

CLERK OF THE COURT

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NATASHA A. LANDRUM, ESQ.
Nevada Bar No. 7414

DAVID S. DAVIS, ESQ.
Nevada Bar No. 11549

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Attorneys for Plaintiff Michael Kirsch

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL KIRSCH, derivatively on behalf
of GALECTIN THERAPEUTICS, INC.,

Plaintiff,

-vs-

PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN
F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; and DR.
MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada corporation,

Nominal Defendant.

CASE NO. A-14-706397-B

DEPT. NO. XI

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION TO
CORRECT ORDER RE: MOTIONS TO
DISMISS SHAREHOLDER DERIVATIVE
ACTION PURSUANT TO NRCp 60**

Date of Hearing: 5-25-16
Time of Hearing: Chambers

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1 DAVID L. HASBROUCK and SIU YIP,
2 derivatively on behalf of GALECTIN
3 THERAPEUTICS, INC.,

4
5 Plaintiffs-Intervenors,

6 -vs-

7 PETER G. TRABER; JAMES C. CZIRR;
8 JACK W. CALLICUTT; GILBERT F.
9 AMELIO; KEVIN D. FREEMAN; ARTHUR
10 R. GREENBERG; ROD D. MARTIN; JOHN
11 F. MAULDIN; STEVEN PRELACK;
12 HERMAN PAUL PRESSLER, III; DR.
13 MARC RUBIN; and 10X FUND, L.P.,

14 Defendants,

15 -and-

16 GALECTIN THERAPEUTICS, INC., a
17 Nevada corporation,

18 Nominal Defendant.

19
20 **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO CORRECT**
21 **ORDER RE: MOTIONS TO DISMISS SHAREHOLDER DERIVATIVE ACTION**
22 **PURSUANT TO NRCP 60**
23
24

25 ///

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27 ///

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1 PLEASE TAKE NOTICE that an *Order Denying Defendants' Motion to Correct Order*
2 *Re: Motions To Dismiss Shareholder Derivative Action Pursuant to NRCP 60* was entered on
3 June 15, 2016, a copy of which is attached hereto.

4 DATED this 16th day of June, 2016.

5 LEE, HERNANDEZ, LANDRUM
6 & GAROFALO

7 By: 

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ORDER

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL KIRSCH, derivatively on behalf
of GALECTIN THERAPEUTICS, INC.,

Plaintiff,

-vs-

PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN
F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; and DR.
MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada corporation,

Nominal Defendant.

CASE NO. A-14-706397-B

DEPT. NO. XI

**[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO CORRECT
ORDER RE: MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION
PURSUANT TO NRCP 60**

Date of Hearing: May 27, 2016
Time of Hearing: IN CHAMBERS

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1 DAVID L. HASBROUCK and SIU YIP,
2 derivatively on behalf of GALECTIN
3 THERAPEUTICS, INC.,

4 Plaintiffs-Intervenors,

5 -vs-

6 PETER G. TRABER; JAMES C. CZIRR;
7 JACK W. CALLICUTT; GILBERT F.
8 AMELIO; KEVIN D. FREEMAN; ARTHUR
9 R. GREENBERG; ROD D. MARTIN; JOHN
10 F. MAULDIN; STEVEN PRELACK;
11 HERMAN PAUL PRESSLER, III; DR.
12 MARC RUBIN; and 10X FUND, L.P.,

13 Defendants,

14 -and-

15 GALECTIN THERAPEUTICS, INC., a
16 Nevada corporation,

17 Nominal Defendant.

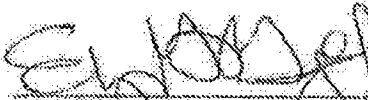
18 **[PROPOSED] ORDER DENYING DEFENDANTS' MOTION**
19 **TO CORRECT ORDER RE: MOTIONS TO DISMISS SHAREHOLDER**
20 **DERIVATIVE ACTION PURSUANT TO NRCP 60**

21 This matter having come before the Court in chambers on May 27, 2016, on Defendants'
22 Peter G. Traber, James C. Czirr, Jack W. Callicutt, Gilbert F. Amelio, Kevin D. Freeman, Arthur
23 R. Greenberg, Rod D. Martin, John F. Mauldin, Steven Prelack, Herman Paul Pressler, III, and
24 Dr. Marc Rubin (the "Individual Defendants") together with Defendant 10X Fund L.P. ("10X
25 Fund") and Nominal Defendant Galectin Therapeutics, Inc. ("Galectin" or the "Company")
26 (collectively, the Individual Defendants, 10X Fund and Galectin are referred to herein as
27 "Defendants") Motion to Correct Order re: Motions to Dismiss Shareholder Derivative Action
28 Pursuant to NRCP 60, the Court having reviewed the Motion, all briefing thereon and supporting
exhibits, and other good cause appearing:

///

1 IT IS HEREBY ORDERED AND ADJUDGED that Defendants' April 5, 2016 Motion to
2 Correct Order re: Motions to Dismiss Shareholder Derivative Action Pursuant to NRCP 60 is
3 DENIED.

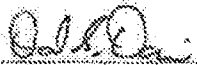
4 Dated this 11th day of June, 2016.

5 
6 DISTRICT COURT JUDGE

7
8 Submitted by:

9 LEE, HERNANDEZ, LANDRUM
10 & GAROFALO

11 By:

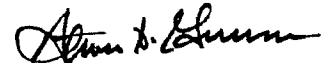
12 
13 NATASHA A. LANDRUM, ESQ.
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Exhibit “8”

Exhibit “8”

1 ORDR



CLERK OF THE COURT

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 MICHAEL KIRSCH, derivatively on behalf
5 of GALECTIN THERAPEUTICS, INC.,

6 Plaintiff,

7 -vs-

8 PETER G. TRABER; JAMES C. CZIRR;
9 JACK W. CALLICUTT; GILBERT F.
10 AMELIO; KEVIN D. FREEMAN; ARTHUR
11 R. GREENBERG; ROD D. MARTIN; JOHN
F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; and DR.
MARC RUBIN,

12 Defendants,

13 -and-

14 GALECTIN THERAPEUTICS, INC., a
15 Nevada corporation,

16 Nominal Defendant.

CASE NO. A-14-706397-B

DEPT. NO. XI

**ORDER RE: MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016
Time of Hearing: 8:30 a.m.

1 DAVID L. HASBROUCK and SIU YIP,
2 derivatively on behalf of GALECTIN
3 THERAPEUTICS, INC.,

4
5 Plaintiffs-Intervenors,

6 -vs-

7 PETER G. TRABER; JAMES C. CZIRR;
8 JACK W. CALLICUTT; GILBERT F.
9 AMELIO; KEVIN D. FREEMAN; ARTHUR
10 R. GREENBERG; ROD D. MARTIN; JOHN
11 F. MAULDIN; STEVEN PRELACK;
12 HERMAN PAUL PRESSLER, III; DR.
13 MARC RUBIN; and 10X FUND, L.P.,

14 Defendants,

15 -and-

16 GALECTIN THERAPEUTICS, INC., a
17 Nevada corporation,

18 Nominal Defendant.

19
20 **ORDER RE: MOTIONS TO DISMISS SHAREHOLDER DERIVATIVE ACTION**

21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
22 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard
25 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.
26 As grounds for its ruling, the Court finds:

27 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
28 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who allege that
they are shareholders of Nominal Defendant Galectin Therapeutics Inc. ("Galectin"), a Nevada
corporation.

1 A shareholder seeking to assert claims derivatively on behalf of a Nevada
corporation must, among other things, either (i) make a pre-suit demand on the company's board

1 of directors or (ii) plead particularized facts establishing legal excuse for the failure to do so.

2 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
3 instead asserted in their complaints that such a demand was excused under Nevada law.

4 4. On June 11, 2015, the Court held a hearing on various motions filed by the parties
5 and proposed Intervenor. On August 10, 2015, the Court entered an order: (i) granting
6 Intervenor Plaintiffs Hasbrouck's and Yip's motion to intervene in this case;¹ (ii) denying
7 Defendants' motion to dismiss Mr. Kirsch's Second Amended Shareholder Derivative
8 Complaint; (iii) staying this action for 180 days pending *In re Galectin Therapeutics, Inc.*
9 *Derivative Litigation*, Lead Case No.: 1:15-CV-00208-SCJ in the United States District Court
10 for the Northern District of Georgia (the "Georgia Action"); and (iv) ordering the parties to file
11 a status report by December 11, 2015 addressing the status of the Georgia Action.
12

13 5. This Court's August 10, 2015 order staying the case for 180 days was based upon
14 representations made to the Court by Mr. Smith at the June 11, 2015 hearing that issues raised in
15 Georgia relate to class representations issues.
16

17 6. Although the Court's August 10, 2015 order was a substantive ruling on the issue
18 of demand futility, which was reached following briefing and oral argument regarding that issue,
19 it was not a final order under Nevada law.

20 7. On December 30, 2015, United States District Court Judge Steven C. Jones of the
21 United States District Court for the Northern District of Georgia, entered a final order and
22 judgment (the "Prior Final Judgment") (i) holding that under Nevada law, Intervenor Plaintiffs
23 David L. Hasbrouck and Siu Yip failed to adequately plead the futility of a pre-suit demand on
24 Galectin's board of directors in their prior-filed and substantively identical Georgia Action and
25 (ii) dismissing the Georgia Action with prejudice.
26

27 ¹ Intervenor Plaintiffs Hasbrouck and Yip filed their Verified Shareholder Complaint-in-
28 Intervention (the "Complaint-in-Intervention") on July 9, 2015.

1 8. A prior final judgment by a United States District Court has preclusive effect in
2 Nevada as to an issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was
3 "actually litigated in the prior litigation," and (3) was "a critical and necessary part of the earlier
4 judgment," provided that the person against whom preclusion is sought to be applied was either
5 a party to the prior final judgment or a nonparty who was "adequately represented by someone
6 with the same interest who [wa]s a party to the suit." *Bower v. Harrah's Laughlin, Inc.*, 125
7 Nev. 470, 480, 215 P.3d 709, 717 (Nev. 2009).

8 9. The Court finds that each of the above requirements for application of issue
9 preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately pled
10 demand futility in their complaints in this action. Based on this finding and the standards set
11 forth above, this Court determines that it must give preclusive effect to the Prior Final
12 Judgment's ruling on demand futility and grant Defendants' motions to dismiss, the Complaint-
13 in-Intervention and this entire action.
14

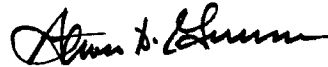
15 IT IS HEREBY ORDERED AND ADJUDGED that this action is dismissed with
16 prejudice.
17

18 Dated this 1 day of March, 2016.

19
20 
21 DISTRICT COURT JUDGE
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Exhibit “9”

Exhibit “9”



CLERK OF THE COURT

1 **NODP**

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3 Nevada Bar No. 5781

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9 landerson@kcnvlaw.com

10 Attorney for Defendants

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 MICHAEL KIRSCH, derivatively on behalf of
14 GALECTIN THERAPEUTICS, INC.,

Case No. A-14-706397-B

15 Plaintiff,

Dept. No. XI

16 vs.

17 PETER G. TRABER; JAMES C. CZIRR;
18 JACK W. CALLICUTT; GILBERT F.
19 AMELIO; KEVIN D. FREEMAN; ARTHUR
20 R. GREENBERG; ROD D. MARTIN; JOHN
21 F. MAULDIN; STEVEN PRELACK;
22 HERMAN PAUL PRESSLER, III; and DR.
23 MARC RUBIN,

**NOTICE OF ENTRY OF ORDER
DISMISSING ACTION WITH
PREJUDICE**

24 Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

Nominal Defendant.

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YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Dismissing
this Action with Prejudice was entered in the above entitled matter on the 1st day of April, 2016.
A copy of said Order is attached hereto.

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DATED this 21st day of June, 2016.

KAEMPFER CROWELL

BY: /s/ Lyssa S. Anderson
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Nevada Bar No. 5781
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
Tel: (702) 792-7000
Fax: (702) 796-7181
Attorneys for Defendants

KAEMPFER CROWELL RENSHAW
GROMAUER & FLORENTINO
1980 Festival Plaza Drive
Suite 650
Las Vegas, Nevada 89135

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2016, I forwarded copies of the foregoing **NOTICE OF ENTRY ORDER REGARDING DISMISSING ACTION WITH PREJUDICE** by ECF and/or U.S. Mail to the following attorneys of record:

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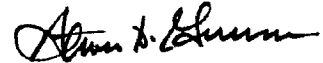
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/s/ Becky Hildebrand
an employee of Kaempfer Crowell

1. **ORDR**



CLERK OF THE COURT

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 MICHAEL KIRSCH, derivatively on behalf
5 of GALECTIN THERAPEUTICS, INC.,

6 Plaintiff,

7 -vs-

8 PETER G. TRABER; JAMES C. CZIRR;
9 JACK W. CALLICUTT; GILBERT F.
10 AMELIO; KEVIN D. FREEMAN; ARTHUR
11 R. GREENBERG; ROD D. MARTIN; JOHN
12 F. MAULDIN; STEVEN PRELACK;
13 HERMAN PAUL PRESSLER, III; and DR.
14 MARC RUBIN,

12 Defendants,

13 -and-

14 GALECTIN THERAPEUTICS, INC., a
15 Nevada corporation,

16 Nominal Defendant.

CASE NO. A-14-706397-B

DEPT. NO. XI

**ORDER RE: MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016

Time of Hearing: 8:30 a.m.

1 DAVID L. HASBROUCK and SIU YIP,
2 derivatively on behalf of GALECTIN
3 THERAPEUTICS, INC.,

4
5 Plaintiffs-Intervenors,

6 -vs-

7 PETER G. TRABER; JAMES C. CZIRR;
8 JACK W. CALLICUTT; GILBERT F.
9 AMELIO; KEVIN D. FREEMAN; ARTHUR
10 R. GREENBERG; ROD D. MARTIN; JOHN
11 F. MAULDIN; STEVEN PRELACK;
12 HERMAN PAUL PRESSLER, III; DR.
13 MARC RUBIN; and 10X FUND, L.P.,

14 Defendants,

15 -and-

16 GALECTIN THERAPEUTICS, INC., a
17 Nevada corporation,

18 Nominal Defendant.

19 **ORDER RE: MOTIONS TO DISMISS SHAREHOLDER DERIVATIVE ACTION**

20 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
21 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
22 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
23 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard
24 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.
25 As grounds for its ruling, the Court finds:

26 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
27 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who allege that
28 they are shareholders of Nominal Defendant Galectin Therapeutics Inc. ("Galectin"), a Nevada
corporation.

1 A shareholder seeking to assert claims derivatively on behalf of a Nevada
corporation must, among other things, either (i) make a pre-suit demand on the company's board

1 of directors or (ii) plead particularized facts establishing legal excuse for the failure to do so.

2 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
3 instead asserted in their complaints that such a demand was excused under Nevada law.

4 4. On June 11, 2015, the Court held a hearing on various motions filed by the parties
5 and proposed Intervenor. On August 10, 2015, the Court entered an order: (i) granting
6 Intervenor Plaintiffs Hasbrouck's and Yip's motion to intervene in this case;¹ (ii) denying
7 Defendants' motion to dismiss Mr. Kirsch's Second Amended Shareholder Derivative
8 Complaint; (iii) staying this action for 180 days pending *In re Galectin Therapeutics, Inc.*
9 *Derivative Litigation*, Lead Case No.: 1:15-CV-00208-SCJ in the United States District Court
10 for the Northern District of Georgia (the "Georgia Action"); and (iv) ordering the parties to file
11 a status report by December 11, 2015 addressing the status of the Georgia Action.
12

13 5. This Court's August 10, 2015 order staying the case for 180 days was based upon
14 representations made to the Court by Mr. Smith at the June 11, 2015 hearing that issues raised in
15 Georgia relate to class representations issues.
16

17 6. Although the Court's August 10, 2015 order was a substantive ruling on the issue
18 of demand futility, which was reached following briefing and oral argument regarding that issue,
19 it was not a final order under Nevada law.

20 7. On December 30, 2015, United States District Court Judge Steven C. Jones of the
21 United States District Court for the Northern District of Georgia, entered a final order and
22 judgment (the "Prior Final Judgment") (i) holding that under Nevada law, Intervenor Plaintiffs
23 David L. Hasbrouck and Siu Yip failed to adequately plead the futility of a pre-suit demand on
24 Galectin's board of directors in their prior-filed and substantively identical Georgia Action and
25 (ii) dismissing the Georgia Action with prejudice.
26

27 ¹ Intervenor Plaintiffs Hasbrouck and Yip filed their Verified Shareholder Complaint-in-
28 Intervention (the "Complaint-in-Intervention") on July 9, 2015.

8. A prior final judgment by a United States District Court has preclusive effect in Nevada as to an issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was "actually litigated in the prior litigation," and (3) was "a critical and necessary part of the earlier judgment," provided that the person against whom preclusion is sought to be applied was either a party to the prior final judgment or a nonparty who was "adequately represented by someone with the same interest who [wa]s a party to the suit." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev. 2009).

9. The Court finds that each of the above requirements for application of issue preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately pled demand futility in their complaints in this action. Based on this finding and the standards set forth above, this Court determines that it must give preclusive effect to the Prior Final Judgment's ruling on demand futility and grant Defendants' motions to dismiss, the Complaint-in-Intervention and this entire action.

IT IS HEREBY ORDERED AND ADJUDGED that this action is dismissed with prejudice.

Dated this 1 day of ~~March~~, 2016.

DISTRICT COURT JUDGE

1 Respectfully submitted by:

2 **KAEMPFER CROWELL**

3 s/ Lyssa S. Anderson

4 LYSSA S. ANDERSON

5 Nevada Bar No. 5781

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7 Las Vegas, Nevada 89113

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11 *Attorneys for Nominal Defendant*

12 *Galectin Therapeutics, Inc. and*

13 *Individual Defendants Peter G. Traber,*

14 *James C. Czirr, Jack W. Callicutt,*

15 *Gilbert F. Amelio, Kevin D. Freeman,*

16 *Arthur R. Greenberg, Rod. D. Martin,*

17 *John F. Mauldin, Steven Prelack,*

18 *Herman Paul Pressler, III, and Dr. Marc Rubin*

19 Approved as to form and content:

20 **LEE, HERNANDEZ, LANDRUM & GAROFALO**

21 Natasha A. Landrum

22 David S. Davis

23 7575 Vegas Drive, Suite 150

24 Las Vegas, Nevada 89128

Attorneys for Plaintiff Michael Kirsch

ALDRICH LAW FIRM, LTD.

John P. Aldrich

1601 S. Rainbow Drive, Suite 160

Las Vegas, Nevada 89146

Attorney for Intervenor Plaintiffs David L. Hasbrouck and Siu Yip

Exhibit D

Lee, Ben

From: Lee, Ben
Sent: Thursday, March 17, 2016 11:21 AM
To: EdMillerEsq@aol.com
Cc: Smith, Michael; Pope, Warren; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; MichaelF@johnsonandweaver.com; jmf@weiserlawfirm.com; bds@weiserlawfirm.com; jaldrich@johnaldrichlawfirm.com; joshualifshitz@gmail.com
Subject: RE: Kirsch_ [Proposed] Order granting motions to dismiss.DOC
Attachments: Clean K&S Proposed Order 03172016.doc; Redline 03172016.docx

Ed:

Please see our further edits to the document you sent last night. I have attached clean revised and redlined versions. Please let us know if this version is acceptable or send any further comments as soon as possible, as we would like to get the proposed order to the Court today.

Regards,
Ben

From: EdMillerEsq@aol.com [mailto:edmilleresq@aol.com]
Sent: Wednesday, March 16, 2016 5:13 PM
To: Lee, Ben
Cc: Smith, Michael; Pope, Warren; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; MichaelF@johnsonandweaver.com; jmf@weiserlawfirm.com; bds@weiserlawfirm.com; jaldrich@johnaldrichlawfirm.com; joshualifshitz@gmail.com
Subject: Re: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Here it is Ben.

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: edmilleresq <edmilleresq@aol.com>
Cc: Smith, Michael <mrsmith@KSLAW.com>; Pope, Warren <WPope@KSLAW.com>; NLandrum <NLandrum@lee-lawfirm.com>; ddavis <ddavis@lee-lawfirm.com>; Michael Fistel Jr. <MichaelF@johnsonandweaver.com>; James Ficaro (jmf@weiserlawfirm.com) <jmf@weiserlawfirm.com>; 'Brett Stecker' (bds@weiserlawfirm.com) <bds@weiserlawfirm.com>; 'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com) <jaldrich@johnaldrichlawfirm.com>; Josh Lifshitz (joshualifshitz@gmail.com) <joshualifshitz@gmail.com>
Sent: Wed, Mar 16, 2016 5:08 pm
Subject: RE: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Ed:

Based on our telephone call yesterday, my understanding is that Plaintiffs are generally in agreement with the contents of the proposed order we circulated last week but wish to proposed some additional language tracking the Court's statements at the March 3 hearing to the effect that its earlier order denying prior motions to dismiss Mr. Kirsch's Second Amended Complaint was not a final order. Do you still anticipate sending the proposed additional language today?

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

From: Lee, Ben

Sent: Monday, March 07, 2016 6:38 PM

To: edmilleresq@aol.com; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; Michael Fistel Jr.; James Ficaro (jmf@weiserlawfirm.com); 'Brett Stecker' (bds@weiserlawfirm.com); 'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com)

Cc: Smith, Michael; Pope, Warren

Subject: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Counsel:

Pursuant to the Court's direction at the March 3, 2016 hearing that Defendants prepare a proposed order granting their motions to dismiss, please see the attached and let us know if we may submit it with your approval.

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

King & Spalding Confidentiality Notice:

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1 **ORDER**

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7 Telephone: (702) 792-7000
8 Fax: (702) 796-7181
9 landerson@kcnvlaw.com

10 *Attorney for Defendants*

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 MICHAEL KIRSCH, derivatively on behalf of
10 GALECTIN THERAPEUTICS, INC.,

11 Plaintiff,

12 vs.

