

EXECUTION COPY

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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

**STIPULATION AND AGREEMENT OF
SETTLEMENT**

Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

1 This Stipulation and Agreement of Settlement dated as of April 24, 2023 (“Stipulation”) is
2 entered into between (i) Lead Plaintiff Arbejdsmarkedets Tillægspension (“Lead Plaintiff”), on
3 behalf of itself and the Settlement Class, and (ii) Defendants BioMarin Pharmaceutical, Inc.
4 (“BioMarin” or the “Company”), Jean-Jacques Bienaimé, and Dr. Henry Fuchs (collectively, the
5 “Individual Defendants” and, with BioMarin, “Defendants”). This Stipulation embodies the terms
6 and conditions of the settlement of the above-captioned action (“Action”).¹ Subject to the approval
7 of the Court and the terms and conditions expressly provided herein, this Stipulation is intended
8 to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the
9 Action and all Released Plaintiffs’ Claims (defined below) against Defendants.

10 WHEREAS:

11 A. On September 25, 2020, Bill Tsantes brought a putative class action, Case No. 3:20-
12 cv-06179-WHO, in the United States District Court for the Northern District of California (the
13 “Court”), against BioMarin and certain of its executives, alleging violations of the Securities
14 Exchange Act of 1934 (the “Exchange Act”). ECF No. 1.

15 B. On December 22, 2020, the Court (the Honorable William H. Orrick) appointed
16 Arbejdsmarkedets Tillægspension as Lead Plaintiff for the Action and approved Bernstein
17 Litowitz Berger & Grossmann LLP as Lead Counsel under the Private Securities Litigation
18 Reform Act (“PSLRA”), 15 U.S.C. § 78u-4. ECF No. 40.

19 C. On February 22, 2021, Lead Plaintiff filed an Amended Class Action Complaint
20 (the “Complaint”). ECF No. 54. The Complaint asserted claims on behalf of all persons and entities
21 who purchased the publicly traded common stock of BioMarin from March 3, 2020 through
22 August 18, 2020, inclusive (the “Class Period”) and were damaged thereby. *Id.* at 1. The Complaint
23 alleged that Defendants made materially false and misleading statements or omissions concerning
24 BioMarin’s application to the Food and Drug Administration (“FDA”) for approval of the
25 Company’s gene therapy for hemophilia called valrox. *Id.* ¶ 1. The Complaint asserted (i) claims

26
27 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed
28 to them in ¶ 1 below.

1 under Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. §
2 240.10b-5, promulgated thereunder, against all Defendants and (ii) claims under Section 20(a) of
3 the Exchange Act, 15 U.S.C. § 78t(a) against the Individual Defendants.

4 D. On April 22, 2021, Defendants moved to dismiss the Complaint asserting (among
5 other things) that Lead Plaintiff failed to sufficiently allege: (i) any actionable misrepresentation
6 or (ii) that Defendants acted with scienter in making any alleged misrepresentation. ECF No. 59.
7 On June 22, 2021, Lead Plaintiff filed its opposition, and on July 22, 2021, Defendants filed their
8 reply. ECF Nos. 63, 65. The Court held oral argument on Defendants' motion to dismiss on
9 December 3, 2021. ECF No. 73.

10 E. On January 6, 2022, the Court denied Defendants' motion to dismiss in its entirety.
11 ECF No. 77. Defendants filed a motion for reconsideration of the Court's order sustaining the
12 Complaint on January 28, 2022, and the Court denied the motion on February 28, 2022. ECF Nos.
13 85, 88.

14 F. Defendants filed their answer to the Complaint on February 15, 2022. ECF No. 86.

15 G. On October 17, 2022, Lead Plaintiff filed a motion for class certification and
16 appointment of class representative and class counsel, which was accompanied by an expert report
17 from Lead Plaintiff's expert, Dr. Michael Hartzmark, on market efficiency and common damages
18 methodologies. ECF No. 110. In connection with Lead Plaintiff's motion for class certification,
19 Defendants deposed two representatives of Lead Plaintiff and Dr. Hartzmark.

20 H. The Parties began exploring the possibility of a settlement in the summer of 2022.
21 The Parties agreed to engage in private mediation and retained Michelle Yoshida to act as mediator
22 in the Action (the "Mediator"). On December 5, 2022, counsel for the Parties participated in a full-
23 day mediation session before the Mediator. In advance of that session, the Parties exchanged and
24 submitted detailed mediation statements to the Mediator. The session ended without any agreement
25 being reached.

26 I. The Parties met and conferred as their discovery efforts continued—exchanging
27 numerous letters, including joint statements concerning discovery disputes that they submitted to
28 the Court, concerning disputed discovery issues over several months. Over the course of discovery,

1 Defendants produced more than 675,000 pages of documents, and Lead Counsel reviewed those
2 documents on a rolling basis as Defendants produced them. The Parties deposed BioMarin’s
3 former Senior Director of Business Development & Strategy in January 2023, and had noticed or
4 were scheduling the dates for 15 additional depositions.

5 J. Defendants filed their opposition to Lead Plaintiff’s motion for class certification
6 on January 27, 2023. ECF No. 119.

7 K. In January 2023, the Parties renewed their settlement discussions and agreed to
8 engage in a second full-day session before the Mediator on March 8, 2023. At the conclusion of
9 the mediation, the Parties reached an agreement in principle to settle the Action. The agreement’s
10 terms were memorialized in a term sheet executed on March 14, 2023 (the “Term Sheet”). The
11 Term Sheet set forth, among other things, the Parties’ agreement to settle and release all claims
12 against Defendants in the Action in return for a cash payment of \$39,000,000 for the benefit of the
13 Settlement Class, subject to certain terms and conditions and the execution of a customary “long
14 form” stipulation and agreement of settlement and related papers.

15 L. This Stipulation (together with the exhibits hereto) reflects the final and binding
16 agreement between the Parties and supersedes the Term Sheet.

