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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MATTHEW WEHNER, Individually
and as a representative of a class of
similarly situated persons, on behalf of
the U.S. ROCHE 401(K) SAVINGS
PLAN,

Plaintiff,

v.

GENENTECH, INC., the U.S. ROCHE
DC FIDUCIARY COMMITTEE,

Defendants.

) CASE NO. 3:20-cv-06894 RS
)
)
) **ORDER GRANTING PRELIMINARY**
) **APPROVAL OF CLASS ACTION**
) **SETTLEMENT, PRELIMINARILY**
) **CERTIFYING CLASS FOR**
) **SETTLEMENT PURPOSES, APPROVING**
) **FORM AND MANNER OF SETTLEMENT**
) **NOTICE, PRELIMINARILY APPROVING**
) **PLAN OF ALLOCATION, AND**
) **SCHEDULING FAIRNESS HEARING**
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1 This Class Action involves claims for alleged violations of the Employee Retirement
 2 Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, with respect to the U.S. Roche
 3 401(k) Savings Plan (“Plan”).¹ The terms of the Settlement are set out in the Settlement Agreement
 4 by counsel on behalf of the Class Representatives and all Class Members, and Defendants,
 5 respectively.

6 Pursuant to the Class Representatives’ Motion for Preliminary Approval of Class Action
 7 Settlement, Preliminary Certification of a Class for Settlement Purposes, Approval of Form and
 8 Manner of Settlement Notice, Preliminary Approval of Plan of Allocation, and Scheduling of a
 9 Date for a Fairness Hearing filed on November 21, 2023, the Court preliminarily considered the
 10 Settlement to determine, among other things, whether the Settlement is sufficient to warrant the
 11 issuance of notice to members of the proposed Settlement Class. Upon reviewing the Settlement
 12 Agreement, and the matter having come before the Court on January 11, 2024, due notice having
 13 been given and the Court having been fully advised in the premises, it is hereby **ORDERED,**
 14 **ADJUDGED, and DECREED** as follows:

15 1. **Preliminary Certification of the Settlement Class.** In accordance with the
 16 Settlement Agreement, and pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil
 17 Procedure, this Court hereby conditionally certifies the following class (“Settlement Class”) for
 18 purposes of settling and resolving the Recordkeeping Claim (as defined below)²:

19 All persons who participated in the Plan at any time during the Class Period
 20 (October 2, 2014 through the date the Preliminary Approval Order is entered by the
 21 Court), including any Beneficiary of a deceased person who participated in the Plan

22 ¹All capitalized terms not otherwise defined in this Preliminary Approval Order shall have the
 23 same meaning as ascribed to them in the Settlement Agreement.

24 ²Pursuant to Plaintiff’s and Defendants’ stipulation on class certification, the certified class is
 25 limited to Plaintiff’s remaining claim as a result of the Court granting in part and denying in part
 26 Defendants’ motion to dismiss the Amended Complaint on June 14, 2021. (ECF No. 61.) Should
 27 Plaintiff appeal the Court’s June 14, 2021 ruling successfully, the parties agreed the stipulation
 28 regarding class certification will not apply to Plaintiff’s revived claims that were dismissed.

1 at any time during the Class Period, and any Alternate Payee of a person subject to
2 a Qualified Domestic Relations Order who participated in the Plan at any time
3 during the Class Period. Excluded from the Settlement Class are Defendants,
4 including the individual members of the Board of Directors of Genentech, Inc. and
5 U.S. Roche DC Fiduciary Committee during the Class Period, and their
6 Beneficiaries.

7 2. The Court finds for the purpose of settling and resolving the Recordkeeping
8 Claim:

9 a) as required by FED. R. CIV. P. 23(a)(1), the Settlement Class is
10 ascertainable from records kept with respect to the Plan and from other objective criteria,
11 and the Settlement Class is so numerous that joinder of all members is impracticable;

12 b) as required by FED. R. CIV. P. 23(a)(2), there are one or more questions of
13 law and/or fact common to the Settlement Class;

14 c) as required under FED. R. CIV. P. 23(a)(3), the claims of the Class
15 Representatives are typical of the claims of the Settlement Class that the Class
16 Representatives seek to certify;

17 d) as required by FED. R. CIV. P. 23(a)(4), the Class Representative will fairly
18 and adequately protect the interests of the Settlement Class in that: (i) the interests of the
19 Class Representative and the nature of the alleged claims are consistent with those of the
20 Settlement Class members; and (ii) there appear to be no conflicts between or among the
21 Class Representative and the Settlement Class;

