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 12 NEXT PAGE]

NOTE CHANGES MADE BY THE COURT

13  
 14 UNITED STATES DISTRICT COURT  
 15 CENTRAL DISTRICT OF CALIFORNIA  
 16 WESTERN DIVISION  
 17

18 MERCK SHARP & DOHME CORP.,  
 19  
 Plaintiff/Counterclaim  
 20 Defendant,  
 21 vs.  
 22 GENENTECH, INC. and CITY OF  
 HOPE,  
 23  
 Defendants/  
 24 Counterclaimants.

CASE NO.: 16-cv-04992-GW-AGR  
**STIPULATED PROTECTIVE  
 ORDER [PROPOSED]**  
 Judge: Hon. George H. Wu  
 [Proposed Order submitted  
 concurrently herewith]

NOTE CHANGES MADE BY THE COURT

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1 The Court recognizes that at least some of the documents and information  
2 being sought through discovery in the above-captioned action (“Action”) are not  
3 publicly available and, for competitive reasons, normally kept confidential by  
4 Plaintiff Merck Sharp & Dohme Corp. (“Plaintiff” or “Merck”) and Defendants  
5 Genentech, Inc. and City of Hope (collectively, “Defendants”) (“Plaintiff” and  
6 “Defendants” collectively referred to herein as the “parties”). The parties have  
7 agreed to be bound by the terms of this Protective Order (“Order”) in this Action.  
8 The materials to be exchanged throughout the course of the litigation between the  
9 parties may contain trade secret or other confidential research, technical, cost, price,  
10 marketing or other commercial information, as is contemplated by Federal Rule of  
11 Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the  
12 confidentiality of such materials as much as practical during the litigation.

13 THEREFORE:

14 **DEFINITIONS**

15 1. The terms “CONFIDENTIAL INFORMATION” and “HIGHLY  
16 CONFIDENTIAL INFORMATION: OUTSIDE COUNSEL ONLY” (collectively,  
17 “RESTRICTED MATERIAL”) shall mean and include information contained or  
18 disclosed in any material that satisfies the requirements of Paragraphs 7 and 8,  
19 respectively. The term “material” shall mean all documents, communications,  
20 depositions, pleadings, exhibits, things and all other material or information subject  
21 to discovery in this Action, including responses to requests for production of  
22 documents, answers to interrogatories, responses to requests for admissions,  
23 deposition testimony, expert testimony and reports and all other discovery taken  
24 pursuant to the Federal Rules of Civil Procedure, as well as testimony adduced at  
25 trial, trial exhibits, matters in evidence and any other information used or disclosed  
26 at trial, hereafter furnished, directly or indirectly, by or on behalf of any party, non-  
27 party, or witness in connection with this Action. For the avoidance of doubt,  
28 RESTRICTED MATERIAL of a non-party produced in this Action shall be

1 afforded the same degree of protection from disclosure as the RESTRICTED  
2 MATERIAL of the parties to this Action. Each party or non-party shall act in good  
3 faith in designating such information as CONFIDENTIAL INFORMATION or  
4 HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE COUNSEL ONLY. Any  
5 information produced in prior litigations and designated Highly Confidential –  
6 Attorneys’ Eyes Only shall be treated as HIGHLY CONFIDENTIAL  
7 INFORMATION: OUTSIDE COUNSEL ONLY in this litigation.

8         2.     The term “Designated In-House Counsel” shall mean up to four in-  
9 house counsel in the employ of a party, whose duties require them to assist Outside  
10 Counsel to prepare for trial in this matter, and any administrative staff assisting such  
11 personnel. Designated In-House Counsel will be subject to the provisions of  
12 Paragraph 4.

13             a.     The Designated In-House Counsel for Merck shall be Gerard  
14 Devlin and Richard Grochala.

15             b.     The Designated In-House Counsel for Genentech shall be  
16 Rebecca Charnas Grant.

17             c.     The Designated In-House Counsel for City of Hope shall be  
18 Greg Schetina and Lydia Chan.

