

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

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)

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 24, 2022, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Katherine A. Bacal, judge presiding, in Department C-69 of the above referenced Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiff Jaime Moen (“Plaintiff”) will seek an Order:

(1) Approving the Joint Stipulation of Class and PAGA Action Settlement and Release (“Stipulation” or “Settlement Agreement”) in this matter;

(2) Conditionally certifying the following class (members within the class are “Class Members”) for settlement purposes only: 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 during the period of September 2, 2016, through the date of preliminary approval of the settlement (“Class Period”);

(3) Appointing Plaintiff Jaime Moen as the Class Representative, and Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. as Class Counsel;

(4) Preliminarily approving the Stipulation and the total Gross Settlement Amount in the amount of Four Million Dollars (\$4,000,000.00);

(5) Finding on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the amount of the PAGA Penalties, Plaintiff’s Enhancement Award, Class Counsel’s fees and costs, settlement administration costs, and allocation of payments to Class Members and Aggrieved Employees, that could ultimately be given final approval by this Court;

(6) Approving the Notice of Class and PAGA Action Settlement and Release (“Class Notice”) to be sent to Class Members;

(7) Appointing Phoenix Settlement Administrators as the Settlement Administrator; and

(8) Setting the matter for a Final Fairness and Final Approval hearing.

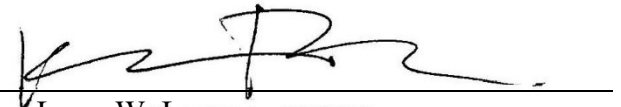
1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court to
3 preliminarily certify a class for settlement purposes.

4 The basis for this Motion, filed without any opposition from Defendant Genentech, Inc.
5 (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and that the
6 procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to
7 opt-out of, or object to, the settlement with respect to the class claims.

8 This Motion will be based on the attached memorandum of points and authorities, the
9 Stipulation and the proposed Class Notice, and the supporting Declarations of Larry W. Lee, Mai
10 Tulyathan, and Plaintiff Jaime Moen, and upon the oral arguments of counsel (should there be
11 any) and on the complete records and file herein.

12
13 DATED: June 2, 2022

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved
Employees

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action under the California Labor Code. Plaintiff Jaime Moen (“Plaintiff”) alleges
4 that Defendant Genentech, Inc. (“Defendant”) failed to pay overtime wages at the correct regular
5 rate of pay in violation of Labor Code §§ 201-203, 510, 558, and 1194, failed to pay sick pay at
6 the correct regular rate of pay in violation of Labor Code §§ 201-203 and 246, failed to pay meal
7 and rest period premium compensation at the correct regular rate of pay in violation of Labor
8 Code §§ 226.7 and 512, and failed to provide accurate itemized wage statements to its employees
9 in violation of Labor Code § 226(a). Based on these violations, Plaintiff asserts class and PAGA
10 claims for violation of California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, and
11 1194, and California Business & Professions Code § 17200 *et seq.* (the “UCL”). Defendant
12 denies all material allegations. The Parties have reached a class and PAGA action settlement, the
13 terms of which are reflected in the Parties’ Joint Stipulation of Class and PAGA Action
14 Settlement and Release (“Stipulation” or “Settlement Agreement”).¹

15 Prior to the settlement of this action, Plaintiff and Defendant (collectively, the “Parties”)
16 thoroughly investigated the facts relating to the class and PAGA claims alleged in the lawsuit,
17 and engaged in a thorough study of the legal principles applicable to the claims asserted against
18 Defendant. Through the exchange of informal discovery in connection with mediation,
19 Defendant provided necessary data pertaining to the number of putative class members and
20 allegedly aggrieved employees, data pertaining to the hourly rates of pay, number of pay periods
21 at issue, number of workweeks at issue, sample wage statements, and a fifteen (15) percent
22 sample of timekeeping and payroll records of the putative class, as well as pertinent policies
23 regarding payment of overtime, incentives, bonuses, sick leave, shift differentials, and other
24 pertinent policies. The information provided by Defendant allowed Plaintiff to review and
25 analyze the liability and potential exposure. Thereafter, the Parties attended a full day of
26

27
28 ¹ The Parties’ Joint Stipulation of Class and PAGA Action Settlement and Release is attached to the
Declaration of Mai Tulyathan as **Exhibit A**.

mediation with experienced mediator Chris Panetta, Esq., after which the Parties were able to reach the current settlement.

