

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 22, 2022

CODEX DNA, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-40497
(Commission File Number)

45-1216839
(I.R.S. Employer Identification No.)

9535 Waples Street, Suite 100
San Diego, California 92121
(Address of principal executive offices, including zip code)

(858) 228-4115
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	DNAY	Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officer; Compensatory Arrangement of Certain Officers.

On June 22, 2022, Jennifer McNealey provided the Company with notice of her intent to resign from her position as Chief Financial Officer of the Company. Ms. McNealey will serve as Chief Financial Officer until July 8, 2022. In connection with Ms. McNealey's resignation, Ms. McNealey and the Company executed a Separation Agreement and Release, which is attached hereto as Exhibit 10.1. It is expected that Ms. McNealey will enter into a consulting agreement pursuant to which Ms. McNealey will assist with the transition of her role and consult for the Company until September 30, 2022. Ms. McNealey's resignation is not a result of any disagreement with the Company or its board of directors, or any matter relating to the Company's operations, policies or practices.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Separation Agreement and Release between the Registrant and Jennifer McNealey, dated June 22, 2022
104	Cover Page Interactive Data File (formatted as Inline XBRL)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CODEX DNA, INC.

Date: June 24, 2022

By: /s/ Todd R. Nelson

Name: Todd R. Nelson

Title: Chief Executive Officer

SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release (“Agreement”) is made by and between Jennifer McNealey (“Executive”) and Codex DNA, Inc. (the “Company”) (collectively referred to as the “Parties” or individually referred to as a “Party”).

RECITALS

WHEREAS, Executive is employed by the Company;

WHEREAS, Executive signed a Confirmatory Employment Letter with the Company on May 19, 2021 (the “Offer Letter”) and an Employee Nondisclosure and Invention Assignment Agreement on March 15, 2021 (the “Confidentiality Agreement”);

WHEREAS, Executive has decided to voluntarily separate from employment with the Company effective July 8, 2022 (the “Separation Date”);

WHEREAS, as of the Separation Date, Executive will be deemed to have resigned from her position as the Chief Financial Officer (“CFO”) of the Company; and

WHEREAS, the Parties wish to resolve any and all disputes, claims, complaints, grievances, charges, actions, petitions, and demands that the Executive may have against the Company and any of the Releasees as defined below, including, but not limited to, any and all claims arising out of or in any way related to Executive’s employment with or separation from the Company.

COVENANTS

1. Consideration.

a. Severance. As consideration for this Agreement and the release contained herein, the Company, in exchange for Executive’s execution of this Agreement and in exchange for Executive’s agreement to provide transitional services to the Company until September 30, 2022, pursuant to a consulting agreement dated as of the date hereof in the form attached to this Agreement, agrees to pay to Executive, within ten (10) days after the Separation Date, a lump-sum payment of ninety eight thousand, three hundred thirty four dollars and two cents (\$98,334.02), less applicable deductions and withholdings (the “Severance Payment”).

b. Acknowledgment. Executive acknowledges that without this Agreement, Executive is otherwise not entitled to the consideration listed in this Section 1. Executive also acknowledges and agrees that, notwithstanding any language to the contrary (including any language set forth in the Offer Letter and/or any Company policy relating to severance, Executive will not receive, is not entitled to, and has no right, title, or interest in any benefits beyond the Separation Date that are not set forth in this Section 1.

2. Benefits. Executive’s health insurance benefits shall cease on July 31, 2022, subject to Executive’s right to continue her health insurance under COBRA. For clarity, the Severance Payment includes an amount equal to the grossed up value of Executive’s COBRA payments required to maintain Executive’s health insurance benefits through September 30, 2022. Executive

shall also cease vesting in any stock options and restricted stock units previously granted to Executive on September 30, 2022. Executive's participation in all other benefits and incidents of employment, including, but not limited to the accrual of bonuses, vacation, and paid time off, shall cease as of the Separation Date.

3. Payment of Salary and Receipt of All Benefits. Executive acknowledges and represents that, other than the consideration set forth in this Agreement, the Company has paid or provided all salary, wages, bonuses, accrued vacation/paid time off, premiums, leaves, housing allowances, relocation costs, interest, severance, outplacement costs, fees, reimbursable expenses, commissions, and any and all other benefits and compensation due to Executive.

