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7 (Additional Counsel on Signature Page)

8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

11 THEODURUS STROUS,  
 12 DERIVATIVELY ON BEHALF OF SCIO  
 DIAMOND TECHNOLOGY CORP.,

13 Plaintiff,

14 v.

15 BERNARD MCPHEELY, KARL  
 16 LEAVERTON, GERALD MCGUIRE,  
 LEWIS SMOAK, ADAMAS ONE CORP.  
 17 and JOHN G. GRDINA,

18 Defendants,

19 and

20 SCIO DIAMOND TECHNOLOGY  
 21 CORP.,

22 Nominal Defendant.

Case No. 22-cv-00256-JCM-EJY

**STIPULATION TO PARTIALLY  
 EXTEND BRIEFING SCHEDULE RE  
 DEFENDANTS’ MOTIONS TO  
 DISMISS PLAINTIFF’S SECOND  
 AMENDED DERIVATIVE ACTION  
 AND CLASS ACTION COMPLAINT  
 (Second Request)**

24 Plaintiff Theodurus Strous (“Plaintiff”) and Defendants Bernard McPheely, Karl  
 25 Leaverton, Gerald McGuire, Lewis Smoak (collectively, the “Scio Defendants”), Adamas  
 26 One Corp., and John Grdina (collectively, along with Gerald McGuire, the “Adamas  
 27 Defendants”, and along with the Scio Defendants, the “Defendants”)), by and through their

28 **STIPULATION TO PARTIALLY EXTEND BRIEFING SCHEDULE RE DEFENDANTS’  
 MOTIONS TO DISMISS PLAINTIFF’S SECOND AMENDED DERIVATIVE ACTION AND  
 CLASS ACTION COMPLAINT**

1 undersigned counsel, stipulate to extend the remaining briefing schedule on the Defendants’  
2 motions to dismiss the Plaintiff’s Second Amended Derivative Action and Class Action  
3 Complaint (the “SAC”). This is the second request to extend the briefing schedule on the  
4 Defendants’ Motions to Dismiss and seeks a partial extension. Following are the events to  
5 date:

6 On February 10, 2022, Plaintiff filed the Complaint against Defendants Bernard  
7 McPheely, Karl Leaverton, Gerald McGuire, and Lewis Smoak.

8 On September 30, 2022, Plaintiff Theodurus Strous filed the Amended Complaint  
9 against Defendants Bernard McPheely, Karl Leaverton, Gerald McGuire, and Lewis Smoak,  
10 and added two additional Defendants: Adamas One Corporation and John G. Grdina.

11 On November 15, 2022, the Court granted Defendants’ Stipulation to Extend  
12 Defendants’ time to Respond to Plaintiff’s Amended Complaint.

13 The briefing schedule per the Court’s Order has been partially satisfied as follows:

14 On January 20, 2023, Plaintiff filed the SAC.

15 On February 17, 2023, the Scio Defendants and Adamas Defendants filed separate  
16 motions to dismiss the SAC with the Adamas Defendants also joining in the motion to  
17 dismiss of the Scio Defendants.

18 Presently pending is Plaintiff’s opposition brief to Defendants’ Motions to Dismiss  
19 that is due to be filed on April 6, 2023, and Defendants’ reply briefs that are due on May 11,  
20 2023.

21 The parties propose the following amended schedule:

22 a. On May 15, 2023, Plaintiff shall file an opposition to Defendants’ motions to  
23 dismiss and/or inform the Court of how it wishes to proceed based on the facts set forth  
24 below; and

25 b. On June 21, 2023, Defendants shall file their reply briefs to Plaintiff’s  
26 opposition to the motions to dismiss and/or file a response to Plaintiff’s proposed course of  
27 how to proceed.

28 Good cause exists for the proposed extension, as set forth below:

1           1.       Plaintiff’s SAC alleges a derivative claim under Federal Rule of Civil  
2 Procedure 23.1 against all Defendants and alleges demand is futile as to Scio’s Board of  
3 Directors. In determining the demand futility issue, the pertinent inquiry is directed at the  
4 Board of Directors who were Scio board members at the time of the filing of the original  
5 action on February 22, 2022.

