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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

**LEAD PLAINTIFF'S MOTION FOR
APPROVAL OF DISTRIBUTION PLAN,
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

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

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1 **NOTICE OF MOTION**
2 **FOR APPROVAL OF DISTRIBUTION PLAN**

3 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

4 PLEASE TAKE NOTICE that in accordance with Federal Rule of Civil Procedure 23(e),
5 Lead Plaintiff Arbejdsmarkedets Tillægspension (“Lead Plaintiff” or “ATP”), on behalf of itself
6 and the Settlement Class, will and does hereby move this Court for entry of the accompanying
7 [Proposed] Order Approving Distribution Plan (“Class Distribution Order”) that will, among other
8 things: (i) approve the Claims Administrator A.B. Data’s administrative determinations accepting
9 and rejecting Claims submitted in connection with the Settlement reached in the above-captioned
10 Action; (ii) direct the Initial Distribution of the Net Settlement Fund to Claimants whose Claims
11 are accepted by A.B. Data as valid and approved by the Court (“Authorized Claimants”);
12 (iii) direct that distribution checks state that the check must be cashed within 120 days after the
13 issue date; (iv) direct that Authorized Claimants will forfeit all recovery from the Settlement if
14 they fail to cash their distribution checks in a timely manner; (v) approve the recommended plan
15 for any funds remaining after the distribution; and (vi) approve A.B. Data’s fees and expenses in
16 connection with the administration of the Settlement.

17 This motion is supported by the memorandum of points and authorities below, the attached
18 Declaration of Adam D. Walter (“Walter Declaration” or “Walter Decl.”), submitted on behalf of
19 the Court-approved Claims Administrator, A.B. Data, Ltd.’s Class Action Administration
20 Company (“A.B. Data”), and its exhibits, the previous filings and orders in this case, and such
21 other materials as the Court may consider.¹

22 There are no disputed Claims by any Settlement Class Member requiring Court review.
23 Further, pursuant to the Stipulation, Defendants have no role in or responsibility for the
24 administration of the Settlement Fund or processing of Claims, including determinations as to the
25 validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 17, 21, 23; *see*
26

27 ¹ Unless otherwise indicated in this memorandum, all terms with initial capitalization shall have
28 the meanings ascribed to them in the Walter Declaration or the Stipulation and Agreement of
Settlement dated as of April 24, 2023 (ECF No. 139-1) (“Stipulation”).

1 also Notice ¶ 48. Nonetheless, Lead Plaintiff has shared a copy of this motion with Defendants’
2 Counsel, and they informed us that Defendants take no position on the motion. As such, the motion
3 is ripe for determination and Lead Counsel respectfully submits that a hearing on this motion is
4 not required.

5 **STATEMENT OF ISSUES TO BE DECIDED**

6 1. Whether the Court should enter the proposed Class Distribution Order, which will,
7 among other things, approve the Claims Administrator’s administrative determinations accepting
8 and rejecting Claims submitted in connection with the Settlement, direct the distribution of the Net
9 Settlement Fund to eligible Claimants, approve the recommended plan for any funds remaining
10 after the distribution, and approve the Claims Administrator’s fees and expenses.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. BACKGROUND**

13 On November 14, 2023, the Court entered the Judgment (ECF No. 156) and Order Granting
14 Final Approval to Settlement, Approving Plan of Allocation, and Awarding Fees and Costs (ECF
15 No. 155) approving the \$39 million all-cash Settlement of this Action and the Plan of Allocation
16 for the Net Settlement Fund. The Settlement’s “Effective Date” under paragraph 31 of the
17 Stipulation has occurred, and the Claims Administrator has completed processing of Claims
18 received. Accordingly, the Net Settlement Fund may now be distributed to Authorized Claimants.
19 In accordance with paragraph 26 of the Stipulation, Lead Plaintiff respectfully requests that the
20 Court enter the Class Distribution Order and approve the Distribution Plan.

21 In accordance with the Court’s Order Granting Preliminary Approval (ECF No. 146)
22 (“Preliminary Approval Order”), A.B. Data mailed the Notice of (I) Pendency of Class Action and
23 Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees
24 and Litigation Expenses (“Notice”) and the Proof of Claim and Release Form (“Claim Form” and,
25 collectively with the Notice, the “Notice Packet”) to potential Settlement Class Members, brokers,
26 and other nominees. Walter Decl. ¶ 2. A.B. Data has disseminated 103,534 Notice Packets to
27 potential Settlement Class Members, brokers, and nominees. *Id.* ¶ 4. The Notice informed
28 Settlement Class Members that if they wished to be eligible to participate in the distribution of the

1 Net Settlement Fund, they were required to submit a properly executed Claim Form postmarked
2 no later than October 30, 2023. *Id.* ¶ 7.

3 **II. CLAIMS ADMINISTRATION**

4 As set forth in the Walter Declaration, through April 8, 2024, A.B. Data received and
5 processed 65,033 Claims. Walter Decl. ¶ 7. All Claims received through April 8, 2024, have been
6 fully processed in accordance with the Stipulation and the Court-approved Plan of Allocation
7 included in the Notice (*see id.*), and A.B. Data has worked with Claimants to help them perfect
8 their Claims. *See id.* ¶¶ 19-32. Many of the Claims were initially deficient or ineligible for one or
9 more reasons, including being incomplete, not signed, not properly documented, or otherwise
10 deficient, which required substantial follow-up work by A.B. Data. *Id.* ¶¶ 19, 22.

11 If A.B. Data determined a Claim to be defective or ineligible, A.B. Data sent a letter (if the
12 Claimant or filer filed a paper or online Claim) or an email (if the Claimant or filer filed an
13 electronic Claim) to the Claimant or filer, as applicable, describing the defect(s) or condition(s) of
14 ineligibility in the Claim and the steps necessary to cure any curable defect(s) in the Claim
15 (“Deficiency Notices”). *Id.* ¶¶ 20, 22. The Deficiency Notices advised the Claimant or filer that
16 the appropriate information or documentary evidence to complete the Claim had to be sent within
17 twenty (20) days from the date of the Deficiency Notice or A.B. Data would recommend the Claim
18 for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* ¶¶ 20, 23.
19 Examples of the Deficiency Notices are attached as Exhibits A, B, and C to the Walter Declaration.

20 Of the 65,033 Claims that are the subject of this motion, A.B. Data has determined that
21 43,630 Claims are acceptable in whole or in part, and that 21,403 Claims should be rejected
22 because they are ineligible for payment from the Net Settlement Fund. Walter Decl. ¶¶ 38-40.
23 Lead Plaintiff respectfully requests that the Court approve A.B. Data’s administrative
24 determinations accepting and rejecting Claims as set forth in the Walter Declaration.

25 **A. No Disputed Claims**

26 A.B. Data carefully reviewed Claimants’ and filers’ responses to the Deficiency Notices
27 and worked with them to resolve deficiencies where possible. *Id.* ¶¶ 21, 26. Consistent with
28 paragraph 43(e) of the Stipulation, the Deficiency Notices specifically advised the Claimant or

1 filer of their right, within twenty (20) days after the mailing or emailing of the Deficiency Notice,
2 to contest the rejection of the Claim and request Court review of A.B. Data's administrative
3 determination of the Claim. *Id.* ¶¶ 20, 23.

