Mark Joseph Nejmeh
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Plaintiff, self-represented

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705** **PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL EXHIBITS SQ, SR AND SS AND A SUPPLEMENTAL STATEMENT IN SUPPORT OF INTERIM RELIEF (LR 7-2(g))**

Plaintiff Mark Joseph Nejmeh, self-represented, respectfully moves under Local Rule 7-2(g) for leave to file Supplemental Exhibits SQ, SR and SS and a Supplemental Statement in Support of Interim Relief. The exhibits follow the proposed Supplemental Exhibits SA through SP and support Plaintiff's Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction (ECF No. 2) and the proposed supplemental memorandum.

Supplemental Exhibit SA notes, at SA-8, paragraph 39, that the public filings of Heat Biologics, Inc. may be used as public comparators. **Exhibit SQ** supplies that comparison. It is compiled entirely from public records concerning Heat Biologics, Inc., later NightHawk Biosciences, Inc. and Scorpius Holdings, Inc. (SEC CIK 0001476963): its SEC filings, SEC insider-ownership records, and audited financial data. It shows Heat's reverse stock splits, name changes, offerings, listing-deficiency notices, accumulated deficit, patent disclosures, and delisting on May 1, 2025, with Defendant's record shown only as a baseline. A scope table identifies where each subject already covered by Exhibits SA through SP appears, and those subjects are not repeated.

Exhibit SR continues the motive inquiry of Exhibit SL. From Heat's own Forms 8-K, 10-K and Schedule 13D filings, it sets out the December 2023 sale of Heat's subsidiary

Elusys Therapeutics, Inc., owner of the FDA-approved product ANTHIM®, to a company the filing describes as controlled by Heat's Chairman and Chief Executive Officer, who is also a director of Defendant; the two later amendments that replaced a guaranteed $5,000,000 minimum royalty with $1,000,000 in cash and the cancellation of a $750,000 note; and the December 2025 foreclosure of substantially all of Heat's remaining non-cash assets. It states the facts that cut against any inference, does not assert that any transaction was unlawful, and identifies the records needed to test whether the matters bear on this action.

Good cause exists because the Heat records were assembled after Exhibits SA through SP were prepared, and they bear directly on the governance, financing, disclosure, and motive questions those exhibits identify: two of Defendant's four directors, both of whom sit on all three of Defendant's board committees, serve or served on Heat's board. Plaintiff offers the exhibits only for what the public records show. They do not ask the Court to find intent, manipulation, or wrongdoing, and they add no claim or party. Plaintiff requests that the Court take judicial notice of the SEC filings they summarize, to the extent the Court finds that appropriate under Federal Rule of Evidence 201.

Exhibit SS sets out, from Defendant's proxy statements, SEC insider-ownership records, Schedule 13G filings and FINRA BrokerCheck: the directors who make up every committee of Defendant's board, their pay, their reported equity awards and open-market purchases, the other companies where they have served, and the eight holders of the 16,184,560 New Warrant Shares, including the holders that also financed Defendant in 2011 or financed Heat, and Defendant's 2017, 2021 and 2022 preferred-stock transactions with MSD Credit Opportunity Master Fund. It states the facts that cut against any inference and asserts no wrongdoing.

The **Supplemental Statement in Support of Interim Relief** identifies, from Defendant's own SEC filings, the corporate actions that could change the position of existing stockholders before the Court rules on ECF No. 2: the New Warrant Shares; a reverse stock split, which Defendant's June 29, 2026 proxy statement says Defendant may effect by board action without stockholder approval, and which would not reduce the 6,500,000-share incentive-plan limit or the 450,000,000-share authorized-share amendment approved on August 3, 2026; and any rights plan, merger, reverse merger, or asset transfer. It asks for status quo on the New Warrant Shares, on any reverse split (or, in the alternative, notice and proportionate adjustment), and on any rights plan (or, in the alternative, notice); ten business days' notice of any merger, reverse merger or asset transfer; and preservation. Good cause exists because the relevant proxy language and vote results were identified after Exhibits SA through SP were prepared, and because a reverse split may be effected on short notice.

For these reasons, Plaintiff respectfully asks the Court to grant leave to file Exhibits SQ, SR and SS and the Supplemental Statement.

Dated: 9/28/2026

Respectfully submitted,

Mark Joseph Nejmeh, Plaintiff, self-represented

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

INDEX OF EXHIBITS

SA–SP — Proposed Supplemental Exhibits SA through SP, previously submitted (Volume I: SA–SJ; Volume II: SK–SP).

SQ — Heat Biologics as a public comparator. Scope table, four figures and three tables compiled from SEC filings, insider-ownership records and audited financial data, with sources. 9 pages, including the exhibit cover page.

SR — Motive, continued: what happened to Heat Biologics' assets. The Elusys Therapeutics sale to a company controlled by Heat's CEO and its two amendments; Heat's secured debt, delisting and foreclosure; the corresponding Theriva record; and records needed. 6 pages.

SS — The directors and the warrant holders. Committees, pay, reported awards and open-market purchases, other companies served, the holders of the New Warrants, repeat financiers, and a public-record comparison with Volcon, Inc. 11 pages.

Supplemental Statement in Support of Interim Relief — status quo on the New Warrant Shares, any reverse stock split, and any rights plan; advance notice of any merger, reverse merger or asset transfer; preservation. Filed as a separate document. 6 pages.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No. 3:26-cv-00705

CERTIFICATE OF SERVICE

I certify that I am over eighteen years of age and not a party to this action.

On ____________________, I served a true and correct copy of Plaintiff's Motion for Leave to File Supplemental Exhibits SQ, SR and SS and a Supplemental Statement in Support of Interim Relief, the Index of Exhibits, Supplemental Exhibits SQ, SR and SS, and the Supplemental Statement in Support of Interim Relief on Defendant Theriva Biologics, Inc., by the following method:

[ ] Personal delivery [ ] First-class U.S. mail, postage prepaid [ ] Overnight delivery

[ ] Electronic service by agreement or court-authorized method

Person or registered agent served: ____________________________________

Address or electronic destination: ____________________________________

____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: ____________________

Signature of person making service: ____________________________________

Printed name: ____

Address: ____

Mark Joseph Nejmeh
P.O. Box 589
Clifton, New Jersey 07012
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Plaintiff, self-represented

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705** **SUPPLEMENTAL EXHIBIT SR MOTIVE, CONTINUED: WHAT HAPPENED TO HEAT BIOLOGICS' ASSETS**

Supplemental Exhibit SR — Motive, Continued

I. PURPOSE AND LIMITS

1. Supplemental Exhibit SL asks whether the facts it describes could supply a motive for a transaction involving Theriva or its assets. Exhibits SH, SM and SN ask whether an internally influenced transaction process may exist. Supplemental Exhibit SQ shows that Heat Biologics, Inc., later NightHawk Biosciences, Inc. and Scorpius Holdings, Inc. ("Heat"), followed the same public sequence of offerings, listing notices, reverse splits and name changes to delisting. This Exhibit SR adds what Heat's own filings report happened to Heat's principal commercial asset and to the rest of its business at the end of that sequence.

2. Heat's founder, Chairman and Chief Executive Officer, Jeffrey Wolf, has been a Theriva director since 2006. Dr. John Monahan was a Heat director from November 2009 until April 21, 2026 and has been a Theriva director since November 11, 2020. Both sit on all three of Theriva's board committees (Theriva DEF 14A filed June 29, 2026).

3. Every fact below is taken from a filing identified by its SEC accession number. This Exhibit does not state or imply that any transaction described was unlawful, that any person breached a duty, or that anything described at Heat has occurred or will occur at Theriva. It identifies a public-record pattern and the records needed to test whether it bears on the issues in this action. Facts that cut against the inference are stated with the facts that support it.

II. THE SALE OF ELUSYS THERAPEUTICS TO A COMPANY CONTROLLED BY HEAT'S CEO

4. December 11, 2023 — the agreement. Heat agreed to sell all equity of its wholly owned subsidiary Elusys Therapeutics, Inc. ("Elusys"), the owner of the FDA-approved anthrax antitoxin ANTHIM®, together with the exclusive right to the name "NightHawk," to Elusys Holdings Inc., which the filing describes as "a company controlled by the Company's Chairman, Chief Executive Officer and President, Jeffrey Wolf." A special committee of independent directors negotiated the agreement. The buyer paid $500,000 in cash and agreed to assume specified liabilities and manufacturing commitments then estimated at $40 million. (Form 8-K, accession 0001558370-23-019741.)

5. The royalty and its guaranteed minimum. The buyer agreed to pay Heat a royalty of 3% of gross revenue from all sales of ANTHIM® from January 1, 2024 through June 30, 2031, and, if Heat had not received $5,000,000 in royalties by December 31, 2028, to pay the shortfall by March 1, 2029. (Id.)

6. Dual roles. The same filing states that Mr. Wolf and Heat's Chief Financial Officer, William Ostrander, would continue in their positions at Heat and would also serve as Chief Executive Officer and Chief Financial Officer of the buyer, and that Heat would provide the buyer transitional administrative, accounting, billing, cash-management and banking services under a shared services agreement. (Id.)

7. A convertible note to the buyer. The buyer agreed to purchase from Heat a $2,250,000 convertible note bearing 1% interest, convertible, if stockholders approved, at $0.39281 per share, or 5,727,960 shares. (Id.; Schedule 13D Amendment No. 9 filed by Mr. Wolf, Elusys Holdings Inc., Orion and Seed-One, accession 0001079973-23-001737.)

8. December 27, 2023 — closing. The sale closed. Heat's Form 10-K for 2023 states that the liabilities and manufacturing commitments assumed by the buyer were then estimated at $51.4 million, and reports a gain on the sale. (Form 8-K, accession 0001079973-23-001821; Form 10-K, accession 0001558370-24-005902.)

9. July 30, 2024 — first amendment. A 1% non-convertible note of $750,000 dated May 1, 2024, issued by Heat to Elusys Holdings, was cancelled. In exchange, the agreement was amended to eliminate "the payment of any royalty fees" by Elusys Holdings and to provide instead a cash payment of $2.5 million on or before December 31, 2028. (Form 8-K, accession 0001079973-24-001136.)

10. March 12, 2025 — second amendment. In exchange for $500,000 paid on or about March 12, 2025, the agreement was amended to eliminate the $2.5 million payment due by December 31, 2028. (Form 8-K, accession 0001079973-25-000380.)

11. What Heat was entitled to receive, as the filings describe it at each stage:

(a) December 2023: $500,000 cash, plus a 3% ANTHIM® royalty through June 30, 2031 with a guaranteed minimum of $5,000,000 by December 31, 2028.

(b) July 2024: the royalty and the $5,000,000 minimum removed; $2,500,000 payable by December 31, 2028; Heat's $750,000 note to the buyer cancelled.

(c) March 2025: the $2,500,000 removed; $500,000 paid.

(d) In total, the filings describe Heat receiving $1,000,000 in cash and the cancellation of a $750,000 note, in place of a guaranteed $5,000,000 minimum plus a 3% royalty on sales through mid-2031.

12. What cuts against the inference. Heat reported Elusys within discontinued operations, with a net loss from discontinued operations of about $5.1 million for 2023; the buyer assumed liabilities and commitments estimated at $40 to $51.4 million; Heat remained liable to the former Elusys owners if the buyer failed to pay merger consideration; and a special committee of independent directors negotiated the original agreement. The filings reviewed do not state which directors served on that committee, who approved the two amendments, or what valuation supported them.

III. THE REST OF HEAT'S BUSINESS

13. December 2024 — secured debt. Heat issued senior secured convertible notes of $13,388,889 to 3i, LP and Sabby Volatility Warrant Master Fund Ltd., and separately issued non-convertible secured promissory notes totalling $9,841,765. (Form 8-K, accession 0001079973-25-001455; Form 8-K, accession 0001079973-26-000142.)

14. April–May 2025 — delisting. NYSE American suspended trading on April 21, 2025 for low selling price; Heat decided on April 28 not to appeal; Form 25 was filed on May 1, 2025. (Form 8-K, accession 0001079973-25-000738.)

15. May 2025 onward — serial short-term notes. After delisting, Heat filed seventeen Forms 8-K between May 2025 and March 2026 reporting Items 1.01, 2.03 and 3.02 (new agreements, new financial obligations, and unregistered sales of equity). One example is a $130,000 non-convertible note issued June 18, 2025 to "an institutional investor" at 5% interest, maturing July 31, 2025. (Form 8-K, accession 0001079973-25-001049.)

16. September 9, 2025 — default. The collateral agent declared a default and accelerated $14,994,810.35 under the secured convertible notes, citing among other things the failure of Heat's stock to remain listed. (Form 8-K, accession 0001079973-25-001455.)

17. December 10, 2025 — foreclosure. Assets comprising "substantially all non-cash assets of the Company," related to its contract manufacturing and research and development activities and subsidiaries, were sold in an Article 9 foreclosure sale conducted by the collateral agent for the secured noteholders. (Form 8-K, accession 0001079973-26-000142; Form 8-K/A, accession 0001079973-26-000283.)

18. March–April 2026 — departures. Heat's CFO resigned effective March 31, 2026. On April 21, 2026, Dr. Monahan resigned from Heat's board, where he chaired the Compensation Committee and sat on the Audit and Nominating Committees; two other directors resigned on April 23, 2026. The departure filings are signed by Mr. Wolf as Chairman, President and Chief Executive Officer. (Form 8-K, accession 0001553350-26-000055; Form 8-K, accession 0001079973-26-000533.)

IV. THE CORRESPONDING THERIVA RECORD, ALREADY BEFORE THE COURT

19. The following Theriva facts are set out in the cited exhibits and are listed here only so the two records can be read side by side:

(a) Theriva licensed SYN-020 on an exclusive, worldwide, sublicensable basis to Rasayana Therapeutics, Inc. for $300,000 up front, with milestones that are contingent and a licensee right to terminate on ninety days' notice for any or no reason. Theriva's 10-K identifies no related-party relationship with Rasayana. (Exhibits SA-7, SC-5, SF, SN-3.)

(b) Theriva states that it will not fund further SYN-004 development internally. (Exhibits SL-3, SN.)

(c) Theriva's August 2026 Form 10-Q describes a strategic review that may include a business combination, merger or reverse merger, and its amended CEO employment agreement of August 10, 2026 provides change-in-control benefits whose definition includes a reverse merger with a non-listed private company. (Exhibit SN-4.)

(d) Theriva has disclosed no transaction with any director or director-controlled entity comparable to the Elusys sale.

V. WHAT THIS RECORD MAY SUPPORT, AND WHAT IT DOES NOT

20. Questions it supports. Whether directors who participated in, approved, or were aware of the sale of Heat's principal commercial asset to a company controlled by Heat's CEO, and in two later amendments reducing the consideration payable to Heat, bring an interest to Theriva's evaluation of asset licences, strategic alternatives and change-in-control arrangements; whether Theriva's board considered those relationships when determining director independence and committee membership; and whether any Theriva director, officer or affiliated entity has, or has discussed, an interest in any Theriva asset, licensee or prospective counterparty.

21. Conclusions it does not prove. That the Elusys sale or its amendments were unfair or unlawful; that any Theriva director acted at Theriva as at Heat; that Rasayana is related to any Theriva insider; or that any Theriva transaction is planned. Those questions require the records below.

VI. RECORDS NEEDED TO TEST THE QUESTION

22. From Theriva: (a) director and officer questionnaires, 2020 to the present, including disclosure of Mr. Wolf's and Dr. Monahan's roles in the Elusys sale and its amendments; (b) board and Nominating Committee materials on the independence of Mr. Wolf and Dr. Monahan, including any consideration of the Elusys transaction; (c) documents sufficient to show whether Mr. Wolf, Dr. Monahan, Elusys Holdings Inc., Seed-One Ventures, Orion, or any entity they control has had any communication, agreement, financing, or interest concerning Rasayana Therapeutics, SYN-020, SYN-004, VCN-01, or any strategic-alternatives counterparty; and (d) any recusal by either director from Theriva decisions on licensing, financing or strategic alternatives.

23. From Heat or Elusys Holdings, by nonparty subpoena only if the Court finds it relevant and proportional: the composition and minutes of the special committee that approved the December 2023 sale, the approvals of the July 2024 and March 2025 amendments, any valuation or fairness analysis of Elusys or ANTHIM®, and ANTHIM® gross revenue from January 1, 2024 to the present sufficient to compute the royalty that the amendments eliminated.

