

THE HONORABLE THOMAS S. ZILLY

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARTIN TUTSCHEK, Derivatively on
Behalf of COCRYSTAL PHARMA, INC.,

No. 2:19-cv-01775 TSZ

Plaintiff,

STIPULATED MOTION AND ORDER

v.

RAYMOND SCHINAZI, GARY WILCOX,
PHILLIP FROST, JANE HSIAO, STEVE
RUBIN, DAVID S. BLOCK, ELLIOT
MITCHELL MAZA, JEFFREY MECKLER,
BRIAN KELLER, TODD BRADY, BARRY
HONIG, MICHAEL BRAUSER, JOHN
STETSON, and JOHN O'ROURKE,

Defendants,

and

COCRYSTAL PHARMA, INC.,

Nominal Defendant.

I. STIPULATED MOTION

WHEREAS, on November 1, 2019, Plaintiff Martin Tutschek ("Plaintiff") filed in this Court a Verified Stockholder Derivative Complaint (the "Complaint") (ECF No. 1) on behalf of nominal defendant Cocrysal Pharma, Inc. ("Cocrysal"), captioned *Tutschek v. Schinazi, et al.*, Case No. 19-cv-01775-TSZ (the "Action");

STIPULATED MOTION AND ORDER
(Case No. 2:19-cv-01775 TSZ) – 1

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1 WHEREAS, the Complaint names as defendants Raymond Schinazi, Gary Wilcox,
2 Phillip Frost, Jane Hsiao, Steve Rubin, David S. Block, Jeffrey Meckler and Todd Brady
3 (collectively, the "Individual Cocystal Defendants"), who are current or former directors or
4 officers of Cocystal, and Elliot Mitchell Maza and Brian Keller (collectively with the Individual
5 Cocystal Defendants, the "Officer/Director Defendants"), who are former officers of Cocystal's
6 predecessor, BioZone Pharmaceuticals, Inc. ("BioZone"), and generally alleges that these
7 Officer/Director Defendants breached fiduciary duties to shareholders of Cocystal or BioZone
8 by failing to disclose an alleged scheme to artificially inflate the price of BioZone's stock;

9 WHEREAS the Complaint also names as defendants Barry Honig, Michael Brauser, John
10 Stetson, and John O'Rourke (collectively, the "Shareholder Defendants" and, together with the
11 Officer/Director Defendants and Cocystal, the "Defendants"), who are alleged to be controlling
12 shareholders of Cocystal, and generally alleges that these Shareholder Defendants breached
13 fiduciary duties by engaging in a "pump and dump" scheme that artificially inflated the price of
14 BioZone stock, and otherwise engaged in related-party transactions that benefited themselves or
15 entities that were either controlled or affiliated with them;

16 WHEREAS, a related securities class action lawsuit, captioned *Pepe v. Cocystal*
17 *Pharma, Inc., et al.*, No. 2:18-cv-14091-KM-JBC, is pending in the United States District Court
18 for the District of New Jersey (the "Securities Class Action");

19 WHEREAS, the plaintiff in the Securities Class Action asserts federal securities claims
20 against certain defendants who are also named as defendants in this Action—including certain
21 current or former officers of Cocystal and former officers of BioZone—arising from facts
22 common to those alleged in this Action;

23 WHEREAS, the plaintiff in the Securities Class Action filed an amended complaint (ECF
24 No. 37) on June 25, 2019;

25 WHEREAS, the court in the Securities Class Action entered a stipulated order on
26 October 21, 2019, directing that the "Stipulating Defendants" in that case would not be required

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1 to answer, move to dismiss, or otherwise respond to the plaintiff's amended complaint until after
2 the parties to the Securities Class Action had engaged in mediation of the claims asserted in the
3 Securities Class Action and reported to the District Court on the outcome of the mediation
4 efforts;

5 WHEREAS, the parties to the Securities Class Action engaged in mediation on
6 November 22, 2019, before the Honorable Jose Linares (Ret.);

7 WHEREAS, the parties to the Securities Class Action did not achieve a settlement on
8 November 22, 2019, but are continuing to work with the mediator in an attempt to reach an
9 agreed resolution;

10 WHEREAS, on January 16, 2019, Plaintiff Susan S. Church filed a Verified Stockholder
11 Derivative Complaint (the "*Church* Complaint") (ECF No. 1) on behalf of nominal defendant
12 Cocrystal, captioned *Church v. Maza, et al.*, No. 2:19-cv-00080-TSZ (the "*Church* Derivative
13 Action");

14 WHEREAS, the *Church* Complaint alleges claims against some of the same individuals
15 who are defendants in this Action based on the same alleged misconduct;

16 WHEREAS, on April 9, 2019, this Court entered a stipulated order in the *Church*
17 Derivative Action pursuant to which all proceedings, including any motion practice, obligation to
18 respond to the *Church* Complaint and any amended complaint, and all discovery and disclosure
19 obligations or deadlines under the applicable local and federal rules or previously-issued Orders
20 of the Court were stayed until (1) the Securities Class Action is dismissed, with prejudice, and all
21 appeals related thereto have been exhausted; (2) any defendant's motion to dismiss the Securities
22 Class Action is denied in whole or in part; or (3) the stay is modified by stipulation of the parties
23 to the *Church* Derivative Action as ordered by the Court, or by the Court pursuant to a motion;

24 WHEREAS, counsel for Plaintiff and counsel for Defendants Raymond Schinazi, Gary
25 Wilcox, Jane Hsiao, Steve Rubin, David S. Block, Jeffrey Meckler and Todd Brady, and
26 Nominal Defendant Cocrystal Pharma, Inc. (collectively with Plaintiff, the "Stipulating Parties"),