The terms of the Settlement Agreement provide that Defendant pay a Gross Settlement Amount of Four Million Dollars and Zero Cents (\$4,000,000.00) to resolve the class and PAGA claims. Significantly, the entire Gross Settlement Amount will be distributed to the class on a **non-reversionary basis, such that no remaining monies will revert to Defendant.** Further, no claim forms are required. The following represents the terms of the Settlement regarding class size and distribution of the Gross Settlement Amount:

- Gross Settlement Amount of \$4,000,000.00;
- As of September 18, 2021, the Class included an estimated 3,869 individuals, and there were no more than 175,000 pay periods during the Class Period where a Class Member earned overtime wages, sick pay, or meal or rest period premiums, and non-discretionary remuneration in the same pay period;²
- Enhancement Payment to the Class Representative of up to \$20,000.00, in recognition of Plaintiff's efforts and risks in assisting with the prosecution of this lawsuit and in consideration for providing a complete and general release of all claims as well as an ADEA waiver;
- Class Counsel's attorneys' fees of one-third of the Gross Settlement Amount, up to \$1,333,333.33, and litigation costs not to exceed \$20,000.00;
- Settlement Administration costs of up to \$32,000.00;
- PAGA Payment of \$200,000.00, of which 75%, or \$150,000.00, will be paid to the Labor & Workforce Development Agency (LWDA), and the remaining 25%, or \$50,000.00, will be distributed to Aggrieved Employees³ on a pro rata basis

² These numbers will be updated once preliminary approval is granted and the Class Period closes.

³ "Aggrieved Employees" is defined to include 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 during the period of July 27, 2019, until the date of preliminary approval of the settlement ("PAGA Period").

1 based on the number of “Eligible PAGA Pay Periods,” or number of pay periods
2 during the PAGA Period when an Aggrieved Employee earned overtime wages,
3 sick pay, or meal or rest period premiums, and non-discretionary remuneration in
4 the same pay period; and

- 5 • Net settlement amount of approximately **\$2,394,666.67** to be distributed to Class
6 Members on a pro rata basis, based on the number of “Eligible Class Pay
7 Periods,” or number of pay periods during the Class Period when a Class Member
8 earned overtime wages, sick pay, or meal or rest period premiums, and non-
9 discretionary remuneration in the same pay period.

10 The Parties and their respective counsel believe that the Settlement for the consideration
11 and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, in light
12 of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff
13 and her counsel are confident that they can prevail on class certification, as well as on the merits,
14 they recognize the inherent risks in drawn-out litigation and the specific risks that the class might
15 not be certified and/or that Plaintiff could fail to establish liability.

16 Therefore, the Parties respectfully request that the Court grant this Motion for
17 Preliminary Approval of Class Action Settlement.

18 **II. BACKGROUND**

19 **A. Procedural Background**

20 On or about January 21, 2021, Plaintiff sent written notice to the California Labor &
21 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code §§ 201-
22 204, 226, 246, 510, 558, and 1194, pursuant to Labor Code § 2699.3. (Declaration of Mai
23 Tulyathan (“Tulyathan Decl.”) at ¶ 2.) Thereafter, on March 1, 2021, Plaintiff filed a wage and
24 hour class and PAGA representative action complaint against Defendant in the San Diego
25 County Superior Court, alleging causes of action for: (1) violation of California Labor Code §§
26 510, 558, and 1194; (2) violation of California Labor Code §§ 201-203; (3) violation of
27 California Labor Code § 226(a); (4) violation of California Business & Professions Code §
28 17200, *et seq.*; and (5) violation of Labor Code § 2698, *et seq.* (*Id.* at ¶ 3.)

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

14 On January 25, 2022, the Parties attended a full-day mediation with experienced wage
15 and hour mediator Christopher Panetta, Esq. (Tulyathan Decl. at ¶ 5.) After arm's-length
16 negotiations during the mediation, the Parties reached a resolution of the action in its entirety.
17 (*Id.*) In resolution of Plaintiff's class and PAGA claims, the Parties entered into the Settlement
18 Agreement, a true and correct copy of which is attached as Exhibit A to the Declaration of Mai
19 Tulyathan. (*Id.* at ¶ 8)

20 In connection with the settlement, on March 7, 2022, Plaintiff filed a supplemental notice
21 with the LWDA, setting forth Defendant's alleged violations of Labor Code §§ 226.7 and 512,
22 pursuant to Labor Code § 2699.3. (Tulyathan Decl. at ¶ 6.) On March 10, 2022, Plaintiff filed a
23 First Amended Complaint, adding causes of action for (1) violation of Labor Code § 226.7; and
24 (2) violation of Labor Code §§ 226.7 and 512. (*Id.* at ¶ 7.) The First Amended Complaint is the
25 operative Complaint ("Complaint").

26 **B. The Allegations in this Lawsuit**

27 The operative Complaint alleges causes of action for (1) violation of Labor Code §§ 510,
28 558, 1194; (2) violation of Labor Code §§ 201-204; (3) violation of Labor Code § 226.7; (4)

1 violation of Labor Code §§ 226.7 and 512; (5) violation of Labor Code § 226(a); (6) violation of
2 Business & Professions Code § 17200, *et seq.*; and (7) violation of the PAGA, Labor Code §§
3 2698, *et seq.* (Tulyathan Decl. at ¶ 7.)