SOURCES

Heat Biologics / NightHawk Biosciences / Scorpius Holdings, Inc., CIK 0001476963: Forms 8-K, accessions 0001558370-23-019741 (Dec. 12, 2023), 0001079973-23-001821 (Dec. 27, 2023), 0001079973-24-001136 (July 31, 2024), 0001079973-25-000380 (Mar. 2025), 0001079973-25-000738 (May 2, 2025), 0001079973-25-001049 (June 2025), 0001079973-25-001455 (Sept. 15, 2025), 0001079973-26-000142 (Jan. 29, 2026) and 8-

K/A 0001079973-26-000283, 0001553350-26-000055 (Apr. 8, 2026), 0001079973-26-000533 (Apr. 24, 2026); Form 10-K for 2023, accession 0001558370-24-005902; Schedule 13D Amendments No. 9–11 filed by Jeffrey Wolf and affiliates, accessions 0001079973-23-001737, 0001079973-24-000701, 0001553350-24-000033. Theriva Biologics, Inc., CIK 0000894158: DEF 14A, accession 0001104659-26-078859.

Dated: 9/28/2026

Signature: ______________________________

Mark Joseph Nejmeh, Plaintiff, self-represented

Mark Joseph Nejmeh
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705** **PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT LIMITED EXPEDITED DISCOVERY FROM DEFENDANT AND FROM THE HOLDERS OF THE NEW WARRANTS, AND FOR A RULE 30(b)(6) DEPOSITION OF DEFENDANT**

Motion and Memorandum of Points and Authorities

I. RELIEF REQUESTED

1. Under Federal Rules of Civil Procedure 26(d)(1), 30(a)(2)(A)(iii) and 45, Plaintiff asks leave to take the limited discovery described below, solely for use in connection with his Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction (ECF No. 2) and the Supplemental Statement in Support of Interim Relief:

(a) to serve on Defendant the document requests in Attachment A, with responses due in twenty-one days;

(b) to serve on each of the eight holders of the New Warrants named in Supplemental Exhibit SS ¶ 14 (the "Holders") a Rule 45 subpoena for documents substantially in the form of Attachment B, with at least twenty-one days to comply;

(b-1) to serve on MSD Credit Opportunity Master Fund, L.P. and MSD Partners, L.P. ("MSD") a Rule 45 subpoena for documents substantially in the form of Attachment B-1, with at least twenty-one days to comply;

(c) after Defendant's production, to take a Rule 30(b)(6) deposition of Defendant on the topics in Attachment C, limited to four hours and taken remotely unless the parties agree otherwise; and

(d) if the documents produced show communications between a Holder and Defendant or any of its directors about a matter listed in Attachment A, Definition 5, to move for leave to depose that Holder's designee for no more than two hours, remotely or at a place permitted by Rule 45(c); and, if the documents produced under Attachment A, Request 14 show a relationship with Rasayana or an assessment of the value of Defendant's assets bearing on a Relevant Transaction, to move for leave to depose Dr. Kaleko, Dr. Connelly or Dr. Cascallo on those subjects.

II. FACTUAL BASIS

2. The facts are set out in the Supplemental Statement and Supplemental Exhibits SQ, SR and SS, each compiled from SEC filings identified by accession number. In summary:

(a) Defendant's June 29, 2026 proxy statement states that Defendant may effect a reverse stock split "as allowed under Nevada law without stockholder approval," and that the 6,500,000-share incentive-plan limit and the 450,000,000-share authorized-share increase approved on August 3, 2026 will not be adjusted for a proportionate reverse split made before either takes effect. (Supplemental Statement ¶¶ 4–6.)

(b) Defendant's August 2026 Form 10-Q describes a strategic review that may include a reverse merger, and its Chief Executive Officer's amended employment agreement provides change-in-control benefits that include a reverse merger with a non-listed private company. (Id. ¶ 7; Exhibit SN-4.)

(c) Eight Holders own warrants on 16,184,560 shares, about 35.3% of the shares outstanding. Two of them, Empery Asset Management and Hudson Bay Capital Management, financed Defendant in January 2011, when two of its present directors were already on the board. Two, Armistice Capital and CVI Investments, financed Heat Biologics, whose founder and chief executive is one of Defendant's directors. Two, Armistice and Intracoastal Capital, invested in Ra Medical Systems in the same weeks of 2020 as Defendant's Chairman, who was then that company's co-president. Six bought into the July 2025 private placement of Empery Digital Inc., whose chairman founded Empery Asset Management, three months before the New Warrants were issued. (Exhibit SS ¶¶ 14–18.)

(d) In January 2021 Defendant lowered the conversion price of MSD's Series A preferred stock from $18.90 to $1.50 and removed its change-of-control repurchase right; MSD converted into 8,996,768 shares, and Defendant recorded the $7.4 million fair value of the inducement as a deemed dividend that increased the loss available to common stockholders. In July 2022 Defendant sold MSD preferred stock carrying up to 20,000 votes per share on the increase of authorized common stock from 20,000,000 to 350,000,000 shares, the base for the 450,000,000-share increase approved in 2026. (Supplemental Exhibits SA-5, SH-2, SS ¶ 17(e).)

(e) The New Warrants were issued on October 16, 2025, the day after Defendant's stock closed at $0.84, up from $0.44, on about 196.6 million shares following its report of VIRAGE trial results; the holders' existing warrants, sold at $2.00 and $1.10 with A.G.P./Alliance Global Partners as placement agent, were repriced to $0.54, and the stock opened at $0.45. A.G.P. was Defendant's financial advisor for the inducement and is its at-the-market sales agent. (Exhibits G-10, J-15; Proposed Supplemental Memorandum, Attachment B; Supplemental Exhibit SS ¶ 14.)

(f) On February 18, 2026 Defendant announced an exclusive, worldwide, sublicensable license of SYN-020 to Rasayana Therapeutics, Inc. for $300,000 up front, which Rasayana may terminate on ninety days' notice for any or no reason; Defendant's 10-K identifies no related-party relationship with Rasayana. (Exhibits SA-7, SC-5, SF, SN-3; Exhibit SR ¶ 19(a).) The Massachusetts Secretary of the Commonwealth's corporations database shows Rasayana Therapeutics Inc. as a Delaware corporation organized on June 3, 2022, registered in Massachusetts on May 23, 2024, with its principal office at 68 Harrison Avenue, Suite 605, Boston, and Vidisha Mohad as its only listed officer, President (identification number 001801592, retrieved September 27, 2026). Plaintiff has reason to believe that Rasayana's founder previously held an internship connected with Defendant; Attachment A, Request 13 asks Defendant to confirm or deny it.

(g) Three directors make up every committee of Defendant's board; they have reported 43 awards of Defendant's equity and no open-market purchase of its stock. The Chairman is registered with a broker-dealer, BA Securities, LLC, a registration his proxy biography does not mention. (Exhibit SS ¶¶ 3–4, 9, 12.)

3. None of these facts establishes wrongdoing, and Plaintiff does not allege that any Holder acted in concert with any director. They show that the persons who would decide on, or benefit from, a reverse split, reverse merger or asset transfer have longstanding financial relationships with one another, and that the documents showing whether any such transaction is being discussed are held only by Defendant and the Holders.

III. THE PROPOSED DISCOVERY IS NARROW

4. Attachment A, Request 1 incorporates the records already identified in Plaintiff's filed exhibits rather than restating them; every other request is new. The requests are limited to (a) the transactions the Supplemental Statement asks the Court to preserve the status quo against; (b) the period from January 1, 2024, the year of Defendant's most recent reverse split, to the present, with two requests reaching back to January 1, 2020 only for documents sufficient to show relationships between directors and Holders, and the requests concerning MSD limited to three identified transactions of 2017, 2021 and 2022; and (c) documents sufficient to show, rather than complete files, wherever that will do. No request seeks any Holder's unrelated positions, investors, strategies or trading books. The trading request in Attachment B is limited to TOVX and to two short windows around the October 2025 private placement and the August 3, 2026 stockholder vote.

5. The discovery is sequenced to reduce burden: documents first, then one corporate deposition of Defendant, and a Holder deposition only if the documents show a communication that warrants it and only on further leave.

IV. LEGAL STANDARD AND GOOD CAUSE

6. Rule 26(d)(1) permits discovery before the Rule 26(f) conference by court order. Courts apply a flexible good-cause standard that weighs the need for expedited discovery against prejudice to the responding party. Semitool, Inc. v. Tokyo Electron America, Inc., 208 F.R.D. 273, 275–76 (N.D. Cal. 2002). Expedited discovery is commonly allowed where a motion for preliminary relief is pending and the discovery bears on it. Rule 26(b)(1) requires relevance and proportionality. Rule 45 authorizes document subpoenas to nonparties, requires prior notice to the parties, and directs the serving party to avoid undue burden. Fed. R. Civ. P. 45(a)(4), (c), (d)(1). A Rule 30(b)(6) notice must describe its topics with reasonable particularity. Fed. R. Civ. P. 30(b)(6).

7. Good cause exists. A motion for interim relief is pending. Defendant may effect a reverse split by board action alone, and a reverse merger or asset transfer can be signed and announced on short notice, so the question whether any such step is being discussed cannot wait for ordinary discovery. The information is held only by Defendant and the Holders. The requests are tied to the relief sought and to defined periods. The discovery may confirm Plaintiff's concerns, dispel them, or narrow them, and in each case will assist the Court.

8. The burden and confidentiality concerns are manageable. Defendant's strategic-review materials and the Holders' trading records may be produced subject to a protective order limiting their use to this action. Plaintiff will comply with any protective order the

Court enters and does not seek any document for publication. Each Holder may seek protection in the court for the place of compliance under Rule 45(d).

V. LOCAL-RULE DISCLOSURE

9. No request or subpoena has yet been served, so there is no objection or ripe dispute to confer about. This motion seeks leave under Rule 26(d)(1); it does not seek to compel. Before any subpoena issues, Plaintiff will serve Defendant with notice and a copy under Rule 45(a)(4), and he will confer in good faith with Defendant and with any Holder before presenting any dispute.

VI. RESERVATION

10. The Holders are nonparties. This motion asserts no claim against any of them and adds no party. If discovery supplies admissible evidence bearing on any claim, Plaintiff will seek any further relief only by proper motion.

VII. CONCLUSION

11. Plaintiff respectfully asks the Court to grant leave as set out in the proposed order.

Dated: 9/28/2026

Respectfully submitted,

Mark Joseph Nejmeh, Plaintiff, self-represented

DECLARATION OF MARK JOSEPH NEJMEH

I, Mark Joseph Nejmeh, declare:

1. I am the plaintiff in this action. I have personal knowledge of the facts stated in this declaration.

2. I compiled Supplemental Exhibits SQ, SR and SS from public records: filings on the SEC's EDGAR system, identified in each exhibit by accession number; the SEC's insider-ownership records; and FINRA BrokerCheck. The quotations in those exhibits are accurate copies of the language in the cited filings.

3. I hold shares of Defendant's common stock and have held them for more than four years.

4. I have not served any request or subpoena described in this motion. I seek the discovery for use in connection with my motion for interim relief, and I will comply with any protective order the Court enters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 9/28/2024 at Sioux Falls SD Library

____

Mark Joseph Nejmeh

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No. 3:26-cv-00705

CERTIFICATE OF SERVICE

I certify that I am over eighteen years of age and not a party to this action.

On ____________________, I served a true and correct copy of Plaintiff's Motion for Leave to Conduct Limited Expedited Discovery from Defendant and from the Holders of the New Warrants, and for a Rule 30(b)(6) Deposition of Defendant, including Plaintiff's supporting declaration, Attachments A, B, B-1 and C, and the proposed order, on Defendant Theriva Biologics, Inc., by the following method:

[ ] Personal delivery [ ] First-class U.S. mail, postage prepaid [ ] Overnight delivery

[ ] Electronic service by agreement or court-authorized method

Person or registered agent served: ______________________________________

Address or electronic destination: ______________________________________

____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: ____________________

Signature of person making service: ______________________________________

Printed name: ____

Address: ____

Attachment A — Document Requests to Defendant

DEFINITIONS

1. "Defendant" means Theriva Biologics, Inc., its subsidiaries, and its officers, employees, agents and advisers acting on its behalf.

2. "Director" means Jeffrey J. Kraws, Jeffrey Wolf, John Monahan or Steven A. Shallcross.

3. "Holder" means Armistice Capital, LLC; Empery Asset Management, LP and the funds it manages; Hudson Bay Capital Management LP and Hudson Bay Master Fund Ltd.; Anson Funds Management LP, Anson Advisors Inc., Anson Investments Master Fund LP and Anson East Master Fund LP; Heights Capital Management, Inc. and CVI Investments, Inc.; Intracoastal Capital LLC; Robert Forster; and any person acting for any of them.

4. "New Warrants" means the warrants to purchase 16,184,560 shares of Defendant's common stock whose issuance on exercise stockholders approved on August 3, 2026, and the agreements under which they were issued, including the inducement agreement described in Defendant's June 29, 2026 proxy statement.

5. "Relevant Transaction" means any actual or proposed (a) reverse stock split; (b) shareholder-rights plan; (c) merger, reverse merger, business combination, tender offer or change of control; (d) sale, license or other transfer of all or substantially all rights to VCN-01, SYN-004 or SYN-020; or (e) filing of the charter amendment increasing authorized common stock to 450,000,000 shares.

6. Unless a request states otherwise, the period is January 1, 2024 to the date of production. "Documents sufficient to show" means documents that show the fact requested, not every document that relates to it.

INSTRUCTIONS

Documents that Defendant designates confidential may be produced under a protective order limiting their use to this action. If a request would require producing privileged material, produce a log. If no responsive document exists, say so.

REQUESTS

1. Records already identified. The documents identified as needed in Supplemental Exhibits SA-7; SB-10 (b) and (d); SC-9 (b)–(d), (f) and (g); SE-7; SF-3 to SF-4; SG-3; SH-4 (b), (f) and (g); SL-4; SM-4; SN-6; SO-8; SK-6, item 5; and SR ¶ 22, to the extent they concern a reverse stock split, the New Warrants, SYN-020, VCN-01, SYN-004 or a Relevant Transaction. These are incorporated by reference and are not restated below.

The following requests are not contained in any filed exhibit.

2. All communications between Defendant or any Director and any Holder concerning any Relevant Transaction, the New Warrants, the October 2025 private placement and inducement, or the exercise of any warrant.

3. Any standstill, voting, lock-up or side-letter agreement between Defendant and any Holder, and any waiver of such an agreement.

4. Board and committee minutes and materials concerning the strategic review described in the August 2026 Form 10-Q, and concerning the provisions that the 6,500,000-share plan limit and the 450,000,000-share authorization will not be adjusted for a reverse split.

5. Engagement letters with any financial adviser or investment bank for the strategic review, and documents sufficient to show each letter of intent, term sheet or indication of interest received, with counterparty identities produced under the protective order.

6. Compensation Committee minutes and materials for the amended employment agreement of August 10, 2026.

7. Documents sufficient to show every agreement with, and payment to, BA Securities, LLC since December 14, 2022, and to Crystal Research Associates, CRA Advisors, TopHat Capital, Grannus Securities or PDK Healthcare Innovations since January 1, 2020.

8. Documents sufficient to show Dr. Monahan's consulting agreements with Defendant from 2015 to November 10, 2020 and the payments made under them.

9. Documents sufficient to show any investment, employment, advisory, consulting or other financial relationship since January 1, 2020 between any Director, or any entity a Director controls, and any Holder.

10. Board and committee minutes and materials approving the January 27, 2021 amendment to the Series A preferred stock held by MSD, including any valuation of the $7.4 million inducement, and the July 28, 2022 sale of Series C and Series D preferred stock to MSD, including the reasons for the voting terms of the Series D preferred stock.

11. All communications between Defendant or any Director and MSD since January 1, 2024 concerning any Relevant Transaction.

12. Rasayana. Documents sufficient to show: (a) the source of the $300,000 upfront payment under the February 2026 SYN-020 license, including the remitting account and bank; (b) every owner, officer, director, investor and lender of Rasayana Therapeutics, Inc. known to Defendant; and (c) any payment, loan, guarantee, equity interest or other transfer of value, direct or indirect, between Defendant, any Director or any Director-controlled entity and Rasayana or any of its owners, officers or employees.

