Exhibit 5

Plaintiff's Emergency Opposition to ECF No. 59, as completed at 1:44 p.m. Central on November 24, 2026 (its Exhibits 1–4 are attached to this motion as Exhibits 1–4)

Nejmeh v. Theriva Biologics, Inc., No. 3:26-cv-00705-ART-CSD

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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 EMERGENCY OPPOSITION TO DEFENDANT'S MOTION FOR EXTENSION OF TIME AND REQUEST FOR STATUS CONFERENCE (ECF No. 59)** **(LR 7-4)**

Plaintiff Mark Joseph Nejmeh, self-represented, opposes Defendant Theriva Biologics, Inc.'s Motion for Extension of Time and Request for Status Conference (ECF No. 59), and asks the Court to hear this matter on an emergency basis under Local Rule 7-4, before Theriva's reverse stock split takes effect at 11:59 p.m. Eastern on December 1, 2026. The emergency is not the briefing schedule; it is that trading in Theriva's stock has been halted, the split takes effect in days, and Theriva lists "a business combination, merger or reverse merger" among its possible strategic alternatives, while it asks the Court to postpone its response to no fixed date. (Declaration of Mark Joseph Nejmeh, Ex. 4 ¶¶ 2–3.)

The facts in two sentences. On the morning of November 23, Theriva offered to respond by December 1 if Plaintiff gave up any further amendment; Plaintiff declined, and that evening — three hours after its own report that trading in its stock had been halted — Theriva asked this Court to require "one final, complete pleading" — in Plaintiff's reading, the same thing — and to postpone its response to no fixed date. Meanwhile Theriva's Board had authorized a reverse split on

November 13 that Theriva first announced on November 20, two days after its stockholders voted, the stock fell below $0.10 and was halted on November 23, and the split takes effect at 11:59 p.m. Eastern on Tuesday, December 1 — one minute before midnight on the day Theriva's response is due — so the stock first trades at the split price when the market opens on Wednesday, December 2, if NYSE American approves.

MEMORANDUM OF POINTS AND AUTHORITIES

I. WHAT IS HAPPENING, IN PLAIN ENGLISH

Theriva says Plaintiff keeps changing his pleading. The pleading changes because Theriva keeps acting. The record, in date order:

Date (2026)	Event	Source
October 16	The Court sets December 1 as Theriva's response date.	ECF No. 40
November 13	Theriva's Board authorizes a 1-for-30 reverse stock split. The same day, Plaintiff moves for leave to file his Second Amended Complaint.	ECF No. 58-2 (8-K, Nov. 20, Ex. 99.1); ECF No. 57
November 13–18	Theriva files nothing with the SEC about the split. **The stockholders vote on November 18 before Theriva has announced it;** Theriva's first announcement is its release of November 20 ("announced today").	SEC EDGAR filing list; ECF No. 58-2; ECF No. 58
November 18	The special meeting is held and the proposals pass.	ECF No. 58-3
November 20, 4:35 p.m. Eastern	After the 4:00 p.m. close, Theriva files a Form 8-K announcing the split, effective at 11:59 p.m. Eastern on December 1 — the day its response to the complaint is due.	ECF No. 58-2
November 23, 9:58 a.m. Eastern	Theriva's counsel proposes a stipulation: Theriva consents to the Second Amended Complaint and will respond to it "on or before December 1, 2026," and Plaintiff "will not seek any further leave to amend his complaint in this Action."	Ex. 1, Ex. 2 ¶¶ 3–4
November 23, 10:47 a.m. Eastern	NYSE American halts trading in Theriva's stock.	NYSE trading-halt list; Ex. 3; Ex. 4 ¶ 2
November 23, 1:01 p.m. Eastern	Plaintiff files his motion for leave to file a supplemental pleading.	ECF No. 58
November 23, 1:10 p.m. Eastern	Plaintiff declines the proposed stipulation, "in particular paragraph 4," and offers to meet Theriva's counsel in person in New York.	Ex. 1

November 23, 1:43 p.m. Eastern	Theriva's counsel answers: "As you are not willing to discuss a stipulation, I do not see any reason to meet."	Ex. 1
November 23, 4:30 p.m. Eastern	After the close, Theriva reports that NYSE American halted trading for the low price and trading below $0.10, and that it expects the halt to last until the split.	Ex. 3
Tuesday, December 1, 11:59 p.m. Eastern	The split takes effect, one minute before midnight on the day Theriva's response is due.	Ex. 3
Wednesday, December 2, market open	The stock first trades at the split price, "subject to NYSE American approval." The halt is expected to last until then.	Ex. 3

In short: the morning of November 23, Theriva was ready to respond by December 1 if Plaintiff gave up any further amendment. He would not. That evening, Theriva asked the Court for "one final, complete pleading" — which, in Plaintiff's reading, is what he refused to give — and for an extension to no fixed date, while the split, the halt and the reopening of trading go forward with no response on file.