19             d.     A party wishing to substitute other, or designate other,  
20 Designated In-House Counsel shall provide written notice identifying the counsel  
21 and counsel’s position and responsibilities. If the party receiving a notice  
22 designating in-house counsel objects to the designation, such party shall make its  
23 objections known to the sender of the notice, in writing, within seven business days  
24 of receipt of the written notification. Such objection must be for good cause and  
25 state with particularity the reasons for the objection. If the parties are unable to  
26 resolve their objections, the party seeking to make the disclosure may apply to the  
27 Court to resolve the matter. No RESTRICTED MATERIAL shall be disclosed to  
28 the replacement designated in-house counsel until (i) the seven-day period for

1 objecting has passed and no objection is served, or (ii) if a timely written objection  
2 is served, the objection is resolved by an order of the Court or by an agreement  
3 among the parties involved.

4         3.       The term “Outside Counsel” shall mean outside counsel of record, and  
5 other attorneys, paralegals, secretaries, and other support staff employed by the law  
6 firm(s) of the outside counsel of record, or other persons hired or used by these  
7 firms for the purpose of preparation and trial of this Action, such as discovery  
8 vendors, mock jurors, and trial and jury consultants.

9         4.       Designated In-House Counsel shall have no involvement in the  
10 Prosecution of any patent or patent application claiming priority to the patents-in-  
11 suit or any other patent or patent application relating to the manufacture of  
12 antibodies through the transformation of a host cell with DNA and subsequent  
13 expression of an antibody from that cell including applications related to cell culture  
14 media, formulating an antibody, and methods for purifying or characterizing an  
15 antibody (“Patent Prosecution Activities”) from the time of receipt of any  
16 RESTRICTED MATERIAL through and including two years following (a) the entry  
17 of a final, non-appealable judgment or order in the liability phase of this Action, or  
18 (b) the complete settlement of all claims against all parties in this Action, whichever  
19 is later. “Prosecution” as used in this Paragraph means direct participation in  
20 drafting, amending, modifying or advising regarding the drafting or amending of  
21 patent claims or participation in domestic and/or foreign patent office  
22 correspondences in connection with such activities or fee payments related to any  
23 such activities. “Prosecution” does not include representing a party in connection  
24 with a challenge to or in defense of a patent before a domestic or foreign agency  
25 (including, but not limited to, an opposition proceeding, a reissue proceeding, *ex*  
26 *parte* reexamination, *inter partes* reexamination, *inter partes* review, or other post-  
27 grant review), provided such representation shall still prohibit a person from  
28 participating in the drafting, amendment, modification, or addition of patent claims



1 c. Research and development, manufacturing, commercialization,  
2 and/or sales of products or potential products related to pembrolizumab, other PD-1  
3 or PD-L1 targeting products, bezlotoxumab, or other Clostridium difficile toxin B  
4 neutralizing products;

5 d. Such additional categories as may become necessary and are  
6 agreed to between the parties in this Action in writing; or

7 e. Materials provided by a non-party to this Action at the request of  
8 the non-party and with a showing of good cause.

9 9. In the event the Producing Party elects to produce materials for  
10 inspection, no marking need be made by the Producing Party in advance of the  
11 initial inspection. For purposes of the initial inspection, all materials produced shall  
12 be considered HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE  
13 COUNSEL ONLY, and shall be treated as such pursuant to the terms of this Order.  
14 Thereafter, upon selection of specified materials for copying by the inspecting party,  
15 the Producing Party shall, within a reasonable time prior to producing those  
16 materials to the inspecting party, mark the copies of those materials that contain  
17 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL  
18 INFORMATION: OUTSIDE COUNSEL ONLY with the appropriate  
19 confidentiality marking.

