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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Alliance Labs, LLC and Enemeez, Inc.,)	
)	
Plaintiffs/Counter)	2:12-cv-927JWS
Claim Defendants)	
)	
vs.)	ORDER AND OPINION
)	
Stratus Pharmaceuticals, Inc.,)	[Re: Motions at dockets
)	172, 178, and 183]
Defendant/Counter)	
Claimant.)	
)	

I. MOTIONS PRESENTED

At docket 172 Alliance Labs, LLC and Enemeez, Inc. (“Plaintiffs”) move for a preliminary and permanent injunction against Stratus Pharmaceuticals, Inc. (“Defendant”). The motion also asks to consolidate the injunctive proceedings with a trial on the merits and to expedite resolution of the case. Defendant has not filed anything explicitly labeled as a response, but the court considers Defendant’s motion to strike at docket 183 to be an opposition, for in addition to a request to strike Plaintiffs’ expert reports, it also set out arguments against consolidation and expedition of

1 resolution. Plaintiffs' response to docket 183 is at docket 187. Defendant replies to the
2 filing at docket 187 in its filing at docket 194

3 Defendant moves for a preliminary injunction at docket 178. Plaintiffs' response
4 is at docket 190. Defendant's reply is at docket 200.

5 **II. DISCUSSION**

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7 Injunctive relief is recognized to be an extraordinary remedy¹ which is not
8 routinely granted.² Preliminary injunctive relief is appropriate when plaintiffs establishes
9 (i) probable success on the merits and irreparable harm if relief is denied, or (ii) that
10 there are serious questions on the merits and the balance of hardship tips sharply in
11 favor of plaintiffs.³ The seemingly alternative tests represent a single spectrum of
12 concerns in which the critical element is relative hardship. The higher plaintiffs'
13 probability of success, the less the balance of hardships need tip in plaintiffs' favor.⁴

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15 Based on the parties' papers, the court concludes that Defendant's motion at
16 docket 178 must be denied. Defendant has not shown a significant probability of
17 success on the merits, nor irreparable harm if the motion is not granted. Similarly, while
18 there is some question on the merits, the balance of hardships does not tip in
19 Defendant's favor.
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22 ¹See *United States v. Oakland Cannabis Buyers' Co-op*, 532 U.S. 483, 496 (2001) citing
23 *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

24 ²*Martin v. O'Grady*, 783 F. Supp. 1191, 1195 (N.D. Ill. 1990).

25 ³*Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003).

26 ⁴*Id.*, quoting from *Immigrant Assistance Project of Los Angeles County Fed'n of Labor*
27 (*AFL-CIO v. INS*, 306 F.3d 842, 873 (9th Cir. 2002)).

1 Plaintiffs' motion at docket 172 seeks both a preliminary and a permanent
2 injunction, consolidation of the injunctive proceedings with a trial on the merits, and an
3 expedited schedule. Defendant opposes the request for consolidation and expedition.
4

5 Defendant contends that Plaintiffs' expert reports are (actually will be when filed)
6 untimely. The argument has no merit. The court explicitly ruled at docket 119 that the
7 date for Plaintiffs' expert disclosures would be 60 days from Defendant's service of
8 *complete* responses to specified discovery requests made by Plaintiffs. Defendant did
9 not comply with the order at docket 119, as explained in the order at docket 193 which
10 imposed sanctions on Defendant for failure to do so. The order at docket 193
11 established a procedure to ensure that there would be a complete response to the
12 discovery requests. That procedure has not yet been completed. Under these
13 circumstances the request to strike Plaintiffs' experts is utterly without merit.
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15 Turning to consolidation of the injunctive proceedings with trial on the merits, this
16 court concludes that such consolidation is warranted. It is the best way to assure a
17 well-informed decision on the merits. Turning to the request to expedite trial, the court
18 notes that Defendant's failure to file complete responses to long outstanding discovery
19 requests caused the court to set a specific schedule in the order at docket 119, which
20 provides for completion of both lay and expert discovery tied to Plaintiffs' certification of
21 full compliance by Defendant with the outstanding discovery requests. That cannot
22 happen until completion of the forensic review required by the order at docket 193. At
23 this time, the court declines to depart from the schedule already established. If, after
24 Plaintiffs certify full compliance with Defendant's discovery obligations, either side
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