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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 SUPPLEMENTAL PLEADING** **(Fed. R. Civ. P. 15(d))**

Plaintiff Mark Joseph Nejmeh, self-represented, moves under Federal Rule of Civil Procedure 15(d) and Local Rules 7-2(g) and 15-1 for leave to file the Supplemental Verified Pleading attached as Exhibit A. It sets out events that happened after November 13, 2026, the date of Plaintiff's pending motion for leave to file a Second Amended Verified Complaint (ECF No. 57). It supplements the First Amended Verified Complaint (ECF No. 54) and, if the Court grants ECF No. 57, the Second Amended Verified Complaint. Its exhibits are attached as Exhibits A-1 and A-2, with Plaintiff's declaration as Exhibit A-3.

MEMORANDUM OF POINTS AND AUTHORITIES

I. WHAT CHANGED AFTER THE COURT'S NOVEMBER 12, 2026 ORDER

The Court found Count I likely moot, relying on its earlier statement that "[a] valid proxy statement would cure Plaintiff's alleged informational injury," and found that the issuance of the New Warrant Shares "would be cured by the upcoming vote" of November 18, 2026 (ECF No. 56 at 4, quoting ECF No. 33 at 6). Theriva had told the

Court that the new vote would use "corrected proxy materials" (ECF No. 15-1 ¶ 21). These events followed:

1. On November 13, 2026, Theriva's Board of Directors authorized a 1-for-30 reverse stock split (Exhibit A-1).

2. Between November 13 and the November 18 vote, Theriva filed nothing with the Securities and Exchange Commission. Its next filing after its November 12 quarterly report was the November 18 report of the vote (Exhibit A-2; Theriva's filing list on the SEC's EDGAR system, CIK 0000894158).

3. The proxy statement on which the stockholders voted (ECF No. 42-2) described a reverse stock split only as a possibility ("if we should effect a reverse stock split"); stated that the 500,000,000 authorized shares in Proposal 1 "will not be adjusted for any fundamental transactions, including any proportionate reverse stock split," with the timing "in the Board's discretion"; gave as a purpose to "aid in meeting the NYSE American stockholders' equity requirements"; and in Proposal 2 sought "a new approval of the issuance of the New Warrant Shares at a lower exercise price," under warrants whose price may be reduced "to any amount and for any period of time."

4. On November 18, 2026, both proposals were approved (Exhibit A-2).

5. On November 20, 2026, Theriva announced the reverse split, effective at 11:59 p.m. Eastern Time on December 1, 2026, the date Theriva's response to the complaint is due (ECF No. 40), with split-adjusted trading from December 2, 2026, giving as its reason "to ensure that the Company can meet the per share price requirements of the NYSE American." Its outstanding shares will fall from 45,892,668 to about 1,529,756. The same release names "strategic alternatives, that may include a business combination, merger or reverse merger" (Exhibit A-1).

So the vote the Court expected to cure Count I was held five days after the Board decided the split, without any correction of the proxy statement's description of a split as an "if." By Plaintiff's arithmetic from Theriva's own figures, the New Warrant Shares (16,184,560 before the split, about 539,486 after) will equal about 35% of the shares outstanding after the split, and the 500,000,000 authorized shares, if filed, about 327 times them. The question of the New Warrant Shares is therefore not moot.

II. LEAVE SHOULD BE GRANTED

"On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). "Rule 15(d) is intended to give district courts broad discretion in allowing supplemental pleadings. . . . The rule is a tool of judicial economy and convenience. Its use is therefore favored." *Keith v. Volpe*, 858 F.2d 467 (9th Cir. 1988). New claims may be brought in a supplemental pleading where they bear a relationship to the original action. *Id.*

Plaintiff moves ten days after the Board's decision and three days after its announcement. The supplement rests on Theriva's own filings and on documents already in the record. It concerns the same New Warrant Shares and the same vote that are the subject of Count I and of the Court's November 12, 2026 Order. Theriva has not answered, and no discovery has taken place.

III. WHAT THE SUPPLEMENT ADDS

Exhibit A adds: (1) the facts above (paragraphs S-1 through S-14); (2) Count VII, under Section 14(a) of the Securities Exchange Act and Rule 14a-9, which requires a proxy solicitation to state any material fact "necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading," 17 C.F.R. § 240.14a-9(a) (paragraphs S-15 through S-22); and (3) requests for relief M through P: damages on Count VII; a declaration that the November 18, 2026 approvals do not cure Count I;

sixty days' notice before any sale or merger of VCN-01 or the company; and a public announcement when VCN-01 or the company is offered for sale, so that every interested buyer may come forward. It changes nothing in the existing allegations.

IV. CONFERENCE WITH THERIVA'S COUNSEL

On November 23, 2026, Theriva's counsel proposed by email a stipulation under which Theriva would consent to the filing of the Second Amended Verified Complaint and keep its December 1, 2026 response date, and Plaintiff would agree that "he will not seek any further leave to amend his complaint in this Action." Plaintiff does not agree to that term (Exhibit A-3 ¶ 4). No rule of this Court requires a meet-and-confer conference before a motion of this kind; Plaintiff will report Theriva's position on this motion when he receives it.

V. CONCLUSION

Because the reverse stock split takes effect on the night Theriva's response is due, Plaintiff respectfully asks the Court to consider this motion before, or together with, any response Theriva files on December 1, 2026, to grant leave to file the Supplemental Verified Pleading (Exhibit A), and to enter the proposed order filed with this motion.

Dated: November 23, 2026

Respectfully submitted,

/s/ Mark Joseph Nejmeh

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INDEX OF EXHIBITS

Exhibit A: Supplemental Verified Pleading

Exhibit A-1: Theriva Form 8-K filed November 20, 2026, with Exhibit 99.1 (Accession No. 0001104659-26-130644)

Exhibit A-2: Theriva Form 8-K filed November 18, 2026 (Accession No. 0001104659-26-129752)

Exhibit A-3: Declaration of Mark Joseph Nejmeh