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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/07/2022** at 12:58:00 PM

Clerk of the Superior Court  
By E- Filing, Deputy Clerk

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN DIEGO**

JAIME MOEN, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

GENENTECH, INC., a Delaware  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 37-2021-00008619-CU-OE-CTL

(Assigned for all purposes to the Honorable  
Katherine A. Bacal, Dept. C-69)

**DECLARATION OF MAI TULYATHAN IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: June 24, 2022

Time: 1:30 P.M.

Dept.: C-69

Complaint Filed: March 1, 2021

FAC Filed: March 10, 2022

Trial Date: Not Set

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I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all courts in the State of California and am a member of the law firm Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Jaime Moen (“Plaintiff”). I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

## CASE SUMMARY

2. On or about January 21, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendant Genentech, Inc.’s (“Defendant”) (together with Plaintiff, the “Parties”) violations of Labor Code §§ 201-204, 226, 246, 510, 558, and 1194, pursuant to Labor Code § 2699.3.

3. On March 1, 2021, Plaintiff filed a wage and hour class and Private Attorneys General Act (“PAGA”) representative action complaint, alleging causes of action for: (1) violation of California Labor Code §§ 510, 558, and 1194; (2) violation of California Labor Code §§ 201-203; (3) violation of California Labor Code § 226(a); (4) violation of California Business & Professions Code § 17200, *et seq.*; and (5) violation of Labor Code § 2698, *et seq.*

4. On June 28, 2021, Defendant filed its Demurrer as to Plaintiff's second cause of action and Motion to Strike Plaintiff's sick pay allegations from the complaint. The Parties subsequently met and conferred in connection with the Demurrer and Motion to Strike. In connection with meet and confer discussions, the Parties agreed to participate in mediation. In connection with mediation, the Parties agreed to conduct informal discovery to allow Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of damages and penalties. Defendant provided necessary data pertaining to the number of putative class members and allegedly aggrieved employees, data pertaining to the hourly rates of pay, number of pay periods at issue, number of workweeks at issue, sample wage statements, and a fifteen (15) percent sample of timekeeping and payroll records of the putative class, as well as pertinent policies regarding payment of overtime, incentives, sick leave, shift differentials, and other pertinent policies. Plaintiff's counsel subsequently conducted an exposure analysis in advance of

1 mediation.

2 5. On January 25, 2022, the Parties attended a full-day mediation with experienced  
3 wage and hour mediator Christopher Panetta, Esq. Counsel for both Parties zealously advocated  
4 on behalf of their respective clients, presenting their respective factual contentions and legal  
5 theories and defenses. After arm's-length negotiation during the mediation and subsequent  
6 discussions, the Parties reached a resolution of the action in its entirety.

7 6. In connection with the Parties' agreement, on March 7, 2022, Plaintiff filed a  
8 supplemental notice with the LWDA, setting forth Defendant's violations of Labor Code §§  
9 226.7 and 512, pursuant to Labor Code § 2699.3.

10 7. Thereafter, on March 10, 2022, Plaintiff filed a First Amended Complaint, adding  
11 causes of action for (1) violation of Labor Code § 226.7; and (2) violation of Labor Code §§  
12 226.7 and 512. The First Amended Complaint is the operative Complaint ("Complaint").  
13 Specifically, Plaintiff's class and PAGA claims as pled in the operative Complaint are predicated  
14 upon the following allegations. With respect to Plaintiff's overtime, sick pay, and meal and rest  
15 period premium regular rate claims, Plaintiff contends that Defendant failed to pay said wages at  
16 the correct regular rate of pay. In this regard, Plaintiff contends that Defendant failed to factor  
17 non-discretionary remuneration, including without limitation, various bonuses, incentives, and  
18 shift differentials, into the calculation of the regular rate for purposes of paying overtime pay,  
19 sick pay, and meal and rest period premium compensation, and thus Plaintiff and employees  
20 were underpaid said wages. In addition, Plaintiff also alleges derivative claims under Labor  
21 Code § 226(a) resulting from the underpayment of overtime, sick pay, and meal and rest period  
22 premiums. As a result of these alleged violations, Plaintiff seeks unpaid wages, waiting time  
23 penalties, statutory penalties, and civil penalties under the California Labor Code and PAGA, as  
24 well as attorneys' fees and costs.

25 **SUMMARY OF THE SETTLEMENT TERMS**

26 8. The terms of the class-wide settlement are set forth in the Stipulation of Class and  
27 PAGA Action Settlement and Release ("Stipulation" or "Settlement Agreement"). A true and  
28 correct copy of the Settlement Agreement is attached hereto as **Exhibit A**.

1           9.       The proposed class consists of “all current and former non-exempt employees of  
2 Defendant in the State of California who earned overtime wages or sick pay or meal- or rest-  
3 period premiums and nondiscretionary remuneration, including without limitation, bonuses,  
4 incentives, and shift differentials, in the same pay period, at any time during the Class Period.”  
5 Based upon Defendant’s records, as of September 18, 2021, there are approximately 3,869  
6 individuals that comprise the Class and 175,000 pay periods at issue. Class Members do not need  
7 to submit a claim should they wish to receive their share of the settlement funds. If a Class  
8 Member does not wish to take part in this settlement and be bound by the release, he or she must  
9 submit a Request for Exclusion.

10           10.       The Settlement Agreement provides for a Gross Settlement Amount of Four  
11 Million Dollars (\$4,000,000.00). *See* Stipulation ¶ 18. The Net Settlement Amount (calculated  
12 after deduction of attorneys’ fees (up to \$1,333,333.33) and costs (up to \$20,000.00), Plaintiff’s  
13 Enhancement Award (up to \$20,000.00), portion of the PAGA Payment to be paid to the LWDA  
14 (\$150,000.00), and Settlement Administration Costs (up to \$32,000.00)) will be distributed to  
15 Settlement Class Members. Stipulation ¶¶ 18, 19, 22, 43.a.i, 43.b, 43.c, 43.d.

16           11.       As part of the Settlement Agreement, Defendant does not object to Plaintiff’s  
17 Counsel’s request for attorney’s fees up to one-third of the Gross Settlement Amount – *i.e.*, the  
18 sum of One Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars  
19 and Thirty-Three Cents (\$1,333,333.33), plus up to Twenty Thousand Dollars (\$20,000.00) for  
20 reimbursement of litigation costs. *See* Stipulation ¶ 43.c. Also, as part of the Settlement  
21 Agreement, Defendant does not object to Plaintiff’s request for an Enhancement Award of  
22 Twenty Thousand Dollars (\$20,000.00). *Id.* ¶ 43.b.

23           12.       Finally, the Settlement Agreement provides for the payment of costs to the  
24 Settlement Administrator for the administration of this current settlement. The Parties have  
25 received a quote from Phoenix Settlement Administrators for a fee of approximately Twenty  
26 Eight Thousand Nine Hundred and Fifty Dollars (\$28,950.00) to administer the settlement. *See*  
27 Stipulation ¶ 43.d.

28           13.       After deducting the amounts listed above, it is estimated that the Net Settlement



Amount of approximately \$2,394,666.67 will be distributed to the Class. *Id.* ¶¶ 18, 19, 22, 43.b, 43.c, 43.d.

14. The amount distributed to each Settlement Class Member (“Individual Settlement Payment”) will depend on the number of Eligible Pay Periods Workweeks for each Class Member during the Class Period. *See* Stipulation ¶ 43.a.i.

### **POTENTIAL STATUTORY AND CIVIL PENALTIES**

15. Plaintiff negotiated the settlement sum based on a clear understanding of the maximum exposure in this case. Based on the class data provided by Defendant, Plaintiff conducted an exposure analysis. For all of the regular rate class claims, the main claim and/or damages to be recovered are waiting time penalties under Labor Code § 203. On that note, Plaintiff estimated that Defendant would face liability up to a maximum of \$14,624,157.33 in class waiting time penalties. This is calculated based on payroll data provided by Defendant regarding the number of former employees and their hourly rates of pay. For Plaintiff’s meal and rest period premiums, Plaintiff analyzed the sample time and payroll records (91 employees out of 606 employees) and found that only approximately 1,351 shifts out of the sample had a meal/rest period premium paid in the same pay period where a bonus and/or a shift differential was paid. Based thereon, Plaintiff extrapolated that data to the entire putative meal and rest period class, which yielded an estimated total of approximately 9,000 shifts that would have a meal/rest period premium paid in the same pay period where a bonus and/or a shift differential was paid. Even assuming that any underpayment of meal and rest period premiums is at \$2.00 per shift (an assumption that is on the higher side), the estimated underpayment amount would amount to only \$18,000.00. As such, Plaintiff determined that any underpayment amount for the meal/rest period premium regular rate would be low.

16. The maximum potential PAGA penalties are \$5,465,900.00 if Plaintiff were successful at trial. However, the trial court has the discretion to reduce PAGA civil penalties “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See* Cal. Labor Code § 2699(e)(2). Thus, the \$5,465,900.00 figure does not factor in the likelihood that the Court would

1 greatly reduce the amount of penalties at trial.

2 17. Under the facts of this case, I appreciate the risk that Defendant could present a  
3 persuasive argument to reduce the amount of PAGA penalties at trial. For example, in *Fleming v.*  
4 *Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff  
5 ultimately prevailed in a PAGA trial, the Court assessed only 17% of the maximum penalties—  
6 and this was after finding liability at trial. Similarly, Judge Carville of the Alameda Superior  
7 Court in the matter of *Parr v. Golden State Overnight*, Alameda Superior Court Case No.  
8 RG12618103, assessed PAGA penalties upon Defendant of approximately 7% of the total  
9 maximum penalties—again, this was only after plaintiff had prevailed at trial. In one recent  
10 California Court of Appeal case, a trial court’s reduction of PAGA penalties by 90% was upheld.  
11 *Carrington v. Starbucks*, 30 Cal. App. 5th 504, 529 (2018).

12 18. The estimated total class and PAGA penalties is approximately \$20,090,057.33,  
13 without discounting for potentially losing on any of the causes of action. Here, the Gross  
14 Settlement Amount is fair and reasonable as it is approximately **20%** of the potential recovery of  
15 Plaintiff’s class and PAGA claims if Plaintiff was to fully succeed at trial, and without any  
16 reduction of the PAGA penalties.

17 19. Based on my own independent investigation and evaluation, I am of the opinion  
18 that settlement for the consideration and on the terms set forth in the Settlement Agreement is  
19 fair, reasonable, and adequate and is in the best interests of the Class and Defendant in light of all  
20 known facts and circumstances, and the uncertainty and risks to Plaintiff involved in not  
21 prevailing on one or more of the causes of action or theories alleged in the operative Complaint,  
22 the possibility of non-certification, and the potential for appeals.

23 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

24 20. From the inception of the case, Class Counsel have zealously represented the  
25 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the  
26 individual Class Representative.

27 21. The Settlement Agreement provides for Four Million Dollars (\$4,000,000.00) as  
28 the Gross Settlement Amount. The Net Settlement Amount (calculated after deduction of

attorneys' fees (up to \$1,333,333.33) and costs (up to \$20,000.00), Plaintiff's Enhancement Award (up to \$20,000.00), the PAGA Penalties (\$200,000) of which \$150,000 will be paid to the LWDA and \$50,000 (the "PAGA Settlement Amount") will be distributed to the Aggrieved Employees, and Settlement Administration Costs (up to \$32,000.00)) is estimated to be approximately **\$2,394,666.67**.

22. The amount any Class Member will be entitled to recover will be greater or lower, depending on the number of Eligible Pay Periods, with some entitled to receive more, and others less. This is fair, as it directly allocates greater recovery to individual Class Members who have allegedly suffered greater harm. The amount may also vary depending on the number of timely Requests for Exclusion received by the Settlement Administrator and costs and awards approved by the Court.

