



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

ELAINE WANG, derivatively on  
behalf of BIOMARIN  
PHARMACEUTICAL INC.,

Plaintiff,

v.

JEAN-JACQUES BIENAIMÉ,  
ELIZABETH MCKEE ANDERSON,  
WILLARD DERE, ELAINE J.  
HERON, ROBERT HOMBACH,  
BRYAN LAWLIS, RICHARD A.  
MEIER, DAVID E. I. PYOTT,  
DENNIS J. SLAMON, MICHAEL  
GREY, MARK J. ALLES, MAYKIN  
HO, and HENRY J. FUCHS,

Defendants,

and

BIOMARIN PHARMACEUTICAL  
INC.,

Nominal Defendant.

C.A. No. 2023-0058-NAC

Additional caption on next page

BILL TSANTES, on behalf of  
BIOMARIN PHARMACEUTICAL  
INC.,

Plaintiff,

v.

JEAN-JACQUES BIENAIMÉ,  
ELIZABETH MCKEE ANDERSON,  
WILLARD DERE, ELAINE J.  
HERON, ROBERT HOMBACH,  
BRYAN LAWLIS, RICHARD A.  
MEIER, DAVID E. I. PYOTT,  
DENNIS J. SLAMON, MICHAEL  
GREY, MARK J. ALLES, MAYKIN  
HO, and HENRY J. FUCHS,

Defendants,

and

BIOMARIN PHARMACEUTICAL  
INC., a Delaware Corporation,

Nominal Defendant.

C.A. No. 2023-0569-NAC

**STIPULATION OF COMPROMISE AND SETTLEMENT**

This Stipulation of Compromise and Settlement (the “Stipulation”) is made and entered into as of February 8, 2024, between and among: (a) plaintiffs Elaine Wang (“Wang”) and Bill Tsantes (“Tsantes” and collectively with Wang, “Plaintiffs”), on behalf of nominal defendant BioMarin Pharmaceuticals Inc. (“BioMarin” or the “Company”), in the above-captioned stockholder derivative actions (the “Derivative Actions”), (b) individual defendants Jean-Jacques Bienaimé

(“Bienaimé”), Elizabeth McKee Anderson, Willard Dere, Elaine J. Heron, Robert Hombach, Bryan Lawlis, Richard A. Meier, David E. I. Pyott, Dennis J. Slamon, Michael Grey, Mark J. Alles, Maykin Ho, and Henry J. Fuchs (“Fuchs”) (the “Individual Defendants”), and (c) nominal defendant BioMarin (together with the Individual Defendants, the “Defendants,” and collectively with Plaintiffs, the “Parties” and each a “Party”). This Stipulation sets for the terms of and conditions of the settlement of the Derivative Actions (the “Settlement”), subject to the approval of the Court of Chancery of the State of Delaware (the “Court”), and is intended to fully, finally, and forever compromise, discharge, resolve, release and settle the Released Claims (as defined in paragraph 1.10 below).

### **SUMMARY OF THE PROCEEDINGS**

A. Plaintiffs in the Derivative Actions allege that the Individual Defendants breached their fiduciary duties to BioMarin, and engaged in other wrongdoing, by, *inter alia*, failing to adequately exercise oversight over the Company to prevent the issuance of materially false and misleading statements concerning the Company’s application to the United States Food and Drug Administration (the “FDA”) for approval of its “Valrox” gene therapy, and selling BioMarin stock at artificially inflated prices while in possession of material, non-public Company information.

B. On May 4, 2021, Tsantes, a BioMarin stockholder, served BioMarin with a demand for the inspection of books and records pursuant to 8 *Del. C.* § 220 (“§ 220”) concerning potential wrongdoing in connection with various statements issued regarding Valrox. In response thereto, after BioMarin and Tsantes negotiated the scope of a document production and entered into a confidentiality agreement, the Company produced 1,902 pages of internal, non-public Company documents to Tsantes, which counsel for Tsantes reviewed and analyzed.