22 e) as required by FED. R. CIV. P. 23(b)(1), the prosecution of separate actions
23 by individual members of the Settlement Class would create a risk of: (i) inconsistent or
24 varying adjudications as to individual Settlement Class members that would establish
25 incompatible standards of conduct for the parties opposing the claims asserted in the Class
26 Action; or (ii) adjudications as to individual Settlement Class members that, as a practical
27 matter, would be dispositive of the interests of the other members not parties to the
28 individual adjudications, or substantially impair or impede the ability of such persons to
protect their interests; and

f) as required by FED. R. CIV. P. 23(g), Class Counsel are capable of fairly and

1 adequately representing the interests of the Settlement Class, and Class Counsel: (i) have
2 done appropriate work identifying or investigating potential claims in the Class Action; (ii)
3 are experienced in handling class actions; and (iii) have committed the necessary resources
4 to represent the Settlement Class.

5 3. The Court preliminarily appoints Matthew Wehner as Class Representative for the
6 Settlement Class, and Miller Shah LLP and Olivier & Schreiber LLP as Class Counsel for the
7 Settlement Class.

8 4. **Preliminary Approval of Proposed Settlement.** The Settlement Agreement is
9 hereby preliminarily approved as fair, reasonable, and adequate. This Court preliminarily finds
10 that:

11 a) The Settlement resolves Plaintiff’s claims that Defendants breached their
12 fiduciary duties under ERISA by causing the Plan to pay excessive recordkeeping and
13 administrative fees (the “Recordkeeping Claim”) and preserves Plaintiff’s right to appeal
14 his previously-dismissed claim that Defendants failed to appropriately monitor the Plan’s
15 investments and retained imprudent investments in the Plan (the “Investment Claim”);

16 b) The Settlement was negotiated vigorously and at arm’s-length by Defense
17 Counsel, on the one hand, and by Class Counsel on behalf of the Class Representatives and
18 the Settlement Class, on the other hand;

19 c) The Class Representatives and Class Counsel had sufficient information to
20 evaluate the settlement value of the Class Action and have concluded that the Settlement
21 is fair, reasonable, and adequate;

22 d) If the Settlement had not been achieved, the Class Representatives and the
23 Settlement Class faced the expense, risk, and uncertainty of protracted litigation;

24 e) The amount of the Settlement—two-hundred fifty thousand dollars
25 (\$250,000.00)—is fair, reasonable, and adequate, considering the costs, risks, and delay of
26 litigation, trial, and appeal associated with the Recordkeeping Claim.³ The fairness,
27

28 ³ The Court notes that Defendants will pay a portion of Administrative Expenses under the

1 reasonably, and adequacy of the Settlement is also supported by the fact that the
 2 Settlement preserves Plaintiff's right to appeal the dismissal of the Investment Claim,
 3 which he has indicated his intention to do. The method of distributing the Net Settlement
 4 Amount is efficient, relying on Defendants' records, requiring no filing of claims for
 5 Current Participants, Beneficiaries, and Alternate Payees with Active Accounts, and
 6 requiring only a modest Former Participant Claim Form for Former Participants,
 7 Beneficiaries, and Alternate Payees without Active Accounts. The Settlement terms
 8 related to litigation expenses do not raise any questions concerning fairness of the
 9 Settlement, and there are no agreements, apart from the Settlement, required to be
 10 considered under FED. R. CIV. P. 23(e)(2)(C)(iv). The Gross Settlement Amount is within
 11 the range of settlement values obtained in similar cases;

12 f) At all times, the Class Representatives and Class Counsel have acted
 13 independently of the Defendants and in the interest of the Settlement Class; and

14 g) The proposed Plan of Allocation is fair, reasonable, and adequate.

15 5. **Establishment of Qualified Settlement Fund.** A common fund is agreed to by
 16 the Settling Parties in the Settlement Agreement and is hereby established and shall be known as
 17 the "Qualified Settlement Fund." The Settlement Fund shall be a "qualified settlement fund"
 18 within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the
 19 Internal Revenue Code. The Qualified Settlement Fund shall be funded and administered in
 20 accordance with terms of the Settlement Agreement.⁴ Defendants shall have no withholding,
 21

22 Settlement.

23 ⁴ Pursuant to the Settlement Agreement, the Settlement Administrator shall maintain the
 24 Qualified Settlement Fund as an escrow account pending resolution of the Investment Claim and
 25 cause the Qualified Settlement Fund to be invested in appropriate securities consistent with the
 26 Settlement Agreement. This shall not prevent the Settlement Administrator from making
 27 disbursements from the Qualified Settlement Fund for approved purposes before the resolution
 28 of the Investment Claim.

