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Plaintiff, self-represented

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEVADA**

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| **MARK JOSEPH NEJMEH,**<br>Plaintiff,<br>v.<br>**THERIVA BIOLOGICS, INC., STEVEN A. SHALLCROSS, JEFFREY J. KRAWS, JEFFREY WOLF and JOHN MONAHAN,**<br>Defendants. | **Case No. 3:26-cv-00705-ART-CSD**<br><br>**EXHIBIT B**<br>**HIGHLIGHTED COPY: SECOND AMENDED VERIFIED COMPLAINT COMPARED WITH ECF NO. 54**<br>**(added or changed text highlighted)** |

Plaintiff Mark Joseph Nejmeh, self-represented, files this Second Amended Verified Complaint against Defendants Theriva Biologics, Inc., Steven A. Shallcross, Jeffrey J. Kraws, Jeffrey Wolf and John Monahan, and alleges as follows. Statements of fact cite their sources or are within Plaintiff's personal knowledge. Plaintiff's beliefs are marked as his beliefs, and his allegations about intent are marked as allegations.

## I. SUMMARY OF THE CASE

1. On December 2, 2025, Michael and Susan Dell pledged $6.25 billion to give 25 million American children aged 10 and under an incentive to claim new investment accounts created for them (Associated Press, December 2, 2025 (Exhibit 1 at 2)). Those children are tomorrow's stockholders. Why, then, did a fund that reports its holdings together with Michael S. Dell, MSD Credit Opportunity Master Fund, L.P. (Exhibit 14 at 2–5), pay Theriva about $3 million in July 2022 for preferred stock carrying 2,000,000,000 votes? Theriva's own proxy statement gave the answer: "In order to assist with procuring the vote necessary to effect" an increase in its authorized common stock

from 20 million to 350 million shares. Holders of a majority of Theriva's common stock did not vote for that increase. By Plaintiff's calculation from Theriva's reported totals, 5,517,109 common shares voted for it, 34.8% of the common stock and 2,405,061 votes short of a majority. It passed only with the preferred stock's 2 billion votes. That authority let Theriva's outstanding shares rise above the old 20,000,000 limit, to 25,131,230 by August 2024 (Exhibit 13 at 16; Exhibit 24 at 2; see paragraphs 16–20). This case asks whether stockholders like those children will get a fair vote.

2. That was not a single event. It is a pattern, and Theriva's own filings show it (chart and timeline, Exhibit 24 at 2–4). Again and again, Theriva raised money through the same placement agent, A.G.P./Alliance Global Partners, from the same small group of funds, on terms that favored them over its own stockholders, while those stockholders were kept from facts that mattered: issued patents that were never announced, a share count that tripled before a vote without a press release or Form 8-K stating it, and stockholder meetings moved to where they could not attend. In October 2025, Theriva's board cut the price of outstanding warrants to $0.54 and gave their holders two new warrants for each one exercised, a transfer Theriva itself valued at $5.9 million in exchange for $4.4 million in cash. By Plaintiff's calculation, every one of the 23,434,881 new shares issued that month was in hand before the record date for the vote to approve those new warrants. Four meetings to approve them failed. The board moved the meetings to Spain. The approval finally passed on August 3, 2026, on a quorum that existed only because of 10,823,826 broker shares voted without instructions on other proposals and a proxy statement Theriva now admits "contained errors." Plaintiff believes that a marketplace run this way takes away the hope of ordinary people who invest their earnings to get ahead, and that this harm reaches beyond Theriva's own stockholders. Plaintiff asks the Court for one thing above all: a fair vote.

3. Theriva did the same with its share count. Four times its board split the stock on its own, without a stockholder vote. Three times, in 2018, 2022 and 2024, Theriva

told its stockholders that the split was being effected to meet "the per share price requirements of the NYSE American." Yet NYSE American had published no notice about Theriva's share price, and Theriva had asked for no extension to cure one. After each split, Theriva asked for, and got, the authority to issue hundreds of millions of new shares (paragraphs 24–36).

**II. WHY PLAINTIFF BRINGS THIS CASE**

4. I am doing this because I see something wrong here. I believe the people involved have been and will continue to hurt shareholders, particularly the shareholders in small companies: the shareholders that are typically poor and with hopes, the shareholders that find it difficult to read the filings, especially in the format in which they are delivered. These are people who believe the press releases they read. They are not prepared for the sophisticated, behind-the-scenes financial moves that destroy shareholder value.

5. It is my belief that if this case can continue, I can show at least one pattern of the same people traveling from company to company, bringing similar devastation to each. Judge, I plead to you to let this case continue, as the first step to expose these complex actions, so that more people do not lose the last bits of hope in the equity markets in America.

**III. PARTIES**

6. Plaintiff Mark Joseph Nejmeh is a stockholder of Theriva Biologics, Inc. He first bought its common stock in August 2021 and attended its stockholder meetings in person in Rockville, Maryland on September 21, 2021, September 30, 2022, October 2, 2023 and December 15, 2025. He held Theriva common stock on the record dates of October 30, 2025 and June 23, 2026 and was solicited for the votes on the New Warrant shares. He holds 90,191 shares of Theriva common stock and has not bought or sold any since this case was filed on September 16, 2026.

7. By his brokerage records, the Theriva common stock Plaintiff holds is worth $759,000 less than he paid for it.

8. Defendant Theriva Biologics, Inc. ("Theriva") is a Nevada corporation whose common stock trades on the NYSE American under the symbol TOVX. Its principal office is at 9605 Medical Center Drive, Suite 270, Rockville, Maryland 20850. Its earlier names were Sheffield Pharmaceuticals, Inc., Pipex Pharmaceuticals, Inc., Adeona Pharmaceuticals, Inc. and Synthetic Biologics, Inc.; it became Theriva Biologics, Inc. on October 12, 2022 (SEC Form 8-K, Accession No. 0001104659-22-107928).

9. Defendant Steven A. Shallcross is Theriva's Chief Executive Officer, Chief Financial Officer and a director. He has been Chief Financial Officer since June 2015 and Chief Executive Officer and a director since December 6, 2018 (Definitive Proxy Statement filed June 29, 2026, Accession No. 0001104659-26-078859 ("2026 Proxy")).

10. Defendant Jeffrey J. Kraws has been a Theriva director since January 2006 and Chairman since May 2012 (2026 Proxy). He was earlier responsible for competitive analysis within the treasury group at Bristol-Myers Squibb Company (Definitive Proxy Statement filed August 14, 2023, Accession No. 0001104659-23-091498). According to the 2026 Proxy, Kraws "has served as a partner at Grannus Securities Pty Ltd. (an Australian based private equity fund) since November 2015" and "is also a partner of PDK Healthcare Innovations LLC." Theriva's proxy statements describe Kraws as a former managing director of healthcare research at Ryan Beck & Co., director of research and senior pharmaceutical analyst at Gruntal & Co., and senior pharmaceutical analyst at First Union Securities, "ranked the number one analyst among all pharmaceutical analysts for stock performance in 2001," and as chief executive officer and co-founder of Crystal Research Associates (2026 Proxy). In 2008, when Theriva was named Pipex Pharmaceuticals and Kraws was both a director and its Vice President of Business Development, Theriva paid Crystal Research Associates $35,000 to write an

"executive information overview" of the company (Form 10-KSB/A filed August 29, 2008, Accession No. 0000890163-08-000600, Item 12).

11. Defendant Jeffrey Wolf has been a Theriva director since 2006. He founded Scorpius Holdings, Inc. (formerly Heat Biologics, Inc. and NightHawk Biosciences, Inc.) and has served as its Chief Executive Officer and Chairman (2026 Proxy).

12. Defendant John Monahan has been a Theriva director since November 11, 2020, and was a director of Scorpius from November 2009 until April 2026 (2026 Proxy).

13. Shallcross, Kraws, Wolf and Monahan (the "Director Defendants") were Theriva's four directors and the four nominees in the 2026 Proxy. All four were also Theriva's directors in July 2022 (Form D, Accession No. 0001104659-22-085738).

## IV. JURISDICTION AND VENUE

14. This Court has jurisdiction over the federal claims under Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331, and over the Nevada claim under 28 U.S.C. § 1367. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 65 governs the injunctive relief requested.

15. Venue is proper in this District under 15 U.S.C. § 78aa and 28 U.S.C. § 1391 because Theriva is a Nevada corporation and the claims concern its internal affairs and its stockholder votes. Theriva's registered agent is in Carson City, within the Northern Division of this District.

## V. FACTS

### A. MSD and the votes it bought (2017–2022)

16. MSD Credit Opportunity Master Fund, L.P. ("MSD") is a Cayman Islands limited partnership managed by MSD Partners, L.P. In an SEC filing dated April 7, 2022, MSD, MSD Partners, MSD Capital, L.P. and Michael S. Dell reported their holdings jointly as "Reporting Persons"; the filing states that Mr. Dell "is the controlling member

of" MSD Capital Management LLC and that his principal business is serving as Chief Executive Officer and Chairman of Dell Technologies Inc. (Schedule 13D/A for Independence Contract Drilling, Inc., Accession No. 0001123292-22-000083 (Exhibit 14 at 2–5)).

17. On September 11, 2017, Theriva (then Synthetic Biologics) sold MSD 120,000 shares of Series A Convertible Preferred Stock for $12 million. Marcello Liguori signed for MSD as Managing Director (Form 8-K filed September 12, 2017, Accession No. 0001144204-17-047548, Exhibit 10.1). On January 27, 2021, Theriva amended the Series A to cut its conversion price "from $18.90 per share to $1.50 per share" and "removed the redemption upon change of control" (Form 8-K, Accession No. 0001104659-21-008261). The holder then converted Series A into 3,160,000, 3,454,005 and 1,851,149 shares of common stock on January 29, February 8 and February 9, 2021 (Forms 8-K, Accession Nos. 0001104659-21-009459, -014306 and -016924).

18. On July 28, 2022, Theriva sold MSD 275,000 shares of Series C and 100,000 shares of Series D Convertible Preferred Stock for about $3.0 million. Liguori signed for MSD; Shallcross signed for Theriva. A.G.P./Alliance Global Partners was Theriva's financial advisor for a $175,000 fee (Form 8-K filed July 29, 2022, Accession No. 0001104659-22-084301, and its Exhibit 10.1 (Exhibit 13 at 2–10)). The sale cut the exercise price of warrants Theriva had issued in October 2018 from $6.90 (as previously adjusted) to $1.22 (Form 8-K filed August 3, 2022, Accession No. 0001104659-22-085672).

