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 JOHN VARIAN, PAUL D. RUBIN, PATRICK J. SCANNON,  
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 JOSEPH M. LIMBER, W. DENMAN VAN NESS,  
 8 TIMOTHY P. WALBERT, AND JACK L. WYSZOMIERSKI  
 and Nominal Defendant XOMA CORPORATION  
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 12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
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15 JEFFREY CSOKA, derivatively on  
 behalf of XOMA CORPORATION,

16 Plaintiff,

17 v.

18 JOHN VARIAN, PAUL D. RUBIN,  
 19 PATRICK J. SCANNON, WILLIAM K.  
 BOWES, JR., PETER BARTON HUTT,  
 20 JOSEPH M. LIMBER, W. DENMAN VAN  
 NESS, TIMOTHY P. WALBERT,  
 21 AND JACK L. WYSZOMIERSKI,

22 Defendants,

23 And

24 XOMA CORPORATION,

25 Nominal Defendant.  
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Case No. 3:15-CV-05429-JST

**STIPULATION AND ~~PROPOSED~~ ORDER TO  
 RESCHEDULE CASE MANAGEMENT  
 CONFERENCE**

Judge: Honorable Jon S. Tigar

1 Pursuant to Civil Local Rules 6-2 and 7-12, Plaintiff Jeffrey Csoka (“Csoka”), Deborah  
2 A. Fieser (“Fieser”), and Defendants W. Denman Van Ness, William K. Bowes, Jr., Peter Barton  
3 Hutt, Joseph M. Limber, Kelvin M. Neu, Patrick J. Scannon, John Varian, Timothy P. Walbert,  
4 Paul D. Rubin, Jack L. Wyszomierski, and Nominal Defendant XOMA Corporation  
5 (collectively, “Defendants”), by and through their respective counsel, hereby agree and stipulate  
6 that good cause exists to request an order from the Court rescheduling the initial Case  
7 Management Conference currently set for August 23, 2017 in this action and related action at  
8 Case No. 3:15-CV-05236-JST to December 13, 2017, and to adjust accordingly the related  
9 deadlines set forth therein.

10 WHEREAS, Joseph Markette (“Markette”) filed a securities class action lawsuit against  
11 XOMA, John Varian, and Paul Rubin relating to XOMA’s EYEGUARD-B study in the United  
12 States Court for the Northern District of California, captioned *Markette v. XOMA Corp., et. al.*,  
13 3:15-CV-3425-HSG, on July 24, 2015 (the “Securities Action”);

14 WHEREAS, Fieser filed a related shareholder derivative action, captioned *Fieser v. W.*  
15 *Denman Van Ness, et. cal.*, Case No. 3:15-CV-05236-JST, on November 16, 2015 (“*Fieser*  
16 *Derivative Action*”);

17 WHEREAS, Plaintiff Csoka filed this related shareholder derivative action in the United  
18 States Court for the Northern District of California, captioned *Csoka v. John Varian, et. cal.*,  
19 Case No. 3:15-CV-05429-JST, on November 25, 2015 (“*Csoka Derivative Action*”);

20 WHEREAS, as of April 25, 2016, both the *Fieser Derivative Action* and the *Csoka*  
21 *Derivative Action* are before Hon. Jon S. Tigar;

22 WHEREAS, on May 9, 2016, the Court stayed the *Fieser Derivative Action* pending  
23 future developments in the Securities Action;

24 WHEREAS, on May 19, 2016, the Court stayed the *Csoka Derivative Action* pending  
25 future developments in the Securities Action;

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1           WHEREAS, on May 24, 2016, the Court in the Securities Action set a briefing schedule  
2 requiring Markette to file an amended complaint by July 8, 2016, Defendants to respond to the  
3 amended complaint by August 11, 2016; Markette to file an opposition to the response by  
4 September 15, 2016, Defendants to file a reply brief by September 29, 2016, and for the hearing  
5 to be held on October 13, 2016;

6           WHEREAS, on July 8, 2016, Markette filed an amended complaint adding for the first  
7 time Kelvin Neu as a defendant;

8           WHEREAS, on July 22, 2016, the parties in the Securities Action filed a stipulation to  
9 amend the case management schedule;

10           WHEREAS, on July 22, 2016, the Court in the Securities Action granted in part and  
11 denied in part the parties' stipulation to amend the case management schedule, requiring  
12 Defendants to respond to the amended complaint by September 2, 2016; Markette to file an  
13 opposition to the response by October 7, 2016; Defendants to file a reply brief by October 21,  
14 2016; and for the hearing to be held on November 3, 2016;

15           WHEREAS, the parties filed a stipulation to reschedule the initial Case Management  
16 Conference in the *Fieser* Derivative Action on August 16, 2016;

17           WHEREAS, on August 19, 2016, this Court ordered the *Fieser* and *Csoka* Derivative  
18 Actions related, extended the stay, and denied Defendants' stipulation to reschedule the Case  
19 Management Conference in the *Fieser* Derivative Action as moot;