4 Plaintiff's class and PAGA claims as pled in the operative Complaint are predicated upon
5 the following allegations. With respect to Plaintiff's overtime, sick pay, and meal and rest period
6 premium regular rate claims, Plaintiff contends that Defendant failed to pay said wages at the
7 correct regular rate of pay. In this regard, Plaintiff contends that Defendant failed to factor non-
8 discretionary remuneration, including without limitation, various bonuses, incentives, and shift
9 differentials, into the calculation of the regular rate for purposes of paying overtime pay, sick
10 pay, and meal and rest period premium compensation, and thus Plaintiff and employees were
11 underpaid said wages. In addition, Plaintiff also alleges derivative claims under Labor Code §
12 226(a) resulting from the underpayment of overtime, sick pay, and meal and rest period
13 premiums. As a result of these alleged violations, Plaintiff seeks unpaid wages, waiting time
14 penalties, statutory penalties, and civil penalties under the California Labor Code and PAGA, as
15 well as attorneys' fees and costs. (Tulyathan Decl. at ¶ 7.) Defendant denies all allegations and
16 contends that neither class nor representative treatment is appropriate for this Action.

17 **III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

18 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
19 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
20 review after notice has been distributed to the class members for their comment or objections.
21 The *Manual for Complex Litigation, Third* § 30.41 states:

22 Approval of class action settlements involves a two-step process. First, counsel
23 submits the proposed terms of settlement and the court makes a preliminary
24 fairness evaluation. If the preliminary evaluation of the proposed settlement does
25 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
26 unduly preferential treatment of class representatives or of segments of the class,
27 or excessive compensation for attorneys, and appears to fall within the range of
28 possible approval, the court should direct that notice...be given to the class
members of a formal fairness hearing, at which arguments and evidence may be
presented in support of and in opposition to the settlement.
(Fed. Jud. Ctr., 3rd ed. 1995).

Thus, the preliminary approval by the trial court is simply a conditional finding that the

1 settlement appears to be within the range of acceptable settlements. As Professor Newberg
2 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
3 concerning a tentative settlement proposal may vary. The court may find that the settlement
4 proposal contains some merit, is within the range of reasonableness required for a settlement
5 offer, or is presumptively valid subject only to any objections that may be raised at a final
6 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26 (4th ed.
7 2002).

8 The procedures for the parties’ submission of a proposed settlement for preliminary
9 approval by the court also are discussed in 4 *Newberg on Class Actions*:

10 When the parties to an action reach a monetary settlement, they will usually
11 prepare and execute a joint stipulation of settlement, which is submitted to the
12 court for preliminary approval. The stipulation should set forth the central terms
13 of the agreement, including but not limited to, the amount of settlement, form of
recapture clause.

14 *Id.* at § 11.24.

15 Here, the Parties have reached such an agreement and have submitted to this Court in
16 connection with this Motion a copy of the Settlement Agreement fully setting forth the
17 agreement reached by the Parties. *See* Tulyathan Decl., Exh. A. The Settlement Agreement sets
18 forth all terms of the agreement reached by the Parties, which include, among other things, the
19 method for calculating the Class Members’ and Aggrieved Employees’ individual settlements.

20 The parties also may, at the preliminary approval stage, request that the court
21 provisionally approve certification of the class—conditional upon final approval of the
22 settlement. “[P]re-certification settlements are routinely approved if found to be fair and
23 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk*
24 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached
25 before any “adversary certification,” the court was satisfied that it was “fair, adequate and
26 reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts
27 have employed this practice in the name of judicial efficiency in order to facilitate apparently
28 beneficial settlement proposals”). As further explained by Professor Newberg:

1 The strength of the findings made by a judge at a preliminary hearing or
2 conference concerning a tentative settlement proposal...may be set out in
3 conditional orders granting tentative approval to the various items submitted to
4 the court. Three basic rulings are often conditionally entered at this preliminary
hearing. These conditional rulings may approve a temporary settlement class, the
proposed settlement, and the class counsel's application for fees and expenses.

5 *4 Newberg on Class Actions* at § 11.26.

6 In addition to such terms as class identification, settlement amount, and payment
7 procedures, the Settlement Agreement reached by the Parties contains a provision pursuant to
8 which the Parties stipulate to the Court's provisional certification of the Class for the purposes of
9 this settlement only. (Stipulation at ¶ 46.)

