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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 OPPOSITION TO DEFENDANT'S MOTION FOR LEAVE TO FILE SUR-REPLY (ECF NO. 53)**

Plaintiff Mark Joseph Nejmeh, self-represented, opposes Defendant Theriva Biologics, Inc.'s Motion for Leave to File Sur-Reply (ECF No. 53) and respectfully asks the Court to deny it.

POINTS AND AUTHORITIES

Theriva's response answered the wrong complaint. On November 2, 2026, the Court granted Plaintiff leave to amend and ruled that it "will adjudicate the preliminary injunction based on the claims raised in the first amended complaint." ECF No. 49. The Court extended Theriva's response deadline to November 6, 2026 for that purpose. *Id.* The First Amended Verified Complaint the Court accepted (ECF No. 46, Exhibit A) pleads five counts, including Count V. Theriva's response, filed four days after the order, instead argued against ECF No. 41, which it said "pleads four counts." ECF No. 50 at 4, 10. Theriva now confirms that its response "addressed each of those counts," the four counts of ECF No. 41. ECF No. 53 at 2. Its response was therefore incomplete.

Count V is not a new matter raised in reply. It is one of the claims raised in the first amended complaint, on which the Court said it will decide the motion. ECF No. 49. Plaintiff's reply did not add it; the reply pointed out that Theriva's response did not address it. ECF No. 52 at 19. A sur-reply would give Theriva a second response to a complaint it had before it on November 6.

Theriva also asks the Court to disregard the "multitude of other factual arguments" in the reply. ECF No. 53 at 2 n.2. Those are the sworn allegations of the verified first amended complaint that Theriva's response did not address, listed in Part IV of the reply. ECF No. 52 at 12. They are not new; they are what Theriva left unanswered.

The reply has 19 exhibits, not twenty-two; the other three attachments are Plaintiff's declaration, the index of exhibits and the certificate of service. ECF Nos. 52-1 to 52-22.

Theriva also notes that the First Amended Verified Complaint had not been entered on its own since leave was granted. ECF No. 53 at 2 n.1. Plaintiff has now filed it as its own entry under LR 15-1(b). ECF No. 54.

The Local Rules provide that "motions for leave to file a surreply are discouraged." LR 7-2(b).

Plaintiff therefore asks the Court to deny Theriva's Motion for Leave to File Sur-Reply (ECF No. 53) and not to consider the proposed sur-reply (ECF No. 53-1).

Dated: November 9, 2026

Respectfully submitted,

/s/ Mark Joseph Nejmeh

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