4. Mutual Release of Claims. Except as otherwise set forth herein, Executive and the Company agree that the foregoing consideration represents settlement in full of all outstanding obligations owed to Executive by the Company and its current and former officers, directors, Executives, agents, investors, attorneys, shareholders, administrators, affiliates, benefit plans, plan administrators, insurers, trustees, divisions, and subsidiaries, and predecessor and successor corporations and assigns (collectively, the "Releasees"). Executive and the Company, on behalf of themselves and their respective heirs, family members, executors, agents, officers, directors, Executives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations, and assigns, hereby and forever release each other from, and Executive hereby and forever releases the Releasees from, and agree not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, demand, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that either may possess against each other or that Executive may possess against any of the Releasees arising from any omissions, acts, facts, or damages that have occurred up until and including the date the Parties sign this Agreement, including, without limitation:

a. any and all claims relating to or arising from Executive's employment relationship with the Company and the termination of that relationship;

b. any and all claims relating to, or arising from, Executive's right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;

c. any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; fraud; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; conversion; and disability benefits;

d. any and all claims for violation of any federal, state, or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Equal Pay Act; the Fair Labor Standards Act; the Fair Credit Reporting Act; the Age Discrimination in Employment Act of 1967; the Older Workers Benefit Protection Act; the Executive Retirement Income Security

Act of 1974; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act; the Sarbanes-Oxley Act of 2002; the Immigration Control and Reform Act; the California Family Rights Act; the California Labor Code; the California Workers' Compensation Act; and the California Fair Employment and Housing Act; and all similar laws under the laws of the State of Minnesota, or any local jurisdiction therein;

- e. any and all claims for violation of the federal or any state constitution;
- f. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination;
- g. any claim for any loss, cost, damage, or expense arising out of any dispute over the non-withholding or other tax treatment of any of the proceeds received by Executive as a result of this Agreement; and
- h. any and all claims for attorneys' fees and costs.

The Parties agree that the release set forth in this Section shall be and remain in effect in all respects as a complete general release as to the matters released. Notwithstanding the foregoing, this release does not extend to (i) any obligations incurred under this Agreement, (ii) any obligations that may arise under the Indemnification Agreement or Confidentiality Agreement, or (iii) any unknown claims relating to or arising from Executive's gross negligence or willful misconduct in connection with Executive's employment with the Company. This release does not release claims that cannot be released as a matter of law. Notwithstanding the foregoing, the Parties acknowledge that any and all disputed claims that are released herein shall be subject to binding arbitration in accordance with this Agreement. The Parties represent that they have made no assignment or transfer of any right, claim, complaint, charge, duty, obligation, demand, cause of action, or other matter waived or released by this Section.

5. Acknowledgment of Waiver of Claims under ADEA. Executive acknowledges that she is waiving and releasing any rights she may have under the Age Discrimination in Employment Act of 1967 ("ADEA"), and that this waiver and release is knowing and voluntary. Executive agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Executive signs this Agreement. Executive acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Executive was already entitled. Executive further acknowledges that she has been advised by this writing that: (a) she should consult with an attorney prior to executing this Agreement; (b) she has twenty-one (21) days within which to consider this Agreement; (c) she has seven (7) days following her execution of this Agreement to revoke this Agreement; (d) this Agreement shall not be effective until after the revocation period has expired; and (e) nothing in this Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by federal law. In the event Executive signs this Agreement and returns it to the Company in less than the 21-day period identified above, Executive hereby acknowledges that she has freely and voluntarily chosen to waive the time period allotted for considering this Agreement.

6. Section 1542 Waiver. Executive understands that this agreement includes a release of all known and unknown claims. Executive acknowledges that she has been advised to consult with legal counsel and is familiar with the provisions of California Civil Code Section 1542, a statute that otherwise prohibits the release of unknown claims. In giving the release herein, which includes claims which may be unknown to Executive at present, Executive acknowledges that she has read and understands Section 1542 of the California Civil Code, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Executive hereby expressly waives and relinquishes all rights and benefits under that section and any law of any other jurisdiction of similar effect with respect to release of any unknown or unsuspected claims herein.

