patents asserted by
10 Defendant in this litigation.

11 The Court finds that the topic, as written, is overbroad and does
12 not provide sufficient notice to Plaintiffs to prepare a witness. The Court
13 cannot enforce it as written and will not rewrite it to meet the new
14 theory advanced by Defendant.

15 Defendant’s motion to compel, as contained within the instant joint
16 motion, is **DENIED**.

17 IT IS SO ORDERED.

18 DATED: November 15, 2013

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21 Hon. Mitchell D. Dembin
22 U.S. Magistrate Judge
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