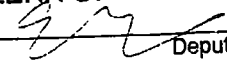


FILED
San Francisco County Superior Court

MAR 10 2021

CLERK OF THE COURT

By:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UFCW & Employers Benefit Trust, on behalf
of itself and all others similarly situated

Plaintiffs,

vs.

Sutter Health, et al.,

Defendants.

Case No. CGC 14-538451
Consolidated with
Case No. CGC-18-565398

**AMENDED ORDER GRANTING
PLAINTIFFS' RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

People of the State of California, ex rel.
Xavier Becerra,

Plaintiff,

vs.

Sutter Health,

Defendant.

Having read and considered the motion for preliminary approval of settlement ("Motion") filed by Plaintiffs People of the State of California, Plaintiff UFCW & Employers Benefit Trust and the Plaintiff Class (collectively, "Plaintiffs") on December 19, 2019, Plaintiffs' May 29, 2020 supplemental submission in response to the Court's February 25, 2020 Order, Plaintiffs' August 5, 2020 responses to the questions in the Court's June 16 and July 29 orders, the August 7, 2020 responses of Defendants Sutter Health *et al.* ("Sutter") to Plaintiffs' responses, Plaintiffs' August 13 supplemental submission in connection with Plaintiffs' motion for preliminary approval of settlement, the parties' August 24, 2020 joint submission in response to the Court's August 13,

1 2020 order re appointment of the monitor, Plaintiffs’ March 1, 2021 Renewed Motion for
2 Preliminary Approval, and having considered the oral argument presented to the Court on August
3 12, 2020, IT IS HEREBY ORDERED as follows:

- 4 1. The plan of notice presented in the Declaration of Cameron R. Azari in support of
5 Plaintiffs’ Motion is approved. The plan for distributing the notice meets the
6 requirements of due process and is the best notice practicable under the
7 circumstances. The form of notice previously attached as Appendix 1 to Plaintiffs’
8 August 13 supplemental submission in connection with Plaintiffs’ motion for
9 preliminary approval of settlement (re-attached hereto as Exhibit 1) and the claim
10 form in the form attached as Appendix 3 to Plaintiffs’ August 13 submission (re-
11 attached hereto as Exhibit 2) are approved. The notice and claim form shall be
12 disseminated to the class in accordance with the plan of notice.
- 13 2. The proposed settlement is within the range for which final approval may be granted,
14 such that notice should be given to the class. The proposed settlement is comprised of
15 the Settlement Agreement, which is attached as Appendix 1 to the Memorandum of
16 Points and Authorities filed on December 19, 2019, as modified by the Addendum to
17 the Settlement Agreement (“Addendum”), which is attached hereto as Exhibit 3. The
18 settlement and Proposed Final Judgment between Plaintiffs and Sutter is
19 preliminarily approved. Ms. Dionne Lomax is appointed to be the Monitor.¹

21 ¹ On March 2, 2021, FedArb sent a letter to the Court expressing its interest in serving as monitor
22 in this litigation. The letter is attached hereto as Exhibit 4. At oral argument, FedArb argued that
23 it should be appointed as the monitor. First, the Court is persuaded, based on the full record, that
24 Ms. Lomax is qualified to be, and should be, appointed as the monitor. Ms. Lomax was selected
25 through a thorough selection process. The People of the State of California were represented in
26 that process by the Attorney General’s Office. Ms. Lomax is qualified. For these independent
27 reasons, the Court grants the parties’ request to appoint her as the monitor. Second, the parties’
28 monitor selection is, as the Court has previously observed, a material term of the settlement. (See
Sept. 22, 2020 Order, 11.) The Court cannot rewrite the parties’ agreement, it may approve it or
reject it. (See *id.* at 6.) In effect, FedArb is asking the Court to deny preliminary approval of the
settlement due to one term to which it objects. (*Id.* at 11.) Assuming that FedArb, a non-party to
this action, has standing to make such a request, a proposition that FedArb has not supported with
citation to authority, the Court remains persuaded that preliminary approval of the settlement, with
Ms. Lomax as the monitor, is appropriate.

3. The process for objecting to the settlement and giving notice of intent to appear at the final approval hearing, as set forth in the approved notice, which is attached as Exhibit 1, is approved.²
4. Epiq Class Action & Claims Solutions, Inc. shall serve as the claims administrator.
5. Plaintiffs shall pay the cost of implementing the plan of notice and shall be reimbursed from the settlement fund after final approval in an amount not to exceed \$25,000.
6. The hearing on Plaintiffs' motions for final approval and for fees, costs, and service award is set for July 19, 2021, at 9:15 a.m., and the following schedule is set:

Event	Deadline
Settlement website	Updated within 5 days of this Order (March 15, 2021)
Mailing of class notice and claim form	Postmarked within 20 days of this Order (March 29, 2021)
Motion for fees, costs, and service award	Filed within 20 days of this Order (March 29, 2021)
Motion for final approval	Filed within 30 days of the deadline for mailing class notice (April 28, 2021)
Deadline for claim form	Must be postmarked or submitted electronically within 60 days of the deadline for mailing class notice (May 28, 2021)
Objections to the settlement and/or motion for fees, costs, and service award	Must be postmarked within 60 days of the deadline for mailing class notice (May 28, 2021)
Any reply re motion for final approval	Filed within 90 days of the deadline for mailing class notice (June 28, 2021)
Class member Notice of Intent to Appear at Fairness hearing	Postmarked 10 days or more in advance of the Fairness hearing (July 9, 2021)

² The Settlement Agreement, at Section II(C), sets forth a different process “[u]nless the Court provides otherwise[.]” The Court does provide otherwise, as described herein.

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Event	Deadline
Hearing on Plaintiffs' motions for final approval and for fees, costs, and service award	July 19, 2021 at 9:15 a.m.

IT IS SO ORDERED.

DATED: March 10, 2021

Anne-Christine Massullo

Hon. Anne-Christine Massullo
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

SAN FRANCISCO SUPERIOR COURT

NOTICE OF PROPOSED SETTLEMENT

in

***UFCW & Employers Benefit Trust v. Sutter Health, Case No. CGC-14-538451, and
People of the State of California, ex. rel. Xavier Becerra v. Sutter Health, Case No.
CGC-18-565398***

**California entities that paid Sutter Health for general acute care hospital
services and ancillary products could receive money from a class action
settlement.**

*A state court authorized this notice. It is not a solicitation from a lawyer.
You are not being sued.*

**CLASS MEMBERS' LEGAL RIGHTS ARE AFFECTED
WHETHER THEY ACT OR DO NOT ACT, SO PLEASE READ
THIS NOTICE CAREFULLY.**

- This is a notice of a proposed settlement of a class action lawsuit. This notice has important information if you are a member of the Class described below. You are receiving this notice because records in the case indicate that you may be a Class Member.
- Defendants have agreed to pay \$575 million (“Settlement Fund”) and to change certain alleged contracting practices with insurance companies to resolve the Class’s damages claims and the California Attorney General’s disgorgement claim against them. Plaintiffs’ Counsel (which include both Class Counsel and the California Attorney General’s Office) collectively have moved for payment from the Settlement Fund of attorneys’ fees of \$184 million (32 percent of Settlement Fund) and litigation expenses of **[up to \$25]** million, and Class Counsel have moved for payment from the Settlement Fund of a Class Representative service award of \$250,000, and will move for payment from the Settlement Fund of current and future settlement-related expenses, which they estimate will total about \$350,000 plus any charges for potential data analysis. If approved by the Court, the Settlement will fully resolve the class action lawsuit against Defendants.
- If you are a Class Member and you do nothing, **you will not share in the Settlement Fund**, even if the Settlement is approved. To receive your share of the Settlement Fund if you are a Class Member and the settlement is approved, **you must complete, sign and return either the enclosed Claim Form or the online Claim Form according to its instructions**. If the Settlement is approved, Class Members are releasing the Released Claims regardless of whether or not they submit the Claim Form.
- The Court has preliminarily approved the Settlement and scheduled a hearing (“Fairness Hearing”) to decide upon final approval of the Settlement, the plan for allocating the Settlement Fund to Class

Members, and Plaintiffs' Counsel's joint motion for attorneys' fees and expenses and a service award to Plaintiff UEBT, the Class Representative, out of the Settlement Fund. The Fairness Hearing is scheduled for [date] before The Hon. Anne-Christine Massullo of the Superior Court of California, County of San Francisco, in Department 304, 400 McAllister St., San Francisco, CA 94102. If you are a Class Member and you mail a written objection to Plaintiffs' Counsel, postmarked by [date], and also mail to Plaintiffs' Counsel a notice of your intent to appear, postmarked no later than ten (10) days before the Fairness Hearing, you may appear at the Fairness Hearing, with or without an attorney, to argue your written objection.

- The process by which Class Members can claim a share of the Settlement Fund will occur in two steps.
 - The first step is to complete, sign, and return the enclosed Claim Form to the Claims Administrator according to its instructions. The Claim Form may also be completed and submitted to the Claims Administrator online at www.SutterHealthLawsuit.com. The Claim Form requires Class Members to establish, under penalty of perjury, that they are members of the Class. The completed and signed form must be mailed to the Claims Administrator at the address provided below, postmarked no later than [date], or completed and electronically signed online by [date]. If the Claim Form is timely submitted and establishes class membership, the Class Member will receive a share of the Settlement Fund. The second step will help determine the size of the Class Member's share.
 - The second step will occur after the Effective Date of the Settlement. At that time, a Relevant Payments Notice will be mailed to Class Members who established their class membership with the Claim Form. The Relevant Payments Notice will provide Class Counsel's calculation of the Class Member's total relevant payments to Defendants (from which the Class Member's *pro rata* share of the Settlement Fund will be calculated) based on the claims data produced in the case by Aetna, Anthem Blue Cross, Blue Shield, Cigna, and United Healthcare. Please note that claims data was not produced in the case by any self-funded payers or by their third-party administrators. The Class Member will have the choice either (1) to do nothing, thereby accepting the amount stated in the Relevant Payments Notice, or (2) to claim a different amount that it paid Defendants. If the Class Member claims a different amount, it must complete and sign under penalty of perjury the Dispute Form attached to the Relevant Payments Notice and, by the deadline set by the Court, return the Form with claims data to support the different amount. The Dispute Form will also be available online, and Class Members will have the option to complete, electronically sign, and submit the Form and the supporting claims data online. To preserve their options, Class Members and/or their claims administrator should keep their claims data reflecting their payments to Defendants for general acute care hospital services and ancillary products.

**SET FORTH BELOW ARE CLASS MEMBERS' LEGAL RIGHTS AND
OPTIONS. PLEASE REVIEW THIS CAREFULLY AS YOUR CHOICE WILL
IMPACT YOUR LEGAL RIGHTS**

**CLASS MEMBERS' LEGAL RIGHTS
AND OPTIONS IN THIS CLASS
ACTION LAWSUIT**

<p>PROMPTLY COMPLETE, SIGN, AND RETURN THE CLAIM FORM</p>	<p>A Claim Form is enclosed with this Notice. If you are a Class Member and you wish to claim your share of the Settlement Fund, you will need to complete and sign the Claim Form and mail it to the Claims Administrator, postmarked by [date], or complete, electronically sign, and submit the Form online by [date]. If the Form establishes your membership in the Class, you will be mailed a Relevant Payments Notice after the Effective Date of the Settlement, which will provide you with a calculation of your relevant payments to Defendants and an opportunity to submit a different amount based on other data available to you.</p>
<p>OBJECT TO THE SETTLEMENT</p>	<p>If you are a Class Member, you may object to part or all of the Settlement and/or to Plaintiffs' Counsel's joint motion for fees and expenses and a service award for the Class Representative. To do so, you must mail your objection to Plaintiffs' Counsel, postmarked by [date] stating why you do not like part or all of the Settlement and/or the plan to allocate and distribute the Net Settlement Fund and/or the joint motion. You may both submit an objection and participate in the recovery by submitting a Claim Form if you wish.</p>
<p>IF YOU DO NOTHING</p>	<p>If you are a Class Member and do nothing, <i>you will not share in the Settlement Fund.</i> To receive a share of the Settlement Fund, <i>you must complete, sign and return either the enclosed Claim Form or the online Claim Form according to its instructions.</i> Class Members are releasing the Released Claims regardless of whether they submit the Claim Form.</p>
<p>GET MORE INFORMATION</p>	<p>If you would like to obtain more information about the lawsuit or the Settlement, you can send questions to the Claims Administrator identified in this notice, or review documents at www.SutterHealthLawsuit.com or the Court's online docket at [insert url].</p>

WHAT THIS NOTICE CONTAINS

This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at www.SutterHealthLawsuit.com.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT OR THE CLAIM PROCESS.

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2. What is this lawsuit about?
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4. Why is there a Settlement?

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10. How can I get a payment?
11. When will I get my payment?
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THE LAWYERS AND PLAINTIFF REPRESENTING YOU PAGES 15, 16

13. Do I have a lawyer in this case?
14. Should I get my own lawyer?
15. How will the lawyers be paid?
16. Who is the Plaintiff and why is it seeking a service award?