19. The Series D carried "20,000 votes per share," or 2,000,000,000 votes, on three proposals only: the name change, the increase in authorized common stock from 20,000,000 to 350,000,000 shares, and an adjournment. Those votes were to be "counted by us in the same proportion as the aggregate shares of Common Stock and Series C Convertible Preferred Stock are voted (excluding any shares of Common Stock that are noted [sic] voted)." MSD agreed to vote its Series C for the proposals and, on Theriva's

request, to give Theriva an irrevocable proxy to vote the Series D. Theriva's proxy statement explained: "In order to assist with procuring the vote necessary to effect the Name Change Proposal, the Authorized Common Stock Increase Proposal and the Adjournment Proposal, on July 29, 2022, we closed a private placement offering in which we issued an aggregate of 375,000 shares of Preferred Stock … to one investor" (Definitive Proxy Statement filed August 16, 2022, Accession No. 0001104659-22-091820 (Exhibit 13 at 13–17)).

20. At the September 30, 2022 annual meeting, which Plaintiff attended in person, the increase to 350,000,000 authorized shares was reported as approved by 1,363,490,126 votes for and 646,929,043 against (Form 8-K filed October 3, 2022, Accession No. 0001104659-22-105229 (Exhibit 13 at 20)). On the August 3, 2022 record date Theriva had 15,844,339 common shares outstanding (Exhibit 13 at 12). The Series C carried 1,803,279 votes, but MSD agreed to submit only 1,549,295 of them (Exhibit 13 at 13, 16–17). Subtracting the 2,000,000,000 Series D votes and applying the stated rule that they followed the other votes cast, Plaintiff calculates that between 5,263,125 and 5,517,109 common shares voted for the increase (depending on how many Series C votes were cast), which is 33.2% to 34.8% of the common stock; a majority would have required 7,922,170. Holders of a majority of the common stock did not vote for the increase. It passed because of the Series D votes.

**B. The reverse splits, the October 2, 2023 statement, and the reloads**

21. On October 2, 2023, Plaintiff attended Theriva's annual meeting in person at its Rockville office (Definitive Proxy Statement filed August 14, 2023, Accession No. 0001104659-23-091498). Plaintiff spoke with Shallcross there. Shallcross told Plaintiff, in substance, that Theriva could not increase its authorized shares after a reverse stock split.

22. On August 26, 2024, Theriva effected a 1-for-25 reverse stock split approved by its board alone, without a stockholder vote. The split also reduced its authorized

common stock from 350,000,000 to 14,000,000 shares (Form 8-K filed August 16, 2024, Accession No. 0001104659-24-090522; Form 8-K filed August 26, 2024, Accession No. 0001104659-24-092644).

23. That was Theriva's fourth reverse stock split. The others were 1-for-3, effective April 25, 2007 (Form 10-K filed March 31, 2008, Accession No. 0000890163-08-000193, note (C)); 1-for-35, effective August 10, 2018, which reduced its outstanding shares "from 132,969,743 shares to 3,799,136 shares" (Form 8-K filed August 13, 2018, Accession No. 0001144204-18-043710); and 1-for-10, effective July 25, 2022, which reduced them "from 158,437,840 shares to 15,843,784 shares" (Form 8-K, Accession No. 0001104659-22-082251).

24. A company listed on NYSE American must report, in a Form 8-K under Item 3.01 filed within four business days, any notice from the exchange that it does not satisfy a continued listing standard. A company that receives such a notice may submit a plan and ask the exchange for time to cure.

25. Theriva followed that procedure when NYSE American cited its stockholders' equity. It reported the exchange's notices (Forms 8-K filed March 7, 2018, Accession No. 0001144204-18-013351; November 27, 2019, Accession No. 0001104659-19-068217; and August 5, 2020, Accession No. 0001104659-20-090908), submitted plans that the exchange accepted (Forms 8-K filed May 22, 2018, Accession No. 0001144204-18-030165, and February 7, 2020, Accession No. 0001104659-20-012556), and announced that it had regained compliance on July 1, 2019 (Accession No. 0001144204-19-033241) and on May 26, 2021, when it reported compliance with all continued listing standards (Accession No. 0001104659-21-072082).

26. Every one of those notices concerned stockholders' equity. None concerned Theriva's share price. Of the 364 Forms 8-K and 8-K/A that Theriva has filed with the SEC, none after August 5, 2020 reports any notice from NYSE American under Item

3.01 (SEC EDGAR filing index for Central Index Key 0000894158). Theriva has never reported asking the exchange for time to cure a share-price deficiency.

27. Yet each time the board split the stock on its own, Theriva gave its stockholders the exchange as the reason. On August 1, 2018: "The reverse stock split is being effected to meet the per share price requirements of the NYSE American, the Company's current listing exchange," adding that if the stock "were to fall below $0.20 per share on a 30-trading-day average, it may become subject to" the exchange's review. On July 15, 2022 and August 16, 2024: "The reverse stock split is being effected to ensure that the Company can meet the per share price requirements of the NYSE American, the Company's current listing exchange." Each release also stated that under Nevada law the board "has the authority to effect a reverse stock split without shareholder approval" (press releases filed as Exhibit 99.1 to Forms 8-K, Accession Nos. 0001144204-18-041405, 0001104659-22-080032 and 0001104659-24-090522).

28. On July 11, 2022, the day the board approved the 1-for-10 split, it also amended Theriva's bylaws, effective immediately, to lower the quorum for stockholder meetings to one-third of the voting power (Form 8-K filed July 15, 2022, Accession No. 0001104659-22-080032, Item 5.03).

29. Plaintiff alleges that the board bypassed the exchange's notice-and-extension process because the purpose of each split was not to cure a listing problem, but to shrink the share count so that the authorized shares could be restored and new shares issued to the financiers described below.

30. At one of Theriva's stockholder meetings, Plaintiff complained to Shallcross about the reverse splits and the lack of information, and told him that the way the company operates will cause people like Plaintiff to sell. Shallcross answered, in words to the effect, "go ahead, sell your shares." Kraws then stepped in and said that Shallcross should not have said that.

31. After two of those splits, public financial websites showed share counts and market values far from Theriva's filings. On August 17, 2018, finviz.com showed 141.96 million shares outstanding and a market capitalization of $362.00 million and a price of $2.75, and on August 24, 2018, 127.16 million shares and $347.15 million, when Theriva had 3,799,136 shares. On August 10, 2022, Yahoo Finance showed a market capitalization of $187.501 million at a price of $1.42, which corresponds to about 132 million shares, when Theriva had about 15.84 million (Internet Archive captures (Exhibit 22 at 2–5)).

32. On March 3, 2021, Theriva had 129,654,575 shares outstanding (Form 10-K cover, Accession No. 0001104659-21-032150), and its stock closed at $0.64, a market value of about $83.0 million. On October 16, 2026, with 45,892,668 shares outstanding and a closing price of $0.21, its market value was about $9.64 million (Exhibit 9 at 8; Exhibit 21 at 2).

33. On October 10, 2018, two months after the 1-for-35 reverse split left it with 3,799,136 shares, Theriva (then Synthetic Biologics) agreed to sell, in an offering underwritten by A.G.P./Alliance Global Partners, 2,520,000 units, each of one share and one five-year warrant exercisable at $1.38, at $1.15 per unit, and 15,723 units of Series B Convertible Preferred Stock convertible into 13,672,173 shares, with 13,672,173 more warrants. The underwriters also bought warrants for 1,807,826 shares. The offering closed October 15, 2018 (Form 8-K, Accession No. 0001144204-18-053807). By Plaintiff's calculation, the offering created rights to about 34.2 million new shares, about nine times the 3,799,136 shares then outstanding.

34. The August 26, 2024 reverse split reduced Theriva's outstanding shares "from 25,131,230 shares to 1,005,249 shares" (Form 8-K, Accession No. 0001104659-24-092644). Four days later, on August 30, 2024, 26,144,100 TOVX shares traded, about twenty-six times the shares outstanding; the price reached $7.15 and closed at $5.90 (Yahoo Finance daily data (Exhibit 23 at 2)). Theriva issued no press release and filed no

Form 8-K between August 27 and September 8, 2024. On September 26, 2024, with A.G.P. as placement agent, Theriva priced a public offering of 918,600 shares, pre-funded warrants for 510,000 shares exercisable at $0.0001, and five-year warrants for 1,428,600 shares exercisable at $2.00, at $1.75 per share and warrant, for about $2.5 million (Form 8-K filed September 30, 2024, Accession No. 0001104659-24-103813). On September 27, 2024, the day the offering closed, the stock closed at $1.49 (Exhibit 23 at 2). Plaintiff will ask each of Theriva's officers and directors, Shallcross, Kraws, Wolf and Monahan, and A.G.P., each under oath, to explain the trading of August 30, 2024 and the timing and price of this offering.

35. On September 18, 2024, Theriva asked its stockholders to increase its authorized common stock "from 14,000,000 shares to 350,000,000 shares" (Preliminary Proxy Statement, Accession No. 0001104659-24-101004, Proposal 4). The increase was approved at the October 31, 2024 annual meeting (Form 8-K filed November 1, 2024, Accession No. 0001104659-24-113480). Plaintiff did not attend that meeting.

36. Theriva had done the same after its 2018 split. About six weeks after the August 10, 2018 1-for-35 split, its stockholders approved, and on September 24, 2018 Theriva filed, an amendment raising its authorized common stock from 10,000,000 to 200,000,000 shares (Form 8-K, Accession No. 0001144204-18-050928).

37. Theriva's October 9, 2026 preliminary proxy statement now provides for a possible further board-only reverse split and asks for 500,000,000 authorized shares that "will not be adjusted for any fundamental transactions, including any proportionate reverse stock split" (Preliminary Proxy Statement, Accession No. 0001104659-26-115074 ("October 2026 Proxy") (Exhibit 9 at 8–9)).

