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9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 GREGORY M. MILLER, derivatively on)
 14 behalf of SOLAZYME, INC.,)
)
 15 Plaintiff,))

16 vs.)
)

17 JONATHAN S. WOLFSON, MICHAEL V.) Case No. 15-cv-3880 HSG
 18 ARBIGE, IAN T. CLARK, JAMES R.)
 19 CRAIGIE, JERRY FIDDLER, PETER) **Second Stipulation and Order Temporarily**
 KOVACS, DAVID C. COLE, and TYLER W.) **Deferring Prosecution of Derivative Action**
 20 PAINTER,)
)
 21 Defendants,))

22 - and -)
)

23 SOLAZYME, INC., a Delaware corporation,)
)
 24 Nominal Defendant.)
)

25 _____)

1 In compliance with the Court’s January 25, 2017 order, the parties respectfully submit this
2 stipulation and proposed order and state as follows:

3 WHEREAS, on August 25, 2015, plaintiff Gregory M. Miller (“Plaintiff”) filed this
4 shareholder derivative action (the “Federal Derivative Action”) on behalf of nominal defendant
5 Solazyme, Inc., which is now named TerraVia, Inc. (“Solazyme”), and against defendants
6 Jonathan S. Wolfson, Michael V. Arbige, Ian T. Clark, James R. Craigie, Jerry Fiddler, Peter
7 Kovacs, David C. Cole, and Tyler W. Painter, (collectively with Solazyme, “Defendants”),
8 alleging claims for, among other things, breaches of fiduciary duties in connection with alleged
9 false and misleading statements regarding Solazyme’s financial condition and business prospects;

10 WHEREAS, related to the Federal Derivative Action is a purported shareholder derivative
11 action captioned, *Bertonis v. Wolfson*, No. CIV 534717 (Cal. Super. Ct., Cnty. of San Mateo)
12 (complaint filed July 16, 2015), which is currently pending in the Superior Court of California,
13 County of San Mateo (the “State Derivative Action”), asserting similar claims against nearly
14 identical defendants based on similar events and transactions alleged in the Federal Derivative
15 Action;

16 WHEREAS, both the Federal Derivative Action and the State Derivative Action involve
17 some of the same defendants and similar events and transactions alleged in a related securities-
18 fraud class action pending in this Court, *Norfolk County Retirement System v. Solazyme, Inc.*, No.
19 15-cv-2938 HSG (N.D. Cal.) (complaint filed June 24, 2015) (the “Securities Class Action”);

20 WHEREAS, counsel for the parties in the Federal Derivative Action have been engaged in
21 discussions since the Federal Derivative Action was filed regarding next steps in light of the State
22 Derivative Action and Securities Class Action, and agreed to temporarily defer proceedings in the
23 Federal Derivative Action;

24 WHEREAS, the parties’ agreement to defer proceedings in the Federal Derivative Action
25 was reflected in the Court’s March 29, 2016 order (Dkt. No. 26);

26 WHEREAS, on December 29, 2016, the Court granted without prejudice defendants’
27 motion to dismiss the complaint in the Securities Class Action;

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1 WHEREAS, on January 20, 2017, the Court set a schedule in the Securities Class Action,
2 ordering that (a) plaintiffs file their amended complaint by February 15, 2017, and (b) any motion
3 to dismiss be filed by March 17, 2017;

4 WHEREAS, on January 18, 2017, pursuant to the March 29, 2016 order (Dkt. No. 26),
5 counsel for the parties in the Federal Derivative Action met and conferred, and agreed that this
6 Action should remain deferred until an answer or order of dismissal is filed in the Securities Class
7 Action, so long as motion practice and discovery in the State Derivative Action also remains
8 deferred;

9 WHEREAS, on January 23, 2017, the Superior Court stayed the State Derivative Action
10 until July 1, 2017 (while the anticipated motion to dismiss the Securities Class Action is pending)
11 and set the next status conference for August 7, 2017;