13 PETER G. TRABER; JAMES C. CZIRR;
14 JACK W. CALLICUTT; GILBERT F.
15 AMELIO; KEVIN D. FREEMAN; ARTHUR
16 R. GREENBERG; ROD D. MARTIN; JOHN
17 F. MAULDIN; STEVEN PRELACK;
18 HERMAN PAUL PRESSLER, III; and DR.
19 MARC RUBIN,

20 Defendants,

21 -and-

22 GALECTIN THERAPEUTICS, INC., a
23 Nevada Corporation,

24 Nominal Defendant.

Case No. A-14-706397-B

Dept. No. XI

[PROPOSED]

ORDER AND FINAL JUDGMENT RE:

**MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016

Time of Hearing: 8:30 a.m.

21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
22 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard

1 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.

2 As grounds for its ruling, the Court finds:

- 3 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
4 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who
5 allege that they are shareholders of Nominal Defendant Galectin Therapeutics Inc.
6 ("Galectin"), a Nevada corporation.
- 7 2. A shareholder seeking to assert claims derivatively on behalf of a Nevada corporation
8 must, among other things, either (i) make a pre-suit demand on the company's board
9 of directors or (ii) plead particularized facts establishing legal excuse for the failure to
10 do so. *See* NRCP 23.1; *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1179 (Nev.
11 2006).
- 12 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
13 instead asserted in their complaints that such a demand was excused under Nevada
14 law.
- 15 4. On June 11, 2015, the Court held a hearing on various motions filed by the parties
16 and proposed Intervenor. As memorialized in the Court's June 11, 2015 Minute
17 Order, the June 11, 2015 hearing transcript, and in subsequent written orders of the
18 Court entered on July 30, 2015 and August 10, 2015, the Court: (i) granted
19 Intervenor Plaintiffs Hasbrouck's and Yip's motion to intervene in this case;¹ (ii)
20 denied Defendants' motion to dismiss Mr. Kirsch's Second Amended Shareholder
21 Derivative Complaint (the "SAC") "at this point"; (iii) stayed this action for 180 days
22 pending *In re Galectin Therapeutics, Inc. Derivative Litigation*, Lead Case No.: 1:15-
23 CV-00208-SCJ in the United States District Court for the Northern District of

24 ¹ Intervenor Plaintiffs Hasbrouck and Yip filed their Verified Shareholder Complaint-in-
Intervention (the "Complaint-in-Intervention") on July 9, 2015.

Georgia (the "Georgia Action"); and (iv) ordered the parties to file a status report by December 11, 2015 addressing the status of the Georgia Action..

5. This Court finds that its denial of Defendants' earlier motion to dismiss heard at the June 11, 2015 hearing was not a final order under Nevada law.

6. On December 30, 2015, United States District Court Judge Steven C. Jones of the United States District Court for the Northern District of Georgia, entered a final order and judgment (the "Prior Final Judgment") (i) holding that under Nevada law, Intervenor Plaintiffs David L. Hasbrouck and Siu Yip failed to adequately plead the futility of a pre-suit demand on Galectin's board of directors in their prior-filed and substantively identical Georgia Action and (ii) dismissing the Georgia Action with prejudice.

7. A prior final judgment by a United States District Court in a case based on federal question jurisdiction like the Georgia Action has preclusive effect in Nevada as to an issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was "actually litigated in the prior litigation," and (3) was "a critical and necessary part of the earlier judgment," provided that the person against whom preclusion is sought to be applied was either a party to the prior final judgment or a nonparty who was "adequately represented by someone with the same interest who [wa]s a party to the suit." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev. 2009) (citation and internal quotation marks omitted).

8. The Court finds that each of the above requirements for application of issue preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately pled demand futility in their complaints in this action. Based on this finding and the standards set forth above, this Court determines that it must give preclusive effect to

1 the Prior Final Judgment's ruling on demand futility and grant Defendants' motions
2 to dismiss the SAC, the Complaint-in-Intervention and this entire action. *See Bower*,
3 125 Nev. at 480-82; *Arduini v. Hart*, 774 F.3d 622, 629-630, 638 (9th Cir. 2014)
4 (holding that prior final judgment dismissing complaint on demand futility grounds
5 under Nevada law precluded further litigation of issue of demand futility and required
6 dismissal of parallel derivative action, relying on *Alcantra v. Wal-Mart Stores, Inc.*,
7 321 P.3d 912, 916-17 (Nev. 2014) and *Five Star Capital Corp. v. Ruby*, 194 P.3d 709
8 (Nev. 2008)).

9 For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that this
10 action is dismissed with prejudice.

11 Dated this ____ day of March, 2016.

12
13 _____
DISTRICT COURT JUDGE
14
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19
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21
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23
24

1 Respectfully submitted by:

2 **KAEMPFER CROWELL**

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7 Las Vegas, Nevada 89113

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10 landerson@kcnvlaw.com

11 *Attorneys for Nominal Defendant*

12 *Galectin Therapeutics, Inc. and*

13 *Individual Defendants Peter G. Traber,*

14 *James C. Czirr, Jack W. Callicutt,*

15 *Gilbert F. Amelio, Kevin D. Freeman,*

16 *Arthur R. Greenberg, Rod. D. Martin,*

17 *John F. Mauldin, Steven Prelack,*

18 *Herman Paul Pressler, III, and Dr. Marc Rubin*

19 Approved as to form and content:

20 **LEE, HERNANDEZ, LANDRUM & GAROFALO**

21 Natasha A. Landrum

22 David S. Davis

23 7575 Vegas Drive, Suite 150

24 Las Vegas, Nevada 89128

Attorneys for Plaintiff Michael Kirsch

ALDRICH LAW FIRM, LTD.

John P. Aldrich

1601 S. Rainbow Drive, Suite 160

Las Vegas, Nevada 89146

Attorney for Intervenor Plaintiffs David L. Hasbrouck and Siu Yip

Date: 4/5/2016

Job: 182

Time: 9:56:16 AM

King & Spalding

4943

1 **ORDER**

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9 landerson@kcnvlaw.com

10 *Attorney for Defendants*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 MICHAEL KIRSCH, derivatively on behalf of
15 GALECTIN THERAPEUTICS, INC.,

16 Plaintiff,

17 vs.

18 PETER G. TRABER; JAMES C. CZIRR;
19 JACK W. CALLICUTT; GILBERT F.
20 AMELIO; KEVIN D. FREEMAN; ARTHUR
21 R. GREENBERG; ROD D. MARTIN; JOHN
22 F. MAULDIN; STEVEN PRELACK;
23 HERMAN PAUL PRESSLER, III; and DR.
24 MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

Nominal Defendant.

Case No. A-14-706397-B

Dept. No. XI

[PROPOSED]

ORDER AND FINAL JUDGMENT RE:

**MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016

Time of Hearing: 8:30 a.m.

21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
22 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard

1 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.

2 As grounds for its ruling, the Court finds:

3 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
4 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who
5 allege that they are shareholders of Nominal Defendant Galactin Therapeutics Inc.
6 ("Galactin"), a Nevada corporation.

7 2. A shareholder seeking to assert claims derivatively on behalf of a Nevada corporation
8 must, among other things, either (i) make a pre-suit demand on the company's board
9 of directors or (ii) plead particularized facts establishing legal excuse for the failure to
10 do so. *See* NRCP 23.1; *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1179 (Nev.
11 2006).

12 3. Plaintiffs did not make a pre-suit demand upon Galactin's board of directors, but
13 instead asserted in their complaints that such a demand was excused under Nevada
14 law.

15 ~~4. On August 10, 2015, this Court's July 30, 2015 written order was entered (the "July~~
16 ~~30, 2015 Written Order") (i) denying Defendants' Motion to Dismiss Plaintiff's~~
17 ~~Second Amended Shareholder Derivative Complaint on the basis of Plaintiff's failure~~
18 ~~to adequately plead the futility of a pre-suit demand on Galactin's board of directors~~
19 ~~and that Plaintiff had adequately pled demand futility. The July 30, 2015 Written~~
20 ~~Order was a substantive ruling on the issue of demand futility which was reached~~
21 ~~following briefing and oral argument regarding demand futility by the parties.~~

22 ~~4. Although, there is no Nevada State court precedent upon the question of whether a~~
23 ~~denial of a motion to dismiss has preclusive effect, this~~ On June 11, 2015, the Court
24 held a hearing on various motions filed by the parties and proposed Intervenor. As

1 memorialized in the Court's June 11, 2015 Minute Order, the June 11, 2015 hearing
2 transcript, and in subsequent written orders of the Court entered on July 30, 2015 and
3 August 10, 2015, the Court: (i) granted Intervenor Plaintiffs Hasbrouck's and Yip's
4 motion to intervene in this case;¹ (ii) denied Defendants' motion to dismiss Mr.
5 Kirsch's Second Amended Shareholder Derivative Complaint (the "SAC") "at this
6 point"; (iii) stayed this action for 180 days pending *In re Galectin Therapeutics, Inc.*
7 *Derivative Litigation*, Lead Case No.: 1:15-CV-00208-SCJ in the United States
8 District Court for the Northern District of Georgia (the "Georgia Action"); and (iv)
9 ordered the parties to file a status report by December 11, 2015 addressing the status
10 of the Georgia Action..

11 5. This Court finds that ~~the~~its denial of aDefendants' earlier motion to dismiss is
12 never heard at the June 11, 2015 hearing was not a final order for purposes of
13 preclusion in Nevada and therefore has no preclusive effect under Nevada law.

14 6. On December 30, 2015, United States District Court Judge Steven C. Jones of the
15 United States District Court for the Northern District of Georgia, entered a final order
16 and judgment (the "Prior Final Judgment") (i) holding that under Nevada law,
17 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip failed to adequately plead the
18 futility of a pre-suit demand on Galectin's board of directors in their prior-filed and
19 substantively identical derivative action styled *In re Galectin Therapeutics, Inc.*
20 *Derivative Litigation*, Civil Action No. 1:15-CV-208-SCJ, U.S. Dist. Ct., N.D. Ga.
21 (the "~~Georgia Action~~")Georgia Action and (ii) dismissing the Georgia Action with
22 prejudice.

23
24 ¹ Intervenor Plaintiffs Hasbrouck and Yip filed their Verified Shareholder Complaint-in-
Intervention (the "Complaint-in-Intervention") on July 9, 2015.

1 7. A prior final judgment by a United States District Court in a case based on federal
2 question jurisdiction like the Georgia Action has preclusive effect in Nevada as to an
3 issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was "actually
4 litigated in the prior litigation," and (3) was "a critical and necessary part of the
5 earlier judgment," provided that the person against whom preclusion is sought to be
6 applied was either a party to the prior final judgment or a nonparty who was
7 "adequately represented by someone with the same interest who [wa]s a party to the
8 suit." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev.
9 2009) (citation and internal quotation marks omitted).

10 8. The Court finds that each of the above requirements for application of issue
11 preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately
12 pled demand futility in their complaints in this action. Based on this finding and the
13 standards set forth above, this Court determines that it must give preclusive effect to
14 the Prior Final Judgment's ruling on demand futility and grant Defendants' motions
15 to dismiss ~~Plaintiffs' complaints~~ the SAC, the Complaint-in-Intervention and this
16 entire action. *See Bower*, 125 Nev. at 480-82; *Arduini v. Hart*, 774 F.3d 622, 629-
17 630, 638 (9th Cir. 2014) (holding that prior final judgment dismissing complaint on
18 demand futility grounds under Nevada law precluded further litigation of issue of
19 demand futility and required dismissal of parallel derivative action, relying on
20 *Alcantra v. Wal-Mart Stores, Inc.*, 321 P.3d 912, 916-17 (Nev. 2014) and *Five Star*
21 *Capital Corp. v. Ruby*, 194 P.3d 709 (Nev. 2008)).

22 For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that this
23 action is dismissed with prejudice.

24 Dated this ____ day of March, 2016.

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DISTRICT COURT JUDGE

1 Respectfully submitted by:

2 **KAEMPFER CROWELL**

3 s/ Lyssa S. Anderson

4 LYSSA S. ANDERSON

5 Nevada Bar No. 5781

8345 West Sunset Road, Suite 250

6 Las Vegas, Nevada 89113

Tel: (702) 792-7000

6 Fax: (702) 796-7181

landerson@kcnvlaw.com

7 *Attorneys for Nominal Defendant*

8 *Galectin Therapeutics, Inc. and*

9 *Individual Defendants Peter G. Traber,*

10 *James C. Czirr, Jack W. Callicutt,*

Gilbert F. Amelio, Kevin D. Freeman,

11 *Arthur R. Greenberg, Rod D. Martin,*

John F. Mauldin, Steven Prelack,

Herman Paul Pressler, III, and Dr. Marc Rubin

12 Approved as to form and content:

13 **LEE, HERNANDEZ, LANDRUM & GAROFALO**

14
15 Natasha A. Landrum

16 David S. Davis

7575 Vegas Drive, Suite 150

17 Las Vegas, Nevada 89128

18 *Attorneys for Plaintiff Michael Kirsch*

19 **ALDRICH LAW FIRM, LTD.**

20
21 John P. Aldrich

22 1601 S. Rainbow Drive, Suite 160

Las Vegas, Nevada 89146

23 *Attorney for Intervenor Plaintiffs David L. Hasbrouck and Siu Yip*

Exhibit E

Lee, Ben

From: EdMillerEsq@aol.com
Sent: Thursday, March 17, 2016 1:36 PM
To: Lee, Ben
Cc: Smith, Michael; Pope, Warren; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; MichaelF@johnsonandweaver.com; jmf@weiserlawfirm.com; bds@weiserlawfirm.com; jaldrich@johnaldrichlawfirm.com; joshualifshitz@gmail.com
Subject: Re: Kirsch_ [Proposed] Order granting motions to dismiss.DOC
Attachments: Galectin Proposed Order 03172016_Plaint Edits FinalRedline.doc

Ben,

Attached is what we propose to submit which leaves intact the vast majority of your initial proposed order. In the event we cannot agree, we plan to submit our own order with a cover letter expressing our position.

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: EdMillerEsq@aol.com <edmilleresq@aol.com>
Cc: Smith, Michael <mrsmith@KSLAW.com>; Pope, Warren <WPope@KSLAW.com>; NLandrum <NLandrum@lee-lawfirm.com>; ddavis <ddavis@lee-lawfirm.com>; MichaelF <MichaelF@johnsonandweaver.com>; jmf <jmf@weiserlawfirm.com>; bds <bds@weiserlawfirm.com>; jaldrich <jaldrich@johnaldrichlawfirm.com>; joshualifshitz <joshualifshitz@gmail.com>
Sent: Thu, Mar 17, 2016 11:22 am
Subject: RE: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Ed:

Please see our further edits to the document you sent last night. I have attached clean revised and redlined versions. Please let us know if this version is acceptable or send any further comments as soon as possible, as we would like to get the proposed order to the Court today.

Regards,
Ben

From: EdMillerEsq@aol.com [mailto:edmilleresq@aol.com]
Sent: Wednesday, March 16, 2016 5:13 PM
To: Lee, Ben
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joshualifshitz@gmail.com

Subject: Re: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Here it is Ben.

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
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Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLEE@KSLAW.com>

To: [edmilleresq <edmilleresq@aol.com>](mailto:edmilleresq@aol.com)

Cc: Smith, Michael <mrsmith@KSLAW.com>; Pope, Warren <WPope@KSLAW.com>; NLandrum <NLandrum@lee-lawfirm.com>; ddavis <ddavis@lee-lawfirm.com>; Michael Fistel Jr. <MichaelF@johnsonandweaver.com>; James Ficaró (<jmf@weiserlawfirm.com> <jmf@weiserlawfirm.com>); 'Brett Stecker' (<bds@weiserlawfirm.com> <bds@weiserlawfirm.com>); 'jaldrich@johnaldrichlawfirm.com' (<jaldrich@johnaldrichlawfirm.com> <jaldrich@johnaldrichlawfirm.com>); Josh Lifshitz (<joshualifshitz@gmail.com> <joshualifshitz@gmail.com>)

Sent: Wed, Mar 16, 2016 5:08 pm

Subject: RE: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Ed:

Based on our telephone call yesterday, my understanding is that Plaintiffs are generally in agreement with the contents of the proposed order we circulated last week but wish to proposed some additional language tracking the Court's statements at the March 3 hearing to the effect that its earlier order denying prior motions to dismiss Mr. Kirsch's Second Amended Complaint was not a final order. Do you still anticipate sending the proposed additional language today?

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

From: Lee, Ben

Sent: Monday, March 07, 2016 6:38 PM

To: edmilleresq@aol.com; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; Michael Fistel Jr.; James Ficaró (<jmf@weiserlawfirm.com>); 'Brett Stecker' (<bds@weiserlawfirm.com>); 'jaldrich@johnaldrichlawfirm.com' (<jaldrich@johnaldrichlawfirm.com>)

Cc: Smith, Michael; Pope, Warren

Subject: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Counsel:

Pursuant to the Court's direction at the March 3, 2016 hearing that Defendants prepare a proposed order granting their motions to dismiss, please see the attached and let us know if we may submit it with your approval.

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

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1 **ORDER**

2 LYSSA S. ANDERSON
3 Nevada Bar No. 5781
4 KAEMPFER CROWELL
5 8345 West Sunset Road, Suite 250
6 Las Vegas, Nevada 89113
7 Telephone: (702) 792-7000
8 Fax: (702) 796-7181
9 landerson@kcnvlaw.com

10 *Attorney for Defendants*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 MICHAEL KIRSCH, derivatively on behalf of
15 GALECTIN THERAPEUTICS, INC.,

16 Plaintiff,

17 vs.

18 PETER G. TRABER; JAMES C. CZIRR;
19 JACK W. CALLICUTT; GILBERT F.
20 AMELIO; KEVIN D. FREEMAN; ARTHUR
21 R. GREENBERG; ROD D. MARTIN; JOHN
22 F. MAULDIN; STEVEN PRELACK;
23 HERMAN PAUL PRESSLER, III; and DR.
24 MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

Nominal Defendant.

Case No. A-14-706397-B

Dept. No. XI

[PROPOSED]

ORDER AND FINAL JUDGMENT RE:

**MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016

Time of Hearing: 8:30 a.m.

21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
22 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard

1 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.

2 As grounds for its ruling, the Court finds:

- 3 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
4 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who
5 allege that they are shareholders of Nominal Defendant Galectin Therapeutics Inc.
6 ("Galectin"), a Nevada corporation.
- 7 2. A shareholder seeking to assert claims derivatively on behalf of a Nevada corporation
8 must, among other things, either (i) make a pre-suit demand on the company's board
9 of directors or (ii) plead particularized facts establishing legal excuse for the failure to
10 do so. *See* NRCP 23.1; *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1179 (Nev.
11 2006).
- 12 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
13 instead asserted in their complaints that such a demand was excused under Nevada
14 law.
- 15 4. On June 11, 2015, the Court held a hearing on various motions filed by the parties
16 and proposed Intervenor. ~~Subsequently, As memorialized in the Court's June 11,~~
17 ~~2015 Minute Order, the June 11, 2015 hearing transcript, and in subsequent written~~
18 ~~orders of the Court entered on July 30, 2015 and August 10, 2015, the Court entered~~
19 ~~an order:~~ (i) granting Intervenor Plaintiffs Hasbrouck's and Yip's motion to
20 intervene in this case;¹ (ii) denying Defendants' motion to dismiss Mr. Kirsch's
21 Second Amended Shareholder Derivative Complaint (the "SAC") ~~at this point~~; (iii)
22 staying this action for 180 days pending *In re Galectin Therapeutics, Inc.*
23 *Derivative Litigation*, Lead Case No.: 1:15-CV-00208-SCJ in the United States

24 ¹ Intervenor Plaintiffs Hasbrouck and Yip filed their Verified Shareholder Complaint-in-
Intervention (the "Complaint-in-Intervention") on July 9, 2015.

1 District Court for the Northern District of Georgia (the "Georgia Action"); and (iv)
2 ordering~~ed~~ the parties to file a status report by December 11, 2015 addressing the
3 status of the Georgia Action.

4 5. Although the Court's August 10, 2015 order was a substantive ruling on the issue of
5 demand futility, which was reached following briefing and oral argument regarding
6 that issue. This Court finds that its denial of Defendants' earlier motion to dismiss
7 heard at the June 11, 2015 hearing was not a final order under Nevada law.

8 6. On December 30, 2015, United States District Court Judge Steven C. Jones of the
9 United States District Court for the Northern District of Georgia, entered a final order
10 and judgment (the "Prior Final Judgment") (i) holding that under Nevada law,
11 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip failed to adequately plead the
12 futility of a pre-suit demand on Galectin's board of directors in their prior-filed and
13 substantively identical Georgia Action and (ii) dismissing the Georgia Action with
14 prejudice.

15 7. A prior final judgment by a United States District Court in a case based on federal
16 question jurisdiction like the Georgia Action has preclusive effect in Nevada as to an
17 issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was "actually
18 litigated in the prior litigation," and (3) was "a critical and necessary part of the
19 earlier judgment," provided that the person against whom preclusion is sought to be
20 applied was either a party to the prior final judgment or a nonparty who was
21 "adequately represented by someone with the same interest who [wa]s a party to the
22 suit." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev.
23 2009) (citation and internal quotation marks omitted).

24 8. The Court finds that each of the above requirements for application of issue

1 preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately
2 pled demand futility in their complaints in this action. Based on this finding and the
3 standards set forth above, this Court determines that it must give preclusive effect to
4 the Prior Final Judgment's ruling on demand futility and grant Defendants' motions
5 to dismiss the SAC, the Complaint-in-Intervention and this entire action. *See Bower*,
6 125 Nev. at 480-82; *Arduini v. Hart*, 774 F.3d 622, 629-630, 638 (9th Cir. 2014)
7 (holding that prior final judgment dismissing complaint on demand futility grounds
8 under Nevada law precluded further litigation of issue of demand futility and required
9 dismissal of parallel derivative action, relying on *Alcantra v. Wal-Mart Stores, Inc.*,
10 321 P.3d 912, 916-17 (Nev. 2014) and *Five Star Capital Corp. v. Ruby*, 194 P.3d 709
11 (Nev. 2008)).