17 M. Based upon their investigation, prosecution, and mediation of the case, Lead
18 Plaintiff and Lead Counsel have concluded that the terms and conditions of this Stipulation are
19 fair, reasonable, and adequate to Lead Plaintiff and the other members of the Settlement Class, and
20 in their best interests. Based on Lead Plaintiff’s direct oversight of the prosecution of this matter
21 and with the advice of its counsel, Lead Plaintiff has agreed to settle and release Lead Plaintiff’s
22 Claims pursuant to the terms and provisions of this Stipulation, after considering, among other
23 things: (a) the substantial financial benefit that Lead Plaintiff and the other members of the
24 Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs
25 of continued litigation and trial.

26 N. This Stipulation constitutes a compromise of all matters that are in dispute between
27 the Parties. Defendants are entering into this Stipulation solely to eliminate the uncertainty, burden,
28 and expense of further protracted litigation. Each of the Defendants denies any wrongdoing, and

1 this Stipulation shall in no event be construed or deemed to be evidence of or an admission or
2 concession on the part of Defendants with respect to any claim or allegation of any fault or liability
3 or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have, or
4 could have, asserted. Defendants expressly deny that Lead Plaintiff has asserted any valid claims
5 as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or
6 damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be
7 evidence of or an admission or concession on the part of Lead Plaintiff of any infirmity in any of
8 the claims asserted in the Action, or an admission or concession that any of the Defendants'
9 defenses to liability had any merit.

10 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead
11 Plaintiff (individually and on behalf of all other members of the Settlement Class) and Defendants,
12 by and through their respective undersigned attorneys and subject to the approval of the Court
13 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits
14 flowing to the Parties from the Settlement, all Released Plaintiffs' Claims as against the
15 Defendants' Releasees and all Released Defendants' Claims as against the Plaintiffs' Releasees
16 shall be settled and released, upon and subject to the terms and conditions set forth below.

17 DEFINITIONS

18 1. As used in this Stipulation and any exhibits attached hereto and made a part hereof,
19 the following capitalized terms shall have the following meanings:

20 (a) "Action" means the securities class action styled *In re BioMarin*
21 *Pharmaceutical Inc. Securities Litigation*, Case No. 3:20-cv-06719-WHO (N.D. Cal.).

22 (b) "Alternate Judgment" means a form of final judgment that may be entered
23 by the Court herein but in a form other than the form of Judgment provided for in this Stipulation.

24 (c) "Authorized Claimant" means a Settlement Class Member who submits a
25 Claim to the Claims Administrator that is approved by the Court for payment from the Net
26 Settlement Fund.

27 (d) "BioMarin" or the "Company" means the BioMarin Pharmaceutical Inc.

28 (e) "Claim" means a paper claim submitted on a Proof of Claim Form or an

1 electronic claim that is submitted to the Claims Administrator.

2 (f) “Claim Form” or “Proof of Claim Form” means the form, substantially in
3 the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must complete and submit
4 should that Claimant seek to share in a distribution of the Net Settlement Fund.

5 (g) “Claimant” means a person or entity who or which submits a Claim to the
6 Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

7 (h) “Claims Administrator” means the firm retained by Lead Counsel, subject to
8 approval of the Court, to provide all notices approved by the Court to potential Settlement Class
9 Members and to administer the Settlement.

10 (i) “Class Distribution Order” means an order entered by the Court authorizing
11 and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized
12 Claimants.

13 (j) “Class Period” means the period from March 3, 2020 through August 18,
14 2020, inclusive.

15 (k) “Complaint” means the Amended Class Action Complaint for Violations of
16 the Federal Securities Laws filed by Lead Plaintiff in the Action on February 22, 2021.

17 (l) “Court” means the United States District Court for the Northern District of
18 California.

19 (m) “Defendants” means BioMarin and the Individual Defendants.

20 (n) “Defendants’ Counsel” means Cooley LLP.

21 (o) “Defendants’ Releasees” means Defendants and their current and former
22 parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns,
23 assignees, partnerships, partners, trustees, trusts, employees, Immediate Family members,
24 insurers, reinsurers, and attorneys, in their capacities as such.

25 (p) “Effective Date” with respect to the Settlement means the first date by which
26 all of the events and conditions specified in ¶ 31 of this Stipulation have been met and have
27 occurred or have been waived.

1 (q) “Escrow Account” means an account maintained at Citibank, N.A. wherein
2 the Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

3 (r) “Escrow Agent” means Citibank, N.A.

4 (s) “Escrow Agreement” means the agreement between Lead Counsel and the
5 Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow
6 Account.

7 (t) “Final,” with respect to the Judgment or, if applicable, the Alternate
8 Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of the time
9 provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, i.e.,
10 thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment
11 or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding
12 on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal,
13 the expiration of the time to file a petition for a writ of certiorari or other form of review, or the
14 denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is
15 granted, the date of final affirmance following review pursuant to that grant. However, any appeal
16 or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect
17 to (i) attorneys’ fees, costs, or expenses, or (ii) the plan of allocation of Settlement proceeds (as
18 submitted or subsequently modified), shall not in any way delay or preclude a judgment from
19 becoming Final.

20 (u) “Immediate Family” means, as defined in 17 C.F.R § 229.404, Instructions
21 1(a)(iii) and 1(b)(ii), children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-
22 law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and any persons
23 (other than a tenant or employee) sharing the household.

24 (v) “Individual Defendants” means Jean-Jacques Bienaimé and Dr. Henry
25 Fuchs.

26 (w) “Judgment” means the final judgment, substantially in the form attached
27 hereto as Exhibit B, to be entered by the Court approving the Settlement.

28 (x) “Lead Counsel” means Bernstein Litowitz Berger & Grossmann LLP.

1 (y) “Lead Plaintiff” or “ATP” means Arbejdsmarkedets Tillægspension.

2 (z) “Litigation Expenses” means the costs and expenses incurred in connection
3 with commencing, prosecuting, and settling the Action, for which Lead Counsel intend to apply to
4 the Court for payment or reimbursement from the Settlement Fund.

5 (aa) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes;
6 (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court;
7 (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the
8 Court.

9 (bb) “Notice” means the Notice of (I) Pendency of Class Action and Proposed
10 Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses,
11 substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to
12 potential Settlement Class Members.

13 (cc) “Notice and Administration Costs” means the costs, fees, and expenses that
14 are incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing
15 notices to the Settlement Class; and (ii) administering the Settlement, including but not limited to
16 the Claims process, as well as the costs, fees, and expenses incurred in connection with the Escrow
17 Account.

