

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

NXGEN MDX, LLC,

Plaintiff,

vs.

HOLLY WATERS,

Defendant.

Case No. 18-02048-CBB

HON. CHRISTOPHER P. YATES

ORDER CLARIFYING PRELIMINARY INJUNCTION

On April 3, 2018, the Court entered a preliminary injunction in the following terms:

IT IS ORDERED that Defendant [Holly] Waters shall neither solicit any customers of NxGEN nor disclose any confidential information that she obtained from NxGEN. These restrictions shall also apply to a company that competes with NxGEN and employs Waters, and shall remain in force upon the company for as long as Waters remains employed by the company.

On August 20, 2018, Defendant Waters moved to modify the terms of the injunction, contending that the Court's pronouncement of the terms of the injunction swept far more broadly than the language of the Court's opinion explaining the need for injunctive relief. Because an "injunction is always subject to modification or dissolution if the facts merit it[.]" see Michigan AFSCME Council 25 v Woodhaven-Brownstown School District, 293 Mich App 143, 146 n2 (2011), the Court shall take a second look at the preliminary injunction to ensure that it is properly tailored to meet the needs of the instant case.

The Court's basic requirements for Defendant Waters involve preventing her from poaching employees and customers from her former employer, Plaintiff NxGEN MDx, LLC ("NxGEN"), for 18 months from the date on which she left NxGEN, *i.e.*, February 23, 2018. Moreover, any employer

of Waters that acts and conspires with her to violate her restrictions runs the risk of civil liability as well. Owens v Hatler, 373 Mich 289, 292 (1964). But Waters’s noncompetition and non-solicitation obligations will last for only 18 months after February 23, 2018,¹ and Waters’s employers need not fear civil liability so long as they do not act and conspire with her to violate her restrictions.

To ensure that Plaintiff NxGEN obtains the benefit of its contract with Defendant Waters in a manner that renders Waters’s noncompetition obligation reasonable, see MCL 445.774a(1), **IT IS ORDERED that Defendant Waters shall not solicit any employees or customers of NxGEN for 18 months from February 23, 2018. IT IS FURTHER ORDERED that Defendant Waters shall not disclose any confidential information that she obtained from NxGEN. IT IS FURTHER ORDERED that Defendant Waters shall not work in her former sales territory, *i.e.*, Delaware, Maryland, and Washington, D.C., for any employer that competes with NxGEN by providing genetic laboratory testing services or products to the women’s health market or to the oncology market.**² Consequently, Waters can work outside that territory for a competitor of NxGEN so long as she does not solicit any customers of NxGEN for a period of 18 months from February 23, 2018.

IT IS SO ORDERED.

Dated: September 11, 2018



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

¹ The contract that Plaintiff NxGEN and Defendant Waters signed has restrictive covenants that last for five years, but NxGEN has conceded that that duration is unreasonable. Additionally, the contract has a broad noncompetition agreement that the Court has limited to render it reasonable.

² Examples of such competitors include LabCorp, Quest, Emory Genetics, Sema4, Counsyl, Myriad, Ambry Genetics, Progenity, Natera, and Invitae Genetics.