

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 IN RE BIOMARIN PHARMACEUTICAL
5 INC. SECURITIES LITIGATION

Case No. 3:20-cv-06719-WHO

6 **[PROPOSED] ORDER APPROVING**
7 **DISTRIBUTION PLAN AS AMENDED**

8 Dept: Courtroom 2, 17th Floor
9 Judge Hon. William H. Orrick
10 Date: May 22, 2024
11 Time: 2:00 p.m.

12 Lead Plaintiff moved this Court for an order approving a distribution plan for the Net
13 Settlement Fund in the above-captioned securities class action (“Action”). Having reviewed and
14 considered all the materials and arguments submitted in support of the motion, including the
15 Memorandum of Points and Authorities in Support of Lead Plaintiff’s Motion for Approval of
16 Distribution Plan and the Declaration of Adam D. Walter in Support of Lead Plaintiff’s Motion
17 for Approval of Distribution Plan (“Walter Declaration”),

18 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

19 1. This Order incorporates by reference the definitions in the Stipulation and
20 Agreement of Settlement dated as of April 24, 2023 (ECF No. 139-1) (“Stipulation”), and the
21 Walter Declaration, and all terms used in this Order shall have the same meanings as defined in
22 the Stipulation and the Walter Declaration.

23 2. This Court has jurisdiction over the subject matter of the Action and over all parties
24 to the Action, including all Settlement Class Members.

25 3. Lead Plaintiff’s plan for distribution of the Net Settlement Fund to Authorized
26 Claimants is **APPROVED**. Accordingly:

27 (a) The administrative determinations of the Court-approved Claims
28 Administrator, A.B. Data, Ltd.’s Class Action Administration Company (“A.B. Data”), to

1 accept the Timely Eligible Claims set forth in Exhibit D to the Walter Declaration and the
2 Late But Otherwise Eligible Claims set forth in Exhibit E to the Walter Declaration are
3 adopted.

4 (b) The Claims Administrator's administrative determinations to reject the
5 Rejected Claims, as set forth in Exhibit F to the Walter Declaration, are adopted.

6 (c) A.B. Data is directed to conduct the Initial Distribution of the Net
7 Settlement Fund after deducting all payments previously allowed, payments approved by
8 this Order, and any estimated taxes, the costs of preparing appropriate tax returns, and any
9 escrow fees, while maintaining a 5% reserve from the Net Settlement Fund to address any
10 tax liability or claims administration-related contingencies that may arise.

11 Specifically, as set forth in paragraph 43(a) of the Walter Declaration:

12 (1) A.B. Data will calculate award amounts for all Authorized Claimants as if the
13 entire Net Settlement Fund were to be distributed now. A.B. Data will calculate
14 each Authorized Claimant's *pro rata* share of the Net Settlement Fund based on the
15 amount of the Authorized Claimant's Recognized Claim in comparison to the total
16 Recognized Claims of all Authorized Claimants; (2) A.B. Data will then eliminate
17 from the Initial Distribution any Authorized Claimant whose total *pro rata* share of
18 the Net Settlement Fund is less than \$10.00. These Claimants will not receive any
19 payment from the Net Settlement Fund and will be so notified by A.B. Data; (3)
20 After eliminating Claimants who would have received less than \$10.00, A.B. Data
21 will recalculate the *pro rata* shares of the Net Settlement Fund for Authorized
22 Claimants who would have received \$10.00 or more based on the amount of the
23 Authorized Claimant's Recognized Claim in comparison to the total Recognized
24 Claims of all Authorized Claimants who would have received \$10.00 or more. This
25 *pro rata* share is the Authorized Claimant's "Distribution Amount"; (4) Authorized
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1 Claimants whose Distribution Amount calculates to less than \$200.00 will be paid
2 their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”).
3 These Authorized Claimants will receive no additional funds in subsequent
4 distributions; and (5) 95% of the remaining balance of the Net Settlement Fund will
5 be distributed *pro rata* to Authorized Claimants whose Distribution Amount
6 calculates to \$200.00 or more. The remaining 5% of the Net Settlement Fund will
7 be held in the Reserve to address any tax liability or claims administration-related
8 contingencies that may arise following the Initial Distribution. To the extent the
9 Reserve is not depleted, the remainder will be distributed in the Second Distribution
10 described in subparagraph (f) below.
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12 (d) To encourage Authorized Claimants to cash their checks promptly, all
13 distribution checks will bear the following notation: “CASH PROMPTLY. VOID AND
14 SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER
15 ISSUE DATE].” Lead Counsel and A.B. Data are authorized to take appropriate action to
16 locate and contact Authorized Claimants who have not cashed their checks within said time
17 as detailed in paragraph 43(b) of the Walter Declaration.
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19 (e) Authorized Claimants who do not cash their Initial Distribution checks
20 within the time allotted or on the conditions set forth in paragraph 43(b) of the Walter
21 Declaration will irrevocably forfeit all recovery from the Settlement, and the funds
22 allocated to these stale-dated checks will be available to be distributed to other Authorized
23 Claimants in the Second Distribution. Similarly, Authorized Claimants who do not cash
24 their distribution checks in the Second Distribution or subsequent distributions, should
25 such distributions occur, within the time allotted or on the conditions set forth in paragraph
26 43(b) of the Walter Declaration will irrevocably forfeit any further recovery from the Net
27 Settlement Fund.
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1 (f) After A.B. Data has made reasonable and diligent efforts to have Authorized
2 Claimants cash their Initial Distribution checks (as provided in paragraph 43(b) of the
3 Walter Declaration), but not earlier than seven (7) months after the Initial Distribution,
4 A.B. Data will, after consulting with Lead Counsel, conduct the Second Distribution, in
5 which any amount remaining in the Net Settlement Fund, after deducting any unpaid fees
6 and expenses incurred, will be distributed to all Authorized Claimants (other than Claims
7 Paid in Full) who cashed their Initial Distribution check and are entitled to receive at least
8 \$10.00 from the Second Distribution based on their *pro rata* share of the remaining funds.
9 If any funds remain in the Net Settlement Fund after the Second Distribution, and if cost-
10 effective, subsequent distributions will take place at six-month intervals.