4 With respect to the fully processed Claims, A.B. Data received two (2) requests for Court
5 review of its administrative determinations. Walter Decl. ¶ 32. To resolve these disputes without
6 necessitating the Court's intervention, A.B. Data contacted the Claimants requesting Court review
7 and attempted to answer all questions, to explain A.B. Data's administrative determination of the
8 Claim's status, and to facilitate the submission of missing information or documentation where
9 applicable. *Id.* ¶ 32. As a result of these efforts, these two (2) Claimants resolved their deficiencies,
10 withdrew their requests for Court review, and their Claims are now recommended for approval.
11 *Id.* Accordingly, there are no outstanding requests for Court review by any Claimants. *Id.*

12 **B. Late Claims and Final Cut-Off Date**

13 The 65,033 Claims received through April 8, 2024, include 10,385 Claims that were
14 postmarked or received after October 30, 2023, the Court-approved Claim submission deadline.
15 *Id.* ¶¶ 33, 41. Those late Claims have been fully processed, and 3,855 of them are, but for their late
16 submission, otherwise eligible to participate in the Settlement. *Id.* Although these 3,855 Claims
17 were late, they were received while the processing of timely Claims was ongoing. *Id.* Due to the
18 amount of time needed to process the timely Claims received, the processing of these late Claims
19 did not delay the completion of the Claims administration process or the distribution of the Net
20 Settlement Fund. *Id.* ¶ 33. The Court has discretion to accept Claims received after the Claim
21 submission deadline. *See* Preliminary Approval Order ¶ 11; Notice ¶ 49. Lead Plaintiff respectfully
22 submits that, when the equities are balanced, it would be unfair to prevent an otherwise eligible
23 Claim from participating in the distribution of the Net Settlement Fund solely because it was
24 received after the Court-approved Claim submission deadline if it were submitted while timely
25 Claims were still being processed.

26 To facilitate the efficient distribution of the Net Settlement Fund, however, there must be
27 a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiff
28 respectfully requests that the Court order that any *new* late Claims (and any requested adjustments

1 to previously filed Claims that would result in an increased Recognized Claim Amount) received
2 after April 8, 2024, shall be barred (*see also* Walter Decl. ¶ 43(f)) – subject to the proviso that if
3 Lead Counsel later determines that an additional distribution is not cost-effective (*see* Walter Decl.
4 ¶ 43(e)), then any post-April 8, 2024 Claimants may, at the discretion of Lead Counsel (and to the
5 extent possible after paying remaining administrative fees and expenses owed), be paid on their
6 new (or adjusted) Claims on a *pro rata* basis so as to bring them into parity with other Authorized
7 Claimants who have cashed their distribution checks.

8 **III. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

9 **A. Initial Distribution of the Net Settlement Fund**

10 Under the proposed Distribution Plan, A.B. Data will distribute 95% of the Net Settlement
11 Fund after deducting (i) all payments previously allowed, (ii) payments approved by the Court on
12 this motion, and (iii) any estimated taxes, the costs of preparing appropriate tax returns, and any
13 escrow fees (i.e., the Initial Distribution). *See* Walter Decl. ¶ 43(a). In the Initial Distribution, A.B.
14 Data will calculate award amounts for all Authorized Claimants as if the entire Net Settlement
15 Fund were to be distributed now. *Id.* ¶ 43(a)(1). A.B. Data will first determine each Authorized
16 Claimant’s *pro rata* share of the total Net Settlement Fund based on the Claimant’s Recognized
17 Claim in comparison to the total Recognized Claims of all Authorized Claimants. *Id.* A.B. Data
18 will eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share
19 calculates to less than \$10.00, as these Claimants will not receive any payment from the Net
20 Settlement Fund and will be so notified by A.B. Data. *Id.* ¶ 43(a)(2). A.B. Data will then recalculate
21 the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received
22 \$10.00 or more based on the amount of the Authorized Claimant’s Recognized Claim in
23 comparison to the total Recognized Claims of all Authorized Claimants who would have received
24 \$10.00 or more. *Id.* ¶ 43(a)(3). This *pro rata* share is the Authorized Claimant’s Distribution
25 Amount. *Id.* Authorized Claimants whose Distribution Amount calculates to less than \$200.00 will
26 be paid their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”). *Id.*
27 ¶ 43(a)(4). These Authorized Claimants will receive no additional funds in subsequent
28 distributions. *Id.* After deducting the payments to the Claims Paid in Full, 95% of the remaining

1 balance of the Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose
2 Distribution Amount calculates to \$200.00 or more. *Id.* ¶ 43(a)(5). The remaining 5% of the Net
3 Settlement Fund will be held in reserve (the “Reserve”) to address any tax liability and claims
4 administration-related contingencies that may arise. *Id.* To the extent the Reserve is not depleted,
5 the remainder will be distributed in the Second Distribution. *Id.*

6 To encourage Authorized Claimants to cash their checks promptly, Lead Plaintiff proposes
7 that all distribution checks bear the notation, “CASH PROMPTLY. VOID AND SUBJECT TO
8 REDISTRIBUTION IF NOT CASHED BY DATE 120 DAYS AFTER ISSUE DATE].” *Id.*
9 ¶ 43(b). Authorized Claimants who do not cash their checks within the time allotted or on the
10 conditions stated in paragraph 43(b) of the Walter Declaration will irrevocably forfeit all recovery
11 from the Settlement, and the funds allocated to these stale-dated checks will be available to be
12 redistributed to other Authorized Claimants in a subsequent distribution, as described below. *Id.*
13 ¶ 43(c).

14 **B. Additional Distribution(s) of the Net Settlement Fund**

15 After A.B. Data has made reasonable and diligent efforts to have Authorized Claimants
16 cash their Initial Distribution checks, but not earlier than seven (7) months after the Initial
17 Distribution, A.B. Data will, after consulting with Lead Counsel, conduct the Second Distribution
18 of the Net Settlement Fund. *Id.* ¶ 43(d). In the Second Distribution, any amount remaining in the
19 Net Settlement Fund, after deducting any unpaid fees and expenses incurred, will be distributed to
20 all Authorized Claimants (other than Claims Paid in Full) who cashed their Initial Distribution
21 checks and would receive at least \$10.00 from the Second Distribution based on their *pro rata*
22 share of the remaining funds. *Id.* If any funds remain in the Net Settlement Fund after the Second
23 Distribution, and if cost-effective, subsequent distributions will take place at six-month intervals.
24 *Id.* When Lead Counsel, in consultation with A.B. Data, determines that a further distribution is
25 not cost-effective, if sufficient funds remain to warrant the processing of Claims received after
26 April 8, 2024, A.B. Data will process those Claims. *Id.* ¶ 43(e). Any of these Claims that are
27 otherwise valid, as well as any earlier received Claims for which an upward adjustment was
28

1 received after April 8, 2024, may be paid in accordance with paragraph 43(f) of the Walter
2 Declaration. *Id.*

3 As provided in the Court-approved Plan of Allocation, if any funds remain in the Net
4 Settlement Fund after payment of those Claims received after April 8, 2024 and any unpaid fees
5 or expenses, those residual funds will be contributed to the Investor Protection Trust, a non-
6 sectarian, not-for-profit 501(c)(3) organization that provides investor education and protection
7 programs. *See* Notice ¶ 91.

