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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

VALERIE WELCH, NINA SUNDAR,  
MARIETTA MACARAEG, EVELYN  
HERNANDEZ-MALAGON, COLLEEN GARZA,  
MATTHEW CHEUNG, and CARLA  
NORDSTROM, individually and on behalf of  
others similarly situated, and on behalf of the  
general public,  
  
Plaintiffs,  
  
vs.  
  
GENENTECH, INC., and DOES 1 through 100,  
inclusive,  
  
Defendants.

Case No.: CIV 524550  
**[PROPOSED] ORDER AND JUDGMENT  
GRANTING FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**  
  
Date: December 18, 2014  
Time: 9:00 a.m.  
Dept: 2  
Before: Hon. Marie S. Weiner  
  
Trial Date: None Set

**ENDORSED FILED  
SAN MATEO COUNTY**

DEC 18 2014

Clerk of the Superior Court  
By TERRI MARAGOULAS  
DEPUTY CLERK

**RECEIVED  
DEC - 2 2014  
CLERK OF THE SUPERIOR COURT  
SAN MATEO COUNTY**

**BY FAX**

1 The Named Plaintiffs, Valerie Welch, Nina Sundar, Marietta Macaraeg, Evelyn Hernandez-  
2 Malagon, Colleen Garza, Matthew Cheung, and Carla Nordstrom, and the settling Defendant  
3 Genentech, Inc. (together the “Parties”) have entered into a Stipulation and Settlement Agreement of  
4 Class Action and Individual Claims (“Settlement Agreement”) to settle the above-captioned class  
5 action subject to the Court’s approval (the “Class Settlement”). The Class Settlement provides for the  
6 mailing of notices and claim forms and the payment of compensation to each Class Member who  
7 timely submits a valid Claim Form.

8 **I. BACKGROUND**

9 **A. Procedural History**

10 On October 3, 2013, Plaintiffs Valerie Welch, Nina Sundar, Marietta Macaraeg, Evelyn  
11 Hernandez-Malagon, Colleen Garza, Matthew Cheung, and Carla Nordstrom, on behalf of themselves,  
12 others similarly situated, and the general public, filed suit against Genentech, Inc. in the Superior Court  
13 of California for the County of San Mateo. Plaintiffs filed a First Amended Complaint (“FAC”) on  
14 November 25, 2013. The FAC asserted claims under California Labor Code sections 201, 202, 203,  
15 226, 226.7, 510, 512, and 1194, California Industrial Welfare Commission Wage Orders, California  
16 Code of Regulations, Title 8, section 11040 *et seq.*, and representative claims under California  
17 Business and Professions Code sections 17200 *et seq.* Plaintiffs alleged that certain former and current  
18 employees of Defendant were misclassified as exempt employees and are owed compensation for  
19 unpaid overtime and missed meal periods. The lawsuit seeks damages for unpaid wages and benefits,  
20 overtime pay, restitution, penalties under California law, interest, injunctive relief, and attorneys’ fees  
21 and expenses. Defendant has denied all of Plaintiffs’ claims.

22 After initial exchanges of information, the Parties entered into private mediation before  
23 respected neutral mediator (and plaintiffs’ counsel) Mark Rudy, Esq. to try and resolve the claims. As  
24 a result of that mediation, and under the auspices of Mr. Rudy, the Parties reached a settlement on  
25 May 17, 2014. On or about July 17, 2014, Plaintiffs and Defendant executed the Settlement  
26 Agreement, setting forth the terms of the Class Settlement.  
27  
28

1 **B. Investigation in the Class Action**

2 The Parties have conducted significant investigation of the facts and law during the prosecution  
3 of this Action. Such discovery and investigations have included the exchange of information pursuant  
4 to informal discovery, meetings and conferences, and interviews of numerous potential witnesses and  
5 putative class members. Counsel for the Parties have further investigated the applicable law as applied  
6 to the facts discovered regarding the alleged claims of the Class Members and potential defenses  
7 thereto and the damages claimed.

8 **C. Benefits of the Class Settlement to Class Members**

9 Plaintiffs recognize the expense and length of continued proceedings necessary to continue the  
10 litigation against Defendant through trial and through any possible appeals. Plaintiffs have also taken  
11 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays  
12 inherent in such litigation, including those involved in class certification. Plaintiffs are also aware of  
13 the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's  
14 defenses thereto, and the difficulties in establishing damages for Class Members. Plaintiffs have also  
15 considered the significant settlement negotiations conducted by the Parties, and the advice of the  
16 neutral mediator. Based on the foregoing, Plaintiffs have determined that the Class Settlement set  
17 forth in the Settlement Agreement is a fair, adequate, and reasonable, and is in the best interests of all  
18 Class Members.

