

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GENENTECH, INC.,

Plaintiff,

v.

AMGEN INC.,

Defendant.

C.A. No. 18-924-CFC

NOTICE OF SERVICE OF SUBPOENAS

PLEASE TAKE NOTICE that Plaintiff Genentech, Inc. will serve the subpoenas attached hereto.

Dated: October 3, 2019

MCCARTER & ENGLISH, LLP

Of Counsel:

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/s/ Daniel M. Silver

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Counsel for Plaintiff Genentech, Inc.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Cancer and Blood Specialty Clinic
3851 Katella Ave #125, Los Alamitos, CA 90720

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 350 S. Grand Ave #2100, Los Angeles, CA 90071) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	Civil Action No. 18-924-CFC
<i>Plaintiff</i>)	
v.)	
Amgen Inc.)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Cancer and Blood Specialty Clinic
3851 Katella Ave #125, Los Alamitos, CA 90720
(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Wilmer Cutler Pickering Hale & Dorr LLP 350 S. Grand Ave #2100 Los Angeles, CA 90071	Date and Time: 10/14/2019 9:00 am
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/ Nora Q.E. Passamaneck <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

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(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

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(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

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(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Cancer and Blood Specialty Clinic produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Cancer and Blood Specialty Clinic, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Cancer and Blood Specialty Clinic covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Caribbean Cancer Care Services

2225 Ponce By Pass, Edificio Parra Suite 101, Ponce, 00717, Puerto Rico

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Verbatim Reporting, 1314 Ponce de Leon Ave., Third Floor, San Juan, PR 00907) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.)	
)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Caribbean Cancer Care Services
2225 Ponce By Pass, Edificio Parra Suite 101, Ponce, 00717, Puerto Rico

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Verbatim Reporting 1314 Ponce de Leon Ave., Third Floor San Juan, PR 00907	Date and Time: 10/14/2019 9:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/ Nora Q.E. Passamaneck <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

~~1225 Seventeenth St., Suite 2600, Denver, CO 80202~~

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Caribbean Cancer Care Services produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Caribbean Cancer Care Services its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Caribbean Cancer Care Services covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Global Cancer Research Institute
9460 N. Name Uno, Gilroy, CA 95020

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 1 Front St. Suite 3500, San Francisco, CA 94111) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

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Civil Action No. 18-924-CFC

PROOF OF SERVICE

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on *(date)* _____ .

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_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

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- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
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- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Global Cancer Research Institute
9460 N. Name Uno, Gilroy, CA 95020

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 350 S. Grand Ave #2100, Los Angeles, CA 90071) and Date and Time (10/14/2019 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Nora Q.E. Passamaneck
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Global Cancer Research Institute produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Global Cancer Research Institute, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Global Cancer Research Institute covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Hannibal Regional Healthcare Systems, Inc.
6000 Hospital Drive, Hannibal, MO 63401
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Alaris Litigation, 2511 Broadway Bluffs Dr, Suite 201, Columbia, MO 65201) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Hannibal Regional Healthcare Systems, Inc.
6000 Hospital Drive, Hannibal, MO 63401

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Alaris Litigation 2511 Broadway Bluffs Dr, Suite 201 Columbia, MO 65201	Date and Time: 10/14/2019 9:00 am
--	--

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk	/s/ Nora Q.E. Passamaneck Attorney's signature
------------------------------------	---

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St, Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hannibal Regional Healthcare Systems, Inc. produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Hannibal Regional Healthcare Systems, Inc., its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Hannibal Regional Healthcare Systems, Inc. covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Hematology/Oncology Clinic
8595 Picardy Ave Suite 400, Baton Rouge, LA 70809

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Baton Rouge Court Reporters, 12016 Justice Avenue, Baton Rouge LA 70816) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Hematology/Oncology Clinic
8595 Picardy Ave Suite 400, Baton Rouge, LA 70809