**C. Patents Theriva did not announce**

38. The United States Patent and Trademark Office issued to Theriva U.S. Patent No. 12,178,917 on December 31, 2024, U.S. Patent No. 12,274,740 on April 15, 2025 and U.S. Patent No. 12,318,434 on June 3, 2025, each assigned to Theriva Biologics,

Inc. The first two, titled "Beta-lactamase formulations and uses thereof" and "Microbiome protection from oral antibiotics," describe SYN-004 (ribaxamase), Theriva's drug candidate designed to protect the gut microbiome from antibiotics and to prevent *C. difficile* infection. The third, titled "Alkaline phosphate-based oncology treatments," claims a method of treating a side effect of chemotherapy.

39. Of 41 U.S. patents issued to Theriva for its *C. difficile* program, none was announced by press release after July 2017; of 10 U.S. patents issued to Theriva for SYN-020, none was ever announced (Exhibit 11 at 2–5). Four more U.S. patents issued to Theriva while it was asking its stockholders to approve the New Warrant shares, Nos. 12,472,147, 12,508,304, 12,648,987 and 12,691,077, and none was announced (Exhibit 11 at 5).

40. At one of the stockholder meetings Plaintiff attended in person in Rockville (September 21, 2021, September 30, 2022 or October 2, 2023), Plaintiff asked Shallcross why Theriva did not announce its issued patents. Shallcross told Plaintiff, in words to the effect, that Theriva did not disclose them because they did not matter. Plaintiff does not recall which of those meetings it was. Plaintiff said publicly at the time that the patents were not being disclosed (for example, in his video of May 31, 2023).

41. Plaintiff believes the patents matter to Theriva's value, because its technology may be a platform that could treat many cancers rather than one, and that stockholders were entitled to know of them while Theriva was raising money from the public and asking stockholders to vote.

42. Theriva reported on May 7, 2025 that, in its Phase 2b VIRAGE trial in newly diagnosed metastatic pancreatic cancer, patients who received two doses of VCN-01 and four or more cycles of gemcitabine/nab-paclitaxel had a median overall survival of 14.8 months, against 11.6 months for patients who received four or more cycles of that chemotherapy alone (Form 8-K, Accession No. 0001104659-25-045309, Exhibit 99.1). On April 13, 2026, Revolution Medicines, Inc. reported that in its Phase 3 trial of

daraxonrasib in previously treated metastatic pancreatic cancer, “daraxonrasib demonstrated a median OS of 13.2 months versus 6.7 months for chemotherapy” (Form 8-K, Accession No. 0001193125-26-152039). For all patients in the VIRAGE trial, median overall survival was 10.8 months against 8.6 months (Exhibit 20 at 2). At closing prices on September 22, 2026, the stock market valued Revolution Medicines at about $41.34 billion (214,336,418 shares, as reported on its most recent Form 10-Q, at $192.86) and Theriva at about $10.56 million (45,892,668 shares at $0.23), about 3,900 to 1. On October 16, 2026, after Revolution Medicines’ price fell about 8%, the values were about $38.14 billion ($177.96 per share) and $9.64 million ($0.21 per share), about 3,960 to 1 (Exhibit 20 at 2, 6, 9; Exhibit 21 at 2; Exhibit 9 at 8).

43. Plaintiff believes that, valued on the same basis as Revolution Medicines, Theriva’s stock would be worth on the order of $830 to $900 per share, and that this value has been kept from Theriva’s stockholders by the conduct described in this complaint. This is Plaintiff’s calculation from the two companies’ reported shares and closing prices.

44. On February 17, 2026, announced February 18, 2026, Theriva licensed its SYN-020 program to Rasayana for $300,000 paid upfront, plus possible milestone payments of up to $38 million and royalties (Form 8-K filed February 18, 2026, Accession No. 0001104659-26-016792 (Exhibit 10 at 3)). The patents licensed to Rasayana include U.S. Patent No. 12,318,434, issued eight months earlier (id., Exhibit 10.1, Exhibit A (Exhibit 10 at 7)). On February 19, 2026, about 274 million TOVX shares traded, according to published daily trading data, with no Theriva announcement that day.

45. Theriva’s own documents do not agree on when the Rasayana license began. Its annual report says Rasayana became responsible for the program “commencing February 7, 2026,” and elsewhere “commencing February 17, 2026” (Form 10-K for 2025, Accession No. 0001104659-26-026767). The license agreement says it was “made

effective this 17th day of February 2026," and the Form 8-K cover gives February 17, 2026 as the date of the event; the Form 8-K text says Theriva entered into the agreement "On February 18, 2026 (the 'Effective Date')" and received the $300,000 "on the Effective Date" (Exhibit 10 at 2, 3, 6).

46. Rasayana Therapeutics, Inc. is a Delaware corporation whose principal place of business, according to the license agreement, is 68 Harrison Avenue, Suite 605, Boston, Massachusetts (Exhibit 10 at 6). Theriva's February 18, 2026 press release quotes Vidisha Mohad as Rasayana's "Founder and CEO." Plaintiff will ask who owns and controls Rasayana and where Rasayana obtained the $300,000 it paid for the license. The ten U.S. patents for SYN-020 name as inventors Michael Kaleko, Christian Furlan Freguia, Sheila Connelly, Vincent Wacher, J. Blair West, Andrew Bristol, Ray Stapleton, Steven Hubert, Cristina Freire and James Gubbins. Plaintiff will seek their testimony on the value of SYN-020 and the Rasayana license.

47. Theriva's February 18, 2026 press release quotes Ms. Mohad: "Having worked on SYN-020 research during my postdoctoral training at Harvard, I have deep conviction in its underlying biology, scientific rigor, and therapeutic potential" (Exhibit 25 at 2). On information and belief, she worked on SYN-020 as an intern connected with Theriva before Rasayana licensed it. Theriva's 2025 annual report, filed after the license, states: "Except as disclosed under 'Executive Compensation,' and below there were no related party transactions during the two years ended December 31, 2025 or the current year." The only related person it then names is MaryAnn Shallcross, "the wife of Steven Shallcross," with her compensation, bonuses and stock options (Exhibit 25 at 10–11). The report does not mention any prior relationship between Theriva and Rasayana's founder. Plaintiff contends that this relationship made the SYN-020 license a related-party transaction that stockholders should have been told about. Plaintiff will seek discovery of every tie between Ms. Mohad and Theriva or its officers, including who paid for her SYN-020 work.

48. Theriva's own 2025 annual report states that "in most cases, pancreatic cancer is diagnosed in its late stages … when surgical resection and possibly curative treatment is not possible" (Form 10-K, Accession No. 0001104659-26-026767). SYN-020 is an oral form of the enzyme intestinal alkaline phosphatase. Plaintiff believes, based on published research about that enzyme, that it has value in identifying pancreatic cancer early. Theriva's license to Rasayana covers diagnostic uses as well as treatment (Exhibit 25 at 3).

49. Plaintiff believes the Rasayana license was a knife in the back of stockholders, both for its price and terms and because Plaintiff believes the drug could help in the early detection of pancreatic and other cancers. Plaintiff alleges that Theriva kept its issued patents from stockholders on purpose. Its chief executive told Plaintiff they did not matter (paragraph 40), and Theriva announced none of them while it sold new shares and warrants at low prices. Plaintiff alleges that this was a breach of the directors' duty to stockholders.

**D. May 7, 2025**

50. On May 7, 2025, Theriva announced topline results of its VIRAGE Phase 2b trial of VCN-01 (Form 8-K, Accession No. 0001104659-25-045309) and, the same day, priced a public offering of about $7.5 million through its sole placement agent, A.G.P./Alliance Global Partners. Each share was sold with a five-year warrant to buy another share at $1.10, at a combined price of $1.10; pre-funded warrants were sold at an exercise price of $0.001. The registration statement was declared effective that day, and the offering closed May 8, 2025 (Form 8-K filed May 8, 2025, Accession No. 0001104659-25-046170, and Exhibit 99.1).

51. In the securities purchase agreement for that offering, Theriva acknowledged that none of the purchasers had been asked to agree, or had agreed, "to desist from purchasing or selling, long and/or short, securities of the Company" (id., Exhibit 10.1,

section 3.1(ff)). The purchasers' restriction on short sales ran only until the transaction was publicly announced (id., section 4.12).

52. The stock had closed at $1.36 on May 6, 2025 and closed at $0.81 on May 7, 2025. On May 7, 2,803,100 TOVX shares were reported to FINRA as sold short, out of 6,063,633 shares reported to FINRA that day (FINRA Reg SHO daily short sale volume file, May 7, 2025). The SEC's fails-to-deliver data shows 2,246,939 TOVX shares failed to deliver as of the May 8, 2025 settlement date, against 101 to 2,961 shares on each reported date from April 15 to May 7, 2025 (Exhibit 17 at 2).

53. On April 29, 2025, eight days before the May 7 offering priced at $1.10, the board granted stock options at $1.4144 per share, including 190,000 to Shallcross and 25,000 to each of the other directors (Forms 4 filed May 1, 2025, Accession Nos. 0001104659-25-043510, -043507, -043511 and -043509). The same day, Theriva granted an option to purchase 25,000 shares to MaryAnn Shallcross, Shallcross's wife, whom Theriva employed as its Director of Clinical Operations. On December 13, 2024, Theriva had approved for her compensation of $157,000 and a bonus of $45,000, and it recorded $202,000 in compensation expense for her in 2025 (2026 Proxy, related party transactions).

54. Theriva released its trial results and priced the offering on the same day, under an agreement that left the purchasers free to sell short once the transaction was announced (paragraph 51). That day 2,803,100 shares were reported sold short and the stock fell from $1.36 to $0.81 (paragraph 52). Plaintiff alleges that Theriva structured the offering this way, and that its retail stockholders, excited by the news, bore the loss.

