

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

JONATHAN D. USLANER (Bar No. 256898)
jonathanu@blbglaw.com
2121 Avenue of the Stars, Suite 2575
Los Angeles, CA 90067
Telephone: (310) 819-3472

SALVATORE GRAZIANO (*pro hac vice*)
salvatore@blbglaw.com

JEROEN VAN KWAWEGEN (*pro hac vice*)
jeroen@blbglaw.com

KATHERINE M. SINDERSON (*pro hac vice*)
katiem@blbglaw.com

ABE ALEXANDER (*pro hac vice*)
abe.alexander@blbglaw.com

1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400

*Counsel for Lead Plaintiff Arbejdsmarkedets
Tillægspension and Lead Counsel for the
Settlement Class*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE BIOMARIN PHARMACEUTICAL
INC. SECURITIES LITIGATION

CLASS ACTION

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

**LEAD PLAINTIFF'S SUPPLEMENTAL
POST-DISTRIBUTION ACCOUNTING**

1 The Court’s July 8, 2024 Order Releasing Remainder of Attorneys’ Fees as Amended (ECF
 2 No. 162) (“July 8, 2024 Order”) ordered that “[a] further post-distribution accounting shall be filed
 3 once all settlement checks become stale.” The checks mailed to Authorized Claimants in
 4 connection with the distribution of settlement funds became stale on October 6, 2024. Accordingly,
 5 Lead Plaintiff Arbejdsmarkedets Tillægspension and Lead Counsel respectfully submit this
 6 Supplemental Post-Distribution Accounting.¹

7 BACKGROUND

8 On June 7, 2024, the Court-appointed Claims Administrator, A.B. Data, Ltd. (“A.B.
 9 Data”), conducted the Initial Distribution of the Net Settlement Fund to Authorized Claimants as
 10 authorized by the Court’s May 3, 2024 Order Approving Distribution Plan as Amended (ECF
 11 No. 159) (the “Distribution Order”). In the Initial Distribution, A.B. Data disseminated a total of
 12 \$30,222,372.86 on June 7, 2024 by wire transfer or by checks mailed by first-class mail to the
 13 22,880 Claimants who were eligible for payment, while maintaining an additional Reserve of
 14 approximately \$1.3 million for any tax liability or claims administration-related contingencies that
 15 may arise.

16 On October 6, 2024, the checks mailed in the Initial Distribution became stale, following
 17 the expiration of the 120-day period provided for recipients to cash those checks. *See* Declaration
 18 of Adam D. Walter in Support of Lead Plaintiff’s Supplemental Post-Distribution Accounting
 19 (“Walter Declaration” or “Walter Decl.”), filed herewith, at ¶¶ 3-4. A.B. Data has made substantial
 20 efforts to contact any Authorized Claimants who did not cash their checks through a combination
 21 of emails and telephone calls. *See id.* ¶ 4. As a result of these efforts the value of uncashed or
 22 returned checks has declined from \$4,168,237.32 as of June 28, 2024 (*see* ECF No. 160, at 2) to
 23 \$138,463.96 as of October 8, 2024, *see* Walter Decl. ¶ 4, a decline of 97%. The current value of
 24 uncashed checks is less than 0.5% of the total amount distributed in the Initial Distribution. *Id.* ¶ 4.
 25
 26

27 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed
 28 to them in the Stipulation and Agreement of Settlement dated as of April 24, 2023 (ECF No. 139-1)
 (“Stipulation”).

SUPPLEMENTAL POST-DISTRIBUTION ACCOUNTING

The table set forth on page four of this document provides updated details of the Initial Distribution, including all details required under the Northern District of California’s Procedural Guidance for Class Action Settlements. This Supplemental Post-Distribution supersedes the Post-Distribution Accounting filed on June 28, 2024 (ECF No. 160).

As noted above, the most significant difference since the version filed in June 2024 is that the value of uncashed checks has declined from over \$4 million to under \$139,000, which represents less than 0.5% of the total funds distributed. This percentage of uncashed payments is lower than typically seen in comparable securities class actions. *See, e.g.*, Lead Plaintiff’s Post-Distribution Accounting at 2, *In re Oracle Corp. Sec. Litig.*, Case No. 5:18-cv-04844-BLF (N.D. Cal. Aug. 22, 2024), ECF No. 155 (**3.9%** of value of checks remained uncashed); Declaration of Paul Mulholland at ¶¶ 2-3, *Smith v. NetApp, Inc.*, Case No: 4:19-cv-04801-JST (N.D. Cal. July 17, 2023), ECF No. 95-1 (**1.1%** of value of checks remained uncashed); Post-Distribution Declaration at ¶ 4, *Carbone v. Amyris, Inc.*, Case No. 4:19-cv-01765-YGR (N.D. Cal. July 14, 2023), ECF No. 133-1 (**3.2%** of value of checks remained uncashed); Notice of Lead Plaintiff’s Post-Distribution Accounting at 2-3, *SEB Inv. Mgmt. v. Align Tech. Inc.*, Case No. 3:18-cv-06720-VC (N.D. Cal. July 14, 2023), ECF No. 225 (**1.6%** of value of checks remained uncashed).