20 10. The Producing Party may redact the following RESTRICTED  
21 MATERIAL or information subject to the attorney-client privilege, work product  
22 doctrine, or other legal privilege protecting information from discovery in this  
23 lawsuit from documents that it produces:

24 a. names, addresses, Social Security numbers, tax identification  
25 numbers, e-mail addresses, telephone numbers, and any other information that  
26 would identify patients;

27 b. names, addresses, Social Security numbers, tax identification  
28 numbers, e-mail addresses, telephone numbers, and any other personal identifying



1 information of health care providers, including but not limited to individuals,  
2 organizations, or facilities that furnish, bill, or are paid for healthcare services or  
3 supplies;

4 c. names, addresses, Social Security numbers, tax identification  
5 numbers, e-mail addresses, telephone numbers, and any other personal identifying  
6 information (not to include race, age, or gender) of individuals enrolled as subjects  
7 in clinical studies or adverse event reports;

8 d. street addresses, Social Security numbers, tax identification  
9 numbers, dates of birth, home telephone numbers, and cellular telephone numbers of  
10 employees;

11 e. names, addresses, Social Security numbers, tax identification  
12 numbers, e-mail addresses, telephone numbers, and other personal identifying  
13 information of any clinical investigator submitting an adverse event to the FDA on a  
14 MedWatch form;

15 f. materials that contain information protected from disclosure by  
16 the attorney-client privilege, the work product doctrine, or other legal privilege  
17 protecting information from discovery in this lawsuit, which shall be identified in a  
18 privilege log; and

19 g. those portions of documents that contain information relating to  
20 the parties' products or molecules not at issue in this litigation.

21 11. The Producing Party that has redacted information pursuant to  
22 Paragraph 10, shall, upon request, identify the nature of the information redacted in  
23 a specific document with sufficient detail to allow the Receiving Party to determine  
24 whether a challenge to the redacted information may be appropriate. If the  
25 Receiving Party has a good-faith basis for challenging the redaction, that party shall  
26 inform counsel for the Producing Party in writing of said challenge within fourteen  
27 calendar days of receipt of the Producing Party's explanation of the redaction. If,  
28 after conferring, the parties cannot resolve the dispute, the Receiving Party

1 challenging the redaction may move for a ruling on the issue of whether certain  
2 information is entitled to redaction. If the Court finds that said information should  
3 remain redacted, said information shall remain redacted and may not be used as  
4 evidence by either party at trial or at a hearing or be relied upon by either party's  
5 experts. If the Court finds that said information should not remain redacted, the  
6 Producing Party shall provide or file an unredacted version of the document within  
7 fourteen calendar days of the Court's decision or, if the Producing Party challenges  
8 such a decision, within fourteen calendar days of the conclusion of any and all  
9 proceedings or interlocutory appeals challenging the decision.

10       12. All RESTRICTED MATERIAL designated as CONFIDENTIAL  
11 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE  
12 COUNSEL ONLY shall not be disclosed by the Receiving Party to anyone other  
13 than those persons designated herein and shall not be used for any purpose other  
14 than this Action as set forth in Paragraph 16, unless and until such designation is  
15 removed either by agreement of the parties, or by order of the Court.

16       13. Information designated HIGHLY CONFIDENTIAL INFORMATION:  
17 OUTSIDE COUNSEL ONLY shall be viewed only by:

18             a. Outside Counsel;

19             b. Subject to Paragraph 15 of this Order, outside consultants or  
20 experts retained by a Receiving Party in this litigation who are not employees or  
21 consultants of a Receiving Party or its affiliates;

22             c. Any person indicated on the face of the document to be its  
23 originator, author or a recipient of a copy thereof;

24             d. The Court and its law clerks, staff, and any jury selected to hear  
25 this Action;

26             e. Stenographic reporters, videographers and their respective  
27 assistants who are engaged in such proceedings as are necessary for the preparation  
28 and trial of this Action;

1 f. Independent copying services, independent computer consulting  
2 and support services, independent exhibit makers, independent translators, and other  
3 independent litigation support services retained by counsel for purposes of this  
4 Action and who are obligated to not disclose CONFIDENTIAL INFORMATION  
5 received from counsel; and

6 g. Others as to whom the Producing Party has given written  
7 consent.