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ATTORNEYS’ FEES, EXPENSES AND A SERVICE AWARD..... PAGES 16

17. How do I tell the Court that I do not like part or all of the Settlement and/or the joint petition for fees, expenses, and a service award?

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18. When and where will the Court decide whether to approve the Settlement?
19. Do I have to come to the hearing?
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21. What happens if I do nothing at all?

GETTING MORE INFORMATION.....PAGE 18

22. How do I get more information?

BASIC INFORMATION

1. Why did I get this notice?

You received this notice because according to available records you may be a member of the Class certified by the Court in the lawsuit *UFCW & Employers Benefit Trust, on behalf of itself and all others similarly situated v. Sutter Health, et al.*, Case No. CGC-14-538451, pending in the San Francisco Superior Court. For information on whether you are a member of the Class, see Question 5, below.

UFCW & Employers Benefit Trust (“UEBT”) filed this lawsuit as a proposed class action against Defendants Sutter Health and certain affiliates identified below on April 7, 2014 in the Superior Court of California, County of San Francisco. The California Attorney General filed a nearly identical lawsuit in the same Court on March 29, 2018, and the two cases were consolidated on May 8, 2018. The Honorable Anne-Christine Massullo is the judge overseeing this case.

The Court has preliminarily approved the Settlement and will hold a Fairness Hearing on **[insert date]** to decide whether the proposed Settlement is fair, reasonable, and provides adequate compensation and other benefits to the members of the Class and whether to finally approve the Settlement.

2. What is this lawsuit about?

UEBT and the California Attorney General (collectively, “Plaintiffs”) alleged that Defendants violated the Cartwright Act (California’s antitrust law) and California’s Unfair Competition Law. In particular, Plaintiffs alleged among other things that Defendants engaged in practices and included provisions in their contracts with the major health insurance companies in California that restricted price competition between Defendants and other general acute care hospitals and other providers in Northern California. Plaintiffs alleged that these practices and contract provisions eliminated or unreasonably restricted Insurers’ ability to exclude some (but not all) Sutter providers from the Insurer’s provider network or to place any Sutter providers in lower tiers of tiered networks. Plaintiffs further alleged that the resulting reduction in price competition permitted Defendants to overcharge self-funded payors for Defendants’ general acute care hospital services and ancillary products. Plaintiffs sought damages on behalf of the Class and an injunction to prohibit Sutter from engaging in the conduct challenged in the lawsuit and to restore competition.

Defendants deny that they did anything wrong and deny that Plaintiffs and the Class are entitled to receive any money or other relief from Defendants.

On August 14, 2017, the Court certified the lawsuit as a class action and authorized Plaintiff UEBT to represent a Class of self-funded payors defined below. On September 29, 2017, the Court modified the class definition. Notice of the certified class, as modified, was mailed on June 11, 2018. On July 10, 2019, the Court granted Plaintiffs’ motion to further modify the class definition. Notice of the modified class definition was mailed on July 18, 2019.

On December 17, 2019, the Plaintiffs entered into a Settlement Agreement with Defendants. The Settlement Agreement provides for payment of \$575 million as a global settlement fund to resolve the Class’s damages claims and the California Attorney General’s disgorgement claim and from which fees and costs may be awarded to all Plaintiffs’ Counsel for their work on these claims and on their claims for injunctive relief. It also provides for an injunction that prohibits and permits certain conduct

related to Defendants' contracting practices with insurance companies. In exchange for this relief, Plaintiffs, including each Class Member, will release all claims asserted, or that could have been asserted, arising from or related to the conduct alleged in the lawsuit against Defendants and related entities and individuals. The Settlement Agreement is available for review at www.SutterHealthLawsuit.com. The Settlement Agreement contains the full text of the release for your review.

THE COURT HAS NOT DECIDED THAT ANY OF THE DEFENDANTS VIOLATED ANY LAWS. THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF PLAINTIFFS' CLAIMS OR THE DEFENSES ASSERTED BY THE DEFENDANTS.

3. What is a class action?

In a class action, one or more entities called "class representatives" sue on behalf of other entities with similar claims. In this case, the class representative is UEFT.

The class representative and the entities on whose behalf it sues together constitute the "Class" or "Class Members." Their attorneys are called "Class Counsel."

The companies that have been sued are called the Defendants. In this case, the Defendants are Sutter Health and the following affiliates: Sutter East Bay Hospitals (predecessor of Sutter Bay Hospitals); Sutter West Bay Hospitals (n/k/a Sutter Bay Hospitals); Eden Medical Center (formerly d/b/a of Sutter Medical Center, Castro Valley) (predecessor of Sutter Bay Hospitals); Sutter Central Valley Hospitals (predecessor of Sutter Valley Hospitals); Mills-Peninsula Health Services (predecessor of Sutter Bay Hospitals); Sutter Health Sacramento Sierra Region (n/k/a Sutter Valley Hospitals); Sutter Coast Hospital; Palo Alto Medical Foundation for Healthcare, Research and Education (n/k/a Sutter Bay Medical Foundation and d/b/a Palo Alto Medical Foundation for Health Care, Research and Education); and Sutter Medical Foundation (n/k/a Sutter Valley Medical Foundation).

In a class action lawsuit, the outcome of the case resolves the issues for everyone in the Class. The Court in this case, by order dated August 14, 2017, certified a Class, and then modified the class definition on September 29, 2017. Notice of the certified class, as modified, was mailed on June 11, 2018. The Court further modified the class definition on July 10, 2019 and a second notice was mailed on July 18, 2019. A copy of the Court's orders and the notices may be found at www.SutterHealthLawsuit.com.

4. Why is there a Settlement?

The Court has not decided which side is correct or whether any laws were violated. Instead, Defendants, UEFT individually and on behalf of the Class, and the California Attorney General agreed to settle the case and avoid the cost, risk, and delay of trial and possible appeals.

This Settlement is the product of extensive negotiations between Plaintiffs and Defendants, at times with the assistance of a private mediator, and after lengthy, hard-fought litigation. At the time of Settlement, the parties had completed all pre-trial proceedings and were about to begin trial.

Class Counsel and the California Attorney General's Office negotiated with counsel for Defendants a

Settlement Agreement providing for a payment of \$575 million and an injunction in exchange for a release to resolve the claims the Plaintiffs brought against the Defendants.

WHO CAN PARTICIPATE IN THE SETTLEMENT

To see if you can get money from the Settlement Fund, you first must determine whether you are in the Class.

5. Am I part of the Class?

You are a class member if you meet the following definition:

All self-funded payors that (1) are citizens of California for purposes of 28 U.S.C. § 1332(d) or arms of the State of California and (2) compensated Sutter for general acute care hospital services or ancillary products:

- At any time between January 1, 2003 and July 25, 2016 at prices set by contracts between Sutter and Aetna;
- At any time between January 1, 2003 and December 31, 2016 at prices set by contracts between Sutter and Anthem;
- At any time between January 1, 2003 and June 25, 2016 at prices set by contracts between Sutter and Blue Shield;
- At any time between January 1, 2003 and April 30, 2016 at prices set by contracts between Sutter and Cigna; or
- At any time between January 1, 2003 and June 30, 2016 at prices set by contracts between Sutter and United Healthcare/PacifiCare.

You are a self-funded payor if you are an entity (such as an employer, healthcare benefit trust, union benefit trust or California government entity (e.g., school district)) that funds a health plan for your employees or members. You are a self-funded payor if you offer your employees or members a self-funded health plan, even if you also offer them a fully-insured health plan. You are a self-funded payor regardless of whether your self-funded plan is administered by a health insurance company or a third-party administrator.

You are a citizen of California if (a) you are organized under the laws of California, or (b) you have your principal place of business in California. To be a member of the Class, you must have been a California citizen on the date the case was filed, April 7, 2014. If you were a California citizen on that date, you are a Class Member even if you were not a California citizen after that date.

You are an arm of the State of California if you are a California governmental entity (for example, a city, county, hospital district, school district, fire protection district, water or irrigation district, transit or transportation district, joint powers agency or authority, public university, department within the State, superior court, the Judicial Council of California, or the Major Risk Medical Insurance Program).

You compensated Sutter for general acute care hospital services or ancillary products if you paid Sutter for health care provided to your health plan members or enrollees by a Sutter general acute care

hospital. If you had the contractual obligation to pay Sutter for such services (either directly or indirectly through an insurance company (e.g., Blue Shield), third-party administrator, or other third party), you are considered the one to have compensated Sutter, even if another entity (such as a parent company or affiliate) paid Sutter on your behalf.

You are not a Class Member if you timely opted out of the Class after it was certified by the Court. The Court's deadline to opt out was June 11, 2018.

THE SETTLEMENT'S BENEFITS —WHAT YOU GET

6. What does the Settlement provide?

The Defendants will pay \$575 million into an escrow account within ten days after Final Approval of the Settlement. If the Court approves the Settlement, the money, plus half of the accrued interest (the other half goes to Sutter) and minus the amounts the Court awards for attorneys' fees, expenses, and a Class Representative service award, will be distributed according to a plan of allocation approved by the Court to Class Members who timely establish their Class membership through either the enclosed Claim Form or the online Claim Form.

The \$575 million recovery is 59% of the \$980 million in damages that Plaintiffs would have sought at trial. Plaintiffs were entitled under the Cartwright Act to trebling of any damages awarded by the jury. Therefore, the maximum possible recovery in this case was three times \$980 million, or \$2.94 billion. Normally, however, a settlement fund is compared to single damages in assessing its reasonableness. Of the \$980 million, \$257 million were subject to Sutter's statute of limitations defense, and another \$191 million would not have been supported by testimony from Plaintiffs' damages expert, due to a Court ruling limiting the scope of the expert's testimony. The Settlement releases claims through December 19, 2019, while the damages Plaintiffs sought ended between August 2018 and January 2019, depending on the insurance company involved. Plaintiffs believe there may be additional damages, which they have not quantified, attributable to the released claims between the end of their damages period and December 19, 2019.

Plaintiffs' Counsel collectively have moved for attorneys' fees from the Settlement Fund of \$184 million (32 percent of the Settlement Fund) as well as litigation expenses from the Settlement Fund of **up to \$25** million. In addition, Class Counsel moved for a Class Representative service award from the Settlement Fund of \$250,000 and will move at a later time for reimbursement from the Settlement Fund of settlement-related expenses, most of which will be incurred in the future. Class Counsel estimate that settlement-related expenses will total about \$350,000, plus charges for analysis by Plaintiffs' damages expert of any data submitted by Claiming Class Members as part of the claims process. If the Court were to award the requested attorneys' fees, litigation and settlement expenses, and service award, the Net Settlement Fund available to distribute to Claiming Class Members would be approximately \$365.4 million.

In addition, the Court will enjoin the Defendants from engaging in the alleged contracting practices, and from engaging in similar conduct in the future, as set forth in the Settlement. More specifically, the injunction prohibits and permits certain conduct related to Defendants' contracting practices with insurance companies concerning network participation, steering, tiering, out-of-network pricing, new affiliate pricing, and availability of pricing information. The injunction is for ten years, and Plaintiffs are permitted to ask the Court to grant a three-year extension. The Court will appoint a compliance monitor to ensure Defendants' compliance with the injunction. The full terms of the injunctive relief

are contained in Exhibit B to the Settlement Agreement, which is available at www.SutterHealthLawsuit.com.

In exchange for the \$575 million payment and the injunction, Defendants and related entities and individuals will be released from all claims that were made or could have been made by Class Members arising from or relating to the conduct alleged in the complaint. The full text of the release is included in the Settlement Agreement, available at www.SutterHealthLawsuit.com.

The Settlement will become effective after it has been approved by the Court, after the Court has entered the Final Judgment and Order attached to the Settlement Agreement as Exhibit B, and after completion of any appeal(s) that affirm the Court's approval of the Settlement. Plaintiffs and Defendants each have the right to terminate the Settlement if a term of the Settlement is held unenforceable. If the Settlement Agreement is terminated or is not approved by the Court, or if the approval is appealed and not affirmed on appeal, the lawsuit will proceed as if the Settlement had not been reached.

7. Why is a portion of the Settlement Agreement redacted, and how do Class Members get access to the redacted information?

The Settlement Agreement was filed with the Court on December 19, 2019 as Appendix 1 to Plaintiffs' Memorandum of Points and Authorities in support of their Motion for Preliminary Approval of Settlement. Attached to the Settlement Agreement as Exhibit B is the [Proposed] Final Judgment and Order Pursuant to Stipulation, which sets out the injunction agreed to as part of the Settlement.

The injunction includes caps on the rates that Sutter may charge for out-of-network services and a limit on the aggregate amount Sutter may increase its billed charges each year. The amounts of the rate caps and chargemaster increase limits have been sealed pursuant to an order of the Court.

