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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MEDIMPACT HEALTHCARE  
12 SYSTEMS, INC.;  
13 MEDIMPACT INTERNATIONAL LLC;  
14 MEDIMPACT INTERNATIONAL  
HONG KONG LTD ,

Plaintiffs,

15 v.  
16

17 IQVIA HOLDINGS, INC.;  
18 IQVIA INC.;  
19 IQVIA AG;  
20 OMAR GHOSHEH;  
AMIT SADANA,

Defendants.  
21  
22

Case No.: 19cv1865-GPC-LL

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION FOR EXPEDITED OR  
EARLY DISCOVERY**

[ECF Nos. 11, 12]

23 Currently before the Court is Plaintiffs' October 3, 2019 motion for permission to  
24 serve expedited or early discovery pursuant to Federal Rule of Civil Procedure 26(d)(1) on  
25 Defendants IQVIA Holdings, Inc. and IQVIA Inc. [ECF Nos. 11 (sealed), 12-1 ("Mot.")],  
26 Defendants IQVIA Holdings, Inc. and IQVIA Inc.'s (collectively "IQVIA US" or  
27 "Defendants") November 1, 2019 opposition [ECF Nos. 29 (sealed), 30 ("Oppo.")], and  
28 Plaintiffs' November 8, 2019 reply [ECF No. 36 ("Reply")]. For the reasons set forth

1 below, the Court **GRANTS IN PART and DENIES IN PART** Plaintiffs’ motion for  
2 expedited or early discovery.

3 **I. BACKGROUND**

4 Plaintiffs MedImpact Healthcare Systems, Inc., MedImpact International, LLC, and  
5 MedImpact International Hong Kong, Ltd. (collectively “MedImpact” or “Plaintiffs”) are  
6 in the business of providing services to health plans, third-party administrators, self-funded  
7 employers, and governments. Mot. at 7. Plaintiffs’ main product is its “pharmacy benefit  
8 management (“PBM”) platform that enables patients and pharmacies to efficiently obtain  
9 insurance approvals for prescribed medicines.” Id. Defendants IQVIA US are a “global  
10 provider of advanced analytics, technology solutions, healthcare data and contract research  
11 services to the life sciences industry.” Id. at 8.

12 On September 26, 2019, Plaintiffs filed a complaint against Defendants alleging  
13 (1) misappropriation of trade secrets under California Uniform Trade Secrets Act,  
14 (2) misappropriation of trade secrets under Defend Trade Secrets Act, 18 U.S.C. § 1836,  
15 (3) intentional interference with prospective economic relations, (4) negligent interference  
16 with prospective economic relations, (5) intentional interference with a contractual  
17 relationship, (6) inducing breach of contract, (7) unfair competition in violation of  
18 California Business & Professions Code section 17200, (8) violation of Racketeer  
19 Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c), (9) unjust enrichment,  
20 (10) civil conspiracy, and (11) conversion.<sup>1</sup> ECF No. 1.

21 On October 3, 2019, Plaintiffs filed the instant motion for expedited discovery  
22 requesting: (1) five Requests for Production of documents, (2) two Interrogatories, and  
23 (3) one deposition of IQVIA US. Mot. at 15. The proposed discovery “seeks the  
24 identification of claim adjudication/processing and PBM services/products offered by  
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27 <sup>1</sup> The complaint also alleges breach of fiduciary duties and duty of loyalties owed to the  
28 joint venture and MedImpact, against Defendants Omar Ghosheh and Amit Sadana only.  
ECF No. 1 at 44–45.

1 IQVIA [US] from February 2019 to the present, identification of the entities it was offered  
2 to, and the related documents” and the documents received from Dimensions Healthcare,  
3 LLC from February 2019 to the present relating to claim adjudication/processing and PBM  
4 services/products. *Id.*; ECF Nos. 12-9 at 8–9, 12-10 at 7–8. The Court issued a briefing  
5 schedule on October 18, 2019. ECF No. 19. Defendants timely filed an opposition and  
6 Plaintiffs timely filed a reply. *Oppo.*, Reply.

7 On October 17, 2019, the district judge granted IQVIA US’s request to extend their  
8 time to file a responsive pleading to Plaintiff’s complaint by sixty days, from October 21,  
9 2019 to and including December 20, 2019. ECF No. 18.