13. Documents sufficient to show any employment, internship, fellowship, consulting, advisory or other relationship that Vidisha Mohad, identified in Defendant's February 18, 2026 press release as Rasayana's founder and chief executive, has had with Defendant or any Director.

14. The scientists. For Dr. Michael Kaleko, identified as a co-author of Defendant's scientific presentations filed with its Forms 8-K of February 16, 2023 and October 20, 2025; Dr. Sheila Connelly, identified as Defendant's Vice President of Research in its Form 8-K of April 22, 2024; and Dr. Manel Cascallo, identified in Defendant's filings as the former sole director of VCN Biosciences, S.L. and a named inventor on its patent application WO2008110579: (a) documents sufficient to show each one's current position with Defendant or its subsidiaries, or the date and terms of separation, including whether each was among the seven employees in the workforce reduction of September 30, 2025; (b) any written assessment by any of them of the scientific or commercial value of SYN-020, SYN-004 or VCN-01 since January 1, 2024; and (c) all communications between any of them and Rasayana, or any counterparty to a Relevant Transaction, since January 1, 2025.

15. The October 2025 inducement. Board and committee minutes and materials approving the warrant inducement of October 16, 2025, including how the $0.54 exercise price and the 200% warrant coverage were determined and any consideration of the trading in Defendant's stock on October 15, 2025; all communications between Defendant and A.G.P./Alliance Global Partners or any Holder from October 1 to October 17, 2025 concerning the inducement; and documents sufficient to show the date, number of shares and price of each at-the-market sale of Defendant's stock from October 1 to October 31, 2025. (Supplemental Exhibit SS ¶ 14.)

16. Defendant's document-retention policies and any litigation hold issued in connection with this action.

Attachment B — Rider to Rule 45 Subpoena to Each Holder

The definitions in Attachment A apply. "You" means the Holder to whom this subpoena is directed and any person acting for it. The period is January 1, 2024 to the date of production unless stated otherwise. Documents may be designated confidential under the protective order in this action. This subpoena does not seek your investors' identities, your positions in any security other than Defendant's, or your trading strategies.

1. All communications between You and Defendant, or between You and any Director, concerning any Relevant Transaction, the New Warrants, the October 2025 private placement and inducement, or the exercise of any warrant issued by Defendant.

2. All agreements between You and Defendant, including side letters, waivers and amendments.

3. Documents sufficient to show any investment, employment, advisory, consulting or other financial relationship since January 1, 2020 between You and any Director, or any entity a Director controls, including Crystal Research Associates, CRA Advisors, TopHat Capital, Grannus Securities, PDK Healthcare Innovations, BA Securities, LLC, Heat Biologics (Scorpius Holdings) and Ra Medical Systems.

4. Documents sufficient to show the date and number of shares of each exercise of any warrant issued by Defendant.

5. Documents sufficient to show Your daily net position, including any short position, swap or other hedge, in Defendant's common stock from October 1 to October 31, 2025 and from July 27 to August 14, 2026.

6. Documents sufficient to show whether You have entered into any agreement or understanding with any other Holder concerning the voting, exercise or sale of Defendant's securities.

7. Documents sufficient to identify each person who negotiated or signed, on Your behalf, the warrant inducement letter dated October 16, 2025 or any other agreement with Defendant, and each person who has communicated with Defendant or any Director on Your behalf since January 1, 2024.

Attachment B-1 — Rider to Rule 45 Subpoena to MSD

The definitions in Attachment A apply. "You" means MSD Credit Opportunity Master Fund, L.P., MSD Partners, L.P., and any person acting for them. Documents may be designated confidential under the protective order in this action. This subpoena does not seek your investors' identities, your positions in any security other than Defendant's, or your trading strategies.

1. All communications between You and Defendant, or between You and any Director, concerning the January 27, 2021 amendment to the Series A preferred stock, Your conversion of that stock, or the $7.4 million inducement.

2. All communications between You and Defendant, or between You and any Director, concerning the July 28, 2022 sale of Series C and Series D preferred stock, its voting terms, and the increase of authorized common stock from 20,000,000 to 350,000,000 shares.

3. All agreements between You and Defendant, including side letters, waivers and amendments, since September 1, 2017.

4. All communications since January 1, 2024 between You and Defendant, any Director, or any Holder concerning any Relevant Transaction.

5. Documents sufficient to show the dates on which You sold the 8,996,768 shares received on conversion in 2021 and the 98,362 shares received on conversion in 2024.

Attachment C — Rule 30(b)(6) Topics for Defendant

The definitions in Attachment A apply. Four hours, taken remotely, after Defendant's production under Attachment A.

1. Communications between Defendant or any Director and any Holder concerning any Relevant Transaction or the New Warrants.

2. The status of the strategic review described in the August 2026 Form 10-Q, including any letter of intent, term sheet or indication of interest, to be answered under the protective order.

3. The board's process for approving a reverse stock split, including the August 15, 2024 split, and any present plan or proposal for another.

4. The reasons the 6,500,000-share plan limit and the 450,000,000-share authorization were written so that a prior reverse split would not reduce them.

5. Any relationship known to Defendant between any Director and any Holder, including those described in Supplemental Exhibit SS ¶¶ 14 and 16–18.

6. The negotiation and approval of the February 2026 SYN-020 license to Rasayana, and any relationship between Rasayana or its founder and Defendant, any Director, or any current or former employee or consultant.

7. The January 27, 2021 amendment to the Series A preferred stock held by MSD and the voting terms of the Series D preferred stock sold to MSD in July 2022.

8. When and by whom the terms of the October 16, 2025 warrant inducement were first proposed and negotiated, and how its price and warrant coverage were set in relation to the VIRAGE results reported on October 14, 2025 and the trading on October 15, 2025.

9. Defendant's preservation of documents relevant to this action.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH,
Plaintiff,

v.

THERIVA BIOLOGICS, INC.,
Defendant.

Case No. 3:26-cv-00705

[PROPOSED] ORDER GRANTING LEAVE FOR LIMITED EXPEDITED DISCOVERY

The Court has considered Plaintiff's motion for leave to conduct limited expedited discovery from Defendant and from the holders of the New Warrants. Good cause appearing, and without making any finding on the merits, IT IS ORDERED:

1. The motion is GRANTED IN PART as stated in this Order.

2. Plaintiff may serve the document requests in Attachment A on Defendant. Defendant shall respond within twenty-one days of service.

3. Plaintiff may request that the Clerk issue subpoenas and may serve on each holder named in Supplemental Exhibit SS ¶ 14 a Rule 45 subpoena for documents substantially in the form of Attachment B, and on MSD a subpoena substantially in the form of Attachment B-1, after serving Defendant with notice and a copy under Rule 45(a)(4). Each subpoena shall allow at least twenty-one days for production and shall specify a place of compliance permitted by Rule 45(c).

4. After Defendant's production, Plaintiff may take a remote deposition of Defendant under Rule 30(b)(6) on the topics in Attachment C, limited to four hours.

5. No person subpoenaed under paragraph 3 or named in Attachment A, Request 14 shall be deposed without further leave of Court.

6. Materials designated confidential shall be used only for this action; within ____ days the parties shall submit a stipulated protective order or competing proposals. Nothing in this Order limits any right to object or to seek protection under Rules 26(c) and 45(d).

IT IS SO ORDERED. Dated: ____________________

____
UNITED STATES DISTRICT JUDGE / UNITED STATES MAGISTRATE JUDGE

Mark Joseph Nejmeh
P.O. Box 589
Clifton, New Jersey 07012
Telephone: 732-995-3914
Email: research@warrantwire.com
Plaintiff, self-represented

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705-ART-CSD** **PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT LIMITED EXPEDITED NONPARTY DISCOVERY AND TO PRESERVE STOCKTWITS EVIDENCE**

Motion and Memorandum of Points and Authorities

Plaintiff Mark Joseph Nejmeh respectfully moves under Federal Rules of Civil Procedure 26(d)(1), 30(a)(2)(A)(iii), 30(b)(6), and 45 for leave to conduct narrow, expedited discovery from nonparty Stocktwits, Inc. concerning the TOVX public stream, moderation and automated-account records, float data, institutional data licensing, potential employee trading conflicts, and the "Official" account designation during May 6–9, 2025 and October 14–31, 2025, and concerning the moderation of TOVX posts linking to the court record in this action since it was filed on September 16, 2026.

This motion does not ask the Court to find that Stocktwits, Howard Lindzon, any employee, any platform user, any institutional data customer, or Theriva engaged in manipulation, coordinated trading, or other wrongdoing. It asks for records needed to determine what occurred. It does not add Stocktwits as a defendant or plead a new claim. Any later claim would require a separate legally sufficient pleading, jurisdiction, standing, injury, and evidence.

Plaintiff requests a Rule 45 document subpoena first, followed by one Rule 30(b)(6) deposition after production. Plaintiff reserves a later, narrower request to depose Stocktwits co-founder and chief executive officer Howard Lindzon individually only if the production shows that he has unique, nonduplicative personal knowledge. The attached schedules are designed to obtain platform evidence rather than conclusions.

RELIEF REQUESTED

1. Authorize Plaintiff, before the Rule 26(f) conference if one has not occurred, to request that the Clerk issue a signed but otherwise blank Rule 45 subpoena and to serve on Stocktwits, Inc. a subpoena substantially in the form of Attachment A, together with a preservation notice.

2. Permit the subpoena to require electronic production within thirty days, subject to Rule 45(d)'s protections, reasonable narrowing by agreement, and an appropriate confidentiality or protective mechanism for personal trading, customer, and account-security information.

3. After substantial document production, authorize one Rule 30(b)(6) deposition on the topics in Attachment B, limited to seven hours, on at least twenty-one days' notice, at a Rule 45-compliant place or remotely by agreement. This corporate testimony is the proper first mechanism for placing Stocktwits' knowledge under oath; any trial subpoena can be addressed later under the trial schedule and Rules 43 and 45.

4. Require Plaintiff to give Defendant advance notice and a copy before serving the nonparty subpoena as Rule 45(a)(4) requires; require the parties and Stocktwits to confer in good faith before any motion to compel; and preserve all objections, privileges, and Rule 45 protections.

5. Provide that documents concerning personal TOVX positions or trades, customer identities, nonpublic access logs, and account identifiers shall not be filed publicly and may be produced subject to a protective order, redaction, attorneys'-eyes-only treatment if counsel later appears, or in-camera review as the Court directs.

6. State that the order makes no merits finding and does not limit Plaintiff's ability to call Gary Pitoniak, Paul Bernhardt, Plaintiff, Theriva personnel, A.G.P./Alliance Global Partners personnel, LifeSci Advisors personnel, Broadridge or other transfer-agent personnel, NYSE American or market-data custodians, or other witnesses identified through discovery.

FACTUAL BASIS

7. TOVX traded on NYSE American during the relevant period. The May 6–9, 2025 window surrounds Theriva's public announcement of VIRAGE Phase 2b results and the next-day public offering. Public reporting described Stocktwits sentiment as extremely bullish and message volume as high while market participants discussed buyout expectations and the offering. The October 14–31, 2025 window covers a later period of extraordinary reported trading volume, including Plaintiff's market-data record reflecting approximately 549,590,800 shares on October 24, subject to authentication from the relevant market-data custodians.

8. Plaintiff observed Stocktwits participants promote TOVX as a 'low float' security. Plaintiff contends that Theriva's outstanding, issuable, warrant, and financing-related share structure made that description materially incomplete or misleading. Plaintiff further contends that public third-party float figures, including Yahoo Finance figures repeated or relied upon by participants, were not corrected by Theriva or Stocktwits. Plaintiff does not presently know what float figure Stocktwits displayed, its source, whether Stocktwits received a correction request, or whether any employee knew a displayed or repeated figure was inaccurate. Those are subjects of the proposed discovery.

9. Plaintiff also observed what he understood as repetitive, coordinated, or possibly automated promotional activity and instances in which critical TOVX material became unavailable, delayed, or less visible while promotional material remained visible. Stocktwits' current Community Guidelines state that bots and automated tools are permitted when they add value but not when used to spam streams, dominate feeds, or promote content at scale. Its current Terms prohibit deceptive or manipulative content and artificial amplification, suppression, coordination, or manipulation of engagement, sentiment, visibility, or market perception. Those 2026 policies do not establish which policies applied in 2025 or prove a violation; they demonstrate that Stocktwits maintains moderation and automated-account functions directly relevant to the requested records.

10. Stocktwits displays an "Official" designation beside certain account names. A review of Stocktwits' public data on September 26, 2026 found that the accounts carrying that designation among recent posts on the twenty-five small-capitalization stocks with the largest one-month volume increase were stock-alert or promotional services, including an account describing itself as "The Most Accurate Stock Alerts," and that none of the posting accounts reviewed carried any indication of verified real-world identity. A platform designation can lend apparent authority to a promotional account. Whether accounts bearing that designation posted about TOVX during the Event Windows, the criteria for granting it, and whether any such account was compensated or had a commercial relationship with Stocktwits are not publicly disclosed and are subjects of the proposed discovery.

11. On September 26, 2026, a public post in the TOVX stream reported that the user had tried four times to post a link to this lawsuit and that the site would not post it. The public record does not show whether that result reflected a policy on links to court records, an automated filter, a moderation decision, or a technical error. Because the availability of the court record in this action to TOVX investors bears on the issues in this case and the relevant records may change through ordinary operations, Plaintiff requests narrow records of how Stocktwits handled TOVX posts linking to the court record in this action from September 16, 2026 forward.

12. Stocktwits describes itself as a leading social platform for investors and traders with more than ten million users and markets real-time sentiment, trending insights, AI-powered insights, and lists driven by community activity. The reach and market-facing use of those indicators make the underlying TOVX post, ranking, moderation, and methodology records relevant to reliance, market context, causation, and damages issues in this action.

13. Stocktwits' current Privacy Policy states that it uses public content and public-facing data to create analytics, datasets, benchmarks, and similar products and licenses them to third parties, including financial institutions and investment firms, for investment research and analysis. Its Terms likewise describe licenses of products derived from public user content to financial institutions and investment firms. These statements verify the existence of a category of institutional data activity. They do not establish that any hedge fund or other institution received TOVX data, traded TOVX, coordinated with Stocktwits, or acted unlawfully. The requested TOVX-specific customer and access records would answer those questions.

14. Stocktwits' current policies state that public content and account activity may remain in backups, archives, logs, legal records, or aggregated datasets, and that it retains information for business, dispute, legal, security, backup, and audit purposes. At the same time, visible posts, moderation status, ranking, account access, and data-delivery logs can change through deletion, suspension, retention cycles, or system updates. Prompt preservation and collection therefore are warranted.

THE PROPOSED DISCOVERY IS NARROW AND TESTABLE

15. The document requests use two short event windows and the single ticker TOVX, plus one additional period, beginning with the filing of this action on September 16, 2026, limited to TOVX posts linking to the court record in this action. They seek public-post content and metadata, moderation and visibility actions, automated-account and account-linkage indicators, message-volume and sentiment metrics, float-data sourcing and corrections, TOVX-specific institutional data access, paid promotion or issuer-relations activity, the criteria for and commercial status of "Official" accounts that posted about TOVX, employee access logs, conflicts controls, and documents sufficient to show TOVX positions or trades by Lindzon and relevant personnel. Network and device identifiers may first be hashed or tokenized so coordinated clusters can be tested without public disclosure;

exact IP addresses should be produced only for identified responsive accounts and only under a protective order, in-camera review, or other court-directed safeguard.

16. The trading request is not a demand for every investment or lifetime gain of every employee. It is limited to TOVX common stock, options, warrants, short positions, swaps, and other TOVX-linked instruments during the event windows, in accounts beneficially owned or controlled by Lindzon or personnel who accessed, moderated, commercialized, sold, or analyzed TOVX content or data. Brokerage account numbers, unrelated holdings, tax information, and home addresses may be redacted. Broader cross-issuer trading would be requested only on a later showing that TOVX records identify overlapping accounts, promoters, data customers, or a recurring course of conduct.

17. The request for institutional records is similarly limited. Plaintiff seeks documents sufficient to identify institutional customers that received, queried, or were furnished TOVX-related Stocktwits data during the two windows, the data fields and delivery timing, and TOVX-specific communications. It does not demand each customer's entire contract, trading book, or unrelated strategy.