C. On March 14, 2022, Tsantes, through his counsel, served a pre-suit litigation demand (the “Litigation Demand”) on BioMarin’s Board of Directors (the “Board”), which included certain allegations based on the confidential § 220 materials, demanding that the Board cause the Company to file an action against defendants Bienaimé and Fuchs for breach of fiduciary duty, contribution, and indemnification. The Litigation Demand also demanded that the Board commence an independent investigation in good faith into the events regarding alleged breaches of fiduciary duties by other current and/or former officers and directors of the Company. The Litigation Demand further demanded that the Board cause BioMarin to enter into tolling agreements with each individual implicated in the alleged wrongdoing to preserve the Company’s claims during the pendency of the Board’s investigation.

D. On April 25, 2022, Wang, a BioMarin stockholder, served BioMarin with a demand for the inspection of books and records pursuant to § 220. In response thereto, after BioMarin and Wang negotiated the scope of a document production and entered into a confidentiality agreement, the Company produced 1,248 pages of internal, non-public Company documents to Wang, which counsel for Wang reviewed and analyzed.

E. On June 1, 2022, the Company responded to Tsantes' Litigation Demand, stating that the Board determined it was in the best interests of the Company to defer consideration of the Litigation Demand during the pendency of a related federal securities class action, *BioMarin Pharmaceutical Inc. Securities Litigation*, 3:20-cv-06719-WHO (N.D. Cal.) (the "Securities Class Action").

F. On January 19, 2023, Wang filed a Confidential Verified Stockholder Derivative Complaint in the action *Wang v. Bienaimé, et al.*, C.A. No. 2023-0058-NAC (the "*Wang Action*"), putatively on behalf of the Company alleging, among other things, that the Individual Defendants breached their fiduciary duties. Certain of the allegations in the *Wang Action* are based on the confidential § 220 materials.

G. On March 1, 2023, Defendants filed a motion to dismiss the complaint in the *Wang Action* (the "Motion to Dismiss") pursuant to Court of Chancery Rules 23.1 ("Rule 23.1"), 12(b)(1), and 12(b)(6).

H. While the parties to the *Wang* Action were discussing a mutually agreeable briefing schedule in connection with the Motion to Dismiss, the parties in the Securities Class Action reached a proposed settlement, and, on April 28, 2023, moved for preliminary approval of that settlement. The settlement of the Securities Class Action provides for a cash payment of \$39,000,000.00 to the settlement class.<sup>1</sup>

I. On June 2, 2023, Tsantes filed a Confidential Verified Stockholder Derivative Complaint in the action *Tsantes v. Bienaimé, et al.*, C.A. No. 2023-0569-NAC (the “*Tsantes* Action”), on behalf of the Company alleging, among other things, that the Individual Defendants breached their fiduciary duties. Certain of the allegations in the *Tsantes* Action are based on the confidential § 220 materials.

J. Shortly thereafter, Plaintiffs agreed to work cooperatively to attempt to negotiate a resolution of the claims asserted in the Derivative Actions and, in or about July 2023, commenced negotiations with Defendants.

K. The negotiations between the Parties continued for several months and, in October 2023, the Parties agreed to schedule a mediation with Michelle Yoshida, Esq. (“Ms. Yoshida” or the “Mediator”) of Phillips ADR Enterprises (“PADRE”) to

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<sup>1</sup> An Order and Final Judgment granting final approval to the settlement of the Securities Class Action were entered on November 14, 2023. Civ. Docket For Case No. 3:20-cv-06719-WHO, ECF Nos. 155, 156.

take place on November 9, 2023. Ms. Yoshida served as the mediator in connection with the Securities Class Action settlement.

L. The Parties continued negotiations regarding the substantive terms of the Settlement and, on November 6, 2023, reached an agreement-in-principle regarding those terms.

M. Ms. Yoshida was provided with the substantive terms of the Settlement by the Parties and, on November 9, 2023, conducted a full day mediation session (the “Mediation”) with the Parties concerning the amount of attorneys’ fees and expenses to be paid to Plaintiffs’ Counsel (defined herein) in consideration of the substantial benefits achieved for the Company and its current stockholders through the filing, litigation, and settlement of the Derivative Actions. By the conclusion of the Mediation, the Parties had reached an impasse and the Mediation session ended with no agreement reached by the Parties.