II. THERIVA OFFERED TO RESPOND BY DECEMBER 1 — IF PLAINTIFF GAVE UP HIS RIGHT TO AMEND

Theriva's counsel wrote at 9:58 a.m. Eastern on November 23 that Theriva was "willing to consent to the filing of the Second Amended Complaint and maintain the December 1 deadline for Theriva's response to the Second Amended Complaint." (Ex. 1.) The attached proposed stipulation provided that "Theriva shall answer, move, or otherwise respond to the Second Amended Complaint on or before December 1, 2026, the date on which Theriva's response to the First Amended Verified Complaint is currently due." (Ex. 2 ¶ 3.) Its recitals add that Theriva's "deadline to respond will remain December 1, 2026." (Ex. 2.) The price was paragraph 4: "Plaintiff agrees that he will not seek any further leave to amend his complaint in this Action." (Ex. 2 ¶ 4.) Plaintiff declined the stipulation, "in particular paragraph 4." (Ex. 1; see ECF No. 58-4 ¶ 4.)

That evening, at 7:33 p.m. Eastern, Theriva told the Court that responding by December 1 would be inefficient. (ECF No. 59 at 4–5.) The Second Amended Complaint Theriva had offered to answer by December 1 did not change between the morning and the evening. What came in between included Plaintiff's refusal of paragraph 4, his motion under Rule 15(d) (ECF No. 58), and the halt of Theriva's stock — which ECF No. 59 does not mention. An extension requires "good cause," and a timely request should "normally … be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party." *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (quoting 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 (3d ed. 2004)) (cited at ECF No. 59 at 4). Here there is prejudice (Part IV), and a deadline Theriva offered to meet in exchange for a waiver is not one it cannot meet.

Federal Rule of Evidence 408 does not apply. The proposed stipulation was not an offer to compromise a disputed claim; it was a scheduling stipulation drafted for filing with the Court. Fed. R. Evid. 408(a). In any event, it is offered here on whether good cause exists for an extension and on the parties' conferral, not on the validity or amount of any claim. Fed. R. Evid. 408(b).

III. THE PLEADINGS CHANGED BECAUSE THERIVA ACTED

Theriva counts "eight versions" of the pleading. (ECF No. 59 at 2–4.) The count includes the Court-ordered completion of the original filing, and it counts the same complaint twice: once attached to the motion for leave (ECF No. 46-1) and again when filed as the Court allowed (ECF No. 54). The two pending motions each answer a new act by Theriva: the Second Amended Complaint (ECF No. 57) answers Theriva's sale of its SYN-004, SYN-007 and certain SYN-006 assets, reported on November 2, 2026; the supplemental pleading (ECF No. 58) answers the November 13 authorization of the split, the November 18 vote and the November 20 announcement. Rule 15(d) exists for exactly this: a 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). Its use "is therefore favored." *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988).

Theriva writes that it "does not ask the Court to foreclose Plaintiff from pleading his best case." (ECF No. 59 at 6.) An order requiring "one final, complete pleading" would do just that for every event that has not yet happened — the split on December 1, any delisting, and any sale, merger or reverse merger. Theriva's own releases of November 20 and November 23 name "one or more strategic alternatives, that may include a business combination, merger or reverse merger." (ECF No. 58-2, Ex. 99.1; Ex. 3, Ex. 99.1.) The pleading will be settled when Theriva stops changing the facts on which it is being sued. Plaintiff asks only that he keep the right Rule 15(d) gives him.

IV. AN OPEN-ENDED EXTENSION FREEZES THE CASE WHILE THERIVA ACTS

This is a private securities action. Discovery has not begun, and once Theriva moves to dismiss, the Private Securities Litigation Reform Act stays "all discovery and other proceedings … during the pendency of any motion to dismiss." 15 U.S.C. § 78u-4(b)(3)(B). Every day Theriva's response is put off pushes back the day the case can reach the records that matter: Theriva's board materials on the split, its communications with NYSE American, and the trading records for November 2026. Theriva's request has no fixed date; it runs until fourteen days after the Court rules on two motions whose briefing is not complete, or, if the Court grants either motion, fourteen days after Plaintiff files the new pleading. (ECF No. 59 at 7.)