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Baton Rouge Court Reporters 12016 Justice Avenue Baton Rouge LA 70816	Date and Time: 10/14/2019 9:00 am
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/ Nora Q.E. Passamaneck <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

~~1225 Seventeenth St. Suite 2600, Denver, CO 80202~~

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hematology/Oncology Clinic produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Hematology/Oncology Clinic, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Hematology/Oncology Clinic covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Hematology Oncology Specialists
412 W. Carroll Ave., Glendora, CA 91741

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 350 S. Grand Ave #2100, Los Angeles, CA 90071) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

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The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Hematology Oncology Specialists
412 W. Carroll Ave., Glendora, CA 91741
(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Wilmer Cutler Pickering Hale & Dorr LLP 350 S. Grand Ave #2100 Los Angeles, CA 90071	Date and Time: 10/14/2019 9:00 am
---	--

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/ Nora Q.E. Passamaneck <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

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I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

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Additional information regarding attempted service, etc.:

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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hematology Oncology Specialists produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Hematology Oncology Specialists, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Hematology Oncology Specialists covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Hematology Oncology Specialists
1473 Ford St, Redlands, CA 92373

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 350 S. Grand Ave #2100, Los Angeles, CA 90071) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.)	
)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Hematology Oncology Specialists
1473 Ford St, Redlands, CA 92373

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Wilmer Cutler Pickering Hale & Dorr LLP 350 S. Grand Ave #2100 Los Angeles, CA 90071	Date and Time: 10/14/2019 9:00 am
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/ Nora Q.E. Passamaneck <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
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(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Hematology Oncology Specialists produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Hematology Oncology Specialists, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
16. Words in the masculine, feminine, or neuter form shall include each of the other genders.
17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.
18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:
 - a. the request to which the Document or Thing is responsive;
 - b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Hematology Oncology Specialists covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Kaiser Permanente
One Kaiser Plaza, Oakland, CA 94612

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 1 Front St Suite 3500, San Francisco, CA 94111) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135, 1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.
Plaintiff
v.
Amgen Inc.
Defendant
Civil Action No. 18-924-CFC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Kaiser Permanente
One Kaiser Plaza, Oakland, CA 94612
(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 1 Front St Suite 3500, San Francisco, CA 94111) and Date and Time (10/14/2019 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk OR /s/ Nora Q.E. Passamaneck Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135,

1225 Seventeenth St., Suite 2800, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Kaiser Permanente produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Kaiser Permanente, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Kaiser Permanente covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Lalita Pandit Medical Group
11180 Warner Ave #467, Fountain Valley, CA 92708

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Wilmer Culter Pickering Hale and Dorr, LLP, 350 S Grand Ave #2100, Los Angeles, CA 90071) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Lalita Pandit Medical Group
11180 Warner Ave #467, Fountain Valley, CA 92708

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Wilmer Culter Pickering Hale and Dorr, LLP 350 S Grand Ave #2100 Los Angeles, CA 90071	Date and Time: 10/14/2019 9:00 am
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/ Nora Q.E. Passamaneck <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Lalita Pandit Medical Group produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Lalita Pandit Medical Group, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Lalita Pandit Medical Group covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Medical Specialists of the Palm Beaches, Inc.
5700 Lake Worth Rd #204, Greenacres, FL 33463

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Florida Legal Support, 5550 Glades Road, Suite 500, Boca Raton, FL 33431) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Medical Specialists of the Palm Beaches, Inc.
5700 Lake Worth Rd #204, Greenacres, FL 33463

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Table with 2 columns: Place (Florida Legal Support, 5550 Glades Road, Suite 500, Boca Raton, FL 33431) and Date and Time (10/14/2019 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Nora Q.E. Passamaneck