8 14. Information designated CONFIDENTIAL INFORMATION shall be  
9 viewed only by those individuals who have access to HIGHLY CONFIDENTIAL  
10 INFORMATION: OUTSIDE COUNSEL ONLY, as well as Designated In-House  
11 Counsel.

12 15. The following provisions shall control the dissemination of  
13 CONFIDENTIAL INFORMATION and HIGHLY CONFIDENTIAL  
14 INFORMATION: OUTSIDE COUNSEL ONLY to consultants and experts:

15 a. A party proposing to show RESTRICTED MATERIAL to a  
16 consultant or expert per Paragraphs 13(b) and/or 14 shall first submit the signed  
17 acknowledgment attached hereto as Exhibit A, and a curriculum vitae (a "C.V.") to  
18 the other party. The C.V. must include or be accompanied by a document setting  
19 forth the consultant's or expert's name, current business affiliation and address, and  
20 any known present or former relationships between the consultant or expert and the  
21 parties to this litigation. The requirements of prior disclosure in this provision will  
22 not be a basis for seeking discovery from a non-testifying consultant or expert.

23 b. Such consultants and experts for the parties shall be entitled to  
24 use staff, assistants and clerical workers as they normally do in organizing  
25 documents, preparing opinions and doing the other analysis and investigation  
26 necessary to assist the experts in completing their assignments provided such  
27 persons shall first submit the signed acknowledgment attached hereto as Exhibit A.

28

1           c.     If a party receiving a notice pursuant to this Paragraph objects to  
2 any RESTRICTED MATERIAL being disclosed to the selected consultant or  
3 expert, pursuant to this Order, such party shall make its objections known in writing  
4 to the sender of the notice within seven business days of receipt of the written  
5 notification required by this section. Such objection must be for good cause, stating  
6 with particularity the reasons for the objection. RESTRICTED MATERIAL may be  
7 disclosed to the consultant or expert if the seven business day period has passed and  
8 no objection has been made. If an objection is made, then within seven business  
9 days of receipt of an objection, the parties shall meet and confer to attempt to  
10 resolve their dispute. If the parties are unable to resolve their objections, the party  
11 making the objection has seven business days after the meet and confer to seek relief  
12 from the Court. If the party making the objection seeks such relief from the Court,  
13 the intended disclosure shall not be made unless and until the Court enters an order  
14 authorizing such disclosure. If relief from the Court is not sought within the above  
15 seven business days, the objection shall be deemed to have been withdrawn. The  
16 party making the objection shall have the burden of proof that the intended  
17 disclosure should not occur. If a timely written notice of objection is provided, no  
18 RESTRICTED MATERIAL shall be disclosed to the selected consultant or expert  
19 until the objection is resolved by an order of the Court or by an agreement among  
20 the parties involved.

21           16.   All RESTRICTED MATERIAL disclosed by a Producing Party shall  
22 be held in confidence by the Receiving Party, and shall be used by the Receiving  
23 Party solely for matters reasonably related to the prosecution or defense of the  
24 claims in this Action, including pursuing the allegations in the pleadings in the  
25 Action, and for the depositions, preparation of motions, trial of this lawsuit, any  
26 appeal of this Action, settlement discussions and negotiations, or any form of  
27 alternative dispute resolution in this Action, and for no other purpose whatsoever,  
28 whether directly or indirectly, unless and until the restrictions herein are removed

1 either by written agreement of counsel for the parties, or by Order of the Court.  
2 Notwithstanding the restrictions of this Paragraph, RESTRICTED MATERIAL  
3 disclosed by a Producing Party in this Action may be used by the parties in the *inter*  
4 *partes* review proceedings brought by Merck with respect to U.S. Patent No.  
5 6,331,415 under the terms of the protective order entered in those proceedings.

6       17. Each person receiving RESTRICTED MATERIAL shall take  
7 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such  
8 information. If RESTRICTED MATERIAL is disclosed to any person other than a  
9 person authorized by this Order, the party responsible for the unauthorized  
10 disclosure must immediately bring all pertinent facts relating to the unauthorized  
11 disclosure to the attention of the other parties and, without prejudice to any rights  
12 and remedies of the other parties, make every effort to retrieve the improperly  
13 disclosed RESTRICTED MATERIAL and prevent further disclosure by the party  
14 and by the person(s) receiving the unauthorized disclosure.