12 For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that this
13 action is dismissed with prejudice.

14 Dated this ____ day of March, 2016.

15
16 _____
DISTRICT COURT JUDGE
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1 Respectfully submitted by:

2 **KAEMPFER CROWELL**

3 s/ Lyssa S. Anderson

LYSSA S. ANDERSON

4 Nevada Bar No. 5781

8345 West Sunset Road, Suite 250

5 Las Vegas, Nevada 89113

Tel: (702) 792-7000

6 Fax: (702) 796-7181

landerson@kcnvlaw.com

7 *Attorneys for Nominal Defendant*

8 *Galectin Therapeutics, Inc. and*

9 *Individual Defendants Peter G. Traber,*

James C. Czirr, Jack W. Callicutt,

10 *Gilbert F. Amelio, Kevin D. Freeman,*

Arthur R. Greenberg, Rod. D. Martin,

11 *John F. Mauldin, Steven Prelack,*

Herman Paul Pressler, III, and Dr. Marc Rubin

12 Approved as to form and content:

13 **LEE, HERNANDEZ, LANDRUM & GAROFALO**

14
15 Natasha A. Landrum

16 David S. Davis

7575 Vegas Drive, Suite 150

17 Las Vegas, Nevada 89128

18 *Attorneys for Plaintiff Michael Kirsch*

19 **ALDRICH LAW FIRM, LTD.**

20
21 John P. Aldrich

1601 S. Rainbow Drive, Suite 160

22 Las Vegas, Nevada 89146

23 *Attorney for Intervenor Plaintiffs David L. Hasbrouck and Siu Yip*

Exhibit F

Lee, Ben

From: Lee, Ben
Sent: Thursday, March 17, 2016 2:37 PM
To: EdMillerEsq@aol.com
Cc: Smith, Michael; Pope, Warren; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; MichaelF@johnsonandweaver.com; jmf@weiserlawfirm.com; bds@weiserlawfirm.com; jaldrich@johnaldrichlawfirm.com; joshualifshitz@gmail.com
Subject: RE: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Ed:

Unfortunately, it appears that we are at an impasse regarding the contents of paragraphs 4 and 5 of the proposed order. Defendants will submit their proposed order with a note that the parties could not reach agreement regarding paragraphs 4 and 5.

Regards,
Ben

From: EdMillerEsq@aol.com [mailto:edmilleresq@aol.com]
Sent: Thursday, March 17, 2016 1:36 PM
To: Lee, Ben
Cc: Smith, Michael; Pope, Warren; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; MichaelF@johnsonandweaver.com; jmf@weiserlawfirm.com; bds@weiserlawfirm.com; jaldrich@johnaldrichlawfirm.com; joshualifshitz@gmail.com
Subject: Re: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

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Attached is what we propose to submit which leaves intact the vast majority of your initial proposed order. In the event we cannot agree, we plan to submit our own order with a cover letter expressing our position.

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: EdMillerEsq@aol.com <edmilleresq@aol.com>
Cc: Smith, Michael <mrsmith@KSLAW.com>; Pope, Warren <WPope@KSLAW.com>; NLandrum <NLandrum@lee-lawfirm.com>; ddavis <ddavis@lee-lawfirm.com>; MichaelF <MichaelF@johnsonandweaver.com>; jmf <jmf@weiserlawfirm.com>; bds <bds@weiserlawfirm.com>; jaldrich <jaldrich@johnaldrichlawfirm.com>; joshualifshitz <joshualifshitz@gmail.com>
Sent: Thu, Mar 17, 2016 11:22 am
Subject: RE: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

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Please see our further edits to the document you sent last night. I have attached clean revised and redlined versions. Please let us know if this version is acceptable or send any further comments as soon as possible, as we would like to get the proposed order to the Court today.

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Cc: Smith, Michael; Pope, Warren; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; MichaelF@johnsonandweaver.com; jmf@weiserlawfirm.com; bds@weiserlawfirm.com; jaldrich@johnaldrichlawfirm.com; joshualifshitz@gmail.com
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Ed:

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Cc: Smith, Michael; Pope, Warren

Subject: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Counsel:

Pursuant to the Court's direction at the March 3, 2016 hearing that Defendants prepare a proposed order granting their motions to dismiss, please see the attached and let us know if we may submit it with your approval.

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

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Exhibit G

Lee, Ben

From: Lee, Ben
Sent: Thursday, March 17, 2016 3:01 PM
To: Dept11LC@clarkcountycourts.us; dept11EA@clarkcountycourts.us
Cc: EdMillerEsq@aol.com; MichaelF@johnsonandweaver.com; bds@weiserlawfirm.com; traci@johnaldrichlawfirm.com; joshualifshitz@gmail.com; jml@jlclasslaw.com; Pope, Warren; Smith, Michael; Natasha Landrum; David S. Davis; Landerson@kcnvlaw.com; kah@weiserlawfirm.com; James Ficaro (jmf@weiserlawfirm.com); 'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com); Ryan Daniels
Subject: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss
Attachments: Kirsch v. Traber - Defendants_ Proposed Order Granting Motions to Dismis....doc

Dear Judge Gonzalez:

Following the hearing in the above-referenced matter held on March 3, 2016, at which the Court granted Defendants' motions to dismiss the case, the parties have conferred and attempted to reach agreement on the contents of a proposed order reflecting the Court's ruling. Although the parties reached agreement on all other contents of the proposed order, they could not agree upon the language to be included in paragraphs 4 and 5.

A Microsoft Word format version of the order proposed by Defendants is attached for your consideration.

Kind regards,

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

Counsel for Defendants (*admitted pro hac vice*)

1 **ORDER**

2 LYSSA S. ANDERSON
3 Nevada Bar No. 5781
4 KAEMPFER CROWELL
5 1980 Festival Plaza Drive, Suite 650
6 Las Vegas, Nevada 89135
7 Telephone: (702) 792-7000
8 Fax: (702) 796-7181
9 landerson@kcnvlaw.com

6 *Attorney for Defendants*

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

8 MICHAEL KIRSCH, derivatively on behalf of
9 GALECTIN THERAPEUTICS, INC.,

Case No. A-14-706397-B

10 Plaintiff,

Dept. No. XI

11 vs.

12 PETER G. TRABER; JAMES C. CZIRR;
13 JACK W. CALLICUTT; GILBERT F.
14 AMELIO; KEVIN D. FREEMAN; ARTHUR
15 R. GREENBERG; ROD D. MARTIN; JOHN
16 F. MAULDIN; STEVEN PRELACK;
17 HERMAN PAUL PRESSLER, III; and DR.
18 MARC RUBIN,

[PROPOSED]

ORDER AND FINAL JUDGMENT RE:

MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION

15 Defendants,

16 -and-

17 GALECTIN THERAPEUTICS, INC., a
18 Nevada Corporation,

Date of Hearing: March 3, 2016

Time of Hearing: 8:30 a.m.

19 Nominal Defendant.

20
21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
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23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard

1 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.

2 As grounds for its ruling, the Court finds:

- 3 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
4 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who
5 allege that they are shareholders of Nominal Defendant Galectin Therapeutics Inc.
6 ("Galectin"), a Nevada corporation.
- 7 2. A shareholder seeking to assert claims derivatively on behalf of a Nevada corporation
8 must, among other things, either (i) make a pre-suit demand on the company's board
9 of directors or (ii) plead particularized facts establishing legal excuse for the failure to
10 do so. *See* NRCP 23.1; *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1179 (Nev.
11 2006).
- 12 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
13 instead asserted in their complaints that such a demand was excused under Nevada
14 law.
- 15 4. On June 11, 2015, the Court held a hearing on various motions filed by the parties
16 and proposed Intervenor. As memorialized in the Court's June 11, 2015 Minute
17 Order, the June 11, 2015 hearing transcript, and in subsequent written orders of the
18 Court entered on July 30, 2015 and August 10, 2015, the Court: (i) granted
19 Intervenor Plaintiffs Hasbrouck's and Yip's motion to intervene in this case;¹ (ii)
20 denied Defendants' motions to dismiss Mr. Kirsch's Second Amended Shareholder
21 Derivative Complaint (the "SAC") "at this point"; (iii) stayed this action for 180 days
22 pending *In re Galectin Therapeutics, Inc. Derivative Litigation*, Lead Case No.: 1:15-
23 CV-00208-SCJ in the United States District Court for the Northern District of

24 ¹ Intervenor Plaintiffs Hasbrouck and Yip filed their Verified Shareholder Complaint-in-
Intervention (the "Complaint-in-Intervention") on July 9, 2015.

Georgia (the "Georgia Action"); and (iv) ordered the parties to file a status report by December 11, 2015 addressing the status of the Georgia Action.

5. This Court finds that its denial of Defendants' earlier motions to dismiss heard at the June 11, 2015 hearing was not a final order under Nevada law.

6. On December 30, 2015, United States District Court Judge Steven C. Jones of the United States District Court for the Northern District of Georgia, entered a final order and judgment (the "Prior Final Judgment") (i) holding that under Nevada law, Intervenor Plaintiffs David L. Hasbrouck and Siu Yip failed to adequately plead the futility of a pre-suit demand on Galectin's board of directors in their prior-filed and substantively identical Georgia Action and (ii) dismissing the Georgia Action with prejudice.

7. A prior final judgment by a United States District Court in a case based on federal question jurisdiction like the Georgia Action has preclusive effect in Nevada as to an issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was "actually litigated in the prior litigation," and (3) was "a critical and necessary part of the earlier judgment," provided that the person against whom preclusion is sought to be applied was either a party to the prior final judgment or a nonparty who was "adequately represented by someone with the same interest who [wa]s a party to the suit." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev. 2009) (citation and internal quotation marks omitted).

8. The Court finds that each of the above requirements for application of issue preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately pled demand futility in their complaints in this action. Based on this finding and the standards set forth above, this Court determines that it must give preclusive effect to

1 the Prior Final Judgment's ruling on demand futility and grant Defendants' motions
2 to dismiss the SAC, the Complaint-in-Intervention and this entire action. *See Bower*,
3 125 Nev. at 480-82; *Arduini v. Hart*, 774 F.3d 622, 629-630, 638 (9th Cir. 2014)
4 (holding that prior final judgment dismissing complaint on demand futility grounds
5 under Nevada law precluded further litigation of issue of demand futility and required
6 dismissal of parallel derivative action, relying on *Alcantra v. Wal-Mart Stores, Inc.*,
7 321 P.3d 912, 916-17 (Nev. 2014) and *Five Star Capital Corp. v. Ruby*, 194 P.3d 709
8 (Nev. 2008)).

9 For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that this
10 action is dismissed with prejudice.

11 Dated this ____ day of March, 2016.

12
13 _____
DISTRICT COURT JUDGE
14
15
16
17
18
19
20
21
22
23
24

1. Respectfully submitted by:

2 **KAEMPFER CROWELL**

3 s/ Lyssa S. Anderson

4 LYSSA S. ANDERSON

5 Nevada Bar No. 5781

6 KAEMPFER CROWELL

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8 Las Vegas, Nevada 89135

9 Tel: (702) 792-7000

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KING & SPALDING LLP

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14 Michael R. Smith (*admitted pro hac vice*)

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16 Benjamin Lee (*admitted pro hac vice*)

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19 404-572-4600 (Phone)

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22 wpope@kslaw.com

23 blee@kslaw.com

24 *Attorneys for Nominal Defendant*

Galectin Therapeutics, Inc. and

Individual Defendants Peter G. Traber,

James C. Czirr, Jack W. Callicutt,

Gilbert F. Amelio, Kevin D. Freeman,

Arthur R. Greenberg, Rod. D. Martin,

John F. Mauldin, Steven Prelack,

Herman Paul Pressler, III, and Dr. Marc Rubin

Exhibit H

Lee, Ben

From: EdMillerEsq@aol.com
Sent: Friday, March 18, 2016 12:48 PM
To: Lee, Ben
Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss
Attachments: Galectin Proposed Order 03172018_Plaing Edits FinalRedline.doc

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: EdMillerEsq@aol.com <edmilleresq@aol.com>
Sent: Fri, Mar 18, 2016 12:24 pm
Subject: RE: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Left the attachment off.

From: EdMillerEsq@aol.com [mailto:edmilleresq@aol.com]
Sent: Friday, March 18, 2016 12:23 PM
To: Lee, Ben
Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Ben,

Please find attached the proposed order we intend to submit to the court today, with redline showing additional edits since last circulated order.

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: Dept11LC <Dept11LC@clarkcountycourts.us>; dept11EA <dept11EA@clarkcountycourts.us>

Cc: EdMillerEsq <EdMillerEsq@aol.com>; MichaelF <MichaelF@johnsonandweaver.com>; bds <bds@weiserlawfirm.com>; traci <traci@johnaldrichlawfirm.com>; joshualifshitz <joshualifshitz@gmail.com>; jml <jml@jlclasslaw.com>; Pope, Warren <WPope@KSLAW.com>; Smith, Michael <mrsmith@KSLAW.com>; Natasha Landrum <nlandrum@lee-lawfirm.com>; David S. Davis <ddavis@lee-lawfirm.com>; Landerson <Landerson@kcnvlaw.com>; kah <kah@weiserlawfirm.com>; James Ficaró (jmf@weiserlawfirm.com) <jmf@weiserlawfirm.com>; 'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com) <jaldrich@johnaldrichlawfirm.com>; Ryan Daniels <RDaniels@kcnvlaw.com>

Sent: Thu, Mar 17, 2016 3:01 pm

Subject: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Dear Judge Gonzalez:

Following the hearing in the above-referenced matter held on March 3, 2016, at which the Court granted Defendants' motions to dismiss the case, the parties have conferred and attempted to reach agreement on the contents of a proposed order reflecting the Court's ruling. Although the parties reached agreement on all other contents of the proposed order, they could not agree upon the language to be included in paragraphs 4 and 5.

A Microsoft Word format version of the order proposed by Defendants is attached for your consideration.

Kind regards,

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

Counsel for Defendants (*admitted pro hac vice*)

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1 **ORDER**

2 LYSSA S. ANDERSON
3 Nevada Bar No. 5781
4 KAEMPFER CROWELL
5 8345 West Sunset Road, Suite 250
6 Las Vegas, Nevada 89113
7 Telephone: (702) 792-7000
8 Fax: (702) 796-7181
9 landerson@kcnvlaw.com

10 *Attorney for Defendants*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 MICHAEL KIRSCH, derivatively on behalf of
15 GALECTIN THERAPEUTICS, INC.,

16 Plaintiff,

17 vs.

18 PETER G. TRABER; JAMES C. CZIRR;
19 JACK W. CALLICUTT; GILBERT F.
20 AMELIO; KEVIN D. FREEMAN; ARTHUR
21 R. GREENBERG; ROD D. MARTIN; JOHN
22 F. MAULDIN; STEVEN PRELACK;
23 HERMAN PAUL PRESSLER, III; and DR.
24 MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

Nominal Defendant.

Case No. A-14-706397-B

Dept. No. XI

[PROPOSED]

ORDER AND FINAL JUDGMENT RE:

**MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016

Time of Hearing: 8:30 a.m.

21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
22 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard

1 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.

2 As grounds for its ruling, the Court finds:

- 3 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
4 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who
5 allege that they are shareholders of Nominal Defendant Galectin Therapeutics Inc.
6 ("Galectin"), a Nevada corporation.
- 7 2. A shareholder seeking to assert claims derivatively on behalf of a Nevada corporation
8 must, among other things, either (i) make a pre-suit demand on the company's board
9 of directors or (ii) plead particularized facts establishing legal excuse for the failure to
10 do so. *See* NRCP 23.1; *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1179 (Nev.
11 2006).
- 12 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
13 instead asserted in their complaints that such a demand was excused under Nevada
14 law.
- 15 4. On June 11, 2015, the Court held a hearing on various motions filed by the parties
16 and proposed Intervenor. ~~Subsequently, As memorialized in the Court's June 11,~~
17 ~~2015 Minute Order, the June 11, 2015 hearing transcript, and in subsequent written~~
18 ~~orders of the Court entered on July 30, 2015 and August 10, 2015, the Court entered~~
19 ~~an order:~~ (i) ~~granting~~ Intervenor Plaintiffs Hasbrouck's and Yip's motion to
20 intervene in this case;¹ (ii) ~~denying~~ Defendants' motion to dismiss Mr. Kirsch's
21 Second Amended Shareholder Derivative Complaint (the "SAC")~~—at this point~~; (iii)
22 ~~staying~~ this action for 180 days pending *In re Galectin Therapeutics, Inc.*
23 *Derivative Litigation*, Lead Case No.: 1:15-CV-00208-SCJ in the United States

24 ¹ Intervenor Plaintiffs Hasbrouck and Yip filed their Verified Shareholder Complaint-in-
Intervention (the "Complaint-in-Intervention") on July 9, 2015.

1 District Court for the Northern District of Georgia (the "Georgia Action"); and (iv)
2 ~~ordering~~ the parties to file a status report by December 11, 2015 addressing the
3 status of the Georgia Action.

4 4.5. This Court's August 10, 2015 order staying the case for 180 days was based upon
5 representations made to the Court by Mr. Smith at the June 11, 2015 hearing that
6 issues raised in Georgia relate to class representations issues. See Court Minutes for
7 March 3, 2016 Hearing.

8 5.6. Although the Court's August 10, 2015 order was a substantive ruling on the issue
9 of demand futility, which was reached following briefing and oral argument regarding
10 that issue, This Court finds that its denial of Defendants' earlier motion to dismiss
11 heard at the June 11, 2015 hearing was not a final order under Nevada law.

12 6.7. On December 30, 2015, United States District Court Judge Steven C. Jones of the
13 United States District Court for the Northern District of Georgia, entered a final order
14 and judgment (the "Prior Final Judgment") (i) holding that under Nevada law,
15 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip failed to adequately plead the
16 futility of a pre-suit demand on Galectin's board of directors in their prior-filed and
17 substantively identical Georgia Action and (ii) dismissing the Georgia Action with
18 prejudice.

19 7.8. A prior final judgment by a United States District Court in a case based on federal
20 question jurisdiction like the Georgia Action has preclusive effect in Nevada as to an
21 issue that: (1) is "identical to the one alleged in the prior litigation," (2) was "actually
22 litigated in the prior litigation," and (3) was "a critical and necessary part of the
23 earlier judgment," provided that the person against whom preclusion is sought to be
24 applied was either a party to the prior final judgment or a nonparty who was

1 “adequately represented by someone with the same interest who [wa]s a party to the
2 suit.” *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev.
3 2009) (citation and internal quotation marks omitted).

4 8.9. The Court finds that each of the above requirements for application of issue
5 preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately
6 pled demand futility in their complaints in this action. Based on this finding and the
7 standards set forth above, this Court determines that it must give preclusive effect to
8 the Prior Final Judgment's ruling on demand futility and grant Defendants' motions
9 to dismiss the SAC, the Complaint-in-Intervention and this entire action. *See Bower*,
10 125 Nev. at 480-82; *Arduini v. Hart*, 774 F.3d 622, 629-630, 638 (9th Cir. 2014)
11 (holding that prior final judgment dismissing complaint on demand futility grounds
12 under Nevada law precluded further litigation of issue of demand futility and required
13 dismissal of parallel derivative action, relying on *Alcantra v. Wal-Mart Stores, Inc.*,
14 321 P.3d 912, 916-17 (Nev. 2014) and *Five Star Capital Corp. v. Ruby*, 194 P.3d 709
15 (Nev. 2008)).

16 For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that this
17 action is dismissed with prejudice.

18 Dated this ____ day of March, 2016.

19
20 _____
DISTRICT COURT JUDGE
21
22
23
24

1 Respectfully submitted by:

2 **KAEMPFER CROWELL**

3 s/ Lyssa S. Anderson

4 LYSSA S. ANDERSON

5 Nevada Bar No. 5781

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7 Las Vegas, Nevada 89113

8 Tel: (702) 792-7000

9 Fax: (702) 796-7181

10 landerson@kcnvlaw.com

11 *Attorneys for Nominal Defendant*

12 *Galectin Therapeutics, Inc. and*

13 *Individual Defendants Peter G. Traber,*

14 *James C. Czirr, Jack W. Callicutt,*

15 *Gilbert F. Amelio, Kevin D. Freeman,*

16 *Arthur R. Greenberg, Rod. D. Martin,*

17 *John F. Mauldin, Steven Prelack,*

18 *Herman Paul Pressler, III, and Dr. Marc Rubin*

19 Approved as to form and content:

20 **LEE, HERNANDEZ, LANDRUM & GAROFALO**

21 Natasha A. Landrum

22 David S. Davis

23 7575 Vegas Drive, Suite 150

24 Las Vegas, Nevada 89128

Attorneys for Plaintiff Michael Kirsch

ALDRICH LAW FIRM, LTD.

John P. Aldrich

1601 S. Rainbow Drive, Suite 160

Las Vegas, Nevada 89146

Attorney for Intervenor Plaintiffs David L. Hasbrouck and Siu Yip

Exhibit I

Lee, Ben

From: Lee, Ben
Sent: Friday, March 18, 2016 3:36 PM
To: EdMillerEsq@aol.com
Cc: Smith, Michael; Pope, Warren
Subject: RE: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss
Attachments: 20150618 Transcript of June 11 Hearing.pdf

Ed:

Your proposal to include language in new paragraph 6 that the “Court finds that its denial of Defendants’ earlier motion to dismiss heard at the June 11, 2015 hearing *was* a final order under Nevada law” (emphasis added) is directly contrary to the Court’s many statements at the March 3, 2016 hearing that its denial of earlier motions to dismiss *was not* a final order under Nevada law. *See, e.g.,* 3/3/2016 Hr’ing Tr. at 3 (“[M]y order can’t be final, because it’s a denial of a motion to dismiss.”); *id.* at 2-3 “[A] denial of a motion to dismiss is never a final order in Nevada. Never.”). Thus, because your elimination of the word “not” in Paragraph 6 is directly contrary to the March 3 hearing transcript, we ask that you reinstate the word “not”.

Furthermore, your new Paragraph 5 stating that the stay of the case in Nevada was based on statements Mr. Smith made at the June 11 hearing regarding “class representations [sic] issues” in the Georgia litigation is inconsistent with the transcript of the June 11 hearing. At the June 11 hearing, Mr. Smith did not make any comments regarding class certification/representation issues, but instead said that the parties in the Georgia litigation were in the process of raising Rule “23.1” issues, *i.e.*, demand futility issues, with the Georgia Court (*see* 6/11/2015 Hr’ing Tr. at 4-5). For your convenience, I have attached the June 11 hearing transcript so you can confirm that for yourself. Further, none of the briefing submitted by Defendants in connection with the June 11 hearing advocated that the Nevada case should be stayed based on class certification (or “class representations”) issues in Georgia. Accordingly, you have no basis to represent to the Court (as your proposed new Paragraph 5 does) that Mr. Smith made such statements. We therefore ask that you remove your new Paragraph 5.