18 (dd) “Officer” means an officer as that term is defined in Securities and Exchange
19 Act Rule 16a-1(f), 17 C.F.R § 229.16a-1(f).

20 (ee) “Parties” means Defendants and Lead Plaintiff, on behalf of itself and the
21 Settlement Class.

22 (ff) “Plaintiffs’ Releasees” means Lead Plaintiff, all other plaintiffs in the
23 Action, and all other Settlement Class Members, and their respective current and former parents,
24 affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees,
25 partnerships, partners, trustees, trusts, employees, Immediate Family members, insurers,
26 reinsurers, and attorneys, in their capacities as such.

27 (gg) “Plan of Allocation” means the proposed plan of allocation of the Net
28 Settlement Fund set forth in the Notice.

1 (hh) “Preliminary Approval Order” means the order, substantially in the form
2 attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement
3 and directing that notice of the Settlement be provided to the Settlement Class.

4 (ii) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15
5 U.S.C. §§ 77z-1, 78u-4, as amended.

6 (jj) “Released Claims” means all Released Defendants’ Claims and all Released
7 Plaintiffs’ Claims.

8 (a) “Released Defendants’ Claims” means all claims and causes of action of
9 every nature and description, known or unknown (including Unknown Claims, defined below)
10 whether arising under federal, state, common, or foreign law, that arise out of or are based upon
11 the institution, prosecution, or settlement of the claims against Defendants. This release does not
12 cover, include, or release (i) any claims relating to the enforcement of the Settlement; or (ii) any
13 claims against any person or entity who or which submits a request for exclusion from the
14 Settlement Class that is accepted by the Court.

15 (kk) “Released Plaintiffs’ Claims” means all claims and causes of action of every
16 nature and description, known or unknown (including Unknown Claims, defined below), whether
17 arising from federal, state, foreign, or common law, (i) alleged by Lead Plaintiff in the Action; or
18 (ii) that have been, could have been, or in the future can or might be asserted in the Action or in
19 any action or proceeding in any forum against Defendants’ Releasees arising from, or based upon,
20 or relating in any way to the allegations, acts, transactions, facts, events, matters, representations
21 or omissions involved, set forth, alleged or referred to in the Action and the purchase or acquisition
22 of BioMarin common stock during the Class Period. This release does not cover, include, or release
23 (i) any claims asserted in *Berlinger v. BioMarin Pharmaceutical Inc. et al.*, No. 3:21-cv-08254-
24 MMC (N.D. Cal.); (ii) any claims asserted in any shareholder derivative action, including *Wang*
25 *v. Bienaimé at al.*, No. 2023-0058-NAC (Del. Ch.); (iii) any claims related to enforcement of the
26 Settlement; or (iv) any claims of any person or entity who or which submits a request for exclusion
27 from the Settlement Class that is accepted by the Court.

1 (ll) “Releasee(s)” means each and any of the Defendants’ Releasees and each
2 and any of the Plaintiffs’ Releasees.

3 (mm) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

4 (nn) “Settlement” means the settlement between Lead Plaintiff and Defendants
5 on the terms and conditions set forth in this Stipulation.

6 (oo) “Settlement Amount” means \$39,000,000 in cash.

7 (pp) “Settlement Class” means all persons who purchased or otherwise acquired
8 BioMarin common stock during the Class Period and were damaged thereby. Excluded from the
9 Settlement Class are: (1) Defendants; (2) any current or former Officers or directors of BioMarin;
10 (3) the Immediate Family members of any Defendant or any current or former Officer or director
11 of BioMarin; (4) any entity that any Defendant owns or controls, or owned or controlled, during
12 the Class Period; and (5) the plaintiffs in *Alger Capital Appreciation Fund et al. v. BioMarin*
13 *Pharmaceutical Inc. at al.*, Case 3:23-cv-00826 (N.D. Cal.) and any of their successors in interest.
14 Also excluded from the Settlement Class are any persons and entities who or which submit a
15 request for exclusion from the Settlement Class that is accepted by the Court.

16 (qq) “Settlement Class Member” means each person and entity who or which is a
17 member of the Settlement Class.

18 (rr) “Settlement Fund” means the Settlement Amount plus any and all interest
19 earned thereon.

20 (ss) “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2)
21 of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

22 (tt) “Summary Notice” means the Summary Notice of (I) Pendency of Class
23 Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and
24 Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be
25 published as set forth in the Preliminary Approval Order.

26 (uu) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including
27 any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the
28 expenses and costs incurred by Lead Counsel in connection with determining the amount of, and

1 paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax
2 attorneys and accountants).

3 (vv) “Unknown Claims” means any Released Plaintiffs’ Claims which Lead
4 Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its
5 favor at the time of the release of such claims, and any Released Defendants’ Claims which any
6 Defendant does not know or suspect to exist in his or its favor at the time of the release of such
7 claims, which, if known by him, her, or it, might have materially affected his, her, or its decision(s)
8 with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate
9 and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall
10 expressly waive, and each of the other Settlement Class Members shall be deemed to have waived,
11 and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly
12 waived, any and all provisions, rights, and benefits conferred by any law of any state or territory
13 of the United States, or principle of common law or foreign law, which is similar, comparable, or
14 equivalent to California Civil Code §1542, which provides:

15 A general release does not extend to claims that the creditor or releasing party does
16 not know or suspect to exist in his or her favor at the time of executing the release
17 and that, if known by him or her, would have materially affected his or her
settlement with the debtor or released party.

18 Lead Plaintiff and Defendants acknowledge, and each of the other Settlement Class Members shall
19 be deemed by operation of law to have acknowledged, that the foregoing waiver was separately
20 bargained for and a key element of the Settlement.

