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*Attorneys for Defendants Puma  
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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

HSINGCHING HSU, Individually and  
 on Behalf of All Others Similarly  
 Situated,

Plaintiff,

vs.

PUMA BIOTECHNOLOGY, INC., et  
 al.,

Defendants.

Case No. 8:15-cv-00865-DOC-SHK

CLASS ACTION

JOINT REQUEST SEEKING  
 CLARIFICATION OF OCTOBER 29,  
 2021 & NOVEMBER 2, 2021  
 ORDERS

1           Lead Plaintiff Norfolk County Council, as Administering Authority of the  
 2 Norfolk Pension Fund, on behalf of the Class of Puma Biotechnology, Inc.  
 3 investors (“Lead Plaintiff”) and Defendants Puma Biotechnology, Inc. and Alan H.  
 4 Auerbach (“Defendants” and together with Lead Plaintiff, the “Parties”),  
 5 respectfully submit this joint request seeking clarification of the Court’s October  
 6 29, 2021 Order (ECF No. 879) (“Judgment Order”) and its November 2, 2021  
 7 Order (ECF No. 881) (“Dismissal Order”). For the reasons discussed below, the  
 8 Parties jointly request that the Court (1) clarify that its Judgment Order does not  
 9 effectuate a judgment in this case, and (2) vacate the Dismissal Order so that an  
 10 appropriate motion for preliminary approval of settlement can be filed for this  
 11 Court’s review and determination.

12           **I. The Court Should Clarify That the Judgment Order Is Not an**  
 13           **Effective Final Judgment**

14           On October 29, 2021, at the Court’s request, the parties filed a Notice of  
 15 Settlement in Principle, alerting the Court that they had come to an agreement on  
 16 the preliminary and material terms of a settlement, but that they would need  
 17 additional time to finalize all terms of the settlement and to execute a written  
 18 agreement. ECF No. 878. The notice explained that if the settlement terms are  
 19 finalized, Plaintiffs will file a motion for preliminary approval of the settlement by  
 20 December 3, 2021. *Id.*

21           Shortly after the Parties filed the notice of settlement, the Court issued an  
 22 order—the Judgment Order (ECF No. 879). While the Judgment Order contains  
 23 monetary terms that are similar to the settlement in principle that the Parties have  
 24 negotiated, there are important differences in both the monetary and non-monetary  
 25 terms of settlement that the parties expect to include in a final settlement  
 26 agreement that will form the basis for a final judgment in this case.

27           In addition, the Parties wish to avoid the necessity of filing post-judgment  
 28 motions and appeals while they finalize a settlement agreement. Under Federal

Rule of Civil Procedure 50(b) and (d), and Federal Rule of Appellate Procedure 4(a), the twenty-eight-day deadlines for post-trial motions and thirty-day deadline for a notice of appeal are triggered by entry of a judgment. The Parties do not believe that this Court intended to require the Parties to file post-trial motions and briefs at the same time as they seek to finalize the settlement; nor do they believe that the Court intended to trigger the deadline for filing a notice of appeal during this period. Indeed, the Dismissal Order expressly contemplates that the Court will retain jurisdiction for sixty days—a directive that is incompatible with either party filing a notice of appeal, which would divest the Court of jurisdiction within thirty days. Notably, Federal Rule of Civil Procedure 6(b)(2) is clear that the deadlines for post-trial motions cannot be extended, and the thirty-day notice of appeal deadline is jurisdictional and can only be extended once for a maximum of thirty days. *See Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13, 19-21 (2017); 28 U.S.C. § 2107; Fed. R. App. P. 4(a)(C).

To avoid any confusion or ambiguity regarding the effect of the Court’s orders, the Parties jointly request that the Court enter an order clarifying that, notwithstanding the Judgment Order, judgment has not yet been entered in this matter for any purpose contemplated by the Federal Rules of Civil Procedure or Federal Rules of Appellate Procedure, including for purposes of triggering deadlines for filing any post-trial briefs or notice of appeal.

## **II. The Court Should Vacate Its November 2, 2021 Dismissal Order**

The Parties further request that the Court vacate the Dismissal Order so that the Court can retain jurisdiction of the case for a sufficient period of time to permit the Parties to complete the necessary requirements to obtain preliminary and final settlement approval. In accordance with Federal Rule of Civil Procedure 23(e) and the Private Securities Litigation Reform Act, the Parties cannot settle the case without the Court’s approval, and the Court can only approve the settlement if it retains jurisdiction. If a settlement agreement is reached, Lead Plaintiff will file a

1 motion for preliminary approval under Rule 23(e)(1) and then provide notice to the  
2 claimants identified in the October 29 Order (ECF No. 879) that will allow time for  
3 those claimants to object or otherwise comment on the settlement and any  
4 proposed attorneys' fees and expenses. In addition, even though the Court is  
5 retaining jurisdiction for sixty days under the Order, in accordance with the Class  
6 Action Fairness Act of 2005 ("CAFA"), a final approval hearing cannot be held  
7 until ninety days after entry of preliminary approval. After preliminary approval is  
8 granted, Defendants are required by CAFA to provide notice of the proposed  
9 settlement to "appropriate state official[s]" at least ninety days before the final  
10 approval of the settlement. In other words, because the final approval of the  
11 settlement cannot take place until at least ninety days after preliminary approval,  
12 until the final approval of the settlement and distribution of settlement funds to  
13 claimants, the case should not be dismissed and the Court should retain  
14 jurisdiction.

15 If the parties are unable to reach an agreement on settlement terms, they will  
16 so notify the Court by no later than December 3, 2021. In that case, dismissal still  
17 would be inappropriate pending resolution of post-judgment motions, including  
18 any claim for attorneys' fees and costs, application to tax costs, any award or  
19 reimbursement to Plaintiff, and any motion pursuant to Federal Rule of Civil  
20 Procedure 37(c).

21 Accordingly, the Parties respectfully request that the Court enter an order  
22 clarifying its October 29 Order and the Dismissal Order as follows:

- 23 1. Notwithstanding the Court's Judgment Order (ECF No. 879),  
24 judgment has not yet been entered in this matter for any purpose  
25 contemplated by the Federal Rules of Civil Procedure or Federal  
26 Rules of Appellate Procedure, including for purposes of triggering  
27 deadlines for filing any post-trial briefs or notice of appeal;  
28

- 1           2.     The Clerk is directed not to enter a judgment on the civil docket at this  
2                     time;  
3           3.     The November 2, 2021 Order dismissing the case and retaining  
4                     jurisdiction for sixty days (ECF No. 881) is vacated; and  
5           4.     By no later than December 3, 2021, Lead Plaintiff is to file a motion  
6                     for preliminary approval of a settlement, or the Parties will notify the  
7                     Court if they have been unable to reach a settlement.  
8

9     DATED: November 5, 2021

Respectfully submitted,

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27     DATED: November 5, 2021

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All signatories listed, and on whose behalf the filing is submitted, concur in  
the filing's content and have authorized the filing.

Dated: November 5, 2021

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/s/ Michele D. Johnson  
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