
From: Moffett, Dan
Sent: Tuesday, April 14, 2020 4:54 PM
To: Burrowbridge, Adam; Almanza, Lillian; Mayeaux, JoEllen; Rosbrook, Andy; Landers, Thomas; O'Neill, Kirt; Langford, Melanie; NANOCELECT (AG TEAM); Raucci, Anthony; Smith, Rodger (External); Hoy, Rebecca
Cc: Liston, Ian; Malik, Rhyea; WSGR - NanoCollect/Cytonome
Subject: RE: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

Adam,

Thank you for preparing this. You have my approval to add my signature and file.

-Dan

Dan Moffett
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From: Burrowbridge, Adam <aburrowbridge@wsgr.com>
Sent: Tuesday, April 14, 2020 1:53 PM
To: Moffett, Dan <dmoffett@AkinGump.com>; Almanza, Lillian <lalmanza@wsgr.com>; Mayeaux, JoEllen <jmayeaux@akingump.com>; Rosbrook, Andy <arosbrook@AKINGUMP.com>; Landers, Thomas <twlanders@akingump.com>; O'Neill, Kirt <koneill@AKINGUMP.COM>; Langford, Melanie <mlangford@AkinGump.com>; NANOCELECT (AG TEAM) <NANOCELECTAGTEAM@akingump.com>; Raucci, Anthony <araucci@mnat.com>; Smith, Rodger (External) <rsmith@mnat.com>; Hoy, Rebecca <rhoy@mnat.com>
Cc: Liston, Ian <iliston@wsgr.com>; Malik, Rhyea <rmalik@wsgr.com>; WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>
Subject: Re: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

Dan,

Please find attached the stipulation and proposed order to amend the schedule. Upon your review and approval, we will file with the Court.

Best,
Adam

From: "Moffett, Dan" <dmoffett@AkinGump.com>
Date: Monday, April 13, 2020 at 12:54 PM
To: "Burrowbridge, Adam" <aburrowbridge@wsgr.com>, "Almanza, Lillian" <lalmanza@wsgr.com>, "Mayeaux, JoEllen" <jmayeaux@akingump.com>, "Rosbrook, Andy" <arosbrook@AKINGUMP.com>, "Landers, Thomas" <twlanders@akingump.com>, "O'Neill, Kirt" <koneill@AKINGUMP.COM>, "Langford, Melanie" <mlangford@AkinGump.com>, "NANOCELECT (AG TEAM)" <NANOCELECTAGTEAM@akingump.com>, "Raucci, Anthony" <araucci@mnat.com>, "Smith, Rodger (External)" <rsmith@mnat.com>, "Hoy, Rebecca" <rhoy@mnat.com>
Cc: "Liston, Ian" <iliston@wsgr.com>, "Malik, Rhyea" <rmalik@wsgr.com>, WSGR - NanoCollect/Cytonome

<nanocollect/cytonome@wsgr.com>

Subject: RE: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

[External]

Adam,

In light of your agreement to present NanoCollect's witnesses during the week of July 6th, and your previous agreement to disclose your designees 4 weeks in advance, we agree to your proposal below. Once you have a chance to prepare a joint motion, please send us a draft for our review.

Thank you,

Dan

Dan Moffett

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From: Burrowbridge, Adam <aburrowbridge@wsgr.com>

Sent: Friday, April 10, 2020 5:31 PM

To: Moffett, Dan <dmoffett@AkinGump.com>; Almanza, Lillian <lalmanza@wsgr.com>; Mayeaux, JoEllen <jmayeaux@akingump.com>; Rosbrook, Andy <arosbrook@AKINGUMP.com>; Landers, Thomas <twlanders@akingump.com>; O'Neill, Kirt <koneill@AKINGUMP.COM>; Langford, Melanie <mlangford@AkinGump.com>; NANOCELECT (AG TEAM) <NANOCELECTAGTEAM@akingump.com>; Raucci, Anthony <araucci@mnat.com>; Smith, Rodger (External) <rsmith@mnat.com>; Hoy, Rebecca <rhoy@mnat.com>
Cc: Liston, Ian <iliston@wsgr.com>; Malik, Rhyea <rmalik@wsgr.com>; WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>

Subject: Re: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

Dan,

As stated, we were conferring with our client concerning availability of dates Cytonome requested. We are working in good faith to ensure that both parties needs are met in light of the extenuating circumstances. It's our understanding that both parties would prefer to take in-person depositions if possible.

At this time, we can confirm that NanoCollect's 30(b)(6) designee(s) are available the week of July 6th. Given the need, under Cytonome's proposal, to complete fact discovery by 8/10 and Cytonome's demand that NanoCollect depose Cytonome's corporate representative *after* NanoCollect, it is similarly necessary that Cytonome confirms its availability (the week of July 13th). See below re NanoCollect's condition to "mutually agree to 30(b)(6) depositions in early-mid July." If Cytonome confirms availability the week of July 13th, and disclosure of its designee(s) 4 weeks prior, the parties seem to be in agreement.