For purposes of evaluating and/or objecting to the terms of the Settlement, Class Members may seek access to the amounts of the rate caps and the limit on annual chargemaster increases up to the deadline for objections, provided they comply with the following procedure. A Class Member wishing to access such information must complete, sign, and serve on the parties a short declaration. The declaration to be filled out and the Protective Order Regarding Out-Of-Network Rate Caps and Chargemaster Aggregate Annual Increases are available at www.SutterHealthLawsuit.com. In the declaration, the Class Member will state under oath that (a) it requests access to the redacted information, (b) it is a member of the Class, (c) it is or is not a healthcare provider, (d) it agrees to be bound by the protective order entered by the Court on [date], and (e) authorized individuals accessing the redacted information will sign an acknowledgment and agreement to be bound by the protective order.

The Court entered this protective order to ensure that Class Members who receive disclosure of the rate caps and chargemaster increase limit maintain the confidentiality of that information and use it solely for the purpose of evaluating and/or objecting to the Settlement. The protective order is available at www.SutterHealthLawsuit.com. The protective order identifies the classes of individuals at the Class Member who may access the redacted information. Class Members must read the protective order carefully before submitting the declaration.

If the Class Member is a government entity, it is also subject to a further requirement: it may only

access the redacted information via a virtual data room, to protect against further disclosure due to a potential request for public records such as a California Public Records Act request. Instructions for accessing the redacted information via the data site are available at www.SutterHealthLawsuit.com.

The amounts of the caps and the limits on annual chargemaster increases are being provided to Class Members solely for their evaluation of and/or objection to the Settlement. The information will be available up until the deadline for submitting an objection. Objections to the Settlement must be mailed to Plaintiffs' Counsel, postmarked by [date]. (See Question 17 below.) Class Members should complete, sign, and serve on the parties the declaration promptly.

Class Members who wish to refer to the caps and/or the limits in an objection to the Settlement may do so provided they mail to Plaintiffs' Counsel both a copy of the objection that redacts all such references and an unredacted copy. Plaintiffs' Counsel will file any objections with the Court and serve them on Defendants.

8. Can I get unredacted copies of key pleadings filed under seal?

The Court entered a protective order in this case to prevent confidential information from being disclosed to third parties. Pursuant to this order, the parties, with the Court's permission, filed certain pleadings under seal, while also filing a public version that redacted the confidential information.

Class Members who, for the sole purpose of evaluating and/or objecting to the settlement, wish to access the redacted information in certain key filings may request a Disclosure Packet, provided they first sign under penalty of perjury an Acknowledgment and Agreement to be Bound to the Amended Protective Order entered in this case. The Disclosure Packet contains unredacted copies of key briefs, orders and expert reports. After reviewing the Disclosure Packet, again for the sole purpose of evaluating and/or objecting to the settlement, Class Members may request unredacted copies of other specific pleadings filed under seal in a written request, that includes the Acknowledgment and Agreement to be Bound to the Amended Protective Order, sent to the Claims Administrator. The process for requesting and accessing sealed/redacted materials not included in the Disclosure Packet is set forth in Paragraphs 2-4 of the Order Regarding Class Member Acknowledgement and Agreement to be Bound by Amended Protective Order, both of which are available at www.SutterHealthLawsuit.com; the Amended Protective Order is also available at www.SutterHealthLawsuit.com. Class Members must read the Amended Protective Order before submitting the Acknowledgment. In the Acknowledgment, the Class Member will state under oath that it (a) requests the Disclosure Packet, (b) is a member of the Class, and (c) agrees to be bound by the Amended Protective Order entered by the Court on February 22, 2018.

If the Class Member is a government entity, it is also subject to a further requirement: it may only access the Disclosure Packet, and any additional pleadings specifically requested, via a virtual data room, to protect against further disclosure due to a potential request for public records such as a California Public Records Act request. Instructions for accessing these pleadings via the data site are available at www.SutterHealthLawsuit.com.

The Disclosure Packet, and any additional pleadings specifically requested, are being provided to Class Members solely for their evaluation of and/or objection to the Settlement. These pleadings will be available up until the deadline for submitting an objection. Objections to the Settlement must be mailed to Plaintiffs' Counsel, postmarked by [date]. (See Question 17 below.) Class Members should complete, sign, and serve on the parties the Acknowledgment promptly.

Any class member that wishes to refer to Protected Material in an objection to the Settlement may do so, provided that Plaintiffs' Counsel—who will file the objection—comply with Section 12.3 of the Amended Protective Order. Either before or immediately upon filing, Plaintiffs' Counsel will consult with Sutter as to which third parties must be notified of the filing.

9. How much will my payment be?

Class Counsel have proposed to the Court a plan for allocating the Settlement Fund to Class Members who timely submit a valid Claim Form ("Claiming Class Members"). The Settlement Fund will be distributed to Claiming Class Members minus the amounts awarded to Plaintiffs' Counsel as fees and expenses and to Plaintiff UEBT as a service award (the "Net Settlement Fund"). If approved by the Court, the plan of allocation will distribute the Net Settlement Fund to Claiming Class Members *pro rata* based on the amount of their relevant payments to Defendants.

As an illustration, the average amount per class member that would be distributed is approximately \$243,000, on the following assumptions: (1) all Class Members timely submit the Claim Form, (2) Class Counsel have correctly counted 1,484 Class Members, (3) the Court grants the joint motion for attorneys' fees, expenses, and a service award, and (4) settlement administration expenses total \$350,000. Any or all of these assumptions could prove to be incorrect. This illustration estimates an average distribution. A particular Class Member's distribution may be far above or far below the average.

Relevant payments are payments by Claiming Class Members to Defendants for general acute care hospital services and ancillary products between January 1, 2003 and August 25, 2018. January 1, 2003 is the date on which Plaintiffs allege that the Class's damages began, and August 25, 2018 is the most current date for which the parties have claims data from all of the Insurers that produced claims data in the lawsuit.

To calculate Claiming Class Members' *pro rata* shares of the Net Settlement Fund, the relevant payments will be weighted as follows:

- Relevant payments will be weighted based on the Sutter hospital to which Class Members made payments, to account for different prices at different hospitals. Plaintiffs' damages expert estimated coefficients to estimate overcharges (coefficients are used to calculate overcharge percentages), for different groups of Sutter hospitals, and those coefficients (as updated to include more recent OSHPD data that was used to estimate the coefficients) will be used to weight the relevant payments. This will result in claims at Sutter hospitals with larger damages coefficients having greater weight than claims at Sutter hospitals with smaller damages coefficients.
- Relevant payments will be weighted by time period. Plaintiffs' damages expert estimated damages coefficients in two-year increments to account for changes in prices over time, and those coefficients (as updated to include more recent OSHPD data) will be used to weight the relevant payments. This will result in claims in years with larger damages coefficients having greater weight than claims in years with smaller damages coefficients. For example, the damages coefficient calculated for 2007-2008 is 1.59 times the coefficient for claims in 2011-2012, and thus claims in this earlier period will be weighted 1.59 times claims in this later period, not counting the effect of also weighting by Sutter hospital (see prior bullet).

The weighting of claims will be determined by both the weighting by hospital and the weighting by time period, and one factor could add to or subtract from the weight of the other factor. Tables listing the damages coefficients that will be used to weight Class Member claims are available at www.SutterHealthLawsuit.com.

A Claiming Class Member's share of the Net Settlement Fund will be calculated based on how its total relevant payments to Defendants, weighted as described above, compare to the total relevant payments, weighted as described above, of all Claiming Class Members. For example, if a Claiming Class Member's total relevant payments, after weighting, are one percent (1%) of the total relevant payments, after weighting, of all Claiming Class Members, then the Claiming Class Member will receive one percent (1%) of the Net Settlement Fund.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How can I get a payment?

To receive a share of the Net Settlement Fund, you must be a member of the Class. If you are a Class Member, your share of the Net Settlement Fund will be calculated according to the plan of allocation described under Question 9.

If you are a Class Member, you must complete, sign and return the enclosed Claim Form, or complete and electronically sign the Claim Form online, by the deadline to receive your share of the Net Settlement Fund. The Claim Form requires Class Members to establish, under penalty of perjury, that they are members of the Class. The completed and signed Claim Form must be mailed to the Claims Administrator at Epiq, [P.O. Box address], postmarked no later than [date], or completed and electronically signed online at www.SutterHealthLawsuit.com no later than [date]. If your Claim Form timely establishes that you are a Class Member, you will receive a share of the Settlement Fund, and the Settlement Administrator will mail a Relevant Payments Notice to you after the Effective Date of the Settlement to help determine the amount of your share.

The Relevant Payments Notice will provide Class Counsel's calculation of the Class Member's total relevant payments to Sutter (from which the Class Member's *pro rata* share of the Settlement Fund will be calculated) based on the claims data produced in the case by Aetna, Anthem Blue Cross, Blue Shield, Cigna, and United Healthcare. Please note that claims data was not produced in this case by any self-funded payers or by their third-party administrators. The Class Member will have the choice either (1) to do nothing and thereby accept the amount stated in the Relevant Payments Notice, or (2) to claim a different amount that it paid Defendants. If the Class Member claims a different amount, it must complete and sign under penalty of perjury the Dispute Form attached to the Relevant Payments Notice and, by the deadline set by the Court, return the Form with claims data (with the required fields and format) to support the different amount. The Dispute Form will also be available online at www.SutterHealthLawsuit.com, and the Class Member will have the option to complete, electronically sign, and submit the Form and supporting claims data online. If the Class Member does not dispute the amount stated in the Relevant Payments Notice, it should not complete and return the Dispute Form. If the Class Member does not timely complete, sign and return the Dispute Form with supporting claims data, the Class Member will be deemed to have accepted the amount stated in the Relevant Payments Notice as its total relevant payments. To preserve their options, Class Members and/or their claims administrator should keep their claims data reflecting their payments to Defendants for general acute care hospital services and ancillary products.

11. When will I get my payment?

The Net Settlement Fund can be distributed to Claiming Class Members only after certain events have occurred:

- The Court must approve the Settlement.
- If the Court's approval is appealed to one or more higher courts, the approval must be affirmed on appeal. An appeal can take two years or more.
- Once the Settlement becomes effective, the Claims Administrator will send the Relevant Payments Notice to Claiming Class Members. Claiming Class Members have the option to submit their own claims data in support of a different amount of relevant payments than appears in the Relevant Payments Notice. Econ One (an economic consulting firm retained by Plaintiffs to estimate the Class's damages) will audit any claims data submitted by Claiming Class Members and will calculate Claiming Class Members' *pro rata* shares according to the plan of allocation. Class Counsel will present the proposed allocation to the Court for approval. Finally, the Claims Administrator will process and mail checks to Claiming Class Members.

It is difficult to predict how long the total process will take. Class Counsel estimate that the total process could take a year or more, and much longer if there is an appeal.

In addition, there could be a second distribution. The Settlement provides for a \$50 million Dispute Fund to be used after the first distribution to resolve any disputes concerning the allocation of the Net Settlement Fund. If the Dispute Fund is not exhausted, the remainder will be distributed to Claiming Class Members in the same percentages as in the first distribution. Similarly, any uncashed checks from the first distribution will be redistributed to the other Claiming Class Members in the same relative shares as in the first distribution.

If a Claiming Class Member's mailing address changes after it submits its Claim Form, it should promptly provide its new address to the Claims Administrator at [P.O. Box] or [email address].

12. What am I giving up to get payment?

In exchange for the payment of \$575 million and the injunction, Class Members are releasing Defendants and related entities and individuals from all claims that were asserted or could have been asserted arising from or relating to the conduct alleged in the complaint. Claims within the scope of the release are released up to December 19, 2019, the date on which the Settlement Agreement was signed. The Released Claims are described fully in the Settlement Agreement available at www.SutterHealthLawsuit.com. Class Members are releasing the Released Claims regardless of whether or not they submit a Claim Form.

THE LAWYERS AND PLAINTIFF REPRESENTING YOU

13. Do I have a lawyer in this case?

The lawyers listed below have been appointed by the Court as Class Counsel. They are experienced in

handling similar cases against other companies. The lawyers are:

Richard L. Grossman
Philip L. Pillsbury Jr.
Pillsbury & Coleman, LLP
100 Green St.
San Francisco, CA 94111
Tel: (415) 433-8000
Lead Counsel

Daniel A. Small
**Cohen Milstein Sellers &
Toll PLLC**
1100 New York Ave. NW,
Ste. 500
Washington, DC 20005
Tel: (202) 408-4600

Christopher C. Wheeler
**Farella Braun + Martel
LLP**
235 Montgomery St., 17th Fl.
San Francisco, CA 94104
Tel: (415) 954-4400

Daniel G. Bird
**Kellogg, Hansen, Todd,
Figel & Frederick,
P.L.L.C.**
1615 M St. NW, Ste. 400
Washington DC, 20036
Tel: (202) 326-7900

Steven L. Stemerman
Sarah Grossman-Swenson
**McCracken, Stemerman &
Holsberry, LLP**
595 Market St., Ste. 800
San Francisco, CA 94105
Tel: (415) 597-7200

14. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. However, if you wish to do so, you may retain your own lawyer at your own expense.