8 **IV. RELEASE OF CLAIMS**

9 In order to allow the full and final distribution of the Net Settlement Fund, it is necessary
10 to (i) bar any further claims against the Net Settlement Fund beyond the amounts allocated to
11 Authorized Claimants, and (ii) provide that all persons involved in any aspect of Claims
12 processing, or who are involved in the administration or taxation of the Settlement Fund or the Net
13 Settlement Fund, be released and discharged from all claims arising out of that involvement. *See*
14 Stipulation ¶ 28. Accordingly, Lead Plaintiff respectfully requests that the Court release and
15 discharge all persons involved in the review, verification, calculation, tabulation, or any other
16 aspect of the processing of the Claims submitted in connection with the Settlement, or who are
17 otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement
18 Fund from all claims arising out of that involvement, and bar all Settlement Class Members and
19 other Claimants, whether or not they receive payment from the Net Settlement Fund, from making
20 any further claims against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims
21 Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff or Lead Counsel in
22 connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund,
23 or any other person released under the Settlement beyond the amounts allocated to Authorized
24 Claimants.

25 In this District, courts have repeatedly approved similar releases in connection with the
26 distribution of settlement proceeds. *See, e.g.,* Class Distribution Order, *Davis v. Yelp, Inc.*, No.
27 3:18-cv-00400 (N.D. Cal. Aug. 29, 2023), ECF No. 216, attached hereto as Exhibit 1 (approving
28 substantially similar language in the order authorizing distribution of settlement proceeds); Order

1 Granting Plaintiffs' Motion for Distribution of Class Action Settlement Funds, *Sanders v. The*
2 *RealReal, Inc.*, No. 5:19-cv-07737 (N.D. Cal. June 8, 2023), ECF No. 79, attached hereto as
3 Exhibit 2 (same); Order Granting Plaintiffs' Motion for Authorization to Distribute Net Settlement
4 Fund, *In re Dropbox, Inc. Sec. Litig.*, No. 5:19-cv-06348 (N.D. Cal. May 18, 2023), ECF No. 138,
5 attached hereto as Exhibit 3 (same); *In re Capstone Turbine Corp. Sec. Litig.*, 2020 WL 7889062,
6 at *2 (C.D. Cal. Aug. 26, 2020) (same).

7 **V. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR**

8 The Court-approved Claims Administrator for the Settlement, A.B. Data, was responsible
9 for, among other things, disseminating notice of the Settlement to the Settlement Class, creating
10 and maintaining a website and toll-free telephone helpline, processing Claims, and allocating and
11 distributing the Net Settlement Fund to Authorized Claimants. Walter Decl. ¶ 2. A.B. Data's fees
12 and expenses for its work performed through March 31, 2024, are \$343,237.29, and its estimated
13 fees and expenses for work to be performed in connection with the Initial Distribution are
14 \$64,145.82, which together total \$407,383.11. *Id.* ¶ 42. Should the estimate of fees and expenses
15 to conduct the Initial Distribution of the Net Settlement Fund exceed the actual cost, the excess
16 will be returned to the Net Settlement Fund and will be available for subsequent distribution to
17 Authorized Claimants. *Id.* To date, A.B. Data has received no payment for its fees and expenses.
18 *Id.* Accordingly, there is an outstanding balance of \$407,383.11 payable to A.B. Data, which
19 amount includes the estimated fees and expenses to be incurred by A.B. Data in connection with
20 the Initial Distribution. *Id.*

21 While the total amount sought by A.B. Data for Notice and Administration Costs
22 (\$407,383.11) is greater than the estimate of \$250,000 originally provided by A.B. Data in April
23 2023, that estimate was based on the assumption that A.B. Data would mail 50,000 Notice Packets
24 and receive 20,000 claims. *See* ECF. No. 139, at 22-23; ECF No. 139-4, at ¶¶ 17, 24. In fact, as
25 noted above, A.B. Data mailed 103,534 Notice Packets (more than twice the number estimated)
26 and received and processed 65,033 Claims (more than three times its estimate). As a result, A.B.
27 Data's costs are higher than initially projected. The total amount now sought by A.B. Data is
28 slightly above 1.5 times higher than its initial estimate, even though A.B. Data printed and mailed

1 twice as many Notice Packets and processed three times as many Claims as initially anticipated.
2 Accordingly, Lead Counsel respectfully requests, on behalf of Lead Plaintiff, that the Court
3 approve payment of all of A.B. Data's fees and expenses.

4 **VI. CONCLUSION**

5 For the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant its
6 Motion for Approval of Distribution Plan and enter the [Proposed] Order Approving Distribution
7 Plan.

8 Dated: April 15, 2024

Respectfully submitted,

9 **BERNSTEIN LITOWITZ BERGER**
10 **& GROSSMANN LLP**

11 /s/ Kathrine M. Sinderson

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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 MOTION FOR
APPROVAL OF DISTRIBUTION
PLAN**

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

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. Pursuant to the Court’s June 8, 2023 Order Granting Preliminary Approval (ECF
8 No. 146) (“Preliminary Approval Order”), A.B. Data was retained by Lead Counsel to serve as the
9 Claims Administrator in connection with the Settlement of the Action. As Claims Administrator,
10 A.B. Data has, among other things: (i) mailed the Notice of Notice of (I) Pendency of Class Action
11 and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and
12 Litigation Expenses (“Notice”) and the Proof of Claim and Release Form (“Claim Form” and
13 together with the Notice the “Notice Packet”) to potential Settlement Class Members, brokers, and
14 other nominees; (ii) created and continues to maintain a toll-free helpline for inquiries during the
15 course of the administration; (iii) created and continues to maintain a website for the Settlement
16 (“Settlement Website”) and posted case-specific documents on it; (iv) caused the Summary Notice
17 to be published; (v) provided, upon request, additional copies of the Notice Packet to potential
18 Settlement Class Members, brokers, and other nominees; and (vi) received and processed each
19 Claim Form received by the Claims Administrator (a “Claim”).

20 3. On November 14, 2023, the Court granted final approval of the Settlement in its
21 Judgment (ECF No. 156) and Order Granting Final Approval to Settlement, Approving Plan of
22 Allocation, and Awarding Fees and Costs (ECF No. 155). A.B. Data has completed processing all
23 Claims received through April 8, 2024, in accordance with the terms of the Stipulation and the
24 Court-approved Plan of Allocation set forth in the Notice, and hereby submits its administrative
25 determinations accepting and rejecting the Claims in preparation for a distribution of the Net

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 Settlement Fund to Authorized Claimants. A.B. Data also presents this declaration in support of
2 Lead Plaintiff's Motion for Approval of Distribution Plan.