N. On November 10, 2023, Ms. Yoshida issued a double-blind mediator’s recommendation to the Parties (the “Mediator’s Proposal”). The Mediator’s Proposal recommended the payment of \$1,250,000.00 in attorneys’ fees and expenses to Plaintiffs’ Counsel, subject to approval by the Court. The Parties accepted the Mediator’s Proposal on November 10, 2023.

O. The Parties agree that Plaintiffs commenced and pursued the Derivative Actions in good faith, including the Litigation Demand and Plaintiffs’ pre-litigation

inspection demand efforts. Plaintiffs maintain that entry by Plaintiffs into this Stipulation is not an admission as to the lack of any merit of any claims asserted by Plaintiffs in the Derivative Actions.

JJ. Defendants have denied, and continue to deny, that they committed any breach of duty, violated any law, or engaged in any wrongdoing, expressly maintain that they diligently and scrupulously complied with their fiduciary and other legal duties, to the extent such duties exist, and further believe that the Derivative Actions are without merit. Defendants are entering into this Stipulation to eliminate the uncertainty, burden and expense of further protracted litigation. This Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted in the Derivative Actions. Defendants expressly deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES TO THIS STIPULATION, subject to the approval of the Court pursuant to Rule 23.1, that the Derivative Actions shall be fully and finally compromised and settled, that the Released Claims shall be released by the



Releasing Parties (as defined in paragraph 1.14 below) as against the Released Parties (as defined in paragraph 1.12 below), and that the Derivative Actions shall be dismissed with prejudice, upon and subject to the following terms and conditions, and further subject to the approval of the Court:

### **DEFINITIONS**

1. In addition to the terms defined elsewhere in this Stipulation, the following terms have the meanings specified below:

1.1 “Applicable BioMarin Stockholders” means any and all individuals or entities who held of record, or beneficially owned, directly or indirectly, common stock of BioMarin as of the close of business on the date the Court enters the Scheduling Order (as defined in paragraph 13 below), excluding the Individual Defendants, the officers and directors of BioMarin, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which the Individual Defendants have or had a controlling interest.

1.2 “Corporate Governance Reforms” means the corporate governance reforms set forth in Exhibit A attached to this Stipulation.

1.3 “Defendants’ Released Claims” means any and all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues

and controversies of any kind, nature or description whatsoever, whether known or unknown, including Unknown Claims, that Plaintiffs asserted or could have asserted on behalf of nominal defendant BioMarin in the Derivative Actions or in any other court, tribunal, forum or proceeding, whether based on state, federal, local, foreign, statutory, regulatory, common or other law or rule, and which are based upon, arise out of, or relate in any way to, or involve, directly or indirectly, (a) the actions, inactions, deliberations, disclosures, discussions, decisions, votes, or any other conduct of any kind by any of the Released Defendant Parties (as defined below in paragraph 1.11), relating in any way to any facts, matters, events, circumstances, claims, or allegations alleged or that could have been alleged in the Derivative Actions, or (b) the institution, commencement, prosecution, defense, mediation, or settlement of the Derivative Actions.

**1.4** “Defendants’ Releasing Parties” means Defendants and their respective agents, spouses, heirs, predecessors, successors, transferors, transferees, personal representatives, representatives and assigns.

**1.5** “Derivative Actions” means, collectively, the *Wang* Action and the *Tsantes* Action, as captioned above.

**1.6** “Final Approval” means the later of (a) the expiration of the time for the filing or noticing of an appeal or motion for reargument or rehearing from the Court’s Order and Final Judgment (as defined below in paragraph 17) approving the

Settlement; (b) the date of final affirmance of the Court's Order and Final Judgment on any appeal or reargument or rehearing; or (c) the final dismissal of any appeal.

