

# Sutter loses appeal re arbitration|must litigate against union in state court

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

The Source has been following *UFCW & Employers Benefit Trust v. Sutter Health*, since the [complaint](#) it was filed in state court in San Francisco in April 7, 2014. A grocery store union is the named plaintiff in the putative class action whose class includes all self-funded payers in California who compensated Sutter for acute care services while the company was engaging in anticompetitive practices alleged to violate California's antitrust law, the Cartwright Act, and other state statutes relating to unfair business practices. The class claims Sutter's various written and oral contracts with network vendors—including Blue Shield—contain anticompetitive terms that insulate Sutter from competition and drive up the cost of healthcare, in violation of California law. Those contractual terms include “all-or-nothing” clauses and anti-steering provisions, *i.e.*, similar provisions to those at issue in the putative class action [Sidibe v. Sutter](#), which was dismissed from federal court in San Francisco last year and is on appeal to the Ninth Circuit. In addition, there are allegations related to Sutter's inflated pricing and billing practices.

In June 2015, Sutter Health moved to compel arbitration under the contract it has with Blue Shield. The case actually focuses on two contracts: (1) Sutter's contract with Blue Shield (the Provider Contract) and (2) an “administrative services only” agreement between Blue Shield and the plaintiff (the ASO Contract). The arbitration clause Sutter claimed

should apply was contained in the Provider Contract, not any contract the union ever saw or signed. Notwithstanding, Sutter set forth agency-based, equitable and statutory justifications for holding UFCW to the arbitration clause in the Provider Contract instead of the choice of forum clause (naming California courts) in the ASO contract. The trial court denied Sutter's motion, and Sutter appealed. The appeals court was similarly unconvinced, and declined to reverse the trial court's ruling. Accordingly, the case will proceed in the lower court. Read the [full opinion](#).