10 **A. Proposed Class Definition**

11 The current settlement is being settled on behalf of "all current and former non-exempt
12 employees of Defendant in the State of California who earned overtime wages or sick pay or
13 meal- or rest-period premiums and nondiscretionary remuneration, including without limitation,
14 bonuses, incentives, and shift differentials, in the same pay period, at any time during the Class
15 Period." (Stipulation at ¶ 6.) Defendant estimates that, as of September 18, 2021, there were
16 approximately 3,869 individuals that comprised the Class. Defendant represents that there were
17 no more than 175,000 pay periods at issue during the Class Period as of September 18, 2021.
18 (Stipulation at ¶ 77.). These figures will be updated after preliminary approval is granted, the
19 Class Period closes, and in advance of any final approval hearing.

20 **B. Settlement Terms and Evaluation**

21 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
22 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
23 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
24 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
25 judgment for that of the proponents, particularly where, as here, settlement has been reached
26 with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
27 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
28 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*

1 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
2 *& Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

3 While the recommendations of counsel proposing the settlement are not conclusive, the
4 Court can properly take them into account, particularly where, as here, they have been involved
5 in formal and informal discovery and negotiations for some period of time, appear to be
6 competent, have experience with this type of litigation, and have exchanged substantial evidence
7 from the opposing party. *See Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural*
8 *Telecomms. Coop.*, 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation
9 process is preserved, however, a strong initial presumption of fairness attaches to the proposed
10 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
11 are most closely acquainted with the facts of the underlying litigation”).

12 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
13 and hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a
14 number of wage and hour class actions and have extensive litigation experience. (Declaration of
15 Larry W. Lee (“Lee Decl.”) at ¶¶ 7-9; Tulyathan Decl. at ¶¶ 26-32.) Each side has apprised the
16 other of their respective factual contentions, legal theories, and defenses, resulting in
17 negotiations taking place between the Parties. (Tulyathan Decl. at ¶ 24.)

18 Based on the class data provided by Defendant, Plaintiff conducted an exposure analysis.
19 For all of the regular rate class claims, the main claim and/or damages to be recovered are
20 waiting time penalties under Labor Code § 203. On that note, Plaintiff estimated that Defendant
21 would face liability up to a maximum of \$14,624,157.33 in class waiting time penalties.
22 (Tulyathan Decl. at ¶ 15.) This is calculated based on payroll data provided by Defendant
23 regarding the number of former employees and their hourly rates of pay. For Plaintiff’s meal
24 and rest period premiums, Plaintiff analyzed the sample time and payroll records (91 employees
25 out of 606 employees) and found that only approximately 1,351 shifts out of the sample had a
26 meal/rest period premium paid in the same pay period where a bonus and/or a shift differential
27 was paid. Based thereon, Plaintiff extrapolated that data to the entire putative meal and rest
28 period class, which yielded an estimated total of approximately 9,000 shifts that would have a

1 meal/rest period premium paid in the same pay period where a bonus and/or a shift differential
2 was paid. Even assuming that any underpayment of meal and rest period premiums is at \$2.00
3 per shift (an assumption that is on the higher side), the estimated underpayment amount would
4 amount to only \$18,000.00. As such, Plaintiff determined that any underpayment amount for the
5 meal/rest period premium regular rate would be low.

6 With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that
7 Defendant could face civil penalties of approximately \$5,465,900.00 if Plaintiff were successful
8 at trial. (Tulyathan Decl. at ¶ 16.) Even assuming Plaintiff prevailed on his PAGA claims, the
9 Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2),
10 the Court can decline to award PAGA penalties where "if, based on the facts and circumstances
11 of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
12 oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v.*
13 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim
14 upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
15 employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court
16 of Appeal found such reduction to be proper. *Id.* at p. 539.

17 Furthermore, Defendant raised several defenses that presented risk as to liability on the
18 claims. First, it is Defendant's position that it correctly pays wages when shift differentials are
19 paid. In this regard, Defendant contends that shift differentials are already factored into the
20 calculation of the regular rate of pay, and as such Plaintiff cannot prove liability with respect to
21 any alleged failure to factor in shift differentials into the regular rate of pay. Furthermore,
22 Defendant contends that certain bonuses and incentives (i.e. the Applause award and Roche
23 Annual Bonus ("RAB") bonuses) are discretionary, and thus do not need to be included into the
24 calculation of the regular rate of pay when paying overtime, sick pay, and meal and rest period
25 premiums. As to the alleged meal and rest period violations, Defendant contends that it has
26 already paid a substantial amount of meal and rest period premiums, any underpayment is
27 minimal, and any underpayment would not result in waiting time penalties or wage statement
28 violations due to its good-faith defense that meal and rest period premiums need not be paid at

1 the regular rate of pay—an issue that remained unsettled under California law until the Supreme
2 Court of California issued its decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858
3 (2021). Given these defenses, it is Defendant’s position that Plaintiff will not prevail on liability
4 as to the regular rate claims. As another risk to prevailing on class certification, there is
5 essentially no precedent from any California courts granting class certification of a sick pay
6 regular rate claim. Thus, while Plaintiff believes that a class can be certified, there is a possibility
7 that the Court will not grant class certification on Plaintiff’s sick pay regular rate claim here.
8 (Tulyathan Decl. at ¶ 24.)