15       18. No party shall be responsible to another party for disclosure of  
16 RESTRICTED MATERIAL under this Order if the information in question is not  
17 labeled or otherwise identified as CONFIDENTIAL INFORMATION or HIGHLY  
18 CONFIDENTIAL INFORMATION: OUTSIDE COUNSEL ONLY, in accordance  
19 with this Order.

20       19. A Producing Party, on its own initiative or at the request of any other  
21 party, may remove the designation HIGHLY CONFIDENTIAL INFORMATION:  
22 OUTSIDE COUNSEL ONLY or re-designate it as CONFIDENTIAL  
23 INFORMATION or may remove the designation CONFIDENTIAL  
24 INFORMATION.

25       20. This Protective Order shall be without prejudice to the right of any  
26 party to bring before the Court the question of whether any particular item should no  
27 longer be designated as RESTRICTED MATERIAL under the terms of this Order.  
28

1 If counsel for a Receiving Party objects to documents or information designated as  
2 such, the following procedure shall apply:

3           a. Counsel for the Receiving Party shall serve on the Producing  
4 Party a written objection to such designation, which shall describe with particularity  
5 the documents or information in question and shall state the grounds for objection.  
6 Counsel for the Producing Party shall respond in writing to such objection within  
7 fourteen calendar days, and shall state with particularity the grounds for asserting  
8 that the document or information is RESTRICTED MATERIAL. If no timely  
9 written response is made to the objection, the challenged designation will be deemed  
10 to be void. If the Producing Party makes a timely response to such objection  
11 asserting the propriety of the designation, counsel shall then confer in good faith in  
12 an effort to resolve the dispute within five business days.

13           b. If a dispute as to the designation of a document or item of  
14 information as RESTRICTED MATERIAL cannot be resolved by agreement, the  
15 proponent of the designation being challenged shall present the dispute in  
16 accordance with the Local Rules and the Court's Discovery Order in this Action.  
17 The document or information that is the subject of the filing shall be treated as  
18 originally designated pending resolution of the dispute.

19           c. In any motion challenging the classification, the Producing Party  
20 shall have the burden of establishing the need for classification as CONFIDENTIAL  
21 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE  
22 COUNSEL ONLY.

23           21. Any party may reasonably request, in writing, that a party filing or  
24 serving a paper in this Action, such as an expert report, dispositive motion,  
25 discovery motion, or similar paper, that is marked as CONFIDENTIAL  
26 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE  
27 COUNSEL ONLY shall produce to the other side a redacted copy of such paper,  
28 removing the information that has been designated as CONFIDENTIAL

1 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE  
2 COUNSEL ONLY. Such redacted copy shall be provided within five (5) calendar  
3 days of such request or otherwise at a date agreed upon by the parties.

4 22. To the extent that any party has produced documents in this Action  
5 prior to the entry of this Order that it has indicated contain or pertain to confidential  
6 information, those documents will be treated as having been produced marked  
7 HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE COUNSEL ONLY  
8 pending any re-designation pursuant to this Order.

9 23. Whenever a deposition taken on behalf of any party involves a  
10 disclosure of RESTRICTED MATERIAL of any party:

11 a. said deposition or portions thereof shall be designated as  
12 containing CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL  
13 INFORMATION: OUTSIDE COUNSEL ONLY subject to the provisions of this  
14 Order; such designation shall be made on the record whenever possible, but a party  
15 may designate portions of depositions as containing CONFIDENTIAL  
16 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE  
17 COUNSEL ONLY after transcription of the proceedings; a party shall have until  
18 twenty (20) days after receipt of the deposition transcript to inform the other party or  
19 parties to these Actions of the portions of the transcript designated  
20 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL  
21 INFORMATION: OUTSIDE COUNSEL ONLY, and each deposition transcript  
22 shall be presumptively deemed to be HIGHLY CONFIDENTIAL INFORMATION:  
23 OUTSIDE COUNSEL ONLY until the twenty-day period has expired;

