

FILED

OCT -2 2023

JAMES M. JOHNSON
COURT CLERK
MARIN CO. SUPERIOR COURT

BY: N. JOHNSON

Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Kristen M. Agnew (State Bar No. 247656)
kagnew@diversitylaw.com
Nicholas Rosenthal (State Bar No. 268297)
nrosenthal@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
POLARIS LAW GROUP
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

SCOTT FORD, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BIOMARIN PHARMACEUTICAL, INC.;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: CV0000674

[Assigned for all purposes to the Hon. Andrew E.
Sweet, Department E]

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR VIOLATION OF
LABOR CODE § 2698, ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Scott Ford ("Plaintiff") hereby submits this First Amended Representative Action
2 Complaint ("Complaint") against Defendant Biomarin Pharmaceutical, Inc. ("Defendant") and
3 Does 1 through 50 (collectively, "Defendants"), on behalf of himself and all other similarly situated
4 current and former employees of Defendant for penalties under the California Labor Code, as
5 follows:

6 **INTRODUCTION**

7 1. This representative action complaint is within the Court's jurisdiction under
8 California Labor Code sections 201, 202, 203, 226, 226.7, 246, 512, 2698, et seq. and the applicable
9 Wage Orders of the California Industrial Welfare Commission ("IWC").

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
13 and severally, have acted intentionally and with deliberate indifference and conscious disregard to
14 the rights of all employees by: (a) failing to incorporate all non-discretionary incentive wages in the
15 regular rate of pay used to calculate and pay meal/rest period premiums, in violation of Labor Code
16 sections 201, 202, 203, 226.7 and 512; (b) failing to incorporate all non-discretionary incentive
17 wages in the regular rate of pay used to calculate and pay sick pay wages, in violation of Labor
18 Code sections 201, 202, 203, and 246; and (c) failing to provide accurate itemized wage statements,
19 in violation of Labor Code section 226.

20 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
21 engaged in, among other things a system of willful violations of the California Labor Code and the
22 applicable IWC Wage Orders, by creating and maintaining policies, practices, and customs that
23 knowingly deny employees the above stated rights and benefits.

24 **JURISDICTION AND VENUE**

25 5. The Court has jurisdiction over the violations of the California Labor Code sections
26 201, 202, 203, 226, 226.7, 246, 512, and 2698, et seq. and the applicable IWC Wage Orders.

27 6. Venue is proper in Marin County, because Plaintiff worked for Defendant in Novato,

1 California.

2 **PARTIES**

3 7. Plaintiff was employed by Defendant as a Facilities Coordinator/Planner from
4 approximately October 2019 to on or about August 3, 2023. During his employment with
5 Defendant, Plaintiff worked as a non-exempt employee.

6 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
7 complained of in this action in ways that have deprived him of the rights guaranteed by California
8 Labor Code sections 201, 202, 203, 226, 226.7, 246 and 512, and the applicable IWC Wage Orders.

9 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
10 Biomarin Pharmaceutical, Inc. maintains operations and does business in the State of California,
11 including in Marin County, California.

12 10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
13 mentioned Does 1 through 50, are and were corporations, business entities, individuals, and
14 partnerships, licensed to do business and actually doing business in the State of California. As such
15 and based upon all the facts and circumstances incident to Defendants' business, Defendants are
16 subject to the California Labor Code, the IWC Wage Orders.

17 11. Plaintiff does not know the true names or capacities, whether individual, partner or
18 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
19 defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
20 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
21 based thereon alleges that each of said fictitious defendants was responsible in some way for the
22 matters alleged herein and proximately caused Plaintiff and Aggrieved Employees to be subject to
23 the illegal employment practices, wrongs and injuries complained of herein.

24 12. At all times herein mentioned, each of said Defendants participated in the doing of
25 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
26 Defendants, and each of them, were the agents, servants, and employees of each of the other
27 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting

1 within the course and scope of said agency and employment.

2 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
5 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
6 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
7 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

8 14. At all times herein mentioned, Defendants, and each of them, were members of, and
9 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
10 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

11 15. At all times herein mentioned, the acts and omissions of various Defendants, and
12 each of them, concurred and contributed to the various acts and omissions of each and all of the
13 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
14 herein mentioned, Defendants, and each of them, ratified each and every act or omission
15 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
16 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
17 damages as herein alleged.

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

20 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

21 16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
22 fully set forth herein.

23 17. Plaintiff brings this cause of action as a proxy for the State of California and in this
24 capacity, seeks penalties on behalf of all Aggrieved Employees from August 7, 2022, through the
25 present, for Defendant's violations of Labor Code sections 201, 202, 203, 226, 226.7, 246, 512, and
26 the applicable IWC Wage Orders, as identified above for: (a) failing to incorporate all non-
27 discretionary incentive wages in the regular rate of pay used to calculate and pay meal/rest period

1 premiums, in violation of Labor Code sections 201, 202, 203, 226.7 and 512; (b) failing to
2 incorporate all non-discretionary incentive wages in the regular rate of pay used to calculate and
3 pay sick pay wages, in violation of Labor Code sections 201, 202, 203, and 246; and (c) failing to
4 provide accurate itemized wage statements, in violation of Labor Code section 226.