9 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
10 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
11 involved in not prevailing on one or more of the causes of action or theories alleged in the
12 operative Complaint, the possibility of non-certification, and potential for appeals. (Tulyathan
13 Decl. at ¶ 24.) These risks on class certification are compounded by the California Supreme
14 Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs
15 obtained class certification and subsequently prevailed at trial after eight years of litigation, but
16 the judgment and the certification ruling were reversed by the California Supreme Court after an
17 additional five years of litigation. The case was remanded back to superior court where class
18 certification was denied and plaintiffs’ subsequent appeal also was denied.

19 Indeed, numerous courts have held that **gross** settlements approximating between only
20 8% and 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego*
21 *Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
22 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash
23 settlement amounting to only a fraction of the potential recovery does not per se render the
24 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
25 assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
26 settlement is fair and adequate depends on the “the difficulties in proving the case”);
27 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
28 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of

the Defendants’ potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained **only 9.1%** of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

Here, Plaintiff’s counsel estimated total class and PAGA penalties to be approximately \$20,090,057.33, without discounting for potentially losing on any of the causes of action. (Tulyathan Decl. at ¶ 18.) The Gross Settlement Amount is \$4,000,000.00, which is approximately **20%** of the maximum class and PAGA penalties. (Tulyathan Decl. at ¶ 18.) Thus, the settlement was negotiated at arms’ length and the significantly high settlement percentage-to-recovery further supports that the settlement is fair and reasonable.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class and PAGA Action Settlement and Release (“Class Notice”), should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement with respect to the class claims. (Stipulation at ¶¶ 36, 52.) Moreover, as set forth in the Class Notice, Class Members are advised of their right to object to any of the terms contained in the Settlement Agreement. (*Id.* at ¶ 52.)

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members and Aggrieved Employees Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Settlement Agreement provides for Four Million Dollars (\$4,000,000.00) as the Gross Settlement Amount. (Stipulation at ¶ 20.) 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**. (Stipulation at ¶¶ 22, 53.a.; Tulyathan Decl. at ¶ 21.) To

determine the amount that each Class Member is entitled from the Net Settlement Amount, the Settlement Administrator will first divide the Net Settlement Amount by the combined total number of Eligible Class Pay Periods for the Class during the Class Period, to arrive at the Class Pay Period Value. (*Id.* ¶ 53.a.i.) The Class Pay Period Value will then be multiplied by the individual number of Eligible Class Pay Periods for each respective Class Member during the Class Period, to arrive at the Individual Settlement Payment for that Class Member. (*Id.*) To determine the amount that each Aggrieved Employee is entitled from the PAGA Settlement Amount, the Settlement Administrator will first divide the PAGA Settlement Amount by the total number of Eligible PAGA Pay Periods for the Aggrieved Employees during the PAGA Period, to arrive at the PAGA Pay Period Value. (*Id.* ¶ 53.a.iii.) The PAGA Pay Period Value will then be multiplied by the individual number of Eligible PAGA Pay Periods for each respective Aggrieved Employee during the PAGA Period, to arrive at the Individual PAGA Settlement Payment for that Aggrieved Employee. (*Id.*)

The amount actually paid to each Settlement Class Member and Aggrieved Employee will increase or decrease depending on his or her number of Eligible Class Pay Periods and Eligible PAGA Pay Periods, as well as the number of opt-outs received, and fees and costs approved by the Court. (Stipulation at ¶ 53.a.) The number of Class Members, Aggrieved Employees, and pay periods at issue in the Settlement Agreement will continue to increase until preliminary approval is granted and the Class Period Closes. However, the parties negotiated an Escalator Provision that increases the Gross Settlement Amount if the number of Eligible Pay Periods exceeds 175,000 by more than 20%, which prevents excessive dilution of individual settlement payments. (Stipulation at ¶ 77). Finally, uncashed checks (upon the expiration date) shall be distributed to the nonprofit organization Legal Aid at Work, as the *cy pres* beneficiary pursuant to California Code of Civil Procedure § 384. (*Id.* at ¶ 43.a.x.)

2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants

None of the settlement funds will revert to Defendant. (Stipulation at ¶ 53.a.)