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Medical Specialists of the Palm Beaches, Inc. produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Medical Specialists of the Palm Beaches, Inc., its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Medical Specialists of the Palm Beaches, Inc. covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Osborn Cancer Care
1201 Bishop Rd, Chehalis, WA 98532-8711
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Byers & Anderson Court Reporters, 2208 North 30th Street, Suite 202, Tacoma, WA 98403) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Osborn Cancer Care
1201 Bishop Rd, Chehalis, WA 98532-8711
(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Table with 2 columns: Place (Byers & Anderson Court Reporters, 2208 North 30th Street, Suite 202, Tacoma, WA 98403) and Date and Time (10/14/2019 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Nora Q.E. Passamaneck

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Osborn Cancer Care produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Osborn Cancer Care, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Osborn Cancer Care covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Pontchartrain Cancer Center
15799 Professional Plaza, Hammond, LA 70403

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Baton Rouge Court Reporters, 12016 Justice Avenue, Baton Rouge LA 70816) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Pontchartrain Cancer Center
15799 Professional Plaza, Hammond, LA 70403

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Table with 2 columns: Place (Baton Rouge Court Reporters, 12016 Justice Avenue, Baton Rouge LA 70816) and Date and Time (10/14/2019 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Nora Q.E. Passamaneck

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Pontchartrain Cancer Center produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Pontchartrain Cancer Center, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.

2. “Plaintiff” or “our” shall refer to Genentech.

3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.

4. “Genentech” shall refer to Genentech, Inc.

5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Pontchartrain Cancer Center covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Saint Peter's Health
2475 E. Broadway St., Helena, MT 59601
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Red Rhino Reporting, 510 W. Hemlock, Bozeman, MT 59715) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 18-924-CFC
Amgen Inc.)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Saint Peter's Health
2475 E. Broadway St., Helena, MT 59601
(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Red Rhino Reporting 510 W. Hemlock Bozeman, MT 59715	Date and Time: 10/14/2019 9:00 am
---	--

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/ Nora Q.E. Passamaneck <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Saint Peter's Health produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. "You," "your," and "yours" shall refer to, collectively or singly, to Saint Peter's Health, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. "Plaintiff" or "our" shall refer to Genentech.
3. "Defendant," "Amgen," and "Amgen's" shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. "Genentech" shall refer to Genentech, Inc.
5. "Person" means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Saint Peter's Health covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Wayne Hematology Oncology Associates, PC
468 Parish Dr. #4, Wayne, NJ 07470

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 250 Greenwich St 45th Floor, New York, NY 10007) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

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- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Wayne Hematology Oncology Associates, PC
468 Parish Dr. #4, Wayne, NJ 07470

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Table with 2 columns: Place (Wilmer Cutler Pickering Hale & Dorr LLP, 250 Greenwich St 45th Floor, New York, NY 10007) and Date and Time (10/14/2019 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Nora Q.E. Passamaneck

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Wayne Hematology Oncology Associates, PC produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Wayne Hematology Oncology Associates, PC, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Wayne Hematology Oncology Associates, PC covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.

UNITED STATES DISTRICT COURT

for the

District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Western Maryland Health System
12500 Willowbrook Road, Cumberland, MD 21502

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Schedule B.

Table with 2 columns: Place (Regus Business Centers, 5100 Buckeystown Pike, Suite 250, Frederick, MD 21704) and Date and Time (10/14/2019 9:00 am)

The deposition will be recorded by this method: Videographer and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/03/2019

CLERK OF COURT

OR

/s/ Nora Q.E. Passamaneck

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135
1225 Seventeenth St., Suite 2600, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

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The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the
District of Delaware

Genentech, Inc.

Plaintiff

v.

Amgen Inc.