18. The proposed production excludes private direct-message content unless a later court order authorizes a specific request consistent with applicable communications-privacy law. Public posts, platform business records, moderation records, data-delivery logs, and corporate communications provide the appropriate first step.

LEGAL STANDARD AND GOOD CAUSE

19. Rule 26(d)(1) ordinarily bars discovery before the Rule 26(f) conference but expressly permits it by court order. Courts apply a flexible good-cause standard that balances the need for expedited discovery against prejudice to the responding party. Semitool, Inc. v. Tokyo Electron America, Inc., 208 F.R.D. 273, 275–76 (N.D. Cal. 2002). Rule 26(b)(1) further requires relevance and proportionality.

20. Rule 45 authorizes subpoenas for documents and testimony from a nonparty, requires prior notice to the other parties for a document subpoena, and directs the serving party to take reasonable steps to avoid undue burden. Fed. R. Civ. P. 45(a)(3), (a)(4), (c), and (d). A Rule 30(b)(6) notice must describe corporate topics with reasonable particularity, and the named organization must designate knowledgeable witnesses. Leave is required for a deposition taken before the time specified in Rule 26(d). Fed. R. Civ. P. 30(a)(2)(A)(iii), (b)(6).

21. Good cause exists because the evidence is uniquely controlled by Stocktwits; the requests are tied to TOVX and defined periods; visible content and system records may be altered or lost through ordinary operations; and the requested sequence—documents before corporate testimony—reduces burden and prevents uninformed individual depositions. The discovery can confirm Plaintiff's concerns, disprove them, or materially narrow them.

22. The privacy and burden concerns are manageable. Public-post content and market metrics are less sensitive. Customer identity, access logs, and employee trading materials can be produced as documents sufficient to show the relevant facts, with redactions and confidentiality protections. Any subpoena must comply with Rule 45(c)'s place-of-compliance limits, and Stocktwits may seek protection in the compliance court under Rule 45(d).

LOCAL-RULE DISCLOSURE

23. No Rule 45 subpoena has yet been issued or served, so there is no nonparty refusal or ripe motion to compel to resolve. Plaintiff therefore cannot truthfully certify that he conferred with Stocktwits over an objection that does not yet exist. Plaintiff will serve Defendant with advance notice and a copy, contact Stocktwits' legal representative after authorization, and confer in good faith before presenting any compliance dispute. This motion seeks leave under Rule 26(d)(1), not an order compelling an unanswered request.

RESERVATION OF OTHER WITNESSES AND CLAIMS

24. Stocktwits' corporate witness is one evidence custodian, not Plaintiff's sole witness and not a substitute for witnesses with first-hand knowledge of Theriva's disclosures, financing, capitalization, transfers, and trading environment. This motion does not amend, narrow, or waive any properly supported witness or claim.

25. The present record does not establish a separate claim against Stocktwits or Lindzon. If discovery supplies admissible evidence of an actionable duty, false statement or omission, causation, legally cognizable injury, and a proper jurisdictional basis, Plaintiff may evaluate separate proceedings subject to the Federal Rules and any applicable contractual or arbitration provisions. The Court need not decide that hypothetical question now.

CONCLUSION

Plaintiff respectfully requests the limited relief stated above and in the proposed order. The requested discovery is intended to preserve and test evidence, not to convert Plaintiff's concerns into findings before the evidence is obtained.

Dated: September 26, 2026

Respectfully submitted: ______________________________

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

DECLARATION OF MARK JOSEPH NEJMEH

I, Mark Joseph Nejmeh, declare under penalty of perjury under 28 U.S.C. § 1746 as follows:

1. I am the Plaintiff in this action. I have personal knowledge of the facts stated in this declaration except where I identify a matter as my understanding, inference, or a record requiring authentication.

2. I used Stocktwits in connection with my TOVX research and reviewed TOVX public-stream posts, sentiment indicators, message-volume information, and public discussions during relevant periods.

3. During the May 2025 and October 2025 periods, I observed participants repeatedly describe TOVX as a low-float stock. Based on the Theriva financing, warrant, outstanding-share, and potentially issuable-share records that I assembled, I believed that description was materially incomplete or inaccurate.

4. I observed public third-party float figures, including Yahoo Finance figures relied upon or repeated in the discussion, that I believed did not reflect Theriva's full capitalization and financing structure. I did not see Theriva or Stocktwits correct those figures or the low-float narrative. I do not presently know whether Stocktwits received notice, what data source it used, or whether it had a correction procedure.

5. I observed repetitive and highly promotional TOVX activity that appeared to me potentially automated or coordinated. I do not possess Stocktwits' device, IP, account-linkage, posting-tool, moderation, or audit records and therefore cannot determine from public pages alone whether the accounts were bots, coordinated persons, or independent users.

6. I observed instances in which material critical of TOVX's financing or share structure became unavailable, delayed, or less visible as I expected, while promotional material remained visible. I understood this as possible suppression or selective moderation, but I do not have Stocktwits' internal records and cannot state the cause as a proven fact.

7. On September 26, 2026, I reviewed a public post in the TOVX stream in which a user stated that repeated attempts to post a link to this lawsuit had failed. I do not know the reason. I seek the records described in Request No. 20 so that it can be established from the platform's own records.

8. My Stocktwits account was suspended or banned after I criticized anonymous promotion in low-float securities. I seek my account, moderation, appeal, and enforcement records so the timing and reason can be established from the platform's own records.

9. I understand from Stocktwits' published current policies that it creates and licenses analytics or datasets derived from public content to financial institutions and investment firms. I do not presently know which institutions received or queried TOVX data or whether any recipient traded TOVX.

10. I seek TOVX-related trading and conflict records for Howard Lindzon and relevant Stocktwits personnel because those records would disclose whether any person with access to TOVX moderation, data, or institutional-delivery information held or traded the security during the event windows. I am not asserting that any such person traded or acted improperly without those records.

11. Public pages do not provide the complete historical posts, deletion and visibility history, moderation reasons, account-linkage information, institutional delivery logs, data-source corrections, or employee access logs needed to test these issues.

12. Other witnesses and custodians exist, including Gary Pitoniak, Paul Bernhardt, Theriva personnel, financing and investor-relations personnel, transfer-agent or Broadridge personnel, NYSE American or market-data custodians, and additional persons identified through discovery. This request is not my final witness list.

13. I request the records so that the evidence can confirm, disprove, or narrow my concerns. I do not ask the Court to treat my observations as a finding of manipulation, coordination, or wrongdoing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2026, at Sioux Falls Library

Signature: ______________________________

Mark Joseph Nejmeh

PUBLIC AUTHORITIES AND POLICY SOURCES

Federal Rules of Civil Procedure (current rules page): https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-civil-procedure

Stocktwits Privacy Policy (effective July 2026): https://stocktwits.com/about/legal/privacy

Stocktwits Terms (revised July 10, 2026): https://stocktwits.com/about/legal/terms/

Stocktwits Community Guidelines: https://stocktwits.com/about/rules/

Stocktwits About page: https://stocktwits.com/about

Stocktwits public API (symbol stream and user search), reviewed September 26, 2026: https://api.stocktwits.com/api/2/streams/symbol/TOVX.json

The 2026 Stocktwits policies are cited only to show current data practices, retention statements, moderation functions, and the type of records likely to exist. The subpoena separately requests the versions in effect during the 2025 event windows.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No. 3:26-cv-00705

CERTIFICATE OF SERVICE

I certify that I am over eighteen years of age and not a party to this action.

On ____________________, I served a true and correct copy of Plaintiff's Motion for Leave to Conduct Limited Expedited Nonparty Discovery and to Preserve Stocktwits Evidence, including Plaintiff's supporting declaration, Attachments A and B, and the proposed order on Defendant Theriva Biologics, Inc., by the following method:

[ ] Personal delivery [ ] First-class U.S. mail, postage prepaid [ ] Overnight delivery

[ ] Electronic service by agreement or court-authorized method

Person or registered agent served: ____________________________________

Address or electronic destination: ____________________________________

____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: ____________________

Signature of person making service: ____________________________________

Printed name: ____

Address: ____

Mark Joseph Nejmeh
P.O. Box 589
Clifton, New Jersey 07012
Telephone: 732-995-3914
Email: research@warrantwire.com
Plaintiff, self-represented

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH,
Plaintiff,

v.

THERIVA BIOLOGICS, INC.,
Defendant.

Case No. 3:26-cv-00705-ART-CSD

ATTACHMENTS TO PROPOSED RULE 45 SUBPOENA TO STOCKTWITS, INC.

Attachment A — Definitions, Instructions, and Document Requests

These schedules are proposed attachments to an official subpoena form issued under Federal Rule of Civil Procedure 45. They are not self-executing and must not be served unless the Court grants leave and the Clerk issues the subpoena.

DEFINITIONS

1. 'Stocktwits' means Stocktwits, Inc. and its officers, employees, contractors, agents, systems, databases, APIs, subsidiaries, and persons acting on its behalf who possess responsive information.

2. 'TOVX' means Theriva Biologics, Inc. common stock, the cashtag $TOVX, any predecessor ticker used in a responsive record, and any TOVX-linked option, warrant, short position, swap, future, or other derivative.

3. 'Event Windows' means May 6 through May 9, 2025 and October 14 through October 31, 2025, inclusive, using Eastern Time. Policies, data-source descriptions, retention schedules, and custodian records outside those dates are included only when reasonably necessary to interpret event-window records.

4. 'Public Post' means a public-facing post, comment, reply, repost, like, sentiment tag, cashtag association, follow, watchlist event, or related public interaction concerning TOVX. This definition excludes private direct-message content.

5. 'Relevant Personnel' means Howard Lindzon and any Stocktwits officer, employee, contractor, moderator, salesperson, analyst, engineer, data scientist, product employee, or administrator who, during an Event Window, accessed, moderated, escalated, ranked, commercialized, sold, delivered, or analyzed TOVX content or TOVX-derived data, or made a decision concerning TOVX data, float information, account enforcement, or promotion.

6. 'Documents sufficient to show' permits production of the least burdensome record or extract that reliably identifies the requested fact and does not require unrelated records.

7. 'Institutional Customer' means a financial institution, investment firm, broker, dealer, hedge fund, asset manager, proprietary trading firm, research provider, data vendor, or other organization that received or queried Stocktwits data for professional investment, trading, research, benchmarking, or analytical use.

8. 'Designated Account' means any Stocktwits account that, at any time during an Event Window, displayed an "Official" designation or any other badge, label, or identity designation assigned by Stocktwits rather than chosen by the user, and that made a Public Post concerning TOVX during an Event Window.

9. 'Case-Link Period' means September 16, 2026 (the date this action was filed) through the date of production.

10. 'Case-Link Post' means any Public Post, or attempted Public Post, associated with TOVX during the Case-Link Period that contained or attempted to contain a hyperlink to, or the case number of, *Nejmeh v. Theriva Biologics, Inc.*, No. 3:26-cv-00705 (D. Nev.), including links to the Court's docket, PACER, CourtListener, or nejmehvstheriva.com.

INSTRUCTIONS

1. Produce records electronically in reasonably usable native or export format. Preserve original timestamps, time zone, post or record identifiers, account identifiers, field names, parent-child relationships, moderation status, and available metadata. A CSV or database export may be used for structured data.

2. Redact brokerage account numbers, taxpayer or government identifiers, home addresses, security credentials, unrelated holdings, and unrelated personal information. Identify the category of each redaction. Do not redact transaction date, time, side, quantity, price, instrument, beneficial ownership or control, or whether preclearance was requested, when those fields are responsive.

3. If a record no longer exists, identify the record type, last known custodian and system, applicable retention period, approximate deletion date, and whether backups, archives, logs, derived datasets, or legal holds contain the information.

4. For withheld privileged material, provide a privilege log sufficient to assess the claim. Customer confidentiality alone is not a privilege; confidential material may be designated for appropriate protection.

5. The requests seek current and historical records that already exist. They do not require creation of a new expert opinion, reconstruction of unavailable data, or disclosure of unrelated source code.

DOCUMENT REQUESTS

REQUEST NO. 1 — Preservation and custodians. Documents sufficient to identify the custodians, systems, databases, archives, logging tools, moderation tools, data warehouses, vendors, and retention rules likely to contain responsive TOVX records, and the steps taken after receipt of this subpoena or preservation notice to preserve them.

REQUEST NO. 2 — Complete public TOVX stream. All Public Posts concerning TOVX in the Event Windows, including post text or media reference, post ID, parent or thread ID, public handle, timestamp and time zone, sentiment tag, cashtag, likes, replies, reposts, impressions or reach if maintained, URL, and current and historical moderation or visibility status.

REQUEST NO. 3 — Visibility and moderation history. Audit, queue, ticket, flag, review, escalation, deletion, restoration, restriction, de-ranking, labeling, trend-selection, search-suppression, recommendation, and enforcement records concerning the TOVX Public Posts or TOVX stream in the Event Windows, including the rule or reason applied and whether the action was human, automated, vendor-driven, or user-initiated.

REQUEST NO. 4 — Automated, linked, and coordinated accounts. Records sufficient to identify TOVX-posting accounts flagged, scored, investigated, labeled, restricted, or allowed as automated, bot-like, spam, coordinated, duplicate, multi-account, ban-evading, managed, promotional, or inauthentic during the Event Windows; the indicators or rules applied; and the resulting action. Produce consistently hashed or tokenized IP-address, device, cookie, session, posting-tool, and other network or account-linkage identifiers sufficient to determine whether multiple responsive accounts shared infrastructure or control. Preserve exact identifiers. Exact IP addresses or device identifiers are requested only for responsive accounts revealed by the linkage analysis and only under a protective order, in-camera review, or further court direction consistent with applicable law.

REQUEST NO. 5 — Policies in effect. The versions in effect during the Event Windows of Terms, Community Guidelines, moderation manuals, automated-account policies, spam and coordinated-behavior rules, low-float or market-manipulation escalation rules, issuer and advertiser policies, appeals procedures, employee trading or conflicts policies, the criteria for granting, reviewing, or removing the "Official" designation or other Stocktwits-assigned badges, and, for the Case-Link Period, any policy, filter, blocklist, or rule governing links to court records, legal filings, or particular domains.

REQUEST NO. 6 — Plaintiff's account. Account, posting, visibility, moderation, flag, suspension, termination, appeal, support, and internal-review records concerning Mark Joseph Nejmeh's Stocktwits account or accounts, identified through confidential account information supplied with the subpoena, including the stated reasons, decisionmakers, timestamps, and rules applied. Private message content is excluded unless it consists of communications between Plaintiff and Stocktwits support or moderation personnel.

REQUEST NO. 7 — TOVX sentiment and message metrics. The Event-Window values and underlying counts for TOVX message volume, sentiment, trending status, watchers, engagement, participation ratio, reach, Social Relative Strength or similar metric; the field definitions and methodology; and records of manual overrides, exclusions, corrections, or backfills.

REQUEST NO. 8 — Float and share-count data. Every TOVX public-float, shares-outstanding, market-capitalization, or similar capitalization value displayed, ingested, calculated, furnished, or used by Stocktwits during the Event Windows; its source or vendor; as-of date; update timestamps; calculation method if any; correction, dispute, warning, or quality-control record; and any record linking to, importing, comparing, or discussing Yahoo Finance TOVX data.

REQUEST NO. 9 — Low-float claims. Internal reports, moderation records, user flags, fact-checks, support tickets, escalations, and communications concerning statements that TOVX was a 'low float,' had a small float, or was susceptible to a float squeeze during the Event Windows, including any decision to leave visible, label, remove, restrict, or correct such statements.

REQUEST NO. 10 — Issuer, adviser, promoter, and paid activity. Documents sufficient to identify any advertising, sponsored content, issuer-service, investor-relations, promotional, content, data, or other paid relationship concerning Theriva or TOVX, and TOVX-specific communications with Theriva, A.G.P./Alliance Global Partners, LifeSci Advisors, known promoters, or persons acting for them during or reasonably surrounding the Event Windows.

REQUEST NO. 11 — Institutional TOVX data recipients. Documents sufficient to identify each Institutional Customer that received, downloaded, queried, subscribed to, or was furnished TOVX-related Stocktwits public-content data, sentiment, message-volume, account-level public identifiers, benchmarks, or analytics in the Event Windows; the data fields furnished; delivery method; request and delivery timestamps; latency; and whether the delivery was real-time, delayed, historical, or custom.