21 **CLASS CERTIFICATION**

22 2. Solely for purposes of the Settlement, Defendants stipulate and agree to:
23 (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal
24 Rules of Civil Procedure on behalf of the Settlement Class; (b) appointment of Lead Plaintiff as
25 Class Representative for the Settlement Class; and (c) appointment of Lead Counsel as Class
26 Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

1 **PRELIMINARY APPROVAL OF SETTLEMENT**

2 3. Within ten (10) business days of execution of this Stipulation, Lead Plaintiff will
3 move for preliminary approval of the Settlement, authorization to provide notice of the Settlement
4 to the Settlement Class, and the scheduling of a hearing for consideration of final approval of the
5 Settlement, which motion shall be unopposed by Defendants. Concurrently with the motion for
6 preliminary approval, Lead Plaintiff shall apply to the Court for, and Defendants shall agree to,
7 entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

8 **RELEASE OF CLAIMS**

9 4. The obligations incurred pursuant to this Stipulation are in consideration of: (a) the
10 full and final disposition of the Action as against Defendants; and (b) the Releases provided for
11 herein.

12 5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further
13 action by anyone, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other
14 Settlement Class Members, on behalf of themselves, and their respective heirs, executors,
15 administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed
16 to have, and by operation of law and of the judgment shall have, fully, finally, and forever
17 compromised, settled, released, resolved, relinquished, waived, and discharged each and every
18 Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and shall
19 forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims
20 against any of the Defendants' Releasees. This release shall not apply to any person or entity who
21 or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

22 6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further
23 action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves,
24 and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their
25 capacities as such, shall be deemed to have, and by operation of law and of the judgment shall
26 have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived,
27 and discharged each and every Released Defendants' Claim against Lead Plaintiff and the other
28 Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the

1 Released Defendants' Claims against any of the Plaintiffs' Releasees. This release shall not apply
2 to any person or entity who or which submits a request for exclusion from the Settlement Class
3 that is accepted by the Court.

4 7. Notwithstanding ¶¶ 5-6 above, nothing in the Judgment, or the Alternate Judgment,
5 if applicable, shall bar any action by any of the Parties to enforce or effectuate the terms of this
6 Stipulation or the Judgment, or Alternate Judgment, if applicable.

7 **THE SETTLEMENT CONSIDERATION**

8 8. In consideration of the settlement of the Released Plaintiffs' Claims against
9 Defendants and the other Defendants' Releasees, BioMarin, on behalf of Defendants, shall pay or
10 cause to be paid the Settlement Amount into the Escrow Account within twenty (20) business days
11 after the later of: (a) entry of an order preliminarily approving the Settlement, and (b) Defendants'
12 Counsel's receipt of all information necessary to effectuate a transfer of funds, including the bank
13 name and ABA routing number, address, account name and number, and a signed Form W-9.

14 **USE OF SETTLEMENT FUND**

15 9. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
16 Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys' fees
17 awarded by the Court; and (e) any other costs and fees approved by the Court. The balance
18 remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to
19 Authorized Claimants as provided in ¶¶ 20-26 below.

20 10. Except as provided herein or pursuant to orders of the Court, the Net Settlement
21 Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow
22 Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction
23 of the Court until such time as the funds shall be distributed or returned pursuant to the terms of
24 this Stipulation and/or further order of the Court. At the written direction of Lead Counsel, the
25 Escrow Account shall invest any funds in the Escrow Account exclusively in instruments or
26 accounts backed by the full faith and credit of the United States Government or fully insured by
27 the United States Government or an agency thereof, including a United States Treasury Fund or
28 bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation

1 (“FDIC”), or (b) secured by instruments backed by the full faith and credit of the United States
2 Government. The Escrow Agent shall reinvest the proceeds of these instruments or accounts as
3 they mature in similar instruments or accounts at their then-current market rates.

4 11. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement
5 Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as
6 administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3),
7 shall be solely responsible for filing or causing to be filed all informational and other tax returns
8 as may be necessary or appropriate (including, without limitation, the returns described in Treasury
9 Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for
10 causing payment to be made from the Settlement Fund of any Taxes owed with respect to the
11 Settlement Fund. Defendants’ Releasees shall not have any liability or responsibility for any such
12 Taxes. Upon written request, Defendants will provide to Lead Counsel the statement described in
13 Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within
14 the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are
15 necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back
16 election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement
17 Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all
18 actions as may be necessary or appropriate in connection therewith.

19 12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or
20 caused to be paid, by Lead Counsel and without further order of the Court. Any tax returns
21 prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with
22 the previous paragraph and in all events shall reflect that all Taxes on the income earned by the
23 Settlement Fund shall be paid out of the Settlement Fund as provided herein. Defendants’
24 Releasees shall have no responsibility or liability for the acts or omissions of Lead Counsel or their
25 agents with respect to the payment of Taxes, as described herein.

26 13. The Settlement is not a claims-made settlement. Upon the occurrence of the
27 Effective Date, no Defendant, Defendants’ Releasee, or any other person or entity (including
28 Defendants’ insurance carriers) who or which paid any portion of the Settlement Amount shall

1 have any right to the return of the Settlement Fund or any portion thereof for any reason
2 whatsoever, including without limitation, the number of Claims submitted, the collective amount
3 of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the
4 amounts to be paid to Authorized Claimants from the Net Settlement Fund.

5 14. Notwithstanding the fact that the Effective Date of the Settlement has not yet
6 occurred, Lead Counsel may pay from the Escrow Account, without further approval from
7 Defendants or further order of the Court, all Notice and Administration Costs actually incurred
8 and paid or payable. Notice and Administration Costs shall include, without limitation, the actual
9 costs of printing and mailing the Notice and Claim Form, developing the Settlement Website,
10 publishing the Summary Notice, reimbursements to nominee owners for searching and providing
11 the names/addresses of prospective Settlement Class Members for noticing or forwarding the
12 Notice and Claim Form directly to their beneficial owners, the administrative expenses incurred
13 and fees charged by the Claims Administrator in connection with providing notice and
14 administering the Settlement (including processing the submitted Claims), and the fees, if any, of
15 the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this
16 Stipulation, all Notice and Administration Costs paid or incurred shall not be returned or repaid to
17 Defendants or any other person or entity who or which paid any portion of the Settlement Amount.

18 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

19 15. Lead Counsel will apply to the Court for an award of attorneys' fees to be paid
20 solely from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for
21 payment of Litigation Expenses, which may include a request for reimbursement of Lead
22 Plaintiff's costs and expenses directly related to its representation of the Settlement Class, to be
23 paid solely from (and out of) the Settlement Fund. Lead Counsel's application for attorneys' fees
24 and/or Litigation Expenses is not the subject of any agreement between Defendants and Lead
25 Plaintiff other than what is set forth in this Stipulation.

