

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE BIOMARIN PHARMACEUTICAL
INC. SECURITIES LITIGATION

Case No. [20-cv-06719-WHO](#)

**ORDER GRANTING FINAL
APPROVAL TO SETTLEMENT,
APPROVING PLAN OF
ALLOCATION, AND AWARDING
FEES AND COSTS**

Re: Dkt. Nos. 147, 148

Lead Plaintiff Arbejdsmarkedets Tillægspension (“Lead Plaintiff”), on behalf of itself and the Settlement Class, and (b) Defendants BioMarin Pharmaceutical Inc. (“BioMarin” or the “Company”), Jean-Jacques Bienaimé, and Dr. Henry Fuchs (collectively, the “Individual Defendants” and, together with BioMarin, “Defendants”) have entered into a Stipulation and Agreement of Settlement dated April 24, 2023 (“Stipulation”), that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (“Settlement”);

Unless otherwise defined, the capitalized terms herein shall have the same meanings as they have in the Stipulation;

The Court conducted a hearing on November 8, 2023 (“Final Approval Hearing”) to consider, among other things, (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants; and

The Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

1 IT IS HEREBY ORDERED:

2 1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and
3 all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each
4 of the Settlement Class Members.

5 2. **Incorporation of Settlement Documents** – Incorporated here in are: (a) the
6 Stipulation filed with the Court on April 28, 2023; and (b) the Notice and Summary Notice, both of
7 which were filed with the Court on October 4, 2023.

8 3. **Class Certification for Settlement Purposes** – The Court hereby certifies for the
9 purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of
10 the Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all persons who
11 purchased or otherwise acquired BioMarin common stock from March 3, 2020 through August 18,
12 2020, inclusive (“Class Period”). and were damaged thereby. Excluded from the Settlement Class
13 are: (1) Defendants; (2) any current or former Officers or directors of BioMarin; (3) the Immediate
14 Family members of any Defendant or any current or former Officer or director of BioMarin; (4) any
15 entity that any Defendant owns or controls, or owned or controlled during the Class Period; and
16 (5) the plaintiffs in *Alger Capital Appreciation Fund et al. v. BioMarin Pharmaceutical Inc. at al.*,
17 Case 3:23-cv-00826 (N.D. Cal.) and any of their successors in interest. Also excluded from the
18 Settlement Class are the persons and entities set forth in Exhibit 1.

19 4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil
20 Procedure, and for the purposes of the Settlement only, the Court hereby appoints Lead Plaintiff as
21 Class Representative for the Settlement Class and appoints Lead Counsel Bernstein Litowitz
22 Berger & Grossmann LLP as Class Counsel for the Settlement Class. Lead Plaintiff and Lead
23 Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the
24 Action and for purposes of entering into and implementing the Settlement, and have satisfied the
25 requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

26 5. **Notice** – The Court finds that the dissemination of the Notice substantially in the
27 form approved by the Court was mailed to all Settlement Class Members who or which could be
28 identified with reasonable effort, and that a summary notice of the hearing substantially in the form

1 approved by the Court was published in *The Wall Street Journal* and transmitted over the *PR*
2 *Newswire* pursuant to the specifications of the Court; and more generally notice (a) was
3 implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice
4 practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the
5 circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect
6 of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel's
7 motion for attorneys' fees and Litigation Expenses; (iv) their right to object to any aspect of the
8 Settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and Litigation
9 Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to
10 appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons
11 and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements
12 of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the
13 Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as
14 amended, and all other applicable law and rules.

15 6. **CAFA Notice** - The Court finds that the notice requirements set forth in the Class
16 Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable to the Action, have been
17 satisfied.

18 7. **Plan of Allocation** – Notice of the proposed Plan of Allocation and of the date for
19 the was given to all Settlement Class Members who could be identified with reasonable effort.
20 Copies of the Notice, which included the Plan of Allocation, were mailed to over 103,000 potential
21 Settlement Class Members and nominees and no objections to the proposed Plan of Allocation
22 were received.

23 8. The Court hereby finds and concludes that the formula for the calculation of the
24 claims of Claimants as set forth in the Plan of Allocation mailed to Settlement Class Members
25 provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund
26 among Settlement Class Members with due consideration having been given to administrative
27 convenience and necessity.

28 9. The Court hereby finds and concludes that the Plan of Allocation is, in all respects,
fair and reasonable to the Settlement Class. Accordingly, the Court hereby approves the Plan of
Allocation proposed by Lead Plaintiff.

1 10. **Attorney Fees and Costs** – Notice of Lead Counsel’s motion for an award of
2 attorneys’ fees and payment of Litigation Expenses was given to all Settlement Class Members who
3 could be identified with reasonable effort. The form and method of notifying the Settlement Class
4 of the motion for an award of attorneys’ fees and expenses satisfied the requirements of Rule 23 of
5 the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15
6 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice
7 practicable under the circumstances, and constituted due and sufficient notice to all persons and
8 entities entitled thereto.