REQUEST NO. 12 — Institutional communications. TOVX-specific communications between Stocktwits and an Institutional Customer in the Event Windows concerning TOVX attention, sentiment, message volume, trend status, public float, user behavior, coordinated activity, promotional activity, risk, or trading interest. Unrelated customer communications and the customer's complete trading strategy are excluded.

REQUEST NO. 13 — Relevant Personnel access logs. Audit or access records sufficient to show which Relevant Personnel viewed, queried, exported, edited, moderated, ranked, delivered, or otherwise accessed nonpublic TOVX content, metrics, moderation information, float data, customer requests, or derived analytics during the Event Windows, with timestamps and action type.

REQUEST NO. 14 — TOVX positions and trades. Documents sufficient to show every position in or transaction involving TOVX by Howard Lindzon or Relevant Personnel during the Event Windows, including purchases, sales, short sales, options, warrants, swaps, futures, or other TOVX-linked instruments in an account beneficially owned or controlled by that person. Produce only the person's name or coded identity, relationship to responsive TOVX functions, instrument, long or short status, transaction date and time, side, quantity, price, and opening and closing position. Unrelated holdings and full account statements are excluded unless no narrower record exists.

REQUEST NO. 15 — Trading conflicts and preclearance. TOVX-specific personal-trading disclosures, conflict questionnaires, certifications, restricted-list entries, watch-list entries, preclearance requests, approvals or denials, recusals, investigations, exception or violation records, and communications concerning trading by Lindzon or Relevant Personnel in the Event Windows.

REQUEST NO. 16 — Cross-issuer linkage preservation. Without producing unrelated trading at this stage, preserve records sufficient to identify whether an account, promoter, Institutional Customer, Relevant Personnel member, automated-account cluster, data query, or moderation pattern identified in response to Requests 4, 10–15, and 19 also appears in another low-float promotional event. No cross-issuer production is required absent agreement or further court order.

REQUEST NO. 17 — Complaints and regulatory contacts. TOVX-specific complaints, preservation requests, subpoenas, civil investigative demands, regulatory inquiries, law-enforcement requests, or communications received from users, issuers, exchanges, FINRA, the SEC, or another governmental body during or after the Event Windows, subject to any lawful nondisclosure restriction.

REQUEST NO. 18 — Retention and completeness. Documents sufficient to explain retention periods and the completeness of each production category, including whether deleted posts, suspended accounts, moderation histories, access logs, institutional delivery logs, and derived datasets remain in backups, archives, logs, legal records, or acquired systems.

REQUEST NO. 19 — Designated Accounts. For each Designated Account: documents sufficient to show the designation displayed and the dates it was displayed; the criteria applied and the person or process that granted it; whether the account holder is an individual, a stock-alert, signal, newsletter, or promotional service, or another business; any payment, subscription, revenue-sharing, partner, affiliate, advertising, or other commercial relationship between Stocktwits and the account holder; any disclosure of compensation the account made or was required to make under Stocktwits' policies; and any review, complaint, or enforcement action concerning the account's TOVX Public Posts. Public handles may be produced; nonpublic personal information is subject to the protections stated in the Instructions.

REQUEST NO. 20 — Case-Link Posts. For the Case-Link Period: documents sufficient to show each Case-Link Post that was blocked, rejected, held, removed, hidden, de-ranked, labeled, or restricted, and each that was published; the date and time; the rule, filter, blocklist, domain policy, or reason applied; whether the action was automated, human, vendor-driven, or user-initiated; any error message returned to the user; and any internal communication, ticket, or escalation concerning links to the court record in this action or to nejmehvstheriva.com. Private direct-message content is excluded.

Attachment B — Proposed Rule 30(b)(6) Topics

After substantial document production, Stocktwits shall designate one or more persons prepared to testify about information known or reasonably available to the organization on these reasonably particular topics. The parties shall confer to narrow, sequence, or clarify topics before the deposition.

TOPIC NO. 1 — Collection and completeness. The custodians, systems, searches, exports, retention rules, preservation steps, and limitations used to collect the TOVX production, including deleted or archived records.

TOPIC NO. 2 — TOVX public stream. The structure and fields of the TOVX Public Post record, timestamps, thread relationships, account identifiers, sentiment tags, engagement fields, and historical visibility status.

TOPIC NO. 3 — Moderation and visibility. The 2025 policies and actual processes for flagging, reviewing, restricting, de-ranking, deleting, restoring, labeling, searching, recommending, and escalating TOVX posts and accounts, including Plaintiff's account.

TOPIC NO. 4 — Bots and coordinated behavior. The 2025 rules, detection systems, indicators, personnel, vendors, appeals, and enforcement concerning bots, automated posting, duplicate or linked accounts, shared IP or device infrastructure, coordinated amplification, spam, ban evasion, promotion at scale, and manipulation of sentiment or visibility in the TOVX stream, including how hashed or tokenized linkage fields map accounts without publicly exposing exact IP addresses.

TOPIC NO. 5 — Sentiment, message volume, and trending. How TOVX sentiment, message volume, trending, watcher, engagement, participation, Social Relative Strength, reach, or similar metrics were calculated, filtered, corrected, and distributed in the Event Windows, including the treatment of deleted, restricted, automated, or suspected coordinated activity.

TOPIC NO. 6 — Float and capitalization. The source, vendor, timing, calculation, quality control, display, correction process, and internal handling of TOVX float, shares outstanding, market capitalization, and related data, including any Yahoo Finance comparison or user report and any low-float claim escalated for review.

TOPIC NO. 7 — Paid and issuer-related activity. Any TOVX advertising, sponsored content, issuer, investor-relations, promotional, content, or data relationship, and TOVX-specific communications with Theriva, A.G.P./Alliance Global Partners, LifeSci Advisors, or persons acting for them.

TOPIC NO. 8 — Institutional data licensing. The TOVX data products, fields, timing, delivery methods, customers, queries, and communications responsive to Requests 11 and 12, including how public identifiers and sentiment or behavior data were packaged or furnished.

TOPIC NO. 9 — Employee access and conflicts. Which Relevant Personnel could access nonpublic TOVX moderation, float, sentiment, customer-query, or institutional-delivery information; the audit controls governing that access; and the personal-trading, restricted-list, preclearance, recusal, and conflict procedures applicable in the Event Windows.

TOPIC NO. 10 — Authentication. The business-record creation, maintenance, timekeeping, identifiers, audit history, and custodial foundation necessary to authenticate the produced TOVX records without requiring unnecessary individual custodians.

TOPIC NO. 11 — Designated Accounts. The meaning of the "Official" designation and other Stocktwits-assigned badges during the Event Windows; how they were granted, reviewed, and removed; whether identity, compensation, or commercial relationships were verified or disclosed; and the Designated Accounts and commercial relationships responsive to Request 19.

TOPIC NO. 12 — Links to the court record. The policies, filters, blocklists, domain rules, and moderation processes applied to Case-Link Posts during the Case-Link Period, and the handling of the Case-Link Posts responsive to Request 20.

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Plaintiff, self-represented

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705-ART-CSD** **[PROPOSED] ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT LIMITED EXPEDITED NONPARTY DISCOVERY**

Proposed Order

The Court has considered Plaintiff's motion for leave to conduct limited expedited nonparty discovery from Stocktwits, Inc. Good cause appearing, and without making any finding on the merits of Plaintiff's allegations or concerns, IT IS ORDERED:

1. The motion is GRANTED IN PART as stated in this Order.

2. Under Rule 26(d)(1), Plaintiff may request that the Clerk issue a signed but otherwise blank subpoena and may serve a Rule 45 subpoena for electronically stored information on Stocktwits, Inc. substantially in the form of Attachment A to the motion.

3. Before service, Plaintiff shall serve Defendant with a notice and copy as required by Rule 45(a)(4). The subpoena shall permit at least thirty days for production unless Stocktwits agrees otherwise.

4. The authorized document discovery is limited to the TOVX security and the periods May 6–9, 2025 and October 14–31, 2025, except that policies, data-source descriptions, retention schedules, and custodian-identification records may be requested for a reasonable surrounding period necessary to understand the event-window records, and except that Request 20 may cover TOVX posts linking to the court record in this action from September 16, 2026 through the date of production.

5. The subpoena may seek public-post content and metadata; moderation, visibility, ranking, deletion, account-enforcement, automated-account and account-linkage records; TOVX message-volume and sentiment data; TOVX float and share-count data sources, update history, correction notices, and internal handling; paid or sponsored TOVX activity; TOVX-specific institutional data delivery and customer identification; employee access logs; conflict and personal-trading policies; the criteria for and commercial status of Stocktwits-designated accounts that posted about TOVX; the handling of TOVX posts linking to the court record in this action; and documents sufficient to show TOVX positions or trades by Howard Lindzon and relevant personnel who accessed, moderated, commercialized, sold, or analyzed TOVX content or data.

6. The subpoena shall not require production of private direct-message content absent a further court order. It shall not require production of unrelated securities holdings, full brokerage statements where a transaction extract or confirmation is sufficient, tax returns, home addresses, complete customer trading books, or unrelated business strategy. Stocktwits may initially hash or tokenize network and device identifiers in a consistent manner that preserves account linkage. Exact IP addresses or device identifiers shall be produced only for responsive TOVX accounts identified through the linkage analysis and only under a protective order, in-camera review, or further court direction consistent with applicable law.

7. Brokerage account numbers, taxpayer or government identifiers, home addresses, unrelated holdings, security credentials, and unrelated personal information may be redacted. Personal trading records, nonpublic customer identities, and nonpublic access logs shall not be filed publicly. Before producing those materials to Plaintiff, the parties and Stocktwits shall confer on an appropriate protective mechanism. If no agreement is reached, the material may be lodged for in-camera review or presented with a properly supported motion to seal under the governing rules.

8. Stocktwits may serve objections under Rule 45. Plaintiff and Stocktwits shall confer in good faith concerning burden, proportionality, search terms, custodians, format, confidentiality, and phased production before any motion to compel. Nothing in this Order alters the issuing or compliance court's authority under Rule 45(d) and (f).

9. Service of the subpoena and preservation notice shall provide notice that TOVX-related public-post, account, moderation, ranking, bot-detection, float-data, institutional-delivery, employee-access, conflict, trading, account-designation, and case-link records within the authorized scope should be preserved pending production and resolution of any timely objection. This paragraph does not expand the scope of production or decide any later spoliation issue.

10. After substantial document production, Plaintiff may notice one Rule 30(b)(6) deposition of Stocktwits on the topics in Attachment B. The deposition is limited to seven hours, must provide at least twenty-one days' notice, and must occur at a place permitted by Rule 45(c) or remotely by agreement. Plaintiff shall confer with Stocktwits to narrow or clarify topics before service.

11. This Order does not authorize an individual deposition of Howard Lindzon. Plaintiff may seek that relief later only upon a particularized showing that Lindzon has unique, nonduplicative personal knowledge not reasonably available from documents or a Rule 30(b)(6) witness.

12. This Order does not find that Stocktwits, Lindzon, an employee, a user, a data customer, Theriva, or any other person manipulated TOVX, coordinated trading, supplied false float information knowingly, selectively suppressed content, permitted unlawful bots, or engaged in wrongdoing. The discovery may confirm, disprove, or narrow Plaintiff's concerns.

13. Nothing in this Order limits a properly supported witness list or the testimony of Gary Pitoniak, Paul Bernhardt, Plaintiff, Theriva personnel, A.G.P./Alliance Global Partners personnel, LifeSci Advisors personnel, Broadridge or other transfer-agent personnel, NYSE American or market-data custodians, or other witnesses identified through discovery.

14. The motion is otherwise DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: ______________________________

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UNITED STATES MAGISTRATE JUDGE

Nejmeh v. Theriva Biologics, Inc.
United States District Court, District of Nevada
Case No. 3:26-cv-00705

EXHIBIT SQ

SUPPLEMENTAL EXHIBIT SQ
HEAT BIOLOGICS AS A PUBLIC COMPARATOR

Submitted in support of Plaintiff's Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction (ECF No. 2), with Plaintiff's Motion for Leave to File Supplemental Exhibits SQ, SR and SS and a Supplemental Statement in Support of Interim Relief.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705** **SUPPLEMENTAL EXHIBIT SQ HEAT BIOLOGICS AS A PUBLIC COMPARATOR**

Supplemental Exhibit SQ — Heat Biologics as a Public Comparator

I. PURPOSE AND LIMITS

1. Supplemental Exhibit SA (SA-8, ¶39) notes that Heat Biologics' public filings may be used as public comparators. This Exhibit supplies that comparison. Heat Biologics, Inc., later NightHawk Biosciences, Inc. and then Scorpius Holdings, Inc. (CIK 0001476963) ("Heat"), was founded and led by Theriva director Jeffrey Wolf and had Theriva director John Monahan on its board. Heat's own SEC filings show the same sequence that Exhibits SB, SE and SK record for Theriva: repeated offerings, exchange listing warnings, reverse stock splits, name changes and a collapsing share price. Heat reached the end of that sequence and was delisted on May 1, 2025.

2. Plaintiff prepared this Exhibit from public records only: SEC EDGAR filings and Forms 3, 4 and 5 insider records, identified by CIK and filing type under each figure and table, and split-adjusted monthly market prices. Each figure states what the records show. None of it states or implies that any person named did anything unlawful, and chronology and association do not establish intent.

II. WHAT THIS EXHIBIT ADDS, AND WHAT IT DOES NOT REPEAT

3. Subjects already in the record are cited, not repeated:

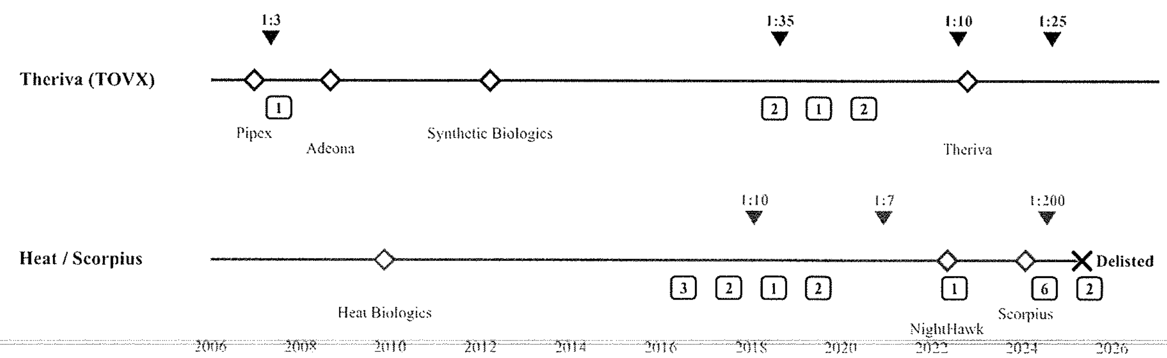
Subject	Where it is already in the record	Treatment here
Board relationships, common counsel and auditor, 2023 non-reliance filings	SA-7 to SA-8	Not repeated
Theriva reverse splits, financings, dilution and cash use	SA, SD, SE, SG	Theriva appears only as the baseline beside Heat
Theriva price, volume and news timing	SB, SK	Not repeated
SYN-020 licence to Rasayana Therapeutics	SA-7 §IX, SC-5, SF, SN	Not repeated
Theriva patent portfolio	SO, SP	Heat's counterpart is Table 1
New in this Exhibit	—	Heat's reverse splits, offerings, listing warnings, delisting, accumulated deficit and share price (Figures 1–4); Heat's patent estate (Table 1); the Kraws and Crystal Research Associates filing footprint (Table 2); the date Dr. Monahan's consultancy ended and his directorship began (¶10)

III. THE SAME SEQUENCE OF EVENTS, COMPANY BY COMPANY

4. Figure 1. Each mark is dated from the company's own filings: name changes (SEC former-name records), reverse stock splits, years with exchange listing-deficiency notices (Form 8-K Item 3.01), and delisting (Form 25-NSE).