26 16. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be
27 paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed
28 objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any

1 part thereof, subject to Lead Counsel's obligation to refund or repay to the Settlement Fund, plus
2 accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is
3 terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further
4 proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or
5 Litigation Expenses is reduced or reversed and such order reducing or reversing the award has
6 become Final. Lead Counsel shall make any refund or repayment in full no later than thirty (30)
7 days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or
8 (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has
9 become Final. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of
10 this Stipulation and is not a condition of the Settlement embodied herein. Neither Lead Plaintiff
11 nor Lead Counsel may cancel or terminate the Settlement based on this Court's or any appellate
12 court's ruling with respect to attorneys' fees and/or Litigation Expenses. Lead Counsel's fee and
13 expense application shall be treated by the Court separately from the fairness, reasonableness, and
14 adequacy of the Settlement.

15 **NOTICE AND SETTLEMENT ADMINISTRATION**

16 17. As part of the Preliminary Approval Order, Lead Counsel shall seek appointment
17 of a Claims Administrator. The Claims Administrator shall administer the Settlement, including
18 but not limited to the process of receiving, reviewing, and approving or denying Claims, under
19 Lead Counsel's supervision and subject to the jurisdiction of the Court. None of the Defendants,
20 nor any other Defendants' Releasees, shall have any involvement in or any responsibility,
21 authority, or liability whatsoever for the selection of the Claims Administrator, the Plan of
22 Allocation, the administration of the Settlement, the Claims process, or disbursement of the Net
23 Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not
24 limited to, Plaintiffs, any other Settlement Class Members, or Lead Counsel in connection with
25 the foregoing. Defendants and Defendants' Counsel shall cooperate in the administration of the
26 Settlement to the extent reasonably necessary to effectuate its terms.

27 18. In accordance with the terms of the Preliminary Approval Order to be entered by
28 the Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Claim Form

1 to those members of the Settlement Class as may be identified through reasonable effort. Lead
2 Counsel shall also cause the Claims Administrator to post the Notice and Claim Form on the
3 Settlement Website as well as cause the Claims Administrator to have the Summary Notice
4 published in accordance with the terms of the Preliminary Approval Order to be entered by the
5 Court. For the purposes of identifying and providing notice to the Settlement Class, within ten (10)
6 business days after the Court's entry of the Preliminary Approval Order, BioMarin shall provide
7 or cause to be provided to the Claims Administrator in electronic format (such as Excel) (at no
8 cost to the Settlement Fund, Lead Plaintiff, the Settlement Class, Lead Counsel or the Claims
9 Administrator) a list, consisting of names, addresses, and e-mail addresses (if available), of record
10 purchasers of BioMarin common stock during the Class Period.

11 19. No later than ten (10) calendar days following the filing of this Stipulation with the
12 Court, Defendants shall serve the notice required under the Class Action Fairness Act, 28 U.S.C.
13 § 1715 et seq. ("CAFA"). Defendants are solely responsible for the costs of the CAFA notice and
14 administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing,
15 Defendants shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit
16 or declaration, regarding compliance with CAFA § 1715(b). The Parties agree that any delay by
17 Defendants in timely serving the CAFA notice will not provide grounds for delay of the Settlement
18 Hearing or entry of the Judgment.

19 20. The Claims Administrator shall receive Claims and determine first, whether the
20 Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share
21 of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared
22 to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation
23 set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation
24 as the Court approves).

25 21. The Plan of Allocation proposed in the Notice is not a necessary term of the
26 Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation
27 that any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel
28 may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any

1 appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this
2 Action. No Defendant, nor any other Defendants' Releasees, shall have any involvement with or
3 liability, obligation, or responsibility whatsoever for the application of the Court-approved plan of
4 allocation.

5 22. Any Settlement Class Member who does not submit a valid Claim will not be
6 entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by
7 all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or, the
8 Alternate Judgment, if applicable, to be entered in the Action and the Releases provided for herein
9 and therein, and will be permanently barred and enjoined from bringing any action, claim, or other
10 proceeding of any kind against the Defendants' Releasees with respect to the Released Plaintiffs'
11 Claims in the event that the Effective Date occurs with respect to the Settlement.

12 23. Lead Counsel shall be responsible for supervising the administration of the
13 Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No
14 Defendant, or any other Defendants' Releasees, shall be permitted to review, contest, or object to
15 any Claim, or any decision of the Claims Administrator or Lead Counsel with respect to accepting
16 or rejecting any Claim for payment. Lead Counsel shall have the right, but not the obligation, to
17 waive what they deem to be formal or technical defects in any Claims submitted in the interests of
18 achieving substantial justice.

19 24. For purposes of determining the extent, if any, to which a Settlement Class Member
20 shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

21 (a) Each Claimant shall be required to submit a Claim in paper form,
22 substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form, in
23 accordance with the instructions for the submission of such Claims, and supported by such
24 documents as are designated therein, including proof of the Claimant's loss, or such other
25 documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may
26 deem acceptable;

27 (b) All Claims must be submitted by the date set by the Court in the Preliminary
28 Approval Order and specified in the notices. Any Settlement Class Member who fails to

1 submit a Claim by such date shall be forever barred from receiving any distribution from
2 the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the
3 Court such Settlement Class Member's Claim is accepted), but shall in all other respects
4 be bound by all of the terms of this Stipulation and the Settlement, including the terms of
5 the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein
6 and therein, and will be permanently barred and enjoined from bringing any action, claim,
7 or other proceeding of any kind against any Defendants' Releasees with respect to any
8 Released Plaintiffs' Claim. Provided that it is mailed by the claim-submission deadline, a
9 Claim Form shall be deemed to be submitted when postmarked, if received with a postmark
10 indicated on the envelope and if mailed by first-class mail and addressed in accordance
11 with the instructions thereon. In all other cases, the Claim Form shall be deemed to have
12 been submitted on the date when actually received by the Claims Administrator;