Defendant

Civil Action No. 18-924-CFC

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Western Maryland Health System
12500 Willowbrook Road, Cumberland, MD 21502

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Table with 2 columns: Place (Regus Business Centers, 5100 Buckeystown Pike, Suite 250, Frederick, MD 21704) and Date and Time (10/14/2019 9:00 am)

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Table with 2 columns: Place and Date and Time (empty)

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Date: 10/03/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Nora Q.E. Passamaneck

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Genentech, Inc., who issues or requests this subpoena, are:

Nora Q.E. Passamaneck, nora.passamaneck@wilmerhale.com, (720) 274-3135

1225 Seventeenth St., Suite 2500, Denver, CO 80202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-924-CFC

PROOF OF SERVICE

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on *(date)* _____ .

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I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests that Western Maryland Health System produce and permit inspection and copying of the following documents and things at the place, date and time specified in the accompanying subpoena.

DEFINITIONS

The words and phrases used in these Requests shall have the meanings ascribed to them under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware. In addition, the following terms shall have the meanings set forth below whenever used in any Request:

1. “You,” “your,” and “yours” shall refer to, collectively or singly, to Western Maryland Health System, its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
2. “Plaintiff” or “our” shall refer to Genentech.
3. “Defendant,” “Amgen,” and “Amgen’s” shall refer, collectively or singly, to Amgen Inc., and all of its corporate parents, corporate predecessors, corporate successors, and all past or present subsidiaries, affiliates, divisions, units, departments, officers, directors, principals, agents, employees, representatives, assigns, attorneys, experts, insurers, and each person acting or purporting to act on its behalf.
4. “Genentech” shall refer to Genentech, Inc.
5. “Person” means any natural person or any business, legal, or governmental entity or association.

6. “Kanjinti” refers to the commercial name for Amgen’s trastuzumab biosimilar product.

7. “Document” means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by the Federal Rules of Civil Procedure.

8. “Including” means including but not limited to.

9. “Produce” means to provide legible, complete, and exact copies of responsive documents to the undersigned counsel, or to make such documents available to the undersigned counsel for inspection and reproduction.

10. “Relate to,” “relates to,” “refers to,” or “relating to” means relating to, referring to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing, constituting, dealing with, or making reference to in any way.

11. “Thing” shall mean any physical specimen or other tangible item other than a document, in your possession, custody, or control.

12. The terms “all,” “each,” and “any” shall be construed as all and any.

13. The use of the singular form of any word shall include the plural form and vice versa.

14. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. Words in the masculine, feminine, or neuter form shall include each of the other genders.

17. The use of any definition for the purposes of these Requests and shall not be deemed to constitute an agreement or acknowledgment on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

18. The “Litigation” refers to the action captioned *Genentech, Inc. v. Amgen, Inc.*, C.A. No. 18-924-CMC (D. Del.).

INSTRUCTIONS

The following instructions shall apply to all the below Requests and should be considered part of each Request.

1. You shall produce all responsive Documents and Things (including any stored by electronic means). If you are withholding or intend to withhold any Documents or Things responsive to these requests, you are requested to state the basis for withholding the Document or Thing in a manner sufficient to enable Plaintiffs and the Court to adjudicate the validity of its withholding. In the case of any Documents and Things being withheld on the grounds of attorney-client privilege, work-product doctrine, or other privilege doctrine or immunity, please also provide a privilege log identifying the following information for each Document or Thing:

- a. the request to which the Document or Thing is responsive;
- b. the title of the Document or Thing;

- c. the date appearing on the Document or Thing, and if no date appears thereon, so state and give the date, or approximate date, on which the Document or Thing was prepared;
- d. the type or general nature of the Document or Thing (*i.e.*, whether it is a letter, memorandum, minutes of a meeting, etc.);
- e. number of pages;
- f. attachments;
- g. appendices;
- h. the name, title, and company affiliation of the Person who prepared the Document or Thing;
- i. the name, title, and company affiliation of each Person to whom the Document or Thing was disclosed, including the Person or Persons to whom it was addressed and the Person or Persons who received the Document or Thing, or copies of the Document or Thing, including blind copy recipients, and any individual to whom the Document or Thing was distributed, shown, or explained;
- j. the name, title, and company affiliation of the Person or Persons who maintain custody of the Document or Thing; and
- k. the general subject matter of the Document or Thing and the basis for withholding the Document or Thing, in a manner sufficient for Plaintiffs and the Court to determine the validity of your withholding.