Figure 1 — Name changes, reverse splits, listing warnings and delisting

▼ Reverse split (ratio above) ◇ Name change [2] Listing warnings that year ✕ Delisted



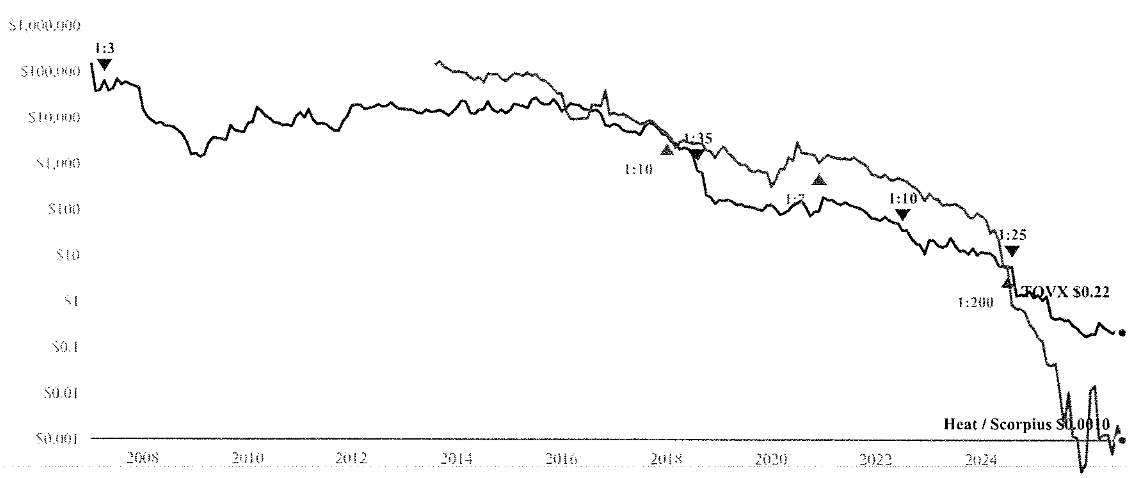
Sources: SEC submissions records for CIK 0000894158 and CIK 0001476963 (former names, Form 8-K items, Form 25/25-NSE); split dates and ratios as reported with market price data.

IV. SHARE PRICE, ADJUSTED FOR EVERY REVERSE SPLIT

5. Figure 2. Monthly closing price on a logarithmic scale, restated in today's shares so that each reverse split does not hide the decline. Triangles mark reverse splits. Early prices look large only because they are restated in today's share count.

Figure 2 — Split-adjusted share price, log scale

▬ Theriva (TOVX) ▬ Heat / NightHawk / Scorpius (HTBX, then SCPX)

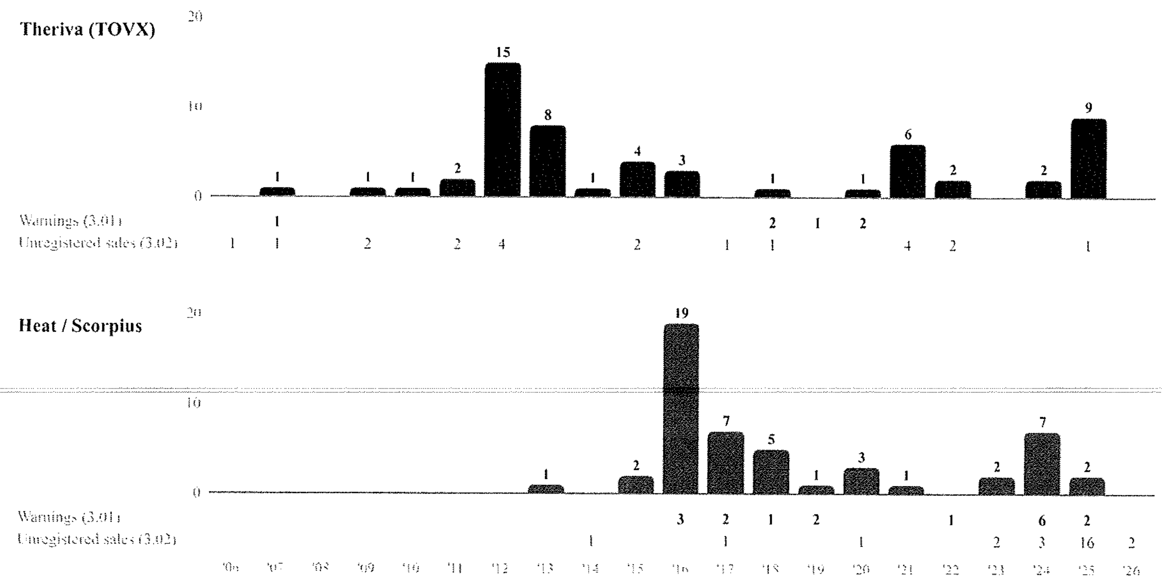


Source: monthly split-adjusted closing prices as published by Yahoo Finance for TOVX and SCPX (market data, not an SEC record).

V. OFFERINGS AND EXCHANGE WARNINGS, YEAR BY YEAR

6. Figure 3. Bars count prospectus filings (Form 424B, the documents filed when securities are sold to the public). The figures beneath each bar count listing-deficiency notices (8-K Item 3.01) and unregistered sales of shares (8-K Item 3.02) that year.

Figure 3 — Offerings (424B) per year, with warnings and unregistered sales



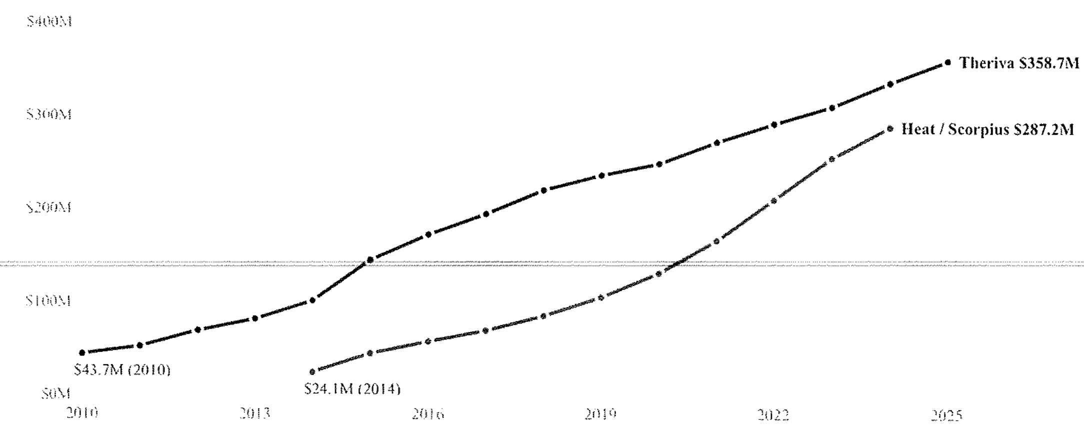
Source: SEC submissions records (form types and Form 8-K item numbers) for CIK 0000894158 and CIK 0001476963, 2006 to September 2026.

VI. MONEY LOST, YEAR BY YEAR

7. Figure 4. Accumulated deficit at each year end, as reported in each company's audited annual report (Form 10-K): the running total of the company's losses since it began. Theriva's grew by $315.0 million from 2010 to 2025; Heat's grew by $263.1 million from 2014 to 2024, its last annual report before delisting. Shares outstanding: Theriva 45,892,668 (August 7, 2026); Scorpius 61,142,712 (February 17, 2026).

Figure 4 — Accumulated deficit, $ millions

— Theriva (TOVX) — Heat / NightHawk / Scorpius



Source: XBRL financial data filed with each Form 10-K (us-gaap RetainedEarningsAccumulatedDeficit), SEC companyfacts for CIK 0000894158 and CIK 0001476963.

VII. HEAT BIOLOGICS' PATENT ESTATE, IN ITS OWN ANNUAL REPORTS

8. Table 1. What Heat told shareholders about its patents, in the words of its Form 10-K filings. This is the Heat counterpart to Supplemental Exhibits SO and SP.

Annual report	What it says about patents
Form 10-K filed March 31, 2017	"Our ImPACT® / ComPACT™ patent portfolio comprise more than fifty issued patents and ten pending patent applications."
Form 10-K filed March 25, 2021	"The ImPACT® / ComPACT™ patent portfolio comprise more than 30 granted patents and 40 pending patent applications."
Form 10-K filed April 30, 2025 (last before delisting)	No patent count is given. Its risk factors state: "We have limited protection for our intellectual property." It reports that the company had licensed "certain provisional patent applications and know-how related to fusion proteins" to Shattuck Labs, and that the Elusys Therapeutics intangible asset "relates to the ANTHIM® formulation and was being amortized over its remaining patent life."

Sources: Heat Biologics Form 10-K, accession 0001553350-17-000337; Heat Biologics Form 10-K, accession 0001558370-21-003460; Scorpius Holdings Form 10-K, accession 0001558370-25-005986 (CIK 0001476963).

VIII. JEFFREY KRAWS AND CRYSTAL RESEARCH ASSOCIATES IN SEC FILINGS

9. Table 2. EDGAR full-text search counts of documents naming "Jeffrey Kraws" or "Crystal Research Associates," the firm Theriva's 2026 proxy statement says Mr. Kraws co-founded and leads. The counts show where the names appear. They do not say what role each document describes. No Heat filing naming either term was returned.

Filer (same company, CIK 0000894158, under each name it used)	"Jeffrey Kraws"	"Crystal Research Associates"
Pipex Pharmaceuticals (filings 2006–2008)	13	10
Adeona Pharmaceuticals (2008–2012)	23	9
Synthetic Biologics (2012–2022)	27	33
Theriva Biologics (2023 to August 2026), including every Form 10-K and every proxy statement in that period	7	15
All filers, 2001–2026	268 documents, 45 companies	423 documents, 51 companies

Source: EDGAR full-text search (efts.sec.gov), all dates, run September 26, 2026.

IX. ONE DATE ADDED ON DR. MONAHAN

10. Board relationships and the SYN-020 licence to Rasayana Therapeutics are set out in Supplemental Exhibit SA at SA-7 to SA-8 and are not repeated here. One date from Theriva's June 29, 2026 proxy statement is added: Dr. Monahan served as a scientific advisory consultant to Theriva from 2015 to November 10, 2020, and has been a director since November 11, 2020. He now sits on the Audit, Compensation and Nominations Committees.

X. SUMMARY

11. Table 3. The two companies side by side:

	Theriva Biologics (TOVX)	**Heat Biologics / Scorpius**
Directors in common	Jeffrey Wolf (Heat founder, Chairman and CEO) and John Monahan (Heat director, 2009 to April 2026) are Theriva directors. See SA-7 to SA-8.	
Reverse splits	1:3 (2007), 1:35 (2018), 1:10 (2022), 1:25 (2024); reverse-split language appears again in the June 29, 2026 proxy statement	1:10 (2018), 1:7 (2020), 1:200 (2024)
Combined since 2018	8,750 shares became 1	14,000 shares became 1
Names used	Sheffield Medical Technologies, Sheffield Pharmaceuticals, Pipex, Adeona, Synthetic Biologics, Theriva	Heat Biologics, NightHawk Biosciences, Scorpius Holdings
Busiest offering years (424B)	2012: 15; 2013: 8; 2025: 9	2016: 19; 2017: 7; 2024: 7
Listing-deficiency notices (8-K 3.01)	2018–2020: 5	2016–2019: 8; 2024: 6; 2025: 2
Unregistered share sales (8-K 3.02)	Most in one year: 4 (2012, 2021)	2025: 16
Accumulated deficit (audited)	$43.7M (2010) to $358.7M (2025)	$24.1M (2014) to $287.2M (2024)
Status, September 2026	Listed on NYSE American; filings describe a possible merger, sale or other strategic alternatives	Delisted (Form 25-NSE filed May 1, 2025); no ticker

SOURCES

(1) Theriva Biologics, Inc. Definitive Proxy Statement (DEF 14A), filed June 29, 2026, accession 0001104659-26-078859; Form 10-K filed March 12, 2026, accession 0001104659-26-026767. (2) SEC EDGAR company records and submissions data, CIK 0000894158 (Theriva Biologics, Inc.). (3) SEC EDGAR company records and submissions data, CIK 0001476963 (Scorpius Holdings, Inc., formerly Heat Biologics, Inc. and NightHawk Biosciences, Inc.). (4) SEC insider (ownership) records for issuers CIK 0000894158 and CIK 0001476963; filers 0001257825 and 0001381450. (5) Scorpius Holdings Form 25-NSE, filed May 1, 2025, and Forms 8-K with Item 3.01 dated April 22,

2024 through May 2, 2025. (6) Heat Biologics Forms 10-K, accessions 0001553350-17-000337 and 0001558370-21-003460; Scorpius Holdings Form 10-K, accession 0001558370-25-005986. (7) EDGAR full-text search (efts.sec.gov) for "Jeffrey Kraws" and "Crystal Research Associates," all dates, run September 26, 2026. (8) Monthly split-adjusted prices and split ratios for TOVX and SCPX as published by Yahoo Finance, retrieved September 26, 2026. Counts cover the filings in each company's SEC submissions index from 2006 onward.

Dated: 9/28/2026

Signature: ______________________________

Mark Joseph Nejmeh, Plaintiff, self-represented

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705** **SUPPLEMENTAL EXHIBIT SS THE DIRECTORS: COMMITTEES, PAY, THEIR OWN STAKE, AND THE HOLDERS OF THE NEW WARRANTS**

Supplemental Exhibit SS — The Directors and the Warrant Holders

I. PURPOSE AND LIMITS

1. The Supplemental Statement in Support of Interim Relief identifies corporate actions that Defendant's board may take before the Court rules. This Exhibit sets out, from public records, who makes those decisions, how they are paid, what stake they hold with their own money, where they have served, and who holds the 16,184,560 New Warrant Shares. It supplements Exhibits SA-7 to SA-8, SL, SN, SQ and SR and does not repeat them.

2. Every fact below is taken from an SEC filing identified by accession number, from the SEC's insider-ownership records (Forms 3, 4 and 5), or from FINRA BrokerCheck. This Exhibit does not state or imply that any person broke a law or a duty. Facts that cut against any inference are stated in Part VII.

II. THE BOARD AND ITS COMMITTEES

3. Defendant's June 29, 2026 proxy statement (accession 0001104659-26-078859) lists four directors:

(a) Jeffrey J. Kraws, age 62 — director since January 2006; independent, non-executive Chairman since May 2012; Chairman of the Compensation Committee; member of the Audit and Nominations Committees; an "audit committee financial expert." He served as Defendant's part-time Vice President of Business Development from 2006 to February 2007.

(b) Jeffrey Wolf, age 63 — director since 2006; member of all three committees; an "audit committee financial expert"; founder, Chairman and Chief Executive Officer of Heat Biologics (Exhibit SR).

(c) Dr. John Monahan, age 79 — director since November 11, 2020; member of the Audit and Compensation Committees; Chairman of the Nominations Committee, which selects director nominees. He was Defendant's Senior Executive Vice President of Research and Development from 2010 to 2015 and a scientific advisory consultant from 2015 to November 10, 2020, the day before he became a director.

(d) Steven A. Shallcross, age 64 — Chief Executive Officer since December 6, 2018 (interim from December 5, 2017), Chief Financial Officer since June 2015, and the only executive on the board.

4. Three directors therefore make up every committee that would review a reverse stock split, rights plan, merger, reverse merger, asset transfer, executive pay, or related-party transaction. The proxy statement describes no retirement age, term limit, or tenure policy for directors. Mr. Kraws and Mr. Wolf have served for twenty years.

III. WHAT THE COMMITTEES DECIDED

5. The Compensation Committee's stated standard. The 2026 proxy states: "The Compensation Committee's philosophy is to deliver higher rewards for superior performance and consequences for underperformance."

6. Chief Executive pay. Mr. Shallcross's reported total compensation was $876,313 for 2024, including a $200,000 cash bonus, and $903,011 for 2025, including options to purchase 190,000 shares granted in April 2025. Defendant's board approved a 1-for-25 reverse stock split on August 15, 2024 (Form 8-K, accession 0001104659-24-090522). His amended employment agreement of August 10, 2026 provides change-in-control benefits whose definition includes a reverse merger with a non-listed private company (Exhibit SN-4).

7. Director pay. For 2025 the proxy reports total director compensation of $206,821 for Mr. Kraws (including $180,250 in cash), $104,321 for Mr. Wolf, and $97,321 for Dr. Monahan.

