

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS CESPEDES,  
Plaintiff,

v.

MOMENTA PHARMACEUTICALS, INC.,  
JANE BARLOW, BRUCE L. DOWNEY,  
GEORGES GEMAYEL, STEVEN C.  
GILMAN, DONNA R. GROGAN, JOSE-  
CARLOS GUTIÉRREZ-RAMOS,  
ELIZABETH STONER, and CRAIG A.  
WHEELER,  
Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff Carlos Cespedes (“Plaintiff”), upon information and belief, including an examination and inquiry conducted by and through his counsel, except as to those allegations pertaining to Plaintiff, which are alleged upon personal belief, alleges the following for his Complaint:

**NATURE OF THE ACTION**

1. Plaintiff brings this action against Momenta Pharmaceuticals, Inc. (“Momenta” or the “Company”) and the members of its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14d-9, 17 C.F.R. §240.14d-9(d) (“Rule 14d-9”), and to enjoin the expiration of a tender offer by Johnson & Johnson (“Johnson & Johnson”) and Vigor Sub, Inc. (“Purchaser”) (the “Offer”).

2. On August 19, 2020, Momenta announced that it had entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which Johnson & Johnson will acquire all outstanding shares of Momenta for \$52.50 in cash per share of Momenta common stock (the “Offer Price”) (the “Proposed Transaction”). The Offer is scheduled to expire at 12:00 midnight, New York City time, at the end of the day on September 30, 2020.

3. On September 2, 2020, in order to convince Momenta’s common stockholders to tender their shares in the Offer, defendants filed a Schedule 14D-9 Solicitation/Recommendation Statement on (the “14D-9”) with the SEC, which omits or misrepresents material information concerning, among other things: (i) Momenta management’s financial projections, relied upon by the Company’s financial advisors, Goldman Sachs & Co. LLC (“Goldman”) and Centerview Partners LLC (“Centerview”), in their financial analyses; (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinions provided by Goldman and Centerview; (iii) the background of the Proposed Transaction; and (iv) Company insiders’ potential conflicts of interest. The failure to adequately disclose such material information renders the 14D-9 false and misleading.

4. For these reasons, and as set forth in detail herein, Plaintiff alleges that defendants violated Sections 14(e) and 20(a) of the Exchange Act as Momenta’s stockholders need such information in order to make a sufficiently informed decision whether to tender their shares in support of the Proposed Transaction or seek appraisal.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder

pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's claims arose in this District, where a substantial portion of the actionable conduct took place, where most of the documents are electronically stored, and where the evidence exists. Momenta's common stock trades on the NASDAQ Global Select Market, which is headquartered in this District, rendering venue in this District appropriate.

#### **PARTIES**

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Momenta.

9. Defendant Momenta is a Delaware corporation with its principal executive offices located at 301 Binney Street, Cambridge, Massachusetts 02142. Momenta's common stock is traded on the NASDAQ Global Select Market under the ticker symbol "MNTA."

10. Defendant Jane Barlow has served as a director of the Company since December 2019.

11. Defendant Bruce L. Downey has served as Chairman of the Board since June 2018 and a director of the Company since June 2009.

12. Defendant Georges Gemayel has served as a director of the Company since January 2016.

13. Defendant Steven C. Gilman has served as a director of the Company since June 2016.

14. Defendant Donna R. Grogan has served as a director of the Company since September 2019.

15. Defendant Jose-Carlos Gutiérrez-Ramos has served as a director of the Company since March 2016.

16. Defendant Elizabeth Stoner has served as a director of the Company since October 2007.

17. Defendant Craig A. Wheeler (“Wheeler”) has served as the Company’s Chief Executive Officer (“CEO”) since September 2006 and President and a director of the Company since August 2006.

18. Defendants identified in paragraphs 10 to 17 are collectively referred to herein as the “Board” or the “Individual Defendants.”

19. Relevant non-party Johnson & Johnson is a New Jersey corporation with its principal executive offices located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Johnson & Johnson’s common stock trades on the New York Stock Exchange under the ticker symbol “JNJ.”