24 b. the Producing Party shall have the right to exclude from  
25 attendance at said deposition, during such time as the RESTRICTED MATERIAL is  
26 to be disclosed, any person not authorized to receive such RESTRICTED  
27 MATERIAL pursuant to this Order; and  
28

1 c. the originals of said deposition transcripts and all copies thereof  
2 shall bear the legend CONFIDENTIAL INFORMATION or HIGHLY  
3 CONFIDENTIAL INFORMATION: OUTSIDE COUNSEL ONLY, as appropriate.

4 24. Before any RESTRICTED MATERIAL is filed with the Court for any  
5 purpose, the party seeking to file such material shall seek permission of the Court to  
6 file said material under seal. The parties will follow and abide by applicable law,  
7 including relevant local rules, with respect to filing documents under seal in this  
8 Court. The party filing any material pursuant to this paragraph shall also file with  
9 the Court and make publicly available at the same time a redacted version that  
10 deletes or obscures any RESTRICTED MATERIAL.

11 25. This Protective Order is intended to be an Order within the meaning of  
12 FRE 502(d) and FRE 502(e). The inadvertent, unintentional disclosure of material  
13 or information subject to the attorney-client privilege, the work product doctrine or  
14 other privilege or immunity shall not be deemed a waiver, in whole or in part, of the  
15 relevant privilege or immunity. If a Producing Party at any time notifies the  
16 Receiving Party, in writing, that it inadvertently produced documents, testimony,  
17 information, or things that are protected from disclosure under the attorney-client  
18 privilege, work product doctrine, or any other applicable privilege or immunity from  
19 disclosure, the Receiving Party:

20 a. shall return or destroy all copies of such documents, testimony,  
21 information, or things to the Producing Party within three business days of receipt of  
22 such notice;

23 b. shall destroy all notes or other work product reflecting the  
24 content of such material and delete or sequester such material from any litigation  
25 support or other database within three business days of receipt of such notice; and

26 c. shall not further use such items for any purpose unless and until  
27 further order of the Court.

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1           26. The return of any discovery item to the Producing Party shall not in any  
2 way preclude the Receiving Party from moving the Court within ten business days  
3 after serving an objection to the Producing Party for a ruling that: (i) the document  
4 or thing is not protected by the attorney-client privilege, the common-interest  
5 privilege, the work-product immunity, or any other immunity, or (ii) any applicable  
6 privilege or immunity has been waived other than by the inadvertent production of  
7 such material. In addition, the parties shall comply with Fed. R. Civ. P. 26(b)(5)(B).  
8 The Receiving Party shall not rely upon the fact or circumstances of the production  
9 of the information in challenging the claim of privilege or protection. Prior to  
10 moving as allowed above, the parties will promptly meet and confer to attempt to  
11 resolve any dispute. In no event is this provision intended to be narrower in scope  
12 than FRE 502(b), rather it is intended to be as broad as its terms can be reasonably  
13 interpreted.

14           27. To the extent consistent with applicable law, the inadvertent or  
15 unintentional disclosure of CONFIDENTIAL INFORMATION or HIGHLY  
16 CONFIDENTIAL INFORMATION: OUTSIDE COUNSEL ONLY that should  
17 have been designated as such, regardless of whether the information, document or  
18 thing was so designated at the time of disclosure, shall not be deemed a waiver in  
19 whole or in part of a party's claim of confidentiality, either as to the specific  
20 information, document or thing disclosed or as to any other material or information  
21 concerning the same or related subject matter. Such inadvertent or unintentional  
22 disclosure may be rectified by notifying in writing counsel for all parties to whom  
23 the material was disclosed that the material should have been designated  
24 CONFIDENTIAL INFORMATION, or HIGHLY CONFIDENTIAL  
25 INFORMATION: OUTSIDE COUNSEL ONLY within a reasonable time after  
26 becoming aware of the inadvertent disclosure. Such notice shall constitute a  
27 designation of the information, document or thing as CONFIDENTIAL  
28 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE

1 COUNSEL ONLY under this Order and the Receiving Party shall take prompt steps  
2 to ensure that all known copies of such material are marked appropriately and  
3 treated as such. Nothing in this section shall preclude a party from challenging the  
4 propriety of the claim of confidentiality.