13 (c) Each Claim shall be submitted to and reviewed by the Claims Administrator
14 who shall determine in accordance with this Stipulation and the plan of allocation the
15 extent, if any, to which each Claim shall be allowed, subject to review by the Court
16 pursuant to subparagraph (e) below as necessary;

17 (d) Claims that do not meet the submission requirements may be rejected. Prior
18 to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with
19 the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies
20 in the Claim submitted. The Claims Administrator shall notify, in a timely fashion and in
21 writing, all Claimants whose Claim the Claims Administrator proposes to reject in whole
22 or in part, setting forth the reasons therefor, and shall indicate in such notice that the
23 Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant
24 so desires and complies with the requirements of subparagraph (e) below; and

25 (e) If any Claimant whose Claim has been rejected in whole or in part desires
26 to contest such rejection, the Claimant must, within twenty (20) days after the date of
27 mailing of the notice required in subparagraph (d) above, or a lesser time period if the
28 Claim was untimely, serve upon the Claims Administrator a notice and statement of

1 reasons indicating the Claimant's grounds for contesting the rejection along with any
2 supporting documentation, and requesting a review thereof by the Court. If a dispute
3 concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present
4 the request for review to the Court.

5 25. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court
6 with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery
7 under the Federal Rules of Civil Procedure, provided, however, that such investigation and
8 discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity
9 and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action
10 or of the Settlement in connection with the processing of Claims.

11 26. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class
12 Distribution Order: (a) approving the Claims Administrator's administrative determinations
13 concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any
14 unpaid administration fees and expenses associated with the administration of the Settlement from
15 the Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net
16 Settlement Fund to Authorized Claimants from the Escrow Account.

17 27. Payment pursuant to the Class Distribution Order shall be final and conclusive
18 against all Claimants. All Settlement Class Members whose Claims are not approved by the Court
19 for payment shall be barred from participating in distributions from the Net Settlement Fund, but
20 otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the
21 terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the
22 Releases provided for herein and therein, and will be permanently barred and enjoined from
23 bringing any action against any and all Defendants' Releasees with respect to any and all of the
24 Released Plaintiffs' Claims.

25 28. No person or entity shall have any claim against Lead Plaintiff, Lead Counsel, the
26 Claims Administrator, or any other agent designated by Lead Counsel, or Defendants' Releasees
27 and/or their respective counsel, arising from distributions made substantially in accordance with
28 the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Lead

1 Plaintiff and Defendants, and their respective counsel, and Lead Plaintiff's damages expert and all
2 other Releasees shall have no liability whatsoever for the investment or distribution of the
3 Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination,
4 administration, calculation, or payment of any claim or nonperformance of the Claims
5 Administrator, the payment or withholding of taxes (including interest and penalties) owed by the
6 Settlement Fund, or any losses incurred in connection therewith.

7 29. All proceedings with respect to the administration, processing and determination of
8 Claims and the determination of all controversies relating thereto, including disputed questions of
9 law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.
10 All Settlement Class Members, other Claimants, and Parties to this Stipulation expressly waive
11 trial by jury (to the extent any such right may exist) and any right of appeal or review with respect
12 to such determinations.

13 **TERMS OF THE JUDGMENT**

14 30. If the Settlement contemplated by this Stipulation is approved by the Court, Lead
15 Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in
16 the form attached hereto as Exhibit B.

17 **CONDITIONS OF SETTLEMENT AND EFFECT OF**
18 **DISAPPROVAL, CANCELLATION OR TERMINATION**

19 31. The Effective Date of the Settlement shall be deemed to occur on the occurrence or
20 waiver of all of the following events:

21 (a) the Court has entered the Preliminary Approval Order, substantially in the
22 form set forth in Exhibit A attached hereto, as required by ¶ 3 above;

23 (b) the Settlement Amount has been deposited into the Escrow Account in
24 accordance with the provisions of ¶ 8 above;

25 (c) BioMarin has not exercised its option to terminate the Settlement pursuant
26 to the provisions of this Stipulation;

27 (d) Lead Plaintiff has not exercised its option to terminate the Settlement
28 pursuant to the provisions of this Stipulation; and

1 (e) the Court has approved the Settlement as described herein, following
2 notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal
3 Rules of Civil Procedure, and entered the Judgment and the Judgment has become
4 Final, or the Court has entered an Alternate Judgment and none of the Parties seek to
5 terminate the Settlement and the Alternate Judgment has become Final.

6 32. Upon the occurrence of all of the events referenced in ¶ 31 above, any and all
7 remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely
8 and forever extinguished and the Releases herein shall be effective.

9 33. If (i) BioMarin exercises its right to terminate the Settlement as provided in this
10 Stipulation; (ii) Lead Plaintiff exercise its right to terminate the Settlement as provided in this
11 Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the
12 Settlement otherwise fails to occur, then:

13 (a) The Settlement and the relevant portions of this Stipulation shall be
14 canceled and terminated;

15 (b) Lead Plaintiff and Defendants shall revert to their respective litigation
16 positions in the Action immediately prior to the execution of the Term Sheet on March 14,
17 2023;

18 (c) Neither Lead Plaintiff nor Defendants will use or rely on any statement,
19 document, admission, or agreement concerning the Settlement and/or settlement
20 discussions in the Action;

21 (d) The terms and provisions of this Stipulation, with the exception of this ¶ 33
22 and ¶¶ 14, 16, 37, and 57, shall have no further force and effect with respect to the Parties
23 and shall not be used in the Action or in any other proceeding for any purpose, and any
24 Judgment, or Alternate Judgment, if applicable, or order entered by the Court in accordance
25 with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

26 (e) Within five (5) business days after joint written notification of termination
27 is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement
28 Fund (including accrued interest thereon, and change in value as a result of the investment

1 of the Settlement Fund, and any funds received by Lead Counsel consistent with ¶ 16
2 above), less any Notice and Administration Costs actually incurred, paid or payable and
3 less any Taxes paid, due or owing shall be refunded by the Escrow Agent to Defendants
4 (or such other persons or entities as Defendants may direct). In the event that the funds
5 received by Lead Counsel consistent with ¶ 16 above have not been refunded to the
6 Settlement Fund within the five (5) business days specified in this paragraph, those funds
7 shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as
8 Defendants may direct) immediately upon their deposit into the Escrow Account consistent
9 with ¶ 16 above.