12 WHEREAS, based upon the overlapping parties and factual allegations contained in the
13 Federal Derivative Action and the Securities Class Action, and to avoid the unnecessary
14 expenditure of judicial resources before resolution of the anticipated motion to dismiss the
15 Securities Class Action, Plaintiff and Defendants agree, subject to this Court's approval, to
16 temporarily defer prosecution, including motion practice and discovery, in the Federal Derivative
17 Action until such time as the Court issues an order ruling on the defendants' motion to dismiss the
18 Securities Class Action; and

19 WHEREAS, the parties in the Federal Derivative Action agree that (a) at any time during
20 which the prosecution of this case is deferred pursuant to this stipulation and order, any party may
21 move the Court to modify the terms of the deferred-prosecution order, and (b) any party may
22 oppose such motion.

23 NOW THEREFORE, Plaintiff and Defendants, by their undersigned counsel, stipulate as
24 follows:

25 1. Except as noted in ¶¶ 4–6 below, all proceedings, including motions practice and
26 discovery, in the Federal Derivative Action are deferred until the earlier occurrence of: (a) an
27 order on the anticipated motion to dismiss in the Securities Class Action (currently scheduled to
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1 be filed on or before March 17, 2017) sustaining all or part of the anticipated amended complaint;
2 (b) issuance of a scheduling order in the State Derivative Action that requires defendants in that
3 action to respond to an operative complaint; (c) dismissal of the Securities Class Action in its
4 entirety with prejudice; (d) notification to the Court by counsel for Plaintiff or Defendants of a
5 settlement of the Securities Class Action, the State Derivative Action, or any subsequently filed or
6 threatened derivative actions that are based on the same or substantially similar allegations as
7 made in the Federal Derivative Action; (e) as otherwise ordered by the Court (including a further
8 deferral of these proceedings); or (f) January 1, 2018.

9 **2.** Within 20 days after the occurrence of any event listed in ¶ 1, the parties shall meet
10 and confer; and within 30 days of the occurrence of any event listed in ¶ 1, the parties shall
11 submit a proposed scheduling order governing further proceedings in the Federal Derivative
12 Action, including a proposed schedule regarding the designation or filing of an operative
13 complaint and Defendants' responses thereto.

14 **3.** Plaintiff may file an amended complaint, but Defendants need not answer, move,
15 or otherwise respond to any complaint or amended complaint filed in the Federal Derivative
16 Action while the proceedings are deferred. None of the Defendants shall have to respond to any
17 complaint or amended complaint filed in the Federal Derivative Action until a response date is set
18 and/or approved by the Court.

19 **4.** In the event that, while proceedings in the Federal Derivative Action are deferred,
20 any discovery is provided or produced to plaintiff in the State Derivative Action, or any
21 subsequently filed or threatened derivative actions that are based on the same or substantially
22 similar allegations as made in the Federal Derivative Action, Defendants will provide copies of
23 that discovery to counsel for Plaintiff subject to the execution of an appropriate protective order.

24 **5.** Defendants shall invite counsel for Plaintiff, Bottini & Bottini, Inc., to participate
25 in any formal settlement meetings, mediations, or conferences that might be held in the State
26 Derivative Action, or any subsequently filed or threatened derivative actions that are based on the

1 same or substantially similar allegations as made in the Federal Derivative Action while
2 proceedings in the Federal Derivative Action are deferred.

3 **6.** At any time during which the prosecution of this Federal Derivative Action is
4 deferred pursuant to this stipulation and order, a party may file a motion with the Court seeking to
5 modify the terms of the order, whether or not other parties object to such motion.

6 IT IS SO STIPULATED.

7 Dated: January 27, 2017

8 Respectfully submitted,
9 BOTTINI & BOTTINI, INC.
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Albert Y. Chang (SBN 296065)
Yury A. Kolesnikov (SBN 271173)

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ATTESTATION

In compliance with Local Rule 5-4.3.4(a)(2)(i), I, Francis A. Bottini, Jr., attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.


s/ Francis A. Bottini, Jr.
Francis A. Bottini, Jr.

* * *

ORDER

Pursuant to stipulation, it is so ordered.

Dated: February 3, 2017



The Honorable Haywood S. Gilliam, Jr.
United States District Judge