3 **DISSEMINATION OF NOTICE**

4 4. As more fully described in the Declaration of Adam D. Walter Regarding:
5 (I) Mailing of Notice and Claim Form; (II) Publication of the Summary Notice; and (III) Report
6 on Requests for Exclusion Received to Date (ECF No. 149-4) ("Mailing Decl.") and the
7 Supplemental Declaration of Adam D. Walter Regarding: (I) Mailing of Notice and Claim Form
8 and (III) Report on Requests for Exclusion and Claims Received (ECF No. 150-1) ("Supp. Mailing
9 Decl."), as of November 1, 2023, A.B. Data had mailed 103,387 Notice Packets to potential
10 Settlement Class Members and other nominees. Supp. Mailing Decl. ¶ 2. Since that date, 147
11 additional Notice Packets have been disseminated. In total, A.B. Data has disseminated 103,534
12 Notice Packets to potential Settlement Class Members, brokers, and other nominees.

13 5. A.B. Data established and continues to maintain the Settlement Website
14 (www.BioMarinSecuritiesLitigation.com) and a toll-free telephone helpline (877-390-3369) to
15 assist potential Settlement Class Members. The Settlement Website, which provides access to
16 important documents relevant to the Settlement, and the telephone helpline enable Settlement
17 Class Members to obtain information about the Settlement. In connection with establishing and
18 maintaining the Settlement Website and toll-free telephone helpline, A.B. Data, among other
19 things, formulated a system to ensure that proper responses were provided to all telephone and
20 electronic inquiries. That work included training telephone agents to respond to inquiries specific
21 to the Settlement; developing a series of common questions and the answers thereto known as
22 Frequently Asked Questions or "FAQs"; loading key documents onto the Settlement Website; and
23 programming the Settlement Website to permit the viewing and downloading of those documents.

24 6. In accordance with paragraph 7(d) of the Preliminary Approval Order, on July 12,
25 2023, A.B. Data caused the Summary Notice to be published in *The Wall Street Journal* and
26 released via *PR Newswire*. Mailing Decl. ¶ 11.

1 **PROCEDURES FOLLOWED IN PROCESSING CLAIMS**

2 7. Under the terms of the Preliminary Approval Order and as set forth in the Notice,
3 each Settlement Class Member who wished to be eligible to receive a distribution from the Net
4 Settlement Fund was required to complete and submit to A.B. Data a properly executed Claim
5 Form postmarked (if mailed) or online no later than October 30, 2023, together with adequate
6 supporting documentation for the transactions and holdings reported in the Claim Form. Through
7 April 8, 2024, A.B. Data has received and fully processed 65,033 Claims (“Presented Claims”).

8 8. In preparation for receiving and processing Claims, A.B. Data: (i) conferred with
9 Lead Counsel to define the guidelines for processing Claims; (ii) created a unique database to store
10 Claim details, images of Claims, and supporting documentation (“Settlement Database”);
11 (iii) trained staff in the specifics of the Settlement so that Claims would be properly processed;
12 (iv) formulated a system so that telephone and email inquiries would be properly responded to;
13 (v) developed various computer programs and screens for entry of Settlement Class Members’
14 identifying information and their transactional information; and (vi) developed a case-specific
15 “calculation module” that would calculate Recognized Claims pursuant to the Court-approved Plan
16 of Allocation for the Net Settlement Fund set forth in the Notice.

17 9. Settlement Class Members seeking to share in the Net Settlement Fund were
18 directed in the Notice to submit their Claims to a post office box address specifically designated
19 for the Settlement or to submit their Claims online through the Settlement Website. Notice Packets
20 returned by the United States Postal Service as undeliverable were reviewed for updated addresses
21 and, where available, updated addresses were entered into the database and Notice Packets were
22 mailed to the updated addresses. Any correspondence received at the post office box was reviewed
23 and, when necessary, appropriate responses were provided to the senders.

24 **PROCESSING CLAIMS**

25 **A. Paper Claims**

26 10. Of the 65,033 Presented Claims, 1,737 are Claims that were submitted on paper or
27 via the online filing component of the Settlement Website provided for individual investors. Once
28 received, paper Claims were opened and prepared for scanning. This process included unfolding

1 documents, removing staples, copying nonconforming-sized documents, and sorting documents.
 2 This manual task of preparing the paper Claims is very laborious and time intensive. Once
 3 prepared, paper Claims were scanned into the Settlement Database together with all submitted
 4 documentation. Subsequently, each Claim was assigned a unique Claim number. Once scanned,
 5 the information from each Claim Form, including the Claimant's name, address, and account
 6 number/information from the supporting documentation, and the Claimant's purchase/acquisition
 7 transactions, sale transactions, and holdings listed on the Claim Form, was entered into the
 8 Settlement Database. Once entered into the Settlement Database, each Claim was reviewed to
 9 verify that all required information had been provided. The documentation provided by the
 10 Claimant in support of the Claim was reviewed for authenticity and compared to the information
 11 provided in the Claim to verify the Claimant's identity and the purchase/acquisition transactions,
 12 sale transactions, and holdings listed on the Claim Form.

13 11. To process the transactions detailed in the Claims, A.B. Data utilized internal codes
 14 ("flags") to identify and classify deficiency or ineligibility conditions existing within those Claims.
 15 Appropriate flags were assigned to the Claims as they were processed. For example, where a Claim
 16 was submitted by a Claimant who did not have any eligible transactions in BioMarin common
 17 stock during the Class Period (e.g., the Claimant purchased BioMarin common stock only before
 18 or after the Class Period), that Claim would receive a flag that denoted ineligibility. Similar defect
 19 flags were used to denote other ineligible conditions, such as duplicate Claims. These flags would
 20 indicate to A.B. Data that the Claimant was not eligible to receive any payment from the Net
 21 Settlement Fund with respect to that Claim unless the deficiency was cured in its entirety.
 22 Examples of conditions of ineligibility are as follows:

23	MIDOC	Inadequate or Missing Documentation for Entire Claim
24	DUPCL	Duplicate Claim
25	NOPUR	No Eligible Purchase during the Class Period
26	MISIG	No Signature
27	NOLOS	No Recognized Claim

1 12. Because a Claim may be deficient only in part, but otherwise acceptable, A.B. Data
 2 utilized flags that were applied only to specific transactions within a Claim. For example, if a
 3 Claimant submitted a Claim with supporting documentation for all but one purchase transaction,
 4 that one transaction would receive a defect flag. The flag indicated that although the transaction
 5 was deficient, the Claim was otherwise eligible for payment if other transactions in the Claim
 6 calculated to a Recognized Claim pursuant to the Court-approved Plan of Allocation. Thus, even
 7 if the deficiency were never cured, the Claim could still be partially accepted. Examples of
 8 transaction-specific flags are as follows:

9 TDOC Missing or Inadequate Documentation for Specific Transaction

10 INEL Ineligible Transaction

11 TRN Transfer In/Free Receipt

12 **B. Electronic Claims**

13 13. Of the 65,033 Presented Claims, 63,296 were submitted electronically (“Electronic
 14 Claims”). Electronic Claims are typically submitted by institutional investors who may have
 15 hundreds or thousands of transactions during the Class Period or by filers submitting Claims on
 16 behalf of multiple beneficial owners (“Electronic Claim Filers” or “E-Claim Filers”). Rather than
 17 provide reams of paper requiring data entry, the E-Claim Filers either mail a computer disc or
 18 electronically submit a file to A.B. Data so that A.B. Data can upload all transactions to the
 19 Settlement Database.