7. No Pending or Future Lawsuits. Executive represents that she has no lawsuits, claims, charges, or actions pending in her name, or on behalf of any other person or entity, against the Company or any of the other Releasees. The Company also represents that it has no lawsuits, claims, charges, or actions pending in its name, or on behalf of any other person or entity, against Executive. Executive and the Company represent that, as of the date this Agreement is signed, they do not intend to bring any claims on their own behalf or on behalf of any other person or entity against the other.

8. Trade Secrets and Confidential Information/Company Property. Executive reaffirms and agrees to observe and abide by the terms of the Confidentiality Agreement, specifically including the provisions therein regarding nondisclosure of the Company's trade secrets and confidential and proprietary information, and non-solicitation of Company executives. Executive's signature below constitutes her certification under penalty of perjury that she shall return all documents and other items provided to Executive by the Company, developed or obtained by Executive in connection with her employment with the Company, or otherwise belonging to the Company, at the conclusion of the Consulting Period.

9. No Cooperation. Executive agrees that she will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against any of the Releasees, unless under a subpoena or other court order to do so. Executive agrees both to immediately notify the Company's Chief Legal Officer upon receipt of any such subpoena or court order, and to furnish, within three (3) business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Releasees, Executive shall state no more than that she cannot provide counsel or assistance. The Indemnification Agreement shall remain in full force and effect with respect to Executive's participation as a witness or non-party in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against any of the Releasees.

10. Mutual Non-disparagement. Executive agrees to refrain from any disparagement, defamation, libel, or slander of any of the Releasees, and agrees to refrain from any tortious interference with the contracts and relationships of any of the Releasees. The Company agrees to use its reasonable best efforts to cause its officers and directors to refrain from any disparagement, defamation, libel, or slander of Executive for so long as such individuals are officers and directors of the Company.

11. Breach. In addition to the rights provided in the “Attorneys’ Fees” section below, Executive acknowledges and agrees that any material breach of this Agreement or of any provision of the Confidentiality Agreement shall entitle the Company immediately to recover and/or cease providing the consideration provided to Executive under this Agreement and to obtain damages. In addition to the rights provided in the “Attorneys’ Fees” section below, the Company acknowledges and agrees that any material breach of this Agreement or of the Indemnification Agreement shall entitle Executive to immediately end the Consulting Period and seek damages.

12. No Admission of Liability. Executive understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by Executive. No action taken by the Company hereto, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Executive or to any third party.

13. Costs. The Parties shall each bear their own costs, attorneys’ fees, and other fees incurred in connection with the preparation and review of this Agreement.

14. ARBITRATION. THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, EXECUTIVE’S EMPLOYMENT WITH AND SEPARATION FROM THE COMPANY OR THE TERMS THEREOF, AND ANY OF THE MATTERS HEREIN RELEASED, SHALL BE SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT (THE “FAA”) AND THAT THE FAA’S SUBSTANTIVE AND PROCEDURAL PROVISIONS SHALL EXCLUSIVELY GOVERN AND APPLY TO THIS AGREEMENT WITH FULL FORCE AND EFFECT. EXECUTIVE AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, EXECUTIVE MAY BRING ANY SUCH ARBITRATION PROCEEDING ONLY IN EXECUTIVE’S INDIVIDUAL CAPACITY. ANY ARBITRATION WILL OCCUR IN SAN FRANCISCO COUNTY, CALIFORNIA, BEFORE JAMS, PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (“JAMS RULES”). THE PARTIES AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION, AND MOTIONS TO DISMISS AND DEMURRERS, APPLYING THE STANDARDS SET FORTH UNDER THE CALIFORNIA CODE OF CIVIL PROCEDURE. THE PARTIES AGREE THAT THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION ON THE MERITS. THE PARTIES ALSO AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO AWARD ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW. THE ARBITRATOR MAY GRANT INJUNCTIONS AND OTHER RELIEF IN SUCH DISPUTES. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE, AND BINDING ON THE PARTIES TO THE ARBITRATION. THE PARTIES AGREE THAT THE PREVAILING PARTY IN ANY ARBITRATION SHALL BE