## 10 **II. LEGAL STANDARD**

11 Federal Rule of Civil Procedure 26(d) states that a party “may not seek discovery  
12 from any source” prior to the conference required by Rule 26(f), which must take place at  
13 least twenty-one days before the initial Case Management Conference.<sup>2</sup> Fed. R. Civ. P.  
14 26(d), (f). Discovery may commence prior to the Rule 26(f) meeting if allowed by court  
15 order or agreement of the parties. Fed. R. Civ. P. 26(d)(1). Courts in the Ninth Circuit  
16 permit early discovery if the requesting party demonstrates good cause. Semitoool, Inc. v.  
17 Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002). “Good cause may be  
18 found where the need for expedited discovery, in consideration of the administration of  
19 justice, outweighs the prejudice to the responding party.” *Id.* In determining whether good  
20 cause justifies expedited discovery, courts commonly consider the following non-  
21 exhaustive factors: “(1) whether a preliminary injunction is pending; (2) the breadth of the  
22 discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden  
23 on the defendants to comply with the requests; and (5) how far in advance of the typical  
24 discovery process the request was made.” Am. LegalNet, Inc. v. Davis, 673 F. Supp. 2d  
25 1063, 1067 (C.D. Cal. 2009) (citation omitted); Synopsys, Inc. v. AzurEngine Techs., Inc.,

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28 <sup>2</sup> The use of “Rule” refers to the Federal Rules of Civil Procedure, unless otherwise stated.

1 No. 19cv1443-LAB (AGS), 2019 WL 3842996, at \*5 (S.D. Cal. Aug. 15, 2019) (quoting  
2 Am. LegalNet, Inc. v. Davis, 673 F. Supp. 2d at 1067).

### 3 **III. DISCUSSION**

#### 4 **A. Parties' Positions**

5 Plaintiffs argue in their motion that (1) “there is reason to believe that [Defendants]  
6 [are] actively causing MedImpact irreparable harm in various international markets” [Mot.  
7 at 5–6]; (2) “expedited discovery may help to prevent potential spoliation” [id. at 6–7]; and  
8 (3) Plaintiffs’ “requested discovery is narrowly tailored in scope and breadth and will not  
9 be an undue burden” on Defendants [id. at 7]. Plaintiffs further argue that good cause exists  
10 for expedited discovery because (1) the express purpose of the request is to determine  
11 whether Plaintiffs must seek a preliminary injunction, which “is a less disruptive approach  
12 than seeking a preliminary injunction in the first instance” [id. at 14, 15]; (2) the limited  
13 discovery requested is a subset of the same discovery Defendants will need to respond to  
14 during the litigation [id. at 16]; and (3) Plaintiffs “simply cannot wait for regular discovery  
15 timeframes without potentially risking irreparable harm” [id. at 17].

16 Defendants argue that (1) Plaintiffs’ complaints have already been resolved in  
17 binding arbitration between Plaintiffs and a subsidiary of Defendants [Oppo. at 6; ECF No.  
18 29 (sealed) at 6]; (2) the only support Plaintiffs offer for their claims that Defendants are  
19 likely misappropriating Plaintiffs’ trade secrets are unavailing because they do not indicate  
20 that Defendants are engaging in PBM services [Oppo. at 7–8]; and (3) Plaintiffs have not  
21 shown that emergency circumstances exist that require expedited discovery [id. at 8–9].  
22 Defendants further contend that good cause does not exist for expedited discovery because  
23 (1) currently, there is no pending motion for preliminary injunction [id. at 10–11]; (2)  
24 Defendants anticipate filing motions to dismiss Plaintiffs’ complaint “on numerous  
25 grounds, including failure to state a claim and lack of personal jurisdiction,” which makes  
26 expedited discovery premature [id. at 13–14]; (3) the proposed written discovery requests  
27 are overly broad, unduly burdensome, costly, and disruptive to business operations because  
28 it “could potentially require canvassing business operations across 100 countries”

1 [id. at 14]; (4) the proposed deposition is “a disruptive and burdensome task on the  
2 business” at this stage of the proceeding when Plaintiffs have “not put forth any evidence  
3 to support its baseless allegations” [id.]; (5) Plaintiffs waited over eight months to bring  
4 the instant motion after learning of the alleged potential trade secrets misappropriation [id.  
5 at 15–16]; (6) Plaintiffs do not “provide any evidence to support its speculation that it may  
6 suffer some future harm that changes the *status quo ante*” [id. at 18]; and (7) Plaintiffs have  
7 provided “no basis for any claim that IQVIA US has or would destroy evidence”  
8 [id. at 19].

