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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 OBJECTION TO MAGISTRATE JUDGE'S ORDER GRANTING DEFENDANT'S MOTION FOR EXTENSION OF TIME (ECF No. 60) AND MINUTE ORDER SETTING STATUS CONFERENCE (ECF No. 61)** **(LR 7-4; LR IB 3-1; Fed. R. Civ. P. 72(a))**

Plaintiff Mark Joseph Nejmeh, self-represented, objects on an emergency basis under Local Rules 7-4 and IB 3-1 and Federal Rule of Civil Procedure 72(a) to the Magistrate Judge's Order of November 24, 2026 (ECF No. 60), which granted Defendant Theriva Biologics, Inc.'s Motion for Extension of Time and Request for Status Conference (ECF No. 59), and to the Minute Order of the same day (ECF No. 61), which set the requested status conference for December 7, 2026. Plaintiff asks the District Judge to set aside ECF No. 60 and keep December 1, 2026 as Theriva's response date, or set a short, fixed date before December 1, 2026. Plaintiff asks the Court to decide this objection before December 1, 2026. ECF No. 59 was not filed as an emergency motion, yet it was decided in less than 24 hours. Plaintiff asks only that this objection be considered with the same promptness. The declaration required by Local Rule 7-4(a) is filed with this objection.

In plain English. Theriva told Plaintiff in writing on the morning of November 23 that it would respond to the complaint by December 1 if he gave up any further amendment. He said no. That morning trading in Theriva's stock was halted for trading below ten cents. That evening Theriva asked the Court for more time, without mentioning either fact. The next day the extension was granted, with no fixed end date, while the stock is expected to stay halted until a 1-for-30 reverse split takes effect at 11:59 p.m. Eastern on December 1, the day Theriva's response was due. The case is now frozen while Theriva acts.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE STANDARD

A district judge "may reconsider any pretrial matter referred to a magistrate judge ... when it has been shown the magistrate judge's order is clearly erroneous or contrary to law," on "specific written objections" filed within 14 days after service. LR IB 3-1(a). The district judge "must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). A finding is clearly erroneous when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948). A court may extend a deadline only "for good cause." Fed. R. Civ. P. 6(b)(1). ECF Nos. 60 and 61 were entered and served on November 24, 2026. This objection is timely.

II. WHAT HAPPENED (in date order, from Theriva's own filings and the record)

Date (2026)	Event	Source
October 16	On Theriva's own motion, 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.	ECF No. 58-2
November 18	Stockholders vote at Theriva's special meeting. The split has not been announced.	ECF No. 58-3
November 20, 4:35 p.m. Eastern	After the market closes, Theriva announces the split, effective 11:59 p.m. Eastern on December 1.	ECF No. 58-2; ECF No. 62-4 ¶ 9

November 23, 9:58 a.m. Eastern	Theriva's counsel writes that Theriva is "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," on condition that "Plaintiff agrees that he will not seek any further leave to amend his complaint in this Action." Plaintiff declines.	ECF No. 62-1; ECF No. 62-2 ¶ 4
November 23, 10:47 a.m. Eastern	NYSE American halts trading in Theriva's stock.	ECF No. 62-4 ¶ 2
November 23, 4:30 p.m. Eastern	Theriva reports 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 the halt to last until the split.	ECF No. 62-3; ECF No. 62-4 ¶ 8
November 23, 7:33 p.m. Eastern	Theriva files ECF No. 59. It does not mention the halt or its offer to respond by December 1.	ECF No. 59
November 24	ECF No. 60 grants the motion: Theriva responds fourteen days after rulings on ECF Nos. 57 and 58. Plaintiff's response to ECF No. 59 was due December 7. The same day Plaintiff moves for reconsideration with the facts above (ECF No. 62), and the Court sets a status conference for December 7 (ECF No. 61).	ECF Nos. 60, 61, 62

III. SPECIFIC OBJECTIONS

Objection 1. The finding of good cause rests on an incomplete account. ECF No. 60 found that "Good cause appearing," the extension should be granted. The only briefing on ECF No. 59 before the Court was Theriva's. That account left out two facts that bear directly on good cause: Theriva had offered in writing, that same morning, to meet the December 1 date (ECF Nos. 62-1, 62-2), and trading in its stock had been halted hours before it filed (ECF No. 62-3). A date a party offers in writing to meet, in exchange for the other side giving up a right, is not a date it cannot meet.

The conferral, in facts. Theriva's offer to keep December 1 had one condition: "Plaintiff agrees that he will not seek any further leave to amend his complaint in this Action." (ECF No. 62-2 ¶ 4.) At 1:10 p.m. Eastern on November 23, Plaintiff declined that term and offered to meet Theriva's counsel in person at their New York office on

November 30. At 1:43 p.m. Eastern, counsel answered: "As you are not willing to discuss a stipulation, I do not see any reason to meet." At 2:16 p.m. Eastern, Plaintiff wrote that his offer to meet stood, and asked whether Theriva had received notice from NYSE American about the halt, and when. Theriva did not answer that email before it filed ECF No. 59 that evening. (ECF No. 62-1; ECF No. 62-4 ¶ 5.)