23. Additionally, the scope of the release is appropriately limited. As a condition of participating in this settlement, Class Members waive and release "all claims, demands, rights, liabilities, penalties, fees, and causes of action that were or could have been asserted based on the facts alleged in the Action (whether in tort, contract, statute or otherwise) during the Class Period, including, but not limited to, for alleged violation of Labor Code §§ 201-204, 226, 226.7, 246, 510, 558, or 1194, or any claims based on the following allegations: failure to properly calculate the regular rate of pay for purposes of overtime, sick pay, and meal- or rest-period premiums; failure to provide accurate and/or compliant wage statements; failure to pay timely wages during employment or upon separation; or violation of Cal. Bus. & Prof. Code § 17200 *et seq.* by engaging in the foregoing conduct" ("Released Claims"). *See* Stipulation ¶¶ 27, 40.a. This release only applies during the time period of September 2, 2016, through the date of preliminary approval of the settlement. *Id.* ¶ 8.

24. I believe that Plaintiff and the Class could prevail at trial. However, I also believe in the fairness of the settlement, which is based on factoring in the inherent risks in drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability. Moreover, as Defendant adamantly denies that it should be liable for the full extent of the penalties, there is a possibility that Plaintiff and the Class would be awarded fewer

1 or no penalties at trial.

2 25. Thus, after taking into account sharply disputed legal issues involved in this  
3 litigation, the risks associated with further prosecution, delays caused by potential appeals, and  
4 the substantial benefits to be received pursuant to the Settlement Agreement, I believe that the  
5 proposed settlement is fair, reasonable, and adequate and is in the best interests of the Class.

6 **ATTORNEY EXPERIENCE**

7 26. Class Counsel have a great deal of experience in wage and hour class action  
8 litigation and have been approved as class counsel in a number of class actions. My co-counsel  
9 and I can and will adequately represent the Class Members in this action and will pursue this  
10 lawsuit to its conclusion. I have no conflicts with the Class and will adequately represent the  
11 Class.

12 27. I have spent significant time researching and pursuing the claims that have been  
13 alleged in this action. From the inception of the case, my co-counsel and I have solely  
14 represented the interest of the Class and have expended significant time and resources reviewing  
15 the pleadings, meeting and conferring with defense counsel, calculating and analyzing the  
16 potential range of recoverable penalties, preparing for and attending mediation, negotiating the  
17 terms of the settlement, and drafting the Settlement Agreement. The settlement was obtained for  
18 the benefit of the Class, not for the individual Plaintiff. Based on my review of all the  
19 information, and based on my experience in class action litigation, I believe this settlement to be  
20 fair, adequate, and reasonable.

21 28. I am one of the primary attorneys on this matter. My qualifications are as follows:  
22 I received my JD from Loyola Law School in 2017. I received the First Honors Award in Legal  
23 Research and Writing, First Honors Award in Appellate Advocacy, and First Honors Award in  
24 Civil Litigation Practicum I for achieving the highest grade in those classes. During law school, I  
25 was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District Court,  
26 Central District of California, for the Honorable Christina A. Snyder, and a certified law clerk at  
27 the San Diego County District Attorney's Office, Collaborative Courts Division, and the Los  
28 Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes

1 Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I  
2 placed Top 16 and was awarded the Top Ten Brief Award. In 2017, I participated in the  
3 Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created  
4 to investigate retaliation complaints. Upon graduation from law school, I was admitted to the  
5 California Bar in December 2017.

6 29. I am currently an associate at the law firm Diversity Law Group, P.C., an  
7 employment law firm that has handled numerous wage and hour class and individual actions, on  
8 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including  
9 the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San  
10 Diego County Superior Court, Monterey County Superior Court, as well as the United States  
11 District Courts for the Central, Northern, Southern, and Eastern Districts of California.

12 30. I am currently handling and/or have handled numerous wage and hour class action  
13 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-  
14 cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-  
15 MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao v. H & M*  
16 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper Company* (Case  
17 Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial  
18 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); and *Garcia v. Apex*  
19 *Systems, LLC, et al.* (Case Number RG19014709).

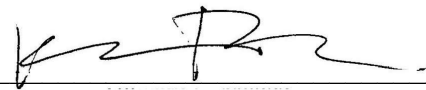
20 31. In 2018, I argued before the California Court of Appeal, Second Appellate  
21 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case  
22 Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*  
23 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In  
24 that same year, I also assisted the firm in successfully obtaining class certification and partial  
25 summary judgment by the United States District Court, Central District of California in the case  
26 of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the  
27 bench trial in that same case in December 2018.

28 32. I have also been approved as class counsel in numerous other wage/hour class

1 actions. Most recently, I was approved as class counsel in the cases *Garcia v. Wal-Mart*  
2 *Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.*  
3 (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-cv-965-JLS  
4 (DFM)), and *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319).  
5 Moreover, I was granted final approval as class counsel in *California Forensic Medical Group*  
6 *Wage and Hour Cases* (Case No. JCCP4999), *Valles v. Community Hospital of the Monterey*  
7 *Peninsula* (Case No. 17CV003452), *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644),  
8 *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319), *Mendez v.*  
9 *Falcon Trading Company* (Case No. 19CV004512), *Khan v. Amy’s Kitchen, Inc.* (Case No.  
10 SCV-266127), and *Truong v. DS Services of America, Inc.* (Case No. FCS054399). I acted as  
11 lead counsel in these cases listed above.

12 I declare under penalty of perjury under the laws of the State of California that the  
13 foregoing is true and correct.

14 Executed on this 2nd day of June 2022, at Los Angeles, California.

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17 Mai Tulyathan  
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# EXHIBIT A

Larry W. Lee (State Bar No. 228175)  
Mai Tulyathan (State Bar No. 316704)  
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Attorneys for Defendant  
GENENTECH, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

JAIME MOEN, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

GENENTECH, INC., a Delaware  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 37-2021-00008619-CU-OE-CTL

(Assigned for all purposes to the Honorable  
Katherine A. Bacal)

**JOINT STIPULATION OF CLASS AND PAGA  
ACTION SETTLEMENT AND RELEASE**

Complaint Filed: March 1, 2021  
Trial Date: None Set



1 IT IS HEREBY STIPULATED by and between Plaintiff Jaime Moen ("Plaintiff") and  
2 Defendant Genentech, Inc. ("Defendant, and with Plaintiff, the "Parties"), subject to the approval  
3 of the Court, that the Action is hereby compromised and settled pursuant to the terms and  
4 conditions set forth in this Joint Stipulation of Class and PAGA Action Settlement and Release  
5 ("Agreement," "Settlement," "Settlement Agreement," or "Stipulation of Settlement").

6 **DEFINITIONS**

7 Unless otherwise defined herein, the following terms used in this Agreement shall have  
8 the meanings ascribed to them as set forth below. To the extent terms or phrases used in this  
9 Agreement are not specifically defined in this section, but are defined elsewhere in the  
10 Agreement, they are incorporated herein by reference.

11 1. "Action" means the putative class and representative action entitled *Jaime Moen*  
12 *v. Genentech, Inc.*, San Diego County Superior Court Case No. 37-2021-00008619-CU-OE-  
13 CTL.

14 2. "Aggrieved Employees" means all current and former non-exempt employees of  
15 Defendant in the State of California who earned overtime wages or sick pay or meal- or rest-  
16 period premiums and nondiscretionary remuneration, including without limitation, bonuses,  
17 incentives, and shift differentials, in the same pay period, at any time during the PAGA Period.

18 3. "Class Counsel" means Diversity Law Group, P.C.

19 4. "Class Counsel Award" means the court-approved attorneys' fees for Class  
20 Counsel's litigation and resolution of the Action not to exceed one-third (1/3) of the Gross  
21 Settlement Amount, and the court-approved costs incurred by Class Counsel in connection with  
22 this Action not to exceed Twenty Thousand Dollars (\$20,000.00).

23 5. "Class List" means information regarding Class Members that Defendant shall in  
24 good faith compile from its records and shall include each Class Member's: (i) full name; (ii) last  
25 known address; (iii) Social Security Number; and (iv) number of Eligible Pay Periods during the  
26 Class Period and PAGA Period (where applicable).

27 6. "Class Members" or "Class" means all current and former non-exempt employees  
28 of Defendant in the State of California who earned overtime wages or sick pay or meal- or rest-

1 period premiums and nondiscretionary remuneration, including without limitation, bonuses,  
2 incentives, and shift differentials, in the same pay period, at any time during the Class Period.

3 7. "Class Notice" means the court-approved Notice of Class Action Settlement and  
4 Release, substantially in the same form attached hereto as Exhibit A, which the Settlement  
5 Administrator shall mail to each Class Member, in accordance with this Agreement.

6 8. "Class Period" means the period of September 2, 2016, through the date of  
7 preliminary approval of the settlement.

8 9. "Defense Counsel" means Orrick, Herrington & Sutcliffe LLP.

9 10. "Effective Date" means: (i) the day immediately after the last day by which a  
10 Notice of Appeal of Judgment may be timely filed with the California Court of Appeal (i.e., the  
11 sixty-first calendar day following entry of Final Order and Judgment), and no such appeal being  
12 filed; (ii) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise,  
13 the day after the last date for filing a request for further review of the Court of Appeal's decision  
14 passes and no further review is requested; (iii) if an appeal is filed and there is a final disposition  
15 by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court  
16 of Appeal's decision is requested, the day after the request for review is denied with prejudice  
17 and/or no further review of the order can be requested; or (iv) if review is accepted, the day the  
18 Supreme Court of the State of California affirms the Settlement.

19 11. "Eligible Class Pay Periods" means the number of pay periods during the Class  
20 Period when a Class Member earned overtime wages, sick pay, or meal or rest period premiums,  
21 and non-discretionary remuneration in the same pay period.

22 12. "Eligible PAGA Pay Periods" means the number of pay periods during the PAGA  
23 Period when an Aggrieved Employee earned overtime wages, sick pay, or meal or rest period  
24 premiums, and non-discretionary remuneration in the same pay period.

25 13. "Employer's Share of Payroll Taxes" means Defendant's portion of payroll taxes,  
26 including on the portion of the Individual Settlement Payments that constitutes wages, as  
27 calculated by the Settlement Administrator. This amount shall be paid in addition to the Gross  
28 Settlement Amount.

1           14.     “Enhancement Award” means the court-approved amount to be paid to Plaintiff  
2 Jaime Moen in an amount not to exceed Twenty Thousand Dollars (\$20,000.00), which shall be  
3 paid in addition to Plaintiff’s Individual Settlement Payment, in recognition of Plaintiff’s efforts  
4 and risks in assisting with the prosecution of the Action and as consideration for providing a  
5 complete and general release as set forth in Paragraph 47(c). Fifty percent (50%) of Plaintiff’s  
6 Enhancement Award shall be allocated to Plaintiff’s efforts and risks in assisting with the  
7 prosecution of the Action, and the remaining fifty percent (50%) shall be allocated as  
8 consideration for providing a complete and general release. Of the fifty percent (50%) that shall  
9 be allocated as consideration for providing a complete and general release, fifty percent (50%)—  
10 or twenty-five percent (25%) of the total Enhancement Award—shall be allocated to the ADEA  
11 Waiver set forth in Paragraph 47(c)(v).

12           15.     “Final Approval Hearing” means the hearing to be conducted by the Court at  
13 which Plaintiff shall request the Court approve the Settlement on a final basis, enter the Final  
14 Order and Judgment, and take other appropriate action.

15           16.     “Final Order and Judgment” means the order and judgment entered by the Court  
16 upon granting final approval of the Settlement and finding this Settlement binding. A proposed  
17 Final Order and Judgment shall be mutually agreed upon by the Parties and submitted to the  
18 Court concurrently with Plaintiff’s Motion for Final Approval of the Settlement.

19           17.     “Final Report” means the declaration to be prepared by the Settlement  
20 Administrator within ten (10) calendar days after final disbursement of all funds from the  
21 Settlement Fund Account, certifying completion of its duties and a final report on the  
22 disbursement of all funds from the Gross Settlement Amount, including the total amount that  
23 was cashed/deposited by Settlement Class Members and Aggrieved Employees and the total  
24 amount any unpaid residue or unclaimed or abandoned funds paid to Legal Aid At Work  
25 pursuant to California Code of Civil Procedure § 384.

26           18.     “Individual Class Settlement Payment” means the settlement amount payable  
27 from the Net Settlement Amount to each Settlement Class Member based on the number of  
28 Eligible Class Pay Periods.

1           19.     “Individual PAGA Settlement Payment” means the settlement amount payable  
2 from the PAGA Settlement Amount to each Aggrieved Employee based on the number of  
3 Eligible PAGA Pay Periods.

