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Order (ALERE LLC)

Alice D. Bonner
Superior Court of Fulton County

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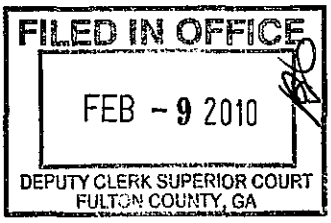
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Alere LLC and GeneCare Medical Genetics Center, Inc. Plaintiffs, v. PerkinElmer, Inc. and NTD Laboratories, Inc., Defendants.	)	Civil Action File No. 2010-CV-179825



ORDER

This case is before the Court on Defendants' Emergency Motion to Vacate Five-Month Temporary Restraining Order and For Expedited Discovery Pursuant to Uniform Superior Court Rule 6.7. After reviewing the briefs submitted on the motion and the record in the case, the Court finds as follows.

"An interlocutory injunction may be issued to maintain the status quo if, after balancing the relative equities of the parties, it appears the equities favor the party seeking the injunction." Cherokee County v. City of Holly Springs, 284 Ga. 298, 300 (2008). "Although the merits of the case are not controlling, they nevertheless are proper criteria for the trial court to consider in balancing the equities." Id. at 301.

The Court clarifies that its Ordered entered on January 27, 2010 was one for interlocutory injunctive relief addressing Plaintiffs' Motion for Temporary Restraining Order and Interlocutory Injunction upon which the parties presented significant oral argument on January 22, 2010.

In deciding to grant Plaintiffs' motion for preliminary injunctive relief, the Court was persuaded by the relationship of the parties just before this dispute arose. The

status quo is "not defined by the parties' existing legal rights; it is defined by the reality of the existing status and relationships between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights." Hampton Island Founder v. Liberty Capital, 283 Ga. 289, 293 (2008). The Court finds that prior to this dispute, Plaintiff GeneCare Medical Genetics Center, Inc. ("GeneCare") and Defendant NTD Laboratories, Inc. ("NTD") had a long-standing relationship spanning twenty-five years, and that NTD had provided GeneCare with the specific genetic screening service at issue in this case continuously for the past fifteen years. The Court was also persuaded by acknowledgments by all parties that in the five months leading up to this dispute, they were in negotiations to establish a long-term written contract to govern their relationship and that NTD promised to continue to provide the same services it had provided to GeneCare in the past while the parties negotiated in good faith.

In balancing the relative equities of the parties, the Court finds that the harm that would befall GeneCare if the injunction were not granted outweighs any harm to NTD who, if the injunction were granted, would be required to continue a customer/vendor relationship that had existed for the past fifteen years for an additional five months. Specifically, the Court was persuaded by the fact that denying an injunction would cause GeneCare to lose customers and the relationships and good will associated with those customers. There is evidence that GeneCare has already been so harmed because of a letter sent by NTD to medical providers, on the same day it ended negotiations with GeneCare, that explains to providers that NTD will no longer be providing screening services for GeneCare's customers, and encouraging those

customers to sign up directly with NTD for those services. The Court was also persuaded by the differing reasons given by Defendants for their decision to end negotiations with Plaintiffs. In their December 14, 2009, letter terminating the parties' relationship, Defendants stated that a long term service agreement did not achieve Defendants' business objectives; in their letter to GeneCare's customers the same day Defendants gave GeneCare's acquisition by Alere LLC as the reason for ending the relationship between GeneCare and NTD. However, that acquisition had been the very reason for the parties' negotiations towards a written contract over many months.

For the foregoing reasons Defendants' Emergency Motion to Vacate Five-Month Temporary Restraining Order and For Expedited Discovery Pursuant to Uniform Superior Court Rule 6.7 is hereby DENIED. Counsel for the parties are ORDERED to confer about expediting the final resolution of this case, and are ORDERED to submit a joint proposed case management order no later than Friday, February 26, 2010.

SO ORDERED this 9th day of February, 2010.

K. Wantland for ADB at her request

Alice D. Bonner, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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