//

1 **3. Scope of the Release of Class Members' Claims**

2 Class Members provide limited releases that are tailored only to claims and allegations
3 that are pled in the operative Complaint that accrue during the Class Period and/or PAGA Period.
4 Specifically, as a condition of participating in this class action settlement, Settlement Class
5 Members shall waive and release “all claims, demands, rights, liabilities, penalties, fees, and
6 causes of action that were or could have been asserted based on the facts alleged in the Action
7 (whether in tort, contract, statute or otherwise) during the Class Period, including, but not limited
8 to, for alleged violation of Labor Code §§ 201-204, 226, 226.7, 246, 510, 558, or 1194, or any
9 claims based on the following allegations: failure to properly calculate the regular rate of pay for
10 purposes of overtime, sick pay, and meal- or rest-period premiums; failure to provide accurate
11 and/or compliant wage statements; failure to pay timely wages during employment or upon
12 separation; or violation of Cal. Bus. & Prof. Code § 17200 *et seq.* by engaging in the foregoing
13 conduct” (“Released Class Claims”). (Stipulation at ¶¶ 34, 49.a.) The Class Period is defined as
14 the period of September 2, 2016, through the date of preliminary approval of the settlement. (*Id.*
15 at ¶ 8.)

16 Class Members who timely and validly opt out of the settlement, but also fall under the
17 category of Aggrieved Employees, will remain Aggrieved Employees and be bound by the
18 PAGA Released Claims. (Stipulation at ¶¶ 2, 23, 29, 49.a., 49.b.) The PAGA Released Claims
19 are “all claims, demands, rights, liabilities, penalties, fees, and causes of action under PAGA
20 during the PAGA Period, Labor Code §§ 201-204, 226, 226.7, 246, 510, 558, or 1194 or that
21 could have been alleged in the operative complaint based on the facts, policies, practices,
22 occurrences, or acts alleged in the operative complaint or letters to the LWDA, or that are based
23 on any alleged failure to properly calculate the regular rate of pay for purposes of overtime, sick
24 pay, and meal or rest period premiums; failure to provide accurate and/or compliant wage
25 statements; failure to pay timely wages during employment or upon separation.” (*Id.* at ¶ 29.)
26 The PAGA Period is defined as the period of July 27, 2019, through the date of preliminary
27 approval of the settlement. (*Id.* at ¶ 28.)

28 Class Members who cash their Settlement Payment Checks will also provide a release of

FLSA claims that are based on the claims and allegations based on the facts alleged in the Complaint. (*Id.* at ¶¶ 34, 49, 53.v.) Settlement Checks will contain the following language:

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.

(*Id.* at ¶ 53.v.) To the extent that they do not cash their Settlement Payment Checks, then said Class Members will not release any of their FLSA claims. (*Id.* at ¶ 49.)

4. Tax Treatment of Settlement Amounts to Class Members

The Individual Class Settlement Payments to Class Members shall be allocated as twenty percent (20%) as wages subject to tax withholding and reported on IRS Form W-2 and eighty percent (80%) as interest and penalties reported on IRS Form 1099. (Stipulation ¶ 53.a.ix.) Defendant shall be responsible for paying the employer’s share of payroll taxes separately from the Gross Settlement Amount. (*Id.*) Individual PAGA Settlement Payments shall be allocated as one hundred percent (100%) non-wage penalties reported on IRS Form 1099. (*Id.*)

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do **not** need to submit a claim should they wish to receive their share of the settlement funds. (Stipulation at ¶ 53.a.) This substantially decreases the amount of burden each Class Member must bear in order to receive their settlement share. If a Class Member does not wish to take part in this settlement and be bound by the Released Claims, the Class Member must submit a Request for Exclusion. (*Id.* at ¶ 52.a.ii.) Class Members who are also Aggrieved Employees and who timely and validly submit a Request for Exclusion, however, will still be bound by the PAGA Released Claims. (Stipulation ¶¶ 22, 23, 29, 49.a., 49.b.)

C. Notice of Class and PAGA Action Settlement and Release

Within twenty (20) calendar days of the preliminary approval of this settlement,

1 Defendant will confidentially transmit to the Settlement Administrator a list containing for each
2 Class Member and Aggrieved Employee the following information: full name; last known
3 address, Social Security Number; number of Eligible Class Pay Periods during the Class Period;
4 and number of Eligible PAGA Pay Periods during the PAGA Period (“Class List”). (Stipulation
5 at ¶¶ 5, 52.a.)

6 Upon receipt of the information and prior to mailing the Class Notice, the Settlement
7 Administrator shall perform a search based on the National Change of Address Database for
8 information to update and correct for any known or identifiable address changes. (Stipulation at ¶
9 52.a.i.) Within seven (7) calendar days after receiving the Class List from Defendant, the
10 Settlement Administrator shall mail the Class Notice to all Class Members. (*Id.*) The Settlement
11 Administrator will re-mail the Class Notice to the forwarding address provided for returned
12 notices. (Stipulation at ¶ 52.a.v.) Class Notices that are returned without a forwarding address
13 will be re-mailed to a corrected address obtained by the Settlement Administrator after
14 performing a skip-trace or other automated search. (*Id.*)

15 As set forth in the Class Notice, Class Members will be allowed to opt out of the
16 settlement by a certain deadline or object to the settlement in writing. (Stipulation at ¶ 52.a.)
17 Class Members will also be informed that, if they opt out of the class settlement, they will still be
18 bound by the settlement and release of the Released PAGA Claims. (*Id.*)

19 **D. Typicality and Adequacy of Representation**

20 **1. Class Representative’s Claims are Typical of the Class**

21 The commonality requirement is met when there are questions of law and fact common to
22 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
23 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
24 facts couple with disparate legal remedies within the class”). Commonality requires only that
25 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
26 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
27 Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
28 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).

