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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC., STEVEN A. SHALLCROSS, JEFFREY J. KRAWS, JEFFREY WOLF and JOHN MONAHAN,** Defendants.	**Case No. 3:26-cv-00705-ART-CSD** **PLAINTIFF'S EMERGENCY MOTION TO POSTPONE THERIVA'S NOVEMBER 18, 2026 SPECIAL MEETING UNTIL AFTER IT ANSWERS THE COMPLAINT, AND FOR CONDITIONS FOR A FAIR VOTE**

Plaintiff Mark Joseph Nejmeh, self-represented, moves under Federal Rule of Civil Procedure 65(a) and Local Rule 7-4 for an order postponing the special meeting of stockholders that Defendant Theriva Biologics, Inc. ("Theriva") has called for November 18, 2026, in Parets del Vallès (Barcelona), Spain, until after Theriva answers the complaint, and setting conditions for a fair vote at the postponed meeting. This motion is supported by the Declaration of Mark Joseph Nejmeh under Local Rule 7-4(a) ("Nejmeh Decl.") and its exhibits, and by the record already before the Court. "DEF 14A" refers to Theriva's definitive proxy statement filed with the SEC on October 20, 2026 (accession no. 0001104659-26-117417; Nejmeh Decl. Ex. 1).

I. RELIEF REQUESTED

Plaintiff asks the Court to order that:

(a) **Postponement.** Theriva not hold the special meeting called for November 18, 2026, or any adjournment of it, before December 22, 2026, and hold it on

December 22, 2026, in person at Theriva's principal office, 9605 Medical Center Drive, Suite 270, Rockville, Maryland 20850;

(b) **Record date.** The record date for the postponed meeting be November 30, 2026, within the period NRS 78.350(2) allows;

(c) **Independent inspector.** The votes be counted and certified by an independent inspector of elections, chosen at random from midsize Washington, D.C. certified public accounting firms with no ties to Theriva, its placement agents, its counsel or the holders of the New Warrants;

(d) **Remote attendance.** The meeting be broadcast live, with remote attendance and voting for stockholders who cannot attend in Rockville;

(e) **Separate votes.** Each proposal be put to a separate vote, with results reported proposal by proposal, showing shares voted by brokers in their discretion separately from all other shares;

(f) **Corrected proxy.** Theriva mail a corrected proxy statement to the stockholders of record on November 30, 2026; and

(g) **Notice of direct registration.** Theriva tell stockholders, within five days of the Court's order, that they may hold their shares in their own names through its transfer agent, Equiniti Trust Company, so that transfers can be completed before the November 30, 2026 record date.

Plaintiff does not ask the Court, by this motion, to stop the exercise of any warrant, any financing or any transaction, or to undo the August 3, 2026 vote. Those questions are pleaded in the First Amended Verified Complaint (ECF No. 41) and are left for decision on the merits.

II. WHY THIS IS AN EMERGENCY

Theriva announced the meeting on October 9, 2026, without a date, and set the record date the same day (Preliminary Proxy Statement, accession no. 0001104659-26-115074, at 1). On October 16, 2026, it asked the Court to extend its time to respond to

the complaint to December 1, 2026 (ECF No. 37), and the Court granted that request (ECF No. 40). On October 20, 2026, Theriva fixed the meeting for November 18, 2026 (DEF 14A at 2). The vote is therefore set for thirteen days before Theriva's answer is due. Theriva fixed the record date on October 9, the day it first announced the meeting and eleven days before it chose the meeting date; no stockholder who bought after October 9 may vote. From October 12 through October 22, 2026, about 4.6 million Theriva shares traded, about 10% of the 45,892,668 shares outstanding (published daily trading data). Plaintiff contends that Theriva set these dates deliberately, so that the vote would be decided by a closed list of holders and held before it must answer the complaint. A motion briefed on the ordinary schedule (14 days for a response, 7 for a reply) would not be fully briefed until about November 13, 2026, leaving no time for a ruling before the vote. Plaintiff conferred with Theriva's counsel by letter, telephone, email and, on October 22, 2026, by telephone conference; counsel said no to every request (Nejmeh Decl. ¶¶ 4–7).

III. FACTS

Every fact below comes from Theriva's own filings or sworn statements, or from the docket.