15. How will the lawyers be paid?

Plaintiffs' Counsel, which consist of Class Counsel and the California Attorney General's Office, have jointly moved for an award of attorneys' fees from the Settlement Fund of \$184 million (32 percent of the Settlement Fund). Class Counsel's share of this joint request is \$172.5 million. The California Attorney General's Office's share of this joint request in this consolidated case is \$11.5 million.

In the joint motion, Class Counsel and the California Attorney General's Office have moved for reimbursement of their combined litigation expenses from the Settlement Fund of **[up to \$25 million]**.

Class Counsel will move for payment from the Settlement Fund of settlement-related expenses. These expenses include the charges of the Claims Administrator for providing class notice, responding to Class Member inquiries, mailing and processing Claim Forms and Dispute Forms, and distributing the Settlement Fund, and the charges of Econ One in connection with any claims data submitted by Claiming Class Members and to calculate Claiming Class Members' *pro rata* shares of the Net Settlement Fund. Most settlement-related costs will be incurred in the future, and Class Counsel can only estimate their amount at this time. Class Counsel estimate that all settlement-related costs will total approximately \$350,000 plus Econ One's charges in connection with any claims data submitted by Claiming Class Members. Class Counsel expect to move for reimbursement of settlement-related expenses after the Effective Date of the Settlement.

Class Counsel's and the Attorney General's Office's requests for fees, expenses and a service award will be paid only to the extent approved by the Court. Any such payments awarded by the Court will be deducted from the Settlement Fund. You will not have to pay these fees, expenses, or service award out of your own pocket.

The joint motion of Class Counsel and the California Attorney General's Office for an award of attorneys' fees, reimbursement and payment of expenses, and a service award to the Class Representative has been filed with the Court and is available for download and/or viewing on www.SutterHealthLawsuit.com as well as at the office of the Clerk of the Superior Court of California, County of San Francisco, 400 McAllister St, Room 103, San Francisco, CA 94102 during normal business hours. It may also be viewed by accessing the Court's docket in this case at <https://bitly.com/>.

16. Who is the Plaintiff and why is it seeking a service award?

The plaintiff is UFCW & Employers Benefit Trust ("UEBT"), an employee benefit trust for the United Food and Commercial Workers Union and the employers who hire UFCW workers. UEBT manages and pays for health care benefits for about 75,000 grocery workers, retail employees, and meat packers in California.

UEBT filed this lawsuit as a class action on April 7, 2014. On August 14, 2017, the Court appointed UEBT as the Class Representative to represent the Class.

In class actions, the Court may provide the Class Representative with a "service award" in recognition of the time and effort expended in the case on behalf of the Class. In the joint motion, Class Counsel have moved for a service award of \$250,000 from the Settlement Fund to Plaintiff UEBT for its services as Class Representative.

OBJECTING TO THE SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES, EXPENSES AND A SERVICE AWARD

You can object to – that is, tell the Court that you do not agree with-- part or all of the Settlement and/or the joint motion for attorneys' fees, litigation expenses, estimated settlement administration costs, and a UEBT service award.

17. How do I tell the Court that I do not like part or all of the Settlement and/or the joint petition for fees, expenses, and a service award?

If you are a Class Member, you can object to and/or tell the Court that you do not agree with part or all of the Settlement and/or the plan to allocate and distribute the Net Settlement Fund by submitting an objection. You may submit an objection to object to and/or tell the Court that you do not agree with and/or to deny part or all of Plaintiffs' Counsel's joint motion for attorneys' fees and expenses and a service award to UEBT, the Class Representative. You cannot ask the Court to order a larger Settlement; the Court can only approve or deny the Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the lawsuit will continue against the Defendants. If that is what you want to happen, you must object. If the Court rejects your objection, you will still be bound by the Settlement.

Any objection to all or part of the proposed Settlement or the plan to allocate and distribute the Net Settlement Fund or to the joint motion for attorneys' fees and expenses and a service award to UEBT must be submitted in writing and mailed to Plaintiffs' Counsel, postmarked by [\[date\]](#). You may also appear at the Fairness Hearing, with or without your own attorney, to argue your written objection. If you appear through your own attorney, you are responsible for paying that attorney.

If you or your attorney wishes to appear, you must mail a notice of your intent to appear to Plaintiffs' Counsel, postmarked no later than ten (10) days before the hearing. All objections and supporting papers and notices of intent to appear at the Fairness Hearing should (a) identify the case name and number, *UFCW & Employers Benefit Trust, on behalf of itself and all others similarly situated v. Sutter Health, et al.* (Case No. CGC-14-538451), (b) be mailed to Plaintiffs' Counsel, c/o Christopher C. Wheeler, Farella Braun + Martel LLP, 235 Montgomery Street, 17th Floor, San Francisco, CA 94104, and (c) be postmarked on or before [date]. In addition, all objections should (a) clearly identify the part of the Settlement or joint motion for attorneys' fees and expenses and a service award to UEBT to which the objection pertains, and (b) explain the reason(s) for the objection. Plaintiffs will file any and all objections and notices of intent with the Court and serve them on Defendants.

THE COURT'S FAIRNESS HEARING

The Court will hold a Fairness Hearing to decide whether to approve the Settlement and the plan to allocate and distribute the Net Settlement Fund and whether to approve Plaintiffs' Counsel's joint motion for attorneys' fees and expenses and a service award to UEBT.

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at [date and time], in Department 304, California Superior Court, 400 McAllister St., San Francisco, CA 94102. At this hearing, the Court will consider whether to approve the Settlement and the plan to allocate and distribute the Net Settlement Fund as fair, reasonable and adequate. The Court will also consider whether to approve Plaintiffs' Counsel's joint motion for attorneys' fees and expenses and a service award for UEBT. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the Settlement and/or Plaintiffs' Counsel's joint motion. Counsel do not know how long these decisions will take.

IMPORTANT: The time and date of the hearing may change without additional mailed notice and without publication notice. For updated information on the hearing, visit www.SutterHealthLawsuit.com.

19. Do I have to come to the hearing?

No. Class Counsel will answer questions that the Court may have. But you are welcome to come at your own expense. If you timely submit an objection, you do not have to come to Court to talk about it. So long as you submit your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Moreover, attendance is not necessary to receive a *pro rata* share of the Net Settlement Fund.

20. May I speak at the hearing?

If you timely submit a written objection and a notice of your intent to appear (see Question 17 above), you may argue your written objection at the Fairness Hearing, with or without your own attorney. If you do not timely submit a written objection and a notice of intent to appear, you or your attorney may attend the hearing, but you will not be permitted to comment on the settlement. If you appear through your own attorney, you are responsible for paying that attorney.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you are a Class Member and do nothing, ***you will not share in the Settlement Fund***, even if the Settlement is approved. To receive your share of the Settlement Fund if you are a Class Member, ***you must complete, sign and return either the enclosed Claim Form or the online Claim Form according to its instructions***. Class Members are releasing the Released Claims regardless of whether or not they submit the Claim Form.

GETTING MORE INFORMATION

22. How do I get more information?

You may obtain more information by contacting the Claims Administrator at [P.O. box] or at [email address] or by calling [toll-free number]. You can get a copy of the complaint, the Settlement Agreement, and other important information about the lawsuit at www.SutterHealthLawsuit.com or from the Court's docket which can be accessed online at [insert url].

**PLEASE DO NOT WRITE OR CALL THE COURT
OR THE CLERK'S OFFICE FOR INFORMATION.**

EXHIBIT 2

UFCW & Employers Benefit Trust v. Sutter Health
 c/o Administrator
 P.O. Box 6389
 Portland, OR 97228-6389
 Forwarding Service Requested



<<control_no>> <<nme_idno>>



**Must be
 Postmarked
 No Later Than**

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 <<city>>, <<state>> <<zip_5>><<zip_4>>

Claim Number:

**UFCW & Employers Benefit Trust, on behalf of itself and all others
 similarly situated v. Sutter Health, et al.
 San Francisco Superior Court
 Case No. CGC-14-538451**

PROOF OF CLAIM AND RELEASE

PART I - INTRODUCTION

1. This Proof of Claim and Release ("Claim Form") has been mailed to you because you may be a member of the Class in a lawsuit against Sutter Health and certain affiliates ("Defendants").
2. This Claim Form was mailed to you with a Notice of Proposed Settlement that provides information about the Settlement of this lawsuit and the rights of Class Members to object to the Settlement or to claim a share of the Settlement Fund or to do both. You should read the Notice before completing this Claim Form.
3. The purpose of this Claim Form is to determine which entities are entitled to claim a share of the Settlement Fund. Only members of the Class certified in the lawsuit are entitled to a share of the Settlement Fund. This Claim Form requires Class Members to provide the information needed to establish their membership in the Class.

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Important - This form should be completed IN CAPITAL LETTERS using BLACK or DARK BLUE ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z 1 2 3 4 5 6 7 0



PART II - GENERAL INSTRUCTIONS

1. If you are a Class Member and wish to claim your share of the Settlement Fund, you must complete this Claim Form according to the instructions herein, sign the form under penalty of perjury, and mail the form to the Claims Administrator at [name and address], postmarked no later than [date]. The same Claim Form is available online at www.SutterHealthLawsuit.com, and Class Members have the option of completing and electronically signing the Claim Form under penalty of perjury online no later than [date]. Class Members who fail to timely complete, sign and submit the Claim Form may be barred from receiving any money from the Settlement Fund.
2. Please keep a copy of your completed and signed Claim Form for your records. If you wish to have confirmation that the Claims Administrator received your mailed Claim Form, you should send it via certified mail, return receipt requested.
3. If you have any questions about the Claim Form or how to complete and return it, you should contact the Claims Administrator at [mail address] or [email address] or [toll-free number].
4. If you complete, sign and timely submit this Claim Form, and it establishes your membership in the Class, you will be a Claiming Class Member and you will be entitled to a share of the Settlement Fund if the Court approves the settlement.
5. The Claims Administrator will later mail a Notice of Relevant Payments to Claiming Class Members if and when the Court approves the Settlement and the Settlement becomes effective. It could take months, or years if there is an appeal, for the Settlement to become effective.
6. The Notice of Relevant Payments will provide each Claiming Class Member with Class Counsel's calculation of the Claiming Class Member's total relevant payments to Defendants based on the health plan claims data produced in the lawsuit. This amount will then be used to calculate each Claiming Class Member's *pro rata* share of the Net Settlement Fund under the Plan of Allocation.
7. However, Claiming Class Members will be able to dispute Class Counsel's calculation of their total relevant payments by completing and signing under penalty of perjury a Dispute Form that will be mailed to Claiming Class Members with the Notice of Relevant Payments. The Dispute Form will also be available online at www.SutterHealthLawsuit.com, and Claiming Class Members will have the option to complete and electronically sign the Dispute Form under penalty of perjury online and submit online the supporting claims data with the specified fields in the required form. If a Claiming Class Member does not dispute the amount of its total relevant payments stated in the Relevant Payments Notice, it should **not** complete and return the Dispute Form. If a Claiming Class Member does not timely complete, sign and return the Dispute Form and supporting claims data with the specified fields in the required form, it will be deemed to have accepted the amount stated in the Relevant Payments Notice as its total relevant payments.
8. To preserve their options, Class Members and/or their health plan and/or their third-party administrator should keep their claims data reflecting their payments to Defendants for general acute care hospital services.
9. If the Settlement is approved by the Court and becomes effective, all Class Members will be bound by the Settlement Agreement and the Final Judgment and Order entered in this lawsuit regardless of whether they submit this Claim Form. However, if you are a Class Member and wish to receive your share of the Settlement Fund, you **must** complete, sign and return this Claim Form according to its instructions, postmarked no later than [date], or complete and electronically sign the online Claim Form no later than [date].



PART III - SPECIFIC INSTRUCTIONS

Please answer the following questions under penalty of perjury.

1. What is the precise name and address of the entity completing this form (the "Claimant")?

Entity Name:

Street Address:

City:

State:

Zip:

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2. Is the Claimant a government entity (state, county or local) of the State of California? (If "yes", skip Questions 3 and 4 and proceed to Question 5.)

Yes No

3. Was the Claimant organized under the laws of the State of California on April 7, 2014?

Yes No

4. Was the Claimant's principal place of business in California on April 7, 2014?

Yes No

5. Is the Claimant an employer, a healthcare benefit trust, or a union benefit trust? (If "no" skip the remaining questions, and go to the next section of this Form.)

Yes No

6. Has the Claimant self-funded a health plan for its employees or members? (If "no" skip the remaining questions, and go to the next section of this Form.)

Yes No

7. Has the Claimant paid Sutter Health for services provided by a Sutter general acute care hospital to members of the Claimant's self-funded health plan? (If "no" skip the remaining questions, and go to the next section of this Form.)

In answering this question, note that if the Claimant had the contractual obligation to pay Sutter for such services (either directly or indirectly through an insurance company, a third-party administrator, or other third party), the Claimant is considered the one to have paid Sutter, even if another entity (such as a parent company or affiliate) paid Sutter on the Claimant's behalf.

Yes No

8. If your answer to Question 7 is "yes," did the Claimant make any such payments to Sutter on or after January 1, 2003? (If your answer is "no," skip Question 9 and go to the next section of the form.)