Should you choose to submit a proposed order containing the above discussed (or similar) inaccurate language, Defendants reserve all rights to bring the discrepancies to the Court’s attention and pursue appropriate relief.

Obviously, we also continue to disagree that the other changes you made to the proposed order we submitted are appropriate.

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

From: EdMillerEsq@aol.com [mailto:edmilleresq@aol.com]
Sent: Friday, March 18, 2016 12:48 PM
To: Lee, Ben
Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: EdMillerEsq@aol.com <edmilleresq@aol.com>
Sent: Fri, Mar 18, 2016 12:24 pm
Subject: RE: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Left the attachment off.

From: EdMillerEsq@aol.com [mailto:edmilleresq@aol.com]
Sent: Friday, March 18, 2016 12:23 PM
To: Lee, Ben
Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Ben,

Please find attached the proposed order we intend to submit to the court today, with redline showing additional edits since last circulated order.

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: Dept11LC <Dept11LC@clarkcountycourts.us>; dept11EA <dept11EA@clarkcountycourts.us>
Cc: EdMillerEsq <EdMillerEsq@aol.com>; MichaelF <MichaelF@johnsonandweaver.com>; bds <bds@weiserlawfirm.com>; traci <traci@johnaldrichlawfirm.com>; joshualifshitz <joshualifshitz@gmail.com>; jml <jml@jlclasslaw.com>; Pope, Warren <WPope@KSLAW.com>; Smith, Michael <mrsmith@KSLAW.com>; Natasha Landrum <nlandrum@lee-lawfirm.com>; David S. Davis <ddavis@lee-lawfirm.com>; Landerson <Landerson@kcnvlaw.com>; kah <kah@weiserlawfirm.com>; James Ficaró <jmf@weiserlawfirm.com>; 'jaldrich@johnaldrichlawfirm.com' <jaldrich@johnaldrichlawfirm.com>; Ryan Daniels <RDaniels@kcnvlaw.com>
Sent: Thu, Mar 17, 2016 3:01 pm

Subject: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Dear Judge Gonzalez:

Following the hearing in the above-referenced matter held on March 3, 2016, at which the Court granted Defendants' motions to dismiss the case, the parties have conferred and attempted to reach agreement on the contents of a proposed order reflecting the Court's ruling. Although the parties reached agreement on all other contents of the proposed order, they could not agree upon the language to be included in paragraphs 4 and 5.

A Microsoft Word format version of the order proposed by Defendants is attached for your consideration.

Kind regards,

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

Counsel for Defendants (*admitted pro hac vice*)

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Exhibit J

Lee, Ben

From: Lee, Ben
Sent: Friday, March 18, 2016 8:38 PM
To: EdMillerEsq@aol.com
Cc: ddavis@lee-lawfirm.com; michael@johnsonandweaver.com; joshualifshitz@gmail.com; bds@weiserlawfirm.com; Smith, Michael; Pope, Warren; jaldrich@johnaldrichlawfirm.com
Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Ed:

The arguments Defendants made in Georgia were consistent with the Nevada Court's rulings at the June 11 Hearing that (i) Defendants' motions to dismiss were denied "at this point" in light of the Court's decisions to grant the Intervenor's motion to intervene and permit Intervenor and Mr. Kirsch to file further pleadings that it was anticipated would supersede and moot Mr. Kirsch's pending complaint (all of which the Court indicated was being done to cure "problems" with Mr. Kirsch's standing in light of his eventual admission, contrary to his verified allegations in *two* complaints, that he first purchased Galectin stock well after nearly all of the alleged conduct challenged in his complaints); and (ii) the Nevada case was stayed in deference to the prior-filed Georgia case, where Defendants informed the Nevada Court the Georgia parties were in the process addressing Rule 23.1/demand futility issues with the Georgia Court. The Georgia Court looked at the record in Nevada, determined that it could not conclude that the Nevada Court's order denying motions to dismiss was a "final ruling on the merits" entitled to preclusive effect, and issued its decision. The Nevada Court has now confirmed its agreement that its prior ruling denying the motions to dismiss was not a final order, and therefore was not entitled to preclusive effect under settled Nevada law.

What you are now proposing to do – ask the Nevada Court to issue a ruling that includes a statement that you have conceded you know is erroneous and unfounded – is another matter entirely and has nothing whatsoever to do with the arguments Defendants made in Georgia. Moreover, your proposal that the Nevada Court include this demonstrably erroneous and unfounded statement – which, in any event, was not part of the basis for the Court's ruling granting Defendants' motion to dismiss – in its order is in no way "essential" to possible future appellate review of that ruling. Should you proceed with this course of action, our position is as stated in my e-mails below.

Ben

On Mar 18, 2016, at 5:12 PM, EdMillerEsq@aol.com <edmilleresq@aol.com> wrote:

None the less, this accurately reflects the court's position as stated at the hearing. Look Ben, Defendants represented to the Georgia court that Judge Gonzales denied your motion to dismiss because it was moot, which she never said and is not accurate. Would you like to find a way to go to the Judge on this issue and jointly ask for clarification on whether or not she dismissed for "mootness" as you said. I suspect not. I suspect you don't want clarification on that at all. If not, and if you oppose clarifying that point, it is essential that the appeals court understand that the Judge made a statement on the record to the effect that she was led to believe that there was a class cert going on..... You have represented to the Georgia Federal Court that the judge did something for a reason that she never indicated in any way shape or form, i.e. mootness - we want merely a record of what the Judge said on the record. So please, just clarify, were you just

threatening us with a Rule 11 Motion for proposing the Court to include its own words in the Order?

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: Edward Miller <EdMillerEsq@aol.com>
Cc: Smith, Michael <mrsmith@KSLAW.com>; Pope, Warren <WPope@KSLAW.com>
Sent: Fri, Mar 18, 2016 4:45 pm
Subject: RE: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Regarding paragraph 5: Notwithstanding the confusing and unclear statement the Court made near the end of the March 3 hearing concerning "class certification" issues in Georgia, there is absolutely no support in the June 11 hearing transcript or related briefing for a representation to the Court that Mr. Smith advocated a stay of the Nevada action based on class certification/representation issues in Georgia. Your response below tacitly acknowledges this. For complete clarity, Defendants' position is that submitting a proposed order to the Court that includes language such as your proposed paragraph 5 adopting a statement that you know to be factually incorrect would constitute a violation of NRCP 11.

Regarding paragraph 6: I take it you will correct the typo, prior to submitting your proposed order?

From: Edward Miller [<mailto:EdMillerEsq@aol.com>]
Sent: Friday, March 18, 2016 3:58 PM
To: Lee, Ben
Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

When is the typo and the other is what the judge said

Sent from my iPhone

On Mar 18, 2016, at 3:36 PM, Lee, Ben <BLee@KSLAW.com> wrote:

Ed:

Your proposal to include language in new paragraph 6 that the "Court finds that its denial of Defendants' earlier motion to dismiss heard at the June 11, 2015 hearing *was* a final order under Nevada law" (emphasis added) is directly contrary to the Court's many statements at the March 3, 2016 hearing that its denial of earlier motions to dismiss *was not* a final order under Nevada law. *See, e.g.*, 3/3/2016 Hr'ing Tr. at 3 ("[M]y order can't be final, because it's a denial of a motion to dismiss."); *id.* at 2-3 "[A] denial of a motion to dismiss is never a final order in Nevada. Never."). Thus, because your elimination of the word "not" in

Paragraph 6 is directly contrary to the March 3 hearing transcript, we ask that you reinstate the word "not".

Furthermore, your new Paragraph 5 stating that the stay of the case in Nevada was based on statements Mr. Smith made at the June 11 hearing regarding "class representations [sic] issues" in the Georgia litigation is inconsistent with the transcript of the June 11 hearing. At the June 11 hearing, Mr. Smith did not make any comments regarding class certification/representation issues, but instead said that the parties in the Georgia litigation were in the process of raising Rule "23.1" issues, *i.e.*, demand futility issues, with the Georgia Court (*see* 6/11/2015 Hr'ing Tr. at 4-5). For your convenience, I have attached the June 11 hearing transcript so you can confirm that for yourself. Further, none of the briefing submitted by Defendants in connection with the June 11 hearing advocated that the Nevada case should be stayed based on class certification (or "class representations") issues in Georgia. Accordingly, you have no basis to represent to the Court (as your proposed new Paragraph 5 does) that Mr. Smith made such statements. We therefore ask that you remove your new Paragraph 5.

Should you choose to submit a proposed order containing the above discussed (or similar) inaccurate language, Defendants reserve all rights to bring the discrepancies to the Court's attention and pursue appropriate relief.

Obviously, we also continue to disagree that the other changes you made to the proposed order we submitted are appropriate.

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia
30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

From: EdMillerEsg@aol.com [<mailto:edmilleresq@aol.com>]
Sent: Friday, March 18, 2016 12:48 PM
To: Lee, Ben
Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: EdMillerEsg@aol.com <edmilleresq@aol.com>
Sent: Fri, Mar 18, 2016 12:24 pm

Subject: RE: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Left the attachment off.

From: EdMillerEsq@aol.com [mailto:edmilleresq@aol.com]

Sent: Friday, March 18, 2016 12:23 PM

To: Lee, Ben

Subject: Re: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Ben,

Please find attached the proposed order we intend to submit to the court today, with redline showing additional edits since last circulated order.

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Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>

To: Dept11LC <Dept11LC@clarkcountycourts.us>; dept11EA
<dept11EA@clarkcountycourts.us>

Cc: EdMillerEsq <EdMillerEsq@aol.com>; MichaelF
<MichaelF@johnsonandweaver.com>; bds <bds@weiserlawfirm.com>; traci
<traci@johnaldrichlawfirm.com>; joshualifshitz <joshualifshitz@gmail.com>;
jml <jml@jiclasslaw.com>; Pope, Warren <WPope@KSLAW.com>; Smith,
Michael <mrsmith@KSLAW.com>; Natasha Landrum <nlandrum@lee-
lawfirm.com>; David S. Davis <ddavis@lee-lawfirm.com>; Landerson
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'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com)
<jaldrich@johnaldrichlawfirm.com>; Ryan Daniels <RDaniels@kcnvlaw.com>

Sent: Thu, Mar 17, 2016 3:01 pm

Subject: Kirsch v. Traber, et al. (In Re: Galectin Therapeutics, Inc.) - Case No. A-14-706397 - [Proposed] Order Granting Motions to Dismiss

Dear Judge Gonzalez:

Following the hearing in the above-referenced matter held on March 3, 2016, at which the Court granted Defendants' motions to dismiss the case, the parties have conferred and attempted to reach agreement on the contents of a proposed order reflecting the Court's ruling. Although the parties reached agreement on all other contents of the proposed order, they could not agree upon the language to be included in paragraphs 4 and 5.

A Microsoft Word format version of the order proposed by Defendants is attached for your consideration.

Kind regards,

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia
30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

Counsel for Defendants (*admitted pro hac vice*)

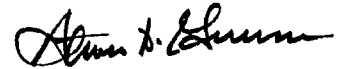
King & Spalding Confidentiality Notice:

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<20150618 Transcript of June 11 Hearing.pdf>

Exhibit “4”

Exhibit “4”



CLERK OF THE COURT

OPPM

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DAVID S. DAVIS, ESQ.
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jml@lclasslaw.com

Attorneys for Plaintiff Michael Kirsch

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL KIRSCH, derivatively on behalf
of GALECTIN THERAPEUTICS, INC.,

Plaintiff,

-vs-

PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN
F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; and DR.
MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada corporation,

Nominal Defendant.

CASE NO. A-14-706397-B

DEPT. NO. XI

**OPPOSITION TO MOTION TO
CORRECT ORDER RE: MOTION TO
DISMISS SHAREHOLDER DERIVATIVE
ACTION PURSUANT TO NRCP 60**

Date of Hearing: May 27, 2016

Time of Hearing: In Chambers

1 DAVID L. HASBROUCK and SIU YIP,
2 derivatively on behalf of GALECTIN
3 THERAPEUTICS, INC.,

4 Plaintiffs-Intervenors,

5 -vs-

6 PETER G. TRABER; JAMES C. CZIRR;
7 JACK W. CALLICUTT; GILBERT F.
8 AMELIO; KEVIN D. FREEMAN; ARTHUR
9 R. GREENBERG; ROD D. MARTIN; JOHN
10 F. MAULDIN; STEVEN PRELACK;
11 HERMAN PAUL PRESSLER, III; DR.
12 MARC RUBIN; and 10X FUND, L.P.,

13 Defendants,

14 -and-

15 GALECTIN THERAPEUTICS, INC., a
16 Nevada corporation,

17 Nominal Defendant.

18 **OPPOSITION TO MOTION TO CORRECT ORDER RE: MOTION TO DISMISS**
19 **SHAREHOLDER DERIVATIVE ACTION PURSUANT TO NRCP 60**

20 COMES NOW Plaintiff, by and through his attorneys, LEE, HERNANDEZ, LANDRUM
21 & GAROFALO, and LIFSHITZ & MILLER (Edward W. Miller, Esq. admitted *pro hac vice*) and
22 hereby submits his Opposition to Defendants' Motion to Correct Order Re: Motion to Dismiss
23 Shareholder Derivative Action Pursuant to NRCP 60.

24 Defendants have moved for Relief for Judgment under Nevada Rules of Civil Procedure
25 Rule 60, but have moved for nothing more than a proposed rewording of the Order that results in
26 no change whatsoever to the legal consequences, meaning, scope or impact of the ruling set forth
27 in the order. As such, Plaintiff respectfully requests the Court to deny Defendants' motion.

28 In addition to the above, Plaintiff provides additional information in response to
Defendants' assertion that Plaintiff submitted proposed Order language to the Court without
Defendants' knowledge. At the outset, Plaintiff's counsel acknowledges that, due to an oversight,
Plaintiff's proposed Order was submitted to the Court on March 18, 2016 without a courtesy copy
to all counsel. Indeed, the Court noticed the lack of indication in the cover letter that all counsel

1 was copied. The Court Clerk contacted Plaintiff's local counsel on March 22, 2016 to inquire if
2 Plaintiff's proposed Order language had been previously circulated to Defense counsel for review.
3 As evidenced by prior e-mails among the parties wherein Defense counsel was provided an
4 opportunity to review Plaintiff's proposed Order and objected to same, Plaintiff's counsel
5 informed the Court that the language had been reviewed by all counsel prior to submission to the
6 Court. This explanation appeared to satisfy the Court in that there was no question Defense
7 counsel had reviewed Plaintiff's proposed Order language prior to submission to the Court. Thus,
8 while Plaintiff accepts the error of not providing a courtesy copy of the actual submission
9 document to all parties, Defendants' suggestion that they were somehow misled or disadvantaged
10 by the oversight is disingenuous.

11 Lastly, Defendants' suggestion that, had they known Plaintiff submitted his proposed
12 Order, they would have addressed the issue with the Court perhaps through a Motion is rather
13 irrational. Plaintiff is not aware of any Motion that would be properly made to request that the
14 Court limit what it can consider and include while preparing to issue an Order. The reality is that
15 the Court could have ignored both proposed Orders and prepared its own. Clearly, the Court is
16 well aware of the facts and circumstances surrounding this matter and chose to prepare an Order
17 adopting language from each proposed Order. Defendants appear to suggest that the Court would

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20 ///

21 ///

22 ///

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7575 VEGAS DRIVE, SUITE 150
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1 be bound to adopt one proposed Order or the other without the authority to make revisions as it
2 sees fit. Plaintiff submits that the Court is more than able to determine which findings of fact,
3 conclusions of law, and any other observations it wishes to include in an Order.

4 For these reasons, Defendants' Motion should be denied.

5 Dated this 22nd day of April, 2016.

6 **LEE, HERNANDEZ, LANDRUM**
7 **& GAROFALO**

8 By: 

9 NATASHA A. LANDRUM, ESQ.

10 Nevada Bar No. 7414

11 DAVID S. DAVIS, ESQ.

12 Nevada Bar No. 11549

13 7575 Vegas Drive, Suite 150

14 Las Vegas, NV 89128

15 Attorneys for Plaintiff Kirsch

16 **LIFSHITZ AND MILLER**

17 EDWARD W. MILLER, ESQ. (admitted *pro*
18 *hac vice*)

19 JOSHUA M. LIFSHITZ, ESQ.

20 821 Franklin Avenue, Suite 209

21 Garden City, New York

22 Telephone: (516) 493-9780

23 Facsimile: (516) 280-7376

24 Attorneys for Plaintiff Kirsch
25
26
27
28

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CERTIFICATE OF MAILING

Michael Kirsch v. Peter Traber, et al.

In Re: Galectin Therapeutics

I HEREBY CERTIFY that on the 22nd day of April, 2016, I served a copy of the above and foregoing **OPPOSITION TO MOTION TO CORRECT ORDER RE: MOTION TO DISMISS SHAREHOLDER DERIVATIVE ACTION PURSUANT TO NRCP 60**, by electronic service via Wiznet/Odyssey, pursuant to Administrative Order 174-2, to the following party(ies) of record:

Lyssa S. Anderson, Esq. Ryan W. Daniels, Esq.. KAEMPFER CROWELL 8345 W. Sunset Road, Ste. 250 Las Vegas, NV 89113 Telephone: (702) 792-7000 Fax: (702) 796-7181 landerson@kenvlaw.com ATTORNEY FOR DEFENDANT	Michael R. Smith, Esq. B. Warren Pope, Esq. Benjamin Lee, Esq. KING & SPAULDING, LLP 1180 Peachtree Street, NE Atlanta, GA 30309 ATTORNEY FOR DEFENDANT
John P. Aldrich, Esq. ALDRICH LAW FIRM, LTD 1601 S. Rainbow Blvd., Ste. 160 Las Vegas, NV 89146 (702) 853-5490 Fax: (702) 227-1975 jaldrich@johnaldrichlawfirm.com ATTORNEY FOR INTERVENORS	Michael I. Fistel, Jr., Esq. JOHSON & WEAVER, LLP 40 Powder Springs St. Marietta, GA 30064 (770)200-3104 michaelf@johnsonandweaver.com ATTORNEY FOR INTERVENORS
Kathleen A. Herkenhoff, Esq. THE WEISER LAW FIRM, P.C. 12707 High Bluff Drive, Suite 200 San Diego, CA 92130 (858) 794-1441 kah@weiserlawfirm.com Attorneys for INTERVENOR – Sui Yip	

By:


An employee of LEE, HERNANDEZ,
LANDRUM & GAROFALO

Exhibit “5”

Exhibit “5”


CLERK OF THE COURT

1 LYSSA S. ANDERSON
Nevada Bar No. 5781
2 KAEMPFER CROWELL
1980 Festival Plaza Drive, Suite 650
3 Las Vegas, Nevada 89135
Telephone: (702) 792-7000
4 Fax: (702) 796-7181
landerson@kcnvlaw.com

5 *Attorney for Defendants*

6
7 DISTRICT COURT
CLARK COUNTY, NEVADA

8 MICHAEL KIRSCH, derivatively on behalf of
GALECTIN THERAPEUTICS, INC.,

9 Plaintiff,

10 vs.

11 PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
12 AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN
13 F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; and DR.
14 MARC RUBIN,

15 Defendants,

16 -and-

17 GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

18 Nominal Defendant.

19 DAVID L. HASBROUCK and SIU YIP,
20 derivatively on behalf of GALECTIN
THERAPEUTICS, INC.,

21 Plaintiff,

22 vs.

23 PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
24 AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN

Case No. A-14-706397-B

Dept. No. XI

**REPLY MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTION TO
CORRECT ORDER RE:
MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION
PURSUANT TO NRCP 60**

1 F. MAULDIN; STEVEN PRELACK;
2 HERMAN PAUL PRESSLER, III; DR.
3 MARC RUBIN, and 10X FUND, L.P.,

4 Defendants,

5 -and-

6 GALECTIN THERAPEUTICS, INC., a
7 Nevada Corporation,

8 Nominal Defendant.

9 Defendants Peter G. Traber, James C. Czirr, Jack W. Callicutt, Gilbert F. Amelio, Kevin
10 D. Freeman, Arthur R. Greenberg, Rod. D. Martin, John F. Mauldin, Steven Prelack, Herman
11 Paul Pressler, III, and Dr. Marc Rubin (the "Individual Defendants") together with Defendant
12 10X Fund L.P. ("10X Fund")¹ and Nominal Defendant Galectin Therapeutics, Inc. ("Galectin"
13 or the "Company") (collectively, the Individual Defendants, 10X Fund and Galectin are referred
14 to herein as "Defendants") hereby respectfully submit this reply memorandum in support of
15 Defendants motion (the "Motion"), pursuant to Rule 60(a)&(b) of the Nevada Rules of Civil
16 Procedure, to correct a factual mistake contained in the Court's Order Re: Motions to Dismiss
17 Shareholder Derivative Action dated April 1, 2016 (the "Order").

18 Significantly, Plaintiff makes no effort to argue that the erroneous statement in paragraph
19 5 of the Order identified in Defendants' Motion is in fact correct or worthy of reliance. It is
20 beyond dispute that neither Mr. Smith nor any counsel for Defendant represented that "class
21 representations" or class certification issues were pending in the parallel Georgia Derivative
22 Action. *See generally* June 11, 2015 Hr'ing Tr. Nor did Defendants make any such
23 representation in their briefs submitted in connection with the motions argued at the June 11,

24 ¹ 10X Fund was named as a defendant only in the Verified Shareholder Complaint-In-
Intervention (the "IC") which was filed by Intervenor Plaintiffs David L. Hasbrouck and Siu Yip
("Intervenor Plaintiffs").

1 2015 hearing. Because Defendants' counsel made no such representation, it could not have
2 formed the basis for this Court's prior order staying this case. Accordingly, the statement in the
3 Court's April 1, 2016 Order that "[t]his Court's August 10, 2015 order staying the case for 180
4 days was based upon representations made to the Court by Mr. Smith at the June 11, 2015
5 hearing that issues raised in Georgia relate to class representations issues" is mistaken and should
6 be corrected pursuant to NRCP 60.