4           20.     “Gross Settlement Amount” means Four Million Dollars (\$4,000,000.00), which  
5 is the maximum amount Defendant shall pay in connection with this Settlement and is all-  
6 inclusive of all Individual Class Settlement Payments to Class Members, all Individual PAGA  
7 Settlement Payments to Aggrieved Employees, the Class Counsel Award, Plaintiff’s  
8 Enhancement Award, LWDA Payment, and Settlement Administration Costs, except that  
9 Defendant shall be separately responsible for its Employer’s Share of Payroll Taxes, which shall  
10 be paid in addition to the Gross Settlement Amount.

11           21.     “LWDA Payment” means the amount that the Parties have agreed to pay to the  
12 LWDA in connection with the PAGA Penalties. Pursuant to PAGA, Seventy-Five Percent  
13 (75%), or One Hundred Fifty Thousand Dollars (\$150,000), of the PAGA Penalties will be paid  
14 to the LWDA.

15           22.     “Net Settlement Amount” means the Gross Settlement Amount, less the Class  
16 Counsel Award, Plaintiff’s Enhancement Award, the PAGA Penalties, and Settlement  
17 Administration Costs.

18           23.     “Notice of Objection” means a Class Member’s valid and timely submission of a  
19 written objection to the Settlement. An objection must include: (a) the Action’s name and case  
20 number; (b) the objector’s full name, address, and telephone number; (c) a written statement of  
21 all grounds for the objection; (d) copies of any papers, briefs, or other documents upon which the  
22 objection is based, if any; (e) a statement whether the objector intends to appear at the Final  
23 Approval hearing; and (f) the objector’s signature. Any Class Member who does not submit a  
24 timely written objection to the Settlement, or who fails to otherwise comply with the specific and  
25 technical requirements of this section, will be foreclosed from objecting to the Settlement, by  
26 appeal or otherwise. Class Members who submit Notices of Objection may be subject to be  
27 called for a deposition. At no time shall any of the Parties, Class Counsel, or Defense Counsel  
28 seek to solicit or otherwise encourage or discourage Class Members from submitting a Notice of

1 Objection or filing an appeal from the Final Order and Judgment.

2 24. "PAGA" means California's Labor Code Private Attorneys General Act of 2004,  
3 as amended (Cal. Labor Code §§ 2698 *et seq.*).

4 25. "PAGA Notices" means the letters dated January 21, 2021 and March 7, 2022,  
5 that Plaintiff Jaime Moen sent to the California Labor & Workforce Development Agency  
6 ("LWDA") pursuant to Labor Code § 2699.3 to exhaust his administrative remedies under the  
7 Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code § 2698, *et seq.*

8 26. "PAGA Penalties" means the amount of Two Hundred Thousand Dollars  
9 (\$200,000.00), subject to Court approval, to be paid from the Gross Settlement Amount for  
10 satisfaction of the PAGA claims in this Action. Pursuant to the PAGA, seventy-five percent  
11 (75%), or One Hundred Fifty Thousand Dollars (\$150,000.00), of this sum will be paid to the  
12 LWDA. The remaining twenty five percent (25%), or Fifty Thousand Dollars (\$50,000.00),  
13 shall be the PAGA Settlement Amount and shall be distributed to Aggrieved Employees in  
14 accordance with this Settlement.

15 27. "PAGA Settlement Amount" means the Twenty-Five Percent (25%) or Fifty  
16 Thousand Dollars (\$50,000) of the PAGA Penalties that will be paid to Aggrieved Employees.

17 28. "PAGA Period" means the period of July 27, 2019, until the date of preliminary  
18 approval of the settlement.

19 29. "PAGA Release" or "Released PAGA Claims" means all claims, demands, rights,  
20 liabilities, penalties, fees, and causes of action under PAGA during the PAGA Period, Labor  
21 Code §§ 201–204, 226, 226.7, 246, 510, 558, or 1194 or that could have been alleged in the  
22 operative complaint based on the facts, policies, practices, occurrences, or acts alleged in the  
23 operative complaint or letters to the LWDA, or that are based on any alleged failure to properly  
24 calculate the regular rate of pay for purposes of overtime, sick pay, and meal or rest period  
25 premiums; failure to provide accurate and/or compliant wage statements; failure to pay timely  
26 wages during employment or upon separation.

27 30. "Pay Period Dispute" means a written statement from a Class Member or  
28 Aggrieved Employee disputing the number of Eligible Class Pay Periods or Eligible PAGA Pay

Periods listed on his/her Class Notice. Any such Pay Period Dispute must be timely mailed or faxed to the Settlement Administrator by the Response Deadline. The date of the postmark/fax stamp on the mailing envelope will be the exclusive means to determine whether a Pay Period Dispute has been timely submitted. A valid Pay Period Dispute must be in writing and should contain: (i) the Class Member's full name, address, and telephone number; (ii) the number of Eligible Class Pay Periods or Eligible PAGA Pay Periods the Class Member/Aggrieved Employee contends is correct; (iii) any evidence supporting his or her contention; and (iv) his or her signature. The information identified by Defendant in the Class List will be presumed to be correct, unless a particular Class Member demonstrates otherwise to the Settlement Administrator by credible evidence. All Pay Period Disputes will be resolved and decided by the Settlement Administrator and the Settlement Administrator's decision on all Pay Period Disputes will be final, subject only to the final resolution by the Court if the Court decides to rule on the dispute prior to or concurrently with its Final Order and Judgment.

31. "Class Pay Period Value" means the value of each Eligible Class Pay Period, obtained by dividing the Net Settlement Amount by the Settlement Class Members' aggregate total number of Eligible Class Pay Periods.

32. "PAGA Pay Period value" means the value of each Eligible PAGA Pay Period, obtained by dividing the PAGA Settlement Amount by the Aggrieved Employees' aggregate total number of Eligible PAGA Pay Periods.

33. "Preliminary Approval Order" means the Court's order approving and authorizing the mailing of the Settlement Notice by the Settlement Administrator, setting the date of the Final Approval Hearing, and granting preliminary approval of this Settlement. A proposed Preliminary Approval Order shall be mutually agreed upon by the Parties and submitted to the Court concurrently with Plaintiff's Motion for Preliminary Approval of the Settlement.

34. "Released Class Claims" means any and all claims, demands, rights, liabilities, penalties, fees, and causes of action that were or could have been asserted based on the facts alleged in the Action (whether in tort, contract, statute or otherwise) during the Class Period, including, but not limited to, for alleged violation of Labor Code §§ 201–204, 226, 226.7, 246,

510, 558, or 1194, or any claims based on the following allegations: failure to properly calculate the regular rate of pay for purposes of overtime, sick pay, and meal- or rest-period premiums; failure to provide accurate and/or compliant wage statements; failure to pay timely wages during employment or upon separation; or violation of Cal. Bus. & Prof. Code § 17200 *et seq.* by engaging in the foregoing conduct. Settlement Class Members' Released Class Claims include all claims for unpaid wages, overtime wages, statutory penalties, civil penalties, damages of any kind, interest, attorneys' fees, costs, injunctive relief, restitution, and any other equitable relief under California or federal statute, ordinance, regulation, common law, or other source of law, including but not limited to the California Labor Code, California Business & Professions Code, California Civil Code, California Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act (FLSA).

35. "Released Parties" means Defendant and its past or present officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors and predecessors in interest, assigns, subsidiaries, affiliates, and parents.

36. "Request for Exclusion" means a written statement submitted by a Class Member indicating a request to be excluded or otherwise opt-out from the Settlement. The Request for Exclusion must be in writing and must: (i) contain the name, address, and telephone number, of the Class Member requesting exclusion; (ii) state the Class Member does not wish to be included in the Settlement; (iii) be signed by the Class Member; (iv) be returned via mail or fax to the Settlement Administrator as specified in the Settlement Notice; and (v) be postmarked or fax stamped on or before the Response Deadline. The date of the postmark/fax stamp on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Class Member who does not validly and timely request exclusion from the Settlement will be deemed a "Settlement Class Member" and will be bound by all terms of the Settlement, if the Settlement is granted final approval by the Court. Any Class Member who validly and timely requests to be excluded from the Settlement will no longer be a member of the Settlement Class and will not have any right to object to, appeal, or comment on the Settlement,

1 but will remain bound by the Released PAGA Claims. Class Members or Aggrieved Employees  
2 may not opt out of the Released PAGA Claims. No later than ten (10) calendar days after the  
3 Response Deadline, the Settlement Administrator shall provide counsel for the Parties a list of all  
4 Class Members who submitted a timely and valid Request for Exclusion.

5 37. “Response Deadline” means forty-five (45) calendar days from the initial mailing  
6 of the Class Notices by the Settlement Administrator unless the 45th day falls on a Sunday or  
7 Federal holiday, in which case the Response Deadline will be extended to the next day on which  
8 the U.S. Postal Service is open. The Response Deadline is the last date on which Class Members  
9 may submit a Request for Exclusion, written objection, or Pay Period Dispute to the Settlement  
10 Administrator.

11 38. “Settlement Administrator” means Phoenix Settlement Administrators, as  
12 approved by the Court for purposes of administering this Settlement. The Parties each represent  
13 they do not have any financial interest in the Settlement Administrator or otherwise have a  
14 relationship that could create a conflict of interest.

15 39. “Settlement Administration Costs” means the reasonable costs and fees incurred  
16 by the Settlement Administrator, as approved by the Court, to administer the Settlement in  
17 accordance with this Agreement, which will be paid from the Gross Settlement Amount and is  
18 expected to not exceed Thirty-Two Thousand Dollars (\$32,000.00).

19 40. “Settlement Class Members” means all Class Members who do not submit a valid  
20 and timely Request for Exclusion.

21 41. “Settlement Check” means a check mailed by the Settlement Administrator to a  
22 Settlement Class Member with that Settlement Class Member’s Individual Class Settlement  
23 Payment. To the extent a Settlement Class Member is also an Aggrieved Employee, that  
24 Settlement Class Member’s Settlement Check will also include that Settlement Class Member’s  
25 Individual PAGA Settlement Payment.

26 42. “Settlement Fund Account” means the Qualified Settlement Fund within the  
27 meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by  
28 the Settlement Administrator for the benefit of Settlement Class Members and Aggrieved



Employees, from which all monies payable under this Settlement Agreement shall be paid, as set forth herein.

### **RECITALS**

43. **Discovery, Investigation, and Research.** The Parties have engaged in extensive investigation of the facts and law during the litigation of the Action. The investigation included the exchange of information through informal discovery, including Defendant's employment policies, practices, and procedures, and time and pay records. The Parties prepared for and attended a full-day mediation with Christopher Panetta, Esq., a well-regarded mediator experienced in mediating complex wage-and-hour matters, including those in the class and PAGA action context. Counsel for the Parties also investigated applicable law as applied to the facts in the case, potential defenses thereto, and relief sought by Plaintiff on behalf of himself and the Class. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action. With the assistance of the mediator, the Parties reached the terms of settlement set forth herein.

44. **Benefits of Settlement to Plaintiff and the Class Members.**

a. The Settlement was reached after arm's-length bargaining between the Parties with the assistance of an experienced mediator and after extensive investigation and exchange and review of documents and class data, by Parties, which allowed them to assess the merits and to compromise the issues on a fair and equitable basis.

b. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate Plaintiff's disputes in the Action through trial and through any possible appeals. Plaintiff also has taken into account the uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages, penalties, restitution, and other relief sought in the Action. Plaintiff and Class Counsel also have taken into account Defendant's agreement to enter into a settlement that confers substantial benefits upon the Class Members. Based on the foregoing,

1 Plaintiff and Class Counsel have determined that the Settlement set forth herein is fair, adequate,  
2 and reasonable, and is in the best interests of all Class Members.

3 45. **Defendant's Denial of Wrongdoing and Reasons for Settlement.**

4 a. Defendant denies generally all claims alleged in the Action and further  
5 denies class treatment is appropriate for any purpose other than this settlement. Defendant  
6 further contends that litigating Plaintiff's claim under PAGA would be unmanageable on a  
7 representative basis. Defendant contends it complied with California and other applicable law.