**E. October 2025: the New Warrants and the new shares**

55. On October 16–17, 2025, Theriva induced warrant holders to exercise 8,092,280 existing warrants at a reduced price of $0.54 and gave them 16,184,560 new warrants (the "New Warrants") exercisable at $0.54, two new warrants for each one exercised. Theriva received about $4.4 million. A.G.P./Alliance Global Partners was

Theriva's exclusive financial advisor for a cash fee of 7.0% of gross proceeds (Form 8-K filed October 17, 2025, Accession No. 0001104659-25-100468 (Exhibit 4 at 3, 5)). The Form D for the transaction reports ten investors (Accession No. 0001104659-25-101914). The existing warrants the holders exercised included warrants issued with the May 2025 offering, whose exercise price was cut from $1.10 to $0.54, about 50.9% (Exhibit 4). In any merger or reverse merger, the holders of the New Warrants may require the successor to buy their unexercised warrants for cash (Exhibit 4 at 5). Theriva gave its stockholders no notice of the inducement before it was agreed; none of its filings with the SEC before October 16, 2025 mentions it. Its first public word came on October 16, 2025, in prospectus supplements filed before the market opened and in a press release, each stating that the agreement had already been entered into that day (Prospectus Supplements filed October 16, 2025, Accession Nos. 0001104659-25-099913 and -099916; Form 8-K filed October 17, 2025, Exhibit 99.1). By Plaintiff's calculation, a buyer who paid $1.10 in May 2025 for a share and a warrant, and exercised that warrant in October at $0.54, paid $1.64 in all for two shares and two New Warrants, about $0.82 a share, with the two New Warrants given free; 6,747,280 of the 6,818,180 May warrants, about 99%, were exercised this way (Exhibit 4).

56. Theriva measured what it gave the warrant holders: "The increase in value transferred to holders was measured as the difference between the fair value of the new warrants and the fair value of the original warrants at the modification date, totaling $5.9 million." It recorded the $1.5 million by which that value exceeded the cash it received as a "deemed dividend" that "increased net loss available to common shareholders" (Form 10-Q for the quarter ended June 30, 2026, Accession No. 0001104659-26-093786 (Exhibit 5 at 5)). By Plaintiff's calculation, for each warrant exercised at $0.54, the holder received a share and two New Warrants, and Theriva itself valued those two New Warrants at about $0.73 more than the warrant they replaced ($5.9 million divided by

8,092,280), more than the $0.54 the holder paid; by Theriva's own measure, the holders were paid to exercise.

57. The New Warrants could not be exercised until stockholders approved the issuance of the shares. The inducement agreement required Theriva to "use its reasonable best efforts to call" a meeting within sixty days and, if approval failed, "a meeting every sixty (60) days thereafter", and required that "all management-appointed proxyholders shall vote their proxies in favor of such proposals" (Exhibit 4 at 10, Exhibit 10.1, section (p)).

58. The holders of the New Warrants are Armistice Capital, LLC (4,503,640 shares), funds managed by Empery Asset Management, LP (3,363,640), Hudson Bay Master Fund Ltd. (3,363,640), Anson Investments Master Fund LP (3,193,638), Anson East Master Fund LP (740,002), CVI Investments, Inc. (570,000), Intracoastal Capital LLC (300,000) and Robert Forster (150,000) (Form S-3 filed November 7, 2025, Accession No. 0001104659-25-108521). Empery and Hudson Bay each also reported holdings in Theriva (then Adeona Pharmaceuticals) in January 2011 (Schedules 13G, Accession Nos. 0000902664-11-000052 and 0001393825-11-000002). Robert Forster is the only individual among the New Warrant holders. A Robert Forster also appears among the investors in the 2025 Volcon placement (paragraph 93). Plaintiff asks why an individual was offered a place in these placements alongside the funds, and will ask Theriva and A.G.P. that question under oath.

59. Empery Asset Management, with its principals Ryan M. Lane and Martin D. Hoe, reported beneficially owning 9.99% of Theriva's common stock (953,185 shares) as of June 30, 2025, and 4.99% (504,091 shares) as of September 30, 2025 (Schedule 13G, Accession No. 0000902664-25-003293; Schedule 13G/A, Accession No. 0000902664-25-004480 (Exhibit 7 at 4–5, 12)).

60. While the New Warrant transaction was under way, Theriva sold new shares into the market through A.G.P. under its at-the-market program: about 5,016,586 shares

during October 2025 and, under a prospectus supplement filed October 24, 2025, 10,326,015 shares as of November 12, 2025 (Form 10-Q for the quarter ended September 30, 2025, Accession No. 0001104659-25-109828 (Exhibit 6 at 4); Form 8-K filed October 24, 2025, Accession No. 0001104659-25-102104). In those same weeks that it gave the New Warrant holders value it measured at $5.9 million for $4.4 million in cash, Theriva raised cash without giving away any new warrants, by selling 15,342,601 shares through its at-the-market program. The inducement agreement allowed those at-the-market sales to begin five days after closing (Exhibit 4 at 3–4).

61. On October 15, 2025, the day before the inducement agreement, about 196.6 million TOVX shares traded and the stock closed at $0.84 (Prospectus Supplement filed October 16, 2025, Accession No. 0001104659-25-099916, for the $0.84 close; published daily trading data for the volume). On October 24, 2025, more than 540 million shares traded, and the stock reached $0.85 and closed at $0.345, according to published daily trading data (Exhibit 16 at 2–3).

62. At 2:31 p.m. Eastern time on October 24, 2025, during that trading, Theriva issued a press release titled “Theriva Biologics Provides Response to Unusual Market Action.” It stated that “there has been no material development in its business and affairs not previously disclosed or, to its knowledge, any other reason to account for the unusual market action” (Exhibit 15 at 2). The release did not mention that Theriva had sold about 5,016,586 new shares through A.G.P. that month, or that its outstanding shares had risen from 10,304,762 on September 30, 2025 to 23,413,628 as of October 22, 2025 (Prospectus Supplement filed October 24, 2025, Accession No. 0001104659-25-102103). After the close of trading that day, Theriva filed a new at-the-market prospectus supplement and a Form 8-K (Accession Nos. 0001104659-25-102103 and -102104). Plaintiff alleges that the October 24, 2025 trading, on no news and against a published share count of 9.6 million (paragraph 64), was a pump and dump that let new shares be sold into the market.

63. Theriva had 10,304,762 shares outstanding on September 30, 2025 (Exhibit 6 at 3, balance sheet). On October 30, 2025, the record date for the first stockholder vote on the New Warrants, it had 33,739,643 shares outstanding (Definitive Proxy Statement filed November 10, 2025, Accession No. 0001104659-25-109200). By Plaintiff's calculation, every one of the 23,434,881 new shares (8,092,280 from the warrant exercise and 15,342,601 sold through A.G.P.) was issued before that record date.

64. Theriva issued no press release or Form 8-K stating its new share count. The 33.7 million count first appeared in a prospectus supplement filed October 29, 2025 (Accession No. 0001104659-25-103770), and the October share sales first appeared in its Form 10-Q filed November 12, 2025, after the record date. Yahoo Finance states that it obtains shares outstanding and market capitalization from Morningstar (help.yahoo.com/kb/SLN2352.html). Yahoo Finance's page for Theriva, as preserved by the Internet Archive on November 17, 2025 and showing the October 24, 2025 trading day, showed a closing price of $0.345 and a market capitalization of $6.103 million, which corresponds to about 17.69 million shares: the 9,597,952 shares on the cover of Theriva's August 2025 Form 10-Q plus the 8,092,280 warrant-exercise shares, but none of the shares Theriva had sold through A.G.P. that month, and not the more than 23 million shares Theriva then had (Exhibit 16 at 2–3). MarketWatch's page for Theriva, as preserved by the Internet Archive at 5:24 p.m. on October 24, 2025, showed "Shares Outstanding 9.6M" and a market capitalization of $3.28 million (Exhibit 18 at 2–3). On November 10, 2025, the day Theriva mailed the proxy for the first vote on the New Warrants, a first-time filer, the Jeffrey Matthew Gryga Irrevocable Trust and its trustee Jeffrey Matthew Gryga, reported owning 739,211 shares as "7.7%" of Theriva's stock, the same percentage those shares were of 9,597,952 (Schedule 13G, Accession No. 0002096075-25-000001). Plaintiff alleges that this filing, made on the day the proxy was mailed and stated against the old share count, served to confuse investors about how many shares Theriva had. Plaintiff alleges that this filing does not reflect a real,

independent investor, and will seek the sworn testimony of Jeffrey Matthew Gryga, in Alaska if necessary.

65. The SEC's fails-to-deliver data shows 509,611 TOVX shares failed to deliver as of October 16, 2025, against 125 to 21,788 shares on each reported date from October 3 to October 14, 2025, and 299,802, 328,264 and 333,088 shares as of October 29, 30 and 31, 2025 (Exhibit 17 at 2–3). October 30 was the record date for the vote on the New Warrants.

**F. The December 15, 2025 meeting, the call, four failed meetings, and the move to Spain**

66. From 2020 through December 15, 2025, Theriva's stockholder meetings were held at its Rockville office, except its 2025 annual meeting on August 29, 2025. That meeting and every meeting after December 15, 2025 were set in person only at its facility in Parets del Vallès (Barcelona), Spain (Definitive Proxy Statements, Accession Nos. 0001104659-25-066731, 0001104659-26-000633, 0001104659-26-028593, 0001104659-26-052960 and 0001104659-26-078859).

67. Special meetings to approve the New Warrant shares were called for December 15, 2025 (Rockville) and February 11, April 9 and June 5, 2026 (Spain). None reached a quorum (Declaration of Steven A. Shallcross, ECF No. 15-1). The shares needed for a quorum rose with each new issue of shares: 11,246,548 on December 15, 2025, 11,896,117 on February 11, 2026 and 15,297,556 on April 9, 2026 (id. ¶¶ 10, 14). Theriva's proxy statement for the December 15, 2025 meeting told stockholders that a quorum required 34% of the outstanding shares; Shallcross later swore that it "inadvertently stated" this, and that the bylaws require one-third (id. ¶ 11). The shares voted at those four meetings were 4,414,253, 8,159,606, 4,097,159 and 4,388,641 (Theriva's Broadridge reports, ECF Nos. 15-5, 15-9, 15-10 and 15-11). The proxy that stated the 34% figure also called Theriva "a Delaware corporation," and Theriva

corrected neither before stockholders voted. Theriva's October 2026 Proxy lists only three of these failed meetings and leaves out June 5, 2026 (Exhibit 9 at 13).

68. Plaintiff attended the December 15, 2025 meeting in person. Plaintiff, an American stockholder of a company listed on an American exchange, could not attend any of the meetings in Spain, and none offered remote attendance. Plaintiff alleges that the board moved the meetings to Spain to keep him and other United States stockholders out of the room after three of them attended on December 15, 2025.