6           2.       It has very recently come to the attention of the parties that the SCIO  
7 Defendants resigned as Scio Board members in March 2020 and that no new Board was  
8 appointed or in place on February 22, 2023, or thereafter, as Scio’s Nevada corporate charter  
9 was revoked.

10          3.       As a result, there is an issue of how to proceed (and whether Plaintiff has  
11 standing to proceed) under these circumstances where there appears to be no Board in place  
12 at a company whose charter has been revoked at the time the original action was filed. Thus,  
13 no demand could have been made, nor can the demand futility issue be properly addressed.

14          4.       The parties seek an opportunity to determine the effect of the combination of  
15 a corporation whose charter was revoked and entire Board resigning prior to suit being  
16 brought and no new Board appointed because of the demand/demand futility issue and  
17 accordingly, how to proceed.

18          5.       The Parties believe that this extension, if granted, will not unreasonably delay  
19 this case and that the extension will serve to preserve the Court’s and the parties’ resources  
20 and advance judicial economy under the circumstances present in this litigation.

21          6.       Neither Plaintiff nor Defendants will be prejudiced by the stipulation.

22                 Therefore, the parties propose the following amended briefing schedule for  
23 Defendants’ Motions to Dismiss:

24                     1. Defendants moved to dismiss the Second Amended  
25                     Complaint on **Friday, February 17, 2023**.

26                     2. On or before **Monday, May 15, 2023**, Plaintiff shall file an  
27                     opposition to Defendants’ motions to dismiss and/or inform  
28                     the Court of how it wishes to proceed based on the facts set

1                   forth above concerning the requirements of Federal Rule of  
2                   Procedure 23.1; and

- 3                   3. On or before **Wednesday, June 21, 2023**, Defendants shall  
4                   file their reply briefs to Plaintiff's oppositions to the motions  
5                   to dismiss and/or file a response to Plaintiff's proposed  
6                   course of how to proceed based on the facts set forth above  
7                   concerning the requirements of Federal Rule of Civil  
8                   Procedure 23.1.
- 9                   4. All rights are reserved with regards to any further requests  
10                  for extensions of deadlines. This schedule can be modified  
11                  by further written agreement of the parties or order of the  
12                  court.
- 13                  5. This Court shall retain jurisdiction with respect to all matters  
14                  arising from or related to the implementation of this Order.

15 **Dated this 5<sup>th</sup> day of April, 2023.**

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20 and

21 **BEST & FLANAGAN LLP**

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Corp., and John Grdina*

1 **ORDER**

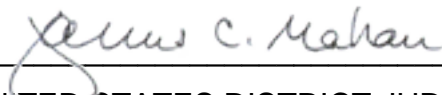
2 Per the parties' stipulation, **IT IS SO ORDERED.**

- 3
- 4 1. On or before **Monday, May 15, 2023**, Plaintiff shall file an
- 5 opposition to Defendants' motions to dismiss and/or inform the
- 6 Court of how it wishes to proceed based on the facts set forth above
- 7 concerning the requirements of Federal Rule of Procedure 23.1; and
- 8 2. On or before **Wednesday, June 21, 2023**, Defendants shall file
- 9 their reply briefs to Plaintiff's oppositions to the motions to dismiss
- 10 and/or file a response to Plaintiff's proposed course of how to
- 11 proceed based on the facts set forth above concerning the
- 12 requirements of Federal Rule of Civil Procedure 23.1.
- 13 3. All rights are reserved with regards to any further requests for
- 14 extensions of deadlines. This schedule can be modified by further
- 15 written agreement of the parties or order of the court.
- 16 4. This Court shall retain jurisdiction with respect to all matters
- 17 arising from or related to the implementation of this Order.

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22 UNITED STATES DISTRICT JUDGE

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24 **Date:** April 7, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2023, a copy of the foregoing was served through the court's ECF/CM system to all counsel of record.

Dated: April 5, 2023

/s/ Martin A. Muckleroy  
Martin A. Muckleroy