Yes No

**PART V - RELEASE**

Whether or not Class Members submit this Claim Form, they are subject to the following release provisions in the Settlement Agreement upon the Effective Date:

"Upon the Effective Date, UEBT, each Class Member, and the People of the State of California (the "Releasers") shall release, forever discharge and covenant not to sue the Defendants, their past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing) (the "Released Parties") from all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising from or related to the facts, activities or circumstances alleged in the Consolidated Action, or any purported anticompetitive effect resulting from the alleged conduct. Claims within the scope of this release shall be released up to the date on which the Settlement is signed by all parties. Claims released pursuant to this paragraph are the "Released Claims." For the avoidance of doubt, this Agreement shall not be construed to release claims to recover damages in the form of premium overcharges as of October 15, 2019 sought in Sidibe, et al. v. Sutter Health, Case No3:12-cv-4854-LB, pending in the Northern District of California ("Sidibe Action").

"Each Releaser expressly agrees that, upon the Effective Date, he, she, or it waives and forever releases with respect to the Released Claims any and all provisions, rights and benefits conferred by either (a) § 1542 of the California Civil Code, which reads:

Section 1542. General release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.
or (b) any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code.

"Upon the Effective Date, Class Members shall be bound by the release of the Released Claims set forth in this Section V."

**REMINDER CHECKLIST**

1. Please sign the Signature Section of the Proof of Claim and Release form.
2. If this Proof of Claim and Release form is being made on behalf of Joint Claimants, then both must sign.
3. Keep a copy of your Proof of Claim and Release form for your records.
4. If you move, please send your new address to the Claims Administrator at the address below or at info@sutterhealthlawsuit.com.
5. Do not use highlighter on the Proof of Claim and Release form or supporting documentation.

***THIS PROOF OF CLAIM MUST BE POSTMARKED NO LATER THAN
_____, 20__ AND MUST BE MAILED TO:***

UFCW & Employers Benefit Trust v. Sutter Health
c/o Administrator
P.O. Box 6389
Portland, OR 97228-6389

EXHIBIT 3

ADDENDUM TO SETTLEMENT AGREEMENT

This Addendum is made and entered into on or about February 26, 2021, by and between:

(a) UFCW & Employers Benefit Trust (“UEBT”), on behalf of itself and the Class of self-funded payers it represents, and the People of the State of California, *ex rel.* Xavier Becerra (the “People”) (collectively, “Plaintiffs”), on the one hand; and (b) Defendants Sutter Health; Sutter East Bay Hospitals (predecessor of Sutter Bay Hospitals); Sutter West Bay Hospitals (n/k/a Sutter Bay Hospitals); Eden Medical Center (formerly d/b/a of Sutter Medical Center, Castro Valley) (predecessor of Sutter Bay Hospitals); Sutter Central Valley Hospitals (predecessor of Sutter Valley Hospitals); Mills-Peninsula Health Services (predecessor of Sutter Bay Hospitals); Sutter Health Sacramento Sierra Region (n/k/a Sutter Valley Hospitals); Sutter Coast Hospital; Palo Alto Medical Foundation for Healthcare, Research and Education (n/k/a Sutter Bay Medical Foundation and d/b/a Palo Alto Medical Foundation for Health Care, Research and Education); and Sutter Medical Foundation (n/k/a Sutter Valley Medical Foundation) (collectively, “Defendants”), on the other hand, and is an Addendum to the Settlement Agreement made and entered into by Plaintiffs and Defendants on or about December 17, 2019.

Plaintiffs and Defendants hereby agree that the monitor selected by the Parties shall be Dionne Lomax, and that the attached document shall constitute the “[Proposed] Final Judgment and Order Pursuant to Stipulation” and shall be attached as Exhibit B to the Settlement Agreement and submitted to the Court in lieu of the version of Exhibit B filed with the Court on December 19, 2019.

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ACCEPTED AND AGREED:

Dated: February 28, 2021

PEOPLE OF THE STATE OF CALIFORNIA,
EX REL. XAVIER BECERRA



Malinda Lee
Deputy Attorney General
300 South Spring Street
Los Angeles, CA 90013

Dated: February 28, 2021

UFCW & EMPLOYERS BENEFIT TRUST



Jacques Loveall
Trustee and Board Chairperson



Frank Jorgensen
Trustee and Board Secretary

Dated February 26, 2021

SUTTER HEALTH DEFENDANTS

Florence L. Di Benedetto

Florence L. Di Benedetto
SVP & General Counsel
Sutter Health
Office of the General Counsel
2200 River Plaza Drive
Sacramento, CA 95833
dibenef@sutterhealth.org

Dated: February __, 2021

On behalf of UFCW & Employers Benefit Trust and
the Class

PILLSBURY & COLEMAN LLP

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Dated: February __, 2021

On behalf of Sutter Health Defendants

JONES DAY

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Dated February __, 2021

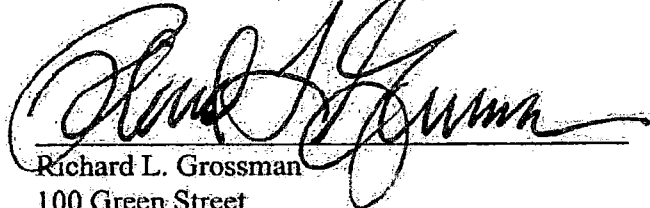
SUTTER HEALTH DEFENDANTS

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Dated: February ~~28~~ 2021

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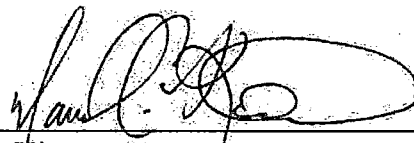
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Dated: March 1, 2021

On behalf of Sutter Health Defendants

JONES DAY



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EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

UFCW & Employers Benefit Trust, on behalf
of itself and all others similarly situated

Plaintiffs,

vs.

Sutter Health, et al.,

Defendants.

Case No. CGC 14-538451
Consolidated with
Case No. CGC-18-565398

**[PROPOSED] FINAL JUDGMENT AND
ORDER PURSUANT TO STIPULATION**

Dept.: 304
Judge: Hon. Anne-Christine Massullo

People of the State of California, ex. rel.
Xavier Becerra,

Plaintiff,

vs.

Sutter Health,

Defendant.

1 WHEREAS, the People of the State of California, through its attorney, XAVIER
2 BECERRA, Attorney General of the State of California (the “People”) and UFCW & Employers
3 Benefit Trust (“UEBT”), on behalf of itself and all others similarly situated, (the People and
4 UEBT collectively, “Plaintiffs”), and Sutter Health; Sutter East Bay Hospitals (predecessor of
5 Sutter Bay Hospitals);¹ Sutter West Bay Hospitals (n/k/a Sutter Bay Hospitals); Eden Medical
6 Center (formerly d/b/a of Sutter Medical Center, Castro Valley) (predecessor of Sutter Bay
7 Hospitals); Sutter Central Valley Hospitals (predecessor of Sutter Valley Hospitals); Mills-
8 Peninsula Health Services (predecessor of Sutter Bay Hospitals); Sutter Health, Sacramento Sierra
9 Region (n/k/a Sutter Valley Hospitals); Sutter Coast Hospital; Palo Alto Medical Foundation for
10 Healthcare, Research and Education (n/k/a Sutter Bay Medical Foundation and d/b/a Palo Alto
11 Medical Foundation for Health Care, Research and Education); and Sutter Medical Foundation
12 (n/k/a Sutter Valley Medical Foundation and d/b/a Sutter Medical Foundation) (collectively
13 “Defendants” or “Sutter,” and together with Plaintiffs, the “Parties”) have stipulated to the entry of
14 this Final Judgment without trial,

15 WHEREAS, UEBT filed an action on April 7, 2014 captioned *UFCW & Employers*
16 *Benefit Trust, on behalf of itself and all others similarly situated, v. Sutter Health, et al.*, Case No.
17 CGC-14-538451, pending in the San Francisco Superior Court, and on March 29, 2018, the People
18 filed a separate action against Sutter Health captioned *People of the State of California, ex rel.*
19 *Xavier Becerra v. Sutter Health*, Case No. CGC-18-565398;

20 WHEREAS, on May 8, 2018, the actions were consolidated for all purposes (the
21 “Consolidated Action”);

22 WHEREAS, the Consolidated Action asserts claims under state antitrust and unfair
23 competition laws and seeks recovery of, among other things, damages, disgorgement, interest,
24 treble damages, attorneys’ fees, costs, and injunctive relief;

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26

27 ¹ For avoidance of doubt, the renaming of the Defendants named in the Consolidated Action does
28 not affect the applicability of this Final Judgment to the Defendants named in the lawsuits
comprising the Consolidated Action.

1 WHEREAS, Defendants have denied and continue to deny that they (and each of them)
2 have engaged in any wrongdoing of any kind, or violated or breached any law, regulation, or duty
3 owed to Plaintiffs (and each of them), and further deny that they individually or collectively have
4 any liability as a result of any and all allegations in the Consolidated Action;

5 WHEREAS, the Parties have reached an agreement providing for the settlement and a
6 release of the claims asserted in the Consolidated Action on the terms and subject to the conditions
7 set forth in a Settlement Agreement approved by the Court;

8 WHEREAS, this Final Judgment and Order Pursuant to Stipulation (“Final Judgment”)
9 results from and incorporates portions of the Parties’ settlement of the claims asserted in the
10 Consolidated Action;

11 WHEREAS, this Final Judgment does not constitute any evidence against, or any admission
12 by, any party regarding any issue of fact or law;

13 WHEREAS, Plaintiffs and Defendants agree to be bound by the provisions of this Final
14 Judgment upon its approval by this Court;

15 NOW THEREFORE, without trial and upon consent of the parties, it is ORDERED,
16 ADJUDGED, AND DECREED:

17 **I. JURISDICTION**

18 This Court has jurisdiction over the subject matter of and each of the Parties to this
19 Consolidated Action. The complaints in the Consolidated Action assert claims against Defendants
20 under the Cartwright Act, Cal. Bus. & Prof. Code Section 16720, *et seq.* and/or the Unfair
21 Competition Law, Cal. Bus. & Prof. Code Section 17200, *et seq.*

22 **II. DEFINITIONS**

23 For purposes of this Final Judgment, the following definitions apply:

24 1. “ABSMC” means the following general acute care hospitals: Alta Bates Summit
25 Medical Center – Alta Bates Campus, Alta Bates Summit Medical Center – Herrick Campus, and
26 Alta Bates Summit Medical Center – Summit Campus, and any new Sutter general acute care
27 hospitals replacing them.
28

1 2. “Broad Network PPO Rates” shall be the in-network rates applicable to the
2 Insurer’s broad preferred provider organization (“PPO”) networks (e.g., the in-network rates for
3 the following broad PPO products in an Insurer’s then-current contracts with Sutter, or their
4 equivalent: Anthem Blue Cross – Prudent Buyer full network PPO; Aetna – Open Choice PPO
5 full network PPO; Blue Shield – Full Network PPO; Cigna – PPO network-Open Access Plus;
6 Health Net – PPO network; UHC – United Healthcare Choice Plus PPO).

7 3. “Commercial Products” are products that offer comprehensive commercial health
8 care coverage offered by Insurers that are either fully insured or made available to Self-Funded
9 Payers on a self-funded basis. Commercial Products do not include any government sponsored
10 programs such as, for example, Medicare, Medi-Cal, Medicare Advantage, and Managed Medi-
11 Cal.

12 4. “CPMC” means all Sutter general acute care hospital providers in the City and
13 County of San Francisco, including but not limited to, California Pacific Medical Center – Davies
14 Campus Hospital, California Pacific Medical Center – Mission Bernal Campus Hospital (opened
15 8/2018), and California Pacific Medical Center – Van Ness Campus (opened 3/2/2019).

16 5. “Group A Providers” means Rural Hospitals, ABSMC, CPMC, and PAMF.

17 6. “Group B Hospitals” means the following general acute care hospitals: Eden
18 Medical Center; Memorial Hospital Los Banos; Memorial Medical Center; Menlo Park Surgical
19 Hospital; Mills-Peninsula Medical Center; Novato Community Hospital; Stanislaus Surgical
20 Hospital LLC; Sutter Auburn Faith Hospital; Sutter Davis Hospital; Sutter Delta Medical Center;
21 Sutter Maternity & Surgery Center of Santa Cruz; Sutter Medical Center, Sacramento; Sutter
22 Roseville Medical Center; Sutter Santa Rosa Regional Hospital (f/k/a Sutter Medical Center Santa
23 Rosa); Sutter Solano Medical Center; Sutter Surgical Hospital, North Valley (also d/b/a Twin
24 Cities Surgical Hospital, LLC); and Sutter Tracy Community Hospital.