19 **D. Class Members**

20 The "Class Members" are defined as "all Case Managers and Senior Case Managers employed  
21 by Genentech in California from October 3, 2009 to September 30, 2013 and all Foundation Specialists  
22 and Senior Foundation Specialists employed by Genentech in California from January 1, 2012 to  
23 September 30, 2013".

24 Every Class Member who has not opted out of the Class Settlement is a Settlement Class  
25 Member.

26 **E. Plaintiffs and the Class Members' Claims**

27 Plaintiffs and the Class Members claimed and continue to claim that the Class Released Claims  
28 (as defined below) have merit and give rise to liability on the part of Defendant. Neither the

1 Settlement Agreement nor any documents referred to herein, or any action taken to carry out the  
2 Settlement Agreement is, or may be construed as or may be used as, an admission by or against the  
3 Class Members or Class Counsel as to the merits or lack thereof of the claims asserted, except as to the  
4 Class Released Claims of the Settlement Class Members.

5 **F. Defendant's Denials of Wrongdoing**

6 Defendant contends that all of its employees were properly exempt and compensated in  
7 compliance with the law, and that its conduct was not willful with respect to any alleged failure to pay  
8 any wages or penalties (including but not limited to compensation for unpaid overtime and missed  
9 meal or rest periods; failing to maintain accurate records of earned wages, work periods, meal periods,  
10 and deductions; and violating fundamental public policy). Defendant has denied and continues to deny  
11 each of the claims and contentions alleged by Plaintiffs and the Class Members in the Action.

12 Defendant denies any wrongdoing or legal liability arising out of any of the facts or conduct alleged in  
13 the Action, and believes that it has valid defenses to Plaintiffs' and the Class Members' claims.

14 Neither the Settlement Agreement, nor any document referred to or contemplated herein, nor any  
15 action taken to carry out the Class Settlement, may be construed as, or may be used as an admission,  
16 concession, or indication by or against Defendant of any fault, wrongdoing, or liability whatsoever,  
17 including any concession that certification of a class would be appropriate in this or any other case.

18 **G. Operation of the Class Settlement**

19 Pursuant to the Preliminary Approval Order dated August 4, 2014, this Court conditionally  
20 certified the Class and granted preliminary approval of the Class Settlement. The Preliminary  
21 Approval Order also approved of the proposed forms of notice and notice plan. The Court entered the  
22 Preliminary Approval Order after review and consideration of all of the pleadings filed in connection  
23 herewith, and the oral representations made by counsel at the hearing.

24 In compliance with the Preliminary Approval Order, the Notice and Claim Forms were sent to  
25 all Class Members via first class mail. Furthermore, follow-up mailings were performed for returned  
26 mail in addition to the distribution of any Claim Forms to Class Members requesting copies. The  
27 notice program was timely completed.

28

1 This matter is now before the Court on Plaintiffs' Motion for Final Approval of the Class  
2 Action Settlement, including approval of Incentive Awards for Named Plaintiffs Valerie Welch, Nina  
3 Sundar, Marietta Macaraeg, Evelyn Hernandez-Malagon, Colleen Garza, Matthew Cheung, and Carla  
4 Nordstrom and Class Counsel's Motion for Award of Attorneys' Fees and Costs and Incentive Award.  
5 The Court has read, heard, and considered all the pleadings and documents submitted, and the  
6 presentations made in connection with the Motions which came on for hearing on December 18, 2014.

7 This Court finds that the Class Settlement appears to be the product of serious, informed, non-  
8 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential  
9 treatment to any individuals. The Court finds that the Class Settlement was entered into in good faith  
10 pursuant to California Code of Civil Procedure section 877.6. The Court further finds that the Class  
11 Settlement is fair, reasonable, and adequate and that Plaintiffs have satisfied the standards for final  
12 approval of a class action settlement under California law. Under the provisions of California Code of  
13 Civil Procedure section 382 and Federal Rule of Civil Procedure 23, as approved for use by the  
14 California state court in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has  
15 discretion to certify a class where:

16 [Q]uestions of law or fact common to the members of the class  
17 predominate over any questions affecting only individual members, and  
18 that a class action is superior to the available methods for the fair and  
efficient adjudication of the controversy . . . Fed. R. Civ. Proc. 23.

19 Certification of a settlement class is the appropriate judicial device under these circumstances.

20 Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

21 1. This Court has jurisdiction over the claims of the Class Members asserted in this  
22 proceeding and over all Parties to the Action.