8 b. Defendant has concluded further defense of the Action would be  
9 protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have  
10 been devoted, and unless this Settlement is completed, shall continue to be, devoted to the  
11 defense of the claims asserted by Plaintiff. Defendant has also taken into account the risks of  
12 further litigation in reaching its decision to enter into this Settlement. Even though Defendant  
13 contends it is not liable for any of the claims alleged by Plaintiff in the Action and/or PAGA  
14 Notices and denies any liability whatsoever, Defendant, nonetheless, has agreed to settle in the  
15 manner and upon the terms set forth in this Settlement and to fully and finally put to rest the  
16 claims alleged in this Action. This Settlement is a compromise of disputed claims. Nothing  
17 contained in this Settlement shall be construed or used as an admission by or against Defendant  
18 as to the merits or lack thereof of the claims asserted in the Action. Defendant contends that it  
19 has complied with all applicable state, federal and local laws.

20 46. **Certification for Settlement Purposes Only.** The Parties stipulate to  
21 certification of the Class for settlement purposes only. The Court has not ruled on class  
22 certification in the underlying litigation and the Settlement is not, and it should not be construed  
23 as, any admission of fact or law in this matter or any other matter that class certification is  
24 appropriate. Should this Settlement not be approved or be terminated, all stipulations set forth  
25 herein (including in this paragraph) shall be null and void and shall not be admissible for any  
26 purpose whatsoever.

27 **TERMS OF SETTLEMENT**

28 NOW THEREFORE, in consideration of the mutual covenants, promises, and

1 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

2       47.     **Binding Settlement.** This Settlement shall bind the Parties, all Settlement Class  
3 Members, and all Aggrieved Employees, subject to the terms and conditions hereof and the  
4 Court's approval.

5       48.     **Tax Liability.** The Parties make no representations as to the tax treatment or  
6 legal effect of the payments specified herein, and Class Members and Aggrieved Employees are  
7 not relying on any statement or representation by the Parties, Class Counsel, Defense Counsel, or  
8 the Settlement Administrator in this regard. Settlement Class Members, Aggrieved Employees,  
9 and Class Counsel understand and agree that they shall be solely and legally responsible for the  
10 payment of all applicable taxes and penalties assessed on the payments specified herein, except  
11 Defendant will be responsible for paying the Employer's Share of Payroll Taxes separate from  
12 and in addition to the Gross Settlement Amount.

13       49.     **Releases.**

14             a.     **Class Release by All Settlement Class Members.** Upon funding of the  
15 Gross Settlement Amount, all Settlement Class Members, including Plaintiff, shall release the  
16 Released Parties of and from all of the Released Class Claims. Class Members who have  
17 submitted a timely and valid Request for Exclusion will not be deemed to have released the  
18 Released Parties from the Released Class Claims.

19             However, those Class Members who are Aggrieved Employees will be deemed to have  
20 released their Released PAGA Claims regardless of whether they request exclusion from the  
21 Settlement, as further set forth below. Class Members who do not negotiate their Individual  
22 Settlement Payment Checks also will not release any claims under the Fair Labor Standards Act,  
23 29 U.S.C. §§ 216 *et seq.*

24             b.     **PAGA Release by Aggrieved Employees.** Upon the Effective Date, and  
25 in consideration for the PAGA Settlement Amount, Plaintiff and Aggrieved Employees shall  
26 release the Released Parties from the Released PAGA Claims. Aggrieved Employees will not  
27 have the opportunity to opt out of or object to the PAGA Release. Aggrieved Employees are  
28 bound by the PAGA Release regardless of whether they opt out of the class portion of the

1 Settlement and regardless of whether they cash and/or otherwise negotiate their Individual  
2 Settlement Payment.

3 c. **Additional General Release and Waiver of Claims by Plaintiff.**

4 i. In addition to the releases set forth above, Plaintiff, in his  
5 individual capacity, agrees to release the Released Parties from any and all claims, known and  
6 unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or  
7 other source of law, arising as of the date of execution of this Agreement, including but not  
8 limited to claims arising from or related to his employment with Defendant, separation of  
9 employment from Defendant, and any acts that have or could have been asserted in any legal  
10 action or proceeding against Defendant, whether known or unknown, arising under any federal,  
11 state or local law or statute, including, inter alia, those arising under the California Labor Code,  
12 Fair Labor Standards Act, Americans with Disabilities Act, Age Discrimination In Employment  
13 Act, Family and Medical Leave Act, Older Workers Benefit Protection Act, Title VII of the Civil  
14 Rights Act of 1964, The Civil Rights Act of 1866, The Rehabilitation Act of 1973, the Civil  
15 Rights Act of 1991, Employee Retirement Income Security Act, Worker Adjustment and  
16 Retraining Notification Act, National Labor Relations Act, California Corporations Code,  
17 California Business and Professions Code, California Fair Employment and Housing Act,  
18 California Constitution (all as amended), and law of contract and tort, as well as for  
19 discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other  
20 employment compensation, emotional distress, medical expenses, other economic and non-  
21 economic damages, attorney fees, and costs (collectively, "Plaintiff's Released Claims").

22 ii. Plaintiff executes this release with the full knowledge that the  
23 release covers all possible claims against the Released Parties, to the fullest extent permitted by  
24 law, except claims based on an alleged breach of this Agreement.

25 iii. Notwithstanding the foregoing, the Parties expressly agree and  
26 acknowledge that nothing in this Agreement releases or waives any rights or claims the Parties  
27 may have with respect to any claims for workers' compensation or to other rights and claims that  
28 cannot be waived as a matter of law or public policy.

1                   iv.           Even if Plaintiff discovers facts in addition to or different from  
2 those that he now knows or believes to be true with respect to the subject matter of Plaintiff's  
3 Released Claims, those claims will remain released and forever barred. To effect a full and  
4 complete general release as described above, Plaintiff expressly waives and relinquishes all  
5 rights and benefits of Section 1542 of the Civil Code of the State of California, and does so  
6 understanding and acknowledging the significance and consequence of specifically waiving  
7 Section 1542. Section 1542 of the Civil Code of the State of California states as follows:

8                   **A GENERAL RELEASE DOES NOT EXTEND TO**  
9                   **CLAIMS THAT THE CREDITOR OR RELEASING**  
10                  **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**  
11                  **OR HER FAVOR AT THE TIME OF EXECUTING THE**  
12                  **RELEASE AND THAT, IF KNOWN BY HIM OR HER,**  
13                  **WOULD HAVE MATERIALLY AFFECTED HIS OR HER**  
14                  **SETTLEMENT WITH THE DEBTOR OR RELEASED**  
15                  **PARTY.**

16           Thus, notwithstanding the provisions of Section 1542, and to implement a full and  
17 complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this  
18 Settlement is intended to include in its effect, without limitation, all claims Plaintiff does not  
19 know or suspect to exist in Plaintiff's favor at the time of signing this Settlement, and that this  
20 Settlement contemplates the extinguishment of any such claims. Plaintiff warrants that he has  
21 read this Settlement, including this waiver of California Civil Code § 1542, and that Plaintiff has  
22 consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this  
23 Settlement and specifically about the waiver of Section 1542, and that Plaintiff understands this  
24 Settlement and the Section 1542 waiver, and so Plaintiff freely and knowingly enters into this  
25 Settlement. Plaintiff further acknowledges that Plaintiff later may discover facts different from  
26 or in addition to those Plaintiff now knows or believes to be true regarding the matters released  
27 or described in this Settlement, and even so Plaintiff agrees that the releases and agreements  
28 contained in this Settlement shall remain effective in all respects notwithstanding any later  
discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any  
mistake in connection with the true facts involved in the matters, disputes, or controversies

1 released or described in this Settlement or with regard to any facts now unknown to Plaintiff  
2 relating thereto. Plaintiff further acknowledges this waiver of the provisions of Section 1542  
3 was separately bargained for and is an essential and material term of this Agreement.

4 v. **ADEA Waiver**. Plaintiff acknowledges that he is knowingly and  
5 voluntarily waiving and releasing any rights he may have under the Federal Age Discrimination  
6 in Employment Act (the "ADEA Waiver") and that the consideration given for the ADEA  
7 Waiver is in addition to anything of value to which he is already entitled. He further  
8 acknowledges that: (a) his ADEA Waiver does not apply to any claims that may arise after he  
9 signs this Agreement; (b) he should consult with an attorney prior to executing this Agreement;  
10 (c) he has 21 calendar days within which to consider this Agreement (although he may choose to  
11 execute the Agreement earlier); (d) he has 7 calendar days following the execution of the  
12 Agreement to revoke it; and (e) the Agreement will not be effective until the eighth day after he  
13 signs it provided that he has not revoked it. He agrees that any modifications, material or  
14 otherwise, made to this Agreement do not restart or affect in any manner the original 21-day  
15 consideration period provided in this paragraph. To revoke the Agreement, he must email a  
16 written notice of revocation to Tiffany Renee Thomas at thomas.tiffany-renee@gene.com prior  
17 to the end of the 7-day period. Plaintiff acknowledges that his consent to this Agreement is  
18 knowing and voluntary.

19 Plaintiff acknowledges that if he timely exercises such right to revocation, it is effective  
20 only for any claims pursuant to the federal Age Discrimination in Employment Act and/or the  
21 federal Older Workers Benefit Protection Act, and all other claims remain waived and released  
22 to the maximum lawful extent and such waiver and release is supported by sufficient  
23 consideration, and this Agreement becomes effective for all other purposes. The Parties  
24 acknowledge that of the Enhancement Award provided for in Section 51(b) of this Settlement  
25 Agreement, twenty-five percent (25%) is in consideration for Plaintiff's ADEA Waiver. Plaintiff  
26 further understands and agrees that if he timely exercises such right to revocation, the  
27 Enhancement Payment amount provided for in Section 51(b) of this Agreement shall be reduced  
28 by twenty-five percent (25%).

1           50.     **Benefit Plans Not Affected.** The Individual Class Settlement Payments made to  
2 Settlement Class Members and Individual PAGA Settlement Payments made to Aggrieved  
3 Employees under this Settlement, as well as any other payments made pursuant to this  
4 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to  
5 which Class Members or Aggrieved Employees may be eligible, including but not limited to  
6 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave  
7 plans, paid time off plans, and any other benefit plan. Rather, it is the Parties' intention that this  
8 Settlement Agreement will not affect any rights, contributions, or amounts to which any Class  
9 Members or Aggrieved Employees may be entitled under any benefit plans.

10           51.     **Settlement Administrator.**

11           a.       The Settlement Administrator will be responsible for (1) preparing,  
12 translating, printing, and mailing the Class Notice to Class Members; (2) receiving and  
13 processing Requests for Exclusion, Notices of Objection, and Pay Period Disputes; (3)  
14 calculating payments under the Settlement, including taking into account any withholdings or  
15 deductions; (4) handling inquiries from Class Members concerning the Settlement, including  
16 matters in the Class Notice; (5) providing weekly status reports to Defense Counsel and Class  
17 Counsel regarding the mailings to and submissions received from Class Members; (6)  
18 distributing Plaintiff's Enhancement Award, Class Counsel Award, Individual Class Settlement  
19 Payments, Individual PAGA Settlement Payments, the LWDA Payment, and payments to taxing  
20 and other government authorities as appropriate; (7) providing due diligence declarations for  
21 submission to the Court, as needed; (8) printing and providing Settlement Class Members,  
22 Aggrieved Employees, and Plaintiff with tax forms as required under this Settlement Agreement  
23 and applicable law, and providing copies of same to Defendant; (9) establishing and maintaining  
24 the Settlement Fund Account, as detailed in this Settlement; and (10) such other tasks as Parties  
25 mutually agree or the Court orders the Settlement Administrator to perform.

26           b.       The Settlement Administrator will perform a skip-trace search and re-mail  
27 all Class Notices that are returned as undelivered on or before the Response Deadline, within  
28 seven (7) calendar days of receiving notice that the mailing was undeliverable, and the deadline

1 to submit a Notice of Objection, Request for Exclusion, and/or Pay Periods Dispute will be  
2 extended by ten (10) calendar days for Class Members to whom a Class Notice is re-mailed.

3 c. The Settlement Administrator will also handle distribution of all payments  
4 to Settlement Class Members, Aggrieved Employees, Plaintiff, the LWDA, and Class Counsel,  
5 as provided herein and approved by the Court, as well as handle transmission of uncashed  
6 settlement checks as provided herein.

