

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

RYAN PERRI, Derivatively on Behalf of  
Nominal Defendant DANIMER  
SCIENTIFIC, INC.,

Plaintiff,

v.

STEPHEN E. CROSKREY, *et al.*,

Defendants,

and

DANIMER SCIENTIFIC, INC.,

Nominal Defendant

Case No. 1:21-cv-01423-GBW

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SAMUEL BEREZIN, Derivatively on Behalf  
of Nominal Defendant DANIMER  
SCIENTIFIC, INC.,

Plaintiff,

v.

STEPHEN E. CROSKREY, *et al.*,

Defendants,

and

DANIMER SCIENTIFIC, INC.,

Nominal Defendant

Case No. 1:23-cv-00149-WCB

**STIPULATION AND [PROPOSED] ORDER  
CONSOLIDATING ACTIONS AND APPOINTING CO-LEAD COUNSEL**

The parties in the above-captioned actions, Ryan Perri, Plaintiff in *Perri v. Croskrey, et al.*, No. 1:21-cv-01423-GBW (D. Del.) (the “*Perri* Action”), and Samuel Berezin, Plaintiff in *Berezin v. Croskrey, et al.*, No. 1:23-cv-00149-WCB (D. Del.) (the “*Berezin* Action”), Nominal Defendant Danimer Scientific, Inc. (“Danimer” or the “Company”), and Defendants Stephen E. Croskrey, John A. Dowdy, III, Richard Hendrix, John P. Amboian, Philip Gregory Calhoun, Gregory Hunt, Isao Noda, Stuart W. Pratt, Christy Basco, Andrea K. Tarbox, Tor B. Braham, Jonathan Furer, Harold Ford Jr., and John W. Sweet (collectively, the “Individual Defendants,” and together with Danimer, “Defendants”), by and through their undersigned counsel, have conferred and stipulate to consolidate the *Perri* Action and the *Berezin* Action (together, the “Actions”) pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. The parties also stipulate to service of the *Berezin* Action on Defendants, and the stay entered in the *Perri* Action applying to the *Berezin* Action and any subsequently consolidated action.

Plaintiffs further stipulate to their respective counsel being appointed co-lead counsel and liaison counsel. Defendants take no position on the qualifications or appointment of lead counsel or liaison counsel for Plaintiffs.

WHEREAS, on October 6, 2021, plaintiff Ryan Perri filed a verified stockholder derivative complaint in the *Perri* Action on behalf of Danimer against nine of the fourteen Individual Defendants (Stephen E. Croskrey, John A. Dowdy, III, Christy Basco, Philip Gregory Calhoun, Gregory Hunt, Isao Noda, Stuart W. Pratt, John P. Amboian, and Richard J. Hendrix);

WHEREAS, the *Perri* Action involves overlapping parties and factual allegations with a series of four related federal securities class actions filed in 2021, which have now all been either dismissed or consolidated before the United States District Court for the Eastern District of New

York under the caption *In re Danimer Scientific, Inc., Securities Litigation*, Case No. 21-cv-02708-MKB-RLM (E.D.N.Y.) (the “Securities Class Action”);

WHEREAS, on October 20, 2021, the Court granted a stipulation staying the *Perri* Action pending resolution of any motion to dismiss in the Securities Class Action;

WHEREAS, the stay of the *Perri* Action does not apply to requests for consolidation and/or leadership (see ECF No. 3 at ¶7);

WHEREAS, on February 9, 2023, plaintiff Samuel Berezin filed a verified stockholder derivative complaint in the *Berezin* Action on behalf of Danimer against the Individual Defendants, which involves overlapping parties and factual allegations with the *Perri* Action and the Securities Class Action;

WHEREAS, Rule 42(a) of the Federal Rules of Civil Procedure permits a court to consolidate actions pending before it if those actions involve a “common question of law or fact,” Fed. R. Civ. P. 42(a), and the purpose of Rule 42(a) “is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties,” Wright & A. Miller, *Federal Practice and Procedure*, § 2381 (1971);

WHEREAS, Plaintiffs agree that the *Perri* and *Berezin* Actions contain substantially similar factual and legal contentions and that the administration of justice would be best served by consolidating the Actions and appointing Co-Lead Counsel as stated in this stipulation; and

WHEREAS, without waiving any rights, arguments, or defenses, Defendants agree that the Actions should be consolidated and that the consolidated action should remain stayed on substantially the same terms as the *Perri* Action is currently stayed, and take no position regarding appointment of Co-Lead Counsel; and

WHEREAS, this stipulation is not a waiver of any of the parties' rights, remedies, claims, or defenses;

NOW, THEREFORE, it is hereby STIPULATED and ORDERED, by and among the parties, through their undersigned counsel, subject to the approval of the Court, as follows:

1. Danimer and the Individual Defendants, through their undersigned counsel, hereby accept service of the summons and complaint in the *Berezin* Action without waiver of any rights or defenses, except as to sufficiency of service.

2. Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the *Perri* and *Berezin* Actions are hereby consolidated for all purposes, including pretrial proceedings, trial, and appeal, and are referred to in this stipulation as the "Consolidated Action."

3. The file in *Perri v. Croskrey, et al.*, Case No. 1:21-cv-01423-GBW, shall constitute the Master File for every action in the Consolidated Action. When the document being filed pertains to all Actions, the phrase "This Documents Relates to All Actions" shall be placed on the cover page. When a pleading applies only to some, not all, of the Actions, the document shall list on the cover page the phrase "This Document Relates To:", the docket number for each individual action to which the document applies, along with the last name of the first-listed plaintiff in said action.

4. Every pleading filed in the Consolidated Action, or in any separate action included, shall bear the following caption:

IN RE DANIMER SCIENTIFIC, INC. STOCKHOLDER DERIVATIVE LITIGATION
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Master File No. 1:21-cv-01423

5. Defendants take no position on the qualifications or appointment of lead counsel or liaison counsel for Plaintiffs.

6. Levi & Korsinsky, LLP (“L&K”) and Glancy Prongay & Murray LLP (“GPM”) are designated Co-Lead Counsel for Plaintiffs in the Consolidated Action. Plaintiffs contend that their counsel, L&K and GPM, are well-qualified to coordinate prosecution of the claims they assert derivatively on behalf of the Company. *See Firm Résumés* attached hereto as Exhibits A & B.

7. Bielli & Klauder, LLC shall serve as Liaison Counsel for Plaintiffs in the Consolidated Action.

8. Co-Lead Counsel shall represent Plaintiffs in the prosecution of the Consolidated Action, determine and present to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial negotiations, delegate and monitor the work performed by Plaintiffs’ attorneys to ensure that there is no duplication of effort or unnecessary expense, coordinate on behalf of the Plaintiffs the initiation and conduct of discovery proceedings, have the authority to negotiate matters with Defendants’ counsel, and perform such other duties as may be incidental to the proper coordination of Plaintiffs’ pretrial activities or authorized by further order of the Court. Defendants’ counsel may rely on all agreements made with either of Co-Lead Counsel, or other duly authorized representative of Co-Lead Counsel, and such agreements shall be binding on all Plaintiffs.

9. It would be duplicative and wasteful of the Court’s resources for any Defendant who has been properly served, has agreed to accept service, or who is served in the future to have to respond whether by answer or motion to the individual complaints before a consolidated complaint is filed in the Consolidated Action. Therefore, any Defendant who has been properly served, has agreed to accept service, or who is served in the future, need only respond, plead, move, or answer to any consolidated complaint filed in the Consolidated Action. Defendants do not need to respond to the complaints filed in the *Perri* and *Berezin* Actions. To the extent that

any Defendant now named in any of the existing complaints filed in the Consolidated Action is not named in the consolidated complaint, the claims against such Defendant shall be deemed dismissed without prejudice. Any pleading filed or served in one of the underlying actions shall become part of the Consolidated Action.

10. This Stipulation and Order shall apply to each action arising out of the same transactions and occurrences and asserting direct and/or derivative state law claims filed in this Court or transferred here, and Co-Lead Counsel shall assist the Court by calling to the attention of the Court the filing or transfer of any such action, and Co-Lead Counsel shall assure that counsel therein receive notice of this Stipulation and Order. Unless otherwise ordered, the terms of all orders, rulings, and decisions in the Consolidated Action shall apply to all later shareholder derivative actions instituted herein.

11. All proceedings in the Consolidated Action are stayed until (a) resolution of defendants' motions to dismiss in the Securities Class Action; (b) at the request of any party, upon thirty (30) days' notice to all parties and to the Court; or (c) upon further order from the Court, whichever comes first.

12. Plaintiffs may file a consolidated amended complaint during the pendency of the stay. Defendants need not answer, move, or otherwise respond to any consolidated amended complaint, if one is filed, during the pendency of the stay.

13. Defendants shall promptly notify Plaintiffs of any mediation that takes place in the Securities Class Action.

14. The stay shall not apply to any motions, stipulations, or any other related filings pertaining to the consolidation of any related stockholder derivative action and related administrative matters.

15. Upon the lifting of the stay of the Consolidated Action, the parties will meet and confer within thirty (30) days, and thereafter submit to the Court a proposed scheduling order governing further proceedings in the Consolidated Action.

16. All deadlines and hearings are postponed until after the stay is lifted.

17. The parties reserve all of their respective rights and waive none, including Defendants' right to move to dismiss any operative complaint in the event the stay is lifted.

**IT IS SO STIPULATED and ORDERED.**

Dated: March 7, 2023

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**SO ORDERED.**

DATED: \_\_\_\_\_, 2023

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Gregory B. Williams  
United States District Judge