11 (g) When Lead Counsel, in consultation with A.B. Data, determines that further
12 distribution of the funds remaining in the Net Settlement Fund is not cost-effective, if
13 sufficient funds remain to warrant the processing of Claims received after April 8, 2024,
14 those Claims will be processed, and any otherwise valid Claims received after April 8,
15 2024, as well as any earlier-received Claims for which an upward adjustment was received
16 after April 8, 2024, will be paid in accordance with subparagraph (h) below. If any funds
17 remain in the Net Settlement Fund after payment of these Claims and unpaid fees or
18 expenses, the remaining funds will be contributed to the Investor Protection Trust (“IPT”).

19 (h) No new Claims may be accepted after April 8, 2024, and no further
20 adjustments to Claims received on or before April 8, 2024, that would result in an increased
21 Recognized Claim amount may be made for any reason after April 8, 2024, subject to the
22 following exception. If Claims are received or modified after April 8, 2024, that would
23 have been eligible for payment or additional payment pursuant to the Court-approved Plan
24 of Allocation if timely received, then, at the time that Lead Counsel, in consultation with
25 A.B. Data, determines a distribution is not cost-effective as provided in subparagraph (g)
26 above, and after payment of any unpaid fees or expenses incurred in connection with
27 administering the Net Settlement Fund and after deducting the payment of any estimated
28 taxes, the costs of preparing appropriate tax returns, and any escrow fees, these Claimants,

1 at the discretion of Lead Counsel and to the extent possible, may be paid their distribution
2 amounts or additional distribution amounts on a *pro rata* basis that would bring them into
3 parity with other Authorized Claimants who have cashed all their prior distribution checks.

4 4. The Court finds that the administration of the Settlement and the proposed
5 distribution of the Net Settlement Fund comply with the terms of the Stipulation and Plan of
6 Allocation approved by this Court and that all persons involved in the review, verification,
7 calculation, tabulation, or any other aspect of the processing of the Claims submitted, or who are
8 otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement
9 Fund, are hereby released and discharged from any and all claims arising out of that involvement,
10 and all Settlement Class Members and other Claimants, whether or not they receive payment from
11 the Net Settlement Fund, are hereby barred from making any further claims against the Net
12 Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent or
13 any other agent retained by Lead Plaintiff or Lead Counsel in connection with the administration
14 or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released under
15 the Settlement beyond the amounts allocated to Authorized Claimants.

16 5. All of A.B. Data's fees and expenses incurred in the administration of the
17 Settlement and estimated to be incurred in connection with the Initial Distribution of the Net
18 Settlement Fund as set forth in the invoices attached as Exhibit G to the Walter Declaration are
19 approved, and Lead Counsel is directed to pay the outstanding balance of \$407,383.11 out of the
20 Settlement Fund to A.B. Data.

21 6. Unless otherwise ordered by the Court, A.B. Data may destroy the paper copies of
22 the Claims and all supporting documentation one year after the Initial Distribution, and one year
23 after all funds have been distributed may destroy the electronic copies of the same.

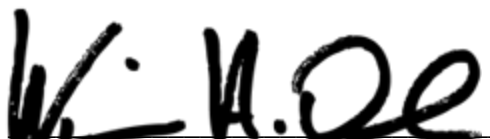
24 7. This Court retains jurisdiction to consider any further applications concerning the
25 administration of the Settlement, and any other and further relief that this Court deems appropriate.

26 As indicated in the Order Granting Final Approval, Dkt. No. 155, A.B. Data shall continue to
27 withhold 20% of the attorney fees granted until the post-distribution accounting has been filed.

28 This matter remains set for a further case management conference on July 10, 2024, with a case

1 management statement due on July 3, 2024. The parties may request that the case management
2 conference be continued if additional time is needed to complete the distribution. The conference
3 will be vacated if the post-distribution accounting has been filed and the Court has released the
4 remaining attorney fees.

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6 SO ORDERED this 3rd day of May, 2024.

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10 William H. Orrick
11 United States District Judge
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