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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 MOTION FOR LEAVE TO FILE FIRST AMENDED VERIFIED COMPLAINT (LR 15-1)**

Plaintiff Mark Joseph Nejmeh, self-represented, moves under Federal Rules of Civil Procedure 15(a)(2), 15(d) and 21 and Local Rule 15-1 for leave to file the First Amended Verified Complaint attached as Exhibit A, with its Exhibits 1 through 29. Exhibit A replaces the proposed pleading lodged on October 19, 2026 (ECF No. 41). It is complete in itself without reference to the original complaint and includes copies of all exhibits it refers to, as Local Rule 15-1(a) requires. A redlined comparison of Exhibit A with the original complaint (ECF No. 4) is attached as Exhibit B, as Section IV.B of the Civil Standing Order of Magistrate Judge Craig S. Denney requires. This motion follows the Court's Minute Order of October 30, 2026. Plaintiff also asks that the claims first pleaded in ECF No. 41 be treated as filed as of October 19, 2026 (Part III). Plaintiff's request concerning the order in which the Court decides this motion and his Emergency Motion (ECF No. 42) is filed as a separate motion, as LR IC 2-2(b) requires.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

1. Plaintiff filed his original Verified Complaint against Theriva Biologics, Inc. ("Theriva") on September 16, 2026 (ECF No. 4). Theriva has not answered or moved to dismiss; its response is due December 1, 2026 (ECF No. 40). No discovery has taken place.

2. On October 9, 2026, after the original complaint was filed, Theriva filed a preliminary proxy statement calling a special meeting of stockholders for November 18, 2026, and filed its definitive proxy statement on October 20, 2026 (ECF No. 42-2).

3. On October 19, 2026, Plaintiff lodged the First Amended Verified Complaint, which adds Theriva's directors Steven A. Shallcross, Jeffrey J. Kraws, Jeffrey Wolf and John Monahan as defendants and pleads the November 18 proxy, together with his alternative motion for leave to amend (ECF No. 41; the motion is at ECF No. 41 at 41–43).

4. On October 30, 2026, the Court directed Plaintiff to Local Rule 15-1.

II. LEAVE TO AMEND SHOULD BE GRANTED

The Court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave is denied only for reasons such as undue delay, bad faith, repeated failure to cure, undue prejudice to the opposing party, or futility. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Prejudice to the opposing party carries the greatest weight, and absent prejudice or a strong showing of the other factors there is a presumption in favor of granting leave. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

Each factor favors leave. The amendment was lodged about five weeks after the original complaint and before any response. It is Plaintiff's first amendment. Theriva suffers no prejudice: it has not answered, its response date of December 1, 2026 has not passed, and no discovery has occurred. The amendment pleads the November 18 proxy, which did not exist when the original complaint was filed; Rule 15(d) allows a pleading

to set out events that happened after the date of the pleading. Rule 21 allows the Court to add parties "at any time, on just terms."

III. THE CLAIMS FIRST PLEADED ON OCTOBER 19, 2026

5. Plaintiff lodged his First Amended Verified Complaint on October 19, 2026, together with his alternative motion for leave to amend (ECF No. 41; the motion is at ECF No. 41 at 41–43). Exhibit A arises from the same conduct, transactions and occurrences, corrects and supplements that pleading, and adds facts from the public record and the record of this case. Plaintiff asks that the claims first pleaded in ECF No. 41 be treated as filed as of October 19, 2026, and in any event as of the date of this motion.

6. Exhibit A pleads Count III (Section 10(b) of the Securities Exchange Act and Rule 10b-5, arising from the statement made to Plaintiff at Theriva's October 2, 2023 stockholder meeting) against Theriva and against each of Steven A. Shallcross, Jeffrey J. Kraws, Jeffrey Wolf and John Monahan, and control-person liability under Section 20(a) for that count against Kraws, Wolf and Monahan. Each of them was named as a defendant in ECF No. 41, which pleaded the same statement and Count III.

IV. CONSENT

Theriva has not given its written consent to the amendment under Rule 15(a)(2).

V. CONCLUSION

Plaintiff respectfully asks the Court to grant leave to file the First Amended Verified Complaint (Exhibit A); to treat the claims first pleaded in ECF No. 41 as filed as of October 19, 2026, and in any event as of the date of this motion; and to enter the proposed order filed with this motion.

Dated: October 31, 2026

Respectfully submitted,

/s/ Mark Joseph Nejmeh

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INDEX OF EXHIBITS

Exhibit A: First Amended Verified Complaint

Exhibits A-1 through A-29: Exhibits 1 through 29 to the First Amended Verified Complaint

Exhibit A-30: Plaintiff's Declaration and Index of Exhibits

Exhibit B: Comparison of Exhibit A with the original Verified Complaint (ECF No. 4)