

[Sutter Case Watch] Approval Hearing of Sutter Health Settlement Moves Forward Despite COVID-19

See case page: [UFCW & Employers Benefit Trust v. Sutter Health](#)

At a July 9 hearing at the Superior Court of San Francisco, Judge Anne-Christine Massullo denied Sutter Health's motion to delay the approval hearing of the preliminary settlement agreement due to the COVID-19 pandemic.

This is an encouraging ruling as there was much speculation and concern that Sutter's request is a thinly veiled attempt to walk back the historic settlement reached last December amidst the chaos of COVID-19. In a [California Healthline quote](#) last month, The Source Executive Editor Jaime King noted that Sutter's request for delay could be a tactical strategy to alter the \$575 million settlement: "The longer they can delay, the more they can show they have significant losses from COVID-19, which allows them to plead for a lower settlement."

As The Source [blogged last month](#), Sutter cited significant financial loss and operational impact from the pandemic and claimed that circumstances have changed substantially that may affect practicability of certain terms in the settlement. In its motion, Sutter requested a 90-day extension to determine whether things would get worse, given the recent uptick in COVID-19 cases. However, according to a [recent report](#) released by the [Nicholas C. Petris Center](#) of UC Berkeley's School of Public Health, Sutter has also received approximately \$317 million in federal relief aid from the Coronavirus Aid, Relief, and Economic Security (CARES) Act's Provider Relief Fund.^[1]

In denying the 90-day delay, Judge Massullo expressed her understanding of the changing situation, and set the settlement approval hearing for August 12, instead of later this month as originally scheduled. She stated that "if in the next week or two it

becomes a true healthcare crisis,” Sutter can request a continuance.^[3] See the tentative ruling [here](#).

California Attorney General Xavier Becerra [applauded the ruling](#), stating that “Sutter’s practices harmed California’s healthcare market by charging higher prices unrelated to quality or cost of care... long before the COVID-19 pandemic. There is no period of time that medical providers, like Sutter, should be able to carry out such destructive market practices.” Indeed, in a quote for the [New York Times](#), The Source Executive Editor Jaime King noted that as the pandemic puts financial strain on smaller practices, larger and “healthy systems are looking forward to the opportunity to make strong acquisitions,” which would further consolidate the healthcare market and increase their market power. Accordingly, “this is the moment where strong antitrust enforcement is more important than ever,” and “regulators should be matching them toe to toe.”

As the coronavirus pandemic continues, some fear Sutter may either continue to use it as an excuse to alter terms of the settlement or additionally, as an opportunity to raise its prices. The Source will continue to monitor this case closely and bring the latest in [Sutter Case Watch series](#) on The Source Blog. Stay tuned.

^[1] Richard M. Scheffler et al., *The Distribution of Provider Relief Payments Among California Health Systems*, Nicholas C. Petris Center on Health Care Markets and Consumer Welfare School of Public Health (July 9, 2020), <https://petris.org/wp-content/uploads/2020/07/The-Distribution-of-Provider-Relief-Payments-Among-California-Health-Systems-FINAL.pdf>.

^[2] See id. at 8, Table 3. Days of Cash and Investment Securities on Hand at the Largest Health Systems in California.

^[3] Tara Bannow, *Judge denies Sutter’s request to delay antitrust settlement hearing*, Modern Healthcare (July 9, 2020).