ENTITLED TO INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT JURISDICTION TO ENFORCE THE ARBITRATION AWARD. THE PARTIES TO THE ARBITRATION SHALL EACH PAY AN EQUAL SHARE OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, AND EACH PARTY SHALL SEPARATELY PAY FOR ITS RESPECTIVE COUNSEL FEES AND EXPENSES;. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHT TO HAVE ANY DISPUTE BETWEEN THEM RESOLVED IN A COURT OF LAW BY A JUDGE OR JURY. NOTWITHSTANDING THE FOREGOING, THIS SECTION WILL NOT PREVENT EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF (OR ANY OTHER PROVISIONAL REMEDY) FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THEIR DISPUTE RELATING TO THIS AGREEMENT AND THE AGREEMENTS INCORPORATED HEREIN BY REFERENCE. SHOULD ANY PART OF THE ARBITRATION AGREEMENT CONTAINED IN THIS SECTION CONFLICT WITH ANY OTHER ARBITRATION AGREEMENT BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO THE ARBITRATION SECTION OF THE CONFIDENTIALITY AGREEMENT, THE PARTIES AGREE THAT THIS ARBITRATION AGREEMENT IN THIS SECTION SHALL GOVERN.

15. Protected Activity Not Prohibited. Executive understands that nothing in this Agreement or the Confidentiality Agreement shall in any way limit or prohibit Executive from engaging in any Protected Activity. Protected Activity includes: (i) filing and/or pursuing a charge, complaint, or report with, or otherwise communicating, cooperating, or participating in any investigation or proceeding that may be conducted by any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board (“Government Agencies”); and/or (ii) disclosing information pertaining to sexual harassment or any other unlawful or potentially unlawful conduct, as protected by applicable law. Executive understands that in connection with such Protected Activity, Executive is permitted to disclose documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company. Notwithstanding the foregoing, Executive agrees to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Company confidential information under the Confidentiality Agreement to any parties or in any manner not protected by applicable law. Executive further understands that “Protected Activity” does not include the disclosure of any Company attorney-client privileged communications or attorney work product.

16. Indemnification. Executive and the Company agree to indemnify and hold harmless the other from and against any and all loss, costs, damages, or expenses, including, without limitation, attorneys’ fees or expenses incurred by either Party arising out of the breach of this Agreement by the other, or from any false representation made herein by the other, or from any action or proceeding that may be commenced, prosecuted, or threatened by the other or for the other’s benefit, upon the other’s initiative, direct or indirect, contrary to the provisions of this Agreement. The Parties further agree that in any such action or proceeding, this Agreement may be pled as a complete defense, or may be asserted by way of counterclaim or cross-claim. The Company agrees that the Indemnification Agreement survived and shall continue to survive Executive’s separation of employment and shall remain in full force and effect.

17. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through

it to the terms and conditions of this Agreement. Executive represents and warrants that she has the capacity to act on her own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Agreement. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

18. No Representations. Executive represents that she has had an opportunity to consult with an attorney and has carefully read and understands the scope and effect of the provisions of this Agreement. Executive has not relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

19. Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

20. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Executive concerning the subject matter of this Agreement and Executive's employment with and separation from the Company and the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement and Executive's relationship with the Company, with the exception of the Confidentiality Agreement and the Indemnification Agreement.

21. No Oral Modification. This Agreement may only be amended in a writing signed by Executive and the Company's Chief Executive Officer.

22. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard for choice-of-law provisions. Executive consents to personal and exclusive jurisdiction and venue in the State of California.

23. Effective Date. Executive understands that this Agreement shall be null and void if not executed by Executive after the Separation Date but within twenty-one (21) days of Executive's receipt of this Agreement. Executive has seven (7) days after Executive signs this Agreement to revoke it. This Agreement will become effective on the eighth (8th) day after Executive signs this Agreement, so long as it has been signed by Executive and has not been revoked (the "Effective Date").

24. Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.


25. Voluntary Execution of Agreement. Executive understands and agrees that she executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of releasing all of her claims against the Company and any of the other Releasees. Executive acknowledges that:

- (a) she has read this Agreement;
- (b) she has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of his own choice or has elected not to retain legal counsel;
- (c) she understands the terms and consequences of this Agreement and of the releases it contains; and
- (d) she is fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

JENNIFER MCNEALEY, an individual

Dated: June 22, 2022

DocuSigned by:


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JENNIFER MCNEALEY

CODEX DNA, INC.

Dated: June 22, 2022

DocuSigned by:


By: 48FE487EAB6F64F8...

Todd R. Nelson
CEO