9 11. Lead Counsel is hereby awarded attorneys’ fees in the amount of 19% of the
10 Settlement Fund (including interest earned at the same rate as the Settlement Fund). Lead Counsel
11 is also hereby awarded \$397,052.78 for payment of its litigation expenses. These attorneys’ fees
12 and expenses shall be paid from the Settlement Fund, subject to the holdback discussed below.

13 12. In making this award of attorneys’ fees and reimbursement of expenses to be paid
14 from the Settlement Fund, the Court has considered and found that:

15 a. The Settlement has created a fund of \$39,000,000 in cash that has been funded into
16 escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class
17 Members who submit acceptable Claim Forms will benefit from the Settlement that occurred
18 because of the efforts of Lead Counsel;

19 b. The fee sought is based on a retainer agreement entered into by Lead Counsel and
20 Lead Plaintiff at the outset of the litigation and the requested fee has been again reviewed
21 and approved as reasonable by Lead Plaintiff, a sophisticated institutional investor that
22 actively supervised the Action, at the conclusion of the Action;

23 c. Copies of the Notice were mailed to over 103,000 potential Settlement Class
24 Members and nominees stating that Lead Counsel would apply for attorneys’ fees in an
25 amount not to exceed 19% of the Settlement Fund and payment of Litigation Expenses in an
26 amount not to exceed \$650,000 and no objections to the requested award of attorneys’ fees
27 or Litigation Expenses were submitted;

28 d. Lead Counsel conducted the litigation and achieved the Settlement with perseverance
and diligent advocacy;

 e. The Action raised a number of complex issues;

 f. Had Lead Counsel not achieved the Settlement there would remain a significant risk
that Lead Plaintiff and the other members of the Settlement Class may have recovered less
or nothing from Defendants;

 g. Lead Counsel devoted over 12,500 hours, with a lodestar value of approximately
\$6.7 million, to achieve the Settlement; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

h. The amount of attorneys’ fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

13. Lead Plaintiff Arbejdsmarkedets Tillægspension is hereby awarded \$127,400 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

14. **Costs of Settlement Administration** – the court-appointed Settlement Administrator A.B. Data shall be reimbursed reasonable expenses up to \$450,000. Any expenses in excess of that amount shall be justified by a declaration in support and submitted to the Court for its approval.

15. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation, the amount of the Settlement, the Releases provided for therein, and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of the Settlement Class. Specifically, the Court finds that (a) Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class; (b) the Settlement was negotiated by the Parties at arm’s length; (c) the relief provided for the Settlement Class under the Settlement is adequate taking into account the costs, risks, and delay of trial and appeal, the proposed means of distributing the Settlement Fund to the Settlement Class, and the proposed attorneys’ fee award; and (d) the Settlement treats members of the Settlement Class equitably relative to each other. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

16. The Action and all of the claims asserted against Defendants in the Action by Lead Plaintiff and Settlement Class Members are hereby dismissed with prejudice as to all Defendants. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

1 17. **Binding Effect** – The terms of the Stipulation and of this Order and the judgment
2 entered shall be forever binding on Defendants, Lead Plaintiff, and all Settlement Class Members
3 (regardless of whether or not any individual Settlement Class Member submits a Claim or seeks or
4 obtains a distribution from the Net Settlement Fund), as well as their respective successors and
5 assigns. The persons and entities listed on Exhibit 1 hereto are excluded from the Settlement Class
6 pursuant to request and are not bound by the terms of the Stipulation or this Order and the judgment
7 entered.

8 18. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together
9 with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly
10 incorporated herein. The Releases are effective as of the Effective Date. Accordingly, this Court
11 orders that:

12 (a) Without further action by anyone, and subject to paragraph 11 below, upon
13 the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members,
14 on behalf of themselves, and their respective heirs, executors, administrators, predecessors,
15 successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law
16 and this Order and the judgment entered shall have, fully, finally, and forever compromised, settled,
17 released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs’ Claim
18 against Defendants and the other Defendants’ Releasees, and shall forever be barred and enjoined
19 from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Defendants’
20 Releasees. This release shall not apply to any person or entity listed on Exhibit 1 hereto.

21 (b) Without further action by anyone, and subject to paragraph 11 below, upon
22 the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs,
23 executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be
24 deemed to have, and by operation of law and of this Order and the judgment entered shall have,
25 fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and
26 discharged each and every Released Defendants’ Claim against Lead Plaintiff and the other
27 Plaintiffs’ Releasees, and shall forever be barred and enjoined from prosecuting any or all of the
28

1 Released Defendants' Claims against any of the Plaintiffs' Releasees. This release shall not apply
2 to any person or entity listed on Exhibit 1 hereto.

3 19. Notwithstanding paragraphs 10(a) – (b) above, nothing in this Order shall bar any
4 action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Order and
5 the judgment entered.

6 20. **Rule 11 Findings** – The Court finds and concludes that the Parties and their
7 respective counsel have complied in all respects with the requirements of Rule 11 of the Federal
8 Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of
9 the Action.