25 7. “Insurers” include the following California licensed health care service plans and
26 insurers: Aetna Health of California, Inc.; Aetna Health Management; Aetna Life Insurance
27 Company; Anthem Blue Cross, Inc./Blue Cross of California; California Physicians’ Service
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1 (d/b/a Blue Shield of California); UnitedHealthcare Insurance Company; UnitedHealthcare of
2 California; Cigna HealthCare of California, Inc.; Cigna Health and Life Insurance Company;
3 Health Net of California, Inc. For purposes of this Final Judgment, Kaiser Foundation Health Plan
4 Inc., Kaiser Foundation Hospitals the Permanente Medical Group and Kaiser Permanente
5 Insurance Corporation are not individually or collectively an Insurer.

6 8. "PAMF" means Palo Alto Medical Foundation for Healthcare, Research and
7 Education.

8 9. "Pretext" and "pretextual" shall be interpreted and applied consistent with
9 California law.

10 10. "Rural Hospitals" means Sutter Lakeside Hospital, Sutter Amador Hospital, and
11 Sutter Coast Hospital.

12 11. "Self-Funded Payers" means group health plans that are self-funded and
13 administered by Insurers (e.g., health plans governed by Employee Retirement Income Security
14 Act of 1974) for employers, Taft-Hartley trusts, and government entities like CalPERS or school
15 districts, whose enrollees access one or more Sutter Providers through their contracts with Insurers
16 for access to provider networks.

17 12. "Sutter Provider" means a person or entity that delivers any healthcare services
18 (e.g., hospitals, physicians, ambulatory surgery centers, urgent care centers, imaging centers,
19 laboratories, hospice, etc.) and on whose behalf Sutter negotiates managed care contracts with
20 Insurers.

21 **III. APPLICABILITY**

22 1. This Final Judgment applies to Plaintiffs and Defendants and all other persons in
23 active concert or participation with any of them who receive actual notice of this Final Judgment
24 by personal service or otherwise. Except as otherwise expressly provided herein, this Final
25 Judgment applies to all Commercial Products.

26 2. Plaintiffs and Defendants, by their respective attorneys, have stipulated to the entry
27 of this Final Judgment without trial of any issue of fact or law. This Final Judgment is not, nor
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1 shall any of the terms, provisions, or anything herein, constitute any evidence against, an
2 admission of liability by, or an estoppel by a third party against, any party to this Final Judgment.

3 This Final Judgment shall not be construed as an admission of any type by Defendants.

4 3. Nothing in this Final Judgment authorizes Defendants to engage in conduct that
5 would violate the antitrust laws. This Final Judgment shall not be construed as approval by the
6 Plaintiffs of any future conduct not expressly approved by this Final Judgment. Each Defendant
7 preserves all rights to raise this Final Judgment in defense, or to otherwise justify its conduct,
8 against any claims related to the conduct at issue. This provision does not limit, expand, or alter
9 the scope of the release in the Court-approved Settlement Agreement.

10 **IV. PROHIBITED, REQUIRED, AND PERMITTED CONDUCT**

11 **A. General**

12 **1. Contract provisions**

13 a. Defendants shall not enforce provisions in prior, existing, or future
14 contracts with Insurers that violate or are inconsistent with the terms of this Final Judgment or
15 promulgate in future contracts terms that violate or are inconsistent with the terms of this Final
16 Judgment. Nothing in this Final Judgment addresses Defendants' right to apply prices in existing
17 or past contracts for services provided before the entry of the Final Judgment.

18 b. Defendants shall not require that the terms of any narrow network, tiered
19 network, center of excellence, reference pricing, or steering arrangement in existence at the time
20 of the negotiation and execution of a contract with an Insurer automatically apply to newly created
21 or modified Commercial Products that post-date the execution of that contract.

22 c. Except as otherwise provided in this Final Judgment, Defendants may
23 negotiate and enforce contract terms that provide that an Insurer and/or Self-Funded Payer may
24 not unilaterally change the participation status of a Sutter Provider in an existing Commercial
25 Product during the performance of a contract term. Defendants may not use this provision to
26 block an Insurer from introducing any new Commercial Products after execution of the contract
27 between that Insurer and Defendants; however, Defendants retain the right to refuse participation
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1 of any or all Sutter Providers in that Commercial Product. If Defendants agree to participate in a
2 Commercial Product that is introduced by an Insurer during the term of a contract that includes
3 some but not all Sutter Providers and which was not disclosed during renewal negotiations
4 between the Insurer and Defendants, Defendants shall offer prices for such participating Sutter
5 Providers that are equal to or less than the maximum rates set forth in Section IV.D.3 below.

6 **2. Narrow, Tiered, and Steering products.** Except as otherwise provided in this
7 Final Judgment:

8 a. Defendants may not veto, interfere with, or otherwise engage in any action,
9 direct or indirect, to prevent the introduction of new narrow, tiered, or steering Commercial
10 Products or value-based designs of any kind for Commercial Products (i.e., benefit designs that
11 attempt to reward providers for affordability and/or quality), including reference pricing.
12 Defendants shall not penalize Insurers and/or Self-Funded Payers for selecting some but not all of
13 Defendants' Providers for participation in Commercial Products. Defendants shall not impede
14 Insurers' and/or Self-Funded Payers' use of differences in co-payments, co-insurance, and
15 information as to quality, certification, ratings, and cost-effectiveness to incentivize patients to
16 select the providers that are preferred by the Insurers and/or Self-Funded Payers for Commercial
17 Products, *provided that* these policies and practices are disclosed to Defendants during the
18 negotiation of a new contract or renewal of a contract and not changed during the term of that
19 contract.

20 b. Defendants shall not require that Insurers and/or Self-Funded Payers
21 include any or all Group A Providers or Group B Hospitals in the preferred tier(s) of tiered
22 networks for Commercial Products, or designate them centers of excellence, or require that these
23 Providers or Hospitals be included in any or all of an Insurer and/or Self-Funded Payer's narrow
24 or tiered network Commercial Products. Defendants shall not require that any sub-set of services
25 provided by a Group A Provider or Group B Hospital be included in the top tier of any
26 Commercial Product.

1 **3. Centers of Excellence**

2 a. Insurers and/or Self-Funded Payers shall have the freedom to design,
3 develop, maintain, and market centers of excellence programs without veto or interference from
4 Defendants. Defendants may not terminate or threaten to terminate an agreement or refuse to
5 negotiate a potential agreement with an Insurer as a result of a Sutter Provider's non-inclusion,
6 exclusion, or threatened exclusion from a center of excellence, provided that such non-inclusion,
7 exclusion, or threatened exclusion is based on criteria previously disclosed by the Insurer in
8 writing during contract negotiations. Defendants shall not require that their affiliated doctors,
9 medical groups, independent physician associations ("IPAs"), hospitals, or outpatient facilities
10 receive particular quality, certification, and/or cost effectiveness ratings from Insurers and/or Self-
11 Funded Payers.

12 b. If a Sutter Provider participates in any center of excellence program
13 disclosed to Defendants during contract negotiations, Insurers and/or Self-Funded Payers shall
14 have the discretion to exclude any such Sutter Provider from those centers of excellence during the
15 contract term for failure to comply with the criteria for those programs which were disclosed in
16 writing to Defendants during contract negotiations.

17 c. If a center of excellence program is developed and marketed during the term
18 of a contract with Defendants, but was not disclosed previously to Defendants, that program shall
19 not apply to Sutter Providers absent mutual agreement of the Insurer marketing the center of
20 excellence program and Defendants.

21 **B. Participation of Group A Providers and Group B Hospitals**

22 **1. Rural Hospitals and ABSMC**

23 a. During contract negotiations, at the request of an Insurer, Defendants will
24 make the Rural Hospitals and ABSMC available to participate in any network for any Commercial
25 Product to Insurers and/or Self-Funded Payers, other than as set forth in Section IV.B.4 below
26 pertaining to co-branded products, subject to (i) negotiation of mutually agreeable price terms so
27 long as the price terms offered by Defendants are not tantamount to conditioning the participation
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1 of the Rural Hospital(s) or ABMSC on the participation, pricing, or tiered status of other Sutter
2 Providers and (ii) the inclusion in the Commercial Product of all services available at each
3 participating Rural Hospital or ABMSC.

4 **2. CPMC and PAMF**

5 a. Subject to Section IV.B.2.c below, during contract negotiations, at the
6 request of an Insurer, Defendants will make available all CPMC hospitals available to participate
7 in any network for any Commercial Product to Insurers and/or Self-Funded Payers, other than as
8 set forth in Section IV.B.4 below pertaining to co-branded products, subject to (i) negotiation of
9 mutually agreeable price terms so long as the price terms offered by Defendants are not
10 tantamount to conditioning the participation of CPMC on the participation, pricing, or tiered status
11 of other Sutter Providers; (ii) the inclusion in the Commercial Product of all services available at
12 CPMC; and (iii) Section IV.D.2.b & c below.

13 b. Subject to Section IV.B.2.c below, during contract negotiations, at the
14 request of an Insurer, Defendants will make PAMF available to participate in any network for any
15 Commercial Product to Insurers and/or Self-Funded Payers, other than as set forth in Section
16 IV.B.4 below pertaining to co-branded products, subject to (i) negotiation of mutually agreeable
17 price terms so long as the price terms offered by Defendants are not tantamount to conditioning
18 the participation of PAMF on the participation, pricing, or tiered status of other Sutter Providers
19 and (ii) Section IV.D.2.b & c below.

20 c. Except as prohibited in Section IV.A.2.a above and IV.C.1.a and IV.C.1.c
21 below, CPMC and PAMF shall have the option to decline to participate in any Commercial
22 Product, for reasons including but not limited to those described in Section IV.C below titled
23 "Conditional Participation" (if applicable) and Section IV.C.3.c below titled "Patient Access
24 Considerations," provided Defendants simultaneously provide the reasons in writing in detail to
25 the Insurer and to the Office of the California Attorney General and counsel for UEBT and the
26 class (*i.e.*, Pillsbury & Coleman, LLP; Cohen Milstein Sellers & Toll PLLC; Farella Braun +
27 Martel LLP; Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.; McCracken, Stemerman &
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1 Holsberry, LLP) (hereinafter, "Class Counsel"). If an Insurer in good faith believes that CPMC's
2 or PAMF's reason(s) for declining to participate in a Commercial Product are a pretext for (1)
3 conditioning CPMC's or PAMF's participation, pricing, or tiered status on the participation,
4 pricing, or tiered status of any other Sutter Provider except as permitted by this Final Judgment, or
5 (2) interfering with, preventing, or penalizing the Insurer's efforts to introduce or offer tiered,
6 steered, or narrow network products except as permitted by this Final Judgment, the Insurer shall
7 make a reasonable effort to meet and confer with Defendants. If the meet and confer process does
8 not swiftly resolve the dispute, or at the election of the Office of the California Attorney General
9 or of Class Counsel, the Office of the California Attorney General or Class Counsel may challenge
10 Defendants' refusal before the Compliance Monitor and ultimately the Court pursuant to the
11 procedures in Section V below.

12 **3. Group B Hospitals**

13 a. Except as otherwise provided in this Final Judgment, any Group B Hospital
14 shall have the option to decline to participate in any Commercial Product, including without
15 limitation because of the tier in which the Insurer places the Group B Hospital.

16 **4. Co-Branded Products**

17 a. A Sutter Provider may refuse to participate in any co-branded Commercial
18 Product arising from a joint venture, partnership, or similar alliance or affiliation between an
19 Insurer and a non-Sutter provider, which may be administered by an Insurer (e.g., Western Health
20 Advantage).

21 **C. Conditional Participation**

22 **1. General Provisions**

23 a. Except as otherwise provided in this Final Judgment, Defendants shall not
24 condition the participation, pricing, or tiered status of any Group A Provider or Group B Hospital
25 in a network upon the participation, pricing, or tiered status of any other Sutter Provider.

26 b. Defendants may not condition the participation or tiered status of some or
27 all Sutter Providers in one Commercial Product on the participation or tiered status of some or all
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1 Sutter Providers in a different Commercial Product or other product, including, without limitation,
2 any product for government-sponsored programs. Defendants may not condition the pricing of
3 some or all Sutter Providers in one Commercial Product on the pricing of one or more Sutter
4 Providers in a different Commercial Product or any government-sponsored program if doing so
5 would constitute an illegal tie or other violation of the law.

6 c. Defendants shall not condition the participation of its Group A Providers on
7 the tier in which the Insurer places them.

8 d. Defendants shall have the option to offer bundled discounts in accordance
9 with Section IV.D.2 below.