9 In their Reply, Plaintiffs argue that (1) “while IQVIA argues there is no evidence  
10 thus far that its US entities are providing PBM services, IQVIA makes no representation  
11 that the myriad entities it controls around the world are not doing so” [Reply at 2];  
12 (2) Defendants carefully avoid stating that they and their subsidiaries “are bound by and in  
13 compliance with the permanent injunction the Tribunal entered” [id.]; (3) evidence shows  
14 that Defendants’ subsidiary has passed Plaintiffs’ trade secrets to Defendants [id. at 5–6];  
15 (4) Plaintiffs did not delay because “[t]he requested expedited discovery is intentionally  
16 not related to the acts MedImpact learned about during the arbitration proceedings (which  
17 occurred prior to February 2019) and is expressly seeking on an expedited basis only recent  
18 information” [id. at 9–10]; and (5) “if Defendants are not engaged in PBM services as they  
19 claim, then the answer to the discovery is not burdensome or disruptive because it is easily  
20 answered with a ‘no’” [id. at 10–11].

## 21 **B. Analysis**

22 Upon review of the parties’ briefing and arguments and the relevant legal standard,  
23 the Court finds that Plaintiffs have demonstrated good cause to conduct some, but not all,  
24 of the requested expedited discovery.

### 25 **1. Preliminary injunction**

26 Plaintiffs indicate that the purpose of the expedited discovery request is to determine  
27 whether they should move for preliminary injunction. The absence or presence of a pending  
28 motion for preliminary injunction is not dispositive toward a finding of good cause. See

1 Citizens for Quality Educ. San Diego v. San Diego Unified Sch. Dist., No. 17-CV-1054-  
2 BAS-JMA, 2018 WL 1150836, at \*2 (S.D. Cal. Mar. 5, 2018) (“But the mere fact that party  
3 has moved for a preliminary injunction does not thereby entitle the party to receive  
4 expedited discovery. Any discovery sought for a preliminary injunction must be evaluated  
5 against the purpose of a preliminary injunction, *i.e.*, to preserve the status quo.” (citations  
6 omitted)); Apple Inc. v. Samsung Elecs. Co., No. 11-CV-01846-LHK, 2011 WL 1938154,  
7 at \*2 (N.D. Cal. May 18, 2011) (“[C]ourts have found that expedited discovery may be  
8 justified to allow a plaintiff to determine whether to seek an early injunction.”). The fact  
9 that there is currently no pending motion for preliminary injunction weighs against  
10 expedited discovery because its absence lessens the urgency for early discovery.

## 11 **2. Breadth of the discovery requests**

12 Plaintiffs contend that the proposed discovery is narrowly targeted to determine the  
13 extent, if any, to which their trade secrets may have flowed from Defendants to its other  
14 subsidiaries around the world over the last nine months. Reply at 9. Defendants make only  
15 one conclusory statement regarding the scope of the proposed discovery requests: that it is  
16 “overly broad.” Oppo. at 14. Otherwise, they attack the scope as unnecessary and as an  
17 impermissible request for merits discovery. Oppo. at 12–14.

18 The Court finds this factor weighs in favor of expedited discovery. Plaintiffs’  
19 proposed discovery requests are narrowly tailored with respect to the time period because  
20 they seek responsive documents and information from February 2019 to the present.  
21 Plaintiff’s complaint alleges misappropriation “beginning in at least mid-2017,” so the  
22 timing is tailored to address new instances of misappropriation. See ECF No. 1 at 28. The  
23 two Interrogatories seek identification of all “services, technology, systems, products and  
24 processes offered by [Defendants] from February 2019 to the present, relating to claim  
25 adjudication, claim processing, pharmacy benefit management, medicine/drug utilization  
26 review, or clinical edits” and identities of the entities it was offered to. ECF No. 12-10 at  
27 7–8. The scope of the Interrogatories and the deposition appears narrowly tailored for a  
28 determination of whether to grant or deny a preliminary injunction. The scope of the

1 Requests for Production also appears narrowly tailored in seeking documents and things  
2 related to allegedly infringing services or products offered, given, or received by  
3 Defendants since February 2019. The temporal limitation combined with the narrow scope  
4 distinguishes these requests from a premature merits-based request. See Citizens for  
5 Quality Educ. San Diego v. San Diego Unified Sch. Dist., No. 17-CV-1054-BAS-JMA,  
6 2018 WL 1150836, at \*4 (S.D. Cal. Mar. 5, 2018) (“The hallmark of an impermissible  
7 merits discovery request—although framed as a limited discovery request necessary to  
8 establish a factual record for a preliminary injunction—is the request’s overbreadth.”).