5 28. Nothing in this Order shall require disclosure of information,  
6 documents or things which a party contends is protected from disclosure by the  
7 attorney-client privilege or the work-product doctrine, or any other applicable  
8 privilege or immunity. This Order will not preclude any party from moving the  
9 Court for an order directing the disclosure of such information, documents or things.

10 29. Nothing in this Order shall bar counsel from rendering advice to their  
11 clients with respect to this Action and, in the course thereof, relying upon any  
12 information designated as CONFIDENTIAL INFORMATION or HIGHLY  
13 CONFIDENTIAL INFORMATION: OUTSIDE COUNSEL ONLY, provided that  
14 the contents of the information shall not be disclosed.

15 30. This Order shall be without prejudice to the right of any party to oppose  
16 production of any information for lack of relevance or any other ground other than  
17 the mere presence of RESTRICTED MATERIAL. The existence of this Order shall  
18 not be used by either party as a basis for discovery that is otherwise not proper under  
19 the Federal Rules of Civil Procedure.

20 31. Drafts of expert reports and notes or outlines for draft reports shall not  
21 be discoverable by any party and do not need to be identified on a privilege log.  
22 Communications between experts and counsel relating to the preparation of expert  
23 reports shall not be discoverable and do not need to be identified on a privilege log,  
24 except that any facts and/or documents provided to an expert, whether from counsel  
25 or any other source, and the source of those documents and/or information are  
26 discoverable. Similarly, communications (including any notes and memorandum)  
27 involving Outside Counsel for each Party do not need to be identified on a privilege  
28 log if the communications occurred during the pendency of or in reasonable

1 anticipation of U.S. District Court litigations relating to U.S. Patent Nos. 6,331,415  
2 or 7,923,221. The materials, communications and other information exempt from  
3 discovery under the foregoing sentences shall be treated as protected by the  
4 attorney-client privilege and/or attorney work product doctrine.

5 32. Upon final termination of this Action, all persons subject to the terms  
6 hereof shall collect and return to the respective parties all RESTRICTED  
7 MATERIAL and all copies, excerpts, and summaries thereof within 60 calendar  
8 days of final termination of this Action (including any appeals), including all copies  
9 of such designated materials which may have been made. Alternatively, all persons  
10 subject to the terms of this Order may elect to destroy such materials and  
11 documents. Notwithstanding the foregoing, Outside Counsel for deponents or each  
12 party may retain: one paper copy of all court pleadings and briefs containing such  
13 designated materials; one paper copy of all deposition transcripts and deposition  
14 exhibits containing such designated materials; paper copies of attorney work product  
15 or other documents incorporating or referring to such designated materials; and  
16 Outside Counsel's electronic files other than the production sets of documents and  
17 things. All such documents retained by Outside Counsel shall remain subject to the  
18 terms of this Protective Order. The fulfillment of the obligations imposed by this  
19 paragraph, whether by return, destruction, or both, shall be certified in writing by  
20 the Receiving Party within 60 calendar days.

21 33. All obligations and duties arising under this Order shall survive the  
22 termination of this Action. ~~The Court retains jurisdiction indefinitely over the~~  
23 ~~parties, and any persons provided access to RESTRICTED MATERIAL under the~~  
24 ~~terms of this Order, with respect to any dispute over the improper use of such~~  
25 ~~designated materials.~~

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26 34. The restrictions and obligations set forth herein shall not apply to any  
27 information that: (a) the parties agree should not be designated CONFIDENTIAL  
28 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION: OUTSIDE

1 COUNSEL ONLY; (b) is already public knowledge; (c) has become public  
2 knowledge other than as a result of disclosure by the Receiving Party, its employees,  
3 or its agents in violation of this Order; or (d) has come or shall come into the  
4 Receiving Party's legitimate knowledge independently of the production by the  
5 designating party. Prior knowledge must be established by pre-production  
6 documentation.