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1 who are all the parties who have appeared in the Action, have conferred regarding the status of
2 the Action, the Securities Class Action, the *Church* Derivative Action, and the appropriate next
3 steps;

4 WHEREAS, the Stipulating Parties agree, as did the stipulating parties in the *Church*
5 Derivative Action, that resolution of the related Securities Class Action will have a bearing on
6 the claims asserted in this Action;

7 WHEREAS, based on the overlapping parties and factual allegations in the Action and in
8 the Securities Class Action and the likely impact of the resolution of the Securities Class Action
9 on the claims in the Action, and to avoid the unnecessary expenditure of judicial and party
10 resources, the Stipulating Parties have agreed, subject to this Court's approval, as did the
11 stipulating parties in the *Church* Derivative Action, to a limited stay of the Action until (1) the
12 Securities Class Action is dismissed, with prejudice, and all appeals related thereto have been
13 exhausted; (2) any defendant's motion to dismiss the Securities Class Action is denied in whole
14 or in part; (3) the stay is modified by stipulation of the parties to the Action as ordered by the
15 Court, or by the Court pursuant to a motion; or (4) in the event a related derivative action is not
16 stayed, plaintiff may lift the stay upon thirty (30) days' notice, by email, to defendants' counsel;

17 WHEREAS, such a stay in this Action is consistent with the terms of the Stay Order in
18 the *Church* Derivative Action;

19 WHEREAS, counsel for the Stipulating Parties have conferred with out-of-state counsel
20 for defendant Brauser, who has not yet appeared in the Action, and counsel for defendant
21 Brauser acknowledges that defendant Brauser has been served with the complaint in this action,
22 reserving all rights and defenses, and consents to the relief requested in this Stipulation and
23 Proposed Order;

24 WHEREAS, defendant Brian Keller was served with the Complaint on November 20,
25 2019 and an affidavit of service was filed with the Court on November 26, 2019 (ECF No. 11),
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1 and Mr. Keller has not yet appeared in the Action, and the Stipulating Parties do not know his
2 opinion on the relief requested in this Stipulation and Proposed Order;

3 WHEREAS, counsel for the Stipulating Parties have conferred with out-of-state counsel
4 for defendant John O'Rourke, who has not yet appeared in this Action, and counsel for Mr.
5 O'Rourke has agreed to the relief requested in this Stipulation and Proposed Order;

6 WHEREAS, counsel for the Stipulating Parties have conferred with out-of-state counsel
7 for defendant Maza, who has not yet appeared in the Action, and counsel for defendant Maza has
8 executed a waiver of service on behalf of defendant Maza, reserving all rights and defenses other
9 than insufficient service of process, and consents to the relief requested in this Stipulation and
10 Proposed Order;

11 WHEREAS, counsel for the Stipulating Parties have conferred with out-of-state counsel
12 for defendant Phillip Frost, who has not yet appeared in the Action, and counsel for Dr. Frost has
13 agreed to accept service of the Complaint on behalf of Dr. Frost, reserving all rights and defenses
14 other than insufficient service of process, and consents to the relief requested in this Stipulation
15 and Proposed Order;

16 WHEREFORE, the Stipulating Parties, through their undersigned counsel, hereby agree,
17 stipulate, and respectfully request that the Court enter an Order as follows:

18 1. Undersigned counsel for Defendants who are parties to this Stipulated Motion
19 agree to accept service of the Complaint in the Action on behalf of each of the Defendants they
20 represent, but each such Defendant expressly reserves all rights and defenses other than
21 insufficient service of process.

22 2. Except as noted below, all proceedings, including any motion practice, obligation
23 to respond to the Complaint and any amended complaint, and all discovery and disclosure
24 obligations or deadlines under the applicable local and federal rules or previously-issued Orders
25 of this Court in the Action are hereby stayed until further order of the Court.

1 3. Defendants shall promptly notify Plaintiff's undersigned counsel of any related
2 shareholder derivative actions filed nominally on behalf of Cocystal of which they become
3 aware.

4 4. Defendants shall promptly notify Plaintiff's undersigned counsel if any such
5 related derivative action is not stayed. In the event that any such related derivative action is not
6 stayed, Plaintiff may move to lift the stay of this Action upon thirty (30) days' notice, by email,
7 to Defendants' undersigned counsel.

8 5. During the stay, Plaintiff may file an amended complaint, but Defendants need
9 not answer, move to dismiss, or otherwise respond to any amended complaint during the
10 pendency of the stay.

11 6. Either during the stay, or shortly after termination of the stay, the parties to this
12 Action and the *Church* Derivative Action may move to consolidate this Action with the *Church*
13 Derivative Action.

14 7. All pending deadlines, hearings, or conferences are vacated until after the stay is
15 lifted.

16 8. Within fourteen (14) days after the Securities Class Action is resolved, or a
17 motion to dismiss the Securities Class Action is denied, **or by July 31, 2020**, whichever occurs
18 earliest, the parties to this Action shall file a Joint Status Report.

19 DATED: December 11, 2019.

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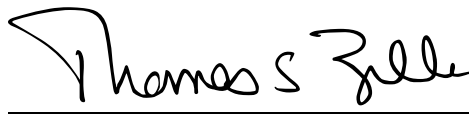
*Attorneys for Defendants Raymond Schinazi,
Gary Wilcox, Jane Hsiao, Steve Rubin,
David S. Block, Jeffrey Meckler and Todd
Brady, and Nominal Defendant Cocrystal
Pharma, Inc.*

11 **II. ORDER**

12 The parties' stipulated motion, docket no. 15, is GRANTED as amended, without
13 prejudice to the right of any defendant who has not yet appear to oppose the relief granted herein.

14 IT IS SO ORDERED.

15 DATED this 17th day of December, 2019.

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18 Thomas S. Zilly
19 United States District Judge
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