Meanwhile the events at issue keep moving. The split takes effect at 11:59 p.m. Eastern on December 1, the trading halt is expected to continue until then, and trading resumes on December 2 only "subject to NYSE American approval." (Ex. 3.) Theriva says "no discovery deadlines are pending." (ECF No. 59 at 5.) That is the prejudice, not the absence of it.

It has happened once already. While Plaintiff's motion for a preliminary injunction was pending, Theriva sold its SYN-004 (C. difficile), SYN-007 and certain SYN-006 assets on October 30, 2026, reported on November 2, 2026. (ECF No. 57.) Those assets were gone before the Court could rule. Theriva's November 20 and November 23 releases list "a business combination, merger or reverse merger" among its possible strategic alternatives. (ECF No. 58-2, Ex. 99.1; Ex. 3, Ex. 99.1.) If a merger or reverse merger closes while Theriva's response is postponed without end, the company, its remaining assets and its stock may be changed or gone before the Court ever reaches the merits, and much of the relief Plaintiff seeks may no longer be possible to grant. A deadline with no fixed date makes that more likely, not less.

V. THE HALT AND THE TRADING THAT CAME BEFORE IT

Theriva's motion calls the November events "corporate action." (ECF No. 59 at 2.) It does not mention that trading in its stock was halted the same morning, or that Theriva expects the halt to last until its reverse split takes effect at 11:59 p.m. Eastern on December 1, the same day its response is due — although Theriva filed the motion at 7:33 p.m. Eastern, three hours after its own 8-K reporting the halt. (Ex. 1 (Notice of Electronic Filing for ECF No. 59); Ex. 3.) The facts, from Theriva's own filings and the trading record:

(a) In its annual report filed March 12, 2026, Theriva told investors that "the NYSE American has informed us that it can commence delisting proceedings and immediately suspend trading in the event that our Common Stock trades at levels viewed to be abnormally low," and that "Currently, the NYSE American views trading at or below a price of $0.10 to be abnormally low." (Theriva Form 10-K for 2025, filed Mar. 12, 2026, Accession No. 0001104659-26-026767, risk factors.)

(b) The Board authorized the split on November 13; it takes effect at 11:59 p.m. Eastern on December 1. Theriva announced it in a Form 8-K accepted by the SEC at 4:35 p.m. Eastern on Friday, November 20, after the market closed. (ECF No. 58-2.)

(c) On Friday, November 20, 1,357,300 shares traded, about twice the volume of the days before; on Monday, November 23, the stock opened at $0.10, traded below $0.10 that morning, and 862,000 shares traded in the 77 minutes before the halt. (Ex. 4 ¶ 9.)

(d) NYSE American halted trading at 10:47 a.m. Eastern. Theriva reported that the halt was "due to the low trading price of the Company's shares of Common Stock for a substantial period of time and the fact that its Common Stock traded below $0.10 on November 23, 2026," and that it "expects that such halt in trading will remain in effect until" the split. (Ex. 3.) Theriva expects the halt to last until the split; trading on December 2 is "subject to NYSE American approval."

(e) **The stock fell before the announcement.** The Board authorized the split on November 13. Theriva said nothing about it until after the close on November 20. In that week, with no news from Theriva about the split, the stock fell from $0.14 at the close on November 13 to $0.12 at the close on November 20, and on November 20 — during the trading day, before the announcement — volume was about twice that of the days before. (Ex. 4 ¶ 9; ECF No. 58-2.)

(f) **The same pattern as Theriva's earlier splits.** This is Theriva's fourth reverse split since 2018: 1-for-35 (effective August 13, 2018), 1-for-10 (July 25, 2022), 1-for-25 (August 26, 2024), and now 1-for-30 — together, 262,500 old shares for each new share. (Theriva Forms 8-K, Accession Nos. 0001144204-18-043710, 0001104659-22-080032 and 0001104659-24-090522; ECF No. 58-2.) After each earlier split, Theriva reported a new sale of its securities to investors: an underwritten public offering of units of common stock and warrants with A.G.P./Alliance Global Partners as representative of the underwriters (Form 8-K filed October 15, 2018, Accession No. 0001144204-18-053807); a sale reported July 29, 2022, four days after that split (Form 8-K, Accession No. 0001104659-22-084301, Items 1.01 and 3.02); and, after the 2024 split, a public

offering of common stock, pre-funded warrants and warrants that closed May 8, 2025 (Form 8-K, Accession No. 0001104659-25-046170).