7 52. **Notice to Class Members.**

8 a. Within twenty (20) calendar days of entry of the Preliminary Approval  
9 Order, Defendant shall provide the Settlement Administrator with the Class List for purposes of  
10 mailing the Class Notice to Class Members.

11 i. **Notice by First Class U.S. Mail.** Upon receipt of the Class List,  
12 the Settlement Administrator shall perform a search based on the National Change of Address  
13 Database maintained by the United States Postal Service to update and correct any known or  
14 identifiable address changes. Within seven (7) calendar days after receiving the Class List from  
15 Defendant as provided herein, the Settlement Administrator shall mail copies of the Class Notice  
16 to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall  
17 exercise its best judgment to determine the current mailing address for each Class Member. The  
18 address identified by the Settlement Administrator as the current mailing address shall be  
19 presumed to be the most current mailing address for each Class Member. The Parties agree that  
20 this procedure for notice provides the best notice practicable to Class Members and fully  
21 complies with due process.

22 ii. **Procedure for Opting Out of the Class.** Class Members who wish  
23 to exclude themselves from the Class must submit to the Settlement Administrator a valid,  
24 written Request for Exclusion on or before the Response Deadline, unless the Court orders  
25 otherwise. The Request for Exclusion must be signed by the Class Member and contain all  
26 information required by this Settlement Agreement. In the case of Requests for Exclusion that  
27 are mailed to the Settlement Administrator, the postmark or fax stamp date will be the exclusive  
28 means to determine whether a Request for Exclusion has been timely submitted. At no time will



any of the Parties or their counsel seek to directly or indirectly solicit or otherwise encourage any Class Member to opt out of the Settlement Class, but may, if warranted by the circumstances, advise individual Class Members of the consequences of opting out.

Any Class Member who submits a valid, timely Request for Exclusion will not receive an Individual Class Settlement Payment, will not be able to object, appeal, or comment on the Settlement, and will not be bound by the Class portion of this Settlement. However, any Class Member who submits a Request for Exclusion will still be bound by the PAGA portion of the Settlement, including the Released PAGA Claims, to the extent the Class Member is also an Aggrieved Employee. Class Members who fail to timely submit a valid Request for Exclusion will be deemed Settlement Class Members and shall be bound by all the terms of this Settlement Agreement, and any judgment and order entered by the Court in the Action.

If a Class Member's Request for Exclusion is defective as to the requirements listed in this Settlement Agreement, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until the later of the Response Deadline or ten (10) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely and invalid.

iii. Procedure for Submitting a Pay Period Dispute. The Settlement Administrator's determination of eligibility for, and the amount of, any Settlement payment under this Settlement Agreement will be conclusive, final, and binding on all Parties, including all Settlement Class Members and Aggrieved Employees, subject only to any final resolution by the Court. To dispute the number of Eligible Class Pay Periods and/or Eligible PAGA Pay Periods with which he or she has been credited, a Settlement Class Member and/or Aggrieved Employee must timely produce evidence to the Settlement Administrator showing that the Eligible Class Pay Periods and/or Eligible PAGA Pay Periods information is inaccurate by the

1 Response Deadline. The postmark/fax stamp date is deemed to be the date the dispute is  
2 submitted. The Settlement Administrator shall decide the dispute, subject to any final resolution  
3 by the Court. To the extent the Court decides not to rule on the dispute, then the Settlement  
4 Administrator's determination will be final and binding. Defendant's records will be presumed  
5 correct, but the Settlement Administrator will evaluate the evidence submitted by the Settlement  
6 Class Member and/or Aggrieved Employee and will make the final decision on the merits of the  
7 dispute. All disputes will be decided within ten (10) calendar days after the Response Deadline.

8                   iv.       Procedure for Objecting to Settlement. Any Class Member who  
9 seeks to object to the Settlement may serve a Notice of Objection to the Settlement  
10 Administrator at the address set forth in the Class Notice. All Notices of Objection must be  
11 submitted to the Settlement Administrator by the Response Deadline. The Notice of Objection  
12 must be signed by the Class Member and contain all information required by this Settlement  
13 Agreement. For mailed Notices of Objection, the postmark or fax stamp will be deemed the  
14 exclusive means for determining that the Notice of Objection is timely. Class Members who do  
15 not serve written objections according to this Settlement shall be deemed to have waived any  
16 objections and shall be foreclosed from making any objections (whether by appeal or otherwise)  
17 to the Settlement.

18           At no time will any of the Parties or their counsel seek to solicit or otherwise encourage  
19 any Class Member to submit objections to the Settlement Agreement or to appeal from the Final  
20 Approval order and judgment. Class Counsel will not represent any Class Members with respect  
21 to any such objections to this Settlement.

22                   v.       Undeliverable Class Notices. Any Class Notice returned to the  
23 Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed  
24 to the forwarding address affixed thereto within seven (7) calendar days of receipt of the returned  
25 Class Notice by the Settlement Administrator. If no forwarding address is provided, the  
26 Settlement Administrator shall attempt to determine a correct address by the use of skip-tracing,  
27 or other type of automated search, using the name, address, and/or Social Security Number of the  
28 Class Member involved, and shall then perform a re-mailing to the Class Member whose Class

1 Notice was returned as non-deliverable within seven (7) calendar days of receipt of the returned  
2 Class Notice by the Settlement Administrator, assuming another mailing address is identified by  
3 the Settlement Administrator. Class Members who are sent a re-mailed Class Notice shall have  
4 their Response Deadline extended by ten (10) calendar days from the date the Settlement  
5 Administrator re-mails the Class Notice. If these procedures are followed, notice to Class  
6 Members shall be deemed to have been fully satisfied, and if the intended recipient of the Class  
7 Notice does not receive the Class Notice, the intended recipient shall nevertheless remain a Class  
8 Member and shall be bound by all terms of the Settlement and the Final Order and Judgment.

9 vi. Determination of Individual Class Settlement Payments. The  
10 Settlement Administrator shall determine the eligibility for, and the amounts of, each Individual  
11 Class Settlement Payment, under the terms of this Settlement. The Settlement Administrator's  
12 determination of the eligibility for and amount of each Individual Class Settlement Payment shall  
13 be binding upon the Class Members and the Parties. In the absence of fraud or gross negligence,  
14 Defendant's Eligible Class Pay Period estimates shall be presumed accurate.

15 vii. Determination of Individual PAGA Settlement Payments. The  
16 Settlement Administrator shall determine the eligibility for, and the amounts of, each Individual  
17 PAGA Settlement Payment, under the terms of this Settlement. The Settlement Administrator's  
18 determination of the eligibility for and amount of each Individual PAGA Settlement Payment  
19 shall be binding upon the Aggrieved Employees and the Parties. In the absence of fraud or gross  
20 negligence, Defendant's Eligible PAGA Pay Period estimates shall be presumed accurate.

21 b. Monitoring and Reviewing Settlement Administration. The Parties have  
22 the right to monitor and review the administration of the Settlement to verify that the monies  
23 allocated under the Settlement are distributed in the correct amount, as provided for in this  
24 Settlement.

25 c. Certification Reports Regarding Individual Class Settlement Payment And  
26 Individual PAGA Settlement Payment Calculations. The Settlement Administrator will provide  
27 Defense Counsel and Class Counsel a weekly report which certifies: (i) the number of Class  
28 Members who have submitted valid Requests for Exclusion or Notices of Objection; and (ii)

whether any Settlement Class Member has submitted a Pay Period Dispute. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

d. Best Efforts. The Parties agree to use their best efforts to carry out the terms of this Settlement.

53. Funding and Allocation of Gross Settlement Amount. The Gross Settlement Amount and the employer's share of payroll taxes shall be paid by Defendant in one lump sum payment within fifteen (15) business days after the Effective Date.

a. Payments to Settlement Class Members and Aggrieved Employees. Settlement Class Members shall not be required to submit a claim in order to receive a share of the Net Settlement Amount, Aggrieved Employees shall not be required to submit a claim in order to receive a share of the PAGA Aggrieved Employee Payment, and no portion of the Gross Settlement Amount shall revert to Defendant or result in an unpaid residue. The Settlement Administrator shall first compute the Net Settlement Amount by deducting from the Gross Settlement Amount the Class Counsel Award, Plaintiff's Enhancement Award, the PAGA Penalties, and Settlement Administration Costs. To the extent the Court does not approve the requested attorneys' fees, litigation costs, enhancement payment, settlement administration costs, or PAGA Penalties, such occasion shall not constitute grounds to terminate or otherwise nullify this Settlement and the Net Settlement Amount will be adjusted accordingly, by the difference between the requested amounts and the amounts awarded by the Court.

i. Individual Class Settlement Payment: The Individual Class Settlement Payments will be made on a *pro rata* basis based on the number of Eligible Class Pay Periods during the Class Period for each Settlement Class Member. The Settlement Administrator will calculate each Individual Class Settlement Payment by dividing the Net Settlement Amount by the combined total number of Eligible Class Pay Periods for the Settlement Class, to arrive at the Class Pay Period Value. The Class Pay Period Value will then be multiplied by the number of Eligible Class Pay Periods for each Settlement Class Member to arrive at the Individual Class Settlement Payment for that Settlement Class Member.

ii. Each Settlement Class Member's Individual Class Settlement

Payment shall be calculated solely by the Settlement Administrator using Defendant's Eligible Class Pay Period data. Defendant's Eligible Class Pay Period data will be presumed to be correct unless a particular Settlement Class Member demonstrates otherwise to the Settlement Administrator by credible evidence. All Pay Period Disputes will be resolved and decided by the Settlement Administrator and the Settlement Administrator's decision on all Pay Period Disputes will be final, subject only to the final resolution by the Court if the Court decides to rule on the dispute prior to or concurrently with its Final Order and Judgment.

iii. Individual PAGA Settlement Payment. The Individual PAGA

Settlement Payments will be made on a *pro rata* basis based on the number of Eligible PAGA Pay Periods during the PAGA Period for each Aggrieved Employee. The Settlement Administrator will calculate each Individual PAGA Settlement Payment by dividing the PAGA Aggrieved Employees Payment by the combined total of Eligible PAGA Pay Periods for the Aggrieved Employees, to arrive at the PAGA Pay Period Value. The PAGA Pay Period Value will then be multiplied by the number of Eligible PAGA Pay Periods for each Aggrieved Employee to arrive at the Individual PAGA Settlement Payment for that Aggrieved Employee.

iv. To the extent a Settlement Class Member is also an Aggrieved

Employee, the Individual Class Settlement Payment and Individual PAGA Settlement Payment will be consolidated into one Settlement Check.

v. Settlement Check to Confirm FLSA Release. Settlement Checks

shall contain language in the endorsement section that states:

The cashing, deposit, or negotiation of this settlement check shall be deemed to be your consent in writing to become a party to this action for the purposes of effectuating the settlement and release of claims arising under the Fair Labor Standards Act ("FLSA") as described in the Settlement Agreement in *Jaime Moen v. Genentech, Inc.*, San Diego County Superior Court, Case No. 37-2021-00008619-CU-OE-CTL.

vi. Settlement Checks shall be mailed by the Settlement Administrator

by regular First Class U.S. Mail to each Settlement Class Member's last known mailing address within ten (10) business days after Defendant provides the Settlement Administrator with the

1 Gross Settlement Amount. Prior to mailing the Settlement Checks, the Settlement Administrator  
2 shall perform a search based on the National Change of Address Database maintained by the  
3 United States Postal Service to update and correct any known or identifiable address changes.

4                   vii.           Should any of the following occur, the Settlement Administrator  
5 will proportionately adjust the Net Settlement Amount for purposes of calculating Individual  
6 Class Settlement Payments: (i) a Class Member submits a timely and valid Request for Exclusion  
7 following the provisions in the Class Notice; (ii) the Court approves the Plaintiff's Enhancement  
8 Award in an amount less than that requested, as detailed herein; (iii) the Court approves a Class  
9 Counsel Award in an amount less than that requested, as detailed herein; (iv) the Court approves  
10 Settlement Administration Costs in an amount less than that requested, as detailed herein; and/or  
11 (v) the Court allocates a greater amount from the Gross Settlement Amount to the PAGA  
12 Penalties than the Parties propose.