5 18. Defendant failed in its affirmative obligation to ensure that Plaintiff and Aggrieved
6 Employees had the opportunity to take and were provided with off-duty meal and rest periods in
7 accordance with the mandates of the California Labor Code and the applicable IWC Wage Order.

8 19. Pursuant to Labor Code section 226.7, for each workday that a meal or rest period is
9 not provided, employees are entitled to one additional hour of pay at the employee's regular rate of
10 pay. Defendant, however, paid meal and rest period premium wages at an employee's base hourly
11 rate of pay, which did not include non-discretionary incentive pay, including without limitation,
12 shift differentials. As such, Plaintiff and Aggrieved Employees are owed additional meal and rest
13 period premiums based on the correct, higher regular rate of pay.

14 20. Relatedly, when Defendant paid Plaintiff and Aggrieved Employees sick pay
15 pursuant to California Labor Code section 246, Defendant did so at the incorrect rate of pay.
16 Plaintiff and Aggrieved Employees earned non-discretionary incentive remuneration, including
17 without limitation, shift differentials, thereby increasing their regular rates of pay to amounts that
18 were higher than their base rates of pay. However, whenever sick pay was paid to Plaintiff and
19 Aggrieved Employees, it was paid only at their base rates of pay, rather than the higher regular rates
20 of pay, as required under Labor Code section 246. As such, Plaintiff and Aggrieved Employees are
21 owed additional sick pay wages based on the correct, higher regular rate of pay.

22 21. As a result of Defendant's failure to pay proper meal/rest break premiums and sick
23 pay wages, as identified above, the wage statements issued to Plaintiff and Aggrieved Employees
24 failed to identify the correct gross wages earned, net wages earned, and correct hourly rates of pay,
25 in violation of Labor Code section 226(a).

26 22. As a separate violation of Labor Code section 226(a), Defendant failed to provide
27 accurate itemized wage statements to Plaintiff and Aggrieved Employees who earned overtime
wages. When Defendant paid overtime wages—including Overtime, Doubtime Pay, OT Shift, and

1 DT Shift wages—to employees, the corresponding wage statements failed to identify the applicable
2 hourly rate and/or hours for such wages. Rather, when the applicable rate and hours shown on the
3 wage statements are multiplied, it does not equate to the amount of wages being paid.

4 23. On or about August 7, 2023, Plaintiff sent written notice to the California Labor &
5 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections 201,
6 202, 203, 226, 226.7, 246, 512, pursuant to Labor Code section 2698, et seq., the Private Attorneys
7 General Act (“PAGA”). Plaintiff also sent written notice of said Labor Code violations to
8 Defendant via certified mail, pursuant to Labor Code section 2699.3. As of the date of the filing of
9 this Complaint, the LWDA has not provided written notice regarding whether it intends to
10 investigate the Labor Code violations set forth in Plaintiff’s written notice.

11 24. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and
12 all applicable civil penalties for Defendant’s violation of Labor Code sections 201, 202, 203, 226,
13 226.7, 246 and 512, for the time period described above, on behalf of himself and other Aggrieved
14 Employees.

15 **PRAYER FOR RELIEF**

16 1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose
17 behalf this suit is brought against Defendants, jointly and severally, as follows:

18 2. Upon the First Cause of Action, for civil penalties according to proof pursuant to
19 Labor Code section 226.3 and 2698, et seq, and for costs and attorneys’ fees;
20 On all causes of action for attorneys’ fees and costs as provided by California Code of Civil
21 Procedure section 1021.5; and

22 3. For such other and further relief the Court may deem just and proper.
23
24
25
26
27

1 DATED: September 29, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

4
5 Attorneys for Plaintiff and the Aggrieved
6 Employees
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3 STATE OF CALIFORNIA]
4]ss.
5 COUNTY OF LOS ANGELES]

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
8 Los Angeles, California 90071.

9 On September 29, 2023, I served the following document(s) described as: **FIRST**
10 **AMENDED REPRESENTATIVE ACTION COMPLAINT FOR VIOLATION OF**
11 **LABOR CODE § 2698, ET SEQ.** on the interested parties in this action as follows:

12 Mollie Burks
13 mburks@grsm.com
14 Seth Weisburst
15 sweisburst@grsm.com
16 Alexandra Romero
17 aromero@grsm.com
18 GORDON & REES
19 275 Battery Street, Suite 2000
20 San Francisco, CA 94111
21 *Attorneys for Defendant*

22 X BY MAIL: by placing _____ the original or X a true and correct copy
23 thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
24 attached mailing list. I am readily familiar with the firm's practice for collection and processing
25 of correspondence and other materials for mailing with the United States Postal Service. On this
26 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
27 collection and mailing on this date at the address above following our office's ordinary business
28 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
in the ordinary course of business.

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
indicated above or on the attached mailing list. I certify that said electronic transmission was
completed and that all pages were received by the party(ies) identified herein or on the attached
mailing list.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on September 29, 2023, at Los Angeles, California.



Erika Mejia