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**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)

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN  
SUPPORT OF UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS AND PAGA  
ACTION SETTLEMENT**

Date: March 10, 2023

Time: 1:30 P.M.

Dept.: C-69

Complaint Filed: March 1, 2021

FAC Filed: March 10, 2022

Trial Date: Not Set

1 Pursuant to this Court's January 27, 2023 Tentative Ruling ("Tentative Ruling"), Plaintiff  
2 Jaime Moen ("Plaintiff") hereby submits this Supplemental Brief in further support of his  
3 unopposed Motion for Final Approval of Class and PAGA Action Settlement.

4 The Court's Tentative Ruling requested that Plaintiff provide further briefing and  
5 declarations regarding lodestar cross-check calculation. Class Counsel's declarations filed  
6 concurrently herewith detail the hourly breakdown of work performed by all counsel on the case,  
7 as well as their respective hourly rates. (*See* Supplemental Declaration of Larry W. Lee ("Supp.  
8 Lee Decl."); Declaration of Mai Tulyathan ("Tulyathan Decl."); Declaration of Max W. Gavron  
9 ("Gavron Decl."); Declaration of Kristen M. Agnew ("Agnew Decl."); Declaration of Nick  
10 Rosenthal ("Rosenthal Decl.").)

11 Specifically, with respect to Class Counsel's lodestar, to date, approximately 577.9 hours  
12 have been expended by Class Counsel in this matter. (Supp. Lee Decl. at ¶ 5, Ex. A; Tulyathan  
13 Decl. at ¶ 9, Ex. A; Gavron Decl. at ¶ 9, Ex. A; Agnew Decl. at ¶ 5, Ex. A; Rosenthal Decl. at ¶  
14 4, Ex. A.) Moreover, Class Counsel expects to incur approximately 62 additional hours in  
15 finalizing this settlement, which include handling post-approval matters and settlement issues  
16 that may arise, and responding to correspondence and phone calls from class members, the  
17 settlement administrator, and defense counsel. (Supp. Lee Decl. at ¶ 5; Tulyathan Decl. at ¶ 10;  
18 Gavron Decl. at ¶ 10; Agnew Decl. at ¶ 6; Rosenthal Decl. at ¶ 5.) Thus, the total number of  
19 hours expected to be invested in this case through resolution is approximately 639.9 hours. Class  
20 Counsel requests hourly rates ranging from \$600.00 to \$800.00 per hour. (Supp. Lee Decl. at ¶  
21 5; Tulyathan Decl. at ¶ 11; Gavron Decl. at ¶ 11; Agnew Decl. at ¶ 7; Rosenthal Decl. at ¶¶ 6-7.)  
22 The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time  
23 records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney  
24 as to the number of hours worked on a particular case is sufficient evidence to support an award  
25 of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182  
26 Cal. App. 3d 553, 559.)

27 Reasonable hours include, in addition to time spent during litigation, the time spent  
28

1 before the action is filed, including time spent interviewing the clients, investigating the facts and  
2 the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447  
3 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend the  
4 attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.) The hours for which Class  
5 Counsel seeks compensation involve only these types of tasks in connection with the litigation  
6 and settlement of this action. Thus, the number of hours for which fees are sought here is  
7 reasonable.

8 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
9 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084,  
10 1095.) The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the  
11 attorney's skill and experience, the nature of the work performed, the relevant area of expertise  
12 and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61  
13 Cal. App. 4th 629, 632-33.)

14 Class Counsel's skill and experience justify the requested rates. As shown in the  
15 supporting declarations, Class Counsel has significant experience in the area of employment and  
16 wage and hour class actions. Specifically, Class Counsel's practice focuses on representing  
17 employees in employment matters, particularly wage and hour cases. (Supp. Lee Decl. at ¶¶ 3-4;  
18 Tulyathan Decl. at ¶¶ 4-8; Gavron Decl. at ¶¶ 6-8; Agnew Decl. at ¶¶ 1-4; Rosenthal Decl. at ¶¶  
19 2-3.) As such, based on the hours and applicable rate, the total lodestar to be expended by Class  
20 Counsel through the finalization of this settlement – without a multiplier – will be approximately  
21 \$444,715.00. (Supp. Lee Decl. at ¶¶ 5-6, Ex. A; Tulyathan Decl. at ¶¶ 9-11, Ex. A; Gavron Decl.  
22 at ¶¶ 9-11, Ex. A; Agnew Decl. at ¶¶ 5-7, Ex. A; Rosenthal Decl. at ¶¶ 4-7, Ex. A.)