13                   viii.          If the Court allocates a greater amount from the Gross Settlement  
14 Amount to the PAGA Penalties than the Parties propose, the Settlement Administrator shall  
15 recalculate the LWDA Payment and PAGA Aggrieved Employees Payment consistent with the  
16 terms of this Settlement Agreement.

17                   ix.           Individual Class Settlement Payments shall be allocated as follows:  
18 twenty percent (20%) as wages subject to all applicable tax withholdings (to be reported on IRS  
19 Form W-2); eighty percent (80%) as interest and non-wage penalties (to be reported on IRS  
20 Form 1099). Individual PAGA Settlement Payments shall be allocated as one hundred percent  
21 (100%) non-wage penalties. The Settlement Administrator shall calculate the amount of the  
22 Employer's Share of Payroll Taxes and shall remit and report the applicable portions of the  
23 payroll tax payment to the appropriate taxing authorities in a timely manner. Defendant will be  
24 responsible for separately paying the Employer's Share of Payroll Taxes; this amount will not be  
25 deducted from the Gross or Net Settlement Amount.

26                   x.           Any Settlement Check issued by the Settlement Administrator  
27 shall be valid for one hundred eighty (180) calendar days, after which time it shall automatically  
28 be cancelled. Any funds remaining in the Settlement Fund Account as a result of an individual's

1 failure to cash or deposit their checks by that date shall be transmitted to Legal Aid At Work, in  
2 accordance with California Code of Civil Procedure § 384.

3           b.     **Plaintiff's Enhancement Award.** For purposes of this Settlement only,  
4 the Parties agree to the designation of Plaintiff as Class Representative. In recognition of his  
5 time and effort in bringing and presenting the Action and in consideration for providing a general  
6 release and waiver under Section 1542 herein and compliance with the terms and obligations of  
7 this Agreement, Defendant does not oppose Plaintiff's request for an Enhancement Award of up  
8 to Twenty Thousand Dollars (\$20,000.00), subject to Court approval. The Enhancement Award  
9 will be in addition to Plaintiff's Individual Class Settlement Payment and Plaintiff's Individual  
10 PAGA Settlement Payment paid pursuant to the Settlement. The Settlement Administrator shall  
11 issue an IRS Form 1099 to Plaintiff for his Enhancement Award. Plaintiff shall be solely and  
12 legally responsible to pay any and all applicable taxes on his Enhancement Award. In the event  
13 the court awards less than the requested amount for the Enhancement Award, the difference shall  
14 become part of the Net Settlement Amount and shall be distributed to Settlement Class Members  
15 as part of their Individual Settlement Payments, and shall not be grounds to terminate or nullify  
16 this Settlement. Within ten (10) business days after receipt of the Gross Settlement Amount, the  
17 Settlement Administrator shall pay Plaintiff's Enhancement Award.

18           c.     **Class Counsel Award.** Class Counsel shall be entitled to request  
19 attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount,  
20 which amounts to One Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-  
21 Three Dollars and Thirty-Three Cents (\$1,333,333.33), subject to Court approval. In addition,  
22 Class Counsel shall also be entitled to request an award of costs associated with Class Counsel's  
23 prosecution of the Action, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00),  
24 subject to Court approval. In the event the Court awards Class Counsel less than One Million  
25 Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three  
26 Cents (\$1,333,333.33), in attorneys' fees, and/or less than Twenty Thousand Dollars  
27 (\$20,000.00) in costs, the difference shall become part of the Net Settlement Amount and shall  
28 be distributed to Settlement Class Members as part of their Individual Settlement Payments, and

1 shall not be grounds to terminate or nullify this Settlement. Within ten (10) business days after  
2 receipt of the Gross Settlement Amount, the Settlement Administrator shall pay the Class  
3 Counsel Award.

4 d. **PAGA Penalties.** Subject to Court approval, Two Hundred Thousand  
5 Dollars (\$200,000.00), will be paid from the Gross Settlement Amount for satisfaction of the  
6 PAGA claims in this Action. Pursuant to the PAGA, seventy-five percent (75%), or One  
7 Hundred Fifty Thousand Dollars (\$150,000.00), of this sum will be paid to the LWDA. The  
8 remaining twenty five percent (25%), or Fifty Thousand Dollars (\$50,000.00), shall be  
9 distributed to Aggrieved Employees on a *pro rata* basis based on the number of Eligible PAGA  
10 Pay Periods during the PAGA Period for each Aggrieved Employee. In the event the Court  
11 allocates an amount greater than Two Hundred Thousand Dollars to the PAGA Payment, the  
12 difference shall be deducted from the Gross Settlement Amount and shall not be grounds to  
13 terminate or nullify this Settlement. Within ten (10) business days after receipt of the Gross  
14 Settlement Amount, the Settlement Administrator will pay the LWDA Payment.

15 e. **Settlement Administration Costs.** The Settlement Administration fees  
16 and expenses, which are estimated not to exceed Thirty-Two Thousand Dollars (\$32,000.00),  
17 shall be paid from the Gross Settlement Amount. Prior to Plaintiff filing a Motion for Final  
18 Approval of the Settlement, the Settlement Administrator shall provide the Parties with a  
19 statement detailing the Settlement Administration Costs to date. The Parties agree to cooperate  
20 in the Settlement Administration process and to make all reasonable efforts to control and  
21 minimize Settlement Administration Costs.

22 54. **Payroll Taxes.** In accordance with this Settlement and to the fullest extent  
23 possible, the Gross Settlement Amount shall resolve, satisfy, and completely extinguish all of  
24 Defendant's liability with respect to the Settlement Class Members and Aggrieved Employees,  
25 except that the Defendant shall solely be responsible for its Employer's Share of Payroll Taxes,  
26 which Defendant will pay separate and in addition to the Gross Settlement Amount. Upon the  
27 transfer of the Gross Settlement Amount and Employer's Share of Payroll Taxes, Defendant  
28 shall have no further payment or defense obligation whatsoever with respect to any claims



covered by this Settlement.

55. **Duties of the Parties Prior to Court Preliminary Approval.** At least ten (10) calendar days before the deadline to file the Motion for Preliminary Approval, Class Counsel shall provide Defense Counsel with the opportunity to review and comment on the Motion for Preliminary Approval. Defendant shall not oppose Plaintiff's Motion for Preliminary Approval to the extent it is consistent with the terms and conditions herein.

a. The Parties shall submit this Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. As part of Plaintiff's Motion for Preliminary Approval, Plaintiff shall also apply to the Court for the entry of an Order as follows:

- i. Certifying the Settlement Class for settlement purposes only;
- ii. Approving, as to form and content, the proposed Class Notice;
- iii. Approving the manner and method for Class Members to object or request exclusion from the Settlement, as contained herein and within the Class Notice;
- iv. Directing the mailing of the Class Notices to Class Members, by first class mail;
- v. Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court; and
- vi. Setting a Final Approval Hearing.

b. Class Counsel shall submit this proposed settlement to the LWDA at the same time that the motion for preliminary approval is submitted to the Court.

56. **Duties of the Parties Prior to Court Final Approval.** At least ten (10) calendar days before the deadline to file the Motion for Final Approval, Class Counsel shall provide Defense Counsel with the opportunity to review and comment on the Motion for Final Approval. Defendant shall not oppose Plaintiff's Motion for Final Approval to the extent it is consistent with the terms and conditions herein or as modified by the Court.

1           57.     **Final Settlement Approval Hearing and Entry of Final Order and Judgment.**

2     At the Final Approval Hearing, Class Counsel will move the Court for entry of a Final Order and  
 3     Judgment in accordance with the California Rule of Court 3.769(h). Class Counsel will seek  
 4     approval of the Class Settlement as being fair, reasonable, and adequate to the Settlement Class  
 5     Members within the meaning of California Code of Civil Procedure §§ 877 and 877.6. Class  
 6     Counsel and Defense Counsel will submit to the Court such pleading and/or evidence as required  
 7     for the Court's determination. Class Counsel will also comply with the requirements for  
 8     submission and approval of PAGA settlements, set forth in California Labor Code § 2699(l).  
 9     The Parties agree to work diligently and cooperatively to have this Settlement presented to the  
 10    Court for final approval.

11           58.     **Duties of the Parties Following Final Approval.** Following final approval by  
 12    the Court of the Settlement provided for in this Settlement Agreement, Class Counsel will submit  
 13    a proposed Final Order of Approval and Judgment:

- 14               a.     Approving the Settlement, adjudging the terms thereof to be fair,  
 15    reasonable and adequate, and directing consummation of its terms and provisions;  
 16               b.     Approving Class Counsel's application for an award of attorneys' fees and  
 17    costs and approving payment of Settlement Administration Costs;  
 18               c.     Approving the Enhancement Award payment to Plaintiff; and  
 19               d.     Entering judgment in this Action barring and enjoining all members of the  
 20    Settlement Class from prosecuting against any of the Released Parties, any individual, class, or  
 21    representative claims released herein pursuant to the Settlement Agreement, upon satisfaction of  
 22    all payments and obligations hereunder.

23           59.     **Final Report by Settlement Administrator.** Within ten (10) calendar days after  
 24    final disbursement of all funds from the Settlement Fund Account, the Settlement Administrator  
 25    will provide Class Counsel and Defendant's Counsel with the Final Report.

26           60.     **Revocation of Settlement by Defendant.** If five percent (5%) or more of the  
 27    Class Members submit valid and timely Request for Exclusions to the Settlement, Defendant  
 28    shall have the sole and absolute discretion to rescind/void the Settlement Agreement within

seven calendar (7) days after receiving from the Settlement Administrator the final list of opt-outs. Defendant agrees to meet and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement. In the event Defendant elects to rescind/void the Settlement Agreement, it shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of this Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement shall become null and void and have no further force or effect, and the Settlement Class certified pursuant to this Settlement Agreement will be decertified for all purposes. If Defendant chooses to terminate this Settlement Agreement under this provision, it shall be responsible for any and all Settlement Administration Costs incurred by the Settlement Administrator.

61. **Nullification of Settlement.** In the event that: (i) the Court does not finally approve the Settlement as provided herein; (ii) if the appropriate appellate court fails to approve the Settlement; or (iii) the Settlement does not become final for any other reason: (1) the Settlement Agreement shall have no force and effect and the Parties shall be restored to their respective positions prior to entering into it, and no Party shall be bound by any of the terms of the Settlement Agreement; (2) Defendant shall have no obligation to make any payments to the Settlement Class Members, Plaintiff, or Plaintiff's counsel; (3) any preliminary approval order, final approval order, or judgment shall be vacated; and (4) the Settlement Agreement and all negotiations, statements, proceedings, and data relating thereto shall be deemed confidential mediation settlement communications and not subject to disclosure for any purpose in any proceeding.

62. **Plaintiff's Waiver of Right to Be Excluded.** Plaintiff agrees that by signing this Settlement Agreement, he will be bound by the terms herein. Plaintiff further agrees that, upon signing this Settlement Agreement, he will not request to be excluded from this Settlement and that any such request for exclusion by Plaintiff will be void and of no force or effect.

63. **No Admission by Defendant.** Defendant denies all claims alleged in this Action and denies all wrongdoing whatsoever by Defendant. Neither this Settlement, nor any of its terms and conditions, nor any of the negotiations connected with it, is a concession or admission,

1 and none shall be used against Defendant as an admission or indication with respect to any claim  
2 of any fault, concession, or omission by Defendant or that class certification is proper under the  
3 standard applied to contested certification motions. The Parties stipulate and agree to the  
4 certification of the proposed class for settlement purposes only. The Parties further agree that  
5 this Settlement will not be admissible in this or any other proceeding as evidence that either (i) a  
6 class action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member, other  
7 than according to the terms of this Settlement.

8         64.     **Privacy of Documents and Information.** Plaintiff and Class Counsel agree that  
9 they will destroy all documents and information provided to them by Defendant within the  
10 course and scope of the Action within thirty (30) days after the Effective Date, except for  
11 documents that must be saved in client files and/or Class Counsel's archives and or documents  
12 that must be saved for malpractice purposes or ethical rules governing attorney conduct in  
13 California and the United States. Plaintiff and Class Counsel further agree that none of the  
14 documents and information provided to them by Defendant shall be used for any purpose other  
15 than the defense or prosecution of a malpractice action or defense of any state bar complaint.

