

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20 CVS 10501

BIOAGILYTIK LABS, LLC and  
BALX HOLDINGS, LLC,

Plaintiffs,

v.

SAFA ALVANDKOUHI; CORINNA  
FIOROTTI; and BIOLOGICS  
DEVELOPMENT SERVICES LLC  
d/b/a IMMUNOLOGIX  
LABORATORIES,

Defendants.

**ORDER ON  
PLAINTIFFS' BCR 10.9  
DISCOVERY DISPUTE SUBMISSION**

1. This Order addresses a Business Court Rule (“BCR”) 10.9 discovery dispute submitted by Plaintiffs BioAgilytix Labs, LLC and BALX Holdings, LLC (together, “BioAgilytix”). BioAgilytix seeks to expedite discovery in advance of filing a motion for a preliminary injunction.

2. BioAgilytix filed suit in mid-September. It alleges that two former employees, Safa Alvandkouhi and Corinna Fiorotti, stole trade secrets and now work for a competitor called Immunologix (together, “Defendants”). BioAgilytix claims, among other things, that Alvandkouhi and Fiorotti have breached noncompetition and nonsolicitation agreements and that all Defendants have misappropriated trade secrets. (*See* Compl. ¶¶ 1–6, ECF No. 3.)

3. Along with the complaint, BioAgilytix served roughly ten document requests and ten interrogatories on each Defendant. By rule, responses are due within 45 days. *See* N.C. R. Civ. P. 33(a), 34(b). BioAgilytix asked Defendants to respond sooner, forecasting its intent to take early depositions and then move for a

preliminary injunction. Defendants balked at expediting discovery but agreed to work out a consent injunction regarding the use of trade secrets. BioAgilytix then submitted its BCR 10.9 dispute summary, asking the Court to shorten Defendants' time to respond to the discovery requests from 45 to 30 days.

4. The Court held a telephone conference on October 15, 2020, with counsel for all parties present. Because formal briefing would be inefficient and of little additional value, the Court elects to decide this dispute based on the parties' informal dispute summaries and the arguments of counsel. *See* BCR 10.9(b)(3), (c).

5. A request for expedited discovery "is subject to a heightened standard, which requires a demonstration of good cause." *Corwin v. Brit. Am. Tobacco PLC*, 2015 NCBC LEXIS 2, at \*10 (N.C. Super. Ct. Jan. 8, 2015) (citation omitted). When expedited discovery is sought in advance of a preliminary-injunction motion, the Court must consider the entirety of the record and the request's reasonableness in light of the totality of the circumstances. *See id.* (citing *Dimension Data N. Am., Inc. v. NetStar-1, Inc.*, 226 F.R.D. 528, 531 (E.D.N.C. 2005)). Relevant factors include the nature of the underlying claims, the timing of the request, the scope of the discovery sought, and the harm the movant may suffer if expedition is not granted. *See Next Advisor, Inc. v. LendingTree, Inc.*, 2015 NCBC LEXIS 166, at \*2–3 (N.C. Super. Ct. Dec. 11, 2015); *Dimension Data*, 226 F.R.D. at 531–32.

6. The Court concludes that BioAgilytix has failed to show good cause for at least three reasons. First, BioAgilytix was aware of the facts giving rise to its claims well before filing suit. As early as July 2020, it knew that Alvandkouhi and Fiorotti

intended to work for Immunologix. By August, it also knew what their duties at Immunologix would be and that they had taken confidential information. Yet BioAgilytix did not file suit until September 18. Had BioAgilytix moved more quickly to protect its rights, it might already have this discovery in hand. Its measured pace so far weighs against expediting discovery now.

7. Second, the discovery requests are not narrowly tailored to what BioAgilytix needs to prepare a motion for a preliminary injunction. The requests are broadly worded, often asking for “all documents” on a given topic in the fashion of general discovery. They also appear to go beyond the scope of the anticipated motion. That is especially so given counsel’s confirmation that a consent injunction on the trade-secret claim is highly likely, if not imminent. BioAgilytix’s motion is sure to center on the restrictive covenants. But few of the discovery requests deal with those issues, and the ones that do are not narrowly tailored.

8. Finally, BioAgilytix has not articulated any irreparable harm it faces from adhering to default discovery deadlines. BioAgilytix has not yet moved for a preliminary injunction or a temporary restraining order. Nor does it intend to file its motion for at least another month, with five depositions to come first. Even if the Court were to shorten Defendants’ response time by fifteen days, it is doubtful whether that would significantly accelerate matters. BioAgilytix has not shown what irreparable harm would result if Defendants serve their discovery responses in 45 days rather than 30. *See Next Advisor*, 2015 NCBC LEXIS 166, at \*3–4 (denying motion for expedited discovery when plaintiff failed to show any irreparable harm it

would suffer if it did not receive discovery responses eleven days earlier than the default deadline); *Dimension Data*, 226 F.R.D. at 531–32 (denying motion for expedited discovery in part because plaintiff had not yet moved for a temporary restraining order or preliminary injunction).

9. The Court concludes BioAgilytix has not shown good cause to expedite discovery and therefore **DENIES** its request.

**SO ORDERED**, this the 19th day of October, 2020.

/s/ Adam M. Conrad  
Adam M. Conrad  
Special Superior Court Judge  
for Complex Business Cases