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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE TERRAVIA HOLDINGS, INC.,
SECURITIES LITIGATION**

Case No.: 16-cv-06633-JD

**ORDER RE PRELIMINARY
APPROVAL**

1 The Court denied the parties' initial request for preliminary approval of a settlement in this
2 class action securities case. Dkt. No. 111. The parties entered into an Amended Stipulation of
3 Settlement, Dkt. No. 118 (Settlement Agreement), and plaintiffs filed a renewed motion for
4 preliminary approval, Dkt. No. 119. Preliminary approval is granted. This order is based on
5 plaintiffs' proposed order and modified according to the Court's conclusions and practices.
6 Counsel are directed to read the order in its entirety for changes from the draft they lodged.

7 Overall, as documented in the Court's orders, counsel for plaintiffs at Pomerantz LLP have
8 performed poorly in this case. The Court reluctantly appoints the Pomerantz firm as counsel for
9 settlement purposes mainly because the firm has renounced any and all claim to attorney's fees,
10 and because this case has already languished for an unduly long time. There is little to be gained
11 by soliciting other counsel for the role, particularly since the issuer company no longer exists as
12 an ongoing entity and the case is unlikely to attract the interest of other law firms.

13 1. The proposed class settlement is sufficiently within the range of reasonableness to
14 warrant the dissemination of notice to the settlement class members. Capitalized terms used in
15 this order that are not otherwise defined have the meaning assigned to them in the Settlement
16 Agreement.

17 2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for
18 purposes of this settlement only, a preliminary settlement class is certified consisting of all persons
19 and entities that purchased or otherwise acquired TerraVia Holdings, Inc. common stock between
20 May 4, 2016, and November 6, 2016, both dates inclusive. Excluded from the Settlement Class
21 are (1) the Settling Defendants and their immediate family members; (2) any person who served
22 as an officer or director of TerraVia during the Settlement Class Period and their immediate family
23 members; (3) any entity in which any of the above have or had a controlling interest; and
24 (4) Settlement Class members who opt out of the Settlement.

25 3. Plaintiffs Ruben Perales and Casey Minnick are preliminarily appointed as the class
26 representatives and Pomerantz LLP is preliminarily appointed as lead counsel for purposes of this
27 settlement.

28 4. The Court finds, for the purposes of this settlement only, that the prerequisites for
a class action under Rules 23(a) and b(3) of the Federal Rules of Civil Procedure have been
satisfied.

1 5. As soon as practicable after entry of this Order, but no later than fourteen (14)
2 calendar days after the entry of this Order, the designated Claims Administrator shall provide
3 individual notice via mail, substantially in the form of Exhibit A-3 to the Settlement Agreement,
4 Dkt. No. 118 at ECF pp. 39-50, to each Settlement Class Member identified by records maintained
5 by TerraVia’s transfer agent using addresses contained in those records.

6 6. The Claims Administrator shall also cause a Summary Notice to be published no
7 later than twenty-one (21) days after the entry of this Order in Investor’s Business Daily and on
8 Globe Newswire substantially in the form of Exhibit A-3 to the Settlement Agreement, Dkt.
9 No. 118 at ECF pp. 62-64.

10 7. The Court approves the proposed Proof of Claim form substantially in the form of
11 Exhibit A-2 to the Settlement Agreement, Dkt. No. 118 at ECF pp. 51-61, except that the
12 “Submission to Jurisdiction of the Court” paragraph on ECF p. 57, and all paragraphs under
13 “F. Release” on ECF pp. 57-58, must be removed. These sections are unnecessary and are likely
14 to discourage the filing of claims. The claim form should be edited throughout to reflect the
15 deletion of these sections, *e.g.*, the title of the form should be changed from “Proof of Claim and
16 Release Form” to “Proof of Claim Form.” In addition, the Court notes that the claim form currently
17 requires submission of “copies of brokerage confirmations, monthly statements, or other
18 documentation of your transactions in TerraVia common stock in order for your claim to be valid.”
19 *Id.* at ECF p. 53. The transactions at issue would have occurred in 2016 and 2017. The parties are
20 directed to discuss relaxing the documentation requirement so that claimants need only submit
21 supporting documents to the extent available, and providing the option of submitting a signed
22 declaration or other reasonable alternative means for verifying the claimed transactions. The
23 parties may agree on these procedures and modify the claim form accordingly without seeking
24 further approval of the Court.

25 8. Plaintiffs’ counsel may retain Strategic Claims Services as the Claims
26 Administrator to supervise and administer the notice and claims procedures, as well as any other
27 services described in the Settlement Agreement.