69. Theriva's bylaws set the quorum for stockholder meetings at one-third of the voting power and provide that, without a quorum, the stockholders present may adjourn the meeting by majority vote (Section 1.05); that no new notice is required for an adjourned meeting if its time and place are announced at the meeting (Section 1.04); that a list of the stockholders entitled to vote be available at the meeting (Section 1.09); and that the secretary record the proceedings of stockholder meetings (Section 4.08) (Second Amended and Restated Bylaws, effective October 3, 2023 (Exhibit 28)).

70. Theriva's proxy statement for the December 15, 2025 meeting described Theriva as "a Delaware corporation"; it is a Nevada corporation. It told stockholders that brokers would need instructions to vote on both proposals and that a broker "legal proxy" was required to vote in person (Definitive Proxy Statement filed November 10, 2025, Accession No. 0001104659-25-109200).

71. Plaintiff attended the December 15, 2025 meeting in person at Theriva's Rockville office with two other stockholders, Gary Pitoniak and Paul Bernhardt. Shallcross and Leslie Marlow of Blank Rome LLP, Theriva's counsel, took part by voice only and could not be seen. When Plaintiff asked how many shares were outstanding, Shallcross said he did not know; Ms. Marlow told him he had to answer, and he gave a figure of about 33,900,000 shares (Exhibit 26).

72. Theriva reported that the meeting was called to order and that no quorum was present (Form 8-K filed December 15, 2025, Accession No. 0001104659-25-121246;

Declaration of Steven A. Shallcross, ECF No. 15-1, ¶ 10). Before the meeting, Plaintiff had voted his shares by proxy against the warrant proposal and against the proposal to adjourn. Theriva's own tabulation by Broadridge, run at 5:05 a.m. on December 15, 2025, shows that the proxies defeated the adjournment proposal, 2,187,914 votes against to 2,171,161 for (ECF No. 15-5).

73. At the meeting Shallcross announced December 22, 2025 as the date to continue the meeting and asked whether it would be good. Plaintiff answered, "Fine. That sounds like it's Hanukkah. But I'll be there." Mr. Bernhardt also said he would attend, and no one objected (Exhibit 26). Shallcross has sworn that "[d]uring the December 15, 2025 meeting, Theriva representatives discussed the possibility of setting the date for the meeting to December 22, 2025, but that date never went forward" (ECF No. 15-1, ¶ 12).

74. At 2:07 p.m. that day, while Plaintiff was driving through Virginia, he received a five-minute call from (301) 417-4363; Theriva's listed telephone number is (301) 417-4364 (Exhibit 27). On that call Ms. Marlow, speaking "in a very friendly manner," pressed Plaintiff to agree that the December 22 meeting not be held, telling him, in substance, "You don't really want to have the meeting on December 22nd." Plaintiff answered that, in his opinion, there should not be another meeting, because the vote on the warrants was the whole point of the special meeting and he had voted against it. Ms. Marlow said, in substance, "Oh well we will just start all over again." Plaintiff told her that the whole idea of the warrants was unfair and that the company should stop playing games. Plaintiff never agreed to cancel the December 22 meeting (Exhibit 26).

75. Theriva's Form 8-K filed the same day said only that Theriva had determined to call a new special meeting; it did not mention December 22 (Accession No. 0001104659-25-121246). No meeting was held on December 22, 2025. Mr. Bernhardt wrote the next day that the December 22 meeting and the warrant proposal had been

"scrapped" (Exhibit 26). Theriva instead called new meetings, in person only in Spain, with a new record date (ECF No. 15-1, ¶¶ 12–14).

76. Plaintiff and Mr. Bernhardt demanded the records of the December 15 meeting, including the vote tabulation and the minutes (Exhibit 29). On June 24, 2026, Andrew T. Hambelton of Blank Rome LLP refused, writing: "Because the Special Meeting did not occur, there are no minutes" (Exhibit 29). Theriva's chief executive has sworn that the meeting was called to order (ECF No. 15-1, ¶ 10), and Theriva's own tabulation of that meeting had existed since 5:05 a.m. on December 15, 2025 (paragraph 72).

**G. The August 3, 2026 vote**

77. The 2026 Proxy told stockholders that their brokers could vote uninstructed shares on matters "considered routine, such as Proposals 2, 4, 5 and 7", although Proposal 5 was the New Warrant share issuance. Elsewhere, the same proxy stated that "Proposals 1, 3 and 5 are all considered 'non-routine' matters." The same proxy announced "seven (7) items" of business but listed six, referred to a "Proposal 7" that did not exist, and, in the sentence after calling Proposal 5 non-routine, listed it again among the routine matters (2026 Proxy). Theriva's proxy for the December 15, 2025 meeting had called the same warrant proposal non-routine (Accession No. 0001104659-25-109200). No corrected proxy was issued before the vote.

78. At the August 3, 2026 annual meeting, held in Spain, stockholders voted on six proposals: the election of the four Director Defendants; ratification of BDO USA, P.C. as auditor; an increase in the stock plan from 4,500,000 to 6,500,000 shares; an increase in authorized common stock; the issuance of the New Warrant shares; and adjournment (Form 8-K filed August 4, 2026, Accession No. 0001104659-26-090064, Item 5.07 (Exhibit 8 at 3–5)).

79. A quorum required one-third of the 45,892,668 shares outstanding, or 15,297,556 shares (2026 Proxy). The shares counted as present were 16,880,127. Of

them, 10,823,826 were broker-held shares voted only on the routine proposals and recorded as "broker non-votes" on the election of directors, the stock plan and the New Warrant shares (Exhibit 8 at 3, 5). Without those shares, 6,056,301 shares were present, 13.2% of the outstanding shares, and there would have been no quorum. The increase in authorized common stock to 450,000,000 shares, which the 2026 Proxy said would not be adjusted for any proportionate reverse stock split, passed with 12,007,931 votes for and no broker non-votes recorded, so brokers voted uninstructed shares on it (Exhibit 8 at 4; 2026 Proxy).

80. The New Warrant share issuance passed 3,665,312 to 2,267,592. Plaintiff voted against it. Each director was elected with about 4.0 million votes, about 8.8% of the outstanding shares, with about 2.0 million withheld (id. at 3, 5).

81. Theriva held or called five meetings to approve the New Warrant shares: the special meetings called for December 15, 2025 and February 11, April 9 and June 5, 2026, and the August 3, 2026 annual meeting. The October 2026 Proxy calls one more special meeting. Theriva's proxy statements state that "we will pay the entire cost of preparing, assembling, printing, mailing, and distributing these proxy materials," and for the August 3, 2026 meeting and the planned special meeting Theriva retained D.F. King & Co., Inc. to solicit proxies for "fees of not more than $10,000 plus expense reimbursement" (Definitive Proxy Statement, Accession No. 0001104659-26-078859; Exhibit 9 at 7). These costs, with the legal, tabulation and other costs of each meeting, are paid with the stockholders' money. Plaintiff has found no statement of the total cost of these meetings and will seek it in discovery.

82. At TD Ameritrade, Plaintiff's Theriva shares were held in his own name. When his account was moved to Charles Schwab & Co., Inc. in or about 2023, no one told him that his shares were no longer held in his name. In late July 2026, Plaintiff asked Schwab to register his shares in his own name; it took Schwab about six weeks (Declaration of Mark Joseph Nejmeh, ECF No. 29, ¶ 11). Plaintiff will seek Schwab's

testimony on why registering shares in the stockholder's own name, rather than in the broker's name, took that long.

**H. Theriva's admission and the planned November meeting**

83. In the October 2026 Proxy, Theriva states that this lawsuit made it aware "that the definitive proxy statement for the 2026 Annual Meeting contained errors" regarding whether the New Warrant proposal was "routine" (Exhibit 9 at 4, 12). Theriva did not need a lawsuit to learn the rule: its own proxy for the December 15, 2025 meeting had called the same proposal non-routine (paragraph 70), and Shallcross has sworn to "inconsistencies in the June Proxy Statement" (ECF No. 15-1, ¶ 21).

84. The October 2026 Proxy calls a special meeting in November 2026, on a date left blank in the proxy, in person only in Spain, with an October 9, 2026 record date, to increase authorized shares to 500,000,000 and to "ratify and confirm the prior approval" of the New Warrant shares. It states that "if we should effect a reverse stock split … as allowed under Nevada law without stockholder approval, … we do not believe the number will be sufficient"; lists among the uses of the new shares "reverse mergers or other strategic transactions"; says the shares would "aid in meeting the NYSE American stockholders' equity requirements"; and says they would let Theriva "act quickly … in most cases without the necessity of obtaining further stockholder approval and holding a special stockholders' meeting" (Exhibit 9 at 3–4, 9–10, 12). The proxy concedes that the new shares could be used to "perpetuate our management" (Exhibit 9 at 10).

85. The October 2026 Proxy states that the 500,000,000 shares "will not be adjusted for any fundamental transactions, including any proportionate reverse stock split," occurring before the charter amendment is filed, "the timing of which shall be in the Board's discretion," at any time within one year after approval (Exhibit 9 at 8). It states no reverse split ratio. Theriva's last reverse split, in August 2024, was 1-for-25 (paragraph 22). At that ratio, Plaintiff calculates that the 45,892,668 shares outstanding on the October 9, 2026 record date would become 1,835,707 shares, about 498 million

authorized shares would remain available to issue, and if they were issued, today's stockholders would hold about 0.37% of the company.

86. The proposal requires only "the affirmative vote of the holders of a majority of the shares present in person or represented by proxy," and a quorum is one-third of the voting power. By Plaintiff's calculation, about 7.65 million votes, 16.7% of the 45,892,668 outstanding shares, could approve it. The meeting is in person only in Spain; those attending must present government-issued identification, and "[n]o cameras, recording equipment or electronic devices will be permitted." The proxy also states that the New Warrants allow Theriva, with a holder's consent, to "voluntarily reduce the then current exercise price to any amount and for any period of time" (Exhibit 9 at 3, 6, 11, 13).

87. Theriva sold 10,204,319 shares through its at-the-market program in the first quarter of 2026 for about $2.3 million (Exhibit 5 at 3, statement of stockholders' equity).

88. In the same Form 10-Q, Theriva stated that it "has been in ongoing discussions with strategic institutional investors and investment banks" regarding "a range of strategic alternatives that may include a business combination, merger or reverse merger" (Exhibit 5 at 4, 8). On July 24, 2026, ten days before the August 3 vote, the board amended the stock options of Theriva's directors and employees so that they vest when a definitive merger agreement is signed (Form 10-Q for the quarter ended June 30, 2026, Accession No. 0001104659-26-093786).

