In re BioMarin Pharmaceutical Inc. Securities Litigation

COURT: United States District Court for the Northern District of California
CASE NUMBER: 3:20-cv-06719
CLASS PERIOD: 03/02/2020 - 08/18/2020
CASE LEADERS: Katherine M. Sinderson, Jeroen van Kwawegen, Avi Josefson, Jonathan D. Uslaner, Abe Alexander
CASE TEAM: Thomas Sperber, William E. Freeland

This is a securities fraud class action brought on behalf of persons and entities who purchased or otherwise acquired the common stock of **BioMarin Pharmaceutical Inc.** ("BioMarin" or the "Company) from March 3, 2020 through August 18, 2020, inclusive (the "Class Period"), and were damaged thereby (the "Settlement Class").

Lead Plaintiff Has Settled the Action for $39 Million

Lead Plaintiff Arbejdsmarkedets Tillægspension, on behalf of itself and the Settlement Class, has settled the Action for **$39,000,000** in cash (the "Settlement").

On November 8, 2023, the Court held a hearing to consider final approval of the Settlement and other matters. On November 14, 2023, the Court entered a final order approving the Settlement and Plan of Allocation and Lead Counsel's motion for attorney's fees and litigation expenses, and a final Judgment.

If you are a member of the Settlement Class, your rights will be affected and you may be eligible for a payment from the Settlement. The Settlement Class consists of:

all persons and entities who purchased or otherwise acquired BioMarin common stock from March 3, 2020 through August 18, 2020, inclusive, and were damaged thereby.

Certain persons and entities are excluded from the Settlement Class by definition (*see* paragraph 32 of the Notice) or if they requested exclusion pursuant to the instructions set forth in the Notice.

Please read the Notice to fully understand your rights. Copies of the Notice and Claim Form can be found in the Case Documents list on the right of this page. You may also visit the case website, www.BioMarinSecuritiesLitigation.com, for more information about the Settlement.

The deadline for submission of a Claim Form to be potentially eligible to receive a payment from the Settlement was **October 30, 2023**.

Payments to eligible claimants will be made only after the completion of all claims processing. Please be patient, as this process will take some time to complete.

Background and History of the Litigation

On September 25, 2020, a class action lawsuit was filed in the U.S. District Court for the Northern District of California alleging violations of the federal securities laws against BioMarin Pharmaceutical Inc. ("BioMarin" or the "Company") and certain of the Company's senior executives (collectively, "Defendants"). On December 22, 2020,

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the Court appointed Arbejdsmarkedets Tillægspension, a Denmark-based pension fund, as Lead Plaintiff for the Action and approved Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel.

Lead Plaintiffs allege that, throughout the Class Period, Defendants made materially false and misleading statements regarding the likelihood that the Company's December 23, 2019 Biologics License Application (BLA) would be approved by the FDA by August 21, 2020 on the basis of preliminary Phase 3 trial data; that Defendants knew of the FDA's concerns that the initial Phase 3 trial data showed potential issues with the long-term effectiveness of the drug due to a decline in Factor VIII levels in patients over time; and that Defendants had no dialogue whatsoever with the FDA from mid-April 2020 to June 2020, at which point Defendants learned that a facility inspection—required for FDA approval—would not occur prior to August 21, 2020. Lead Plaintiff alleges that, despite this knowledge, BioMarin assured investors that the FDA approval process was "going quite well," that the FDA had been "quite collaborative" and in a "mesh" with Defendants, and that the drug would "launch[] in the second half of" 2020.

Lead Plaintiff alleges that the truth emerged on August 19, 2020, when BioMarin announced that the Company had received a Complete Response Letter from the FDA, which included the FDA's concerns about the initial Phase 3 data's indication of a declining durability of effect. BioMarin disclosed that the FDA declined to approve the BLA and would require that BioMarin complete its Phase 3 trial and submit two-year follow-up safety and efficacy data on all participants before any possible approval. Accordingly, FDA approval of BioMarin's BLA for Valrox cannot happen until at least 2022. In response to these disclosures, BioMarin's stock price dropped $41.82 per share, or 35.28%, to close at $76.72 per share on August 19, 2020.

Lead Plaintiff filed an Amended Class Action Complaint on February 22, 2021. Defendants filed a Motion to Dismiss on April 22, 2021. On January 6, 2022, the Honorable William Orrick III denied the Motion to Dismiss and sustained the Complaint in its entirety. Lead Plaintiff filed its motion for class certification on October 17, 2022. Defendants filed their brief in opposition on January 27, 2023.

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

In March 2023, following mediation with Michelle Yoshida, the Parties reached an agreement in principle to settle the Action in return for a cash payment of $39,000,000 for the benefit of the Settlement Class. On April 24, 2023, the Parties entered into the Stipulation and Agreement of Settlement, which sets forth the terms and conditions of the Settlement.

On June 8, 2023, the Court preliminarily approved the Settlement, authorized notice of the Settlement to be provided to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement for November 8, 2023.

On November 8, 2023, the Court held a hearing to consider final approval of the Settlement and other matters. On November 14, 2023, the Court entered a final order approving the Settlement and Plan of Allocation and Lead Counsel's motion for attorney's fees and litigation expenses, and a final Judgment.

The claims administration concluded in April 2024. On April 15, 2024, Lead Counsel filed a Motion for Approval of

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Distribution Plan seeking the Court's permission to distribute the net settlement fund to Court-approved eligible claimants. Once the Court grants permission for the net settlement fund to be distributed, the distribution of funds will occur thereafter within 4 – 6 weeks.

Case Documents

- Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses ("Notice")
- Proof of Claim and Release Form (Claim Form)
- April 15, 2024 – Lead Plaintiff's Motion for Approval of Distribution Plan
- November 14, 2023 - Order Granting Final Approval to Settlement, Approving Plan of Allocation, and Awarding Fees and Costs
- November 14, 2023 - Judgment
- November 1, 2023 - Reply Memorandum in Further Support of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- October 4, 2023 - Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation
- October 4, 2023 - Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- October 4, 2023 - Declaration of Katherine M. Sinderson in Support of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- June 8, 2023 - Order Granting Preliminary Approval
- April 28, 2023 - Motion For Preliminary Approval of Settlement
- April 24, 2023 - Stipulation and Agreement of Settlement
- January 3, 2022 - Order on Motion to Dismiss
- February 22, 2021 - Amended Class Action Complaint for Violations of the Federal Securities Laws
- December 22, 2020 - Order Appointing Arbejdsmarkedets Tillægspension as Lead Plaintiff and Approving its Selection of Lead Counsel

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