## **SUBSTANTIVE ALLEGATIONS**

### **Company Background and the Proposed Transaction**

20. Momenta is a biotechnology company focused on the discovery and development of novel biologic therapies for the treatment of rare immune-mediated diseases in the United States. The Company’s novel therapeutic programs include M281, a fully-human anti-neonatal Fc receptor (“FcRn”), aglycosylated immunoglobulin G (“IgG1”), and monoclonal antibody to reduce circulating IgG antibodies by blocking endogenous IgG recycling via FcRn; M230, a recombinant

trivalent human IgG1 Fc multimer containing three IgG Fc regions joined to maximize activity; and M254, a hyper-sialylated immunoglobulin to treat various inflammatory diseases, including idiopathic thrombocytopenic purpura and chronic inflammatory demyelinating polyneuropathy. Momenta's biosimilar programs include M923, a biosimilar of HUMIRA for the treatment of patients with rheumatoid arthritis, crohn's disease, ulcerative colitis, and psoriasis; and M710, a biosimilar of EYLEA for the treatment of neovascular age-related macular degeneration, macular edema following retinal vein occlusion, diabetic macular edema ("DME"), and diabetic retinopathy in patients with DME. The Company's complex generics programs include Enoxaparin sodium injection, a generic version of LOVENOX that is indicated for the prevention and treatment of deep vein thrombosis, as well as supports the treatment of acute coronary syndromes; GLATOPA, a generic version of once-daily COPAXONE for the treatment of patients with relapsing forms of multiple sclerosis; and GLATOPA, a generic version of three-times-weekly COPAXONE. In addition, Momenta has collaboration and license agreements with Sandoz AG, Mylan Ireland Limited, and CSL Behring Recombinant Facility AG.

21. On August 10, 2020, Momenta announced its second quarter 2020 financial results, including total revenue of \$6.6 million for the quarter, as compared to \$5.2 million for the second quarter of 2019. The Company further reported net loss of \$57.0 million for the quarter, compared to a net loss of \$114.0 million for the same period of 2019. Defendant Wheeler commented on the second quarter's results, stating,

Momenta has made meaningful progress advancing our novel drug portfolio for auto- and alloimmune diseases, including a substantial data update from our lead program, nipocalimab. In particular, we achieved proof of concept for nipocalimab, establishing a linear and highly statistically significant correlation between rapid and durable IgG reduction and efficacy in MG. We are preparing to engage with regulators on the design for a Phase 3 study in MG and look forward to reporting full results from Vivacity-MG in the fourth quarter of 2020, as we advance ongoing studies of nipocalimab in other indications.

Additionally, we were very pleased to receive rare pediatric disease designation for nipocalimab in hemolytic disease of the fetus and newborn (HDFN), which emphasizes the need for non-invasive, safe and effective treatment options for pregnant women with alloimmune diseases. Importantly, our data and FDA's action supports nipocalimab as a best-in-class investigational FcRn-inhibitor for dosing precision and flexibility and its utility across IgG-mediated diseases.

Lastly, with M254, we recently completed enrollment in Part B of our multi-part Phase 1/2 clinical trial in idiopathic thrombocytopenic purpura (ITP) and look forward to sharing the study results later this quarter.

22. On August 19, 2020, Momenta issued a press release announcing the Proposed Transaction. The press release stated, in relevant part:

CAMBRIDGE, Mass., Aug. 19, 2020 -- Momenta Pharmaceuticals, Inc. (Nasdaq: MNTA, "Momenta" or the "Company"), a biotechnology company focused on discovering and developing novel biologic therapeutics to treat rare immune-mediated diseases announced today that it has entered into a definitive agreement for Johnson & Johnson ("Johnson & Johnson" or "J&J") to acquire Momenta for \$52.50 per share in an all-cash transaction, implying a fully-diluted equity value of \$6.5 billion. The agreement was unanimously approved by the Boards of Directors of both Momenta and Johnson & Johnson.

"The agreement with J&J recognizes the value created by years of commitment and dedication to our mission by the many current and past Momenta employees. Programs such as nipocalimab have the potential to improve the lives of countless patients suffering from autoimmune and fetal maternal diseases," said Craig Wheeler, President and Chief Executive Officer of Momenta. "This acquisition provides strong value for our shareholders and ensures a level of investment in our exciting portfolio that will further enhance its potential for patients. I believe J&J is the right company to advance our portfolio of novel drug candidates for autoimmune and rare diseases. J&J's leadership in immunology, extensive capabilities, and global reach, as well as its alignment with our vision of pioneering therapies for complex diseases is a strong fit for our company and our portfolio."

The transaction is expected to close in the second half of 2020, pending the satisfaction of all conditions to the completion of the tender offer and merger. Until that time, Momenta will continue to operate as a separate and independent company.