23 2. For the reasons set forth in the Preliminary Approval Order and in the transcript of the  
24 proceedings of the Preliminary Approval hearing, which are adopted and incorporated herein by  
25 reference, this Court finds that the applicable requirements of the California Code of Civil Procedure  
26 section 382, Rule 3.769 of the California Rules of Court, and Federal Rule of Civil Procedure 23 have  
27 been satisfied with respect to the Class and the proposed Class Settlement. The Court hereby makes  
28 final its earlier provisional certification of the Class, as set forth in the Preliminary Approval Order.

1           3.       The Notice given to the Class Members fully and accurately informed the Class  
2 Members of all material elements of the proposed Class Settlement and of their opportunity to object to  
3 or comment thereon; was the best notice practicable under the circumstances; was valid, due, and  
4 sufficient notice to all Class Members; and complied fully with the laws of the State of California, the  
5 United States Constitution, due process, and other applicable law. The Notice fairly and adequately  
6 described the Class Settlement and provided Class Members adequate instructions and a variety of  
7 means to obtain additional information. A full opportunity has been afforded to the Class Members to  
8 participate in this hearing and all Class Members and other persons wishing to be heard have been  
9 heard. Accordingly, the Court determines that all Class Members who did not timely and properly  
10 execute a request for exclusion are bound by this Order and Judgment.

11           4.       Pursuant to California law, the Court hereby grants final approval to the Class  
12 Settlement and finds it reasonable and adequate, and in the best interests of the Class as a whole. More  
13 specifically, the Court finds that the Class Settlement was reached following meaningful discovery and  
14 investigation conducted by Class Counsel; that the Class Settlement is the result of serious, informed,  
15 adversarial, and arms-length negotiations between the Parties; and that the terms of the Class  
16 Settlement are in all respects fair, adequate, and reasonable. In so finding, the Court has considered all  
17 of the evidence presented, including evidence regarding the strength of the Plaintiffs' case; the risk,  
18 expense, and complexity of the claims presented; the likely duration of further litigation; the amount  
19 offered in Class Settlement; the extent of investigation and discovery completed; and the experience  
20 and views of Class Counsel. The Court further has considered the absence of objection to or request  
21 for exclusion from the Class Settlement by Class Members. Accordingly, the Court hereby directs that  
22 the Class Settlement be effected in accordance with the Settlement Agreement and the following terms  
23 and conditions.

24           5.       It is hereby ordered that the Incentive Awards of \$5,000 each for Named Plaintiffs  
25 Valerie Welch, Nina Sundar, Marietta Macaraeg, Evelyn Hernandez-Malagon, Colleen Garza,  
26 Matthew Cheung, and Carla Nordstrom are fair and reasonable for the work they provided to the Class  
27 and Class Counsel, and shall be paid accordingly.

28

1           6.       It is hereby ordered that the PAGA Payment of \$10,000.00 shall be paid to the Labor  
2 and Workforce Development Agency to pay all applicable penalties under the California Labor Code's  
3 Private Attorney General Act of 2004, as amended, California Labor Code sections 2699 *et seq.*

4           7.       It is hereby ordered that a payment of \$23,000 shall be paid to the Settlement  
5 Administrator, Kurtzman Carson Consultants, for services performed in administering the Class  
6 Settlement.

7           8.       With this final approval of the proposed Class Settlement, it is hereby ordered that  
8 Settlement Class Members and their successors shall conclusively be deemed to have given a release,  
9 as set forth in the Settlement Agreement and Notice, against the Released Parties, and all such  
10 participating Class Members and their successors shall be permanently enjoined and forever barred  
11 from asserting any claim related to this Action against the Released Parties. The Class Released  
12 Claims include all claims, demands, rights, liabilities, and causes of action that were or might have  
13 been asserted (whether in tort, contract, or otherwise) for violation of the Fair Labor Standards Act, the  
14 California Labor Code, the California Business and Professions Code, the Private Attorneys General  
15 Act ("PAGA"), the applicable Industrial Welfare Commission Wage Orders, or any similar state or  
16 federal law, whether for economic damages, non-economic damages, liquidated damages, punitive  
17 damages, restitution, penalties, other monies, or other relief arising out of, relating to, or in connection  
18 with any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or  
19 failures to act pled in the Complaint, which are or could be the basis of claims that Defendant  
20 improperly classified Class Members as exempt, failed to provide all wages and overtime wages due,  
21 failed to provide timely or accurate final paychecks, failed to keep records properly concerning time  
22 worked, failed to provide accurate itemized wage statements, failed to provide meal periods, failed to  
23 authorize and permit rest breaks, and/or engaged in unfair business practices, at any times on or before  
24 September 30, 2013 (and whether such claims are based on California or federal wage and hour law,  
25 contract law, or other law).