A. The meeting. Theriva's special meeting "will be held in person" on November 18, 2026, at 3:30 p.m. local time, at its research site in Parets del Vallès (Barcelona), Spain; the record date is October 9, 2026 (DEF 14A at 2). "No cameras, recording equipment or electronic devices will be permitted in the Special Meeting" (id. at 4). The notice describes no way to attend remotely. As of the record date, Theriva had 45,892,668 shares outstanding (id. at 9).

B. What the meeting would decide. Proposal 1 would increase Theriva's authorized common stock to 500,000,000 shares, "at the discretion of the Company's Board of Directors" (DEF 14A at 2). The increase "will not be adjusted for any fundamental transactions, including any proportionate reverse stock split, occurring prior

to the effective date of the filing" of the amendment, "the timing of which shall be in the Board's discretion" (id. at 9). The proxy explains that a reverse split may reduce authorized and outstanding shares proportionately "as allowed under Nevada law without stockholder approval," and lists among the uses of new shares "other corporate purposes, including reverse mergers or other strategic transactions" (id.). With the increase, Theriva expects to act "in most cases without the necessity of obtaining further stockholder approval" (id. at 10). The 450,000,000-share increase approved on August 3, 2026 "has not yet been filed" (id. at 5). Proposal 2 asks stockholders "to ratify and confirm the prior approval obtained at the Company's 2026 Annual Meeting of Stockholders and, to the extent necessary, to grant a new approval" of the issuance of up to 16,184,560 shares on exercise of the New Warrants (id. at 2).

C. Theriva names this case as the reason for the vote. The DEF 14A states that "a litigation was filed in the United States District Court for the District of Nevada captioned Nejmeh v. Theriva Biologics, Inc., 3:26-cv-00705-ART-CSD, making the Company aware of the fact that the definitive proxy statement for the 2026 Annual Meeting contained errors" (DEF 14A at 11). In this Court, Theriva has said that the new vote "will provide the corrective solicitation Plaintiff seeks" and that the dispute "is headed toward mootness" (ECF No. 32 at 5).

D. The same structure that carried the August vote. Theriva expects brokers to vote uninstructed shares on Proposal 1 as a "routine" matter, and treats the warrant proposal as non-routine (DEF 14A at 7). The warrant proposal failed to reach a quorum at four special meetings at which it was the only substantive item (ECF No. 15-1 ¶¶ 10, 13–14). It passed on August 3, 2026, when it shared a ballot with routine items; 16,880,127 shares were represented, of which 10,823,826 were broker non-votes on the warrant proposal, and without them about 6,056,301 shares would have been represented against a quorum requirement of 15,297,556 (ECF No. 15-1 ¶ 17; ECF No. 15-18). The

DEF 14A says only that the warrant proposal "was subsequently presented at the 2026 Annual Meeting, at which a quorum was present" (DEF 14A at 11).

E. Stockholders asked before August 3. The DEF 14A states that "No stockholders reported any confusion or made any inquiry with the Company regarding the routine or non-routine nature of this proposal prior to, or during, the 2026 Annual Meeting" (DEF 14A at 11). Before the annual meeting, stockholders wrote to Theriva asking for the records of the December 15, 2025 special meeting; Theriva's counsel refused Plaintiff's request on May 28, 2026 (ECF No. 15-20) and another stockholder's requests in June 2026 (ECF No. 4-3 at 14–16).

F. Plaintiff. Plaintiff owns 90,191 shares of Theriva common stock registered in his own name (ECF No. 29 ¶ 11). He attended Theriva's stockholder meetings in Rockville, Maryland in person in 2021, 2022 and 2023, and has been unable to attend any of the meetings held in Spain (Nejmeh Decl. ¶ 7).

IV. ARGUMENT

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The movant must show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20. An injunction may also issue where there are "serious questions going to the merits" and the balance of hardships tips sharply in the movant's favor, if the other two factors are met. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

A. What is new since the Court's order of October 13, 2026. The Court denied Plaintiff's earlier motion because he had not shown irreparable injury (ECF No. 33). That motion was filed before Theriva called this meeting. The facts now before the Court are new: a vote fixed for a date certain, on a record date closed the day it was

announced, asking stockholders to ratify the very approval this case challenges, thirteen days before Theriva's answer is due.