Best,
Adam

From: "Moffett, Dan" <dmoffett@AkinGump.com>

Date: Friday, April 10, 2020 at 5:22 PM

To: "Burrowbridge, Adam" <aburrowbridge@wsgr.com>, "Almanza, Lillian" <lalmanza@wsgr.com>, "Mayeaux, JoEllen" <jmayeaux@akingump.com>, "Rosbrook, Andy" <arosbrook@AKINGUMP.com>, "Landers, Thomas" <twlanders@akingump.com>, "O'Neill, Kirt" <koneill@AKINGUMP.COM>, "Langford, Melanie"

<mlangford@AkinGump.com>, "NANOCELLECT (AG TEAM)" <NANOCELLECTAGTEAM@akingump.com>, "Raucci, Anthony" <araucci@mnat.com>, "Smith, Rodger (External)" <rsmith@mnat.com>, "Hoy, Rebecca" <rhoy@mnat.com>
Cc: "Liston, Ian" <iliston@wsgr.com>, "Malik, Rhyea" <rmalik@wsgr.com>, WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>
Subject: RE: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

[External]

Adam,

NanoCollect asked us to agree to extend discovery and push off the depositions we have been diligently seeking for months. As a compromise, and to avoid burdening the Court with motions practice, we have agreed to the extension, provided that we receive assurances from NanoCollect that it will present its witnesses by the week of July 6th, a date falling within the range you proposed. Now, you are essentially asking Cytonome to commit to providing NanoCollect with deposition dates and designees before NanoCollect does so. We do not believe that makes sense, particularly when it is NanoCollect seeking an extension.

We will work with you on scheduling depositions for our witnesses, which you have only recently requested, on dates after NanoCollect makes its own witnesses available. With respect to the inventors, they are represented by Erik Belt at McCarter and English, as we have told you in the past, and we will be working with him on scheduling their depositions. Finally, we will be using TSG as a court reporting service.

Please let us know if you are still interested in the requested extension.

Thank you,

Dan

Dan Moffett

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From: Burrowbridge, Adam <aburrowbridge@wsgr.com>

Sent: Friday, April 10, 2020 1:49 PM

To: Moffett, Dan <dmoffett@AkinGump.com>; Almanza, Lillian <lalmanza@wsgr.com>; Mayeaux, JoEllen <jmayeaux@akingump.com>; Rosbrook, Andy <arosbrook@AKINGUMP.COM>; Landers, Thomas <twlanders@akingump.com>; O'Neill, Kirt <koneill@AKINGUMP.COM>; Langford, Melanie <mlangford@AkinGump.com>; NANOCELLECT (AG TEAM) <NANOCELLECTAGTEAM@akingump.com>; Raucci, Anthony <araucci@mnat.com>; Smith, Rodger (External) <rsmith@mnat.com>; Hoy, Rebecca <rhoy@mnat.com>

Cc: Liston, Ian <iliston@wsgr.com>; Malik, Rhyea <rmalik@wsgr.com>; WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>

Subject: Re: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

Dan,

We are conferring with our client. Please confirm: (1) Cytonome's corporate representatives are available for in-person or remote depositions the week of July 13th (with disclosure of the designee(s) at least 4 weeks prior); (2) Manish Deshpande and John Gilbert are, at minimum, available for depositions in July; and (3) the court reporting agency Cytonome intends to use, should remote depositions be necessary.

Thank you,

Adam

From: "Moffett, Dan" <dmoffett@AkinGump.com>

Date: Friday, April 10, 2020 at 11:34 AM

To: "Burrowbridge, Adam" <aburrowbridge@wsgr.com>, "Almanza, Lillian" <almanza@wsgr.com>, "Mayeaux, JoEllen" <jmayeaux@akingump.com>, "Rosbrook, Andy" <arosbrook@AKINGUMP.COM>, "Landers, Thomas" <twlanders@akingump.com>, "O'Neill, Kirt" <koneill@AKINGUMP.COM>, "Langford, Melanie" <mlangford@AkinGump.com>, "NANOCELECT (AG TEAM)" <NANOCELECTAGTEAM@akingump.com>, "Raucci, Anthony" <araucci@mnat.com>, "Smith, Rodger (External)" <rsmith@mnat.com>, "Hoy, Rebecca" <rhoy@mnat.com>

Cc: "Liston, Ian" <iliston@wsgr.com>, "Malik, Rhyea" <rmalik@wsgr.com>, WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>

Subject: RE: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

[External]

Adam,

We cannot agree to push back the deadlines for briefing on dispositive motions. We are concerned that it would not give the Court sufficient time to rule before trial. We also do not believe the Court would agree to do so, particularly where the deadlines are still more than 6 months out.