9 **3. Purpose for requesting expedited discovery**

10 The Court finds this factor weighs in favor of expedited discovery because Plaintiffs  
11 seek it to determine whether Defendants are presently engaging in misappropriation of their  
12 trade secrets. See Apple Inc. v. Samsung Elecs. Co., 2011 WL 1938154, at \*2 (finding  
13 good cause for expedited discovery in part because the purpose was “to prevent alleged  
14 infringement of its intellectual property and to forestall allegedly irreparable harm  
15 associated with a loss of market share and consumer good will”); Semitool, Inc. v. Tokyo  
16 Electron Am., Inc., 208 F.R.D. at 276 (“It should be noted that courts have recognized that  
17 good cause is frequently found in cases involving claims of infringement and unfair  
18 competition.”). The Court finds no support for Plaintiffs’ allegations of potential spoliation.  
19 The Court is also unpersuaded by Defendants’ arguments of a lack of indication of future  
20 harm and delay. Although the Court makes no opinion on the merits of Plaintiffs’ claims  
21 or their potential motion for preliminary injunction, they have proffered evidence that a  
22 subsidiary of Defendants misappropriated Plaintiffs’ trade secrets and that Defendants in  
23 turn misappropriated the same trade secrets beginning in 2017. Future harm is possible if  
24 Plaintiff’s allegations are true because as Defendants state, they have “business operations  
25 across 100 countries” and could have recently disclosed Plaintiffs’ trade secrets with any  
26 of those operations. See Oppo. at 14.

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1                   **4. Burden on Defendants to comply with the requests**

2           The Court finds that this factor weighs against expedited discovery as to some of the  
3 proposed discovery. The document requests at this early stage would be burdensome  
4 because they would require Defendants to conduct a wide-ranging investigation for  
5 documents and things “related to” pharmacy benefit management services offered, given,  
6 or received by Defendants. ECF No. 12-9 at 8–9; see Apple Inc. v. Samsung Elecs. Co.,  
7 2011 WL 1938154, at \*3 (finding requests for production in an expedited discovery motion  
8 to be unduly burdensome in part because “it would require [defendant] to undertake a wide-  
9 ranging investigation to determine whether any such documents exist”). Likewise, the  
10 deposition of Defendants at this procedural stage—before Defendants have even responded  
11 to the complaint—would be burdensome because the representative may not have  
12 sufficient time or information to prepare. See Semitool, Inc. v. Tokyo Electron Am., Inc.,  
13 208 F.R.D. at 277 (granting expedited discovery in part because it did not involve a request  
14 for “a free ranging deposition for which a representative of Defendants may not have had  
15 sufficient time or information with which to prepare”). The Court finds the two  
16 Interrogatories are not unduly burdensome because they are sufficiently limited. To the  
17 extent that Defendants claim that canvassing its numerous business operations around the  
18 globe is a burdensome and disruptive task, the Court finds current technology is sufficient  
19 to respond to these narrow requests. See id. (granting expedited discovery for production  
20 of documents in a foreign country in part because any logistical inconvenience was  
21 overcome by current communication technology and the narrow requests).

22                   **5. Divergence from typical discovery process**

23           The Court finds this factor weighs slightly against expedited discovery because in  
24 the normal course, discovery in this case would begin in approximately two months if  
25 Defendants file an answer, or possibly months later if Defendants file a motion to dismiss,  
26 which is what they indicate they will do. A pending motion to dismiss is not dispositive to  
27 a finding of good cause for expedited discovery. See Hardie v. N.C.A.A., No. 13CV346-  
28 W DHB, 2013 WL 1399333, at \*2 (S.D. Cal. Apr. 5, 2013) (recognizing that motion to



1 dismiss may weigh against expedited discovery in some cases, but granting expedited  
2 discovery request even with a pending motion to dismiss); Quintero Family Tr. v. Onewest  
3 Bank, F.S.B., No. 09cv1561 IEG AJB, 2009 WL 3381804, at \*1–2 (S.D. Cal. Oct. 16,  
4 2009) (granting expedited discovery request when a motion to dismiss was pending).

5 **C. Finding**

6 Weighing all the factors and considering whether the need for expedited discovery  
7 outweighs the prejudice to the responding party, the Court finds Plaintiffs have shown good  
8 cause for the following expedited discovery requests: Interrogatory No. 1 and Interrogatory  
9 No. 2. See Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273 at 276. The Court  
10 finds Plaintiffs have not shown good cause for the following expedited discovery requests:  
11 all five Requests for Production and a deposition of Defendants. Id.

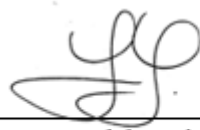
12 **IV. CONCLUSION**

13 For the reasons set forth above, the Court **GRANTS IN PART and DENIES IN**  
14 **PART** Plaintiffs' motion for expedited or early discovery as follows:

- 15 • Defendants are **ORDERED** to respond to Interrogatory No. 1 and  
16 Interrogatory No. 2 [ECF No. 12-10] propounded by Plaintiffs on or before  
17 **December 30, 2019.**

18 **IT IS SO ORDERED.**

19 Dated: November 25, 2019

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21 \_\_\_\_\_  
22 Honorable Linda Lopez  
23 United States Magistrate Judge  
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