B. Likelihood of success, or at least serious questions. Count I of the First Amended Verified Complaint challenges the 2026 proxy solicitation under Section 14(a) and Rule 14a-9 (ECF No. 41 ¶¶ 89–92). Theriva now admits that the 2026 proxy "contained errors" on whether brokers could vote uninstructed shares on the warrant proposal (DEF 14A at 11). Rule 14a-9 prohibits solicitation by a proxy statement containing a statement "false or misleading with respect to any material fact." 17 C.F.R. § 240.14a-9(a). A stockholder may sue under Section 14(a) "both before and after the vote is taken." *Stahl v. Gibraltar Fin. Corp.*, 967 F.2d 335 (9th Cir. 1992). The new proxy repeats the structure that carried the August vote (Part III.D) and describes that vote only as one "at which a quorum was present." Plaintiff acknowledges the Ninth Circuit's holding that under Section 14(a) "without an allegation of economic loss, no remedy, equitable or otherwise, is available," *N.Y.C. Emps.' Ret. Sys. v. Jobs*, 593 F.3d 1018 (9th Cir. 2010); the First Amended Verified Complaint alleges economic loss (ECF No. 41 ¶ 92). At a minimum, these are serious questions going to the merits.

C. Irreparable harm. The movant must show that irreparable injury is "likely in the absence of an injunction." *Winter*, 555 U.S. at 22. Once the November 18 vote is held, Theriva will treat the defect pleaded in Count I as cured and the case as moot (ECF No. 32 at 5). Relief after a corporate vote is uncertain; nothing in the statutory policy "requires the court to unscramble a corporate transaction merely because a violation occurred." *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 386 (1970) (quotation omitted). The Ninth Circuit has recognized the "irreparable harm which would result if he were forced to 'unscramble the egg' after the transaction was concluded." *Klaus v. Hi-Shear Corp.*, 528 F.2d 225 (9th Cir. 1975). And for the share authorization, Theriva says that once the 500,000,000 shares are authorized it expects to act "in most cases without the necessity of obtaining further stockholder approval" (DEF 14A at 10); the November

vote may be the last vote stockholders cast on it. And every stockholder who bought after October 9, 2026 (about 4.6 million shares had traded by October 22) is shut out of that vote for good; no later order can give them back a vote that has already been counted.

D. The balance of equities. A five-week postponement costs Theriva little. Theriva has already called five meetings on the warrant question since December 2025 (Part III.D), and the 450,000,000-share increase approved in August remains unfiled at the Board's own choice (DEF 14A at 5). Nothing in this motion restrains any warrant exercise, financing or transaction. The conditions requested are modest: Nevada law permits remote participation, NRS 78.320(4); Theriva already uses "[o]ne or more inspectors of election" (DEF 14A at 8) and a tabulator that reports broker non-votes by proposal (ECF No. 15-17 at 2–4). On the other side, Plaintiff and every other stockholder would vote, in a place most cannot reach, before Theriva answers the claims about the very approval being ratified.

E. Nevada law allows the date requested. The board "may fix a record date not more than 60 or less than 10 days before the date of any such meeting." NRS 78.350(2). A November 30, 2026 record date is 22 days before December 22, 2026. When a meeting is postponed, the record date remains the same "unless the board of directors fixes a new record date." NRS 78.350(5). Plaintiff asks the Court to require that new date, so that stockholders who acquired shares after October 9, 2026, may vote.

F. This Court has entered orders of this kind. In *Shoen v. AMERCO*, 885 F. Supp. 1332 (D. Nev. 1994), a case involving a Nevada corporation, this Court enjoined an annual meeting "for a period of forty-five (45) days … to allow sufficient time for resolicitation" and ordered that "an independent firm, with no material relationship to any party to this litigation and approved by all parties to this litigation, be appointed to tabulate" the vote. *Id.* at 1355. Plaintiff acknowledges the differences: *Shoen* involved a contest for control, and it was decided before Nevada enacted NRS 78.139 and NRS

78.012. He relies on it only as an example of the narrow process orders a federal court may enter to protect a vote.

G. The public interest. The public interest is served when stockholders of a listed company vote on accurate disclosure, with a fair chance to attend, and when a contested count is independently certified. The orders requested decide no merits question and restrain no business activity.

V. BOND

"The district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). Plaintiff asks for a nominal bond, such as $100: the relief postpones a meeting by five weeks and sets conditions for it, restrains no warrant, financing or transaction, and Plaintiff is a self-represented individual stockholder (ECF No. 29 ¶ 5).

VI. CONCLUSION

Plaintiff respectfully asks the Court to grant items (a) through (g) in Part I, set a nominal bond, set an expedited schedule for Theriva's response, and enter the proposed order filed with this motion.

Dated: October 22, 2026

Respectfully submitted,

/s/ Mark Joseph Nejmeh

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