1 reporting or tax reporting responsibilities with regard to the Qualified Settlement Fund or its
2 distribution, except as otherwise specifically identified in the Settlement Agreement. Moreover,
3 Defendants shall have no liability, obligation, or responsibility for administration of the
4 Settlement Fund or the disbursement of any monies from the Qualified Settlement Fund except
5 for: (1) their obligation to cause the Gross Settlement Amount to be paid; and (2) their agreement
6 to cooperate in providing the information necessary for settlement administration as set forth in
7 the Settlement Agreement. The Settlement Administrator may make disbursements out of the
8 Qualified Settlement Fund only in accordance with this Preliminary Approval Order or any
9 additional Orders issued by the Court. The Qualified Settlement Fund shall expire after the
10 Settlement Administrator distributes all of the assets of the Qualified Settlement Fund in
11 accordance with the Settlement Agreement; provided, however, that the Qualified Settlement
12 Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges
13 and excises of any kind, including income taxes, and any interest, penalties or additions to such
14 amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such
15 amounts have been paid by the Qualified Settlement Fund. The Court and the Settlement
16 Administrator recognize that there will be tax payments, withholding, and reporting requirements
17 in connection with the administration of the Qualified Settlement Fund. The Settlement
18 Administrator shall, in accordance with the Settlement Agreement, determine, withhold, and pay
19 over to the appropriate taxing authorities any taxes due with respect to any distribution from the
20 Qualified Settlement Fund and shall make and file with the appropriate taxing authorities any
21 reports or returns due with respect to any distributions from the Qualified Settlement Fund. The
22 Settlement Administrator also shall determine and pay any income taxes owing with respect to
23 the income earned by the Qualified Settlement Fund. Additionally, the Settlement Administrator
24 shall file returns and reports with the appropriate taxing authorities with respect to the payment
25 and withholding of taxes. The Settlement Administrator, in its discretion, may request expedited
26 review and decision by the IRS or the applicable state or local taxing authorities, with regard to
27 the correctness of the returns filed for the Qualified Settlement Fund and shall establish reserves
28 to assure the availability of sufficient funds to meet the obligations of the Qualified Settlement

1 Fund itself and the Settlement Administrator as fiduciaries of the Qualified Settlement Fund.
2 Reserves may be established for taxes on the Qualified Settlement Fund income or on
3 distributions. The Settlement Administrator shall have all the necessary powers, and take all
4 necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the
5 payment of all distributions. Such powers include investing, allocating, and distributing the
6 Qualified Settlement Fund and supervising the administration of the Settlement Agreement in
7 accordance with its terms and this Order. The Settlement Administrator shall keep detailed and
8 accurate accounts of all investments, receipts, disbursements, and other transactions of the
9 Qualified Settlement Fund. All accounts, books, and records relating to the Qualified Settlement
10 Fund shall be open for reasonable inspection by such persons or entities as the Court orders.
11 Included in the Settlement Administrator's records shall be complete information regarding
12 actions taken with respect to the award of any payments to any person, the nature and status of
13 any payment from the Qualified Settlement Fund and other information which the Settlement
14 Administrator considers relevant to showing that the Qualified Settlement Fund is being
15 administered, and awards are being made, in accordance with the purposes of the Settlement
16 Agreement, this Preliminary Approval Order, and any future orders that the Court may find it
17 necessary to issue.

18 6. **Fairness Hearing.** A hearing is scheduled for June 13, 2024 to make a final
19 determination concerning, among other things:

- 20 a) Any objections from Class Members to the Settlement or any aspects of it;
- 21 b) Whether the Settlement merits final approval as fair, reasonable, and
22 adequate;
- 23 c) Whether the Class Action should be dismissed with prejudice pursuant to
24 the terms of the Settlement;
- 25 d) Whether Class Counsel adequately represented the Settlement Class for
26 purposes of entering into and implementing the Settlement;
- 27 e) Whether the proposed Plan of Allocation should be granted final approval;
- 28 and

1 f) Whether Class Counsel’s application(s) for litigation expenses and a Case
2 Contribution Award to the Class Representative are fair and reasonable, and should be
3 approved.

4 7. **Settlement Notice.** The Court approves the form of Settlement Notice attached
5 as Exhibit A to the Settlement Agreement. The Court finds that such form of notice fairly and
6 adequately:

7 a) describes the terms and effects of the Settlement Agreement, the
8 Settlement, and the Plan of Allocation;

9 b) notifies Former Participants, Beneficiaries, and Alternate Payees without
10 Active Accounts of how to submit a claim;

11 c) notifies the Settlement Class that Class Counsel will seek litigation
12 expenses from the Gross Settlement Fund, payment of the costs of administering the
13 Settlement out of the Gross Settlement Fund, and a Case Contribution Award for the Class
14 Representatives for their service in such capacity;

15 d) gives notice to the Settlement Class of the time and place of the Fairness
16 Hearing; and

17 e) describes how the recipients of the Settlement Notice may object to any of
18 the relief requested.