We can, however, agree to your alternative proposal, provided we are given the assurance that NanoCollect will make its witnesses available to Cytonome (remotely, if governmental restrictions are still in place) by the week of July 6th, at the latest. Cytonome will make its witnesses available to NanoCollect afterwards, since Cytonome's 30(b)(6) notice predates NanoCollect's by 3.5 months.

We calculate the changed deadlines as follows:

Deadlines	Current	Proposed
Fact Discovery Closes	6/26/20	8/10/20
Opening Expert Report	6/19/20	8/03/20
Responsive Expert Report	7/20/20	9/02/20
Reply Expert Report	8/14/20	9/23/20 (21 days from response per NanoCollect proposal)
Expert Discovery Closes	9/30/20	11/14/20
Opening Dispositive Briefing	10/16/20	No change
Responsive Dispositive Briefing	11/13/20	No Change
Reply Dispositive Briefing	12/11/20	No Change
Pretrial Conference	4/9/21	No Change
Trial	4/26/21	No Change

If you agree to the foregoing, please prepare a joint motion for our review.

Thank you,

Dan

Dan Moffett

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From: Burrowbridge, Adam <aburrowbridge@wsgr.com>

Sent: Thursday, April 9, 2020 5:36 PM

To: Moffett, Dan <dmoffett@AkinGump.com>; Almanza, Lillian <lalmanza@wsgr.com>; Mayeaux, JoEllen <jmayeaux@akingump.com>; Rosbrook, Andy <arosbrook@AKINGUMP.com>; Landers, Thomas <twlanders@akingump.com>; O'Neill, Kirt <koneill@AKINGUMP.COM>; Langford, Melanie <mlangford@AkinGump.com>; NANOCELECT (AG TEAM) <NANOCELECTAGTEAM@akingump.com>; Raucci, Anthony <araucci@mnat.com>; Smith, Rodger (External) <rsmith@mnat.com>; Hoy, Rebecca <rhoy@mnat.com>
Cc: Liston, Ian <iliston@wsgr.com>; Malik, Rhyea <rmalik@wsgr.com>; WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>

Subject: Re: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

Dan,

Thank you for your email. NanoCollect shares the goal of being able to conduct in-person depositions and proposed a 60-day extension for this reason. Given the information available, we expect travel restrictions and stay-at-home orders to still be in place such that in-person depositions will not be feasible the week of June 22, 2020.

Accordingly, NanoCollect re-proposes a 60-day extension to fact discovery while also extending the expert discovery schedule and the schedule for dispositive briefing (if any) to ensure adequate time for both. Under this proposal, the following schedule addresses Cytonome's stated concerns while significantly improving the chances that both parties are able to conduct in-person fact depositions:

Deadlines	Current	Proposed	Days per deadline
Fact Discovery Closes	6/26/20	8/25/20	
Opening Expert Report	6/19/20	8/18/20	
Responsive Expert Report	7/20/20	9/18/20	30 days for responsive reports
Reply Expert Report	8/14/20	10/9/20	21 days for reply reports
Expert Discovery Closes	9/30/20	11/20/20	42 days for expert depositions
Open Dispositive Briefing	10/16/20	12/11/20	21 days from close of expert discovery to brief opening
Responsive Dispositive Briefing	11/13/20	1/14/21	34 days (with holidays) to brief response
Reply Dispositive Briefing	12/11/20	1/29/21	15 days to brief reply
Pretrial Conference	4/9/21	4/9/21	
Trial	4/26/21	4/26/21	

Alternatively, under Cytonome's proposal, we request that the parties mutually agree to 30(b)(6) depositions in early-mid July. Under this proposal both parties are more likely to conduct in-person 30(b)(6) depositions and will still have several weeks to conduct additional depositions before the close of fact discovery on 8/10. With 30(b)(6) depositions being conducted in July, NanoCollect does not expect requesting an additional extension to the close of fact discovery. If in-person depositions are still not feasible in July, NanoCollect would agree to remote depositions.

If Cytonome agrees with either of these proposals, please let us know and we will circulate a draft joint motion for review.