20 14. A.B. Data maintains an electronic filing operations team (“Electronic Claim Filing
 21 Team (“ECF Team”) to coordinate and supervise the receipt and handling of all Electronic Claims.
 22 In this case, the ECF Team reviewed and analyzed each electronic file to ensure that it was
 23 formatted in accordance with A.B. Data’s required format and to identify any potential data issues
 24 or inconsistencies within the file. If any issues or inconsistencies arose, A.B. Data notified the
 25 filer. If the electronic file was deemed to be in an acceptable format, it was then loaded into the
 26 Settlement Database.

27 15. Once each electronic file was loaded, the Electronic Claims were flagged to denote
 28 any deficient or ineligible conditions that existed within them. These flags are similar to those

1 applied to paper and online Claims. In lieu of manually applying flags, the ECF Team performed
2 programmatic reviews on Electronic Claims to identify deficient and ineligible conditions (such
3 as, but not limited to, price out-of-range issues, out-of-balance conditions, transactions outside the
4 Class Period, etc.). The output was thoroughly verified and confirmed as accurate.

5 16. The review process also included flagging any Electronic Claims that were not
6 accompanied by a signed Claim Form, which serves as a “Master Proof of Claim Form” for all
7 Claims referenced on the electronic file submitted. This process was reviewed by A.B. Data’s ECF
8 Team and, when appropriate, A.B. Data contacted the E-Claim Filers whose submissions were
9 missing information. This ensured that only fully completed Claims, submitted by properly
10 authorized representatives of the Claimants, were considered eligible to participate in the
11 Settlement.

12 17. Finally, at the end of the process, A.B. Data performed various targeted reviews of
13 Electronic Claims. Specifically, A.B. Data used criteria such as the calculated Recognized Claims
14 and other identified criteria to flag and reach out to a selection of E-Claim Filers and request that
15 various sample purchases, sales, and holdings selected by A.B. Data be documented by providing
16 confirmation slips or other transaction-specific supporting documentation. These targeted reviews
17 help to ensure that electronic data supplied by Claimants does not contain inaccurate information.

18 **EXCLUDED PERSONS**

19 18. A.B. Data also reviewed all Claims to ensure that they were not submitted by or on
20 behalf of “Excluded Persons” to the extent that the identities of such persons or entities were
21 known to A.B. Data through the list of Defendants and other excluded persons and entities set
22 forth in the Stipulation and the Notice and from the Claimants’ certifications on the Claim Forms.
23 A.B. Data also reviewed all Claims against the list of persons who were excluded from the
24 Settlement Class pursuant to request as listed on Exhibit A to the Supp. Mailing Decl.

25 **THE DEFICIENCY PROCESS**

26 **A. Paper Claims and Online Claims**

27 19. Approximately 47% of the paper and online Claims, i.e., 816 of the 1,737 Claim
28 Forms submitted, were incomplete or had one or more defects or conditions of ineligibility, such

1 as the Claim not being signed, not being properly documented, or indicating no eligible
2 transactions in BioMarin common stock during the Class Period. The “Deficiency Process,” which
3 primarily involved mailing letters to Claimants and responding to communications from Claimants
4 by email and/or telephone, was intended to assist Claimants in properly completing their otherwise
5 deficient submissions so that they could be eligible to participate in the Settlement.

6 20. If paper and online Claims were determined to be defective, a Notice of Rejection
7 of Claim (“Deficiency Letter”) was sent to the Claimants describing the defect(s) in the Claims
8 and what steps, if any, were necessary to cure the defect(s) in these Claims. The Deficiency Letter
9 advised Claimants that submission of appropriate information and/or documentary evidence to
10 complete the Claim had to be sent within twenty (20) days from the date of the Deficiency Letter
11 or the Claim would be recommended for rejection to the extent that the deficiency or condition of
12 ineligibility was not cured. The Deficiency Letter also advised Claimants of their right to contest
13 these administrative determinations, and that Claimants were required to submit written statements
14 to A.B. Data requesting Court review of their Claims and setting forth the basis for such requests.
15 A.B. Data sent a total of 816 Deficiency Letters to Claimants who submitted paper or online Claims
16 that A.B. Data determined to be defective. It is possible for a Claimant to be sent more than one
17 Deficiency Letter for a Claim and thus the number of Deficiency Letters sent would exceed the
18 number of deficient Claims discussed above in paragraph 19. Attached hereto as Exhibit A is an
19 example of a Deficiency Letter.

20 21. Claimants’ responses to Deficiency Letters were scanned into the Settlement
21 Database and associated with the corresponding Claims. The responses were then carefully
22 reviewed and evaluated by A.B. Data’s team of processors. If a Claimant’s response corrected the
23 defect(s) in a Claim, A.B. Data manually updated the Settlement Database to reflect the changes
24 in the status of the Claim.

25 **B. Electronic Claims**

26 22. For Electronic Claims, A.B. Data used the following process to contact the banks,
27 brokers, nominees, and other E-Claim Filers to confirm receipt of their submissions and to notify
28 the Electronic Claim Filers of any deficiencies or Electronic Claims that were ineligible. Each E-

1 Claim Filer was sent an email to the email address included with the Claim Form(s) (“Status
2 Email”) with an attached Electronic Filer Status Spreadsheet, which contained detailed
3 information associated with the Claim(s) and indicated which Claim(s) within the filing were
4 deficient and/or rejected (“Status Spreadsheet”).

5 23. The Status Email sent to the email address of record provided with the Claim Form:

- 6 (a) Notified the filer that any Claims with deficiencies not corrected within
7 twenty (20) days from the date of the Status Email may be rejected;
- 8 (b) Advised the filer of the right to contest the rejection of the Claim(s) and
9 request this Court’s review of A.B. Data’s administrative determination
10 within twenty (20) days from the date of the Status Email; and
- 11 (c) Provided the filer with instructions for how to submit corrections.

12 24. The Status Spreadsheet attached to the Status Email contained the following
13 information:

- 14 (a) A listing of all Electronic Claims associated with the filing and their
15 unique identification numbers;
- 16 (b) Identification of individual Electronic Claims that were found to be
17 deficient or ineligible;
- 18 (c) Each Electronic Claim’s current status in the Settlement Database; and
- 19 (d) The current Recognized Claim calculation associated with each Electronic
20 Claim.

21 25. A.B. Data emailed a Status Email and Status Spreadsheet to 189 E-Claim Filers.
22 Examples of a Status Email and Status Spreadsheet are attached hereto as Exhibits B and C,
23 respectively.