Momenta's financial advisors are Goldman Sachs & Co. LLC and Centerview Partners LLC, Latham & Watkins LLP is acting as legal counsel for Momenta and Skadden, Arps, Slate, Meagher & Flom LLP is acting as legal counsel for Goldman Sachs & Co. LLC and Centerview Partners LLC.

### **Transaction Details**

Under and subject to the terms of the agreement, Vigor Sub, Inc. (“Merger Sub”), a newly formed wholly owned subsidiary of Johnson & Johnson, agreed to commence a tender offer to acquire all outstanding shares of Momenta common stock for \$52.50 per share in cash and Momenta agreed to file a recommendation statement containing the unanimous recommendation of the Momenta board that Momenta stockholders tender their shares to Merger Sub. Following the completion of the tender offer, Johnson & Johnson expects to promptly consummate a merger of Momenta with Merger Sub, in which shares of Momenta that have not been tendered in the tender offer will be acquired by Johnson & Johnson and converted into the right to receive the same cash price per share as paid in the tender offer.

The closing of the tender offer is subject to customary closing conditions, including the tender of a majority of outstanding Momenta shares on a fully diluted basis and the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act. The merger agreement includes customary termination provisions for both Momenta and Johnson & Johnson.

### **The 14D-9 Contains Material Misstatements or Omissions**

27. On September 2, 2020, the defendants filed the materially incomplete and misleading 14D-9 with the SEC. Designed to convince the Company’s stockholders to tender their shares in the Offer, the 14D-9 is rendered misleading by the omission of critical information concerning: (i) Momenta management’s financial projections, relied upon by the Company’s financial advisors Goldman and Centerview in their financial analyses; (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinions provided by Goldman and Centerview; (iii) the background of the Proposed Transaction; and (iv) Company insiders’ potential conflicts of interest.

### ***Material Omissions Concerning Momenta’s Financial Projections***

28. The 14D-9 omits material information regarding the Company’s financial projections provided by Momenta’s management and relied upon by Goldman and Centerview for their financial analyses.

29. For example, the 14D-9 fails to disclose the “certain analyses prepared by the management of the Company related to the expected utilization by the Company of certain net operating loss carryforwards of the Company, as approved for Goldman Sachs’ use by the Company (the “**NOL Forecasts**”).” 14D-9 at 28. The 14D-9 similarly fails to disclose the unlevered free cash flow (“UFCF”) projected to be generated from each of the Company’s M281, M254, M710, M230, the SIFbody research platform, and the unallocated expenses and revenues for years 2020 through 2039, as well as the UFCF from Glatopa for the years 2020 through 2023, utilized by Goldman in connection with its *Illustrative Sum-of-the-Parts Discounted Cash Flow Analysis*. The 14D-9 further fails to disclose the details of the risk adjustments that were made to the Company’s projections, as well as the Company’s un-risked projections, and the line items underlying the company’s UFCFs.

30. The omission of this information renders certain portions of the 14D-9 materially misleading, including, inter alia, the following sections of the 14D-9: “Certain Projections” and “Opinions of the Company’s Financial Advisors.”

***Material Omissions Concerning Goldman’s and Centerview’s Financial Analyses***

31. The 14D-9 describes Goldman’s and Centerview’s fairness opinions and the various valuation analyses performed in support of their opinions. However, the description of Goldman’s and Centerview’s fairness opinions and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Momenta’s public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Goldman’s and Centerview’s fairness opinions in determining whether to tender their shares in the Proposed Transaction or seek appraisal.



32. With respect to Goldman's *Illustrative Discounted Cash Flow Analysis*, the 14D-9 fails to disclose: (i) the terminal year estimate of the free cash flow to be generated by the Company used to calculate a range of terminal values; and (ii) the individual inputs and assumptions underlying the discount rate range of 8.0% to 10.0%.

33. With respect to Goldman's *Illustrative Sum-of-the-Parts Discounted Cash Flow Analysis*, the 14D-9 fails to disclose: (i) the UFCFs to be generated from each of M281, M254, M710, M230, the SIFbody research platform, and the unallocated expenses and revenues for the years 2020 through 2039, and UFCFs for Glatopa for the years 2020 through 2023; (ii) Company management's basis for assuming the terminal rates of decline set forth on page 32 of the 14D-9; and (iii) the individual inputs and assumptions underlying the discount rates ranging from 8.0% to 10.0%.

34. With respect to Centerview's *Discounted Cash Flow Analysis*, the 14D-9 fails to disclose: (i) the individual inputs and assumptions underlying the discount rates ranging from 9.5% to 11.5%; and (ii) the basis for assuming that UFCFs would decline in perpetuity after December 31, 2039 at a range of rates of free cash flow decline of 30% to 20% year over year.