16         65.     **Publicity.** Plaintiff and Class Counsel agree not to issue a press release or  
17 otherwise notify the media about the terms of the Settlement or advertise or market any of the  
18 terms of the Settlement through written, recorded, or electronic communications. Plaintiff and  
19 Class Counsel further agree that if contacted regarding this case, they will state only that the  
20 lawsuit exists and has been resolved. This provision is not intended to, and does not limit Class  
21 Counsel from responding to questions from and providing advice to Class Members regarding  
22 the settlement after preliminary approval is granted.

23         66.     **Waiver.** No waiver of any condition or covenant contained in this Settlement  
24 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered  
25 to imply or constitute a further waiver by such party of the same or any other condition,  
26 covenant, right, or remedy.

27         67.     **Judgment and Continued Jurisdiction.** Upon final approval of the Settlement  
28 by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the

Judgment to the Court for its approval, pursuant to Rule 3.770 of the California Rules of Court. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement. Should either Party seek to enforce the terms of this Agreement, the prevailing party to any such enforcement action shall be entitled to recover its attorneys' fees and costs in connection therewith.

68. **Exhibits and Headings.** The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. The Exhibits to this Settlement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are inserted for convenience of reference only.

69. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest, or by court order.

70. **Entire Agreement.** This Settlement constitutes the entire agreement between the Parties, and no oral or written representations, warranties, or inducements have been made to Plaintiff or Defendant.

71. **Authorization to Enter into Settlement Agreement.** Class Counsel and Defense Counsel warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties, Class Counsel, and Defense Counsel shall cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the mediator and/or Court to resolve such disagreement. The person

1 signing this Settlement on behalf of Defendant represents and warrants that he or she is  
2 authorized to sign this Settlement on behalf of Defendant. Plaintiff represents and warrants that  
3 he is authorized to sign this Settlement and that he has not assigned any claim, or part of a claim,  
4 covered by this Settlement of Settlement to a third party. Because the Class Members are so  
5 numerous, Parties agree it is impossible or impractical to have each Class Member sign this  
6 Settlement. This Settlement may be executed on behalf of the Class by Class Counsel and  
7 Plaintiff. The Parties have cooperated in the drafting and preparation of this Settlement. Hence,  
8 in any construction made of this Settlement, the same shall not be construed against any of the  
9 Parties.

10 72. **Binding on Successors and Assigns.** This Settlement shall be binding upon, and  
11 inure to the benefit of, the successors and assigns of the Parties.

12 73. **California Law Governs.** All terms of this Settlement and the Exhibits hereto  
13 shall be governed by and interpreted according to the laws of the State of California.

14 74. **Counterparts.** This Settlement may be executed in one or more counterparts,  
15 including electronic scan, pdf, and/or DocuSign. All executed counterparts and each of them  
16 shall be deemed to be one and the same instrument. Facsimile or .pdf copies of any such signed  
17 counterparts may be used in lieu of the original for any purpose. Pursuant to California Civil  
18 Code § 1633.7, Parties agree they may use DocuSign or similar electronic signature technology  
19 to expedite the execution of this Settlement Agreement.

20 75. **This Settlement is Fair, Adequate, and Reasonable.** Plaintiff represents that  
21 this Settlement is a fair, adequate, and reasonable settlement of the Action and that he has arrived  
22 at this Settlement after extensive arm's-length negotiations, taking into account all relevant  
23 factors, present and potential.

24 76. **Invalidity of Any Provision.** Before declaring any term or provision of this  
25 Settlement invalid, the Parties request that the Court first attempt to construe the terms or  
26 provisions valid to the fullest extent possible consistent with applicable precedents so as to  
27 define all provisions of this Settlement as valid and enforceable. In the event the Court declares  
28 any material provision of this Settlement invalid, the Settlement will be void and its terms will be


of no force and effect, except as otherwise agreed to by the Parties in writing.

77. **Escalator Clause.** Defendant represents that there are no more than 175,000 Eligible Class Pay Periods during the Class Period as of September 18, 2021. If the number of Eligible Class Pay Periods exceeds 175,000 by more than twenty percent (20%) (*i.e.*, more than 35,000 pay periods), the Gross Settlement Amount shall be increased by a proportional percentage of the amount in excess of twenty percent. For example, if the number of Eligible Pay Periods exceeds 175,000 by 21%, the Gross Settlement Amount shall be increased by 1%.

78. **Binding Nature of Notice of Class Action Settlement.** It is agreed that, because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute the Settlement. The Class Notice shall advise all Class Members of the binding nature of the Settlement and the release of the Released Class Claims and Released PAGA Claims, and shall have the same force and effect as if this Settlement were executed by each Settlement Class Member and Aggrieved Employee.

IN WITNESS WHEREOF, the Parties, with the benefit of representation and advice of counsel, hereto knowingly and voluntarily execute this Joint Stipulation of Class Action and PAGA Settlement and Release, as of the date(s) set forth below:

DATED: 4/20/2022 \_\_\_\_\_

DocuSigned by:  
  
 22931F28FAEA45A...  
 Plaintiff Jaime Moen

GENENTECH, INC.

DATED: \_\_\_\_\_

\_\_\_\_\_  
 Tiffany Renee Thomas  
 Senior Counsel, Employment Law Group

**APPROVED AS TO FORM**

1 of no force and effect, except as otherwise agreed to by the Parties in writing.

2 77. **Escalator Clause.** Defendant represents that there are no more than 175,000  
3 Eligible Class Pay Periods during the Class Period as of September 18, 2021. If the number of  
4 Eligible Class Pay Periods exceeds 175,000 by more than twenty percent (20%) (*i.e.*, more than  
5 35,000 pay periods), the Gross Settlement Amount shall be increased by a proportional  
6 percentage of the amount in excess of twenty percent. For example, if the number of Eligible  
7 Pay Periods exceeds 175,000 by 21%, the Gross Settlement Amount shall be increased by 1%.

8 78. **Binding Nature of Notice of Class Action Settlement.** It is agreed that, because  
9 the Class Members are so numerous, it is impossible or impractical to have each Class Member  
10 execute the Settlement. The Class Notice shall advise all Class Members of the binding nature  
11 of the Settlement and the release of the Released Class Claims and Released PAGA Claims, and  
12 shall have the same force and effect as if this Settlement were executed by each Settlement Class  
13 Member and Aggrieved Employee.

14 IN WITNESS WHEREOF, the Parties, with the benefit of representation and advice of  
15 counsel, hereto knowingly and voluntarily execute this Joint Stipulation of Class Action and  
16 PAGA Settlement and Release, as of the date(s) set forth below:

17  
18 DATED: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Jaime Moen

20

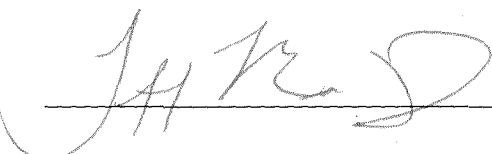
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GENENTECH, INC.

22

23 DATED: 04/18/2022

24

  
\_\_\_\_\_  
Tiffany Renee Thomas  
Senior Counsel, Employment Law Group

25

26

27 **APPROVED AS TO FORM**

28



1 DATED: 4/15/2022  
2 \_\_\_\_\_

DIVERSITY LAW GROUP, P.C.

3 By:  \_\_\_\_\_  
4 Larry W. Lee

Mai Tulyathan

5 Attorneys for Plaintiff, the Class, and Aggrieved  
6 Employees

7 DATED: \_\_\_\_\_

ORRICK, HERRINGTON & SUTCLIFFE LLP

8 By: \_\_\_\_\_

9 Julie A. Totten

10 Scott Morrison

11 Attorneys for Defendant Genentech, Inc.  
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27  
28

1 DATED: \_\_\_\_\_  
2  
3

DIVERSITY LAW GROUP, P.C.

4 By: \_\_\_\_\_  
5

Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved  
Employees

6 DATED: April 18, 2022  
7

ORRICK, HERRINGTON & SUTCLIFFE LLP

8 By:  \_\_\_\_\_  
9

Julie A. Totten

Scott Morrison

Attorneys for Defendant Genentech, Inc.

# EXHIBIT A

*Jaime Moen v. Genentech, Inc.*, Case No. 37-2021-00008619-CU-OE-CTL  
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO  
NOTICE OF CLASS AND PAGA ACTION SETTLEMENT AND RELEASE

**To:** All current and former non-exempt employees of Defendant Genentech, Inc. (“Defendant”) in the State of California who earned overtime wages or sick pay or meal- or rest-period premiums and nondiscretionary remuneration, including without limitation, bonuses, incentives, and shift differentials, in the same pay period, at any time from September 2, 2016, through [the date of preliminary approval of the settlement] (“Class Members”).

All current and former non-exempt employees of Defendant in the State of California who earned overtime wages or sick pay or meal- or rest-period premiums and nondiscretionary remuneration, including without limitation, bonuses, incentives, and shift differentials, in the same pay period, at any time from July 27, 2019, through [the date of preliminary approval of the settlement] (“PAGA Members”).

***You are not being sued. However, your legal rights are affected whether you act or not. Please read this notice carefully.***

On \_\_\_\_\_, the Honorable Katherine A. Bacal of the San Diego County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement. You do not need to do anything to receive a payment from this settlement.**

**If the Court grants final approval of the settlement, you will be deemed a Class Member and will automatically be mailed a check for your share of the settlement fund.** If you do not want to participate in the settlement, you can choose to exclude yourself by following the instructions listed below on page \_\_\_\_\_. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at \_\_\_\_\_.m. on \_\_\_\_\_, 2022 in Department 69 of the San Diego County Superior Court, located at the Hall of Justice at 330 W Broadway, San Diego, CA 92101.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
INCLUDE THE FOLLOWING:	
<b>OPTION #1: DO NOTHING</b>	<b>You need not take any action if you wish to receive your settlement payment.</b> If the settlement is approved by the Court and you do nothing, you will automatically be mailed a check for your share of the Settlement at the address on file with the Settlement Administrator. In exchange for the settlement check, you will release or give up any rights to sue Defendant for the same legal claims that are part of this lawsuit (see page _____ for an explanation of the claims you are giving up).
<b>OPTION #2: EXCLUDE YOURSELF</b>	<b>If you ask to be excluded from the class action settlement, you will not receive a share of the Settlement.</b> However, regardless of whether you exclude yourself from the Settlement, you will still be bound by the release of the Released PAGA Claims under the Settlement. This is the

**Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\***

	<p>only option that allows you to keep any rights to sue Defendant for the same legal claims that are part of this lawsuit.</p> <p>You cannot ask to be excluded <b>and</b> still get a settlement payment.</p>
<b>OPTION #3: OBJECT TO THE SETTLEMENT</b>	<p>If you do not agree with the Settlement, you may object to this Settlement according to the instructions described below on page [REDACTED]. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement. You cannot object if you exclude yourself from the Settlement.</p>

### **Summary of the Litigation**

Plaintiff Jaime Moen (“Plaintiff”), on his behalf and of other current and former non-exempt employees, alleges that Defendant violated California state labor laws as a result of its alleged failure to account for all necessary forms of nondiscretionary remuneration when calculating the regular rate of pay for purposes of overtime wages, sick pay, meal-period premiums, and rest-period premiums, resulting in an alleged failure to: (1) pay all overtime wages earned; (2) pay all sick-pay wages owed to terminated employees; (3) pay all rest-period premium penalties owed; (4) pay all meal-period premium penalties owed; (5) provide accurate wage statements; and (6) comply with unfair competition law. Based on these allegations and claims, Plaintiff seeks to recover damages, statutory penalties, civil penalties, attorneys’ fees and costs on behalf of himself and other employees affected by these violations. Defendant denies these allegations.

The parties have reached an agreement to resolve the claims in the lawsuit. The Court has preliminarily approved Plaintiff to represent the settlement class. However, the Court has not made any findings with respect to the merits of Plaintiff’s claims in this lawsuit.