10 e. Nothing in this Final Judgment limits any Sutter Provider's ability to
11 condition its participation in a Commercial Product upon the participation of other Sutter
12 Providers that collectively (i) accept a prepaid capitation payment in exchange for delivering
13 healthcare services to enrollees under a risk arrangement, (ii) participate in a qualified ACO under
14 federal law, federal regulations, or any state law or regulations promulgated in the future, or (iii)
15 participate in a Commercial Product that is similar to a qualified ACO, which incentivizes groups
16 of doctors, hospitals, and other health care providers, to collectively agree to financial incentives
17 and/or disincentives that involve the sharing of material upside risk (i.e., shared savings) and/or
18 material downside risk (i.e., shared losses) to provide coordinated care designed to cost-effectively
19 manage a population in a manner consistent with Medicare Shared Savings Programs (an "ACO-
20 like Arrangement"). The Office of the California Attorney General and/or Class Counsel may
21 seek review of any ACO-like Arrangement by the Compliance Monitor and ultimately by the
22 Court, which shall consider any challenge upon the motion of a Party after the Compliance
23 Monitor makes a timely recommendation to the Parties and the Court concerning resolution of the
24 challenge, *provided however*, that the Compliance Monitor shall also consider whether the
25 arrangement, at the time that Sutter sought to participate in the arrangement, is expected to
26 significantly or materially improve the quality and/or affordability of the health care services
27 being provided and whether such an improvement reasonably can be achieved without
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1 participation of all of the designated Sutter providers in the same network or tier of a Commercial
2 Product.

3 **2. PAMF**

4 a. Unless otherwise permitted under this Final Judgment, Defendants shall not
5 condition the participation, pricing, or tiered status of PAMF in a network of a Commercial
6 Product upon the participation, pricing, or tiered status of any other Sutter Provider except:

7 (i) Defendants shall have the option to offer bundled discounts in
8 accordance with Section IV.D.2.b & c below; and

9 (ii) Defendants shall have the option to condition PAMF's participation
10 in a Commercial Product on the participation of ABSMC, CPMC, Mills-Peninsula Medical
11 Center, Eden Medical Center, Sutter Maternity & Surgery Center of Santa Cruz, and/or Menlo
12 Park Surgical Hospital, *provided however* that (1) Menlo Park Surgical Hospital may condition its
13 participation in a network of a Commercial Product upon the participation, pricing or tiered status
14 of PAMF; (2) ABSMC and CPMC may not condition their participation in a network of a
15 Commercial Product upon the participation, pricing, or tiered status of PAMF, unless otherwise
16 permitted under this Final Judgment, (3) Mills-Peninsula Medical Center, Eden Medical Center,
17 and Sutter Maternity & Surgery Center of Santa Cruz may condition participation in a network of
18 a Commercial Product (a) upon the participation or tiered status of PAMF if Sutter first satisfies
19 the Clinical Integration Exception of Section IV.C.3.b.; or (b) upon the participation of PAMF if
20 Sutter first satisfies the Patient Access Considerations Exception of Section IV.C.3.c; (c) but may
21 not otherwise condition their participation, pricing, or tiered status on that of PAMF unless
22 permitted under this Final Judgment, and (4) upon request of the Insurer, ABSMC, CPMC, Mills-
23 Peninsula Medical Center, Eden Medical Center, and Sutter Maternity & Surgery Center of Santa
24 Cruz shall offer separate pricing from PAMF for participation in a network of a Commercial
25 Product.

26 b. Defendants may not condition the participation of PAMF in a Commercial
27 Product upon the participation of any Ambulatory Surgical Centers or Endoscopy Centers
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1 (“ASCs”), unless (1) PAMF has an ownership interest in that ASC and a pattern of regular
2 admission of patients to that ASC or (2) the ASC is listed in Exhibit A, which lists ASCs in which
3 Sutter or any of its affiliates has an ownership interest and to which PAMF has a pattern of regular
4 admission of patients, subject to the right of the Office of the California Attorney General and/or
5 of Class Counsel, after meeting and conferring in good faith with Defendants to attempt to agree
6 to the list of ASCs in Exhibit A, to challenge inclusion of any ASC on Exhibit A before the
7 Compliance Monitor and ultimately the Court, which shall consider any challenge upon the
8 motion of a Party after the Compliance Monitor makes a timely recommendation to the Parties and
9 the Court concerning resolution of the challenge.

10 **3. Group B Hospitals**

11 a. Except as otherwise permitted by this Final Judgment, if an Insurer and/or
12 Self-Funded Payer selects one or more Group B Hospitals for inclusion in a network of a
13 Commercial Product, the selected Group B Hospitals may condition their participation or tiered
14 status on the participation or tiered status of any other Sutter Provider(s) (except Group A
15 Providers) subject to the requirements governing the Clinical Integration Exception or Patient
16 Access Considerations Exception as set forth in Section IV.C.3.b and IV.C.3.c below or under
17 other applicable exceptions in this Final Judgment.

18 b. **Clinical Integration Exception:** Defendants may condition the
19 participation or tiered status of its Group B Hospitals in a network of a Commercial Product upon
20 the participation or tiered status of other Sutter Providers if all affected Sutter Providers are
21 clinically integrated with respect to the services covered by the Commercial Product and if, in the
22 case of conditional tiering, such conditional tiering is reasonably necessary to achieve the benefits
23 of clinical integration. Defendants shall not designate Group B Hospitals and other Sutter
24 Providers to be part of a clinically integrated group specifically for these purposes unless the
25 specified Sutter Hospitals and Sutter Providers satisfy the standards for clinical integration
26 described in the 2009 Alta Bates Medical Group consent decree with the Federal Trade
27 Commission and in the similarly worded Washington Attorney General’s 2019 settlement with
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1 CHI Franciscan and The Doctors Clinic. For purposes of interpreting and enforcing this Final
2 Judgment, the standards set forth in those consent decrees, and Section V.C.2.d.i and (ii) below,
3 shall govern whether any Group B Hospitals and other Sutter Providers are clinically integrated.

4 (i) Section IV.C.3.b does not contravene any rights, protections, or
5 defenses that Defendants may have under State or Federal statutes or regulations in effect at the
6 time of the challenge to their invocation of the clinical integration exception.

7 c. **Patient Access Considerations Exception:** Defendants may condition the
8 participation of Group B Hospitals in a network for a Commercial Product upon the participation
9 of other Sutter Providers if the failure to condition the participation of those specific Providers
10 raises substantial and material patient access or financial risk issues as set forth below.

11 (i) Patient Access: The Commercial Product adversely affects patient
12 access to healthcare services if it offers inadequate specialty care, requires transfers of patients for
13 extended distances or extended travel time, or otherwise creates a substantial risk of disruption of
14 discharge planning, or other serious continuum of care/access problems (e.g., lack of access to
15 physician follow-up, lack of ancillary providers, etc.), or for a hospital, does not provide a
16 sufficient number of physicians that admit to that facility in the Commercial Product (regardless of
17 whether they are affiliated with Defendants) or that refer patients to that hospital to permit the
18 hospital to provide the full range of its services, provided that the insufficiency of physicians is not
19 caused by Defendants' conduct.

20 (ii) Financial Risk: The Commercial Product raises a financial risk
21 issue if it creates a substantial risk of unforeseeable patient financial hardship through
22 substantially different patient out-of-pocket costs between the admitting physician and the hospital
23 that the physician regularly admits to, or if it is a Commercial Product that has a minimum average
24 cost sharing, otherwise known as actuarial value, of less than 60% in the tier in which the provider
25 is offered. The calculation of the actuarial value of a tier in a tiered product shall be made in
26 accordance with the Center for Medicare and Medicaid's Final 2019 Actuarial Value Calculator
27 Methodology (Dec. 28, 2017), p. 23, or any federal or state replacement thereto. Commercial
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1 Products that do not have an out of pocket maximum or that cause unlimited liability for patients
2 who access Sutter Providers in the tier in which Sutter Providers have been asked to participate
3 shall be deemed to fall within the financial risk exception.

4 d. Should Defendants invoke the Clinical Integration or Patient Access
5 Considerations Exceptions and the Insurer in good faith believes that Defendants' conditional
6 participation is not justified under this Final Judgment, the Insurer shall notify Defendants and
7 Defendants shall put in writing to the Insurer, the Office of the California Attorney General, and
8 Class Counsel the basis for doing so with sufficient detail that the Insurer and the Office of the
9 California Attorney General and Class Counsel can understand the basis for Defendants'
10 invocation of the exception. If the Insurer then believes in good faith that Defendants' invocation
11 of the Clinical Integration or Patient Access Considerations exception violates this Final
12 Judgment, then the Insurer shall make a reasonable effort to meet and confer with Defendants. If
13 the meet and confer process does not resolve the dispute, or at the election of the Office of the
14 California Attorney General and/or of Class Counsel, the Office of the California Attorney
15 General and/or Class Counsel may challenge Defendants' invocation of these exceptions before
16 the Compliance Monitor and/or the Court pursuant to the procedures set forth in Section V below.

17 **D. Pricing**

18 **1. Right To Offer Lower Prices for Increased Expected Volume**

19 a. An individual Sutter Provider may offer lower prices for networks or
20 products that may provide for increased expected volume to that Sutter Provider (e.g., networks or
21 products featuring that Provider, co-branded products in which that Provider would participate,
22 placing that Provider in more favorable tiers, or otherwise steering patients to that Sutter Provider,
23 including through financial incentives).

24 **2. Right To Offer Bundled Pricing**

25 a. Defendants may offer an Insurer lower prices for one or more Group B
26 Hospitals as part of a bundle with one or more other Group B Hospitals provided that Defendants,
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1 on an Insurer's request, offer a separate standalone price for any of the included Hospitals
2 requested by the Insurer.

3 b. Defendants may offer an Insurer lower prices for bundles of one or more of
4 its Group B Hospitals together with CPMC and/or PAMF *provided that* Defendants and the
5 Insurer, before Defendants offer a bundled price for bundles including CPMC and/or PAMF, first
6 reach a written agreement on the pricing terms for CPMC and/or PAMF on a standalone basis,
7 subject to execution of a binding agreement including all non-monetary terms. Sutter may not
8 otherwise offer lower bundled prices for its Group A Providers.

9 c. Defendants are not required to offer a standalone price where an Insurer
10 seeks to include all Sutter hospitals in a network of a Commercial Product or where Defendants
11 condition participation of PAMF or Group B Hospitals pursuant to Sections IV.C.2 and IV.C.3
12 above.

13 d. The restrictions on bundling in this Final Judgment do not apply to bundling
14 of Sutter Providers that are not Group A Providers or Group B Hospitals as such bundling is
15 beyond the scope of this Final Judgment.

16 **3. Out of Network Rates**

17 a. Maximum OON Rates: The maximum that a Sutter Provider may charge an
18 Insurer and/or Self-Funded Payer (and/or its respective enrollee) that contracts with at least one
19 Sutter Provider for services for any out-of-network healthcare will be the multiples of the contract
20 rates or the percentage of billed charges set forth in this Section IV.D.3. Insurers may negotiate
21 lower out-of-network rates, but out-of-network rates shall not exceed the maximums set forth in
22 this Section IV.D.3 while this Final Judgment remains in effect.

23 b. The maximum out-of-network rates set forth in this Section IV.D.3 are
24 applicable to services by Sutter primary or specialty care physicians on whose behalf Defendants
25 negotiate contracts with Insurers and that are billed as part of a hospital visit for trauma,
26 emergency room, and post-stabilization services for patients admitted through the emergency
27 room ("Covered Physicians Hospital Services"). Office visits, other inpatient services (aside from
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1 post-stabilization services for patients admitted through the emergency room), and outpatient
 2 services are not covered by this Final Judgment as they are beyond the scope of this Final
 3 Judgment.

4 c. The contract rates used for determining the maximum out-of-network rates
 5 will be separately computed for each Insurer. For any additional Insurer approved by the Court,
 6 the maximum out-of-network rates will be calculated using the same multiples or percentage of
 7 billed charges listed below.

8 d. Notwithstanding any fluctuation in Defendants' contract rates, the agreed-
 9 upon multiples of contract rates or percentage of billed charges will be utilized to determine the
 10 maximum out-of-network rates, regardless of the circumstances, while this Final Judgment
 11 remains in effect.

12 e. At the option of any Insurer, the maximums set forth in this Section IV.C.3
 13 shall also apply to the transition period (as defined in the Insurer's contract with Defendants)
 14 between the expiration of the contract between that Insurer and Defendants and the earlier of (1)
 15 any renewal of that contract or (2) ultimate termination of that contract without renewal.

16 f. Maximum Out-of-Network Rates and Other Out-of-Network Rate
 17 Provisions for Sutter Hospital Providers:

Category of Care	Multiple of Contract Rates Used To Compute Out-Of-Network Rates
Trauma (IP/OP)	[REDACTED] rate applicable to that Insurer or Self-Funded Payer
ER Non-Trauma	[REDACTED] rate applicable to that Insurer or Self-Funded Payer
Post-Stabilization Admitted Through ER	[REDACTED] Billed Charges
All Other IP	[REDACTED] Billed Charges
All Other OP	[REDACTED] Billed Charges
Rural Hospitals	[REDACTED] rate applicable to that Insurer or Self-Funded Payer

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2 g. Maximum Out-of-Network Reimbursement and Other Out-of-Network
3 Reimbursement Provisions for Covered Physician Hospital Services:

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Category of Care	Multiple of Contract Rates Used To Compute Out-Of-Network Rates
Trauma (IP/OP)	[REDACTED] rate applicable to that Insurer or Self-Funded Payer
ER Non-Trauma	[REDACTED] rate applicable to that Insurer or Self-Funded Payer
Post-Stabilization Admitted Through ER	[REDACTED] rate applicable to that Insurer or Self-Funded Payer

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12 **4. Chargemaster Commitment**

13 a. Defendants will limit the aggregate annual increase for chargemasters for
14 the Sutter general acute care hospitals subject to this Final Judgment to less than [REDACTED]
15 [REDACTED], and [REDACTED] measured by the process
16 described below.