A Second Distribution, which will include the approximately \$1.3 million maintained in the Reserve (plus accrued interest) as well as any amounts available as a result of uncashed checks or returned payments, will be conducted in this case. *See* Walter Decl. ¶ 5. The Second Distribution has not yet occurred. The timing of the Second Distribution is established in the Court-approved Plan of Allocation and in the Court’s Distribution Order to be *at least seven months after the Initial Distribution*. *See* Distribution Order (ECF No. 159) at ¶ 3(f) (“After A.B. Data has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks . . . , but not earlier than seven (7) months after the Initial Distribution, A.B. Data will, after consulting with Lead Counsel, conduct the Second Distribution . . .”); *see also* Notice ¶ 91 (ECF No. 149-4, at 21) (“To the extent any monies remain in the Net Settlement Fund after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is

1 cost-effective to do so, the Claims Administrator, no less than seven (7) months after the initial
2 distribution, will conduct another distribution of the funds remaining . . .”).

3 Because the Initial Distribution was conducted on June 7, 2024, A.B. Data expects to
4 conduct the Second Distribution on January 7, 2025 or as soon thereafter as possible. *See* Walter
5 Decl. ¶ 6. If any funds remain in the Net Settlement Fund after the Second Distribution, and a
6 further distribution would be cost-effective, subsequent distributions will take place at six-month
7 intervals thereafter. *See* Distribution Order ¶ 3(e). To date, no *cy pres* distribution of residual funds
8 has occurred. *See* Walter Decl. ¶ 9. A distribution to the *cy pres* recipient would only be made if
9 further distribution to eligible Settlement Class Members would not be cost efficient.

10 As noted previously (*see* ECF No. 160, at 1), Lead Counsel confirms that there have been
11 no significant or recurring concerns communicated by class members to A.B. Data or Lead
12 Counsel following final approval of the Settlement and that there have been no modifications to
13 the Settlement Agreement or the Final Approval Order.

14 As provided in the Court’s July 8, 2024 Order, five percent (5%) of the total attorney’s fees
15 that were awarded by the Court have been withheld and remain in the Escrow Account under the
16 jurisdiction of the Court. As requested in the July 8, 2024 Order, Lead Counsel has submitted a
17 proposed order releasing the remainder of the withheld attorney’ fees to
18 whopo@cand.uscourts.gov.

<i>In re BioMarin Pharmaceutical Inc. Securities Litigation, 3:20-cv-06719-WHO (N.D. Cal.)</i> Figures are current as of Oct. 9, 2024.	
	% Total Settlement Fund Value
Total Settlement Fund Value¹: \$40,602,363.58	100%
Method of Notice: The Court-approved notice included direct first-class mailing as well as publication in <i>The Wall Street Journal</i> , via <i>PR Newswire</i> , and on case-dedicated website.	
Notices ² mailed: 103,534	
Notices sent and not returned as undeliverable: 103,285 (99.8%)	
Claim Forms received: 65,033 (62.8% of notices mailed)	
Number of Opt-Outs: 2 (0.002% of notices mailed)	
Number of Objections: 0 (0%)	
Payments to Settlement Class Members³: \$31,521,589.85	77.6%
Method of Payment: By check mailed first-class or wire transfer.	
Average payment per eligible Claimant: \$1,320.90	
Median payment per eligible Claimant: \$30.38	
Largest payment: \$1,066,467.77	
Smallest payment: \$10.00	
Uncashed checks ⁴ : Number 756; Value \$138,463.96	
Attorneys' fees awarded⁵: \$7,592,937	18.7%
Lead Counsel's Lodestar: \$6,702,525	
Lodestar Multiplier: 1.1	
Attorney Litigation Expenses: \$397,052.78	1%
PSLRA Award to Lead Plaintiff: \$127,400	0.3%
Taxes & Tax Preparation Costs: \$575,188	1.4%
Notice and Administration Costs: \$407,383.11	1%
Cy Pres⁶: \$0	0%

Further details concerning the distribution are set forth in the accompanying Walter Declaration. Explanatory notes to the Post-Distribution Accounting table, as indicated by the superscript numbers in the above chart, are set forth below:

1. As of October 9, 2024, the Settlement Fund has earned a total of \$1,602,363.58 in interest since its inception, which has increased the total value of the Settlement Fund from the Settlement Amount of \$39,000,000 to \$40,602,363.58.