Best,
Adam

From: "Moffett, Dan" <dmoffett@AkinGump.com>
Date: Thursday, April 9, 2020 at 1:06 PM
To: "Burrowbridge, Adam" <aburrowbridge@wsgr.com>, "Almanza, Lillian" <lalmanza@wsgr.com>, "Mayeaux, JoEllen" <jmayeaux@akingump.com>, "Rosbrook, Andy" <arosbrook@AKINGUMP.COM>, "Landers, Thomas" <twlanders@akingump.com>, "O'Neill, Kirt" <koneill@AKINGUMP.COM>, "Langford, Melanie" <mlangford@AkinGump.com>, "NANOCELECT (AG TEAM)" <NANOCELECTAGTEAM@akingump.com>, "Raucci, Anthony" <araucci@mnat.com>, "Smith, Rodger (External)" <rsmith@mnat.com>, "Hoy, Rebecca" <rhoy@mnat.com>
Cc: "Liston, Ian" <iliston@wsgr.com>, "Malik, Rhyea" <rmalik@wsgr.com>, WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>
Subject: RE: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

[External]
Adam,

We wanted to follow up on our email. Please let us know if NanoCollect agrees with our counter-proposal, or whether you have a different solution to the issues we raised. If you are no longer interested in discussing an extension, let us know that as well. In that case, we will need you to identify your 30(b)(6) designees per your agreement to do so 30 days prior to the deposition.

Thank you,

Dan

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From: Moffett, Dan
Sent: Tuesday, April 7, 2020 2:28 PM
To: 'Burrowbridge, Adam' <aburrowbridge@wsgr.com>; Almanza, Lillian <lalmanza@wsgr.com>; Mayeaux, JoEllen <jmayeaux@akingump.com>; Rosbrook, Andy <arosbrook@AKINGUMP.COM>; Landers, Thomas <twlanders@akingump.com>; O'Neill, Kirt <koneill@AKINGUMP.COM>; Langford, Melanie <mlangford@AkinGump.com>; NANOCELECT (AG TEAM) <NANOCELECTAGTEAM@akingump.com>; Raucci, Anthony <araucci@mnat.com>; Smith, Rodger (External) <rsmith@mnat.com>; Hoy, Rebecca <rhoy@mnat.com>
Cc: Liston, Ian <iliston@wsgr.com>; Malik, Rhyea <rmalik@wsgr.com>; WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>
Subject: RE: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

Adam,

Cytonome is willing to agree to an extension of discovery deadlines with the goal of being able to conduct in-person depositions. Under your current proposal, however, we would still need to proceed with depositions of NanoCollect's witnesses as currently scheduled so that we have final transcripts for our experts in advance of the June 19, 2020

deadline for serving reports. Cytonome also would like an assurance that this is a one-time extension, and that we will be able to proceed with depositions after the extension period.

Accordingly, we propose a 45 day extension to the deadline for completing fact discovery and the expert disclosure and discovery deadlines in Section 10(a) of the Scheduling Order. We selected 45 days so that the parties will still have time to conduct expert depositions between serving reply expert reports and the deadline for filing Daubert and dispositive motions, if desired. Because of that, the extension will not affect the trial date or the deadlines for filing Daubert or dispositive motions, which we believe is important for getting approval from the Court.

This proposal is contingent on NanoCollect's agreement that it will make its 30(b)(6) designees available for deposition during the week of June 22, 2020, which is a little over 45 days from the currently-noticed date. If governmental restrictions continue to make in-person depositions impossible at that time, NanoCollect would also agree to present its witnesses for deposition through Cytonome's court reporting agency's remote deposition service. We note that Judge Andrews has recently instructed parties to be prepared to take depositions remotely in order to avoid resetting a trial.

Let us know if you have any questions or concerns about our counter-proposal. Otherwise, if you agree with the foregoing, please prepare a joint motion for our review.

Thanks,

Dan

Dan Moffett

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From: Burrowbridge, Adam <aburrowbridge@wsgr.com>

Sent: Monday, April 6, 2020 8:19 PM

To: Almanza, Lillian <lalmanza@wsgr.com>; Moffett, Dan <dmoffett@AkinGump.com>; Mayeaux, JoEllen <jmayeaux@akingump.com>; Rosbrook, Andy <arosbrook@AKINGUMP.com>; Landers, Thomas <twlanders@akingump.com>; O'Neill, Kirt <koneill@AKINGUMP.COM>; Langford, Melanie <mlangford@AkinGump.com>; NANOCELECT (AG TEAM) <NANOCELECTAGTEAM@akingump.com>; Raucci, Anthony <araucci@mnat.com>; Smith, Rodger (External) <rsmith@mnat.com>; Hoy, Rebecca <rhoy@mnat.com>
Cc: Liston, Ian <iliston@wsgr.com>; Malik, Rhyea <rmalik@wsgr.com>; WSGR - NanoCollect/Cytonome <nanocollect/cytonome@wsgr.com>

Subject: Cytonome/ST, LLC v. Nanocollect Biomedical, Inc. (1:19-cv-00301-RGA)

****EXTERNAL Email****

Dan,

Please see the attached correspondence.

Best,
Adam

Adam Burrowbridge ■ Wilson Sonsini Goodrich & Rosati, PC

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