1 Where the employer's conduct is uniformly directed at a class of employees, as it is here, the
2 class wide impact of the defendant's policies satisfies the commonality requirement. *See*
3 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

4 In the present case, Plaintiff alleges that Defendant, as a matter of its corporate policy,
5 practice, or procedure violated the Labor Code by failing to pay overtime wages, sick pay, and
6 meal and rest period premiums based on the correct, regular rate of pay. (Declaration of Jaime
7 Moen ("Moen Decl.") at ¶¶ 2-8.) In particular, Plaintiff alleges that Defendant miscalculated the
8 regular rate of pay when paying overtime wages, sick pay, and meal and rest period premiums to
9 Plaintiff whenever non-discretionary remuneration, such as bonuses, incentives, and shift
10 differentials, were paid to Plaintiff. (*Id.*) Additionally, Plaintiff also alleges that he was not
11 issued accurate wage statements that complied with Labor Code § 226(a). (*Id.*) In other words,
12 Plaintiff asserts he was subjected to the same policies and practices as other Class Members.
13 Thus, Plaintiff believes his claims are typical to those of Class Members.

14 Moreover, Plaintiff asserts he does not have any interests adverse to the Class, nor have
15 any such issues been raised or presented. (*Id.* at ¶ 8.) Plaintiff has taken all necessary steps to
16 represent the interests of the Class, including by providing information and documents to his
17 counsel. (*Id.* at ¶ 9.) For such reasons, Plaintiff claims he has adequately represented the Class
18 Members and will continue to do so.

19 **2. Class Counsel Have Adequately Represented the Class and Have** 20 **Experience with Wage and Hour Class Actions**

21 From the inception of the case, Class Counsel have zealously represented the interests of
22 the Class. Class Counsel has engaged in significant meet and confer discussions with opposing
23 counsel to obtain informal data and documents and to discuss the merits of the claims on behalf
24 of the Class. (Tulyathan Decl. at ¶ 20.) The settlement was obtained for the benefit of the Class,
25 as opposed to the individual Class Representative. Further, Class Counsel have been approved
26 as class counsel on a number of prior cases, have litigated numerous other class action cases, and
27 are competent to represent the class. (Lee Decl. at ¶¶ 7-9; Tulyathan Decl. at ¶¶ 30-32.)

28 //

1 **E. Costs and Fees**

2 **1. Attorneys' Fees and Costs**

3 California state and federal courts have recognized that an appropriate method for
4 determining award of attorneys' fees is based on a percentage of the total value of benefits to
5 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
6 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*,
7 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
8 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
9 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
10 bear the entire burden alone." *Vincent*, 557 F.2d at 769.

11 The common fund doctrine is predicated on the principle of preventing unjust
12 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
13 he may require the passive beneficiaries to compensate those who created the fund. Both
14 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
15 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
16 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
17 been applied "consistently in California when an action brought by one party creates a fund in
18 which other persons are entitled to share." The reasons for applying the common fund doctrine
19 include: "...fairness to the successful litigant, who might otherwise receive no benefit because
20 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage
21 to the others who are entitled to share in the fund and who should bear their share of the burden
22 of its recovery; encouragement of the attorney for the successful litigant who will be more
23 willing to undertake and diligently prosecute proper litigation for the protection or recovery of
24 the fund if he is assured that he will be properly and directly compensated should his efforts be
25 successful." *Id.*

26 Indeed, more recently, the California Supreme Court has also now held that the award of
27 attorneys' fees in common fund wage and hour class action settlements should start with the
28 percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the

1 overwhelming majority of federal and state courts in holding that when class action litigation
2 establishes a monetary fund for the benefit of the class members, and the trial court in its
3 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
4 of a reasonable fee by choosing an appropriate percentage of the fund created”).

5 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
6 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
7 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
8 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
9 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

10 The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement
11 Amount (or \$1,333,333.33) for payment to Class Counsel as attorneys’ fees. The Parties have
12 agreed to a payment of the foregoing attorney’s fees and, thus, this payment should be presumed
13 to be fair. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs
14 in an amount up to \$20,000.00. Class Counsel have, at their own risk, expended costs, for
15 example, to file this instant action, effect service of process, pay mediation costs, and pay other
16 litigation related costs. If Class Counsel’s actual costs are less than \$20,000.00, the remainder
17 will go to the Class for distribution.