19 8. **Settlement Administrator.** The Court hereby approves the appointment of
20 Strategic Claims Services as the Settlement Administrator for the Settlement. The Court directs
21 that the Settlement Administrator shall:

22 a) By no later than February 11, 2024 , cause the Settlement Notice and Former
23 Participant Claim Form, with such non-substantive modifications thereto as may be agreed
24 upon by the Parties, to be provided by first-class mail, postage prepaid, to the last known
25 address of each member of the Settlement Class who can be identified through reasonable
26 effort. The Settlement Administrator shall use commercially reasonable efforts to locate
27 any Class Member whose Settlement Notice and Former Participant Claim Form is
28 returned and re-send such documents one additional time. In addition, for each Former

1 Participant, Beneficiary, and Alternate Payee who has not returned the Former Participant
2 Claim form within seventy-five (75) days of the entry of the Preliminary Approval Order,
3 the Settlement Administrator shall send within ten (10) days thereafter a post card by
4 electronic mail (if available) or first-class mail, postage prepaid, to such Class Members
5 notifying them again of the deadline by which to submit the Former Participant Claim
6 Form.

7 b) By no later than February 11, 2024, cause the Settlement Notice to be
8 published on the Settlement Website identified in the Settlement Notice, which will also
9 host and make available copies of all Settlement-related documents, including the
10 Settlement Agreement.

11 c) The Court finds that the contents of the Settlement Notice and the process
12 described herein and in the Settlement are the best notice practicable under the
13 circumstances, and satisfy the requirements of Rule 23(c) and Due Process.

14 9. **Petition for Litigation Expenses and Case Contribution Award.** The Court
15 notes that the Settlement Agreement indicates that Class Counsel does not intend to seek
16 attorneys' fees in connection with the Settlement. Any petition by Class Counsel for Litigation
17 Expenses and a Case Contribution Awards to the Class Representative, and all briefs in support
18 thereof, shall be filed no later than April 29, 2024.

19 10. **Briefs in Support of Final Approval of the Settlement.** Briefs and other
20 documents in support of final approval of the Settlement shall be filed no later than
21 April 29, 2024.

22 11. **Objections to Settlement.** Any member of the Settlement Class or authorized
23 recipient of any CAFA Notice may file an objection to the fairness, reasonableness, or adequacy
24 of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the
25 proposed award of attorneys' fees and litigation costs, to the payment of costs of administering
26 the Settlement out of the Qualified Settlement Fund, or to the request for a Case Contribution
27 Award for the Class Representatives. An objector must file with the Court a statement of his,
28 her, their, or its objection(s), specifying the reason(s), if any, for each such objection made,

1 including any legal support and/or evidence that the objector wishes to bring to the Court's
2 attention or introduce in support of the objection(s). The address for filing objections with the
3 Court is as follows:

4 Office of the Clerk

5 United States District Court

6 450 Golden Gate Avenue

7 San Francisco, CA 94102- 3489

8 Re: *Wehner v. Genentech, Inc.*, Case No. 3:20-cv-06894 RS (N.D. Cal.)

9 The objector or his, her, their, or its counsel (if any) must file the objection(s) and
10 supporting materials with the Court and provide a copy of the objection(s) and supporting materials
11 to Class Counsel and Defense Counsel at the addresses in the Settlement Notice no later than May
12 14, 2024. If an objector hires an attorney to represent him, her, them, or it for the purposes of
13 making an objection pursuant to this Paragraph, the attorney must also file a notice of appearance
14 with the Court no later than May 14, 2024. Any member of the Settlement Class or other Person
15 who does not timely file a written objection complying with the terms of this Paragraph shall be
16 deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and
17 any untimely objection shall be barred. Any responses to objections shall be filed with the Court
18 no later than June 6, 2024. There shall be no reply briefs.

19 12. Any additional briefs the Settling Parties may wish to file in support of the
20 Settlement shall be filed no later than June 6, 2024.

21 13. **Participation in Final Approval Hearing.** Any objector who files a timely,
22 written objection in accordance with Paragraph 11 above may also participate in the Fairness
23 Hearing either in person or through qualified counsel retained at the objector's expense.
24 Objectors or their attorneys intending to participate in the Fairness Hearing must file a notice of
25 intention to participate (and, if applicable, the name, address, and telephone number of the
26 objector's attorney) with the Court by no later than May 29, 2024. Any objectors, or their
27 counsel, who do not timely file a notice of intention to participate in accordance with this
28 Paragraph shall not be permitted to speak at the Fairness Hearing, except for good cause shown.