10 34. It is further stipulated and agreed that BioMarin and Lead Plaintiff shall each have
11 the right to terminate the Settlement and this Stipulation, by providing written notice of their
12 election to do so (“Termination Notice”) to the other Parties to this Stipulation within thirty (30)
13 days of: (a) the Court’s final refusal to enter the Preliminary Approval Order in any material
14 respect; (b) the Court’s final refusal to approve the Settlement or any material part thereof; (c) the
15 Court’s final refusal to enter the Judgment in any material respect as to the Settlement; (d) the date
16 upon which the Judgment is modified or reversed in any material respect by the United States
17 Court of Appeals for the Ninth Circuit or the United States Supreme Court; or (e) the date upon
18 which an Alternate Judgment is modified or reversed in any material respect by the United States
19 Court of Appeals for the Ninth Circuit or the United States Supreme Court, and the provisions of
20 ¶ 33 above shall apply. However, any decision or proceeding, whether in this Court or any
21 appellate court, with respect to an application for attorneys’ fees or Litigation Expenses or with
22 respect to any plan of allocation shall not be considered material to the Settlement, shall not affect
23 the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for
24 termination of the Settlement.

25 35. In addition to the grounds set forth in ¶ 34 above, BioMarin shall have the unilateral
26 right to terminate the Settlement in the event that Settlement Class Members timely and validly
27 requesting exclusion from the Settlement Class meet the conditions set forth in the confidential
28 supplemental agreement between Lead Plaintiff and BioMarin (“Supplemental Agreement”), in

1 accordance with the terms of that agreement. The Supplemental Agreement, which is being
2 executed concurrently herewith, shall not be filed with the Court and its terms shall not be
3 disclosed in any other manner (other than the statements herein and in the Notice, to the extent
4 necessary, or as otherwise provided in the Supplemental Agreement) unless the Court otherwise
5 directs or a dispute arises between Lead Plaintiff and BioMarin concerning its interpretation or
6 application, in which event the Parties shall submit the Supplemental Agreement to the Court in
7 camera and request that the Court afford it confidential treatment.

8 36. Lead Plaintiff shall also have the option to terminate the Settlement in the event
9 that the Settlement Amount has not been paid as provided for in ¶ 8 above, by providing written
10 notice of the election to terminate to Defendants' Counsel, and if, thereafter, there is a failure to
11 pay the Settlement Amount within five (5) business days of such written notice. For the avoidance
12 of doubt, the Settlement will not be terminated under this paragraph unless the Settlement Amount
13 is not paid within five business days after Lead Plaintiff provides written notice in accordance with
14 this paragraph.

15 **NO ADMISSION OF WRONGDOING**

16 37. Neither the Term Sheet, this Stipulation (whether or not consummated), including
17 the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation
18 that may be approved by the Court), the Parties' mediation and subsequent Settlement, the
19 communications and/or discussions leading to the execution of the Term Sheet and this Stipulation,
20 nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation,
21 and/or approval of the Settlement (including any arguments proffered in connection therewith):

22 (a) shall be offered against any of the Defendants' Releasees as evidence
23 of, or construed as, or deemed to be evidence of any presumption, concession, or
24 admission by any of the Defendants' Releasees with respect to the truth of any fact
25 alleged by Lead Plaintiff or the validity of any claim that was or could have been
26 asserted or the deficiency of any defense that has been or could have been asserted in
27 this Action or in any other litigation, or of any liability, negligence, fault, or other
28 wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to

1 for any other reason as against any of the Defendants' Releasees, in any arbitration
2 proceeding or other civil, criminal, or administrative action or proceeding, other than
3 such proceedings as may be necessary to effectuate the provisions of this Stipulation;

4 (b) shall be offered against any of the Plaintiffs' Releasees, as evidence of,
5 or construed as, or deemed to be evidence of any presumption, concession, or
6 admission by any of the Plaintiffs' Releasees that any of their claims are without merit,
7 that any of the Defendants' Releasees had meritorious defenses, or that damages
8 recoverable under the Complaint would not have exceeded the Settlement Amount or
9 with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any
10 way referred to for any other reason as against any of the Plaintiffs' Releasees, in any
11 arbitration proceeding or other civil, criminal, or administrative action or proceeding,
12 other than such proceedings as may be necessary to effectuate the provisions of this
13 Stipulation; or

14 (c) shall be construed against any of the Releasees as an admission,
15 concession, or presumption that the consideration to be given hereunder represents the
16 amount which could be or would have been recovered after trial;

17 *provided, however,* that if this Stipulation is approved by the Court, the Parties and the Releasees
18 and their respective counsel may refer to it to effectuate the protections from liability granted
19 hereunder or otherwise to enforce the terms of the Settlement.

20 **MISCELLANEOUS PROVISIONS**

21 38. All of the exhibits attached hereto are hereby incorporated by reference as though
22 fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or
23 inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto,
24 the terms of the Stipulation shall prevail.

25 39. Each Defendant warrants, as to the payments made or to be made on behalf of
26 himself or itself only, that at the time of entering into this Stipulation and at the time of such
27 payment they, or to the best of their knowledge any persons or entities contributing to the payment
28 of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on

1 behalf of them render them insolvent, within the meaning of and/or for the purposes of the United
2 States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each
3 of the Defendants and not by their counsel.

4 40. In the event of the entry of a final order of a court of competent jurisdiction
5 determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf
6 of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and
7 any portion thereof is required to be returned, and such amount is not promptly deposited into the
8 Settlement Fund by others, then, at the election of Lead Plaintiff, the Parties shall jointly move the
9 Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment, if
10 applicable, entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in
11 which event the Releases and Judgment, or Alternate Judgment, if applicable, shall be null and
12 void, and the Parties shall be restored to their respective positions in the litigation as provided in
13 ¶ 33(b) above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing
14 with respect to the Settlement Fund and less any Notice and Administration Costs actually
15 incurred, paid or payable) shall be returned as provided in ¶ 33(e) above.