7 35. The restrictions and obligations herein shall not be deemed to prohibit  
8 discussions of any RESTRICTED MATERIAL with anyone if that person already  
9 has or obtains legitimate possession thereof.

10 36. Nothing herein shall be construed to limit in any way a party's use of  
11 its own RESTRICTED MATERIAL.

12 37. In the event that a new party is added, substituted or brought in, this  
13 Order will be binding on and inure to the benefit of the new party, subject to the  
14 right of the new party to seek relief from or modification of this Order.

15 38. Nothing herein shall be construed to prevent disclosure of  
16 RESTRICTED MATERIAL if such disclosure is required by law or by order of the  
17 Court. In the event that a Producing Party's RESTRICTED MATERIAL is sought  
18 from a Receiving Party by any person not a party to this Action, by subpoena, by  
19 service with any legal process, by order or otherwise, prompt written notice shall be  
20 given to the Producing Party. Such notice shall include a copy of such subpoena,  
21 legal process or order. The Producing Party shall have ten (10) business days from  
22 receipt of notice to object. Nothing in this Order shall be construed as authorizing a  
23 party to disobey a lawful subpoena issued in another action. Nothing in this Order  
24 shall be construed as requiring anyone covered by this Order to contest a subpoena  
25 or other process, to appeal any order requiring production of RESTRICTED  
26 MATERIAL covered by this Order or to subject itself to penalties for non-  
27 compliance with any subpoena, legal process or order. Any persons seeking such  
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1 RESTRICTED MATERIAL who take action to enforce such subpoena or other  
2 legal process shall be apprised of this Order.

3 39. Transmission by facsimile and/or e-mail is acceptable for all  
4 notification purposes herein.

5 40. This Order may be modified by agreement of the parties, subject to  
6 approval by the Court.

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IT IS SO ORDERED.  
DATED: 2/8/2017  
*Alicia M. Rosenberg*  
UNITED STATES MAGISTRATE JUDGE

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**Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

MERCK SHARP & DOHME CORP.,  
  
Plaintiff/Counterclaim  
Defendant,  
  
vs.  
  
GENENTECH, INC. and CITY OF  
HOPE,  
  
Defendants/  
Counterclaimants.

CASE NO.: 16-cv-04992-GW-AGR

**EXHIBIT A TO PROPOSED  
PROTECTIVE ORDER**

**AGREEMENT TO BE BOUND BY  
PROTECTIVE ORDER**

Ctrm: 10, Spring St. Floor  
Judge: Hon. George H. Wu

I, \_\_\_\_\_, hereby acknowledge and agree that:

1. My address is \_\_\_\_\_.
2. My present employer(s) is/are \_\_\_\_\_.
3. My present occupation(s) or job description(s) is/are \_\_\_\_\_.
4. I have read and understood the provisions of the Protective Order in this case signed by the Court in the above-captioned matter, and I will comply with all provisions of the Protective Order.
5. I will hold in confidence and not disclose to anyone not qualified under the Protective Order any RESTRICTED MATERIAL or any words, summaries, abstracts, or indices of such information disclosed to me.
6. I will limit use of designated information disclosed to me solely for purpose of this action pursuant to the provisions of the Protective Order.
7. No later than the final conclusion of the case, I will destroy or return all designated materials and information, as well as all summaries, excerpts, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

**I declare under penalty of perjury that the foregoing is true and correct.**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature

1 DATED: February 6, 2017

Respectfully submitted,

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*Defendant Merck Sharp & Dohme Corp.*

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1 DATED: February 6, 2017

Respectfully submitted,

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DURIE TANGRI LLP

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By /s/ Adam R. Brausa

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OF HOPE