28 9. Plaintiffs’ counsel is hereby authorized to have the Escrow Agent establish a Notice
and Administration Escrow Account in the amount of \$100,000.00 in accordance with the
provisions of the Settlement Agreement to be used for reasonable out-of-pocket costs in connection

1 with providing notice of the Settlement to the Class, for administering the Settlement and
2 distributing payments therefrom, and for other reasonable out-of-pocket administrative expenses.

3 10. The notice to be provided as set forth in this order is found to be the best means of
4 notice to the Settlement Class Members that is practicable under the circumstances and, when
5 completed, will constitute due and sufficient notice consistent with the requirements of due
6 process, the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(7),
7 and the Federal Rules of Civil Procedure.

8 11. To participate in recovery from the Settlement, Settlement Class Members must
9 complete, sign, and submit a Proof of Claim form to the Claims Administrator as indicated in the
10 Notice, postmarked or e-filed online no later than twenty-one (21) calendar days prior to the Final
11 Approval Hearing. All Settlement Class Members who do not submit valid and timely Proofs of
12 Claim will be barred from receiving any payments from the Net Settlement Fund, but will in all
13 other respects be subject to and bound by the provisions of the Settlement Agreement and the
14 Order and Judgment of the Court.

15 12. Any Settlement Class Member may request exclusion from the Settlement Class
16 and this Action in the manner and with the consequences described herein, provided that all such
17 requests for exclusion must be postmarked no later than twenty-one (21) calendar days prior to the
18 Final Approval Hearing and received by the Claims Administrator at:

19 *TerraVia Securities Litigation*
20 c/o Strategic Claims Services
21 P.O. Box 230
22 600 N. Jackson St., Ste. 205
23 Media, PA 19063
24 Tel.: (866) 274-4004
25 Fax: (610) 565-7985
26 info@strategicclaims.net
27 terraviasettlement.com.

28 Such requests for exclusion shall be in a form that sufficiently identifies (1) the name, address, and
telephone number (if any) of the person(s) or entity seeking exclusion, and (2) a list of all
transactions involving TerraVia common stock between May 4, 2016, and November 6, 2016, both
dates inclusive, and the number of shares, principal amount, and trade date of each purchase and
sale (if any). The request for exclusion must also be signed and state the intent to be excluded
from the Settlement.

1 13. Any Settlement Class Member that does not file a timely and complete request for
2 exclusion from the settlement by the exclusion deadline will be bound by the Settlement
3 Agreement and Judgment.

4 14. A Final Approval Hearing will be held in Courtroom 11, 19th Floor, United States
5 District for the Northern District of California, San Francisco Courthouse, 450 Golden Gate
6 Avenue, San Francisco, California 94102, on June 13, 2024, at 10:00 a.m, to determine:

7 (a) whether a Class should be certified for purposes of Settlement only, and whether Ruben
8 Perales and Casey Minnick should be appointed as Class Representatives;

9 (b) whether the Settlement on the terms and conditions provided for in the Settlement
10 Agreement should be finally approved by the Court as fair, reasonable and adequate;

11 (c) whether the proposed Plan of Allocation is fair, just, reasonable, and adequate;

12 (d) whether the Action should be dismissed on the merits and with prejudice as to the
13 Defendants;

14 (e) whether the Court should permanently enjoin the assertion of any Released Claims
15 against any of the Released Persons;

16 (f) whether the application for attorney's expenses to be submitted by Plaintiffs' Counsel
17 should be approved;

18 (g) whether the application for an award to be submitted by the Lead Plaintiff Group and
19 the proposed Class Representatives should be approved; and

20 (h) such other matters as the Court may deem necessary or appropriate.

21 15. The Court may approve the Settlement with any modifications as may be consented
22 to by the Settling Parties and without further notice to the Settlement Class where to do so would
23 not impair Settlement Class Members' rights of due process. The Court may also approve the
24 Settlement regardless of any determination regarding the Plan of Allocation or awards to Plaintiffs'
25 Counsel or the Plaintiffs.

26 16. Any Settlement Class Member and any other interested party may appear at the
27 Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court,
28 either in support of or in opposition to the matters to be considered at the hearing, but attendance
at the Final Approval Hearing is not required.