24 Once the court establishes the lodestar amount, it may enhance the fee award by a  
25 multiplier in order to make an appropriate fee award. (*Serrano III*, 20 Cal.3d at p. 48.) The  
26 pertinent factors include the difficulty of the questions involved and the skill in presenting them,  
27 the contingent nature of the fee award, the extent to which the litigation precluded other  
28 employment, and the percentage-of-the-fund the attorney would have received on the fair

1 market. (*Id.*, *Lealao*, 82 Cal.App.4th at p. 49.) However, this list is not exhaustive and the court  
2 can consider other factors it deems important in setting the multiplier. (*Ketchum v. Moses* (2001)  
3 24 Cal.4th 1122, 1139.)

4 *Lealao* contains several factors justifying an enhancement based on the percentage-of-  
5 the-benefit, namely, commendable conduct by counsel, and significant recoveries by Class  
6 Members, all of which were previously detailed in Plaintiff's moving papers. (*Lealao*, 82 Cal.  
7 App. 4th at pp. 51-53.) As in *Lealao*, the Class was notified of the settlement and attorneys' fee  
8 request, and no objections were made by the Class. The extreme effort undertaken by counsel,  
9 as shown by their hours put into the case and the significantly high value being paid to settlement  
10 class members for claims—here, a net settlement sum of **\$2,412,208.58** to be distributed among  
11 the Class, shows considerable skill.

12 The multiplier should also be enhanced because of the contingent nature of counsel's fee  
13 recovery. The risks in taking on a class action case are enormous, not the least of which is time  
14 and effort. Not only do these cases require substantial work, but there exists significant risks.  
15 Many times Plaintiff's counsel expend enormous amounts of work and out of pocket costs in the  
16 interest of aggrieved employees and/or the State of California, only to end up without any  
17 recovery whatsoever. For example, in the matter of *Magadia v. Wal-Mart*, Plaintiff's counsel  
18 expended thousands of hours work and over two hundred thousand dollars (\$200,000.00) in out-  
19 of-pocket costs. While Plaintiff's counsel initially obtained a trial verdict of \$102 million, the  
20 entirety of this verdict was wiped away on appeal. (*See Magadia v. Wal-Mart* (2021) 999 F.3d  
21 668.) In yet another recent example, Plaintiff's counsel also expended significant time and  
22 expenses in another wage/hour class and PAGA action, only to have the District Court grant  
23 summary judgment in its entirety against Plaintiff. (*See Guynn-Neupane* (N.D. Cal. Sep. 30,  
24 2021) 2021 WL 4481661.) These are the actual risks that Plaintiff requests this Court take into  
25 account when considering the requested attorneys' fees, including any multiplier to be accounted  
26 into Plaintiff's lodestar.  
27

28 Furthermore, this case involved novel and difficult questions of evolving law.

Specifically, among other claims, Plaintiff asserted a theory of liability that Defendant failed to factor in all forms of non-discretionary remuneration such as bonuses, incentives, and shift differentials, when calculating and paying sick pay wages to its employees. This theory of liability presents significant risk because there is essentially no precedent from any California courts granting class certification of a sick pay regular rate claim. Thus, this shows the amount of risk that Class Counsel assumed because there was a possibility that the Court will not grant class certification, especially on the sick pay regular rate theory of liability, and thus this claim will be extinguished. In addition to this risk, Class Counsel was also faced with the risk that waiting time penalties may not be recovered for the meal and rest period premiums, since this was an undecided issue during the pendency of this lawsuit until the California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93 (2022).

Thus, the risks are very real and substantial for Class Counsel. Not only have Plaintiff's counsel undertaken a significant risk in pursuing this action, but in the face of that risk they have achieved an excellent settlement for the Class. Thus, their work in obtaining the settlement in this matter has been commendable and justifies the multiplier requested here.

Here, based upon Plaintiff's counsel's lodestar of \$444,715.00, Plaintiff's request for a multiplier of 2.99 is reasonable and fair, particularly based on the risks and factors described above. (*Wershba v. Apple Computer, Inc.* (Ct. App. 2001) 91 Cal.App.4th 224 (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of the common fund, based on a multiplier of 2.52).)

Based on the arguments set forth in Plaintiff's moving papers and the information provided to the Court in this briefing, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members.

1 For these reasons, Class Counsel's request for attorneys' fees in the amount of \$1,333,333.33  
2 should be approved as fair, reasonable, and adequate.

3  
4 DATED: March 3, 2023

DIVERSITY LAW GROUP, P.C.

5  
6 By: 

Larry W. Lee

Mai Tulyathan

7 Attorneys for Plaintiff, the Class, and Aggrieved  
8 Employees  
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