24 26. The E-Claim Filers’ responses were reviewed by A.B. Data’s ECF Team, scanned
25 and/or loaded into the Settlement Database, and associated with the corresponding Electronic
26 Claims. If a response corrected the defect(s) or affected an Electronic Claim’s status, A.B. Data
27 manually and/or programmatically updated the database to reflect such change in status of the
28 Electronic Claim.

1 **C. Calling Campaign to Claimants Who Did Not Cure Deficiencies**

2 27. After responses to the Deficiency Letters and Status Emails were received and
3 evaluated, and the Claims updated, A.B. Data called Claimants with still-deficient Claims to
4 provide them with a final opportunity to cure the deficiencies in their Claims.

5 28. During this calling campaign, A.B. Data's agents explained to contacted Claimants
6 that their Claims remained deficient, advised Claimants of the steps required to cure the
7 deficiencies, and provided assistance to Claimants where possible, depending on the nature of the
8 deficiency. For example, if a Claimant needed additional supporting documentation, A.B. Data
9 explained the types of documentation that would render the Claim eligible and how the Claimant
10 could obtain the necessary documentation. A.B. Data also provided some Claimants with direct
11 phone numbers and email addresses so that Claimants could receive continued personalized
12 attention and assistance.

13 29. If A.B. Data could not reach a Claimant to speak one-on-one, A.B. Data left a voice
14 message, when possible, requesting a return call. A.B. Data explained in the voice message that it
15 was calling to assist the Claimant in remedying outstanding deficiencies in the Claim. A.B. Data
16 also reached out to Claimants via email if a valid email address was provided in their Claim
17 submission.

18 30. If, in response to a telephone call or email, a Claimant cured the deficiency in a
19 Claim by providing the appropriate information and/or supporting documentation, A.B. Data
20 updated the Settlement Database to reflect the change in the status of the Claim.

21 **NO DISPUTED CLAIMS**

22 31. As noted above, Claimants were advised that they had the right to contest A.B.
23 Data's administrative determination of deficiencies or ineligibility within twenty (20) days from
24 the date of notification and that they could request that the dispute be submitted to the Court for
25 review. More specifically, Claimants were advised in the Deficiency Letter or Status Email that,
26 if they disputed A.B. Data's determination, they had to provide a statement of reasons indicating
27 the grounds for contesting the determination, along with supporting documentation, and if the
28

1 dispute concerning the Claim could not otherwise be resolved, Lead Counsel would thereafter
2 present the request for review to the Court for a final determination.

3 32. A.B. Data received two (2) requests for Court review. To resolve these disputes
4 without necessitating the Court's intervention, A.B. Data reached out to each Claimant requesting
5 Court review and attempted to answer all questions, fully explain A.B. Data's administrative
6 determination of the Claim's status, and facilitate the submission of missing information or
7 documentation where applicable. As a result of these efforts, two (2) Claimants resolved their
8 deficiencies and their Claims are now recommended for approval, and Claimants withdrew their
9 request for Court review. There are, therefore, no disputed Claims requiring Court review.

10 **LATE BUT OTHERWISE ELIGIBLE CLAIMS**

11 33. Of the 65,033 Presented Claims, 10,385 Claims were received or postmarked after
12 October 30, 2023, the Claim submission deadline established by the Court. A.B. Data processed
13 all late Claims received through April 8, 2024, and 3,855 late Claims have been found to be
14 otherwise eligible in whole or in part ("Late But Otherwise Eligible Claims"). A.B. Data has not
15 rejected any Claim received through April 8, 2024, solely based on its late submission, and A.B.
16 Data believes no delay has resulted from the provisional acceptance of these Late But Otherwise
17 Eligible Claims. To the extent they are eligible but for the fact that they were late, they are
18 recommended for payment.

19 34. However, there must be a final cut-off date after which no more Claims will be
20 accepted so that there may be a proportional allocation of the Net Settlement Fund and the
21 distribution may be accomplished. Acceptance of additional Claims or responses received during
22 the finalization of the administration and the preparation of this declaration would necessarily
23 require a delay in the distribution. Accordingly, A.B. Data also respectfully requests that this Court
24 order that no Claim received after April 8, 2024, or Claim cured or adjusted after April 8, 2024,
25 be eligible for payment for any reason whatsoever subject only to the provision of paragraph 43(f)
26 of the proposed distribution plan discussed below. If the Court adopts the proposed distribution
27 plan, then, after Lead Counsel has/have determined that further distributions are not cost-effective
28 and before any contribution of the residual funds to charity, if sufficient funds remain to warrant

1 the processing of Claims received after April 8, 2024, these Claims will be processed and, if any
2 would have been eligible if timely received, these Claimants may be paid their distribution
3 amounts, to the extent permitted by the amount of remaining funds, on a *pro rata* basis that would
4 bring them into parity with other Authorized Claimants who have cashed all their prior distribution
5 checks. See ¶ 43(f) below. With respect to previously submitted Claims that are cured or adjusted
6 after April 8, 2024, such Claims will be reevaluated upon receipt of the adjustment and, to the
7 extent that they are found eligible for a distribution or additional distribution, they will be treated
8 in the same manner as Claims received after April 8, 2024. However, should an adjustment result
9 in a lower Recognized Claim amount, the Recognized Claim amount will be reduced accordingly
10 prior to a distribution to that Claimant.

11 QUALITY ASSURANCE

12 35. An integral part of the claims administration process is the Quality Assurance
13 review. Throughout the administration process, A.B. Data's Quality Assurance Department
14 worked to verify that Claims were processed properly by ensuring that information was entered
15 correctly into the database, deficiency and/or rejection flags were assigned accurately, and
16 deficiency and/or rejection notifications were sent appropriately. After all Claims were processed,
17 deficiency and/or rejection notifications were sent, and Claimants' responses to the deficiency
18 and/or rejection notifications were reviewed and processed, the supervisors and managers in A.B.
19 Data's Quality Assurance Department performed additional Quality Assurance reviews. These
20 final Quality Assurance reviews further ensured the correctness and completeness of all Claims
21 processed prior to preparing this declaration and all A.B. Data's final documents in support of
22 distribution of the Net Settlement Fund. As part of the Quality Assurance reviews, A.B. Data:

- 23 (a) Verified that all Claim Forms had signatures of authorized individuals;
- 24 (b) Verified that true duplicate Claims were identified, verified, and rejected
- 25 (c) Verified that Tax Identification Numbers were provided, when applicable;
- 26 (d) Verified that persons and entities excluded from the Settlement Class did
27 not file Claims or their Claims were rejected upon review;

- 1 (e) Performed a final Quality Assurance audit of Claims and all supporting
- 2 documentation to ensure completeness of Claims;
- 3 (f) Determined that Claimants requiring deficiency and/or rejection
- 4 notifications were sent such notification;
- 5 (g) Performed an audit of deficient Claims;
- 6 (h) Performed additional review of Claims with high Recognized Claim
- 7 amounts;
- 8 (i) Audited Claims that were designated invalid;
- 9 (j) Audited Claims with a Recognized Claim amount equal to zero;
- 10 (k) Performed other auditing based on Claims completion requirements and the
- 11 approved calculation specifications based on the Court-approved Plan of
- 12 Allocation; and
- 13 (l) Re-tested the accuracy of the Recognized Claim amount calculation
- 14 program.