7 Instead, Plaintiff argues that Defendants' Motion should be denied merely because the
8 correction Defendants request purportedly would "result[] in no change whatsoever to the legal
9 consequences, meaning, scope or impact of the ruling set forth in the order." Pl. Opp. at 2. This
10 argument fails for at least two key reasons. *First*, if not corrected, the erroneous statement in the
11 Order may impact the course of appellate proceedings in this case or the Georgia Derivative
12 Action. Defendants expect that plaintiffs would use the erroneous statement to (incorrectly)
13 argue that Defendants procured a stay of this action or other advantage by misrepresenting the
14 procedural posture of the Georgia Derivative Action. Although any such argument would be
15 meritless and would find no support in the June 11, 2015 hearing transcript, Defendants (and any
16 appellate court reviewing the dismissal of the derivative claims asserted here and/or in the
17 Georgia Derivative Action) should not be put to the burden of sorting through the confusion
18 created by the Order's erroneous statement that this case was stayed based on a representation
19 that "class representations" or class certification issues were pending in the Georgia Derivative
20 Action. Thus, the premise of Plaintiff's argument—that the erroneous statement does not
21 matter—is incorrect. *Second*, irrespective of its lack of merit, Plaintiff's argument that the
22 factual mistake in the Order is immaterial simply provides no basis upon which to deny
23 Defendants' Motion. Rule 60 provides for correction of "clerical" and other mistakes such as the
24 one this Motion addresses. NRCP 60. This Court should correct the mistake of fact rather than

1 leave in the record of this case an incorrect statement and implication that Defendants' counsel
2 inaccurately described the procedural posture of the parallel Georgia Derivative Action to
3 improperly secure a stay of this case.

4 Plaintiffs' opposition is also noteworthy for its admission that Plaintiff did not notify
5 Defendants that he had in fact submitted his proposed order containing the factually erroneous
6 language regarding "class representations" issues—*even after the Clerk raised the matter with*
7 *Plaintiff's counsel*. "No harm, no foul," Plaintiff says in effect (Opp. at 3); but he is again
8 mistaken. Had Defendants known Plaintiff had submitted his proposed order containing the
9 incorrect and unsupported statement regarding "class representations" issues, Defendants would
10 have raised the matter with the Court before it issued its Order with the erroneous language from
11 Plaintiff's version. Instead, Plaintiff's failure to provide proper notice of his submission and lack
12 of candor with the Court have required both Defendants and the Court to expend additional time
13 and resources addressing the factual error in Plaintiff's proposed order which the Court
14 incorporated into its own Order.

15 In sum, Plaintiffs' opposition wholly fails to rebut Defendants' showing that the Order
16 contains a clear factual error that should be corrected pursuant to NRCP 60. Defendants
17 therefore respectfully request that the Court correct the Order by either (1) striking paragraph 5
18 thereof, which states: "This Court's August 10, 2015 order staying the case for 180 days was
19 based upon representations made to the Court by Mr. Smith at the June 11, 2015 hearing that

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1 issues raised in Georgia relate to class representations issues.”; or (2) correcting the paragraph to
2 reflect that the representations made by Mr. Smith at the June 11, 2015 hearing “related to Rule
3 23.1 issues” rather than “class representations” issues.

4 DATED this 20th day of May, 2016.

5 **KAEMPFER CROWELL**

6 /s/ Lyssa S. Anderson

7 LYSSA S. ANDERSON

8 Nevada Bar No. 5781

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10 Las Vegas, Nevada 89135

11 Tel: (702) 792-7000

12 Fax: (702) 796-7181

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14 **KING & SPALDING LLP**

15 Michael R. Smith (*admitted pro hac vice*)

16 B. Warren Pope (*admitted pro hac vice*)

17 Benjamin Lee (*admitted pro hac vice*)

18 1180 Peachtree Street

19 Atlanta, GA 30309

20 404-572-4600 (Phone)

21 404-572-5139 (Fax)

22 mrsmith@kslaw.com

23 wpope@kslaw.com

24 blee@kslaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2016, I forwarded copies of the foregoing **REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO CORRECT ORDER RE: MOTIONS TO DISMISS SHAREHOLDER DERIVATIVE ACTION PURSUANT TO NRCP 60** by ECF and/or U.S. Mail to the following attorneys of record:

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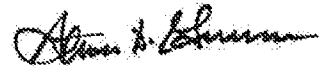
/s/ Heather R. Suter
an employee of Kaempfer Crowell

Exhibit “6”

Exhibit “6”

ORIGINAL

Electronically Filed
06/15/2016 01:56:44 PM



CLERK OF THE COURT

ORDER

NATASHA A. LANDRUM, ESQ.
Nevada Bar No. 7414

DAVID S. DAVIS, ESQ.
Nevada Bar No. 11549

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& GAROFALO

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EdMillerEsq@aol.com

jmlt@jllclasslaw.com

Attorneys for Plaintiff Michael Kirsch

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL KIRSCH, derivatively on behalf
of GALECTIN THERAPEUTICS, INC.,

Plaintiff,

-vs-

PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN
F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; and DR.
MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada corporation,

Nominal Defendant.

CASE NO. A-14-706397-B

DEPT. NO. XI

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO CORRECT
ORDER RE: MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION
PURSUANT TO NRCP 60

Date of Hearing: May 27, 2016
Time of Hearing: IN CHAMBERS

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LEE, HERNANDEZ, LANDRUM & GAROFALO
7575 VEGAS DRIVE, SUITE 150
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(702) 330-9750

1 DAVID L. HASBROUCK and SIU YIP,
2 derivatively on behalf of GALECTIN
3 THERAPEUTICS, INC.,

4 Plaintiffs-Intervenors,

5 -vs-

6 PETER G. TRABER; JAMES C. CZIRR;
7 JACK W. CALLICUTT; GILBERT F.
8 AMELIO; KEVIN D. FREEMAN; ARTHUR
9 R. GREENBERG; ROD D. MARTIN; JOHN
10 F. MAULDIN; STEVEN PRELACK;
11 HERMAN PAUL PRESSLER, III; DR.
12 MARC RUBIN; and 10X FUND, L.P.,

13 Defendants,

14 -and-

15 GALECTIN THERAPEUTICS, INC., a
16 Nevada corporation,

17 Nominal Defendant.

18 **[PROPOSED] ORDER DENYING DEFENDANTS' MOTION**
19 **TO CORRECT ORDER RE: MOTIONS TO DISMISS SHAREHOLDER**
20 **DERIVATIVE ACTION PURSUANT TO NRCP 60**

21 This matter having come before the Court in chambers on May 27, 2016, on Defendants'
22 Peter G. Traber, James C. Czirr, Jack W. Callicutt, Gilbert F. Amelio, Kevin D. Freeman, Arthur
23 R. Greenberg, Rod D. Martin, John F. Mauldin, Steven Prelack, Herman Paul Pressler, III, and
24 Dr. Marc Rubin (the "Individual Defendants") together with Defendant 10X Fund L.P. ("10X
25 Fund") and Nominal Defendant Galectin Therapeutics, Inc. ("Galectin" or the "Company")
26 (collectively, the Individual Defendants, 10X Fund and Galectin are referred to herein as
27 "Defendants") Motion to Correct Order re: Motions to Dismiss Shareholder Derivative Action
28 Pursuant to NRCP 60, the Court having reviewed the Motion, all briefing thereon and supporting
exhibits, and other good cause appearing:

///

1 IT IS HEREBY ORDERED AND ADJUDGED that Defendants' April 5, 2016 Motion to
2 Correct Order re: Motions to Dismiss Shareholder Derivative Action Pursuant to NRCP 60 is
3 DENIED.

4 Dated this 10th day of June, 2016.

5
6 
DISTRICT COURT JUDGE

7
8 Submitted by:

9 LEE, HERNANDEZ, LANDRUM
10 & GAROFALO

11 By: 

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Exhibit “7”

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- 1 a. Exercise good faith to ensure that the affairs of the Company were conducted in
2 an efficient, business-like manner so as to make it possible to provide the
3 highest quality performance of their business;
- 4 b. Exercise good faith to ensure that the Company was operated in a diligent,
5 honest, and prudent manner and complied with all applicable federal and state
6 laws, rules, regulations, and requirements, and all contractual obligations,
7 including acting only within the scope of its legal authority; and
- 8 c. When put on notice of problems with the Company's business practices and
9 operations, exercise good faith in taking appropriate action to correct the
10 misconduct and prevent its recurrence.

11 **Audit Committee Duties**

12 239. In addition to these duties, the members of the Audit Committee owed specific
13 duties to Galectin under the Audit Committee's Charter to review and approve quarterly and
14 annual financial statements and earnings press releases, and to ensure that the Company had
15 appropriate and effective internal controls over financial reporting.

16 240. Specifically, according to Galectin's Audit Committee Charter, the Audit
17 Committee is responsible for, among other things:

18 • Providing oversight regarding significant financial matters,
19 including such matters as borrowings, currency exposures, dividends,
share issuance and repurchases.

20 • Providing any recommendations, certifications and reports that
21 may be required by the SEC including the report of the Committee that
22 must be included in the Company's annual proxy statement. As part of the
23 CEO and CFO certification process for the Form 10-K and Form 10-Q,
reviewing disclosures concerning any significant deficiencies in the design
or operation of disclosure controls and procedures and any fraud involving
management or other employees who have a significant role in the
Company's internal controls.

24 • Reviewing and discussing the annual audited financial statements
25 and quarterly financial statements with management and the independent
26 auditor, including major issues regarding accounting, disclosure and
auditing procedures and practices as well as the adequacy of internal
controls that could materially affect the Company's financial statements.

27 • Reviewing with management, the independent auditors, and the
28 internal auditors, if any, the adequacy and effectiveness of the Company's

1 internal controls, and the integrity of the Company's financial reporting
2 process.

3 • Reviewing and approving any recommendations, certifications and
4 reports that may be required by NASDAQ or the SEC, including the report
of the Committee that must be included in the Company's annual proxy
statement.

5 • Reviewing and discussing the annual audited financial statements
6 and quarterly financial statements with management and the independent
7 auditor, including the disclosures made in "Management's Discussion and
8 Analysis of Financial Condition and Results of Operations," any major
9 issues regarding accounting, disclosure and auditing procedures and
practices, and the adequacy of internal controls that could materially affect
the Company's financial statements. Based on such annual review, the
Committee shall recommend to the Board the inclusion of the financial
statements in the Company's annual report on Form 10-K.

10 • Discussing with management the type of presentation and type of
11 information to be included in the Company's earnings press releases and
the financial information and earnings guidance provided to, as applicable,
analysts and rating agencies.

12 • Establishing and overseeing procedures for (a) the receipt,
13 retention, and treatment of complaints received by the Company regarding
14 accounting, internal accounting controls, or auditing matters; and (b) the
confidential anonymous submission by employees of the Company of
concerns regarding questionable accounting or auditing matters.

15 • Discussing with management and the independent auditor the
16 Company's policies with respect to risk assessment and risk management.

17 • In consultation with, as applicable, the independent auditor,
18 management and the internal auditors, reviewing the integrity of the
Company's financial reporting process.

19 • Reviewing periodically issues regarding accounting principles and
20 financial statement presentations, including any significant changes in the
21 Company's selection or application of accounting principles, and major
22 issues as to the adequacy of the Company's internal controls and any
23 special audit steps adopted in light of material control deficiencies;
24 analyses prepared by management and/or the independent auditor setting
25 forth significant financial reporting issues and judgments made in
connection with the preparation of the financial statements, including
26 analyses of the effects of alternative GAAP methods on the financial
27 statements; and the effect of regulatory and accounting initiatives, as well
28 as off-balance sheet structures, on the financial statements of the
Company.

• Reviewing, approving and overseeing any "related party
transactions" on an ongoing basis, and establishing appropriate procedures
to receive material information about and prior notice of such transactions.

• Reporting regularly to the Board of Directors.

1 241. Upon information and belief, the Company maintained an Audit Committee
2 Charter during the Relevant Period that imposed the same, or substantially and materially the
3 same or similar, duties on the members of the Audit Committee as those set forth above.

4 **Duties Pursuant to the Company's Code of Conduct and Ethics**

5 242. Additionally, the Individual Defendants, as officers and/or directors of
6 Galectin, are bound by the Company's Code of Conduct and Ethics (the "Code") which,
7 according to the Code, was adopted to deter wrongdoing and promote, among other things:

8 Full, fair, accurate, timely and understandable disclosure in reports and
9 documents filed with or submitted to the Securities and Exchange
Commission and in other public communications made by the Company.

10 243. With respect to public disclosures, the Code states, in pertinent part, that:

11 The Company must also disclose to the SEC, our current stockholders
12 ~~and the investing public, information that is required to be disclosed under~~
13 applicable laws, regulations or rules, and any additional information that
14 may be necessary to ensure that the required disclosures are not
15 misleading or inaccurate. The Company requires you to participate in the
disclosure process, which is designed to record, process, summarize and
report material information for disclosure, such that the information when
disclosed is full, fair, accurate, timely and understandable.

16 244. With respect to misrepresentations and false statements, the Code states, in
17 pertinent part, that:

18 Employees must never make a deliberate misrepresentation concerning
19 the Company or its business operations. No employee shall create, or
20 assist another in creating, a false or misleading entry on the Company's
books.

21 245. With respect to conflicts of interest, the Code states, in pertinent part, that:

22 All employees are expected to make decisions in the best interest of
23 the Company, and not for personal gain. Therefore, all employees are
24 required to handle in an ethical manner any actual or apparent conflicts of
interest between personal and professional relationships.

25 246. With respect to insider trading, the Code states, in pertinent part, that:

26 Employees, officers and directors who have access to confidential
27 information are not permitted to use or share that information for stock
28 trading purposes or for any other purpose except the conduct of our
business, whether or not such information is viewed as material. All non-

1 public information about the Company should be considered confidential
2 information. To use nonpublic information for personal financial benefit
3 or to "tip" others who might make an investment decision on the basis of
4 this information is not only unethical but also illegal.

5 247. Upon information and belief, the Company maintained a version of the Code
6 during the Relevant Period that imposed the same, or substantially and materially the same or
7 similar, duties on, among others, the Individual Defendants, as those set forth above.

8 **Governance Committee Duties**

9 248. In addition to their duties as directors of Galectin, the members of the
10 Governance Committee owed specific duties to Galectin under the Governance Committee's
11 Charter regarding the Code.

12 249. Specifically, according to Galectin's Governance Committee Charter, the
13 Governance Committee is responsible for, among other things:

- 14 • Periodically reviewing and recommending to the Board changes to the Code;
- 15 • Monitoring overall compliance with the Code;
- 16 • Reviewing all potential conflicts of interest under and violations of the Code;
- 17 and
- 18 • Considering all waivers of compliance with the Code.

19 250. Further, and specifically when defendant Mauldin was nominated for
20 appointment to the Board in June 2011 by, among others, Martin and Amelio who, at all
21 relevant times were members of the Company's Governance Committee, the Governance
22 Committee was specifically "responsible for identifying individuals qualified to become
23 members of the Board, and to recommend to the Board, candidates for election or re-election
24 as directors and for reviewing our governance policies in light of the corporate governance
25 rules of the SEC." The Governance Committee was also specifically charged with
26 "establish[ing] and recommend[ing] criteria for service as a director, including matters relating
27 to professional skills and experience, board composition, potential conflicts of interest and
28 manner of consideration of individuals proposed by management or stockholders for
nomination" and were to specifically consider a candidate's "integrity, business acumen, age,

1 experience, commitment, diligence, conflicts of interest and the ability to act in the interests of
2 all shareholders.”

3 251. Upon information and belief, the Company maintained a Governance
4 Committee Charter during the Relevant Period that imposed the same, or substantially and
5 materially the same or similar, duties on the members of the Governance Committee as those
6 set forth above.

7 **Control, Access, and Authority**

8 252. The Individual Defendants, because of their positions of control and authority
9 as directors and/or officers of Galectin, were able to and did, directly and/or indirectly,
10 exercise control over the wrongful acts complained of herein, as well as the contents of the
11 various public statements issued by Galectin.

12 253. Because of their advisory, executive, managerial, and directorial positions with
13 Galectin, each of the Individual Defendants had access to adverse, non-public information
14 about the financial condition, operations, and improper representations of Galectin.

15 254. At all times relevant hereto, each of the Individual Defendants was the agent of
16 each of the other Individual Defendants and of Galectin, and was at all times acting within the
17 course and scope of such agency.

18 **Reasonable and Prudent Supervision**

19 255. To discharge their duties, the officers and directors of Galectin were required to
20 exercise reasonable and prudent supervision over the management, policies, practices, and
21 controls of the financial affairs of the Company. By virtue of such duties, the officers and
22 directors of Galectin were required to, among other things:

- 23 (a) ensure that the Company complied with its legal obligations and requirements,
24 including acting only within the scope of its legal authority and disseminating
25 truthful and accurate statements to the investing public;
- 26 (b) conduct the affairs of the Company in an efficient, business-like manner so as
27 to make it possible to provide the highest quality performance of its business, to
28 avoid wasting the Company’s assets, and to maximize the value of the

Company's stock;

(c) properly and accurately guide investors and analysts as to the true financial and business prospects of the Company at any given time, including making accurate statements about the Company's business and financial prospects and internal controls;

(d) remain informed as to how Galectin conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with securities laws;

(e) refrain from trading on material, adverse, non-public information; and

(f) ensure that Galectin was operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules, and regulations.

BREACHES OF DUTIES

256. Each Individual Defendant, by virtue of his or her position as a director and/or officer, owed to Galectin and its shareholders the fiduciary duty of loyalty and good faith and the exercise of due care and diligence in the management and administration of the affairs of Galectin, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Galectin, the absence of good faith on their part, and a reckless disregard for their duties to Galectin and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to Galectin.

257. The Individual Defendants each breached their duties of loyalty and good faith by issuing or by causing the Company to issue false and/or misleading statements that misled shareholders into believing that disclosures related to the Company's financial and business prospects were truthful and accurate when made.

1 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

2 258. In committing the wrongful acts alleged herein, Defendants have pursued, or
3 joined in the pursuit of, a common course of conduct, and have acted in concert with and
4 conspired with one another in furtherance of their wrongdoing. Defendants further aided and
5 abetted and/or assisted each other in breaching their respective duties.

6 259. During all times relevant hereto, Defendants collectively and individually
7 initiated a course of conduct that was designed to mislead shareholders into believing that the
8 Company's business and financial prospects were better than they actually were. In
9 furtherance of this plan, conspiracy, and course of conduct, Defendants collectively and
10 individually took the actions set forth herein.

11 260. The purpose and effect of the Defendants' conspiracy, common enterprise,
12 and/or common course of conduct was, among other things, to: (a) disguise Defendants'
13 violations of law, including breaches of fiduciary duties, aiding and abetting thereof, and
14 unjust enrichment; and (b) disguise and misrepresent the Company's actual business and
15 financial prospects.

16 261. Defendants accomplished their conspiracy, common enterprise, and/or common
17 course of conduct by causing the Company to purposefully, recklessly, or negligently release
18 improper statements. Because the actions described herein occurred under the authority of the
19 Board, each Defendant was a direct, necessary, and substantial participant in the conspiracy,
20 common enterprise, and/or common course of conduct complained of herein.

21 262. Each Defendant aided and abetted and rendered substantial assistance in the
22 wrongs complained of herein. In taking such actions to substantially assist the commissions of
23 the wrongdoing complained of herein, each Defendant acted with knowledge of the primary
24 wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of
25 his overall contribution to and furtherance of the wrongdoing.

26 **DAMAGES TO GALECTIN**

27 263. As a result of the Individual Defendants' wrongful conduct, Galectin
28 disseminated false and misleading statements and omitted material information to make such

1 statements not false and misleading when made. The improper statements have devastated
2 Galectin's credibility. Galectin has been, and will continue to be, severely damaged and
3 injured by the Individual Defendants' misconduct.

4 264. As a direct and proximate result of the Individual Defendants' actions as
5 alleged above, Galectin's market capitalization has been substantially damaged, losing tens of
6 millions of dollars in value as a result of the conduct described herein.

7 265. Further, as a direct and proximate result of the Individual Defendants' conduct,
8 Galectin has expended and will continue to expend significant sums of money. Such
9 expenditures include, but are not limited to:

10 a. costs incurred from compensation and benefits paid to the Individual
11 Defendants, which compensation was based at least in part on Galectin's

12 artificially-inflated stock price; and

13 b. costs incurred from the loss of the Company's customers' confidence in
14 Galectin's products.

15 266. Moreover, these actions have irreparably damaged Galectin's corporate image
16 and goodwill. For at least the foreseeable future, Galectin will suffer from what is known as
17 the "liar's discount," a term applied to the stocks of companies who have been implicated in
18 illegal behavior and have misled the investing public, such that Galectin's ability to raise
19 equity capital or debt on favorable terms in the future is now impaired. The Company has also
20 suffered a loss of almost \$200 million in market capitalization as a direct result of the
21 Individual Defendants' wrongdoing alleged herein.

22 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

23 267. Plaintiffs-Intervenors bring this action derivatively in the right and for the
24 benefit of Galectin to redress injuries suffered, and to be suffered, by Galectin as a direct result
25 of the Individual Defendants' breaches of fiduciary duties and other violations of law.
26 Galectin is named as a nominal defendant solely in a derivative capacity.

27 268. Plaintiffs-Intervenors will adequately and fairly represent the interests of
28 Galectin in enforcing and prosecuting its rights.

1 269. Plaintiffs-Intervenors have continuously been Galectin shareholders at all
2 relevant times, including at the time of the Individual Defendants' wrongdoing complained of
3 herein. Specifically, Plaintiffs-Intervenors have continuously been shareholders of Galectin
4 since 2003 and 2007, respectively.

5 270. Plaintiffs-Intervenors did not make a pre-suit demand on the Board to pursue
6 this action, because such a demand would have been a futile and wasteful act.