20           WHEREAS, on September 2, 2016, Defendants filed a motion dismiss the Securities  
21 Action;

22           WHEREAS, on September 15, 2016, the Court in the Securities Action continued the  
23 hearing to December 15, 2016;

24           WHEREAS, on October 7, 2016, Plaintiff Markette filed an opposition to Defendants'  
25 motion to dismiss;

26           WHEREAS, on October 21, 2016, Defendants filed a reply in support of their motion to  
27 dismiss;

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1           WHEREAS, on December 14, 2016, the Court in the Securities Action vacated the  
2 hearing previously scheduled for December 15, 2016, and took the pending motion to dismiss  
3 filings under submission;

4           WHEREAS, on May 2, 2017, the parties filed a second stipulation to reschedule the  
5 initial Case Management Conference;

6           WHEREAS, this Court granted the stipulation in the *Fieser* Derivative Action on May 3,  
7 2017, and granted the stipulation in the *Csoka* Derivative Action on May 5, 2017, and  
8 rescheduled the initial Case Management Conference to August 23, 2017;

9           WHEREAS, on May 26, 2017, the Court in the Securities Action ordered the parties in  
10 that action to submit simultaneous supplemental briefing in light of the Ninth Circuit's recent  
11 opinion in *City of Dearborn Heights Act 345 Police & Retirement Sys. v. Align Tech., Inc.*, No.  
12 14-16814, 2017 WL 1753276 (9th Cir. May 5, 2017);

13           WHEREAS, on June 9, 2017, both parties in the Securities Action filed supplemental  
14 briefing in support of their respective motion to dismiss filings;

15           WHEREAS, the Court in the Securities Action has yet to issue an order on the motion to  
16 dismiss;

17           WHEREAS, the initial Case Management Conference is currently scheduled for August  
18 23, 2017 in both the *Fieser* and *Csoka* Derivative Actions;

19           WHEREAS, in light of the current stay of both the *Fieser* and *Csoka* Derivative Actions  
20 and the status of the Securities Action, the parties believe it would be a waste of judicial and  
21 party resources for the Court and the Parties to conduct the Case Management Conference on  
22 August 23, 2017;

23           WHEREAS Fieser, Csoka, and Defendants further agree that the Case Management  
24 Conference should be rescheduled to December 13, 2017, and all related deadlines adjusted  
25 accordingly.

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1 NOW THEREFORE, THE FOLLOWING IS HEREBY STIPULATED by and between  
2 the parties, through their respective counsel:

3 1. The Case Management Conference will be rescheduled to December 13, 2017,  
4 and all related deadlines (including ADR deadlines) adjusted accordingly.

5 IT IS SO STIPULATED.

6 Dated: August 9, 2017

COOLEY LLP

7  
8 /s/ Jessica Valenzuela Santamaria

Jessica Valenzuela Santamaria (220934)

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10 Attorneys for Defendants JOHN VARIAN, PAUL D.  
11 RUBIN, PATRICK J. SCANNON, WILLIAM K.  
12 BOWES, JR., PETER BARTON HUTT, JOSEPH M.  
LIMBER, W. DENMAN VAN NESS, TIMOTHY P.  
WALBERT, AND JACK L. WYSZOMIERSKI and  
Nominal Defendant XOMA CORPORATION

13 Dated: August 9, 2017

LAW OFFICE OF ADAM R. BERNSTEIN  
ADAM BERNSTEIN (132982)

14  
15 /s/ Adam Bernstein

Adam Bernstein (132982)

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28 Attorneys for Plaintiff JEFFREY CSOKA

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Dated: August 9, 2017

GREEN & NOBLIN, P.C.

and

FEDERMAN & SHERWOOD  
WILLIAM B. FEDERMAN

*/s/ Robert S. Green*

Robert S. Green (136183)

Attorneys for Plaintiff DEBORAH A. FIESER

**PURSUANT TO STIPULATION, IT IS SO ORDERED**

DATED: August 10, 2017



Honorable Jon S. Tigar  
United States District Judge

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**ATTESTATION OF CONCURRENCE IN FILING**

Pursuant to Local Rule 5-1 of The United States District Court for the Northern District of California, I, Jessica Valenzuela Santamaria, hereby attest that the concurrence to the filing of the foregoing document has been obtained from Adam Bernstein and Robert S. Green, who provided the conformed signatures above.

Dated: August 9, 2017 COOLEY LLP

*/s/ Jessica Valenzuela Santamaria*  
\_\_\_\_\_  
Jessica Valenzuela Santamaria (220934)

Attorneys for Defendants JOHN VARIAN, PAUL D. RUBIN, PATRICK J. SCANNON, WILLIAM K. BOWES, JR., PETER BARTON HUTT, JOSEPH M. LIMBER, W. DENMAN VAN NESS, TIMOTHY P. WALBERT, AND JACK L. WYSZOMIERSKI and Nominal Defendant XOMA CORPORATION