89. On August 10, 2026, seven days after the August 3, 2026 vote, Theriva entered into an amended and restated employment agreement with Shallcross. His prior agreement, effective March 3, 2025, defined a change in control as a person acquiring fifty percent of the voting power, a merger in which the stockholders lose their majority, or a sale of substantially all assets. The new agreement adds "the Company's execution of a definitive agreement" for a transaction in which "a non-listed private operating company combines with or is acquired by the Company … including forward merger,

sign and close reverse merger, reverse merger, share exchange, asset acquisition, or recapitalization," and states that it "captures all reverse merger structures, including those designed to avoid Nasdaq's reverse merger seasoning rule under Nasdaq Rule 5110(c)." On a change in control, all of Shallcross's unvested options now vest immediately; under the prior agreement they vested "[u]pon the closing." If his employment is terminated without cause, or he resigns for good reason, within eighteen months after a change in control, he receives two times the sum of his $687,562 salary and his target bonus of up to fifty percent of salary, plus twenty-four months of health coverage, and $500,000 of that amount is "deemed" a payment for a covenant not to compete, to be excluded from "parachute payments" under Section 280G of the Internal Revenue Code. The agreement was signed for Theriva by "Timothy Swope, Secretary" (Form 10-Q for the quarter ended June 30, 2026, Exhibit 10.1; Form 10-K for 2024, Accession No. 0001410578-25-000285, Exhibit 10.36 (Exhibit 19 at 2–9)).

90. Theriva's 2025 annual report states that "[o]ur Charter and bylaws and Nevada law may have anti-takeover effects that could discourage, delay or prevent a change in control, which may cause our stock price to decline," and that they "could make it more difficult for a third party to acquire us, even if closing such a transaction would be beneficial to our stockholders." It states that the board could issue an additional series of preferred stock with special voting rights and preferred rights to Theriva's assets on liquidation, and that the charter and bylaws give the board "the ability to alter the bylaws without stockholder approval" and let vacancies on the board be filled by a majority of the directors in office (Exhibit 25 at 6–9). Plaintiff believes these provisions work as a poison pill that devalues the company by stopping a takeover.

91. On October 17, 2026, Plaintiff wrote to Theriva's counsel, by email and by FedEx, asking Theriva to agree to steps that are part of the relief requested below before he asked the Court, and in a second letter that day told counsel what the First Amended Verified Complaint would address (Exhibit 2 at 2–3; Exhibit 3 at 2–3).

**I. The same funds and the same directors at other companies**

92. On July 17, 2025, Volcon, Inc., a Nasdaq-listed company, agreed to sell about $500 million of its stock in private placements to buy Bitcoin, with Clear Street LLC and Aegis Capital Corp. as placement agents. In connection with the placement, Empery's founder Ryan M. Lane became Volcon's Chairman and Co-Chief Executive Officer, and an Empery portfolio manager and Empery's general counsel joined its management (Form 8-K filed July 17, 2025, CIK 1829794, Accession No. 0001683168-25-005160). Volcon was renamed Empery Digital Inc.

93. The investors in that placement included funds affiliated with Anson Funds Management (7,500,000 shares), affiliates of Empery Asset Management, Hudson Bay Master Fund Ltd., CVI Investments, Inc., Intracoastal Capital LLC, Robert Forster and Sabby Volatility Warrant Master Fund, Ltd. (Form S-3ASR filed August 18, 2025, CIK 1829794, Accession No. 0001683168-25-006260, Selling Stockholders (Exhibit 12 at 9–11)). Every New Warrant holder named in paragraph 58 except Armistice was an investor in that placement (Robert Forster, if the same person), three months before Theriva gave them the New Warrants.

94. Two of the Director Defendants, Wolf and Monahan, also sat on the board of Wolf's company, Scorpius (then NightHawk Biosciences, Inc.). On March 10, 2023 and March 23, 2023, thirteen days apart, Theriva and NightHawk each announced that their quarterly reports for the second and third quarters of 2022 should no longer be relied upon because of errors in accounting for deferred taxes connected with a 2022 acquisition; BDO USA was the auditor of both companies, and neither company filed amended quarterly reports (Forms 8-K, Accession Nos. 0001104659-23-031255 and 0001558370-23-004449). In 2023, Monahan was a member of the Audit Committee of both companies; Theriva's Audit Committee was Wolf (Chairman), Kraws and Monahan (Theriva Definitive Proxy Statement filed August 14, 2023, Accession No. 0001104659-23-091498; NightHawk Definitive Proxy Statement filed August 24, 2023, Accession

No. 0001558370-23-015256). In December 2023, NightHawk sold its Elusys subsidiary and the NightHawk name to "a company controlled by" Wolf (NightHawk Form 8-K, Accession No. 0001558370-23-019741).

95. Kraws has taken part in reverse mergers at other companies. In 2021, GridIron BioNutrients, Inc. acquired the assets of a private company whose Chief Executive Officer was Kraws and of which he owned about 6.5%; that company received 19,831,623 shares, "approximately 70% of the Company's outstanding shares of common stock on a fully diluted basis," and Kraws became GridIron's Chief Executive Officer and a director (GridIron BioNutrients Form 8-K, Accession No. 0001477932-21-008364). Saleen Automotive, Inc. reported in its Form 10-K filed in 2014 that its merger with the private Saleen companies "was accounted for as a reverse merger," after which the owners of the private Saleen companies held about 112,000,000 shares and the existing stockholders 8,000,000; Kraws was one of three directors whose replacements "will be determined under the terms of the Voting Agreement by Saleen" (Saleen Automotive Form 10-K, Accession No. 0001493152-14-002054).

96. Empery Asset Management and its funds have filed Schedules 13G and 13D, and amendments, reporting holdings in 178 companies from 2009 to October 2026. In 174 of them Empery reported owning 5% or more of the stock. In 168 of those 174, a later Empery filing reported less than 5% (in 79 of them, 4.99% or just under), a median of about seven months later. At least 60 of the 178 companies effected a reverse stock split within twenty-four months after Empery's first report (Plaintiff's compilation of Empery's filings on the SEC's EDGAR system and of the companies' reverse split announcements).

97. At Ocugen, Inc., a 2019 registration statement covered the resale of 111,540,825 shares issuable on exercise of warrants held by Hudson Bay Master Fund Ltd., CVI Investments, Inc., three Empery funds and Alto Opportunity Master Fund (Ocugen Form S-3, Accession No. 0001047469-19-005628). In April 2020, Ocugen

agreed to sell one thousand shares to an accredited investor at $0.395 per share; the agreement states that this sale "constitutes a Dilutive Issuance and thereby triggers the adjustments to the Exercise Price and number of Warrant Shares." The warrant holders then exchanged their warrants for 21,920,820 shares and $5,625,000 of promissory notes (Ocugen Form 8-K, Accession No. 0001104659-20-049559, and Exhibit 10.1).

98. At Timber Pharmaceuticals, Inc. (formerly BioPharmX Corporation), a 2020 merger left BioPharmX's existing stockholders with "approximately 11.5%" of the common stock and the private company's members and investors with "approximately 88.5%" (Form 8-K, Accession No. 0001104659-20-065467, Exhibit 99.3). Empery Debt Opportunity Fund, LP reported holding 9.49% of Timber as of May 18, 2020 (Schedule 13G, Accession No. 0000902664-20-002221). Timber later filed for Chapter 11, and in January 2024 sold substantially all of its assets to LEO Pharma for $14.35 million (Form 8-K, Accession No. 0001493152-24-003336).

99. Sabby Management reported owning 741,353 shares of Theriva (then Synthetic Biologics), more than 5%, as of November 28, 2018, six weeks after the October 2018 offering described in paragraph 33 (Schedule 13G, Accession No. 0001535610-19-000054). On June 12, 2023, the SEC sued Sabby Management and its managing partner, Hal D. Mintz, alleging a naked short-selling scheme from March 2017 to May 2019 in the stock of at least ten public companies (SEC v. Mintz, No. 2:23-cv-03201 (D.N.J.)). In 2025, Sabby invested alongside Empery, Hudson Bay, Anson, CVI, Intracoastal and Robert Forster in the Volcon placement (paragraph 93).

**J. What Plaintiff alleges**

100. Plaintiff alleges that Theriva engaged the same financiers repeatedly and shared non-public information with them before announcing reverse splits; that accounts on anonymous stock boards, including StockTwits and X, were used to promote the stock; that Theriva drove its stock price down between December 2025 and February 2026, when it fell as low as $0.16 (February 23, 2026), shifting ownership; that the stock

price has been manipulated; and that stockholders have been kept from clear and concise reports. Plaintiff also alleges that the August 3, 2026 result was arranged in advance by putting the warrant proposal on a ballot with routine items so that uninstructed broker shares would supply the quorum; that the aim of the October 2026 Proxy is a reverse split; and that stockholders have not been kept informed.

101. Plaintiff alleges that the October 2025 transaction was arranged for the benefit of the New Warrant holders and not Theriva's stockholders: a reduced price, two new warrants for each one exercised, value Theriva itself measured at $5.9 million for $4.4 million in cash, and new shares sold by the same agent while the stock fell, all before the record date for the vote on those warrants. Several of the funds that hold the New Warrants have invested together at other small companies: Empery, Hudson Bay, Anson, CVI and Intracoastal at Volcon (paragraph 93), and Empery, Hudson Bay and CVI at Ocugen (paragraph 97); Plaintiff believes this is a pattern, and that the directors who saw the same sequence at other companies knew where it led. Plaintiff will ask the Court in discovery for the records of the placement agent, the New Warrant holders, the preferred stock purchaser, the transfer agent and the vote tabulator, and to order StockTwits and X to identify the accounts that posted about TOVX on its highest-volume days.

102. Plaintiff believes that large drug companies facing the loss of patent protection on their largest products are seeking patents and drug candidates; that Theriva's patents and programs are worth far more than its market value; and Plaintiff alleges that the board is preparing a reverse merger, as its own filings show (paragraphs 88–89), in which a private company would acquire control of Theriva cheaply, Theriva's stockholders would be diluted to a small minority, and the company would then be sold, so that the value of Theriva's patents would go to the new owners and insiders rather than to its stockholders. Plaintiff believes that Theriva has chosen, again and again, to

work with financiers who follow the pattern described in paragraphs 96–98, and that this is not the way to build a company.