35. With respect to Centerview's *Analyst Price Target Analysis*, the 14D-9 fails to disclose the individual price targets observed and the sources thereof.

36. With respect to Centerview's *Premia Paid Analysis*, the 14D-9 fails to disclose the individual premiums paid in each of the transactions observed.

37. The omission of this information renders certain portions of the 14D-9 materially misleading, including, inter alia, the following sections of the 14D-9: "Certain Projections" and "Opinions of the Company's Financial Advisors."

***Material Omissions Concerning the Background of the Proposed Transaction***

38. The 14D-9 fails to disclose material information concerning the background process leading to the Proposed Transaction.

39. For example, the 14D-9 fails to disclose whether the confidentiality agreement the Company entered into with a global pharmaceutical company identified in the 14D-9 as “Company A” includes a standstill provision and, if so, whether it is still in effect and/or a “don’t-ask, don’t-waive” standstill provision presently precluding Company A from submitting a topping bid for the Company.

40. The omission of this information renders certain portions of the 14D-9 materially misleading, including, inter alia, the following section of the 14D-9: “Background of the Offer.”

***Material Omissions Concerning Company Insiders’ Potential Conflicts of Interest***

41. The 14D-9 fails to disclose material information concerning the potential conflicts of interest faced by the Company’s insiders.

42. The 14D-9 fails to disclose whether any of the Company’s directors or executive officers have secured employment with the combined company upon consummation of the Proposed Transaction, as well as the details of all employment and retention-related discussions and negotiations that occurred between Johnson & Johnson and Momenta executive officers and directors, including who participated in all such communications, when they occurred and their content. The 14D-9 further fails to disclose whether any of Johnson & Johnson’s proposals or indications of interest mentioned management retention.

43. Communications regarding post-transaction employment and merger-related benefits during the negotiation of the underlying transaction must be disclosed to stockholders. This information is necessary for Momenta’s stockholders to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning

motivations that would prevent fiduciaries from acting solely in the best interests of the Company's stockholders.

44. The omission of this information renders certain portions of the 14D-9 materially misleading, including, inter alia, the following sections of the 14D-9: "Arrangements with Current Executive Officers and Directors of the Company" and "Background of the Offer."

45. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **Claims Against All Defendants for Violations of Section 14(d) of the Exchange Act and SEC Rule 14d-9**

23. Plaintiff repeats all previous allegations as if set forth in full.

24. Defendants have caused the 14D-9 to be issued with the intention of soliciting Momenta stockholders to tender their shares in the Offer.

25. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure in connection with Offers.

26. The 14D-9 violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which omission renders the 14D-9 false and/or misleading.

27. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the 14D-9, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Transaction, they allowed it to be omitted from the 14D-9, rendering certain portions of the 14D-9 materially incomplete and therefore misleading.

28. The misrepresentations and omissions in the 14D-9 are material to Plaintiff and the other stockholders of Momenta, who will be deprived of their right to make an informed decision whether to tender their shares or seek appraisal if such misrepresentations and omissions are not corrected prior to the expiration of the Offer. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

### **COUNT II**

#### **Claims Against All Defendants for Violations of Section 14(e) of the Exchange Act**

29. Plaintiff repeats all previous allegations as if set forth in full.

30. Defendants violated Section 14(e) of the Exchange Act by issuing the 14D-9 in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Offer.

31. Defendants knew that Plaintiff would rely upon their statements in the 14D-9 in determining whether to tender its shares pursuant to the Offer or seek appraisal.

32. As a direct and proximate result of these defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff has sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender his shares or seek appraisal.

### **COUNT III**

#### **Claims Against the Individual Defendants for Violation of Section 20(a) of the Exchange Act**

33. Plaintiff repeats all previous allegations as if set forth in full.

34. The Individual Defendants acted as controlling persons of Momenta within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Momenta and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the 14D-9 filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

35. Each of the Individual Defendants was provided with or had unlimited access to copies of the 14D-9 and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

36. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The 14D-9 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

37. In addition, as the 14D-9 sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The 14D-9 purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

38. By virtue of the foregoing, the Individual Defendants have violated section 20(a) of the Exchange Act.

39. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in its favor on behalf of Momenta, and against defendants, as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

C. Directing the Individual Defendants to disseminate a 14D-9 that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: September 22, 2020

**WEISSLAW LLP**



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