10 21. **No Admissions** – Neither this Order and the judgment entered, the Term Sheet, the
11 Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation
12 contained therein (or any other plan of allocation that may be approved by the Court), the Parties'
13 mediation and subsequent Settlement, the communications and/or discussions leading to the
14 execution of the Term Sheet and this Stipulation, nor any proceedings taken pursuant to or in
15 connection with the Term Sheet, the Stipulation, and/or approval of the Settlement (including any
16 arguments proffered in connection therewith): (a) shall be offered against any of the Defendants'
17 Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession,
18 or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by
19 Lead Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of
20 any defense that has been or could have been asserted in this Action or in any other litigation, or of
21 any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees
22 or in any way referred to for any other reason as against any of the Defendants' Releasees, in any
23 arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than
24 such proceedings as may be necessary to effectuate the provisions of the Stipulation; (b) shall be
25 offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be
26 evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any
27 of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses,
28 or that damages recoverable under the Complaint would not have exceeded the Settlement Amount

1 or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred
2 to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration proceeding or
3 other civil, criminal, or administrative action or proceeding, other than such proceedings as may be
4 necessary to effectuate the provisions of the Stipulation; or (c) shall be construed against any of the
5 Releasees as an admission, concession, or presumption that the consideration to be given hereunder
6 represents the amount which could be or would have been recovered after trial; *provided, however,*
7 that if the Stipulation is approved by the Court, the Parties and the Releasees and their respective
8 counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to
9 enforce the terms of the Settlement.

10 22. **Retention of Jurisdiction** – Without affecting the finality of this Order and the
11 judgment entered in any way, this Court retains continuing and exclusive jurisdiction over: (a) the
12 Parties for purposes of the administration, interpretation, implementation, and enforcement of the
13 Settlement; (b) the disposition of the Settlement Fund; (c) any motion for attorneys' fees and/or
14 Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d)
15 any motion to approve the Plan of Allocation; (e) any motion to approve the Class Distribution
16 Order; and (f) the Settlement Class Members for all matters relating to the Action.

17 23. **Modification of the Agreement of Settlement** – Without further approval from the
18 Court, Lead Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments
19 or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that:
20 (a) are not materially inconsistent with this Order and the judgment entered; and (b) do not materially
21 limit the rights of Settlement Class Members in connection with the Settlement. Without further
22 order of the Court, Lead Plaintiff and Defendants may agree to reasonable extensions of time to
23 carry out any provisions of the Settlement.

24 24. **Termination of Settlement** – If the Settlement is terminated as provided in the
25 Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Order and the
26 judgment entered shall be vacated, rendered null and void, and be of no further force and effect,
27 except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the
28 rights of Lead Plaintiff, the other Settlement Class Members, and Defendants, and the Parties shall

United States District Court
Northern District of California

1 revert to their respective litigation positions in the Action immediately prior to the execution of the
2 Term Sheet on March 14, 2023, as provided in the Stipulation.

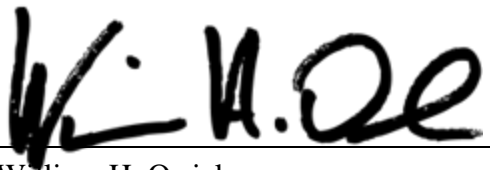
3 25. **Post Distribution Accounting** – Class counsel shall file a post-distribution
4 accounting within 21 days after the distribution of settlement funds. In addition to the information
5 contained in the Northern District of California’s Procedural Guidance for Class Action Settlements,
6 available at <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>, the
7 post-distribution accounting shall discuss any significant or recurring concerns communicated by
8 class members to the settlement administrator or counsel since final approval, any other issues in
9 settlement administration since final approval, and how any concerns or issues were resolved, the
10 final costs of claims administrator, and any modifications of the Settlement Agreement and this
11 Order under paragraph 23 above.

12 26. The Court directs the Claims Administrator to withhold 20% of the attorney’s fees
13 granted in this order until the post-distribution accounting has been filed. Class counsel shall file a
14 proposed order releasing the remainder of the fees when they file their post-distribution accounting.

15 27. This matter is set for a further case management conference on July 10, 2024, with a
16 case management statement due on July 3, 2024. The parties may request that the case management
17 conference be continued if additional time is needed to complete the distribution. The conference
18 will be vacated if the post-distribution accounting has been filed and the Court has released the
19 remaining attorney’s fees.

20 **IT IS SO ORDERED.**

21 Dated: November 14, 2023



William H. Orrick
United States District Judge

22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

[List of Persons and Entities Excluded from the Settlement Class Pursuant to Request]

- 1. James C. Collins
Ramona, CA

- 2. Benjamin E. and Kathleen M. Ramp Living Trust U/A 12/17/15
Benjamin E. Ramp & Kathleen M. Ramp, Trustees
Geneseo, IL

United States District Court
Northern District of California