ECF No. 59 did not disclose the offer or the halt. ECF No. 59 was entered at 4:33 p.m. Pacific on November 23, and ECF No. 60 at 12:05 p.m. Pacific on November 24, less than 24 hours later. Plaintiff did not have the chance to put these facts before the Magistrate Judge: the order was entered before his time to respond had run. Plaintiff does not say the timing was itself improper; Rule 6(b)(1)(A) allows an extension "with or without motion or notice." He says that on the entire record, which now includes ECF No. 62, the finding of good cause leaves a definite and firm conviction that a mistake was made. Plaintiff respectfully asks the District Judge to consider this objection together with ECF No. 62, which is pending.

Objection 2. The extension has no end date. ECF No. 60 sets Theriva's response at fourteen days after the Court rules on two motions whose briefing is not complete (ECF Nos. 57 and 58; Theriva's responses are due November 27 and December 7). There is no date at all. Under the Private Securities Litigation Reform Act, once Theriva moves to dismiss, "all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss." 15 U.S.C. § 78u-4(b)(3)(B). An open-ended extension in front of a statutory stay freezes the case for an unknown time.

Objection 3. The prejudice to Plaintiff was not weighed. While the case is frozen:

(a) Trading in Theriva's stock is expected to remain halted until the split, so no stockholder can sell on the exchange (ECF No. 62-3).

(b) Theriva's releases of November 20 and November 23 list "a business combination, merger or reverse merger" among its possible strategic alternatives

(ECF No. 58-2; ECF No. 62-3). While Plaintiff's motion for a preliminary injunction was pending, Theriva sold its SYN-004, SYN-007 and certain SYN-006 assets on October 30, 2026 (ECF No. 57).

(c) Theriva reports an accumulated deficit of approximately $365.4 million as of September 30, 2026, and states that "[s]ince inception, the Company has financed its activities principally from the proceeds of the issuance of equity securities." (Theriva Form 10-Q for the quarter ended September 30, 2026, filed November 12, 2026.) Its stockholders have paid for those losses.

(d) Plaintiff believes, and states as his belief, that on these facts the trading in Theriva's stock seems to have been manipulated, in the pattern of Theriva's earlier reverse splits (ECF No. 62 at Part III; ECF No. 62-5 at Part V).

Since this case was filed on September 16, 2026, Theriva has sold its SYN-004, SYN-007 and certain SYN-006 assets for $350,000 upfront (ECF No. 57); authorized a 1-for-30 reverse split, announced only after the November 18 vote (ECF No. 58-2); obtained re-approval of warrants that become about 35% of its post-split shares, with power, with the holder's consent, to cut their price "to any amount" (ECF No. 58-1 ¶¶ S-5, S-9, S-13); and seen its stock halted for trading below $0.10 (ECF No. 62-3). Plaintiff asked Theriva on November 23 whether it had received notice from NYSE American about the halt, and when; Theriva had not answered as of November 24 (ECF No. 62-4 ¶ 5). Plaintiff believes, and states as his belief, that the halt may have been initiated or timed by Theriva.

None of this was raised in ECF No. 59 or weighed when the Court found good cause. Events of this kind are hard to undo once they happen.

What can happen from December 2, by Theriva's own filings, is set out in Appendix A, filed with this objection.

Objection 4. The minute order sets the conference after the events it concerns. ECF No. 61 states that the Court "approved Defendant's motion for an

extension of time" and set a status conference "pursuant to their request in the motion," for December 7, 2026. That date falls after the split takes effect on December 1, after the stock is to reopen on December 2, and after December 1, Theriva's original response date. At 1:02 p.m. Central on November 24, before ECF No. 61 was entered, Plaintiff told the Courtroom Administrator in writing, with Theriva's counsel copied, that he was available on December 7, that December 7 falls after both the halt and the split, and that, if the Court's calendar allowed an earlier conference, he was available any day before December 1. (ECF No. 62-9.) To the extent ECF No. 61 rests on ECF No. 60, it should be set aside with it, and the conference should be held before December 1.

Objection 5. The order should not be read to bar later supplements. ECF No. 59 asked for "one final, complete pleading." If ECF No. 60 is read to adopt that request, it would bar Plaintiff from seeking leave under Rule 15(d) to plead events that happen after his pleading, which is what Rule 15(d) is for. Plaintiff asks that the order be clarified so that it does not.

IV. RELIEF REQUESTED

Plaintiff respectfully asks the District Judge to:

1. Sustain this objection and set aside ECF No. 60;

2. Keep December 1, 2026 as Theriva's response date, the date Theriva itself offered on November 23, or set a short, fixed date before December 1, 2026;

3. Set aside ECF No. 61 to the extent it rests on ECF No. 60, and set the status conference before December 1, 2026;

4. Consider this objection together with Plaintiff's pending Motion for Reconsideration (ECF No. 62);

5. Make clear that nothing in ECF No. 60 bars Plaintiff from seeking leave under Rule 15(d) to plead later events; and

6. Grant any other relief the Court finds just.

Dated: November 25, 2026

/s/ Mark Joseph Nejmeh

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