(g) **What Theriva's CEO swore one week before the Board authorized the split.** On November 6, 2026, Theriva's Chief Executive Officer swore that "[a]s of the market close on November 5, 2026, Theriva's common stock trades at $0.17 per share, well below the $0.54 per share exercise price of the New Warrants." (ECF No. 50-1 ¶ 8.) Seven days later, on November 13, the Board authorized the reverse split. Theriva's own release says the split brings "[p]roportionate adjustments" to "the exercise price of" its outstanding warrants (ECF No. 58-2, Ex. 99.1): the 16,184,560 New Warrants become exercisable for about 539,485 shares at $16.20 a share. Theriva did not tell the Court.

The price broke through $0.10 in the first regular session after Theriva's own announcement. The stock closed at $0.12 on November 20, before Theriva's 4:35 p.m. filing announcing the split; at the next regular session, on the morning of November 23, it opened at $0.10 and fell below it — the very level Theriva had told investors in March would allow NYSE American to "immediately suspend trading" — and it was halted that morning. (Ex. 3; Ex. 4 ¶ 9.)

Plaintiff believes, on these facts, that this sequence was planned: a split authorized on November 13 but not effective until the night of Theriva's December 1 response date, withheld from the stockholders who voted on November 18, announced after the close on November 20, followed by heavy trading at and below $0.10 and a halt that freezes trading until the split. Plaintiff believes Theriva's announcement and the trading that followed drove the price down, and that the market for Theriva's stock was manipulated in that period. Plaintiff further believes that Theriva's financiers learn of these decisions before the public, buy shares at the low prices around each split, and sell into later rises; and that the split is meant to set up a rise in the price that makes the warrants worth exercising, followed by a sale — a pump and dump. These contentions are likely to have evidentiary support after a reasonable opportunity for discovery —

Theriva's communications with NYSE American and the trading records for November 2026. Fed. R. Civ. P. 11(b)(3). They are one more reason the case should not be frozen.

VI. CONFERRAL

Plaintiff offered in writing to meet Theriva's counsel in person at their New York office on November 30, 2026, "consistent with Local Rule IA 1-3(f)," and to "confer in good faith on any matter in this case." Theriva's counsel declined: "I do not see any reason to meet." (Ex. 1.) At 2:16 p.m. Eastern, Plaintiff wrote again: he had not refused to discuss a stipulation, he had declined its terms; his offer to meet stood; and he asked Theriva's position on ECF No. 58 and whether Theriva had received any notice or communication from NYSE American about the halt, and when. (Ex. 1.) Theriva has not answered that email. It filed ECF No. 59 at 7:33 p.m. Eastern that evening without answering and without conferring with Plaintiff about it. On November 24, before filing this opposition, Plaintiff emailed all five of Theriva's counsel asking to confer by phone about ECF No. 59 and whether Theriva would keep December 1, left telephone messages for Ms. Young, Mr. Hambelton, Mr. McQueeney and Ms. Weil, and asked for a call by 12:00 noon Eastern. Ms. Young called back at 10:21 a.m. Eastern. She said that because Plaintiff keeps adding to the complaint, Theriva does not know what to answer, and that answering was a waste of Theriva's time and resources if the complaint keeps changing. Plaintiff answered that Theriva keeps doing things the Court needs to know, and that Theriva needs to answer while its stockholders are dealing with the reverse split. Theriva did not agree to keep December 1. (Ex. 4 ¶ 5.) Ms. Young later wrote that she did not say Theriva will not respond by December 1 to the current pleading and did not ask how the pleading keeps changing, and that Theriva's position, as set out in its motion, is that it should respond to one pleading, after the motions to amend are resolved. (Ex. 1.) Plaintiff stands by his account. (Ex. 4 ¶ 5.) ECF No. 59 does not mention the proposed stipulation, Plaintiff's answer, the offer to meet, or the halt.

VII. RELIEF REQUESTED

Plaintiff respectfully asks the Court to:

1. Deny the extension requested in ECF No. 59 and keep December 1, 2026 as Theriva's response date — the date Theriva itself proposed on November 23;

2. Decline any order that would bar Plaintiff from seeking leave under Rule 15(d) to supplement his pleading with events that happen after it;

3. Set the requested status conference at the Court's earliest convenience, before December 1, 2026 if the Court's calendar allows; and

4. Grant any other relief the Court finds just.

Dated: November 24, 2026

/s/ Mark Joseph Nejmeh

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Exhibits: 1 – Email exchange with Theriva's counsel, November 23–24, 2026, the Court's Notice of Electronic Filing for ECF No. 59, and the Courtroom Administrator's email of November 24, 2026 with Theriva's reply; 2 – Proposed stipulation as received, November 23, 2026; 3 – Theriva Form 8-K filed November 23, 2026, with Exhibit 99.1; 4 – Declaration of Mark Joseph Nejmeh, with TOVX trading data, November 13–23, 2026.