**1.7** "Plaintiffs' Counsel" means Rigrodsky Law, P.A., deLeeuw Law LLC, Shuman, Glenn & Stecker, and Pomerantz LLP.

**1.8** "Plaintiffs' Released Claims" means all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law, including Unknown Claims, that arise out of or relate in any way to Released Plaintiff Parties' (as defined below in paragraph 1.13) institution, prosecution, or settlement of the Derivative Actions.

**1.9** "Plaintiffs' Releasing Parties" means Plaintiffs, BioMarin, and all Applicable BioMarin Stockholders, whether acting directly, representatively, or derivatively on behalf of BioMarin, and their respective agents, spouses, heirs, predecessors, successors, transferors, transferees, personal representatives, representatives and assigns.

**1.10** "Released Claim(s)" means Plaintiffs' Released Claims and Defendants' Released Claims; *provided, however*, for the avoidance of doubt, that Released Claims shall not include any claims relating to the enforcement of this Stipulation or Settlement or any claims by BioMarin or the Individual Defendants for insurance coverage or any claims by the Individual Defendants for indemnification or advancement.

**1.11** “Released Defendant Parties” means all Defendants in the Derivative Actions, and any and all of their and BioMarin’s respective current or former agents, parents, controlling persons, general or limited partners, members, managers, managing members, direct or indirect equity holders, subsidiaries, affiliates, employees, officers, directors, predecessors, successors, attorneys, heirs, assigns, insurers, reinsurers, consultants, and other representatives, servants and related persons, in their capacities as such.

**1.12** “Released Party” or “Released Parties” means each and all of the Released Plaintiff Parties and the Released Defendant Parties.

**1.13** “Released Plaintiff Parties” means Plaintiffs and Plaintiffs’ Counsel and each of their respective agents, assigns, and related persons.

**1.14** “Releasing Parties” means Plaintiffs’ Releasing Parties and Defendants’ Releasing Parties.

**1.15** “Unknown Claims” means any Released Claim which the Releasing Party does not know or suspect to exist in his, her or its favor at the time of Final Approval of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into or object to the Settlement.

## **RELEASES**

**2.** Upon Final Approval of the Settlement, Plaintiffs’ Releasing Parties, by

operation of the Settlement and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Defendant Parties from any and all of the Defendants' Released Claims.

3. Upon Final Approval of the Settlement, Defendants' Releasing Parties, by operation of the Settlement and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Plaintiff Parties from any and all of the Plaintiffs' Released Claims.

4. The Settlement is intended to extinguish all of the Released Claims by the Releasing Parties as against the Released Parties and, consistent with such intention, upon Final Approval of the Settlement, the Releasing Parties shall waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting the Released Claims. This shall include a waiver of any rights pursuant to California Civil Code § 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States or any state or territory thereof, or of the common law), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES  
NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**

**FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
AND THAT IF KNOWN BY HIM OR HER WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR OR THE RELEASED PARTY.**

5. Plaintiffs acknowledge, and the Plaintiffs' Releasing Parties shall be deemed by operation of the entry of the Order and Final Judgment upon Final Approval of the Settlement to have acknowledged, that the foregoing waiver in paragraph 4 was expressly bargained for, is an integral term of the Settlement, and was relied upon by each and all of the Released Defendant Parties in entering into the Settlement.

6. Nothing herein shall in any way release, waive, impair, or restrict the rights of any Party to enforce the terms of this Stipulation.

**SETTLEMENT CONSIDERATION**

7. The Parties agree that as a direct result of Plaintiffs' investigation, initiation and litigation of the Derivative Actions, in consideration for the full Settlement and release of the Released Claims, and upon Court approval of the Settlement, BioMarin will implement the Corporate Governance Reforms, of which Plaintiffs were a precipitating, substantial, and material cause.

8. In further consideration for the full Settlement and release of the Released Claims, BioMarin and the Individual Defendants also acknowledge that Plaintiffs and the Derivative Actions were a precipitating, substantial, and material cause of BioMarin's adoption and implementation of the Corporate Governance Reforms.