7 271. Plaintiffs-Intervenors have not made any demand on shareholders of Galectin
8 to institute this action since such demand would be a futile and useless act for the following
9 reasons:

10 a. Galectin is a publicly traded company with thousands of shareholders of
11 record;

12 b. Making demand on such a number of shareholders would be impossible for
13 Plaintiffs-Intervenors, who have no means of collecting the names, addresses,
14 or phone numbers of Galectin shareholders; and

15 c. Making demand on all shareholders would force Plaintiffs-Intervenors to
16 incur excessive expense and obstacles, assuming all shareholders could even be
17 individually identified with any degree of certainty.

18 272. The Company has been directly and substantially injured by reason of the
19 Individual Defendants' breaches of their fiduciary duties to Galectin. Plaintiffs-Intervenors, as
20 shareholders of Galectin, seek damages and other relief on behalf of the Company, in an
21 amount to be proven at trial.

22 273. At the time this action was commenced, the Board of Galectin consisted of the
23 following ten (10) directors: Czirr, Martin, Amelio, Freeman, Greenberg, Mauldin, Prelack,
24 Pressler, Rubin, and Traber.

25 **Direct Interestedness Based on Challenged Insider Sales**

26 274. During the Relevant Period, defendants Czirr, Martin, and Prelack, either in
27 their individual capacities or through entities they owned and/or controlled, illicitly sold shares
28 of Galectin stock while in possession of material, adverse, non-public information, during a

1 time in which Galectin stock was artificially inflated due to the Individual Defendants'
2 misconduct. Moreover, in making or causing these sales, Czirr, Martin, and Prelack violated
3 the Company's insider trading policy, as set forth in the Code.

4 275. As a result of these illicit insider sales, defendants Czirr, Martin, and Prelack
5 each received direct financial benefits not shared with Galectin shareholders, and are,
6 therefore, each directly interested in a demand. Further, defendants Czirr, Martin, and Prelack
7 each are interested in a demand because they face a substantial likelihood of liability for their
8 breaches of fiduciary duties of loyalty and good faith based on their challenged insider sales.
9 Accordingly, demand upon Czirr, Martin, and Prelack is futile.

10 **Demand is Futile as to All Director Defendants Because the Director Defendants**
11 **Face a Substantial Likelihood of Liability in Connection with the Secret Stock Promotion**
Scheme

12 276. The Director Defendants face a substantial likelihood of liability for their
13 breaches of fiduciary duties of loyalty and good faith and other misconduct. The Director
14 Defendants were directors throughout the Relevant Period, and as such had fiduciary duties to
15 ensure the Company's SEC filings, press releases, and other public statements and
16 presentations on behalf of the Company concerning its financial and business prospects were
17 accurate.

18 277. The Director Defendants caused and/or allowed the Company to enter into the
19 illicit, secret, and unethical stock promotion agreement with the Stock Promoters, whereby the
20 Company's stock price was artificially inflated through a series of misleading "articles"
21 published by the Stock Promoters that appeared to be independent, but were in fact paid. As
22 set forth above, the Director Defendants admit to hiring the Stock Promoters. Indeed, Cox has
23 a direct relationship with Mauldin. Specifically, Mauldin publishes investment advice to
24 paying subscribers through his website, Mauldin Economics. Mauldin Economics employed
25 various editors, including, among others, Cox, who contributed research on small-cap biotech
26 companies, including Galectin, through a fee-based publication titled *Transformational*
27 *Technology Alert*.

1 278. As a result of this illicit scheme, defendants Traber, Czirr, Martin, Amelio,
2 Freeman, Greenberg, Mauldin, Prelack, Pressler, and Rubin (*i.e.* the entire Board) face a
3 substantial likelihood of liability for their breaches of fiduciary duties, rendering any demand
4 upon them futile. Moreover, this conduct is not entitled to the protections of the business
5 judgment rule, which also independently excuses demand.

6 279. Further, defendants Traber, Czirr, Martin, Amelio, Freeman, Greenberg,
7 Mauldin, Prelack, Pressler, and Rubin (*i.e.* the entire Board) each signed the false and
8 misleading 2012 and 2013 Form 10-Ks. The 2012 and 2013 Form 10-Ks were false and
9 misleading because (among other things) they utterly failed to disclose the scheme that
10 Defendants had entered into with the Stock Promoters, and misstated GR-MD-02's putative
11 benefits and effectiveness. As a result, defendants Traber, Czirr, Martin, Amelio, Freeman,

12 Greenberg, Mauldin, Prelack, Pressler, and Rubin (*i.e.* the entire Board) face a substantial
13 likelihood of liability for their breaches of fiduciary duties, rendering any demand upon them
14 futile.

15 280. Further, on October 25, 2013, the Director Defendants caused the Company to
16 file with the SEC a Prospectus Supplement on Form 424B5 in connection with the Company's
17 Registration Statement filed with the SEC on Form S-3 on March 16, 2011. The Form 424B5
18 incorporated by reference, among other things, the Company's 2012 Form 10-K, which as
19 stated in ¶¶100-101, 213 was false and misleading and which was signed by each of the
20 Director Defendants.

21 281. Each of the Director Defendants also signed the Registration Statement on
22 Form S-3 filed with the SEC on March 21, 2014, along with the Base Prospectus and Sales
23 Agreement Prospectus, which provided for the sale of up to another \$30 million in Galectin
24 common stock by the Company, in accordance with the terms of the At-Market Agreement, as
25 amended, which were incorporated by reference. As is detailed herein at ¶213(c) and (d), the
26 At-Market Agreement was false and misleading. Thus, the Director Defendants face a
27 substantial likelihood of liability for these statements incorporated into the Form S-3, which
28 they each signed.

1 282. Indeed, the Director Defendants, knowingly and/or with reckless disregard
2 reviewed, authorized, and/or caused the publication of materially false and misleading
3 statements throughout the Relevant Period that caused the Company's stock to trade at
4 artificially inflated prices.

5 283. Moreover, the Director Defendants also wasted corporate assets by paying
6 improper compensation, bonuses, and severance to certain of the Company's executive
7 officers and directors. The handsome remunerations paid to wayward fiduciaries who
8 proceeded to breach their fiduciary duties to the Company was improper and unnecessary, and
9 no person of ordinary, sound business judgment would view this exchange of consideration for
10 services rendered as fair or reasonable.

11 284. The Director Defendants' making or authorization of false and misleading
12 statements throughout the Relevant Period, failure to timely correct such statements, failure to
13 take necessary and appropriate steps to ensure that the Company's internal controls or internal
14 auditing and accounting controls were sufficiently robust and effective (and/or were being
15 implemented effectively), failure to take necessary and appropriate steps to ensure that the
16 Audit Committee's duties were being discharged in good faith and with the required diligence,
17 and/or acts of corporate waste and abuse of control constitute breaches of fiduciary duties, for
18 which the Director Defendants face a substantial likelihood of liability. If the Director
19 Defendants were to bring a suit on behalf of Galectin to recover damages sustained as a result
20 of this misconduct, they would expose themselves to significant liability. This is something
21 they will not do. For this reason demand is futile.

22 **Demand is Futile as to the Audit Committee Defendants**

23 285. During the Relevant Period, Prelack (Chairperson), Freeman, and Greenberg
24 served as members of the Audit Committee. Pursuant to the Company's Audit Committee
25 Charter, the Audit Committee Defendants were specifically responsible for, among other
26 things, reviewing and approving quarterly and annual financial statements and earnings press
27 releases, overseeing Galectin's internal controls over financial reporting, and discharging their
28 other duties described herein. Despite these duties, the Audit Committee Defendants

1 knowingly or recklessly reviewed and approved, or failed to exercise due diligence and
2 reasonable care in reviewing and preventing the dissemination of false and/or materially
3 misleading earnings press releases and earnings guidance and failed in their specific duties to
4 ensure that the Company's internal controls over financial reporting were sufficient and that
5 statements made by the Company regarding its business and financial prospects were accurate.
6 Accordingly, the Audit Committee Defendants face a sufficiently substantial likelihood of
7 liability for breach of their fiduciary duties of loyalty and good faith. Any demand upon the
8 Audit Committee Defendants therefore is futile.

9 **Demand is Futile as to the Governance Committee Defendants**

10 286. During the Relevant Period, Martin (Chairperson), Amelio, and Greenberg
11 served as members of the Governance Committee. Pursuant to the Governance Committee
12 Charter, the Governance Committee Defendants were specifically responsible for, among other
13 things, monitoring compliance with the Code. Despite these duties, the Governance
14 Committee Defendants took no action in response to the repeated violations of the Code's
15 provisions governing public disclosures, misrepresentations and false statements, conflicts of
16 interest, and insider trading referenced herein. Accordingly, the Governance Committee
17 Defendants face a substantial likelihood of liability for breach of their fiduciary duties of
18 loyalty and good faith. Any demand upon the Governance Committee Defendants therefore is
19 futile.

20 287. Further, Defendant Mauldin was nominated for appointment to the Board in
21 June 2011 by, among others, Martin and Amelio, who, at all relevant times were members of
22 the Company's Governance Committee, and who knew or should have known about
23 Mauldin's ties to stock promoters and history of "pumping-up" the price of a Company's
24 stock.

25 **Demand is Futile as to Defendant Traber for Additional Reasons**

26 288. In addition to the reasons discussed herein as to why demand is futile as to all
27 Director Defendants, demand is futile as to Traber because there is reason to doubt that Traber
28 is an independent director.

1 289. Specifically, Traber's principal professional occupation is his employment with
2 Galectin as its President, CEO, and CMO, pursuant to which he has received and continues to
3 receive substantial monetary compensation and other benefits. In addition, according to the
4 Company's most recent Proxy filed with the SEC and disseminated to shareholders on April 8,
5 2015, the Board admits that Traber is not an independent director. Thus, Traber lacks
6 independence from demonstrably interested directors, rendering him incapable of impartially
7 considering a demand to commence and vigorously prosecute this action.

8 290. Traber also cannot disinterestedly consider a demand to bring suit against
9 himself because Traber is a named defendant in the Securities Class Action which alleges that
10 he made many of the same misstatements described above in violation of the federal securities
11 laws. Thus, if Traber were to initiate suit in this action he would compromise his ability to
12 simultaneously defend himself in the Securities Class Action and would expose himself to
13 liability in this action. This he will not do.

14 291. As such, Traber cannot independently consider any demand to sue himself for
15 breaching his fiduciary duties to Galectin, because that would expose him to liability and
16 threaten his livelihood.

17 **Demand is Futile as to Defendant Czirr for Additional Reasons**

18 292. In addition to the reasons discussed herein as to why demand is futile as to all
19 Director Defendants, demand is futile as to Czirr because there is reason to doubt that Czirr is
20 an independent director.

21 293. Specifically, demand is futile as to Czirr since he is an executive officer of the
22 Company who derives substantial income from his employment with Galectin, making him, as
23 acknowledged by the Board in Galectin's most recent Proxy filed with the SEC and
24 disseminated to shareholders on April 8, 2015, not an independent director.

25 294. Czirr also cannot disinterestedly consider a demand to bring suit against himself
26 because Czirr is a named defendant in the Securities Class Action which alleges that he made
27 many of the same misstatements described above in violation of the federal securities laws.
28 Thus, if Czirr were to initiate suit in this action he would compromise his ability to

1 simultaneously defend himself in the Securities Class Action and would expose himself to
2 liability in this action. This he will not do.

3 295. Czirr faces a substantial likelihood of liability for breach of fiduciary duties in
4 connection with the sales of Galectin stock he caused the 10X Fund to execute, as set forth
5 herein.

6 296. As such, Czirr cannot independently consider any demand to sue himself for
7 breaching his fiduciary duties to Galectin, because that would expose him to liability and
8 threaten his livelihood.

9 **Demand is Futile as to Defendant Mauldin for Additional Reasons**

10 297. In addition to the reasons discussed herein as to why demand is futile as to all
11 Director Defendants, demand is futile as to Mauldin because there is reason to doubt that

12 Mauldin is an independent director.

13 298. Specifically, demand is futile as to Mauldin since he is affiliated with one of the
14 Stock Promoters the Individual Defendants secretly hired to tout Galectin's stock price.

15 299. Indeed, Mauldin published investment advice to paying subscribers through his
16 website, Mauldin Economics. Mauldin Economics employed various editors, including,
17 among others, Cox, who contributed research on small-cap biotech companies through a fee-
18 based publication titled *Transformational Technology Alert*. As alleged herein, Cox was one
19 of four stock promoters that Galectin illicitly retained during the Relevant Period to write
20 articles touting the Company to investors as part of the Company's stock promotion scheme.

21 300. Mauldin also cannot disinterestedly consider a demand to bring suit against
22 himself because Mauldin is a named defendant in the Securities Class Action which alleges
23 that he violated the federal securities laws. Thus, if Mauldin were to initiate suit in this action
24 he would compromise his ability to simultaneously defend himself in the Securities Class
25 Action and would expose himself to liability in this action. This he will not do.

26 301. As such, Mauldin cannot independently consider any demand to sue himself for
27 breaching his fiduciary duties to Galectin, because that would expose him to liability.

1 **Demand is Futile as to Defendant Martin for Additional Reasons**

2 302. In addition to the reasons discussed herein as to why demand is futile as to all
3 Director Defendants, demand is futile as to Martin because there is further reason to doubt that
4 Martin is an independent director.

5 303. Martin cannot disinterestedly consider a demand to bring suit against himself
6 because Martin is a named defendant in the Securities Class Action which alleges that he
7 violated the federal securities laws. Thus, if Martin were to initiate suit in this action he would
8 compromise his ability to simultaneously defend himself in the Securities Class Action and
9 would expose himself to liability in this action. This he will not do.

10 304. As such, Martin cannot independently consider any demand to sue himself for
11 breaching his fiduciary duties to Galectin, because that would expose him to liability.

12 **Demand is Futile Because Czirr and Martin Control the Board**

13 305. Defendants Traber, Amelio, Freeman, Greenberg, Mauldin, Prelack, Pressler,
14 and Rubin (a majority of the Board) are incapable of independently and disinterestedly
15 considering a demand to commence and vigorously prosecute this action since, in addition to
16 their participation or approval in the wrongs alleged herein, each of these defendants is
17 controlled by defendants Czirr and Martin.

18 306. In 2009, Czirr and Martin led a takeover of the Company.

19 307. Czirr and Martin are also co-founders of the 10X Fund.

20 308. As of March 19, 2014, 10X Fund – which is controlled by Czirr and Martin – is
21 the owner of all of the issued and outstanding shares of Galectin Series B preferred stock.

22 309. As holders of Galectin Series B preferred stock, 10X Fund has the right to,
23 among other things, vote as a separate class to nominate and elect two directors, referred to as
24 the Series B directors, and to nominate three directors, referred to as the Series B nominees,
25 who must be recommended for election by holders of all of Galectin's securities entitled to
26 vote on election of directors. In fact, Czirr is a Series B director.

310. In addition to controlling all of the issued and outstanding shares of the Series B preferred stock, Czirr, Martin, and 10X Fund, collectively, own a significant amount of the Company's common stock.

311. Czirr and Martin serve as Executive Chairman and Vice Chairman of the Board, respectively, and Martin also serves as the Chairperson of the Governance Committee *and* Compensation Committee.

312. Due to their significant business ties with one another, Czirr and Martin are beholden to one another.

313. Further, because of the influence Czirr and Martin have as a result of their positions on the Board and ownership of all of the Series B preferred stock and significant holdings of the Company's common stock, Defendants Traber, Amelio, Freeman, Greenberg,

Mauldin, Prelack, Pressler, and Rubin (a majority of the Board) are beholden to defendants Czirr and Martin, and are therefore incapable of impartially considering a demand to commence and vigorously prosecute this action against defendants Czirr and Martin.

314. Thus, demand is futile as to defendants Traber, Amelio, Freeman, Greenberg, Mauldin, Prelack, Pressler, and Rubin.

COUNT I

Against the Individual Defendants for Breaches of Fiduciary Duties

315. Plaintiffs-Intervenors incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

316. The Individual Defendants owed and owe Galectin fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe Galectin the highest obligation of good faith, fair dealing, loyalty, due care, reasonable inquiry, oversight, and supervision.

317. As alleged in detail herein, each of the Individual Defendants (and particularly the Audit Committee Defendants) had a duty to ensure that Galectin disseminated accurate, truthful and complete information to its shareholders.

318. The Individual Defendants violated and breached their fiduciary duties of good faith, fair dealing, loyalty, due care, reasonable inquiry, oversight, and supervision.

319. The Individual Defendants each knowingly, recklessly or negligently approved the issuance of false statements that misrepresented and failed to disclose material information concerning the Company. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

320. Additionally, as is also alleged herein, each of the Individual Defendants had a fiduciary duty to, among other things, exercise good faith to ensure that the Company's financial statements were prepared in accordance with GAAP, and, when put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

321. Yet, the Individual Defendants willfully ignored the obvious and pervasive problems with Galectin's internal controls practices and procedures and failed to make a good faith effort to correct the problems or prevent their recurrence.

322. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary obligations, Galectin has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

323. Plaintiffs-Intervenors, on behalf of Galectin, have no adequate remedy at law.

COUNT II

Against all Defendants for Common Law Conspiracy

324. Plaintiffs-Intervenors incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

325. By and through the wrongful acts and omissions described herein, Defendants, and each of them, have combined, associated, agreed, conspired, mutually undertaken and concerted together for the purpose of willfully and maliciously injuring Galectin in its reputation, trade, and business.

326. By and through the wrongful acts and omissions described herein, Defendants, and each of them, have attempted to procure the participation, cooperation, agreement, or other assistance of other persons to enter into an unlawful combination, association, agreement, mutual understanding or concert for the purpose of willfully and maliciously injuring Galectin in its reputation, trade, and business.

327. The acts and omissions of Defendants complained of in this Count have been undertaken in order to serve Defendants' respective personal pecuniary interests, including without limitation the extensive profiteering from sales of Company stock owned by certain Defendants at artificially inflated prices, to protect their executive and/or directorial positions at the Company, and to preserve the value of their personally held Company stock, which interests are separate and distinct from, and indeed contrary to, the interests of the Company.

328. The acts and omissions of Defendants complained of in this Count have been undertaken without justification.

329. The Company has been injured as a direct and proximate result of the acts and omissions complained of herein, and has suffered damages in an amount to be determined at trial.

330. The acts and omissions of Defendants complained of in this Count have been undertaken willfully, knowingly, and maliciously, and/or with reckless disregard for their respective civil obligations, and accordingly Galectin is entitled to recover punitive damages with respect to this Count.

COUNT III

Against the Insider Selling Defendants for Breaches of Fiduciary Duties for Insider Selling and Misappropriation of Information

331. Plaintiffs-Intervenors incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

332. At the time of the stock sales set forth herein, the Insider Selling Defendants were in possession of material, adverse, non-public information described above, and sold Galectin common stock on the basis of such information.

1 333. The information described above was proprietary, non-public information
2 concerning the Company's financial condition and future business prospects. It was a
3 proprietary asset belonging to the Company that the Insider Selling Defendants used for their
4 own benefit or for the benefit of an entity they controlled when they sold Galectin common
5 stock.

6 334. At the time of their stock sales, the Insider Selling Defendants knew, *inter alia*,
7 that the Individual Defendants had secretly hired the Stock Promoters to disseminate positive
8 but misleading reports about the Company, that both the Company and the Stock Promoters
9 they hired were embellishing the putative effectiveness of GR-MD-02 in the treatment of
10 patients with NASH despite the absence of any definitive evidence proving its efficacy and
11 were overstating Galectin's competitiveness with its so-called "peer" Intercept, even though

12 Intercept's clinical trial was more than two years ahead of Galectin's and had already delivered
13 positive Phase II data demonstrating the efficacy of its drug candidate, knew that GR-MD-02
14 did not provide the benefits suggested by the Individual Defendants when discussing the patent
15 the Company was awarded or the Phase 1 clinical trial the Individual Defendants were causing
16 the Company to conduct, and that the ATM Offerings were being managed as to limit the
17 dilution of their personal Galectin stock holdings. As such, the Insider Selling Defendants
18 knew the Company's touted financial and business prospects were materially false and
19 misleading at all relevant times during the Relevant Period.

20 335. The Insider Selling Defendants' stock sales while in possession and control of
21 this material adverse, non-public information constituted breaches of their fiduciary duties of
22 loyalty and good faith and/or an unlawful misappropriation of Company information.

23 336. Since the use of the Company's proprietary information for their own gain
24 constitutes breaches of the Insider Selling Defendants' fiduciary duties, the Company is
25 entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants
26 obtained thereby.

27 337. Plaintiffs-Intervenors, on behalf of Galectin, have no adequate remedy at law.
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COUNT IV

Against the Individual Defendants for Unjust Enrichment

338. Plaintiffs-Intervenors incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

339. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Galectin.

340. The Individual Defendants were unjustly enriched as a result of the compensation they received while breaching their fiduciary duties owed to Galectin.

341. Further, the Insider Selling Defendants sold Galectin common stock (or caused it to be sold for their benefit) while in possession of material, adverse non-public information that artificially inflated the price of Galectin stock. As a result, the Insider Selling Defendants

profited from their misconduct and were unjustly enriched through their exploitation of material and adverse inside information.

342. Plaintiffs-Intervenors, as shareholders and representatives of Galectin, seek restitution from the Individual Defendants and seek an order from this Court disgorging all profits, benefits, and other compensation obtained by Defendants from their wrongful conduct and fiduciary breaches.

343. Plaintiffs-Intervenors, on behalf of Galectin, have no adequate remedy at law.

COUNT V

Against the Individual Defendants for Waste of Corporate Assets

344. Plaintiffs-Intervenors incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

345. The wrongful conduct alleged regarding the issuance of false and misleading statements, was continuous, connected, and on-going throughout the Relevant Period. It resulted in continuous, connected, and on-going harm to the Company.

346. As a result of the misconduct described above, the Individual Defendants wasted corporate assets by: (i) paying excessive compensation, bonuses, and termination

1 payments to certain of its executive officers; (ii) awarding self-interested stock options to
2 certain officers and directors; (iii) paying the Stock Promoters to improperly tout the
3 Company; and (iv) incurring potentially millions of dollars of legal liability and/or legal costs
4 to defend Defendants' unlawful actions.

5 347. As a result of the waste of corporate assets, the Individual Defendants are liable
6 to the Company.

7 348. Plaintiffs-Intervenors, on behalf of Galectin, have no adequate remedy at law.