8. Accelerated equity on departure. The Audit Committee reviews and approves related-party transactions. Exhibit SA-7 records the employment of MaryAnn Shallcross, the Chief Executive Officer's wife. The 2026 proxy adds that she was one of seven employees terminated in the workforce reduction announced September 30, 2025, and that under a separation letter she received three months' base salary, "acceleration of all unvested outstanding equity awards," and an extension of her option exercise period to December 31, 2026. Defendant's 2021 proxy (accession 0001104659-21-106374) reports that when director Scott Tarriff resigned on November 11, 2020 — the day Dr. Monahan joined the board — the board accelerated vesting of his unvested options and extended his exercise period.

IV. THEIR OWN MONEY

9. The SEC's insider-ownership records list every Form 3, 4 and 5 transaction each director has reported. For Defendant (CIK 0000894158, including its former names) they show:

(a) Mr. Kraws (reporting owner CIK 0001380918): 18 awards reported from November 2007 to January 5, 2026; no open-market purchase of Defendant's stock since his first report in November 2006.

(b) Mr. Wolf (CIK 0001381450): 19 awards reported from February 2007 to January 5, 2026; no open-market purchase of Defendant's stock since November 2006. At Heat he reported open-market purchases of 2,551 shares in 2013 and 2014.

(c) Dr. Monahan (CIK 0001257825): 6 awards reported from December 2020 to January 5, 2026 (including options on 75,000 shares on January 5, 2026); no open-market purchase of Defendant's stock or of Heat's stock. His only reported open-market purchase at any company is 900 shares of Anixa Biosciences on April 29, 2019. His records show no filing with respect to Defendant before November 12, 2020.

(d) Mr. Shallcross (CIK 0001263501): 12 awards from June 2015 to January 5, 2026, and nine open-market purchases of Defendant's stock totalling 340,000 shares as reported before the 2024 reverse split — 50,000 on August 23, 2019; 50,000 on May 10, 2021; and 240,000 in seven purchases between December 29, 2022 and June 7, 2023.

10. Each of the four directors received an award reported for January 5, 2026.

V. WHERE THEY HAVE SERVED

11. Mr. Shallcross. The 2026 proxy states that he was Chief Financial Officer of Nuo Therapeutics, Inc. (formerly Cytomedix) from May 2013 to May 2015 and that Nuo filed a Chapter 11 petition in January 2016; that he was a director of Elys Game Technology, Corp. from June 2019 until March 2024, a company "Nasdaq-listed until October 2023"; and that he was a director of Twin Vee PowerCats from April 2021 to June 2022. His insider records also list Vanda Pharmaceuticals, where he reported sales in 2007.

12. Mr. Kraws. The 2026 proxy lists him as co-founder and Chief Executive Officer of Crystal Research Associates since 2003 (Exhibit SQ, Table 2), formerly co-president of The Investor Relations Group, "a firm representing primarily under-followed, small-capitalization companies," and in other roles including Kazia Therapeutics since February 2026. FINRA BrokerCheck (CRD 2049439, retrieved September 27, 2026) shows him currently registered with BA Securities, LLC (CRD 153489) since December 14, 2022; that he passed the Investment Banking Registered Representative examination on January 2, 2023; and that he was previously registered with Piper Sandler & Co. from March 2019 to December 2020. The biography in the 2026 proxy does not mention BA Securities.

13. Dr. Monahan. Besides the roles in paragraph 3(c), he was a director of Heat from November 2009 to April 21, 2026 — through the Elusys sale and its amendments, Heat's delisting, and the foreclosure of substantially all of its non-cash assets (Exhibit SR) — and a director of Anixa Biosciences from 2016 to 2021. Defendant's 2021 proxy reports that he earned $11,250 in consulting fees in 2020 before his appointment. The proxy statements filed in 2017 through 2020 do not disclose the fees paid to him as a consultant.

VI. THE HOLDERS OF THE NEW WARRANTS

14. Defendant's Form S-3 filed November 7, 2025 (accession 0001104659-25-108521) registers for resale the shares issuable on exercise of the New Warrants and names their holders: Armistice Capital, LLC (4,503,640); 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) — together 16,184,560 shares. These are the persons whose exercise the status quo requested in the Supplemental Statement, ¶ 2(a), would affect. The New Warrants were issued as follows:

(a) The inducement of October 16, 2025 and its terms — the repricing of the September 2024 and May 2025 warrants to $0.54, the $4.4 million exercise, the 200% New Warrant coverage, the $0.84 closing price on October 15, 2025, and

A.G.P./Alliance Global Partners' roles as placement agent, sales agent and exclusive financial advisor — are already before the Court. (Exhibits G-10, H-10, J-15, L-8, M and T-35; Supplemental Exhibits SA-2 and SA-5; Verified Complaint ¶ 64; Proposed Supplemental Memorandum, Attachment B.) This Exhibit adds only the following.

(b) The September 2024 warrants had carried an exercise price of $2.00 (Form 8-K, accession 0001104659-24-103813). Defendant reported VIRAGE trial results in a Form 8-K filed before the market opened on October 14, 2025 (accession 0001104659-25-098882). On October 15 the stock traded as high as $0.86 on volume of about 196.6 million shares, compared with about 1 million on October 14. Prospectus supplements to the registration statements for the existing warrants were filed at 8:23 a.m. Eastern on October 16 (accessions 0001104659-25-099913 and -099916); the stock opened that day at $0.45, closed at $0.43, and closed at $0.42 on October 17.

(c) Defendant's at-the-market prospectus supplement of October 24, 2025 reports cumulative sales through A.G.P. since January 1, 2024 of about 12,016,073 shares for net proceeds of about $6.1 million; its supplement of October 29, 2025 reports about 16,618,692 shares and about $10.1 million (accessions 0001104659-25-102103 and 0001104659-25-103770). On October 24 the stock traded as high as $0.85 on volume of about 549.6 million shares and closed at $0.35.

(d) Price and volume figures are daily NYSE American trading data as reported by Yahoo Finance, retrieved September 27, 2026. Defendant's filings do not state the price at which the at-the-market shares were sold, the reasons for the $0.54 price or the 200% coverage, or when the inducement terms were first discussed.

15. The S-3 states that Martin Hoe and Ryan Lane, as investment managers of Empery Asset Management, may be deemed to have voting and investment power over the Empery funds' shares. Empery filed a Schedule 13G for Defendant on July 31, 2025 and an amendment on October 21, 2025 (accessions 0000902664-25-003293 and -004480). Empery Digital Inc. (NASDAQ: EMPD, CIK 0001829794), a public company, identifies Ryan Lane as its Co-Chief Executive Officer (Form 8-K filed July 23, 2026, accession 0001683168-26-005723).

16. The same investors, fifteen years earlier. On January 28, 2011, when Mr. Kraws and Mr. Wolf were already directors, Defendant (then Adeona Pharmaceuticals, Inc.) agreed to sell to funds managed by Empery 1,428,572 shares of common stock and warrants to purchase 714,286 shares. The Schedule 13G reporting that purchase names three reporting persons: Empery Asset Management, LP, Ryan M. Lane and Martin D. Hoe; it reports 5.74% and a 4.99% exercise "blocker" (accession 0000902664-11-000052, filed January 2011). A year later Empery reported only the warrants, 2.23% (accession 0000902664-12-000071).

17. Repeat financiers, and financiers of both companies. A full-text search of Defendant's and Heat's EDGAR filings, and the holders' own Schedule 13G filings, show:

(a) Hudson Bay Capital Management (managing member Sander Gerber) filed a Schedule 13G for Defendant on January 31, 2011, three days after the Empery purchase in paragraph 16 (accession 0001393825-11-000002). It reported holding only warrants on 1,496,555 shares, at a 9.99% cap, in February 2019; 2,219,019, at 9.99%, in February 2021; and 2,608,696 (1.94%) in February 2022 (accessions 0001393825-19-000099, 0001393825-21-000068, 0001393825-22-000113). Defendant's 2019 and 2020 proxy statements list it as a holder of more than five percent. It now holds 3,363,640 of the New Warrants.

(b) Empery and Hudson Bay are the two holders of the New Warrants that also appear in Defendant's filings in 2011. Armistice, Anson, CVI and Intracoastal first appear in Defendant's filings in 2024, after the August 2024 reverse split; Defendant's September 27, 2024 offering of shares, pre-funded warrants and warrants raised about $2.5 million (Form 8-K, accession 0001104659-24-103813).

(c) Two holders of the New Warrants also financed Heat, the company Mr. Wolf founded and led and on whose board Dr. Monahan sat: Armistice Capital filed a Schedule 13G for Heat on January 27, 2020 (accession 0000919574-20-000579), and CVI Investments filed a Schedule 13G for Heat on November 30, 2018 and an amendment on February 14, 2019 (accessions 0001104659-18-070761, 0001104659-19-008580). Each filing gives as its date of event the day Heat entered into an underwriting agreement with A.G.P./Alliance Global Partners — the same firm that later placed, repriced and sold Defendant's securities (¶ 14): November 21, 2018, for 9,200,000 shares with warrants at $1.49 (CVI reported 2,000,000 shares, 6.4%), and January 16, 2020, for 20,000,000 shares and 10,000,000 warrants at $0.35 (Armistice reported 2,901,635 shares, 4.99%) (Heat Forms 8-K, accessions 0001553350-18-001288 and 0001553350-20-000080).

(d) Mr. Kraws and two holders of the New Warrants invested in Ra Medical Systems, Inc. in the same weeks of 2020. Ra Medical is the company where Defendant's proxy states he was Co-President from August 2016 to January 2021. Ra Medical sold units of one share and one warrant, with pre-funded warrants for purchasers above a 4.99% or 9.99% ownership cap, at $0.45 on May 21, 2020 and at $0.35 on August 3, 2020 (Forms 424B4, accessions 0001564590-20-026560 and

0001564590-20-035368). The August prospectus states: “Kraws has agreed to purchase 10,000 units in the offering,” and his insider records report purchases of 10,000 shares on May 22, 2020 and 10,000 shares and 10,000 warrants on August 3, 2020. Armistice Capital and Intracoastal Capital each filed a Schedule 13G for Ra Medical on May 29, 2020 and again on August 10, 2020 (accessions 0000919574-20-003878, 0000919574-20-004948, 0001213900-20-013677, 0001213900-20-020988). Armistice holds 4,503,640 and Intracoastal 300,000 of the New Warrants.

(e) MSD Credit Opportunity Master Fund, L.P. (investment manager MSD Partners, L.P.) dealt with Defendant three times while Mr. Kraws and Mr. Wolf were directors, the last two while Dr. Monahan was also a director. Its July 2022 Series C and Series D preferred stock, with 20,000 votes per Series D share on the increase of authorized common stock to 350,000,000 shares, is already before the Court (Supplemental Exhibit SH-2; Proposed Supplemental Memorandum, Attachment B, ¶ 28), as is the $7.402 million deemed dividend Defendant recorded in 2021 for a conversion inducement (Supplemental Exhibit SA-5). The filings identify that inducement as MSD’s: on September 11, 2017 MSD bought 120,000 shares of Series A preferred stock for $12 million, with a 2% cumulative dividend and a right to be repurchased on a change of control; on January 27, 2021 Defendant lowered the conversion price from $18.90 to $1.50 per share and removed that repurchase right; and MSD converted into 8,996,768 shares of common stock in January and February 2021 (Form 10-K for 2021, accession 0001410578-22-000405). The filings reviewed do not list MSD as a holder of the New Warrants.

18. What happened at Volcon, Inc., a company Empery financed. From its own filings (CIK 0001829794):

(a) Empery appears in Volcon’s filings from its August 2022 convertible-note financing onward, and reported holdings in Volcon on Schedule 13G amendments filed January 11 and October 9, 2024 (accessions 0000902664-24-000177 and 0000902664-24-005746).

(b) Volcon’s board approved five reverse stock splits, each within a range its stockholders had authorized: 1-for-5 (October 2023), 1-for-45 (February 2024), 1-for-100 (June 2024), 1-for-8 (November 2024) and 1-for-8 (June 2025) — together, 1,440,000 shares became one (Forms 8-K, accessions 0001683168-23-007174, 0001683168-24-000670, 0001683168-24-004033, 0001683168-24-007809, 0001683168-25-004446).

(c) On May 13, 2025 Nasdaq notified Volcon that its stock had closed below $1.00 for thirty business days; after a June 24, 2025 hearing, a Nasdaq panel set conditions for continued listing (Form 8-K, accession 0001683168-25-005160).

(d) On July 17, 2025, five weeks after the last split, Volcon agreed to sell 41,885,838 shares at $10.00 and pre-funded warrants for 5,457,013 more to investors for cash — about $473 million — and further securities to investors paying in bitcoin. The same day its board elected four new directors, and Ryan Lane, described as having founded Empery Asset Management in July 2008, became Chairman and Co-Chief Executive Officer, with a $225,000 salary, a $225,000 signing bonus and stock options (id.). On July 30, 2025 Volcon changed its name to Empery Digital Inc.

(e) The purchasers in Volcon's July 2025 private placements, which closed on July 21, 2025, included six of the eight holders of the New Warrants: entities affiliated with Anson Funds Management, including Anson Investments Master Fund and Anson East Master Fund (7,500,000 shares, the largest purchaser); funds managed by Empery Asset Management (2,500,000); Hudson Bay Master Fund (1,000,000); CVI Investments (1,000,000); Intracoastal Capital (100,000); and a holder listed as Robert Forster (100,000) (Form S-3ASR filed August 18, 2025, accession 0001683168-25-006260). Armistice is not listed. Three months later, those holders received the New Warrants in Defendant's October 2025 warrant inducement transaction (Form 8-K, accession 0001104659-25-100468; Form S-3, accession 0001104659-25-108521).

19. Defendant's own sequence is set out in Exhibit SQ: four reverse splits since 2007, three since 2018 (together 8,750 shares became one), and listing-deficiency notices. Defendant's filings describe a strategic review that may include a reverse merger (Exhibit SN-4). Paragraph 18 is offered as a public-record comparison of what a holder of the New Warrants did at another company, and of the overlap between that company's financiers and the holders of the New Warrants; paragraph 17 is a record of which financiers return. Neither is evidence that Empery or any other holder has acted in concert with any director or intends to acquire control of Defendant.

VII. WHAT CUTS AGAINST ANY INFERENCE

20. Mr. Shallcross bought Defendant's stock with his own money nine times. Nuo Therapeutics filed for Chapter 11 about eight months after he left it. The proxy states that the board determined every committee member independent under SEC and NYSE American rules, and Dr. Monahan's disclosed 2020 consulting fees ($11,250) are well below the NYSE American threshold of $120,000 in any twelve months. BrokerCheck reports no disclosure events for Mr. Kraws. A full-text search of Defendant's and Heat's EDGAR filings finds no reference to BA Securities or Piper Sandler, and a full-text search of Empery Digital's EDGAR filings finds no reference to Defendant, Heat, or any of Defendant's directors or their firms. No law requires a director to buy shares, and a reported award is compensation, not proof of a profit. Volcon's stockholders authorized each reverse-split range, its July 2025 financing brought in new capital, and nothing in the record reviewed shows that Empery or any other holder of the New Warrants has sought control of Defendant.

VIII. RECORDS NEEDED

21. From Defendant: (a) director and officer questionnaires, 2022 to the present, including outside business activities and broker-dealer registrations; (b) any agreement, payment or communication between Defendant and BA Securities, LLC or any firm listed in paragraph 12; (c) Dr. Monahan's consulting agreements and all payments under them, 2015 to 2020; (d) Compensation Committee minutes and materials for the January 5, 2026 awards and the August 10, 2026 amended employment agreement; (e) the Audit Committee's approval of the September 2025 separation terms for Ms. Shallcross; and (f) communications between Defendant, or any director, and any holder of the New Warrants, including Empery Asset Management, Hudson Bay Capital Management, Armistice Capital and Intracoastal Capital, concerning a reverse stock split, merger, reverse merger, rights plan, asset sale, or strategic alternatives; and (g) board and committee materials approving the January 27, 2021 amendment of the Series A preferred stock and the July 28, 2022 sale of Series C and Series D preferred stock to MSD Credit Opportunity Master Fund, L.P., including any valuation of the $7.4 million inducement; and (h) the board's approval of the October 16, 2025 inducement, including how the $0.54 price and 200% coverage were set, communications with A.G.P. and the holders from October 1 to October 17, 2025, and records of each at-the-market sale in October 2025.