16 41. The Parties intend this Stipulation and the Settlement to be a final and complete
17 resolution of all disputes asserted or which could be asserted by Lead Plaintiff and any other
18 Settlement Class Members against the Defendants' Releasees with respect to the Released
19 Plaintiffs' Claims. Lead Plaintiff and Defendants agree that each has complied fully with the
20 strictures of Rule 11 of the Federal Rules of Civil Procedure, and the proposed Judgment will
21 contain a statement to reflect this compliance. The Parties agree that the amounts paid and the
22 other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
23 including through a mediation process supervised and conducted by Michelle Yoshida, and reflect
24 the Settlement that was reached voluntarily after extensive negotiations and consultation with
25 experienced legal counsel, who were fully competent to assess the strengths and weaknesses of
26 their respective clients' claims or defenses.

27 42. While retaining their right to deny that the claims asserted in the Action were
28 meritorious, Defendants and their counsel, in any statement made to any media representative

1 (whether or not for attribution), will not assert that the Action was commenced or prosecuted in
2 bad faith. In all events, Lead Plaintiff and their counsel and Defendants and their counsel shall not
3 make any accusations of wrongful or actionable conduct by any Party concerning the prosecution,
4 defense, and resolution of the Action, and shall not otherwise suggest that the Settlement
5 constitutes an admission of any claim or defense alleged.

6 43. The terms of the Settlement, as reflected in this Stipulation, may not be modified
7 or amended, nor may any of its provisions be waived, except by a writing signed on behalf of both
8 Lead Plaintiff and Defendants (or their successors-in-interest) or their counsel.

9 44. The headings herein are used for the purpose of convenience only and are not meant
10 to have legal effect.

11 45. The administration and consummation of the Settlement as embodied in this
12 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
13 purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Lead
14 Counsel and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other
15 plan of allocation as may be approved by the Court) and the distribution of the Net Settlement
16 Fund to Settlement Class Members.

17 46. The waiver by one Party of any breach of this Stipulation by any other Party shall
18 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

19 47. This Stipulation and its exhibits and the Supplemental Agreement constitute the
20 entire agreement among Lead Plaintiff and Defendants concerning the Settlement and this
21 Stipulation and its exhibits. All Parties acknowledge that no other agreements, representations,
22 warranties, or inducements have been made by any Party hereto concerning this Stipulation, its
23 exhibits or the Supplemental Agreement other than those contained and memorialized in such
24 documents.

25 48. This Stipulation and the Supplemental Agreement may be executed in one or more
26 counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the
27 signature transmitted via email. All executed counterparts and each of them shall be deemed to be
28 one and the same instrument.

1 49. This Stipulation shall be binding upon and inure to the benefit of the successors and
2 assigns of the Parties, including any and all Releasees and any corporation, partnership, or other
3 entity into or with which any Party hereto may merge, consolidate, or reorganize.

4 50. The construction, interpretation, operation, effect, and validity of this Stipulation,
5 the Supplemental Agreement and all documents necessary to effectuate the Settlement shall be
6 governed by the internal laws of California without regard to conflicts of laws, except to the extent
7 that federal law requires that federal law govern.

8 51. Any action arising under or to enforce this Stipulation or any portion thereof shall
9 be commenced and maintained only in the Court.

10 52. This Stipulation shall not be construed more strictly against one Party than another
11 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of
12 the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties
13 and all Parties have contributed substantially and materially to the preparation of this Stipulation.

14 53. All counsel and any other person executing this Stipulation and any of the exhibits
15 hereto, or any related Settlement documents, warrant and represent that they have the full authority
16 to do so and that they have the authority to take appropriate action required or permitted to be
17 taken pursuant to the Stipulation to effectuate its terms.

18 54. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another
19 in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in
20 this Stipulation, and to use best efforts to promptly agree upon and execute all such other
21 documentation as may be reasonably required to obtain final approval by the Court of the
22 Settlement.

23 55. If any Party is required to give notice to another Party under this Stipulation, such
24 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand
25 delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided
26 as follows:
27
28

1 If to Lead Plaintiff or Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP
2 Attn: Salvatore J. Graziano
3 Katherine M. Sinderson
4 Abe Alexander
5 1251 Avenue of the Americas
6 New York, NY 10020
7 Tel: (212) 554-1400
8 Fax: (212) 554-1444
9 Email: salvatore@blbglaw.com
10 katiem@blbglaw.com
11 abe.alexander@blbglaw.com

12 If to Defendants or Defendants' Counsel: Cooley LLP
13 Attn: John C. Dwyer
14 Patrick E. Gibbs
15 Amanda A. Main
16 Brett De Jarnette
17 3175 Hanover Street
18 Palo Alto, CA 94304-1130
19 Tel: (650) 843 5000
20 Fax: (650) 849 7400
21 Email: dwyerjc@cooley.com
22 pgibbs@cooley.com
23 amain@cooley.com
24 bdejarnette@cooley.com

25 56. Except as otherwise provided herein, each Party shall bear its own costs.

26 57. Whether or not the Stipulation is approved by the Court and whether or not the
27 Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use
28 their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts,
documents signed, and proceedings in connection with the Stipulation confidential.

58. All agreements made and orders entered during the course of this Action relating
to the confidentiality of information shall survive this Settlement.

59. No opinion or advice concerning the tax consequences of the proposed Settlement
to individual Settlement Class Members is being given or will be given by the Parties or their
counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation.
Each Settlement Class Member's tax obligations, and the determination thereof, are the sole
responsibility of the Settlement Class Member, and it is understood that the tax consequences may
vary depending on the particular circumstances of each individual Settlement Class Member.

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed,
2 by their duly authorized attorneys, as of April 24, 2023.

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

5 

6 _____
7 SALVATORE GRAZIANO (*pro hac vice*)
8 (salvatore@blbglaw.com)
9 JEROEN VAN KWAWEGEN (*pro hac vice*)
10 (jeroen@blbglaw.com)
11 KATHERINE M. SINDERSON (*pro hac vice*)
12 (katiem@blbglaw.com)
13 ABE ALEXANDER (*pro hac vice*)
14 (abe.alexander@blbglaw.com)
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1 **IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed,
2 by their duly authorized attorneys, as of April 24, 2023.


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