8 **COUNT VI**

9 **Against the Individual Defendants and 10X Fund for Aiding and Abetting Fiduciary**
10 **Violations**

11 349. Plaintiffs-Intervenors incorporate by reference and reallege each and every
12 allegation contained above, as though fully set forth herein.

13 350. The wrongful conduct alleged herein was continuous, connected, and on-going
14 since at least August 2012. The Individual Defendants' and 10X Fund's misconduct resulted
15 in continuous, connected, and on-going harm to the Company.

16 351. The Individual Defendants and 10X Fund had the power and/or ability to, and
17 did, directly or indirectly control or influence the Company's general affairs, including the
18 content of public statements disseminated by Galectin and had the power and/or ability
19 directly or indirectly to control or influence one another.

20 352. Specifically, with respect to the Individual Defendants, each served in either an
21 executive position at the Company and/or as a director of the Company.

22 353. Specifically, with respect to 10X Fund, it was the beneficial owner of all of the
23 issued and outstanding shares of Galectin's Series B preferred stock. Through its ownership of
24 Galectin Series B preferred stock, 10X Fund was entitled to: (i) elect three directors to the
25 Company's Board in a separate class vote; (ii) nominate three directors for election by all
26 shares entitled to vote; and (iii) provide or withhold consent to a range of fundamental
27 corporate actions that the Company may have wished to undertake, such as recapitalization,
28 sale of the Company, and other matters.

354. Each Individual Defendant and 10X Fund is jointly and severally liable to the same extent as any other Defendant is liable for breaches of fiduciary duties as set forth herein or violations of any other laws.

355. As a direct and proximate result of the Individual Defendants' and 10X Fund's foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

356. Plaintiffs-Intervenors, on behalf of Galectin, have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs-Intervenors demand judgment as follows:

A. Against all Defendants for the amount of damages sustained by the Company as a result of Defendants' wrongdoing as alleged herein;

B. Directing Galectin to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Galectin and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote the following corporate governance proposals or policies:

- a proposal to strengthen the Board's supervision of operations and compliance with applicable state and federal laws and regulations;
- a proposal to strengthen the Company's internal reporting and financial disclosure controls;
- a proposal to develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;
- a proposal to ensure the accuracy of the qualifications of Galectin directors, executives and other employees;
- a provision to strengthen the Company's oversight and controls over insiders' purchase and sale of Company stock;
- a proposal to require an independent Chairman of the Board;

- a proposal to strengthen the Company's procedures for the receipt, retention and treatment of complaints received by the Company regarding internal controls; and
- a provision to appropriately test and then strengthen the Company's internal operational control functions.

C. Awarding to Galectin restitution from the Individual Defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the Individual Defendants;

D. Awarding to Plaintiffs-Intervenors the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

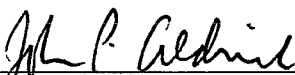
E. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs-Intervenors demand a trial by jury.

DATED this 9th day of July, 2015.

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*Counsel for Plaintiffs-Intervenors David L.
Hasbrouck and Siu Yip*

1 **CERTIFICATE OF SERVICE**

2 Michael Kirsch v. Peter Traber, et al.
3 (In Re: Galectin Therapeutics)

4 I hereby certify that on the 9th day of July 2015, I mailed a copy of the above and
5 foregoing **David L. Hasbrouck's And Siu Yip's Verified Shareholder Derivative**
6 **Complaint-In-Intervention** by electronic service via Wiznet/Odyssey, pursuant to
7 Administrative Order 174-2, to the following parties of record:

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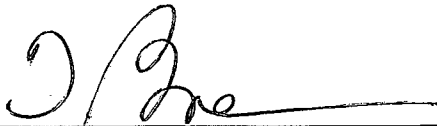
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By: 
An employee of ALDRICH LAW FIRM,
LTD.

VERIFICATION

I, Siu Wing Yip, under penalty of perjury, state as follows:

I am the Plaintiff in the above-captioned action. I have read the foregoing Complaint and authorized its filing. Based upon the investigation of my counsel, the allegations in the Complaint are true to the best of my knowledge, information and belief.

DATED: 6/23/15



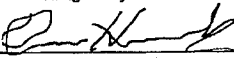
Siu Wing Yip

VERIFICATION

I, David L. Hasbrouck, under penalty of perjury, state as follows:

I am one of the Plaintiffs-Intervenors in the above-captioned action. I have read the foregoing Verified Shareholder Derivative Complaint-in-Intervention and authorize its filing. Based upon the investigation of my counsel, the allegations in the Complaint are true to the best of my knowledge, information, and belief.

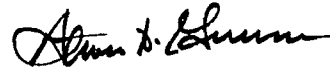
Dated: June 22, 2015

DocuSigned by:

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(Signature of David L. Hasbrouck)

Exhibit “3”

Exhibit “3”



CLERK OF THE COURT

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5 *Attorney for Defendants*

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 MICHAEL KIRSCH, derivatively on behalf of
GALECTIN THERAPEUTICS, INC.,

Case No. A-14-706397-B

9 Plaintiff,

Dept. No. XI

10 vs.

11 PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
12 AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN
13 F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; and DR.
14 MARC RUBIN,

**DEFENDANTS' MOTION TO CORRECT
ORDER RE: MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION
PURSUANT TO NRCP 60**

15 Defendants,

16 -and-

17 GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

18 Nominal Defendant.
19

20
21 [captions continued on following page]
22
23
24

1 DAVID L. HASBROUCK and SIU YIP,
2 derivatively on behalf of GALECTIN
THERAPEUTICS, INC.,

3 Plaintiff,

4 vs.

5 PETER G. TRABER; JAMES C. CZIRR;
6 JACK W. CALLICUTT; GILBERT F.
7 AMELIO; KEVIN D. FREEMAN; ARTHUR
8 R. GREENBERG; ROD D. MARTIN; JOHN
F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; DR.
MARC RUBIN, and 10X FUND, L.P.,

9 Defendants,

10 -and-

11 GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

12 Nominal Defendant.

Case No. A-14-706397-B

Dept. No. XI

**DEFENDANTS' MOTION TO CORRECT
ORDER RE: MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION
PURSUANT TO NRCP 60**

1 Defendants Peter G. Traber, James C. Czirr, Jack W. Callicutt, Gilbert F. Amelio, Kevin
2 D. Freeman, Arthur R. Greenberg, Rod. D. Martin, John F. Mauldin, Steven Prelack, Herman
3 Paul Pressler, III, and Dr. Marc Rubin (the “Individual Defendants”) together with Defendant
4 10X Fund L.P. (“10X Fund”)¹ and Nominal Defendant Galectin Therapeutics, Inc. (“Galectin”
5 or the “Company”) (collectively, the Individual Defendants, 10X Fund and Galectin are referred
6 to herein as “Defendants”) hereby respectfully move this Court, pursuant to Rule 60(a)&(b) of
7 the Nevada Rules of Civil Procedure, to correct a factual mistake contained in the Court’s Order
8 Re: Motions to Dismiss Shareholder Derivative Action dated April 1, 2016 (the “Order”).

9 The Court’s Order includes an incorrect statement adopting language from a proposed
10 order that Plaintiffs apparently submitted to the Court without either serving or informing
11 Defendants they had done so. The incorrect language states that the Court’s “August 10, 2015
12 order staying this case for 180 days was based on representations made to the Court by
13 [Defendants’ counsel] at the June 11, 2015 hearing that issues raised in Georgia relate to class
14 representations issues.” As clearly reflected in the transcript of the June 11, 2015 hearing and
15 accompanying minutes, that that statement is patently incorrect, because *Defendants’ counsel*
16 *did not make any such representation at the June 11, 2015 hearing*. See June 11, 2015 Hr’ing
17 Tr. at 4-5 (referencing the “derivative” litigation pending in Georgia and “Rule 23.1” issues—not
18 class representation/certification issues—being raised in the Georgia action); *see also* Minutes of
19 June 11, 2015 Hr’ing (same). As a result, Defendants respectfully request that the Court correct
20 its April 1, 2016 Order by striking paragraph 5 thereof, which states: “This Court’s August 10,
21 2015 order staying the case for 180 days was based upon representations made to the Court by
22

23
24 ¹ 10X Fund is named as a defendant only in the Verified Shareholder Complaint-In-Intervention
(the “IC”) which was filed by Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (“Intervenor
Plaintiffs”).

1 Mr. Smith at the June 11, 2015 hearing that issues raised in Georgia relate to class
2 representations issues.”

3 This motion is made pursuant to NRCP 60(a)&(b) and is supported by the attached
4 Memorandum of Points and Authorities, the exhibits, the files and pleadings in this matter, such
5 other papers as may be filed at or before any hearing of this motion, oral argument of counsel,
6 and any other matters properly before the Court.

7 Respectfully submitted this 5th day of April, 2016.

8 **KAEMPFER CROWELL**

9 s/ Lyssa S. Anderson

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 At a hearing held in this action on March 3, 2016, the Court granted Defendants' motions
4 to dismiss the action with prejudice and directed Defendants to submit a proposed order.
5 Defendants promptly prepared a draft and shared it with Plaintiffs' counsel. Unfortunately after
6 discussion, the parties were not able to agree on certain contents of the proposed order.
7 Defendants submitted their proposed order to the Court via e-mail on March 17, 2016, copying
8 Plaintiffs' counsel and noting that the parties had not reached agreement as to the language to be
9 contained in certain paragraphs thereof.

10 Thereafter—and unbeknownst to Defendants, whose counsel Plaintiffs did not copy on
11 their communication to the Court—Plaintiffs apparently submitted a different proposed order,
12 portions of which the Court adopted and included in its order entered on April 1, 2014 (the
13 “Order”). The language at issue includes an erroneous assertion that the Court’s prior order
14 staying this case in deference to a substantively identical, prior-filed derivative action pending in
15 federal court in Georgia was “based upon representations” by Defendants’ counsel at a June 11,
16 2015 hearing (the “June 11 Hearing”) that “class representations” or class certification issues
17 were then pending in the parallel Georgia derivative action. That assertion is incorrect,
18 because—as the transcript of the June 11 Hearing confirms—Defendants’ counsel did not make
19 any such representation at the June 11 Hearing. Nor did Defendants make any such
20 representation in any of the briefing Defendants submitted in connection with the June 11
21 Hearing.

22 Defendants promptly raised these issues with Plaintiffs’ counsel after receiving a draft
23 order from Plaintiffs containing the erroneous statement about representations at the June 11
24 Hearing. Because Plaintiffs’ counsel did not copy Defendants’ counsel on the communication

1 forwarding Plaintiffs' proposed order to the Court and did not otherwise inform Defendants
2 counsel that the proposed order had been submitted, however, Defendants were not aware that
3 the Court had Plaintiffs' proposed order and therefore did not have an opportunity to raise the
4 issues relating to the erroneous language contained therein with the Court until now.

5 Pursuant to NRCP 60, the Court should correct this mistake in the April 1, 2016 Order by
6 striking paragraph 5 of the Order, which states: "This Court's August 10, 2015 order staying the
7 case for 180 days was based upon representations made to the Court by Mr. Smith at the June 11,
8 2015 hearing that issues raised in Georgia relate to class representations issues."

9 **II. RELEVANT BACKGROUND**

10 **A. The June 11, 2015 Hearing**

11 On June 11, 2015, this Court held a hearing to address the following motions in this case:
12 (i) Nominal Defendant Galectin Therapeutics, Inc.'s Motion To Dismiss The Second Amended
13 Complaint And Memorandum Of Points And Authorities; (ii) Individual Defendants' Motion To
14 Dismiss The Second Amended Complaint And Memorandum Of Points And Authorities; (iii)
15 David L. Hasbrouck's And Siu Yip's Motion To Intervene; (iv) Intervenors David L.
16 Hasbrouck's And Siu Yip's *Ex Parte* Motion For Order Shortening Time And (Proposed) Order
17 Shortening Time; and (v) Plaintiff's Motion To Join Additional Plaintiffs On Order Shortening
18 Time.

19 At the June 11 Hearing, the Court asked Defendants' counsel about a parallel and prior-
20 filed *derivative* action filed by Intervenors David L. Hasbrouck and Siu Yip, which was pending
21 in the United State District Court for the Northern District of Georgia at the time of the June 11
22 Hearing (the Georgia Action). The following colloquy ensued:

23 THE COURT: Are you involved in the Georgia litigation?

24 MR. SMITH: Yes, I am.

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THE COURT: Okay. *So the Georgia litigation is a shareholder derivative action.*

MR. SMITH: *It is.*

THE COURT: Has it had – I don’t know if the federal system if they do the same thing we do here. *Under Rule 23.1 of our rules there’s a process we go through. Have they gone through that process?*

MR. SMITH: Well, the federal derivative cases were filed before these cases.

THE COURT: Absolutely.

MR. SMITH: They were originally filed in Nevada.

THE COURT: Then they were transferred.

MR. SMITH: Then they were transferred, and we’re in the process of going through the –

THE COURT: So the answer is it hasn’t happened yet.

MR. SMITH: *Hasn’t gone to ruling. But we’re in the process of raising the 23.1 issues.*

THE COURT: Okay.

June 11, 2015 Hr’ing Tr. at 4-5 (emphasis added).

The foregoing discussion at the June 11 Hearing pertained to “Rule 23.1” issues, *i.e.*, issues pertaining to whether persons claiming to be shareholders of a company have adequately alleged the prerequisites to pursue claims derivatively on the company’s behalf, including whether demand futility had been adequately alleged (*see, e.g.*, NRCP 23.1)—not class certification or “class representations” issues. Indeed, in response to the Court’s question, Defendants’ counsel confirmed the Court’s correct understanding that the Georgia Action was a “shareholder derivative action”—not a putative class action.² June 11, 2015 Hr’ing Tr. at 4. The

² This Court’s minutes of the June 11 Hearing also confirm that Defendants’ counsel referred to “23.1 issues” that were being raised in the “derivative cases” in Georgia—again, not class

1 June 11 Hearing transcript contains no record of Defendants' counsel making any representation
2 to the Court that this case should be stayed pending a decision on class certification or "class
3 representations" issues in the Georgia Action.³ Defendants also made no such representation in
4 any briefs Defendants submitted in connection with the June 11 Hearing.

5 **B. The March 3, 2016 Hearing**

6 While this action was stayed, the Court in the Georgia Action entered a final order and
7 judgment dismissing the Georgia Action with prejudice for failure to adequately allege demand
8 futility under Federal Rule of Civil Procedure 23.1 and Nevada corporation law. Thereafter,
9 Defendants filed motions to dismiss this action based on the preclusive effect of the final
10 judgment in the Georgia Action. This Court held a hearing on the motions to dismiss on March
11 3, 2016, and granted the motions. *See* March 3, 2016 Corrected Hr'ing Tr. at 9. The Court
12 directed Defendants' counsel to prepare a proposed order. *Id.* at 9-10.

13 **C. Submission Of Proposed Orders**

14 On March 7, 2016, Defendants forwarded a draft of a proposed order granting their
15 motions to dismiss to Plaintiffs' counsel. *See* Mar. 7, 2016 e-mail, copy attached as Exhibit B.
16 Plaintiffs sent proposed edits to the draft order on March 16, 2016. *See* Mar. 16, 2016 e-mail,
17 copy attached as Exhibit C. Defendants responded and proposed further edits on March 17,
18 2016. *See* Mar. 17, 2016 e-mail, copy attached as Exhibit D. Later on March 17, 2016,
19 Plaintiffs sent a further revised version of the proposed order and stated that "Attached is what
20 we propose to submit . . . In the event we cannot agree, we plan to submit our own order with a
21 cover letter expressing our position." *See* Mar. 17, 2016 e-mail, copy attached as Exhibit E.

22
23 certification or "class representations" issues. *See* Minutes of June 11, 2015 Hr'ing, copy
attached as Exhibit A.

24 ³ Indeed, it was Intervenors and not Defendants who advocated for a stay of this case in
deference to the Georgia Action at the June 11 Hearing. *See* June 11, 2015 Hr'ing Tr. at 21.

1 Thereafter, Defendants confirmed that Plaintiffs' proposed draft was not agreeable and that
2 Defendants would submit their last draft of the proposed order and notify the Court that the
3 parties had been unable to agree on certain of its contents. See Mar. 17, 2016 e-mail, copy
4 attached as Exhibit F. Defendants then submitted their proposed order to the Court via e-mail,
5 copying Plaintiffs' counsel of record. See Mar. 17, 2016 e-mail, copy attached as Exhibit G.

6 On March 18, 2016, Plaintiffs forwarded to Defendants a further revised draft proposed
7 order. See Mar. 18, 2016 e-mail with attached draft order, copy attached as Exhibit H.
8 Plaintiffs' March 18 draft was the first version of their proposed order to include language
9 asserting that Defendants counsel had made representations to the Court about "class
10 representations issues" at the June 11 Hearing. Paragraph 5 of Plaintiffs' March 18 draft
11 proposed order stated:

12 5. This Court's August 10, 2015 order staying the case for
13 180 days was based upon representations made to the Court by Mr.
14 Smith at the June 11, 2015 hearing that issues raised in Georgia
relate to class representations issues. See Court Minutes for March
3, 2016 Hearing.

15 *Id.*, attached draft order.

16 Also on March 18, 2016, Defendants wrote back to Plaintiffs' counsel regarding
17 Plaintiffs' draft order. See Mar. 18, 2016 e-mail, copy attached as Exhibit I (June 11 Hr'ing Tr.
18 omitted). Defendants identified a significant error in paragraph 6 of the draft and explained that
19 Plaintiffs' proposed paragraph 5 regarding purported representations by Defendants' counsel at
20 the June 11 Hearing was incorrect and inconsistent with the transcript of the June 11 Hearing, a
21 copy of which Defendants attached for Plaintiffs' review, because, as shown therein,
22 Defendants' counsel did not make such representations at the June 11 Hearing. *Id.* Defendants
23 requested that Plaintiffs fix the error in paragraph 6 and remove paragraph 5 and further noted
24 that, should Plaintiffs "submit a proposed order containing the above discussed (or similar)

1 inaccurate language, Defendants reserve all rights to bring the discrepancies to the Court's
2 attention and pursue appropriate relief." *Id.*

3 Thereafter, Plaintiffs and Defendants exchanged several additional e-mails regarding
4 Plaintiffs' March 18 draft order. *See* Mar. 18, 2016 e-mail string, copy attached as Exhibit J. In
5 these e-mails, Plaintiffs did not dispute that the June 11 Hearing transcript contains no record of
6 any representation by Defendants' counsel pertaining to class representations/certification issues
7 in the Georgia litigation. *Id.* Nor did Plaintiffs inform Defendants that they had submitted their
8 proposed order to the Court. *Id.* In the last of these e-mails, Defendants reiterated their view
9 that the proposed language contained in paragraph 5 of Plaintiffs' draft order was incorrect,
10 unfounded and should be removed. *Id.*

11 Until Defendants' counsel received a copy of the Court's April 1, 2016 Order via the
12 Court's ECF notification system and noted that the Order contained language mirroring contents
13 of paragraph 5 of Plaintiffs' draft order, Defendants did not suspect that Plaintiffs had in fact
14 submitted their proposed order to the Court. Plaintiffs did not copy Defendants' counsel on or
15 serve Defendants with the communication by which Plaintiffs transmitted their proposed order to
16 the Court. Nor did Plaintiffs file their proposed order via the Court's ECF system.

17 **D. The Court's April 1, 2016 Order**

18 The Court's April 1, 2016 Order included the erroneous language proposed by Plaintiffs
19 asserting that "This Court's August 10, 2015 order staying the case for 180 days was based upon
20 representations made to the Court by Mr. Smith at the June 11, 2015 hearing that issues raised in
21 Georgia relate to class representations issues." *See* April 1, 2016 order at ¶ 5.

22 **III. ARGUMENT**

23 Rule 60 of the Nevada Rules of Civil Procedure provides, in relevant part:
24

1 (a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or
2 other parts of the record and errors therein arising from oversight
3 or omission may be corrected by the court at any time of its own
4 initiative or on the motion of any party and after such notice, if
5 any, as the court orders. During the pendency of an appeal, such
6 mistakes may be so corrected before the appeal is docketed in the
7 appellate court, and thereafter while the appeal is pending may be
8 so corrected with leave of the appellate court.

9 (b) **Mistakes; Inadvertence; Excusable Neglect; Newly**
10 **Discovered Evidence; Fraud, Etc.** On motion and upon such
11 terms as are just, the court may relieve a party or a party's legal
12 representative from a final judgment, order, or proceeding for the
13 following reasons: (1) mistake, inadvertence, surprise, or excusable
14 neglect; (2) newly discovered evidence which by due diligence
15 could not have been discovered in time to move for a new trial
16 under Rule 59(b); (3) fraud (whether heretofore denominated
17 intrinsic or extrinsic), misrepresentation or other misconduct of an
18 adverse party; (4) the judgment is void; or, (5) the judgment has
19 been satisfied, released, or discharged, or a prior judgment upon
20 which it is based has been reversed or otherwise vacated, or it is no
21 longer equitable that an injunction should have prospective
22 application. The motion shall be made within a reasonable time,
23 and for reasons (1), (2), and (3) not more than 6 months after the
24 proceeding was taken or the date that written notice of entry of the
judgment or order was served. A motion under this subdivision (b)
does not affect the finality of a judgment or suspend its operation.
This rule does not limit the power of a court to entertain an
independent action to relieve a party from a judgment, order, or
proceeding, or to set aside a judgment for fraud upon the court.
Writs of coram nobis, coram vobis, audita querela, and bills of
review and bills in the nature of a bill of review, are abolished, and
the procedure for obtaining any relief from a judgment shall be by
motion as prescribed in these rules or by an independent action.

NRCP 60.