9. The Corporate Governance Reforms shall remain in effect for a period of at least four (4) years from the date of adoption.

10. Defendants acknowledge that the Corporate Governance Reforms confer substantial benefits on the Company and its current stockholders.

### **STAY OF PROCEEDINGS**

11. Pending Final Approval of the Settlement by the Court, Plaintiffs agree to stay the Derivative Actions, and Plaintiffs and Plaintiffs' Counsel agree not to initiate any other proceedings related to the Derivative Actions other than those incident to the Settlement itself.

12. The Parties will request that the Court order that, pending Final Approval of the Settlement, Plaintiffs and all Applicable BioMarin Stockholders are barred and enjoined from commencing, prosecuting, instigating or in any way participating in the commencement, prosecution, or instigation of any action asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, against BioMarin, the Individual Defendants, or any of the Released Defendant Parties.

## **SUBMISSION AND APPLICATION TO THE COURT**

13. As soon as reasonably practicable after this Stipulation has been executed, the Parties shall jointly apply for a scheduling order (the “Scheduling Order”), substantially in the form attached hereto as Exhibit B, establishing the procedure for the approval of notice to Applicable BioMarin Stockholders substantially in the form attached hereto as Exhibit C (the “Notice”).

### **NOTICE**

14. BioMarin shall undertake the primary responsibility for providing notice to Applicable BioMarin Stockholders, in accordance with the terms of the Scheduling Order, and shall be solely responsible for paying the costs and expenses associated with providing the notice described in this paragraph. By no later than sixty (60) calendar days prior to the date the Court sets for the Settlement Hearing (as defined below in paragraph 16), BioMarin shall mail the Notice, substantially in the form attached hereto as Exhibit C, to all Applicable BioMarin Stockholders who held of record at their respective addresses currently set forth in BioMarin’s stock records. In addition, the Company shall use reasonable efforts to give notice to all Applicable BioMarin Stockholders who were beneficial owners by: (a) filing copies of this Stipulation and the Notice as exhibits to a Current Report on Form 8-K with the United States Securities and Exchange Commission; (b) posting links to this Stipulation and the Notice on the Investor Relations portion of the Company’s website through the



date of the Settlement Hearing; and (c) including in the Notice a statement that a copy of this Stipulation can be found on the Investor Relations portion of the Company's website, along with the website's address.

15. Counsel for BioMarin shall, at least ten (10) business days before the Settlement Hearing, file with the Court an appropriate affidavit with respect to compliance with the requirements set forth in the foregoing paragraph.

### **ORDER AND FINAL JUDGMENT**

16. If the Settlement (including any modifications thereto made with the consent of the Parties as provided for herein) shall be approved by the Court following a hearing (the "Settlement Hearing") as fair, reasonable, and adequate and in the best interests of BioMarin, the Parties shall jointly request that the Court enter an order substantially in the form attached hereto as Exhibit D (the "Order and Final Judgment").

17. The Order and Final Judgment shall, among other things, provide for full and complete dismissal of the Derivative Actions with prejudice, and the Settlement and release of the Released Claims by the Releasing Parties as against the Released Parties.

### **COOPERATION**

18. The Parties and their respective counsel agree to cooperate fully with one

another in seeking the Court's approval of the Settlement, and to use their best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to obtain the Court's approval of the Settlement, consummate and make effective, as promptly as practicable, this Stipulation and the Settlement provided for hereunder (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement) and the dismissal of the Derivative Actions with prejudice without costs, fees or expenses to any Party (except as provided for herein).

**19.** Without further order of the Court, the Parties may agree to reasonable extensions of time not expressly set forth by the Court in order to carry out any provisions of this Stipulation.

### **CONDITIONS OF SETTLEMENT**

**20.** The Settlement is conditioned upon the fulfillment of each of the following:

**20.1** The entry by the Court of an Order and Final Judgment in the form attached hereto as Exhibit D approving the proposed Settlement and dismissing the Derivative Actions with prejudice without the award of any damages, costs, fees or the grant of any further relief except for an award of fees and expenses to Plaintiffs' Counsel that the Court may make as contemplated herein.