Defendant has denied, and continues to deny, the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

### **Summary of the Proposed Settlement Terms**

Plaintiff and Defendant have agreed to settle the underlying claims in this lawsuit in exchange for a Gross Settlement Amount of \$4,000,000. This amount is inclusive of: (1) individual settlement payments to all Settlement Class Members; (2) an Enhancement Award of \$20,000 to Plaintiff for prosecuting this lawsuit on behalf of the class, and for a release of all claims arising out of his employment with Defendant; (3) up to \$1,333,333.33 in attorneys’ fees and up to \$20,000.00 in litigation costs and expenses; (4) a \$200,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), inclusive of a \$150,000 payment to the California Labor and Workforce Development Agency (“LWDA”) in connection with the PAGA, and a \$50,000 payment (the “PAGA Settlement Amount”) to PAGA Members; and (5) Settlement Administrator’s fees and expenses of \$[REDACTED] in connection with administering this settlement. After deducting the above payments, a total of approximately \$[REDACTED] will be allocated to Class Members who do not opt out of the Settlement Class (“Net Settlement Amount”). Additionally, all PAGA Members will receive a proportional share of the \$50,000 PAGA Settlement Amount, regardless of whether they opt out of the Settlement Class.

**Questions? Contact the Settlement Administrator toll free at 1-[REDACTED]**

**Payments from Net Settlement Amount.** Each Class Member who does not exclude himself or herself from the settlement will be entitled to receive a share of the Net Settlement Amount.

To calculate each Class Member's individual settlement share from the Net Settlement Amount ("Individual Class Settlement Payment"), the Settlement Administrator will calculate the total aggregate number of Eligible Class Pay Periods<sup>1</sup> from September 2, 2016, through [REDACTED] ("Class Period") and each Class Member's total number of Eligible Class Pay Periods during the Class Period. The Net Settlement Amount will then be divided by the aggregate total number of Eligible Class Pay Periods, resulting in the "Class Pay Period Value." Each Class Member's share of the Net Settlement Amount will be calculated by multiplying each individual Class Member's total number of Eligible Class Pay Periods by the Class Pay Period Value.

The Individual Class Settlement Payment will be reduced by any required deductions for each Class Member as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, or if there are any successful Pay Period Disputes, the Settlement Administrator shall proportionately increase or decrease each Settlement Class Member's share of the Net Settlement Amount according to the number of Eligible Class Pay Periods, so that the amount distributed to the Settlement Class Members equals 100% of the Net Settlement Amount.

**According to Defendant's records, you have a total of [REDACTED] Eligible Class Pay Periods during the Class Period. Accordingly, your estimated payment from the Net Settlement Amount is approximately \$ [REDACTED].**

If you believe the information regarding Eligible Class Pay Periods provided above is incorrect, please contact the Settlement Administrator and follow the instructions on page [REDACTED].

**Payments from PAGA Settlement Amount.** Each PAGA Member will receive a proportional share of the \$50,000 PAGA Settlement Amount, regardless of whether they opt out of the Settlement Class.

To calculate each PAGA Member's proportional share, the Settlement Administrator will calculate the total aggregate number of Eligible PAGA Pay Periods<sup>2</sup> from July 27, 2019, through [REDACTED] ("PAGA Period") and the each PAGA Member's total number of Eligible PAGA Pay Periods during the PAGA Period. The PAGA Settlement Amount (\$50,000) will then be divided by the aggregate total number of Eligible PAGA Pay Periods, resulting in the "PAGA Pay Period Value." Each PAGA Member's share of the PAGA Settlement Amount will be calculated by multiplying each individual Participating PAGA Member's total number of Eligible PAGA Pay Periods by the "PAGA Pay Period Value."

A Request for Exclusion to be excluded from the class settlement does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, et seq. and the PAGA Member will still receive their portion of the PAGA Settlement Amount even if he or she submits a valid Request for Exclusion and is excluded from the class settlement.

If there are any successful Pay Period Disputes, the Settlement Administrator shall proportionately increase or decrease each Aggrieved Employee's share of the PAGA Settlement Amount according

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<sup>1</sup> An "Eligible Class Pay Period" is a pay period during the Class Period when a Class Member earned overtime wages, or sick pay, or meal- or rest-period premiums, and non-discretionary remuneration in the same pay period.

<sup>2</sup> An "Eligible PAGA Pay Period" is a pay period during the PAGA Period when an Aggrieved Employee earned overtime wages, or sick pay, or meal- or rest-period premiums, and non-discretionary remuneration in the same pay period.

**Questions? Contact the Settlement Administrator toll free at 1-[REDACTED]**

to the number of Eligible PAGA Pay Periods, so that the amount distributed to the Aggrieved Employees equals 100% of the PAGA Settlement Amount.

**According to Defendant's records, you have a total of [redacted] Eligible PAGA Pay Periods during the PAGA Period. Accordingly, your estimated payment from the PAGA Settlement Amount is approximately \$ [redacted].**

If you believe the information regarding Eligible PAGA Pay Periods provided above is incorrect, please contact the Settlement Administrator and follow the instructions on page [redacted].

**Your Estimated Payment:**

**Based on the above, your estimated payment from the Settlement is approximately \$ [redacted].**

If you believe the information regarding Eligible Class Pay Periods or Eligible PAGA Pay Periods provided above is incorrect, please contact the Settlement Administrator to submit a "Pay Period Dispute" and dispute the information. To submit a valid Pay Period Dispute, you must write to the Settlement Administrator and provide: (1) your full name, address, and telephone number; (2) the number of Eligible Class Pay Periods or Eligible PAGA Pay Periods you believe to be correct; and (3) any evidence you have supporting your belief as to the correct pay period count. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR), to the extent you have any. All disputes must be signed and postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

[Name]  
Phoenix Settlement Administrators  
c/o [redacted]  
[Mailing Address]  
Fax No. [redacted]

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise. The Settlement Administrator will decide the dispute, subject to any final resolution by the Court, if the Court decides to rule on it. To the extent the Court decides not to rule on the dispute, then the Settlement Administrator's determination as to your Eligible Class Pay Periods or Eligible PAGA Pay Periods will be final and binding.

**Taxes on Settlement Payments.** IRS Forms W-2 and 1099 will be distributed to Settlement Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Settlement Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

For purposes of this settlement, 20% of Individual Class Settlement Payments will be allocated as wages for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. For purposes of this settlement, 100% of Individual PAGA Settlement Payments shall be allocated as non-wage penalties for which IRS Forms 1099-MISC will be issued.

**Your Options Under the Settlement**

**Option 1 – *Do Nothing and Participate in the Settlement to Automatically Receive a Payment from the Settlement***

**Questions? Contact the Settlement Administrator toll free at 1-[redacted]**

If want to participate in the Settlement, then no further action is required on your part. You will automatically receive your Settlement Check from the Settlement Administrator if and when the settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a Settlement Check for your share of the Settlement Amount. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

**Released Class Claims:** Any and all claims, demands, rights, liabilities, penalties, fees, and causes of action that were or could have been asserted based on the facts alleged in the Action (whether in tort, contract, statute, or otherwise) during the Class Period, including, but not limited to, for alleged violation of Labor Code §§ 201–204, 226, 226.7, 246, 510, 558, or 1194, or any claims based on the following allegations: failure to properly calculate the regular rate of pay for purposes of overtime, sick pay, and meal- or rest-period premiums; failure to provide accurate and/or compliant wage statements; failure to pay timely wages during employment or upon separation; or violation of Cal. Bus. & Prof. Code § 17200 *et seq.* by engaging in the foregoing conduct. Settlement Class Members’ Released Class Claims include all claims for unpaid wages, overtime wages, statutory penalties, civil penalties, damages of any kind, interest, attorneys’ fees, costs, injunctive relief, restitution, and any other equitable relief under California or federal statute, ordinance, regulation, common law, or other source of law, including but not limited to the California Labor Code, California Business & Professions Code, California Civil Code, California Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act.

**Released PAGA Claims:** All claims, demands, rights, liability, penalties, fees, and causes of action under PAGA during the PAGA Period, Labor Code §§ 201–204, 226, 226.7, 246, 510, 558, or 1194 or that could have been alleged in the operative complaint based on the facts, policies, practices, occurrences, or acts alleged in the operative complaint or letters to the LWDA, or that are based on any alleged failure to properly calculate the regular rate of pay for purposes of overtime, sick pay, and meal or rest period premiums; failure to provide accurate and/or compliant wage statements; failure to pay timely wages during employment or upon separation.

#### **Option 2 – Request Exclusion From the Settlement**

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have decided not to participate in the settlement, and desire to be excluded from the settlement. To be valid, the written Request for Exclusion must include (1) your name, address, and telephone number, (2) state that you do not wish to be included in the settlement, (3) be signed by you. The request for exclusion must be mailed by First Class U.S. Mail or equivalent, or faxed, to the address or facsimile below.

[Name]

Phoenix Settlement Administrators

c/o

[Mailing Address]

Fax No.

Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\*



The Request for Exclusion must be postmarked or faxed not later than [REDACTED], 2022. If you submit a Request for Exclusion which is not postmarked or faxed by [REDACTED], 2022, your Request for Exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2** and you submit a valid Request for Exclusion pursuant to the instructions above, you will no longer be a Class Member, and you will:

- Not receive a payment from the Net Settlement Amount.
- Not release the Released Class Claims.
- However, you will still release the Released PAGA Claims and will receive payment from the PAGA Settlement Amount if you deemed to be a PAGA Member.

### **Option 3 – Object to the Settlement**

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement. If you wish to submit a written objection, you must provide: (1) this case’s name and case number – *Jaime Moen v. Genentech, Inc.*, Case No. 37-2021-00008619-CU-OE-CTL; (2) your full name, address, and telephone number; (3) a written statement of all grounds for your objection; (4) copies of any papers, briefs, or other documents upon which the objection is based, if any; (5) a statement whether you intend to appear at the Final Approval hearing; and (6) your signature. The objection must be mailed or faxed to the administrator at:

[Name]

**Phoenix Settlement Administrators**

c/o [REDACTED]

[Mailing Address]

Fax No. [REDACTED]

All written objections must be received by the administrator not later than [REDACTED], 2022. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims (in addition to the Released PAGA Claims). Please note that if you submit a written objection under Option 3, you may be subject to be called for a deposition.

### **Details About the Final Approval Hearing**

The Court will conduct a final fairness hearing about the proposed terms of the settlement (the “Final Approval Hearing”) on [REDACTED] at [REDACTED] a.m./p.m. in Department 69 of the San Diego County Superior Court located at 330 W Broadway, San Diego, CA 92101. The Court will then determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s attorneys; (v) the amount that should be awarded to Plaintiff as a service payment for prosecuting this lawsuit on behalf of other employees; and (vi) the amount that should be approved for settlement administration costs.

**Questions? Contact the Settlement Administrator toll free at 1-[REDACTED]**

You have a right to attend this hearing, but you are not required to do so. You may also retain an attorney to represent you, at your own expense, or to enter an appearance and represent yourself at the hearing. The Final Approval hearing may be continued to another date without further notice. Any changes to the hearing date and time will be available on the Court's website at <https://roa.sdcourt.ca.gov/roa/> and can be found by searching by this case's case number: 37-2021-00008619-CU-OE-CTL.

### **Additional Information**

This Notice of Class and PAGA Action Settlement is only a summary of the case and the settlement. For the complete terms and conditions of the Settlement, you are referred to view the detailed Joint Stipulation of Class and PAGA Action Settlement and Release (the "Settlement Agreement"), which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of San Diego's Electronic Filing and Service Website at <https://roa.sdcourt.ca.gov/roa/>, or (b) in person at Superior Court of California, County of San Diego, Hall of Justice at 330 W Broadway, San Diego, CA 92101, between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

All other inquiries by Class Members regarding this Class Notice and/or the settlement can be directed to the Settlement Administrator. Inquiries regarding the litigation can be made by contacting Settlement Class Counsel. Contact information for Settlement Class Counsel, as well as Defendant's attorneys, are as follows:

<u>Settlement Class Counsel</u> Larry W. Lee Mai Tulyathan <b>Diversity Law Group, P.C.</b> 515 S. Figueroa St., Suite 1250 Los Angeles, CA 90071 Phone: 213-488-65555	<u>Counsel for Defendant Genentech, Inc.</u> Julie A. Totten <b>Orrick, Herrington &amp; Sutcliffe LLP</b> 400 Capitol Mall, Suite 3000 Sacramento, CA 95814 Phone: 916-447-9200
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**PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE, WITH INQUIRIES.**

**Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\***