26           9.       For the reasons set forth in the Motion for Attorneys' Fees and Costs, Class Counsel's  
27 attorneys' fee request in the amount of \$859,500 is hereby granted because Class Counsel's request  
28 falls within the range of reasonableness and the result achieved justified the award. The court further

1 finds that Class Counsel's 2014 hourly rates are reasonable and commensurate with the prevailing rates  
2 for wage and hour class actions. Class Counsel's actual expenses in prosecuting this Action in the  
3 amount of \$10,000 are hereby approved as reasonably incurred.

4 10. It is hereby ordered that any amounts remaining with the Settlement Administrator after  
5 checks that are not negotiated are cancelled, shall be divided equally and paid to the Legal Aid Society  
6 – Employment Law Center ([www.las-elc.org](http://www.las-elc.org)) and the Genentech Foundation, as the qualified  
7 501(c)(3) charities (*cy pres* recipients).

8 11. No other costs or fees relief shall be awarded, either against Defendant or any related  
9 persons or entities, as defined in the Settlement Agreement, or from the award to the Settlement Class.

10 12. Neither the making of the Settlement Agreement nor the entry into the Settlement  
11 Agreement constitutes an admission by Defendant, nor is this Order a finding of the validity of any  
12 claims in the Complaint or of any other wrongdoing. Further, the Settlement Agreement is not a  
13 concession, and shall not be used as an admission of any wrongdoing, fault, or omission of any entity  
14 or persons; nor may any action taken to carry out the terms of the Settlement Agreement be construed  
15 as an admission or concession by or against Defendant or any related person or entity.

16 13. The Court approves the following Implementation Schedule for further proceedings:

17 Sixty-five (65) days after service of notice of entry of the Final  
18 Approval Order and Judgment on the Parties Payment Obligation and Class Release Date:  
19 Defendant to transfer settlement pay-out funds to  
20 Settlement Administrator.

21 Fifteen (15) days after the Payment Obligation and Class  
22 Release Date Settlement Administrator to mail Settlement Awards  
23 to Authorized Claimants, incentive awards to  
24 Plaintiffs Valerie Welch, Nina Sundar, Marietta  
25 Macaraeg, Evelyn Hernandez-Malagon, Colleen  
26 Garza, Matthew Cheung, and Carla Nordstrom,  
27 attorneys' fees and costs to Class Counsel, and  
28 PAGA payment to the LWDA.

180 days after issuance of Settlement Award checks Any issued checks will automatically be  
cancelled if not cashed by the Authorized Claimants  
within that time, and fifty percent of the funds  
represented by such checks shall be paid to the  
Genentech Foundation and fifty percent to the Legal  
Aid Society – Employment Law Center.

1 270 days after the Payment  
2 Obligation and Class Release  
3 Date

Administration of the Class Settlement shall be  
completed by this date. Upon completion of  
administration of the Class Settlement, the Settlement  
Administrator shall provide written certification of  
such completion to the Court, Class Counsel, and  
Defendant's Counsel.

5 **JUDGMENT**

6 In accordance with, and for the reasons stated in, the Final Approval Order, judgment shall be  
7 entered whereby Named Plaintiffs Valerie Welch, Nina Sundar, Marietta Macaraeg, Evelyn  
8 Hernandez-Malagon, Colleen Garza, Matthew Cheung, and Carla Nordstrom and all Settlement Class  
9 Members shall take nothing from Defendant Genentech, Inc., except as expressly set forth in the  
10 Settlement Agreement, which was previously filed as part of Plaintiffs' Motion for Preliminary  
11 Approval of the Class Action Settlement.

12 Pursuant to California Code of Civil Procedure section 664.6 and Rule 3.769(h) of the  
13 California Rules of Court, this Court reserves exclusive and continuing jurisdiction over this action, the  
14 Named Plaintiffs, Members of the Class, and Defendant for the purposes of:

- 15 (a) supervising the implementation, enforcement, construction, and interpretation of the  
16 Settlement Agreement, the Preliminary Approval Order, the plan of allocation, the Final  
17 Approval Order, and the Judgment; and,  
18 (b) supervising distribution of amounts paid under this Class Settlement.

19 **IT IS SO ORDERED.**

20 **MARIE S. WEINER**

21 Dated: DEC 18 2014, 2014

22 \_\_\_\_\_  
23 Honorable Marie S. Weiner  
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