**20.2** Final Approval of the Settlement.

**21.** Each of BioMarin and the Individual Defendants shall have the right to

withdraw from the Settlement in the event that any claims related to the subject matter of the Derivative Actions are commenced or prosecuted against any of the Released Defendant Parties in any court prior to Final Approval of the Settlement and such claims are not dismissed with prejudice or stayed in contemplation of dismissal following Final Approval of the Settlement. In the event such claims are commenced, the Parties agree to cooperate and use their reasonable best efforts to secure the dismissal thereof or a stay in contemplation of dismissal following Final Approval of the Settlement. This Stipulation shall be null and void and of no force and effect if the Settlement does not obtain Final Approval for any reason. In such event, this Stipulation shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Derivative Actions or to entitle any Party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement, including any costs related to providing notice to Applicable BioMarin Stockholders (as set forth in paragraph 14), to the extent such costs have already been incurred by BioMarin.

**22.** In the event that the proposed Settlement is rendered null and void for any reason, the existence of or the provisions contained in this Stipulation or any term sheet or other document relating to the terms of the proposed Settlement shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Derivative Actions; nor shall they be deemed a presumption, a concession, or

an admission by the Parties of any fault, liability, wrongdoing or damages whatsoever as to any facts, claims or defenses that have been or could have been alleged or asserted in the Derivative Actions, or any other action or proceeding or each thereof; nor shall they be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Derivative Actions, or in any other action or proceeding.

### **WARRANTY AND NON-ASSIGNMENT OF CLAIMS**

23. Plaintiffs and Plaintiffs' Counsel represent and warrant that Plaintiffs are current BioMarin stockholders and that none of Defendants' Released Claims have been assigned, encumbered, or in any manner transferred in whole or in part, and that neither Plaintiffs nor Plaintiffs' Counsel will attempt to assign, encumber, or in any way transfer, in whole or in part, any of Defendants' Released Claims.

### **ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FOR PLAINTIFFS' COUNSEL**

24. After negotiation of the principal terms of the Settlement, including the Corporate Governance Reforms and the definition of Released Claims, the Parties participated in the full-day Mediation session with the assistance of Ms. Yoshida of PADRE. By the conclusion of the Mediation, the Parties were at an impasse and were unable to reach an agreement on the amount of attorneys' fees and expenses for Plaintiffs' Counsel in connection with the proposed Settlement of the Derivative

Actions. After the Parties reached that impasse, Ms. Yoshida issued the double-blind Mediator's Proposal to the Parties. Pursuant to the Mediator's Proposal, the Parties agreed that Plaintiffs' Counsel shall receive an award of attorneys' fees and expenses in the amount of \$1,250,000.00 in the aggregate (the "Fee Award"), subject to Court approval, and that Defendants will not oppose or object to the proposed Fee Award.

**25.** The Court may consider and rule upon the fairness, reasonableness, and adequacy of the proposed Settlement independently of Plaintiffs' Counsel's proposed Fee Award. The failure of the Court to approve the proposed Fee Award, in whole or in part, shall have no effect on the validity of the Settlement or delay the enforceability of the Settlement, and final resolution by the Court of the proposed Fee Award shall not be a precondition to the dismissal with prejudice of the Derivative Actions. Any failure of the Court to approve the proposed Fee Award, in whole or in part, shall not provide any of the Parties with the right to terminate the Settlement.

**26.** BioMarin's insurer(s) shall pay and/or cause to be paid any fee award entered by the Court as provided by the terms of such order within twenty (20) business days of entry of such order and Plaintiffs' Counsel providing BioMarin's counsel with the necessary information required for payment by check or a wire-transfer, including a signed W-9 and a tax ID number, with the Fee Award to be held in the escrow account of Rigrodsky Law, P.A. No payments shall be made from the escrow account of Rigrodsky Law, P.A. until allocation of the Fee Award has been resolved pursuant

to paragraph 28 of this Stipulation. Any payment of any fee award provided herein shall be subject to Plaintiffs' Counsel's obligation to make refunds or repayments to BioMarin of any amounts paid, if the Settlement is terminated pursuant to the terms of this Stipulation or fails to become effective for any reason, or if, as a result of any appeal of further proceedings on remand or successful collateral attack, the award of attorneys' fees and/or expenses is reduced or reversed by final non-appealable court order.