15 36. As part of its due diligence in processing the Claims, A.B. Data conducted a
16 Questionable Claim Filer search of all Claims submitted in connection with the Settlement. A.B.
17 Data maintains a Questionable Claim Filer Database of known questionable filers, which contains
18 names, addresses, and aliases of individuals or entities that have been investigated by government
19 agencies for questionable claim filing, as well as names and contact information compiled from
20 previous settlements administered by A.B. Data in which fraudulent claims were received. A.B.
21 Data updates this Questionable Claim Filer Database on a regular basis. The Settlement Database
22 was searched for all individuals identified in the Questionable Claim Filer Database. A.B. Data
23 performs searches based on names, aliases, addresses, and city/zip codes. In addition, A.B. Data's
24 claim processors are trained to identify any potentially inauthentic documentation when processing
25 claims, including claims submitted by Claimants not previously captured in the Questionable
26 Claim Filer Database. Processors are instructed to flag any questionable Claims and escalate them
27 to management for review. A.B. Data's procedures did not identify any potentially fraudulent
28 Claims necessitating further review and verification.

RECOMMENDATIONS FOR APPROVAL AND REJECTION

37. As noted above, the number of Presented Claims in this motion is 65,033.

A. Timely Submitted and Valid Claims

38. A total of 54,648 Claims were received or postmarked on or before October 30, 2023, the Court-approved Claim submission deadline, of which 39,775 Claims were determined by A.B. Data to be eligible to participate in the Settlement and are recommended for approval (“Timely Eligible Claims”). The total Recognized Claim amount for these Timely Eligible Claims is \$713,785,519.89.

B. Late But Otherwise Eligible Claims

39. A total of 10,385 Claims were received or postmarked after October 30, 2023, the Court-approved Claim submission deadline, but received on or before April 8, 2024. Of those 10,385 late Claims, 3,855 were determined by A.B. Data to be otherwise eligible and are recommended for approval (“Late But Otherwise Eligible Claims”). The total Recognized Claim amount for these Late But Otherwise Eligible Claims is \$42,144,185.27.

C. Rejected Claims

40. After the responses to Deficiency Letters and Status Emails were processed, a total of 21,403 Claims (including the Disputed Claims discussed above) remain recommended for rejection by the Court (“Rejected Claims”) for the following reasons:

- (a) 15,396 Claims Did Not Result in a Recognized Claim;
- (b) 5,940 Claims Had No Purchase(s) of BioMarin Common Stock During the Class Period;
- (c) 53 Duplicate Claims; and
- (d) 14 Claims Withdrawn.

D. Lists of All Presented Claims

41. Attached hereto as Exhibits D through F are listings of all the Presented Claims:

- (a) Exhibit D lists the Timely Eligible Claims and shows each Claimant’s Recognized Claim;

1 (b) Exhibit E lists the Late But Otherwise Eligible Claims and shows each
2 Claimant's Recognized Claim; and

3 (c) Exhibit F lists the Rejected Claims and the reasons for their rejection.

4 **FEES AND DISBURSEMENTS**

5 42. A.B. Data agreed to be the Claims Administrator in exchange for payment of its
6 fees and out-of-pocket expenses. Lead Counsel received reports on and invoices for the work A.B.
7 Data performed with respect to the provision of notice and administration of the Settlement.
8 Attached hereto as Exhibit G are copies of A.B. Data's invoices for its work performed on behalf
9 of the Settlement Class as well as an estimate for the work that will be performed and the costs
10 that will be incurred in connection with the initial distribution of the Net Settlement Fund. Should
11 the estimate of fees and expenses to conduct the initial distribution of the Net Settlement Fund
12 exceed the actual cost, the excess will be returned to the Net Settlement Fund and will be available
13 for subsequent distribution to Authorized Claimants. As set forth in these invoices, A.B. Data's
14 total fees and expenses for this matter through March 31, 2024, are \$343,237.29. A.B. Data
15 anticipates that its fees and expenses for the work performed in conjunction with the initial
16 distribution of the Net Settlement Fund will be \$64,145.82. To date A.B. Data has not received
17 any payment for its fees and expenses. Accordingly, there is an outstanding balance of \$407,383.11
18 payable to A.B. Data from the Settlement Fund, which includes the estimate for completing the
19 initial distribution.

20 **DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

21 43. Should the Court concur with A.B. Data's determinations concerning the
22 provisionally accepted and rejected Claims, including the Late But Otherwise Eligible Claims,
23 A.B. Data recommends the following distribution plan ("Distribution Plan"):

24 (a) A.B. Data will conduct an initial distribution ("Initial Distribution") of the
25 Net Settlement Fund, after deducting all payments approved by the Court,
26 and after payment of any estimated taxes, the costs of preparing appropriate
27 tax returns, and any escrow fees, while maintaining a 5% reserve to address
28

1 any tax liability and claims administration-related contingencies that may
2 arise, as follows:

3 (1) A.B. Data will calculate award amounts for all Authorized
4 Claimants as if the entire Net Settlement Fund were to be distributed
5 now. In accordance with the Court-approved Plan of Allocation,
6 A.B. Data will calculate each Authorized Claimant's *pro rata* share
7 of the Net Settlement Fund based on the amount of the Authorized
8 Claimant's Recognized Claim in comparison to the total Recognized
9 Claims of all Authorized Claimants. *See* Notice ¶¶ 88, 89.

10 (2) A.B. Data will, pursuant to the terms of the Plan of Allocation,
11 eliminate from the Initial Distribution any Authorized Claimant
12 whose *pro rata* share calculates to less than \$10.00. *See id.* ¶ 90.
13 These Claimants will not receive any payment from the Net
14 Settlement Fund and will be so notified by A.B. Data.

15 (3) After eliminating Claimants who would have received less than
16 \$10.00, A.B. Data will recalculate the *pro rata* share of the Net
17 Settlement Fund for Authorized Claimants who would have
18 received \$10.00 or more. A "Distribution Amount" will be
19 calculated for each of these Authorized Claimants, which shall be
20 the Authorized Claimant's Recognized Claim divided by the total
21 Recognized Claims of all Authorized Claimants who would have
22 received \$10.00 or more, multiplied by the total amount in the Net
23 Settlement Fund. *See id.* ¶ 91.

24 (4) Authorized Claimants whose Distribution Amount calculates to less
25 than \$200.00 will be paid their full Distribution Amount in the Initial
26 Distribution ("Claims Paid in Full"). These Authorized Claimants
27 will receive no additional funds in subsequent distributions.
28

1 (5) After deducting the payments to the Claims Paid in Full, 95% of the
2 remaining balance of the Net Settlement Fund will be distributed
3 *pro rata* to Authorized Claimants whose Distribution Amount
4 calculates to \$200.00 or more. The remaining 5% of the Net
5 Settlement Fund will be held in reserve (the “Reserve”) to address
6 any tax liability and claims administration-related contingencies that
7 may arise following the Initial Distribution. To the extent the
8 Reserve is not depleted, the remainder will be distributed in the
9 “Second Distribution” described in subparagraph (d) below.