- 1 2. In a securities class action such as this one, the “total number of Settlement Class
2 Members” is not precisely known because the securities are widely traded and there is
3 no definitive list of Settlement Class Members available to the parties covering all times
4 during the Class Period. Accordingly, notices are mailed to all potential Settlement
5 Class Members who can be identified through reasonable efforts, including through
6 requests to brokers and nominees to identify all potential Settlement Class Members.
7 Because the Court-approved process for disseminating the notice by mail is designed
8 to reach the maximum number of potential Settlement Class Members, it typically
9 results in an overbroad dissemination of Notice, including the direct mailing of Notices
10 to a substantial number of persons who are not Settlement Class Members, such as
11 nominees who are not beneficial owners; persons who only held, but did not purchase,
12 the relevant securities during the Class Period; or persons who purchased the securities
13 during the Class Period but sold before any alleged corrective disclosure.
14
- 15 3. This value includes the amount distributed to Authorized Claimants in the Initial
16 Distribution on June 7, 2024, \$30,222,372.86, as well as the value of the Reserve
17 established pursuant to the Distribution Order, which is currently \$1,299,216.99, and
18 continues to accrue interest.
- 19 4. The number and value of uncashed checks has declined substantially since Lead
20 Plaintiff’s June 28, 2024 Post-Distribution Accounting (ECF No. 160). Settlement
21 Class Members had until October 5, 2024 to cash their checks. A.B. Data has made
22 extensive efforts to contact Authorized Claimants to encourage them to cash their
23 checks, including by email and phone calls. As a result of its efforts, the value of the
24 uncashed checks substantially decreased from \$4,168,237.32 on June 28, 2024, to
25 \$138,463.96 as of October 8, 2024. AB Data continues to contact claimants to cash any
26 uncashed checks and assist with any check reissue requests.
- 27 5. This value includes both the attorneys’ fees already paid to Lead Counsel and the 5%
28 of the total awarded fees that remain in the Escrow Account, including accrued interest.
6. As set forth in the Court-approved Plan of Allocation, residual funds will be distributed
to the *cy pres* recipient only if any funds remain after all cost-effective rounds of
distributions to Authorized Claimants have been completed.

21 This Supplemental Post-Distribution Accounting will be posted to the Settlement website,
22 www.BiomarinSecuritiesLitigation.com, immediately after its filing with the Court.

1 Dated: October 10, 2024

Respectfully submitted,

2 **BERNSTEIN LITOWITZ BERGER**
3 **& GROSSMANN LLP**

4 /s/ Katherine M. Sinderson

SALVATORE GRAZIANO (*pro hac vice*)

(salvatore@blbglaw.com)

JEROEN VAN KWAWEGEN (*pro hac vice*)

(jeroen@blbglaw.com)

KATHERINE M. SINDERSON (*pro hac vice*)

(katiem@blbglaw.com)

8 ABE ALEXANDER (*pro hac vice*)

(abe.alexander@blbglaw.com)

1251 Avenue of the Americas

New York, NY 10020

Tel: (212) 554-1400

Fax: (212) 554-1444

12 JONATHAN D. USLANER (Bar No. 256898)

(jonathanu@blbglaw.com)

2121 Avenue of the Stars

Suite 2575

Los Angeles, CA 90067

Tel: (310) 819-3472

16 *Lead Counsel for Lead Plaintiff*
17 *and the Settlement Class*

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jonathanu@blbglaw.com
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Los Angeles, CA 90067
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE BIOMARIN PHARMACEUTICAL
INC. SECURITIES LITIGATION

CLASS ACTION

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

**DECLARATION OF ADAM D.
WALTER IN SUPPORT OF LEAD
PLAINTIFF'S SUPPLEMENTAL
POST-DISTRIBUTION ACCOUNTING**

1 ADAM D. WALTER, declares as follows:

2 1. I am a Client Services Director of A.B. Data, Ltd.’s Class Action Administration
3 Company (“A.B. Data”), which has its corporate office in Milwaukee, Wisconsin. I am over 21
4 years of age and am not a party to the above-captioned action (“Action”).¹ I have personal
5 knowledge of the facts set forth in this declaration and, if called as a witness, could and would
6 testify competently thereto.

