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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC., STEVEN A. SHALLCROSS, JEFFREY J. KRAWS, JEFFREY WOLF and JOHN MONAHAN,** Defendants.	**Case No. 3:26-cv-00705-ART-CSD** **PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED VERIFIED COMPLAINT**

Plaintiff Mark Joseph Nejmeh, self-represented, moves under Federal Rules of Civil Procedure 15(a)(2) and 15(d) and Local Rule 15-1 for leave to file the Second Amended Verified Complaint attached as Exhibit A, with its Exhibits 1 through 30 (Exhibits A-1 through A-30) and Plaintiff's Declaration and Index of Exhibits (Exhibit A-31). Exhibit A is complete in itself without reference to the First Amended Verified Complaint (ECF No. 54) and includes copies of all exhibits it refers to, as Local Rule 15-1(a) requires. A highlighted copy showing every change from ECF No. 54 is attached as Exhibit B, as Section IV.B of the Civil Standing Order of Magistrate Judge Craig S. Denney requires.

MEMORANDUM OF POINTS AND AUTHORITIES

I. WHY A SECOND AMENDMENT IS NEEDED

Plaintiff alleges that Theriva is emptying the house: selling off its drug programs far below their value before a merger. In nine months Theriva has parted with drug programs for a combined $650,000 upfront: SYN-020, an oral form of the

enzyme intestinal alkaline phosphatase, licensed in February 2026 for $300,000; and SYN-004 (ribaxamase), its reformulation SYN-007, and "certain assets exclusively related to SYN-006," its carbapenemase product candidate, all sold together to Biossil Labs Inc. on October 30, 2026 for $350,000, of which Theriva kept $210,000 after paying a prior owner. Theriva itself states that there can be no assurance that it "will receive any payments beyond the upfront payment." Plaintiff estimates that the development of these programs cost about $250 million. These programs were developed with the stockholders' money, which Theriva asked them for in its own stock offerings, not with the directors' own; Theriva states that since inception it "has financed its activities principally from the proceeds of the issuance of equity securities" (Form 10-Q, Accession No. 0001104659-26-125918). What directors, mindful of their fiduciary duty, would sell them at this price, with no valuation and no other bidder named? SYN-004 is designed to protect the gut microbiome from antibiotics and to prevent *C. difficile* infection; it holds the FDA's Breakthrough Therapy Designation and a completed 412-patient Phase 2b trial. Theriva signed and closed the sale the same day, eight days after Plaintiff asked this Court to postpone Theriva's November 18 meeting (ECF No. 42). It named no advisor, no valuation and no other bidder, and it told no one until November 2, after Plaintiff had signed his First Amended Verified Complaint (Exhibit A ¶¶ 112–118; Exhibit A-30).

Theriva's own filings say what comes next: discussions about "a business combination, merger or reverse merger"; director options that vest when a merger agreement is signed; its chief executive's change-in-control pay extended to "all reverse merger structures"; and, if no deal comes, possible "dissolution and liquidation." VCN-01, which Theriva calls "our lead program," is what remains (Exhibit A ¶¶ 119–121). Plaintiff asks leave to plead the sale of SYN-004, SYN-007 and SYN-006 now, so that the Court can act before the next program goes the same way.

II. WHAT THE AMENDMENT ADDS

The amendment changes nothing in the existing allegations. It adds: (1) the facts of the sale of the SYN-004 (ribaxamase), SYN-007 and SYN-006 assets (paragraphs 112–121); (2) one paragraph to Count IV, that the Director Defendants approved the sale without acting on an informed basis under NRS 78.138 (paragraph 134); (3) Count VI, under Nevada's Uniform Fraudulent Transfer Act, NRS 112.180 and 112.210, against Theriva (paragraphs 140–144); and (4) a request that Theriva give fourteen days' written notice before selling VCN-01 or another drug program or patent outside the ordinary course of business (Relief L). It does not ask the Court to undo the sale to Biossil, which is not a party. The other changes are the title, the date, one word in paragraph 91, and the renumbering of the claims that follow the new paragraphs.

III. LEAVE SHOULD BE GRANTED

The Court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave is denied only for reasons such as undue delay, bad faith, repeated failure to cure, undue prejudice to the opposing party, or futility. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Prejudice to the opposing party carries the greatest weight, and absent prejudice or a strong showing of the other factors there is a presumption in favor of granting leave. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Rule 15(d) also allows a pleading to set out events that happened after its date, such as Theriva's November 2, 2026 disclosure and its November 12, 2026 report.

Each factor favors leave. Plaintiff moves eleven days after Theriva first disclosed the sale. The amendment rests on Theriva's own filings with the Securities and Exchange Commission. Theriva has not answered; its response is due December 1, 2026 (ECF No. 40). No discovery has taken place.

IV. CONSENT

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

V. CONCLUSION

Plaintiff respectfully asks the Court to grant leave to file the Second Amended Verified Complaint (Exhibit A) and to enter the proposed order filed with this motion.

Dated: November 13, 2026

Respectfully submitted,

/s/ Mark Joseph Nejmeh

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INDEX OF EXHIBITS

Exhibit A: Second Amended Verified Complaint

Exhibits A-1 through A-30: Exhibits 1 through 30 to the Second Amended Verified Complaint

Exhibit A-31: Plaintiff's Declaration and Index of Exhibits

Exhibit B: Highlighted copy comparing Exhibit A with the First Amended Verified Complaint (ECF No. 54)