18 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and
19 costs being requested by the Parties.

20 **2. Proposed Payment to the Class Representative**

21 Class and PAGA Representative Jaime Moen requests a modest enhancement of
22 \$20,000.00. (Stipulation at ¶ 53.b.) The Class and PAGA Representative met and conferred with
23 Class Counsel on a number of occasions to discuss the case; searched for and provided
24 documents and information to Class Counsel, including his paystubs, letters and e-mails, policy
25 documents, and other employment documents; and reviewed documents and pleadings in the
26 case, including his PAGA letter, the Complaint, the Settlement Agreement, and his declaration.
27 (Moen Decl. at ¶ 9.) As part of his duties as a Class and PAGA Representative, Plaintiff
28 provided invaluable information, evidence, and documents that resulted in this settlement. (*Id.*)

1 In addition to the invaluable services that he provided, Plaintiff also took a significant risk, both
2 professionally and monetarily, in acting as the Class and PAGA Representative and seeking
3 benefits on behalf of the Class and Aggrieved Employees. Because the claims alleged by the
4 Class and PAGA Representative involved the payment of costs to the prevailing party, Plaintiff
5 could have possibly faced paying the costs of Defendant had he not prevailed in this action. (*Id.*
6 at ¶ 12.)

7 Furthermore, given that future employers are much less likely to hire individuals who
8 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
9 prejudice in the future from other potential employers. (*Id.* at ¶ 12.) Plaintiff assumed these
10 risks and the Class and Aggrieved Employees all benefited from these risks taken by Plaintiff.
11 Class Members and Aggrieved Employees did not have to file individual lawsuits and bear the
12 risks of payment of costs if they did not prevail, nor did they have to face the potential for
13 retaliation and not getting future employment had they filed a public lawsuit.

14 Finally, as part of this settlement and in consideration for his Enhancement Payment,
15 Plaintiff has executed a general release of his individual claims, including as to Civil Code §
16 1542, as well as an ADEA waiver, something that the Class Members and Aggrieved Employees
17 did not have to provide. (Stipulation at ¶¶ 49.c., 49.d.) Plaintiff's sacrifice for the benefit of the
18 Class and Aggrieved Employees further warrants the requested enhancement amount.

19 **3. Settlement Administration Costs**

20 The Parties have agreed to a payment of up to \$32,000.00 to the Settlement
21 Administrator, Phoenix Settlement Administrators, to send notices and to otherwise administer
22 this settlement. (Stipulation at ¶ 53.d.) Phoenix Settlement Administrators is a well-recognized
23 class action settlement administrator. The Parties believe that the administration fee is
24 reasonable and should be approved.

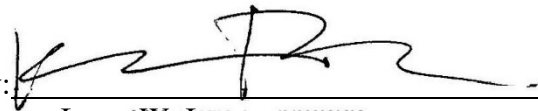
25 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 26 **PRELIMINARY APPROVAL**

27 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
28 substantial monetary benefits to Class Members and Aggrieved Employees; it is non-collusive;

1 and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted
2 by counsel for respective parties who are experienced in wage and hour class action litigation.
3 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
4 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of
5 the proposed Notice of Class and PAGA Action Settlement and Release, and set a date for a final
6 approval hearing.

7
8 DATED: June 2, 2022

DIVERSITY LAW GROUP, P.C.

9
10 By: 

11 Larry W. Lee
12 Mai Tulyathan
13 Attorneys for Plaintiff, the Class, and Aggrieved
14 Employees
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1 **PROOF OF SERVICE**

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

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On June 2, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR**
PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 13 **3. DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **4. DECLARATION OF JAIME MOEN IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 15 **5. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

16 on the interested parties in this action as follows:

17 Jessica R. Perry 18 jperry@Orrick.com 19 Orrick, Herrington & Sutcliffe LLP 20 1000 Marsh Road 21 Menlo Park, Ca 94025-1015 22 <i>Attorneys for Defendant Genentech, Inc.</i>	23 Julie A. Totten 24 Jatotten@Orrick.com 25 Orrick, Herrington & Sutcliffe LLP 26 400 Capitol Mall, Suite 3000 27 Sacramento, CA 95814 28 <i>Attorneys for Defendant Genentech, Inc.</i>
29 Scott Morrison 30 Scott.morrison@orrick.com 31 Orrick, Herrington & Sutcliffe LLP 32 2050 Main Street, Suite 1100 33 Irvine, California 92614-8255 34 <i>Attorneys for Defendant Genentech, Inc.</i>	

X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the One Legal E-Filing System at the website www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 2, 2022, at Los Angeles, California.


Erika Mejia