10 (b) To encourage Authorized Claimants to deposit their payments promptly, all
11 distribution checks will bear a notation: “CASH PROMPTLY. VOID AND
12 SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 120
13 DAYS AFTER ISSUE DATE].” For Authorized Claimants whose checks
14 are returned as undeliverable, A.B. Data will endeavor to locate new
15 addresses through reasonable methods. Where a new address is located,
16 A.B. Data will update the Settlement Database accordingly and reissue a
17 distribution check to the Authorized Claimant at the new address. In the
18 event a distribution check is lost or damaged or otherwise requires
19 reissuance, A.B. Data will issue replacements. Distribution reissues will be
20 undertaken only upon written instructions from the Authorized Claimant,
21 provided that the Authorized Claimant returns the previous check where
22 appropriate. For all checks, A.B. Data will void the initial payment prior to
23 reissuing a payment. In order not to delay further distributions to Authorized
24 Claimants who have timely cashed their checks, A.B. Data’s outreach
25 program shall end thirty (30) days after the initial void date. Authorized
26 Claimants will be informed that, if they do not cash their Initial Distribution
27 checks within ninety (90) days of the mail date, or they do not cash check
28 reissues within thirty (30) days of the mailing of such reissued check, their

1 check will lapse, their entitlement to recovery will be irrevocably forfeited,
2 and the funds will be reallocated to other Authorized Claimants. Reissue
3 requests for lost or damaged checks will be granted after the void date on
4 the checks as long as the request for the reissue is received no later than
5 forty-five (45) days prior to the next planned distribution. Requests for
6 reissued checks in connection with any subsequent distributions (should
7 such distributions occur) will be handled in the same manner.

8 (c) Authorized Claimants who do not cash their Initial Distribution checks
9 within the time allotted or on the conditions set forth above will irrevocably
10 forfeit all recovery from the Settlement. The funds allocated to all such
11 stale-dated checks will be available for distribution to other Authorized
12 Claimants in the Second Distribution. Similarly, Authorized Claimants who
13 do not cash their second or subsequent distribution checks, should such
14 distributions occur, within the time allotted or on the conditions set forth
15 above will irrevocably forfeit any further recovery from the Net Settlement
16 Fund.

17 (d) Consistent with the Court-approved Plan of Allocation, after A.B. Data has
18 made reasonable and diligent efforts to have Authorized Claimants cash
19 their Initial Distribution checks, which efforts shall consist of the follow-up
20 efforts described above, but not earlier than seven (7) months after the Initial
21 Distribution, A.B. Data will, after consulting with Lead Counsel, conduct a
22 second distribution of the Net Settlement Fund (“Second Distribution”). *See*
23 *id.* ¶ 91. Any amounts remaining in the Net Settlement Fund after the Initial
24 Distribution, including from the Reserve and the funds allocated for all void
25 stale-dated checks, after deducting A.B. Data’s unpaid fees and expenses
26 incurred in connection with administering the Settlement, including A.B.
27 Data’s estimated costs of the Second Distribution, and after deducting the
28 payment of any estimated taxes, the costs of preparing appropriate tax

1 returns, any escrow fees, and appropriate reserves, will be distributed to all
2 Authorized Claimants in the Initial Distribution (other than Claims Paid in
3 Full) who cashed their distribution checks and who would receive at least
4 \$10.00 in the Second Distribution based on their *pro rata* share of the
5 remaining funds. *See id.* Additional distributions, after deduction of costs
6 and expenses as described above and subject to the same conditions, may
7 occur thereafter at six-month intervals until Lead Counsel, in consultation
8 with A.B. Data, determines that further distribution is not cost-effective. *See*
9 *id.*

10 (e) At such time as Lead Counsel, in consultation with A.B. Data, determines
11 that further distribution of the funds remaining in the Net Settlement Fund
12 is not cost-effective, if sufficient funds remain to warrant the processing of
13 Claims received after April 8, 2024, those Claims will be processed, and
14 any otherwise valid Claims received after April 8, 2024, as well as any
15 earlier-received Claims for which an adjustment was received after April 8,
16 2024, that resulted in an increased Recognized Claim, will be paid in
17 accordance with subparagraph (f) below. If any funds remain in the Net
18 Settlement Fund after payment of these late or late-adjusted Claims, the
19 remaining balance of the Net Settlement Fund, after payment of any unpaid
20 fees or expenses incurred in connection with administering the Net
21 Settlement Fund and after the payment of any estimated taxes, the costs of
22 preparing appropriate tax returns, and any escrow fees, will be contributed
23 to the Investor Protection Trust (“IPT”). *See id.*

24 (f) No new Claims may be accepted after April 8, 2024, and no further
25 adjustments to Claims received on or before April 8, 2024, that would result
26 in an increased Recognized Claim may be made for any reason after April
27 8, 2024, subject to the following exception. If Claims are received or
28 modified after April 8, 2024, that would have been eligible for payment or

1 additional payment under the Plan of Allocation if timely received, then at
2 the time that Lead Counsel, in consultation with A.B. Data, determines that
3 an additional distribution is not cost-effective as provided in subparagraph
4 (e) above, and after payment of any unpaid fees or expenses incurred in
5 connection with administering the Net Settlement Fund and after deducting
6 the payment of any estimated taxes, the costs of preparing appropriate tax
7 returns, and any escrow fees, such Claimants, at the discretion of Lead
8 Counsel and to the extent possible, may be paid the distribution amounts or
9 additional distribution amounts on a *pro rata* basis that would bring them
10 into parity with other Authorized Claimants who have cashed all their prior
11 distribution checks.

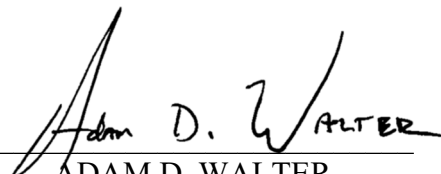
12 (g) Unless otherwise ordered by the Court, A.B. Data may destroy the paper
13 copies of the Claims and all supporting documentation one (1) year after the
14 Initial Distribution, and one (1) year after all funds have been distributed
15 may destroy the electronic copies of the same.

16 **CONCLUSION**

17 44. A.B. Data respectfully requests that the Court enter the Class Distribution Order
18 approving its administrative determinations accepting and rejecting the Claims submitted herein
19 and approving the proposed Distribution Plan. A.B. Data further respectfully submits that its
20 unpaid fees and expenses and its fees and expenses expected to be incurred in connection with the
21 Initial Distribution, as reflected on the invoices attached hereto as Exhibit G, should be approved
22 for payment from the Settlement Fund.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct to the best of my knowledge.

25 Executed on April 15th, 2024

26
27 
28 ADAM D. WALTER