**K. Irreparable harm**

103. The New Warrants for 16,184,560 shares became exercisable on August 3, 2026 and expire on August 3, 2031 (Form 10-Q for the quarter ended June 30, 2026, Accession No. 0001104659-26-093786). Theriva may, with a holder's consent, reduce their exercise price "to any amount and for any period of time" (paragraph 86).

104. The October 2026 Proxy would let the board split the stock and keep all 500,000,000 authorized shares; at Theriva's last ratio, today's stockholders would hold about 0.37% of the company if those shares were issued (paragraph 85).

105. On September 29, 2026, Theriva's chief executive swore that Theriva would hold a meeting at which stockholders would "again vote on Warrant Exercise Approval using corrected proxy materials" (ECF No. 15-1 at 6). The meeting Theriva then called, for November 18, 2026, adds the 500,000,000-share authorization described above.

106. Once New Warrant shares or newly authorized shares are issued and traded, the votes cannot be held again with the same stockholders, and the loss of Plaintiff's voting power cannot be restored by a money judgment. Plaintiff has no adequate remedy at law.

**L. Why the vote needs a new record date**

107. The record date decides who may vote. Theriva set October 9, 2026 as the record date for the November 18, 2026 meeting, the same day it filed the preliminary proxy statement that first announced the meeting and the 500,000,000-share proposal (October 2026 Proxy). A stockholder who learned of the meeting from that proxy had no time to register his shares or give his broker instructions before the record date, and anyone who bought shares after that day cannot vote at all.

108. Theriva has used record dates before to decide who votes. Every one of the 23,434,881 shares issued in October 2025, to the warrant holders and through A.G.P.,

was issued before the October 30, 2025 record date for the first vote on the New Warrants (paragraph 63). The 10,204,319 shares Theriva added in the first quarter of 2026 were all outstanding by the February 27, 2026 record date for the next vote (paragraph 87; Definitive Proxy Statement, Accession No. 0001104659-26-028593).

109. A stockholder who holds shares through a broker cannot vote them himself at the meeting without a legal proxy from the broker, and the broker may vote them without his instructions only on matters treated as routine (paragraph 70). On August 3, 2026, 10,823,826 uninstructed broker shares made the quorum (paragraph 79). When Plaintiff asked his broker to register his shares in his own name, it took about six weeks (paragraph 82). A stockholder who learns the facts from a corrected proxy needs time, before the record date, to instruct his broker or to hold his shares in his own name.

110. A record date of November 30, 2026, set after a corrected proxy statement is mailed and after stockholders are told that they may hold their shares in their own names through Theriva's transfer agent, lets the people who own Theriva when the vote is taken, and who have been told the facts, decide it. NRS 78.350(2) allows the board to fix a record date within a set period before the meeting, and November 30 falls within that period for a December 22, 2026 meeting. Plaintiff also asks the Court to set any other record date, meeting date or condition that the Court finds will better protect the stockholders' right to a fair and informed vote.

111. Plaintiff alleges that Theriva set the October 9, 2026 record date on the day it announced the meeting so that the vote would be decided by the stockholder base as it stood before stockholders learned of the 500,000,000-share proposal, as it had done with the October 30, 2025 and February 27, 2026 record dates.

**M. The October 30, 2026 sale of SYN-004, SYN-007 and SYN-006**

112. On October 30, 2026, Theriva sold to Biossil Labs Inc., a Canadian corporation, its assets "exclusively relating to SYN-004 (ribaxamase)," including SYN-007, and "certain assets exclusively related to SYN-006," including "the patents and

other intellectual property relating exclusively to Ribaxamase" and its investigational new drug application. "The closing of the transaction … occurred concurrently with the execution of the Purchase Agreement." Shallcross signed the Form 8-K that reported the sale (Form 8-K filed November 2, 2026, Accession No. 0001104659-26-121318, Items 1.01 and 2.01 (Exhibit 30 at 3–5)).

113. Biossil paid "an upfront payment of $350,000 at the Closing." Any further payment (up to $3 million in regulatory milestones, up to $88 million in sales milestones, and a low-single-digit royalty capped at $250 million) depends on Biossil's own work. Theriva's Form 8-K states: "There can be no assurance that any milestone will be achieved, that any product will be approved or commercialized, or that the Company will receive any payments beyond the upfront payment." Biossil "has sole control over the development and commercialization of the products," and the agreement "does not provide for a termination of the transaction or reversion of the Purchased Assets to Theriva upon a breach by Biossil" (Exhibit 30 at 3).

114. At the closing Theriva paid $140,000 to PREV ABR LLC, its counterparty under an Asset Purchase Agreement dated November 7, 2012, which is also to receive fifty percent of any milestone payments, subject to a $13.0 million cap (Exhibit 30 at 3). By Plaintiff's calculation, Theriva kept $210,000.

115. SYN-004 (ribaxamase) is Theriva's "oral β-lactamase product candidate" (Exhibit 30 at 3), designed to protect the gut microbiome from antibiotics and to prevent *C. difficile* infection (paragraph 38). SYN-007 is one of its "reformulations," and SYN-006 is Theriva's "carbapenemase product candidate" (Exhibit 30 at 3). SYN-004 received the FDA's Breakthrough Therapy Designation "for the prevention of Clostridium difficile infection" (press release of May 11, 2017, Form 8-K Accession No. 0001144204-17-027431, Exhibit 99.1) and completed a Phase 2b trial with 412 participants (Form 10-K for 2025, Accession No. 0001104659-26-026767). Its patents are among those described in paragraphs 38–39.

116. Theriva's Form 8-K names no financial advisor, valuation, fairness opinion or other prospective buyer (Exhibit 30). When GlycoMimetics, Inc. sold a drug program to Biossil, it disclosed that it did so "following extensive marketing efforts and discussion with multiple potentially interested parties" (Prospectus, Accession No. 0001104659-25-048564). When Summit Therapeutics Inc. sold Biossil "an investigational Phase III precision antibiotic asset," ridinilazole, it reported that it "will receive $500,000 upfront" (Form 8-K, Accession No. 0001599298-26-000067). Plaintiff has found no announcement by Theriva, before November 2, 2026, that SYN-004, SYN-007 or SYN-006 was for sale, and on information and belief Theriva did not market it or invite competing bids. Plaintiff will show, through past sales and licenses of competing C. difficile drug programs and expert testimony, that SYN-004 was worth far more than Theriva received. For example, on July 1, 2021, Seres Therapeutics, Inc. licensed its SER-109 product for Clostridioides difficile infection, in the United States and Canada, to a Nestlé affiliate for "an upfront payment of $175 million" (Form 8-K, Accession No. 0001193125-21-205559).

117. Theriva's 2026 Proxy states: "In February 2026, Mr. Kraws joined Kazia Therapeutics Limited as the Head of Corporate Strategy and Development." Ikarian Capital, LLC reported its holdings in Kazia on Schedule 13G (Accession No. 0001193125-26-055235, filed February 17, 2026) and reported holding 112,076 Theriva shares as of June 30, 2026 (Form 13F, Accession No. 0001420506-26-001820). When Galera Therapeutics, Inc. acquired Nova, "a syndicate of investors led by Ikarian Capital invested approximately $2.9 million in Galera," and by an Asset Purchase and Sale Agreement dated October 15, 2025, Galera sold drug assets to Biossil (Information Statement, Accession No. 0001193125-26-294765). Plaintiff does not know whether Kraws, Kazia or Ikarian had any part in the sale of the SYN-004, SYN-007 and SYN-006 assets. Plaintiff will seek discovery of who introduced Biossil to Theriva, whether

the program was offered to anyone else, and whether Kraws took part in approving the sale.

118. Theriva signed and closed the sale eight days after Plaintiff filed his motion to postpone the November 18, 2026 meeting (ECF No. 42, October 22, 2026), and one day before Plaintiff signed the First Amended Verified Complaint. Theriva's definitive proxy statement for the November 18, 2026 meeting, filed October 20, 2026 (Accession No. 0001104659-26-117417), does not mention the sale. Theriva first announced it on Monday, November 2, 2026 (Exhibit 30 at 4).

119. On November 12, 2026, Theriva reported "substantial doubt about the Company's ability to continue as a going concern," a "cash position of $7.5 million as of early November 2026," and that its alternatives "could include a dissolution and liquidation of the Company" (Form 10-Q, Accession No. 0001104659-26-125918). The same day it called VCN-01 "our lead program" (Form 8-K, Accession No. 0001104659-26-125912, Exhibit 99.1).

120. Theriva's own filings show it is preparing for a merger. Its Form 10-Q of November 12, 2026 states that it "has been in ongoing discussions with strategic institutional investors and investment banks with respect to … a range of strategic alternatives that may include a business combination, merger or reverse merger" (Accession No. 0001104659-26-125918). On July 24, 2026, the board amended its directors' and employees' options to vest when a definitive merger agreement is signed, and on August 10, 2026 Shallcross's new employment agreement extended his change-in-control benefits to "all reverse merger structures" (paragraphs 88–89). In February 2026 Theriva licensed SYN-020 for $300,000 upfront (paragraph 44), and on October 30, 2026 it sold SYN-004, SYN-007 and the SYN-006 assets for $350,000 upfront. Biossil has bought drug programs from companies preparing to merge: on September 5, 2024 GlycoMimetics sold its rivipansel program to Biossil, and on September 13, 2024 its board "reviewed the proposed reverse merger process" (Accession No. 0001104659-

25-048564); Galera sold drug assets to Biossil on October 15, 2025, and the sale is described in the information statement for Galera's merger (Accession No. 0001193125-26-294765).

121. Plaintiff alleges that Theriva is preparing a merger or reverse merger by emptying the company of its drug programs at prices far below their value, so that a new owner and insiders, not the stockholders who paid for the research, receive that value. Plaintiff estimates that the development of these programs cost about $250 million. Plaintiff alleges that Theriva sold SYN-004, SYN-007 and the SYN-006 assets for $350,000 without a valuation and without seeking other buyers, while this action and ECF No. 42 were pending and without telling the stockholders it was asking to vote on November 18, 2026, with intent to put the asset beyond the reach of the stockholders and of this Court, and that its remaining programs, including VCN-01, can be sold the same way.