Defendants respectfully submit that, pursuant to one or both of the above subsections of
NRCP 60, this Court should correct the portion of its April 1, 2016 Order that mistakenly
attributes the Court's earlier decision to stay this case for 180 days following the June 11
Hearing to purported "representations made to the Court by Mr. Smith at the June 11, 2015
hearing that issues raised in Georgia relate to class representations issues." As clearly reflected

1 in the June 11 Hearing transcript (and as set forth in the minutes of the June 11 Hearing and
2 summarized in Section II.a above), *Defendants' counsel did not make any such representations*
3 *at or in connection with the June 11 Hearing.*

4 During the June 11 Hearing, the Court asked Defendants' counsel whether the parallel,
5 prior-filed Georgia *derivative* action (not the related class action) in deference to which this case
6 was eventually stayed had completed the "Rule 23.1" process (*i.e.*, the briefing and adjudication
7 of whether the plaintiffs in the Georgia derivative case had adequately pled the demand futility
8 pre-requisite for prosecuting derivative claims). June 11, 2015 Hr'ing Tr. at 4; *accord* Minutes
9 of June 11, 2015 Hr'ing. Defendants' counsel responded by stating that the parties to the
10 Georgia derivative action were "in the process of raising the 23.1 issues" but that those issues
11 had not been decided in Georgia. June 11, 2015 Hr'ing Tr. at 4-5; *accord* Minutes of June 11,
12 2015 Hr'ing.

13 At no point during the June 11 Hearing did Defendants counsel represent that this case
14 should be stayed due to the pendency of class certification or "class representations issues" in the
15 Georgia derivative action or related class action. *See generally* June 11, 2015 Hr'ing Tr. At no
16 point in the hearing did Defendants counsel utter the words "class certification" or "class
17 representations." Nor did Defendants make such representations in their briefing of any of the
18 motions argued at the June 11 Hearing. Indeed, there would have been no reason to raise any
19 such "class certification/representation" issues, as there was not even a class certification motion
20 either pending or even scheduled to be filed in the Georgia federal class action securities suit
21 related to the derivative suit. In light of the complete absence of any mention or reference
22 whatsoever to class certification or class representation at the June 11 Hearing, the language in
23 paragraph 5 of the Order proposed by Plaintiff's counsel and adopted by the Court is facially
24 incorrect in asserting that Defendants' counsel made such representations at or in connection

1 with the June 11 Hearing. As a result, pursuant to NRCP 60(a) and/or (b), the Court should
2 correct that mistake.

3 Finally, Defendants are deeply troubled that Plaintiffs' counsel apparently submitted their
4 proposed order containing the above-described erroneous language despite Defendants' counsel
5 having raised all of the above issues with Plaintiffs' counsel in e-mails exchanged on March 18,
6 2016. Further, Plaintiffs' counsel neither served Defendants with nor copied Defendants'
7 counsel on the communication by which the proposed order was transmitted to the Court. As a
8 result, Defendants' counsel were unaware that Plaintiffs' counsel had submitted the proposed
9 order to the Court and did not have an opportunity to raise the issues discussed in this motion
10 with the Court prior to its entry of the Order. Had Defendants known Plaintiffs had submitted
11 the proposed order containing the factually-incorrect assertion, Defendants would have promptly
12 raised these issues with the Court and requested that the Court's Order not include the incorrect
13 statement.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Defendants respectfully request that the Court correct its April
16 1, 2016 Order by striking paragraph 5 thereof, which states: "This Court's August 10, 2015
17 order staying the case for 180 days was based upon representations made to the Court by Mr.

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1 Smith at the June 11, 2015 hearing that issues raised in Georgia relate to class representations
2 issues.”

3 Respectfully submitted this 5th day of April, 2016.

4 **KAEMPFER CROWELL**

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15 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2016, I forwarded copies of the foregoing
**DEFENDANTS' MOTION TO CORRECT ORDER RE: MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION PURSUANT TO NRCP 60** by ECF and/or U.S.

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an employee of Kaempfer Crowell

Exhibit A

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REGISTER OF ACTIONS

CASE NO. A-14-706397-B

Michael Kirsch, Plaintiff(s) vs. Peter Traber, Defendant(s)

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REGISTER OF ACTIONS

CASE NO. A-14-706397-B

Michael Kirsch, Plaintiff(s) vs. Peter Traber, Defendant(s)

§
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§

Case Type: Other Business Court
Matters
Date Filed: 08/29/2014
Location: Department 11
Cross-Reference Case A706397
Number:

PARTY INFORMATION

Defendant	Amelio, Gilbert F	Lead Attorneys Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Callicutt, Jack W	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Czirr, James C	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Freeman, Kevin D	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Galectin Therapeutics, Inc.	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Greenberg, Arthur R	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Martin, Ron D	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Mauldin, John F	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Prelack, Steven	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Pressler, Herman Paul, III	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Rubin, Marc	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)
Defendant	Traber, Peter G	Lyssa M. Simonelli <i>Retained</i> 7027927000(W)

Plaintiff

Kirsch, Michael

Natasha A. Landrum
Retained
7028809750(W)

EVENTS & ORDERS OF THE COURT

06/11/2015 All Pending Motions (8:00 AM) (Judicial Officer Gonzalez, Elizabeth)

Minutes

06/11/2015 8:00 AM

- INDIVIDUAL DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED SHAREHOLDER DERIVATIVE COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES... PLAINTIFF'S MOTION TO JOINT ADDITIONAL PLAINTIFFS ON ORDER SHORTENING TIME... DAVID L. HASBROUK AND SIU YIP'S MOTION TO INTERVENE... INTERVENORS, DAVID L. HASBROUCK AND SIU YIP'S EX PARTE MOTION FOR ORDER SHORTENING TIME AND (PROPOSED) ORDER SHORTENING TIME... NOMINAL DEFENDANT GALECTIN THERAPEUTICS, INC.'S MOTION TO DISMISS THE SECOND AMENDED SHAREHOLDER DERIVATIVE COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES Also present: Counsel for Proposed Intervenor Catherine Hernandez, Esq. of the Aldrich Law Firm (local); Michael Fistel, Esq. of Johnson & Weaver, LLC, and Kathleen Herkenhoff, Esq. of the Weiser Law Firm, P.C., Pro Hac Vice pending. Mr. Smith stated the threshold issue here is that Defendants filed a motion to dismiss while motions to intervene and a joinder have been filed. Mr. Smith objected to the motion to intervene as there have been fundamental issues in Plaintiff's standing in this case; he confirmed he is involved in the Georgia litigation and that the federal derivative cases were filed before these cases and they were transferred; it has not gone to ruling but they are in the process of raising 23.1 issues; the motion is due July 1st. COURT ORDERED, motion to intervene GRANTED. Arguments by Mr. Smith, Mr. Miller, and Mr. Fistel regarding the motions to dismiss. COURT ORDERED, motions DENIED; the allegations related to conflict of directors who may face personal liability are not the best but are not enough to merit dismissal at this point. COURT FURTHER ORDERED, the way the joinder is being done is not appropriate and needs to be filed as a motion to amend complaint to add Plaintiffs; the motion needs to include the proposed amended complaint as well as a verification from the proposed people counsel is seeking to add; in the meantime, if the intervenors want to file a complaint in intervention they may. Finally, COURT ORDERED, aside from those two things - a motion to amend to add Plaintiffs and a complaint in intervention - CASE STAYED for ONE HUNDRED EIGHTY (180) DAYS pending the Georgia Court. Status Check SET on the December 11, 2015 Chambers calendar. CLERK'S NOTE: Motion to Intervene ADVANCED to today's date from the 7/10/15 Chambers calendar.

Parties Present

Return to Register of Actions

Exhibit B

Lee, Ben

From: Lee, Ben
Sent: Monday, March 07, 2016 6:38 PM
To: edmilleresq@aol.com; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; Michael Fistel Jr.; James Ficaró (jmf@weiserlawfirm.com); 'Brett Stecker' (bds@weiserlawfirm.com); 'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com)
Cc: Smith, Michael; Pope, Warren
Subject: Kirsch_ [Proposed] Order granting motions to dismiss.DOC
Attachments: Kirsch_ [Proposed] Order granting motions to dismiss (4).DOC

Counsel:

Pursuant to the Court's direction at the March 3, 2016 hearing that Defendants prepare a proposed order granting their motions to dismiss, please see the attached and let us know if we may submit it with your approval.

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

1 **ORDER**

2 LYSSA S. ANDERSON
3 Nevada Bar No. 5781
4 KAEMPFER CROWELL
5 8345 West Sunset Road, Suite 250
6 Las Vegas, Nevada 89113
7 Telephone: (702) 792-7000
8 Fax: (702) 796-7181
9 landerson@kcnvlaw.com

10 *Attorney for Defendants*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 MICHAEL KIRSCH, derivatively on behalf of
15 GALECTIN THERAPEUTICS, INC.,

16 Plaintiff,

17 vs.

18 PETER G. TRABER; JAMES C. CZIRR;
19 JACK W. CALLICUTT; GILBERT F.
20 AMELIO; KEVIN D. FREEMAN; ARTHUR
21 R. GREENBERG; ROD D. MARTIN; JOHN
22 F. MAULDIN; STEVEN PRELACK;
23 HERMAN PAUL PRESSLER, III; and DR.
24 MARC RUBIN,

Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

Nominal Defendant.

Case No. A-14-706397-B

Dept. No. XI

[PROPOSED]

ORDER AND FINAL JUDGMENT RE:

**MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016
Time of Hearing: 8:30 a.m.

21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
22 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard

1 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.

2 As grounds for its ruling, the Court finds:

- 3 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
4 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who
5 allege that they are shareholders of Nominal Defendant Galectin Therapeutics Inc.
6 ("Galectin"), a Nevada corporation.
- 7 2. A shareholder seeking to assert claims derivatively on behalf of a Nevada corporation
8 must, among other things, either (i) make a pre-suit demand on the company's board
9 of directors or (ii) plead particularized facts establishing legal excuse for the failure to
10 do so. *See* NRCP 23.1; *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1179 (Nev.
11 2006).
- 12 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
13 instead asserted in their complaints that such a demand was excused under Nevada
14 law.
- 15 4. On December 30, 2015, United States District Court Judge Steven C. Jones of the
16 United States District Court for the Northern District of Georgia, entered a final order
17 and judgment (the "Prior Final Judgment") (i) holding that under Nevada law,
18 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip failed to adequately plead the
19 futility of a pre-suit demand on Galectin's board of directors in their prior-filed and
20 substantively identical derivative action styled *In re Galectin Therapeutics, Inc.*
21 *Derivative Litigation*, Civil Action No. 1:15-CV-208-SCJ, U.S. Dist. Ct., N.D. Ga.
22 (the "Georgia Action") and (ii) dismissing the Georgia Action with prejudice.
- 23 5. A prior final judgment by a United States District Court in a case based on federal
24 question jurisdiction like the Georgia Action has preclusive effect in Nevada as to an

1 issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was "actually
2 litigated in the prior litigation," and (3) was "a critical and necessary part of the
3 earlier judgment," provided that the person against whom preclusion is sought to be
4 applied was either a party to the prior final judgment or a nonparty who was
5 "adequately represented by someone with the same interest who [wa]s a party to the
6 suit." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev.
7 2009) (citation and internal quotation marks omitted).

- 8 6. The Court finds that each of the above requirements for application of issue
9 preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately
10 pled demand futility in their complaints in this action. Based on this finding and the
11 standards set forth above, this Court determines that it must give preclusive effect to
12 the Prior Final Judgment's ruling on demand futility and grant Defendants' motions
13 to dismiss Plaintiffs' complaints and this entire action. *See Bower*, 125 Nev. at 480-
14 82; *Arduini v. Hart*, 774 F.3d 622, 629-630, 638 (9th Cir. 2014) (holding that prior
15 final judgment dismissing complaint on demand futility grounds under Nevada law
16 precluded further litigation of issue of demand futility and required dismissal of
17 parallel derivative action, relying on *Alcantra v. Wal-Mart Stores, Inc.*, 321 P.3d 912,
18 916-17 (Nev. 2014) and *Five Star Capital Corp. v. Ruby*, 194 P.3d 709 (Nev. 2008)).

19 For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that this
20 action is dismissed with prejudice.

21 Dated this ____ day of March, 2016.

22
23 _____
DISTRICT COURT JUDGE

1 Respectfully submitted by:

2 **KAEMPFER CROWELL**

3 s/ Lyssa S. Anderson

LYSSA S. ANDERSON

4 Nevada Bar No. 5781

8345 West Sunset Road, Suite 250

5 Las Vegas, Nevada 89113

Tel: (702) 792-7000

6 Fax: (702) 796-7181

landerson@kcnvlaw.com

7 *Attorneys for Nominal Defendant*

8 *Galectin Therapeutics, Inc. and*

Individual Defendants Peter G. Traber,

9 *James C. Czirr, Jack W. Callicutt,*

Gilbert F. Amelio, Kevin D. Freeman,

10 *Arthur R. Greenberg, Rod. D. Martin,*

John F. Mauldin, Steven Prelack,

11 *Herman Paul Pressler, III, and Dr. Marc Rubin*

12 Approved as to form and content:

13 **LEE, HERNANDEZ, LANDRUM & GAROFALO**

15 Natasha A. Landrum

16 David S. Davis

7575 Vegas Drive, Suite 150

17 Las Vegas, Nevada 89128

18 *Attorneys for Plaintiff Michael Kirsch*

19 **ALDRICH LAW FIRM, LTD.**

21 John P. Aldrich

1601 S. Rainbow Drive, Suite 160

22 Las Vegas, Nevada 89146

23 *Attorney for Intervenor Plaintiffs David L. Hasbrouck and Siu Yip*

24

Exhibit C

Lee, Ben

From: EdMillerEsq@aol.com
Sent: Wednesday, March 16, 2016 5:13 PM
To: Lee, Ben
Cc: Smith, Michael; Pope, Warren; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; MichaelF@johnsonandweaver.com; jmf@weiserlawfirm.com; bds@weiserlawfirm.com; jaldrich@johnaldrichlawfirm.com; joshualifshitz@gmail.com
Subject: Re: Kirsch_ [Proposed] Order granting motions to dismiss.DOC
Attachments: ProposedOrder20150315.doc

Here it is Ben.

Edward W. Miller, Esq.
Lifshitz & Miller
821 Franklin Avenue, Suite 209
Garden City, New York 11530
(516) 493-9780
Direct (516) 280-7377
Fax (516) 280-7376

-----Original Message-----

From: Lee, Ben <BLee@KSLAW.com>
To: edmilleresq <edmilleresq@aol.com>
Cc: Smith, Michael <mrsmith@KSLAW.com>; Pope, Warren <WPope@KSLAW.com>; NLandrum <NLandrum@lee-lawfirm.com>; ddavis <ddavis@lee-lawfirm.com>; Michael Fistel Jr. <MichaelF@johnsonandweaver.com>; James Ficaro (jmf@weiserlawfirm.com) <jmf@weiserlawfirm.com>; 'Brett Stecker' (bds@weiserlawfirm.com) <bds@weiserlawfirm.com>; 'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com) <jaldrich@johnaldrichlawfirm.com>; Josh Lifshitz (joshualifshitz@gmail.com) <joshualifshitz@gmail.com>
Sent: Wed, Mar 16, 2016 5:08 pm
Subject: RE: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Ed:

Based on our telephone call yesterday, my understanding is that Plaintiffs are generally in agreement with the contents of the proposed order we circulated last week but wish to proposed some additional language tracking the Court's statements at the March 3 hearing to the effect that its earlier order denying prior motions to dismiss Mr. Kirsch's Second Amended Complaint was not a final order. Do you still anticipate sending the proposed additional language today?

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

From: Lee, Ben
Sent: Monday, March 07, 2016 6:38 PM
To: edmilleresq@aol.com; NLandrum@lee-lawfirm.com; ddavis@lee-lawfirm.com; Michael Fistel Jr.; James Ficaro (jmf@weiserlawfirm.com); 'Brett Stecker' (bds@weiserlawfirm.com); 'jaldrich@johnaldrichlawfirm.com' (jaldrich@johnaldrichlawfirm.com)

Cc: Smith, Michael; Pope, Warren
Subject: Kirsch_ [Proposed] Order granting motions to dismiss.DOC

Counsel:

Pursuant to the Court's direction at the March 3, 2016 hearing that Defendants prepare a proposed order granting their motions to dismiss, please see the attached and let us know if we may submit it with your approval.

Benjamin Lee | King & Spalding LLP | 1180 Peachtree Street, NE | Atlanta, Georgia 30309-3521 | 404-572-2820 | fax: 404-572-5139 | blee@kslaw.com

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1 **ORDER**

2 LYSSA S. ANDERSON
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10 *Attorney for Defendants*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 MICHAEL KIRSCH, derivatively on behalf of
14 GALECTIN THERAPEUTICS, INC.,

15 Plaintiff,

16 vs.

17 PETER G. TRABER; JAMES C. CZIRR;
18 JACK W. CALLICUTT; GILBERT F.
19 AMELIO; KEVIN D. FREEMAN; ARTHUR
20 R. GREENBERG; ROD D. MARTIN; JOHN
21 F. MAULDIN; STEVEN PRELACK;
22 HERMAN PAUL PRESSLER, III; and DR.
23 MARC RUBIN,

24 Defendants,

-and-

GALECTIN THERAPEUTICS, INC., a
Nevada Corporation,

Nominal Defendant.

Case No. A-14-706397-B

Dept. No. XI

[PROPOSED]

ORDER AND FINAL JUDGMENT RE:

**MOTIONS TO DISMISS
SHAREHOLDER DERIVATIVE ACTION**

Date of Hearing: March 3, 2016

Time of Hearing: 8:30 a.m.

21 This matter having come before the Court on March 3, 2016 at 8:30 a.m. on Nominal
22 Defendant Galectin Therapeutics Inc.'s Motion to Dismiss Shareholder Action and the Individual
23 Defendants' and 10X Fund L.P.'s Motion to Dismiss Shareholder Action (the "Motions"), the
24 Court having reviewed the Motions, all briefing thereon and supporting exhibits, having heard

1 oral argument, and other good cause appearing, the Court holds that the Motions are GRANTED.

2 As grounds for its ruling, the Court finds:

- 3 1. This is a shareholder derivative action brought by Plaintiff Michael Kirsch and
4 Intervenor Plaintiffs David L. Hasbrouck and Siu Yip (collectively, "Plaintiffs") who
5 allege that they are shareholders of Nominal Defendant Galectin Therapeutics Inc.
6 ("Galectin"), a Nevada corporation.
- 7 2. A shareholder seeking to assert claims derivatively on behalf of a Nevada corporation
8 must, among other things, either (i) make a pre-suit demand on the company's board
9 of directors or (ii) plead particularized facts establishing legal excuse for the failure to
10 do so. *See* NRCP 23.1; *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1179 (Nev.
11 2006).
- 12 3. Plaintiffs did not make a pre-suit demand upon Galectin's board of directors, but
13 instead asserted in their complaints that such a demand was excused under Nevada
14 law.
- 15 4. On August 10, 2015, this Court's July 30, 2015 written order was entered (the "July
16 30, 2015 Written Order") (i) denying Defendants' Motion to Dismiss Plaintiff's
17 Second Amended Shareholder Derivative Complaint on the basis of Plaintiff's failure
18 to adequately plead the futility of a pre-suit demand on Galectin's board of directors
19 and that Plaintiff had adequately pled demand futility. The July 30, 2015 Written
20 Order was a substantive ruling on the issue of demand futility which was reached
21 following briefing and oral argument regarding demand futility by the parties.
- 22 5. Although, there is no Nevada State court precedent upon the question of whether a
23 denial of a motion to dismiss has preclusive effect, this Court finds that the denial of a
24 motion to dismiss is never a final order for purposes of preclusion in Nevada and

therefore has no preclusive effect.

6. On December 30, 2015, United States District Court Judge Steven C. Jones of the United States District Court for the Northern District of Georgia, entered a final order and judgment (the "Prior Final Judgment") (i) holding that under Nevada law, Intervenor Plaintiffs David L. Hasbrouck and Siu Yip failed to adequately plead the futility of a pre-suit demand on Galectin's board of directors in their prior-filed and substantively identical derivative action styled *In re Galectin Therapeutics, Inc. Derivative Litigation*, Civil Action No. 1:15-CV-208-SCJ, U.S. Dist. Ct., N.D. Ga. (the "Georgia Action") and (ii) dismissing the Georgia Action with prejudice.
7. A prior final judgment by a United States District Court in a case based on federal question jurisdiction like the Georgia Action has preclusive effect in Nevada as to an issue that: (1) is "identical to the one alleged in the prior litigation;" (2) was "actually litigated in the prior litigation," and (3) was "a critical and necessary part of the earlier judgment," provided that the person against whom preclusion is sought to be applied was either a party to the prior final judgment or a nonparty who was "adequately represented by someone with the same interest who [wa]s a party to the suit." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 480, 215 P.3d 709, 717 (Nev. 2009) (citation and internal quotation marks omitted).
8. The Court finds that each of the above requirements for application of issue preclusion is satisfied with respect to the issue of whether Plaintiffs have adequately pled demand futility in their complaints in this action. Based on this finding and the standards set forth above, this Court determines that it must give preclusive effect to the Prior Final Judgment's ruling on demand futility and grant Defendants' motions to dismiss Plaintiffs' complaints and this entire action. *See Bower*, 125 Nev. at 480-

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82; *Arduini v. Hart*, 774 F.3d 622, 629-630, 638 (9th Cir. 2014) (holding that prior final judgment dismissing complaint on demand futility grounds under Nevada law precluded further litigation of issue of demand futility and required dismissal of parallel derivative action, relying on *Alcantra v. Wal-Mart Stores, Inc.*, 321 P.3d 912, 916-17 (Nev. 2014) and *Five Star Capital Corp. v. Ruby*, 194 P.3d 709 (Nev. 2008)).

For the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED that this action is dismissed with prejudice.

Dated this ____ day of March, 2016.

DISTRICT COURT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KIRSCH; AND SIU YIP,

Appellants,

v.

PETER G. TRABER; JAMES C. CZIRR;
JACK W. CALLICUTT; GILBERT F.
AMELIO; KEVIN D. FREEMAN; ARTHUR
R. GREENBERG; ROD D. MARTIN; JOHN
F. MAULDIN; STEVEN PRELACK;
HERMAN PAUL PRESSLER, III; DR.
MARC RUBIN; AND GALECTIN
THERAPEUTICS, INC., A NEVADA
CORPORATION,

Respondents.

Supreme Court No. 70854
Electronically Filed
Aug 25 2016 02:54 p.m.
District Court Case No. A-14-706387-B
Trade K. Lindeman
APPELLANTS of Supreme Court

DOCKETING STATEMENT

-CONTINUED-

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or file it in a timely manner, constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste valuable judicial resources of this court, making the imposition of sanctions appropriate. *See, KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.