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17 Bennett M. Shapiro

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

20 BIOTECHNOLOGY VALUE FUND,
L.P.; BIOTECHNOLOGY VALUE
21 FUND II, L.P.; INVESTMENT 10, L.L.C.;
BVF INVESTMENTS, L.L.C.; BVF INC.;
22 and BVF X, LLC,

23 Plaintiffs,

24 vs.

24 CELERA CORPORATION; CREDIT
SUISSE SECURITIES (USA) LLC;
25 KATHY ORDOÑEZ; RICHARD H.
AYERS; WILLIAM G. GREEN; PETER
26 BARTON HUTT; GAIL K. NAUGHTON;
WAYNE I. ROE; and BENNETT M.
27 SHAPIRO,

28 Defendants.

Case No. CV-13-3248-WHA-DMR

STIPULATION AND ~~PROPOSED~~
ORDER MODIFYING HEARING DATE
FOR SUMMARY JUDGMENT

STIPULATION AND ~~PROPOSED~~ ORDER MODIFYING HEARING
DATE FOR SUMMARY JUDGMENT
Case No. CV-13-3248-WHA

1 In accordance with Civil Local Rules 6-1 and 6-2, the parties – consisting of Plaintiffs
2 Biotechnology Value Fund, L.P., Biotechnology Value Fund II, L.P., Investment 10, L.L.C.,
3 BVF Investments, L.L.C., BVF Inc., and BVF X, LLC (collectively, “Plaintiffs”) and Defendants
4 Celera Corporation, Kathy Ordoñez, Richard H. Ayers, William G. Green, Peter Barton Hutt,
5 Gail K. Naughton, Wayne I. Roe, and Bennett M. Shapiro (collectively, “Celera Defendants”) –
6 respectfully submit this Stipulation, with the accompanying Proposed Order, allowing the Celera
7 Defendants’ anticipated motion for summary judgment to be heard on January 8, 2015, as January
8 1, 2015 is a federal and court holiday.

9 **WHEREAS:**

10 1. On November 1, 2013, the Court entered a Case Management Order (“First
11 Order”) that set the last day to file dispositive motions as November 6, 2014 and further stated:
12 “No dispositive motions shall be heard more than 35 days after this deadline, i.e., if any party
13 waits until the last day to file, then the parties must adhere to the 35-day track in order to avoid
14 pressure on the trial date.” (Docket No. 59 at ¶ 9.)

15 2. On August 12, 2014, at Plaintiffs’ request, the Court entered a Second Case
16 Management Order (“Second Order”), which extended the case management deadlines by adding
17 an additional three weeks, and in relevant part, reset the last day to file dispositive motions as
18 November 27, 2014. (Docket No. 158.) The Court further set the pretrial conference for
19 February 4, 2015 at 2:00 P.M. and set trial to begin on February 17, 2015 at 7:30 A.M. The
20 Second Order does not specifically refer to the timing of any hearing on the motion for summary
21 judgment.

22 3. Defendants intend to file their motion for summary judgment within the deadline
23 set in the case management order. The Celera Defendants anticipate filing their motion for
24 summary judgment prior to November 27, 2014. (Because November 27 is a federal holiday, the
25 Celera Defendants anticipate filing their motion by November 26, 2014.) A problem arises,
26 however, because the first hearing date 35 days after filing is January 1, 2015, which is another
27 federal and court holiday. Filing the anticipated summary judgment motion earlier than the court-
28 ordered deadline also would not solve this problem because, even if the parties were to file a

1 week earlier on November 20, 2014, the first available hearing date would be December 25, 2014
2 – another federal holiday.¹

3 4. The parties, therefore, jointly request that the motion for summary judgment be
4 heard at the Court's civil law and motion calendar on **Thursday, January 8, 2015 at 8:00 A.M.**
5 The parties would also be available any other day during the week of January 5, 2015 if the Court
6 were inclined to specially set the hearing. While the Celera Defendants could attend a hearing on
7 the motion were the Court to set it on Wednesday, December 31, 2014 – which is exactly 35 days
8 after the Celera Defendants expect to file their motion for summary judgment – the Plaintiffs are
9 not available for argument on that date as the partner in charge of the litigation (Joy A. Kruse)
10 and the client (Mark Lampert) are unavailable.

11 5. The parties do not anticipate that this requested modification will have an effect on
12 the schedule as this modification would not interfere with the final pretrial conference, which is
13 set for February 4, 2015.

14 6. All other previous time modifications in the case, whether by stipulation or
15 proposed order, are reflected in the Court's November 1, 2013 First Order (Docket No. 59),
16 August 12, 2014 Second Order (Docket No. 158), and Orders granting and denying requests by
17 the parties to extend briefing with respect to the Fall 2013 motion to dismiss. (*See* Docket Nos.
18 31, 55, 58, and 67.)

19 7. Accordingly, the parties hereby stipulate, subject to the Court's approval, that the
20 Celera Defendants may set the hearing on their anticipated motion for summary judgment on
21 January 8, 2015 at 8:00 A.M.

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23 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that concurrence in
24 the filing of this document has been obtained from each of the signatories.

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27 ¹ Filing on November 20, 2014 would not be realistic in any event because Plaintiffs' expert reply reports were
28 served on November 12, 2014 and the final expert deposition will occur on November 25, 2014.

1 Dated: November 13, 2014

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By: /s/ Karen P. Kimmey
Karen P. Kimmey

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Attorneys for Defendants Celera
Corporation, Kathy Ordoñez, Richard H.
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Hutt, Gail K. Naughton, Wayne I. Roe, and
Bennett M. Shapiro

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9 Dated: November 13, 2014

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By: /s/ Joy A. Kruse
Joy A. Kruse

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Plaintiffs

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PURSUANT TO STIPULATION, IT IS SO ORDERED

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Dated: November 18, 2014

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William Alsup
United States District Judge

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