 17. The Court will consider objections to the Settlement, the Plan of Allocation, or the
application for Expenses and any Award to Plaintiffs only if such objections and any supporting

1 papers are filed at least twenty-one (21) calendar days prior to the Final Approval Hearing with
2 the Court at the following address:

3 Re: *In re TerraVia Holdings Securities Litigation*, No. 16-6633-JD
4 Clerk of the Court
5 United States District Court
6 Northern District of California
7 450 Golden Gate Avenue
8 San Francisco, CA 94102

9 18. Objections must be in writing, signed, and reference the case caption, objector's
10 name, address, telephone number, a list of your purchases and sales (if any) of TerraVia common
11 stock, as well as all of the reasons you object to the Settlement. Any objection that does not include
12 the information prescribed above may be deemed to have waived all such objections and be
13 foreclosed from making any objection to the fairness, adequacy, or reasonableness of the
14 Settlement and the Judgment entered in the Action.

15 19. All papers in support of the Settlement, the Plan of Allocation, and any application
16 for Expenses or an Award to Plaintiffs shall be filed and served by March 14, 2024.

17 20. Any submissions in response to any objections to or further support of the
18 Settlement, the Plan of Allocation, and any application for Expenses or an Award to Plaintiffs shall
19 be filed no later than ten (10) calendar days prior to the Final Approval Hearing.

20 21. The Claims Administrator shall also make all reasonable efforts to give notice to
21 nominee owners such as brokerage firms and other persons or entities who purchased TerraVia
22 common stock during the Class Period. Such nominees or custodians shall, within ten (10)
23 calendar days of receipt of the notice, either: (i) request copies of the Notice sufficient to send the
24 Notice to all beneficial owners for whom they are nominee or custodian, and within ten (10)
25 calendar days after receipt thereof send copies to such beneficial owners; (ii) request an electronic
26 copy of the Summary Notice and either email the Summary Notice in electronic format or links to
27 the Notice to each beneficial owner for whom they are nominee or custodian within ten (10)
28 calendar days after receipt thereof; or (iii) provide the Claims Administrator with lists of the names,
last known addresses and email addresses (to the extent known) of such beneficial owners, in
which event the Claims Administrator shall promptly deliver the Summary Notice or a link to the
Notice, if email addresses are available, or Notice to such beneficial owners, if last known
addresses are provided. If the Claims Administrator receives an email address, it will send a

1 Summary Notice or link to the Notice electronically. Nominees or custodians who elect to email
2 or send the Notice to their beneficial owners shall send a written certification to the Claims
3 Administrator confirming that the emailing or mailing has been made as directed. Copies of the
4 Notice shall be made available to any nominee or custodian requesting the same for the purpose
5 of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse
6 nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket
7 expenses incurred in providing notice to beneficial owners, which expenses would not have been
8 incurred except for the providing of names and addresses, in amounts up to: (i) \$0.5 per name and
9 address provided; (ii) \$0.05 per email for emailing notice; or (iii) \$0.05 per Notice, plus postage
10 at the pre-sort rate used by the Claims Administrator, for mailing the Notice, subject to further
11 order of this Court with respect to any dispute concerning such reimbursement. A nominee's
12 failure to transmit the Notice to a beneficial owner shall not affect whether that beneficial owner
13 is considered a Class Member. Nothing in this Order creates any duties, liabilities, obligations,
14 responsibilities, or rights as between any nominee and any beneficial owner that do not already
15 otherwise exist in contract or by law.

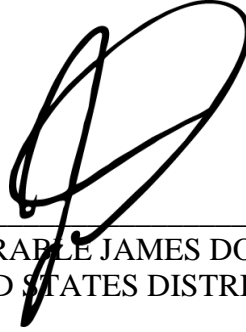
16 22. The date and time of the Final Approval Hearing may be changed without any
17 further notice other than entry of an Order on the Court's docket.

18 23. Neither the Settlement Agreement nor the Settlement, nor any act performed or
19 document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement:
20 (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or
21 infirmity of any Released Claim, of any allegation made in the Action, or of any wrongdoing or
22 liability of any of the Released Persons; (b) is or may be deemed to be or may be used as an
23 admission of, or evidence of, any liability, fault or omission of any of the Released Persons in any
24 civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal;
25 or (c) is or may be deemed to be or may be used as an admission or evidence that the Plaintiffs or
26 the Class would have received less than the Settlement Amount had the Action been prosecuted to
27 conclusion.
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1 24. In the event the Settlement is terminated or is not consummated for any reason, the
2 Settlement Agreement and all associated proceedings will be null and void, and without prejudice
3 to the rights of the Parties to the Settlement Agreement before it was executed.

4 SO ORDERED.

5 Dated: January 4, 2024



HONORABLE JAMES DONATO
UNITED STATES DISTRICT JUDGE

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