APPENDIX — CHRONOLOGY, AUGUST 2024 TO AUGUST 2026

Each entry restates a fact set out above or in the cited exhibit, in date order.

Aug. 15, 2024 — Board approves a 1-for-25 reverse stock split (¶ 6).

Sept. 27, 2024 — Offering with warrants exercisable at $2.00; A.G.P. placement agent (¶ 14(a)–(b)).

Jan. 2024–Oct. 2025 — At-the-market sales through A.G.P. of about 12.0 million shares (¶ 14(c)).

May 8, 2025 — Offering with warrants exercisable at $1.10; A.G.P. placement agent (Exhibit L-8; ¶ 14(a)).

June 30, 2025 — Cash of about $12.1 million; substantial doubt about ability to continue as a going concern (Form 10-Q, accession 0001410578-25-001654).

July 17–21, 2025 — Six of the eight future New Warrant holders buy into Empery Digital's private placements (¶ 18(e)).

Sept. 30, 2025 — Workforce reduced by seven employees, 32%; separation terms for the Chief Executive Officer's wife include acceleration of all unvested equity (¶ 8).

Oct. 14–17, 2025 — VIRAGE results reported; stock closes at $0.84 on October 15; warrants repriced to $0.54 and New Warrants issued on October 16 (Exhibits G-10, J-15; ¶ 14).

Oct. 24–29, 2025 — Cumulative at-the-market sales rise by about 4.6 million shares and $4.0 million (¶ 14(c)).

Jan. 5, 2026 — Awards reported for all four directors (¶ 10).

Feb. 18, 2026 — SYN-020 licensed to Rasayana Therapeutics for $300,000 up front (Exhibit SR ¶ 19(a)).

June 29, 2026 — Proxy states Defendant may reverse-split without stockholder approval and that the plan limit and authorized-share increase will not be adjusted for a prior split (Supplemental Statement ¶¶ 4–5).

Aug. 3, 2026 — Stockholders approve the New Warrant Shares, the plan increase and the authorized-share increase (Form 8-K, accession 0001104659-26-090064).

Aug. 10, 2026 — Chief Executive Officer's amended agreement: change-in-control benefits include a reverse merger (Exhibit SN-4).

Aug. 2026 — Form 10-Q describes a strategic review that may include a reverse merger (Exhibit SN-4).

SOURCES

Theriva Biologics, Inc., CIK 0000894158: Forms 10-K, accessions 0001410578-22-000405 (for 2021) and 0001104659-26-026767 (Mar. 12, 2026); DEF 14A, accession 0001104659-26-078859 (June 29, 2026); DEF 14A, accession 0001104659-21-106374 (Aug. 16, 2021); Forms 8-K, accessions 0001104659-24-090522 (Aug. 16, 2024), 0001104659-24-103813 (Sept. 30, 2024), 0001104659-25-046170 (May 8, 2025) and 0001104659-25-098882 (Oct. 14, 2025); Forms 424B5, accessions 0001104659-25-099913, 0001104659-25-099916, 0001104659-25-102103 and 0001104659-25-103770; DEF 14A, accessions 0001144204-19-034736 (July 15, 2019) and 0001104659-20-090343 (Aug. 4, 2020); Schedules 13G and 13G/A filed by Hudson Bay Capital Management, accessions 0001393825-11-000002, 0001393825-19-000099, 0001393825-21-000068 and 0001393825-22-000113; Form 8-K, accession 0001104659-25-100468 (Oct. 2025); Form S-3, accession 0001104659-25-108521 (Nov. 7, 2025); Schedules 13G and 13G/A filed by Empery Asset Management, accessions 0000902664-11-000052, 0000902664-12-000071, 0000902664-25-003293 and 0000902664-25-004480. Heat Biologics, Inc., CIK 0001476963: Forms 8-K, accessions 0001553350-18-001288 and 0001553350-20-000080; Schedules 13G and 13G/A filed by Armistice Capital (accession 0000919574-20-000579) and CVI Investments (accessions 0001104659-18-070761 and 0001104659-19-008580). Ra Medical Systems, Inc., CIK 0001716621: Forms 424B4, accessions 0001564590-20-026560 and 0001564590-20-035368; Schedules 13G filed by Armistice Capital and Intracoastal Capital, accessions 0000919574-20-003878, 0000919574-20-004948, 0001213900-20-013677 and 0001213900-20-020988. SEC insider-ownership records for reporting owners CIK 0001380918 (Kraws), 0001381450 (Wolf), 0001257825 (Monahan) and 0001263501 (Shallcross), https://www.sec.gov/cgi-bin/own-disp?action=getowner. Empery Digital Inc., formerly Volcon, Inc., CIK 0001829794: Forms 8-K, accessions 0001683168-23-007174, 0001683168-24-000670, 0001683168-24-004033, 0001683168-24-007809, 0001683168-25-004446, 0001683168-25-005160 (July 17, 2025) and 0001683168-26-005723 (July 23, 2026); Form S-3ASR, accession 0001683168-25-006260 (Aug. 18, 2025); Schedules 13G/A filed by Empery Asset Management, accessions 0000902664-24-000177 and 0000902664-24-005746. FINRA BrokerCheck, individual CRD 2049439, retrieved September 27, 2026. EDGAR full-text search, retrieved September 27, 2026.

Dated: 9/28/2026

Signature: ______________________

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK JOSEPH NEJMEH, Plaintiff, v. **THERIVA BIOLOGICS, INC.,** Defendant.	**Case No. 3:26-cv-00705** **PLAINTIFF'S SUPPLEMENTAL STATEMENT IN SUPPORT OF INTERIM RELIEF: STATUS QUO ON THE NEW WARRANT SHARES, ANY REVERSE STOCK SPLIT, AND ANY RIGHTS PLAN; ADVANCE NOTICE OF ANY MERGER, REVERSE MERGER, OR ASSET TRANSFER**

1. Plaintiff submits this statement in support of his Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction (ECF No. 2), subject to the Court granting leave under Local Rule 7-2(g). It adds no claim or party. It identifies, from Defendant's own public filings, the specific corporate actions that could change the position of existing stockholders before the Court rules, and asks for narrow interim relief directed to those actions.

I. RELIEF REQUESTED

2. Plaintiff respectfully asks that, pending a noticed hearing on ECF No. 2, the Court order:

(a) **Status quo on the New Warrant Shares.** That Defendant not issue, deliver, register, or permit the voting of shares upon exercise of the warrants to purchase 16,184,560 shares approved at Defendant's August 3, 2026 annual meeting (the

"New Warrant Shares"), as requested in ECF No. 2 and in Supplemental Exhibit SN ¶ 10;

(b) **Status quo on any reverse stock split.** That Defendant not approve or effect a reverse stock split of its common stock; or, in the alternative, that Defendant (i) file and serve notice at least ten business days before any board approval of a reverse stock split, stating the ratio and effective date, and (ii) proportionately adjust, in the same ratio, the 6,500,000-share limit of its 2020 Stock Incentive Plan and the 450,000,000-share authorized-share amendment approved on August 3, 2026, if either is later made effective;

(c) **Status quo on any rights plan.** That Defendant not adopt, amend, or trigger any shareholder-rights plan ("poison pill") or similar instrument; or, in the alternative, that Defendant file and serve notice at least ten business days before doing so, stating its terms;

(d) **Advance notice of other control transactions.** That Defendant file and serve notice at least ten business days before it (i) signs any agreement for a merger, reverse merger, business combination, or change of control; or (ii) signs any agreement to sell, license, or otherwise transfer all or substantially all of the rights to VCN-01, SYN-004, or any other material asset outside the ordinary course of business, so that any party may seek relief concerning an actual instrument or agreement; and

(e) **Preservation.** That Defendant preserve the records identified in Supplemental Exhibits SH, SL, SM, SN, and SR concerning any such split, plan, transaction, or transfer.

3. Plaintiff does not ask the Court to rule on the validity of any rights plan, merger, or reverse merger that does not yet exist. As Supplemental Exhibit SJ acknowledges, the closest District of Nevada authority, Horwitz v. Southwest Forest Industries, Inc., 604 F. Supp. 1130 (D. Nev. 1985), disfavors relief directed only at a possible future plan. The notice requested in paragraph 2(d) is designed so that any later request can be addressed to an actual agreement, on an actual record, before it takes effect. The requests in paragraphs 2(b) and 2(c) are different in kind: they ask only that Defendant not use, before the hearing, powers its board already holds and may exercise alone — a reverse split, which its proxy says Nevada law permits without stockholder approval, and a rights plan, which a board ordinarily adopts without a stockholder vote; Defendant itself states that its charter, bylaws and Nevada law may discourage, delay or prevent a change in control (Supplemental Exhibit SH-2) — and each offers notice as the alternative. They preserve the present position; they do not ask the Court to judge an instrument that does not yet exist.

II. WHY THE RELIEF IS NEEDED

4. Defendant may reverse-split without a stockholder vote. Defendant's definitive proxy statement filed June 29, 2026 (SEC accession 0001104659-26-078859) states that Defendant may "effect a reverse stock split and decrease both the number of authorized shares of Common Stock and the number of outstanding shares of Common Stock proportionately, as allowed under Nevada law without stockholder approval." See Nev. Rev. Stat. § 78.207. Defendant has done so before: its Form 8-K filed August 16, 2024 (accession 0001104659-24-090522) reports that its board approved a 1-for-25 reverse stock split on August 15, 2024, and its 2026 proxy refers to "subsequent reverse stock splits" in the plural.

5. Two amounts approved on August 3, 2026 are written so that a reverse split will not reduce them. According to the same proxy statement:

(a) The 2020 Stock Incentive Plan was increased to 6,500,000 shares, "such amendment to become effective on the earlier of consummation of a strategic transaction or January 1, 2027," and the 6,500,000 shares "will not be adjusted for any fundamental transactions occurring prior to the effective date . . . including any proportionate reverse stock split."

(b) Authorized common stock may be increased from 350,000,000 to 450,000,000 shares, filed at the board's discretion within one year of approval, and the 450,000,000 shares "will not be adjusted for any fundamental transactions, including any proportionate reverse stock split," occurring before that filing. (Exhibit J-12.)

Defendant's Form 8-K filed August 4, 2026 (accession 0001104659-26-090064) reports that stockholders approved both: the plan increase by 3,110,068 votes for and 2,840,658 against, and the authorized-share increase by 12,007,931 for and 4,643,286 against. The warrant proposal passed by 3,665,312 for and 2,267,592 against.

6. The effect, by arithmetic. Defendant reported 45,892,668 shares outstanding as of August 7, 2026. For illustration only, at the 1-for-25 ratio Defendant used in 2024, those shares would become about 1,835,707 shares. An unadjusted 6,500,000-share plan limit would then equal about 3.5 times all shares outstanding, and an unadjusted 450,000,000-share authorization would exceed the outstanding shares roughly 245 times. The existing stockholders' percentage ownership would not change on the day of the split, but the number of new shares the board could issue, or award under the plan, relative to their holdings would multiply by the split ratio.

7. Defendant has disclosed that a reverse merger is under consideration. Defendant's August 2026 Form 10-Q describes a strategic review that may include a business combination, merger, or reverse merger. Its amended chief-executive employment agreement of August 10, 2026 provides change-in-control benefits whose definition includes a reverse merger with a non-listed private company. (Supplemental Exhibit SN-4; Supplemental Exhibit SR ¶ 19(c).) The proxy itself names "business combinations" among the uses for the additional authorized shares. Under paragraph 5(a), a "strategic transaction" would also make the 6,500,000-share plan limit effective before January 1, 2027.

8. The dilution already at stake is large. The 16,184,560 New Warrant Shares equal about 35.3% of the 45,892,668 shares outstanding. (ECF No. 2; Supplemental Exhibit SN ¶ 10.) Defendant has also already licensed SYN-020 on an exclusive, worldwide, sublicensable basis to Rasayana Therapeutics, Inc. for $300,000 up front, and has stated that it will not fund further SYN-004 development internally. (Supplemental Exhibit SR ¶ 19(a)–(b).) The eight holders of the New Warrants are named in Supplemental Exhibit SS ¶ 14; two of them financed Defendant in 2011, two also financed Heat, two invested in the same weeks of 2020 as Defendant's Chairman at a company he co-led, and six bought into the July 2025 bitcoin-treasury financing of Empery Digital three months before receiving the New Warrants. (Id. ¶¶ 16–18.) Defendant's remaining lead asset is not idle: Defendant reports that the FDA granted VCN-01 Orphan Drug designation for pancreatic cancer in June 2023 and Fast Track designation in May 2024, granted Rare Pediatric Disease designation for retinoblastoma on July 30, 2024, and on December 5, 2024 provided general agreement with Defendant's proposed Phase 3 design. (Form 10-K filed March 12, 2026, accession 0001104659-26-026767.) Those designations are part of what any merger partner, acquirer or licensee would obtain.

9. The same directors have overseen an insider asset transfer before. Two of Defendant's directors, both of whom sit on all three of Defendant's board committees, serve or served on the board of Heat Biologics, Inc. (later NightHawk Biosciences and Scorpius Holdings). Heat's own filings report that in December 2023 it sold its subsidiary Elusys Therapeutics, owner of the FDA-approved product ANTHIM®, to a company controlled by Heat's Chairman and Chief Executive Officer, who is also Defendant's director; that two later amendments replaced a guaranteed $5,000,000 minimum royalty with $1,000,000 in cash and the cancellation of a $750,000 note; and that after delisting, substantially all of Heat's remaining non-cash assets were foreclosed upon in December 2025. (Supplemental Exhibit SR ¶¶ 4–18.) Plaintiff does not contend that those transactions were unlawful. He cites them because they show that asset transfers to insiders and change-of-control outcomes can be completed, and later renegotiated, before public stockholders have any practical opportunity to be heard. The three directors who make up every committee of

Defendant's board have reported 43 awards of Defendant's equity and no open-market purchase of its stock. (Supplemental Exhibit SS ¶¶ 3–4, 9.)

10. The harm would be difficult to undo. A reverse split takes effect on a single date and cannot practically be reversed once shares trade on the new basis; combined with the unadjusted amounts in paragraph 5, it would enlarge the board's issuance capacity relative to existing holdings without a further stockholder vote. A reverse merger ordinarily issues a large number of new shares and replaces the board and management; a rights plan can alter who may acquire or vote shares; an exclusive, worldwide transfer of a clinical asset moves its value outside the company. Money damages may not measure the loss of voting power or of an asset's value.

11. The balance of hardships and the public interest. The alternative relief in paragraph 2(b) does not prevent a reverse split. If Defendant needs one, for example to meet an exchange listing standard, it may proceed after notice, and the only condition is that the plan and authorized-share amounts move in the same ratio as every stockholder's shares. The same is true of the alternative in paragraph 2(c). Notice under paragraph 2(d) imposes minimal burden on a company that already reports material agreements on Form 8-K. The relief serves the public interest in informed stockholder decision-making and orderly judicial review. Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008); Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

III. LIMITS

12. This statement does not ask the Court to find that any person intends to transfer value from stockholders or that any transaction or reverse split is planned. The quotations above are from Defendant's public SEC filings, identified by accession number, of which the Court may take judicial notice. Plaintiff understands that any restraint must satisfy Federal Rule of Civil Procedure 65, including specificity under Rule 65(d) and any security the Court finds proper under Rule 65(c), and that he may pursue only his own claims. If the Court prefers, the notice periods may be shortened or the notices filed under seal.

Dated: 9/28/2024

Respectfully submitted,

____

Mark Joseph Nejmeh, Plaintiff, self-represented

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No. 3:26-cv-00705

CERTIFICATE OF SERVICE

I certify that I am over eighteen years of age and not a party to this action.

On ____________________, I served a true and correct copy of Plaintiff's Supplemental Statement in Support of Interim Relief on Defendant Theriva Biologics, Inc., by the following method:

[ ] Personal delivery [ ] First-class U.S. mail, postage prepaid [ ] Overnight delivery

[ ] Electronic service by agreement or court-authorized method

Person or registered agent served: ______________________________________

Address or electronic destination: ______________________________________

____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: ____________________

Signature of person making service: ______________________________________

Printed name: ____

Address: ____