7 2. On June 7, 2024, A.B. Data conducted the Initial Distribution of the Net Settlement
8 Fund in this Action, as approved by the Court’s May 3, 2024 Order Approving Distribution Plan
9 (ECF No. 159) (the “Distribution Order”). The Initial Distribution was conducted in the manner
10 set forth in the Court-approved Distribution Order and the Declaration of Adam D. Walter in
11 Support of Lead Plaintiff’s Motion for Approval of Distribution Plan (ECF No. 158) (the “Walter
12 Distribution Declaration”). In the Initial Distribution, \$30,222,372.86 was sent by check or wire
13 transfer to 22,880 Authorized Claimants whose Claims were approved for payment in the
14 Distribution Order. A.B. Data encountered no problems or unexpected issues in conducting the
15 distribution. Further, there were no significant nor recurring issues communicated by class
16 members to A.B. Data following final approval of the Settlement.

17 3. As provided in the Distribution Order, the checks mailed to eligible Claimants
18 indicated that they must be cashed with 120 days of issue. *See* Distribution Order ¶ 3(d).
19 Accordingly, the checks mailed on June 7, 2024 contained a “stale date” of October 5, 2024.

20 4. As of October 8, 2024, checks with a total value of \$138,463.96 remain uncashed,
21 which represents less than 0.5% of the total amount distributed in the Initial Distribution. As noted
22 above, Authorized Claimants had until October 5, 2024 to cash their checks. A.B. Data has made
23 and will continue to make extensive efforts to contact Authorized Claimants who have not cashed
24
25

26 _____
27 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed
28 to them in the Stipulation and Agreement of Settlement dated as of April 24, 2023 (ECF No. 139-1)
 (“Stipulation”).

1 their Initial Distribution checks to encourage them cash their checks, including by email and phone
2 calls.

3 5. A Second Distribution will be conducted in this Action, in which A.B. Data will
4 redistribute any funds remaining in the Net Settlement Fund, including from the Reserve
5 established pursuant to the Distribution Order (which has a current value of approximately \$1.3
6 million) or as a result of any remaining uncashed checks. The Second Distribution has not yet
7 occurred because the Court-approved Plan of Allocation and Distribution Order state that the
8 Second Distribution should be conducted “not earlier than seven months after the initial
9 distribution.” Distribution Order ¶ 3(f); Notice ¶ 91 (ECF No. 149-4, at 21).

10 6. Accordingly, A.B. Data intends to conduct the Second Distribution on January 7,
11 2025, seven months after the Initial Distribution, or as soon thereafter as possible. A.B. Data will
12 honor all requests to reissue checks from Authorized Claimants for as long as feasible in
13 accordance with the Court’s Distribution Order prior to conducting the Second Distribution. If any
14 funds remain in the Net Settlement Fund after the Second Distribution, and a further distribution
15 would be cost-effective, A.B. Data, after consulting with Lead Counsel, will conduct subsequent
16 distributions at six-month intervals thereafter. *See* Distribution Order ¶ 3(e).

17 7. I have reviewed the Supplemental Post-Distribution Accounting prepared by Lead
18 Plaintiff and can confirm that the information provided therein relating to mailing of notices,
19 processing of Claims, the distribution of settlement funds, and notice and administrative costs
20 incurred by A.B. Data is accurate based on A.B. Data’s current records.

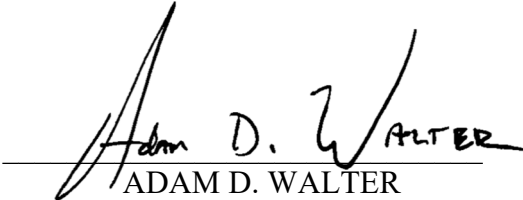
21 8. The average and median payment per eligible Claimant and the largest and smallest
22 payments reported in the Post-Distribution Accounting are based on Claimants’ recoveries in the
23 initial distribution. Authorized Claimants may receive additional funds in any subsequent
24 distributions. In calculating the average and median payment to eligible claimants, claims that
25 were not eligible for a payment because they fell below the \$10 minimum threshold, as provided
26 in the Court-approved Plan of Allocation and Distribution Order, were excluded from the analysis.

27 9. To date, no funds have been paid to any *cy pres* recipient. As set forth in the Court-
28 approved Plan of Allocation and the Walter Distribution Declaration, residual funds will be

1 distributed on *cy pres* only if funds remain after all cost-effective rounds of further distributions to
2 Authorized Claimants have been completed. Those subsequent rounds have not yet occurred, but
3 A.B. Data expects that any eventual payment to the *cy pres* recipient will be minimal.

4 I declare under penalty of perjury that the foregoing is true and correct to the best of my
5 knowledge.

6
7 Executed on October 9, 2024


ADAM D. WALTER