2. Produce all responsive Documents and Things in your actual or constructive possession, custody, or control, or the actual or constructive possession, custody, or control of

your attorneys, accountants, representatives, consultants, agents, employees, or anyone else acting on your behalf. Documents and Things in your actual or constructive possession, custody, or control include documents stored in electronic form on a server controlled by a related or unrelated entity (including but not limited to subsidiary companies, parent companies, subsidiaries of parent companies, and unrelated third parties) that you have the ability to access as part of the ordinary course of business. You are to produce entire Documents and Things, including attachments, enclosures, cover letters, memoranda, and appendices.

3. Each Document and Thing is to be produced along with all nonidentical drafts thereof in their entirety, without abbreviation or redaction, and as maintained in the ordinary course of business. In the event that multiple copies of a Document or Thing exist, produce every copy on which appear any notations or markings of any sort not appearing on any other copy.

4. If a responsive Document or Thing is not in your possession, custody, or control, identify the names of the Persons who have possession, custody, or control of such Document and Thing. If such Document or Thing was in your possession, custody, or control in the past but is no longer in your possession, custody, or control, state what disposition was made of it, the reasons for such disposition, identify any Persons having any knowledge of said disposition, and identify the Persons responsible for such disposition.

5. If a responsive Document or Thing has been destroyed or is alleged to have been destroyed, state the reasons for its destruction, the names of the Persons having any knowledge of its destruction and the names of the Persons responsible for its destruction.

6. If you contend that any Request is objectionable in whole or in part, you shall state with particularity each objection, the basis for it, and the categories of information to which the objection applies, and respond to the Request insofar as it is not deemed objectionable.

7. If You find the meaning of any term in these Requests unclear or ambiguous, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

8. The Documents and Things produced in response to these Requests shall be (a) organized and designated to correspond to the categories in these Requests or, if not, (b) produced as they are maintained in the normal course of business, and in either case: (i) all associated file labels, file headings, and file folders shall be produced together with the responsive Documents and Things from each file and each file shall be identified as to its owner or custodian; (ii) all Documents and Things that cannot be legibly copied shall be produced in their original form; otherwise, you may produce photocopies; (iii) all photocopies shall be stapled or clipped as the originals; and (iv) each page shall be given a discrete production number.

9. None of the Definitions or Requests set forth above shall be construed as an admission relating to the existence of evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Request.

10. These Requests are continuing in nature and require supplemental or additional responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

11. A copy of the Protective Order filed in the Litigation is attached as Exhibit A.

12. You should redact patient personal identifiers from documents, communications, and things before producing them.

DOCUMENT REQUESTS

1. Patient records, with personally identifying information redacted, sufficient to show the administration of Kanjinti, for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer, to a patient at an initial dose of 8 mg/kg followed by at least two subsequent doses of 6 mg/kg, with doses separated from each other by three weeks.

2. For each patient whose records are produced in response to Request No. 1, patient records, with personally identifying information redacted, sufficient to show the administration of a chemotherapeutic agent to the patient for either adjuvant treatment of HER2-overexpressing breast cancer or treatment of metastatic gastric cancer.

SCHEDULE B

Pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Genentech Inc. hereby requests the deposition of Western Maryland Health System covering the following topics. The definitions in Schedule A are expressly incorporated here by reference.

TOPICS FOR TESTIMONY

13. For each document produced in response to Document Request No. 1, the authenticity of the document and the nature of the document, including (a) when the document was made; (b) the role of the person who made the document; (c) whether the document was kept in the ordinary course of your business; (d) whether making such documents is a regular practice of your business; and (e) the accuracy of the information contained in the document.