27. Plaintiffs may seek the Court's approval of reasonable service awards for each Plaintiff of up to \$2,000.00, to be paid from the Fee Award, and Defendants shall not oppose any such request.

28. Plaintiffs' Counsel shall allocate the Fee Award among themselves.

#### **STIPULATION NOT AN ADMISSION**

29. Neither this Stipulation nor the Settlement, nor any act or omission taken in connection with this Stipulation or the Settlement, is intended or shall be deemed to be a presumption, concession or admission by: (a) any of the Individual Defendants or any of the Released Defendant Parties as to the validity of any claims, causes of action or other issues that were or could have been raised in the Derivative Actions or in any other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies any such wrongdoing or liability; or (b) Plaintiffs as to the lack of merit of any claim or the validity of any

defense.

**30.** Any communications related to the Settlement, their contents or any of the negotiations, statements, or proceedings in connection therewith shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked, or otherwise used by any person for any purpose in the Derivative Actions or otherwise, except as may be necessary to effectuate the Settlement.

**31.** Paragraphs 21, 22, 29 and 30 shall remain in full force and effect in the event that the proposed Settlement is terminated or fails to become effective for any reason.

### **NO WAIVER**

**32.** Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of the Settlement shall not be deemed a waiver of any of the provisions of the Settlement, and such Party shall have the right thereafter to insist upon the strict performance of any and all of the provisions of the Settlement. All waivers must be in writing and signed by the Party against whom the waiver is asserted.

**33.** No waiver, express or implied, by any Party of any breach or default in the performance by any other Party of its obligations pursuant to the Settlement shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent or contemporaneous, under the terms of the Settlement.

### **BREACH**

34. The Parties agree that in the event of any breach of the Settlement, all of the Parties' rights and remedies at law, equity, or otherwise, are expressly reserved.

### **GOVERNING LAW**

35. This Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles.

### **ENTIRE AGREEMENT; AMENDMENTS**

36. This Stipulation constitutes the entire agreement among the Parties with respect to the subject matter hereof and may be modified or amended only by a writing signed by the signatories hereto.

### **COUNTERPARTS**

37. This Stipulation may be executed in multiple counterparts by any of the signatories hereto, including by facsimile, and as so executed shall constitute one agreement.

### **SUCCESSORS AND ASSIGNS**

38. Except as expressly provided for herein, this Stipulation, and all rights and powers granted hereby, shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors, affiliates and assigns.



## **COMPLIANCE WITH ETHICAL RULES**

39. The Parties agree that throughout the course of the litigation, all Parties and their counsel complied with the provisions of Rule 11 of the Rules of the Court of Chancery of the State of Delaware and that the Order and Final Judgment submitted to the Court will contain a statement to reflect this compliance.

## **JURISDICTION**

40. Any action related to implementing and enforcing the Settlement shall be filed and litigated exclusively in the Court. Each Party (i) consents to personal jurisdiction in any such action brought in the Court, (ii) consents to service of process by registered mail (with a copy to be delivered at the time of such mailing to counsel for each Party by facsimile or electronic mail) upon such Party and/or such Party's agent for purposes of such action, (iii) waives any objection to venue in the Court and any claim that Delaware or the Court is an inconvenient forum for such action, and (iv) waives any right to demand a jury trial as to any such action.

**AUTHORITY**

41. The undersigned attorneys represent and warrant that they have the authority from their client(s) to enter into this Stipulation and bind their client(s) thereto.

DATED: March 27, 2024

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## Case Details

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2023-0058-NAC	Elaine Wang vs. Jean-Jacques Bienaimé, et. al.
2023-0569-NAC	Bill Tsantes v. Jean-Jacques Bienaimé et al