**VI. CLAIMS**

**COUNT I — Section 14(a) of the Exchange Act and Rule 14a-9 (against all Defendants)**

122. Plaintiff repeats the paragraphs above.

123. Defendants solicited proxies through the 2026 Proxy. It told stockholders that brokers could vote uninstructed shares on the New Warrant proposal as a "routine" matter, which was false, as Theriva admits (October 2026 Proxy), and it omitted the issued patents described above. These statements and omissions were material to stockholders deciding how to vote and whether to attend or give instructions. The December 15, 2025 call from Theriva's counsel asking Plaintiff, as a stockholder, to agree that the announced December 22 meeting not be held was a request for his consent or authorization, which is a "proxy" under Rule 14a-1(f), and a "solicitation" under Rule 14a-1(l) (paragraphs 73–74).

124. The 2026 Proxy was an essential link in the August 3, 2026 approvals, which depended on a quorum made by 10,823,826 uninstructed broker shares.

125. The approvals, including the New Warrant shares, authorized the dilution of Plaintiff's shares and impaired his right to cast an informed vote on Proposal 5. Plaintiff suffered economic loss in an amount to be proven at trial.

**COUNT II — Section 20(a) of the Exchange Act (against Shallcross, Kraws, Wolf and Monahan)**

126. Plaintiff repeats the paragraphs above.

127. Each Director Defendant controlled Theriva and its proxy solicitations as a director, and Shallcross also as Chief Executive Officer and Chief Financial Officer, and each is jointly liable for the violation in Count I.

**COUNT III — Section 10(b) of the Exchange Act and Rule 10b-5, and Section 20(a) (against Theriva, Shallcross, Kraws, Wolf and Monahan): the October 2, 2023 statement**

128. Plaintiff repeats the paragraphs above.

129. On October 2, 2023, Shallcross, Theriva's Chief Executive Officer, told Plaintiff, a stockholder, in substance that Theriva could not increase its authorized shares after a reverse stock split. Within a year Theriva did a board-only reverse split and asked stockholders for a twenty-five-fold increase in authorized shares (paragraphs 22–35). When Shallcross said this, Theriva had already raised its authorized shares after a reverse split, from 10,000,000 to 200,000,000 in 2018 (paragraph 36), and did so again within a year (paragraph 35).

130. Plaintiff relied on the statement when he continued buying Theriva stock after October 2, 2023, as he did repeatedly until recently, and lost money when the truth emerged through the reverse split, the share increase and the resulting dilution. Plaintiff suffered economic loss in an amount to be proven at trial.

131. Kraws and Wolf were directors when the 2018, 2022 and 2024 reverse splits and the following increases in authorized shares were approved, and Monahan when the 2022 and 2024 ones were; each knew that Theriva could and did increase its authorized shares after a reverse split. Plaintiff alleges that each of them knew the October 2, 2023 statement made to a stockholder at their annual meeting was false and let it stand, and that each is liable under Section 10(b) and Rule 10b-5 and, under Section 20(a) of the Exchange Act, as a person who controlled Theriva.

**COUNT IV — Breach of Fiduciary Duty under Nevada Law, NRS 78.138 (against Shallcross, Kraws, Wolf and Monahan)**

132. Plaintiff repeats the paragraphs above.

133. The Director Defendants owed Theriva's stockholders duties of care and loyalty in the conduct of stockholder votes. They knowingly moved the meetings to Spain in person only, set the October 9, 2026 record date on the day the meeting was announced, bound management proxyholders in advance to vote for the New Warrant shares, issued and sold new shares before the October 30, 2025 record date for the vote on those warrants without a press release or Form 8-K stating the new share count, granted themselves options at $0.241 twenty-one days after a failed meeting, chose not to tell stockholders of Theriva's issued patents while asking them to approve dilution, and obtained the August 3, 2026 approvals through a quorum made of uninstructed broker shares and a proxy that Theriva admits contained errors. Each of them had already seen, as a director in 2022, an increase in authorized shares carried by purchased preferred votes after holders of a majority of the common stock did not vote for it (paragraphs 18–20). These facts rebut any presumption that the Director Defendants acted in good faith. The harm is Plaintiff's own: the dilution of his shares and voting power, and the information owed to him as a stockholder asked to vote.

134. On information and belief, the Director Defendants approved the October 30, 2026 sale of the SYN-004, SYN-007 and SYN-006 assets (paragraphs 112–121).

They did so without a valuation or a search for other buyers, while this action and ECF No. 42 were pending, and without telling the stockholders they were asking to vote on November 18, 2026. Plaintiff alleges that the sale was not made "on an informed basis" (NRS 78.138(1)) and that it involved intentional misconduct within NRS 78.138(7).

135. Plaintiff was harmed. He suffered economic loss and is entitled to equitable relief and damages in an amount to be proven at trial.

**COUNT V — Declaratory Relief under Nevada Law and Theriva's Bylaws, NRS 78.310 and 78.320; 28 U.S.C. §§ 2201–2202 (against Theriva)**

136. Plaintiff repeats the paragraphs above.

137. NRS 78.310 and 78.320 and Theriva's bylaws govern the calling, quorum, adjournment and conduct of Theriva's stockholder meetings (paragraph 69).

138. An actual controversy exists over (a) the quorum standard and the voting power represented at the December 15, 2025 meeting; (b) whether that meeting was continued to December 22, 2025 by announcement at the meeting, and the effect of Theriva's cancelling it without notice to the stockholders who said they would attend; (c) whether the December 15, 2025 call from Theriva's counsel was a solicitation of Plaintiff's consent; and (d) the effect of those events on the later approvals of the New Warrant shares.

139. Plaintiff is entitled to a declaration of the parties' rights on each of these questions and to further relief under 28 U.S.C. § 2202.

**COUNT VI — Nevada Uniform Fraudulent Transfer Act, NRS 112.180 and 112.210 (against Theriva)**

140. Plaintiff repeats the paragraphs above.

141. Under NRS 112.150(3), a "claim" is "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed." Plaintiff has asserted a right to payment against Theriva since September 16, 2026, including the damages sought in Counts I and III, and

is a "creditor" under NRS 112.150(4). Theriva is a "debtor" under NRS 112.150(6), and the sale of the SYN-004, SYN-007 and SYN-006 assets was a "transfer" under NRS 112.150(12).

142. Plaintiff alleges that Theriva made the transfer "with actual intent to hinder, delay or defraud" a creditor (NRS 112.180(1)(a)). Factors the statute names are present: the transfer was concealed until after it closed (NRS 112.180(2)(c)); before the transfer Theriva "had been sued" (NRS 112.180(2)(d)); and the $350,000 Theriva received, of which it kept $210,000, was not reasonably equivalent to the value of a Breakthrough-designated program with a completed Phase 2b trial and its patents (NRS 112.180(2)(h)).

143. In the alternative, Theriva made the transfer "without receiving a reasonably equivalent value in exchange," when it "believed or reasonably should have believed" that it would incur debts beyond its ability to pay as they became due, as its own going-concern statement shows (NRS 112.180(1)(b)(2); paragraph 119).

144. Under NRS 112.210(1)(c), Plaintiff is entitled, "subject to applicable principles of equity," to "an injunction against further disposition by the debtor … of other property" and to "any other relief the circumstances may require." In this Count Plaintiff does not ask the Court to undo the sale to Biossil, which is not a party.

**VII. RELIEF REQUESTED**

Plaintiff respectfully asks the Court to:

A. set aside the results of all six proposals voted on at the August 3, 2026 annual meeting, including the election of directors, the auditor ratification, the stock plan amendment, the authorized share increase and the New Warrant share issuance;

B. order those six proposals, and the proposals in the October 2026 Proxy, re-voted at a single meeting on December 22, 2026, or on another date the Court sets, held in person at Theriva's principal office, 9605 Medical Center Drive,

Suite 270, Rockville, Maryland 20850, with a record date of November 30, 2026, or another date the Court sets, as NRS 78.350 permits;

C. order that the votes be counted 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. order the meeting broadcast live, with remote attendance and voting for stockholders in Spain and anywhere else who cannot attend in Rockville, and each proposal put to a separate vote;

E. order Theriva to mail a corrected proxy statement to the stockholders of record on the record date, disclosing its issued patents and its current share count, and to 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 (formerly Corporate Stock Transfer, Inc.), 3200 Cherry Creek South Drive, Suite 430, Denver, Colorado 80209;

F. order Theriva to make no at-the-market sales and issue no other new shares, and to issue no preferred stock with special voting rights, until the court-ordered vote is certified; to permit no exercise of the New Warrants, make no reduction of their exercise price and issue no New Warrant shares until that vote is certified;

G. order Theriva to produce to Plaintiff, before the court-ordered meeting, the records of the December 15, 2025 special meeting: the inspector of elections' report, the complete Broadridge tabulation, and the list of stockholders of record on October 30, 2025;

H. award Plaintiff damages in an amount to be determined by the jury, including the $759,000 loss described in paragraph 7, together with interest and costs;

I. order Theriva and its agents to preserve all proxy, meeting, tabulation, Broadridge, DTC, transfer-agent, NYSE American, warrant-exercise and related

communication records;

J. declare the parties' rights on the questions set out in Count V;

K. set any other record date, meeting date or condition that the Court finds necessary to protect the stockholders' right to a fair and informed vote;

L. under NRS 112.210(1)(c), enjoin Theriva from selling, licensing or otherwise disposing of VCN-01, or of any other drug program or patent, outside the ordinary course of business, without at least fourteen days' written notice to Plaintiff and the Court; and

M. grant any other relief the Court finds just.

**VIII. JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 13, 2026

*/s/ Mark Joseph Nejmeh*
Mark Joseph Nejmeh, Plaintiff, self-represented
P.O. Box 589, Clifton, New Jersey 07012
732-995-3914 · research@warrantwire.com

## VERIFICATION

I, Mark Joseph Nejmeh, am the Plaintiff in this action. I have read this Second Amended Verified Complaint. The facts stated in it are true of my own knowledge or, where a source is cited, accurately taken from that source, except those stated as Plaintiff's belief or allegation, and as to those I believe them to be true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 13, 2026.

*/s/ Mark Joseph Nejmeh*
Mark Joseph Nejmeh