17 b. **Chargemaster Measurement:** The chargemaster increase for the Sutter
18 general acute care hospitals that are Group A Providers or Group B Hospitals will be measured
19 using information submitted to California's Office of Statewide Health Planning and Development
20 (OSHPD) under penalty of perjury, as required by Health and Safety Code Section 1339.55.
21 Commencing in the calendar year following the date when this Final Judgment is entered, the
22 percentage change in each general acute care hospital's gross revenue as submitted to OSHPD
23 shall be multiplied by the total gross revenue for that hospital for the prior year. This product will
24 be summed for these hospitals. The resulting sum will be divided by the total gross revenue for all
25 Sutter general acute care hospitals subject to this Final Judgment. The resulting number shall be
26 Sutter's chargemaster increase.

1 **E. New Affiliates, New PAMF Hospitals/ASCs, New Insurers**

2 **1. New Affiliates**

3 a. In the event Defendants acquire a hospital not included in the Group B
4 Hospital definition (“New Sutter Hospital”), the Office of the California Attorney General and
5 Class Counsel shall make a reasonable effort to meet and confer with Defendants in an effort to
6 reach agreement to include such New Sutter Hospital in the definition of Group B Hospital above.
7 In the event the Office of the California Attorney General and/or Class Counsel and Defendants do
8 not agree, the Office of the California Attorney General and/or Class Counsel may petition the
9 Court, after seeking the recommendation of the Compliance Monitor, to include such New Sutter
10 Hospital in the definition of Group B Hospital.

11 b. Whenever Defendants acquire an ownership interest, stock, or assets of any
12 Hospital or ASC as set out below (“New Affiliate”) during the term of a contract with an Insurer
13 and/or Self-Funded Payer and Defendants seek to apply the terms of the contract between the
14 Defendants and the Insurer and/or Self-Funded Payer to the New Affiliate in any respect
15 whatsoever, the following provisions shall apply:

16 (i) If an Insurer and/or Self-Funded Payer had an existing agreement
17 with the New Affiliate prior to Defendants’ acquiring the hospital or ASC as a New Affiliate, and
18 Insurer and/or Self-Funded Payer notifies Sutter that Insurer and/or Self-Funded Payer wants the
19 New Affiliate to participate in one or more of Insurer and/or Self-Funded Payer’s Commercial
20 Products, then the Commercial Product’s fee for service (FFS) rates in Insurer and/or Self-Funded
21 Payer’s existing agreement with the New Affiliate (“Prior Rates”) shall apply to the applicable
22 Commercial Product for a period of two year(s) after the acquisition of the New Affiliate, or until
23 the expiration of such agreement in accordance with its provisions, whichever is sooner. Nothing
24 in this paragraph shall prevent Defendants and Insurer and/or Self-Funded Payer from negotiating
25 capitation rates and related agreements, including, without limitation, shared risk budgets or rates
26 for participation in government-sponsored products. Upon expiration of the Prior Rates as set
27 forth above, the Insurer and/or Self-Funded Payer may elect at its option to treat the New Affiliate
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1 as being out-of-network of any Commercial Product through the expiration of the term of the
2 contract between the Insurer and Defendants. The provisions of this Section IV.E.1.b shall apply
3 regardless of whether Defendants maintain the New Affiliate as a separate entity or merge it into
4 an existing Sutter Provider as an expansion of that Provider's operations. Notwithstanding the
5 provisions of this Section IV.E.1.b, the Insurer may, with Defendants' consent, opt to renegotiate
6 its agreement with the New Affiliate prior to the expiration of the Prior Rates as set forth above.

7 (ii) If an Insurer does not have an existing agreement with a New
8 Affiliate, the Insurer may exclude the New Affiliate from its networks after the New Affiliate is
9 acquired by Defendants.

10 (iii) In the event any Defendant acquires a hospital or the assets of a
11 hospital, the provisions of this Section IV.E.1 will be superseded by any requirements or
12 conditions, regarding pricing or contracting imposed by any of the regulatory authorities who have
13 oversight and approval of the acquisition, that are inconsistent with this Section IV.E.1.

14 (iv) The provisions of this Section IV.E.1 shall not apply to the
15 acquisition of any non-Sutter medical group, any individual non-Sutter medical practice, or any
16 purchase of assets or goodwill of a non-Sutter medical group, by any Defendant or by a Sutter-
17 affiliated medical foundation. The provisions of this Section IV.E.1 likewise shall not apply to the
18 hiring of individual physicians from a non-Sutter medical practice or group. Any such
19 acquisitions or hiring are outside the terms of this Final Judgment as they are beyond the scope of
20 this Final Judgment.

21 c. The provisions of this Section IV.E.1 shall not operate to bar, immunize, or
22 estop any state or federal regulatory or law enforcement action to bar or condition the acquisition
23 under any law, including antitrust, unfair competition, or charitable trust law.

24 **2. New PAMF Hospital or ASC**

25 a. In the event that PAMF seeks to add a Sutter Hospital or ASC to the list in
26 Sections IV.C.2.a.(ii) or IV.C.2.b above ("New PAMF Hospital or ASC"), Defendants shall
27 make a reasonable effort to meet and confer with the Office of the California Attorney General
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1 and Class Counsel in an effort to reach agreement to include such New PAMF Hospital(s) or
2 ASC(s) under Section IV.C.2.a.(ii) and IV.C.2.b above. In the event Defendants and the Office of
3 the California Attorney General and/or Class Counsel do not agree, Defendants may petition the
4 Court, after seeking the recommendation of the Compliance Monitor, to include such New PAMF
5 Hospital(s) or ASC(s) pursuant to the procedures in Section V below.

6 **3. New Insurers**

7 a. In the event a California licensed health care service plan or insurance
8 company, other than a provider owned or affiliated plan (“New Insurer”), newly enters or
9 substantially expands its operations in the Northern California market for Commercial Products
10 and is licensed to sell fully-funded or self-funded products directly to employers or health benefit
11 trusts and such New Insurer (1) is of similar size and scope to the entities defined as Insurers
12 above either in California, in a region of the United States, or nationwide, or would likely have
13 been covered by this Final Judgment had they entered or re-entered the Northern California market
14 prior to October 15, 2019, and (2) has demonstrated a commitment to entering the Northern
15 California market for Commercial Products, the Office of the California Attorney General and
16 Class Counsel shall meet and confer with Defendants to include the New Insurer within the
17 definition of Insurer under this Final Judgment. If the Parties do not reach agreement, the Office
18 of the California Attorney General and/or Class Counsel may petition the Court, after seeking the
19 recommendation of the Compliance Monitor, to amend the Final Judgment to include the New
20 Insurer as an Insurer covered by the terms of this Final Judgment.

21 **F. Price and Quality Transparency:**

22 1. Subject to reasonable confidentiality protections against further disclosure, an
23 Insurer may provide Self-Funded Payers (a) access to the pricing terms in Defendants’ agreements
24 with that Insurer as soon as those agreements are fully executed.

25 2. An Insurer may provide a Self-Funded Payer, which has a contract with that Insurer
26 to access Sutter Providers, that Self-Funded Payer’s own claims paid data from that Insurer, which
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1 that Self-Funded Payer may use for any purpose subject to reasonable protections against further
2 disclosure of price information.

3 3. Insurers and/or Self-Funded Payers may provide enrolled members with access to
4 pricing, quality, and/or cost information concerning Sutter Providers for purposes of comparing
5 such Providers' prices and/or quality for particular healthcare services and products to the prices
6 and/or quality of the same healthcare services or products available from other providers.

7 Defendants' remedy for the posting of allegedly inaccurate pricing or quality information by
8 Insurers and/or Self-Funded Payers is (1) to post the allegedly correct information on its own
9 website, (2) to seek a court or, if applicable, arbitration order requiring the correction of the
10 information, and/or (3) to pursue any other remedies authorized by law.

11 4. Insurers and/or Self-Funded Payers shall have discretion to publish their subjective
12 views or ratings of the relative cost and/or quality of Sutter Providers and competing providers,
13 including without limitation the option to separately rate the cost or quality of individual doctors
14 in a medical practice.

15 5. Defendants shall not require Insurers and/or Self-Funded Payers to comply with
16 additional process for disclosure of data related to Health & Safety Code Section 1367.49 &
17 Insurance Code Section 10133.64 beyond what is expressly required by California law.

18 **G. Miscellaneous**

19 **1. Admitting Privileges**

20 a. Defendants shall continue to offer physicians, including independent
21 physicians an opportunity to apply for and enjoy medical staff membership and privileges at their
22 hospitals in accordance with California law and the medical staff bylaws, rules, regulations,
23 criteria, and standards. Defendants shall also continue to offer physicians, including independent
24 physicians, the opportunity to admit patients to, participate in, and practice at these hospitals
25 (including through on call schedules) in accordance with California law and the medical staff
26 bylaws, rules, regulations, criteria, and standards.

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2. Retaliation

a. Retaliation or threats of retaliation based on any entity or individual having provided information in conjunction with the lawsuit or providing any information going forward to any party, the Compliance Monitor, or the Court, is prohibited.

3. Notices

All communications required to be made under this Final Judgment shall be sent to the respective parties at the following addresses:

- If to Defendants: Florence L. Di Benedetto
SVP & General Counsel
Sutter Health
Office of the General Counsel
2200 River Plaza Drive
Sacramento, CA 95833
dibenef@sutterhealth.org
- If to the People: Emilio Varanini
Deputy Attorney General
455 Golden Gate Avenue, Ste. 11000
San Francisco, Ca. 94102
E-mail: Emilio.Varanini@doj.ca.gov
- If to Class Counsel: Pillsbury & Coleman, LLP
100 Green Street
San Francisco, CA 94111
Attn: Richard L. Grossman
E-mail: rgrossman@pillsburycoleman.com
- Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, N.W., Suite 500
Washington, DC 20005
Attn: Daniel A. Small
E-mail: dsmall@cohenmilstein.com
- Farella Braun + Martel
Russ Building
235 Montgomery Street
San Francisco, CA 94104
Attn: Christopher Wheeler
E-mail: cwheeler@fbm.com

1 Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C
2 1615 M Street, N.W., Suite 400
3 Washington, DC 20036
4 Attn: Daniel Bird
5 E-mail: dbird@kellogghansen.com

6 McCracken, Stemerman & Holsberry, LLP
7 595 Market Street, Suite 800
8 San Francisco, CA 94105
9 Attn: Sarah Grossman-Swenson
10 E-mail: sgs@msh.law

11 V. COMPLIANCE MONITOR

12 **A. Settlement Compliance Monitor**

13 For the purpose of monitoring compliance with this Final Judgment, Dionne Lomax of
14 Affiliated Monitors, Inc. shall serve as the Compliance Monitor pursuant to an agreement among
15 the Compliance Monitor and the Parties, which shall be submitted to the Court.

16 **B. Powers of the Compliance Monitor**

17 1. The Compliance Monitor shall have the following powers to monitor compliance
18 with this Final Judgment: to investigate compliance; to take complaints from Plaintiff(s) and
19 Insurers; to compel disclosure of confidential documents subject to appropriate confidentiality
20 protections; to interview witnesses; to inspect records; to hire staff and experts; and to make
21 recommendations concerning enforcement to the Court.

22 2. In investigating compliance, or in taking complaints from Plaintiff(s) and
23 Insurer(s), the Compliance Monitor may, in his or her discretion, fully investigate any such
24 complaints to determine compliance with the terms of this Final Judgment and/or set up a process
25 by which evidence shall be presented for the Compliance Monitor to make an appropriate
26 recommendation to the Court.

27 **C. Specific Procedures**

28 1. With respect to Section IV.B.2.c above, related to a challenge by the Office of the
California Attorney General and/or Class Counsel to a decision by CPMC or PAMF not to
participate in a Commercial Product, the Office of the California Attorney General and/or Class

1 Counsel may present evidence that the refusal is pretextual. If it is determined by the Court that
2 CPMC's or PAMF's refusal is pretextual, CPMC or PAMF shall participate in the product, subject
3 to the negotiation of mutually agreeable price terms so long as the price terms offered by Sutter
4 are not tantamount to conditioning the participation of CPMC or PAMF on the participation,
5 pricing, or tiered status of other providers.

6 2. With respect to Sections IV.C.3.b and IV.C.3.c above, governing the Clinical
7 Integration and/or Patient Access Considerations, the process set up by the Compliance Monitor
8 shall include the presentation of evidence supporting or contesting the invocation of the exceptions
9 for conditioning access set forth in those sections and supporting or contesting any claim by
10 Plaintiff(s) that the invocation of those exceptions is anticompetitive (for example, and without
11 limitation, because the Group B Hospital in question has market power, the anticompetitive effects
12 of conditioning outweigh the procompetitive benefits, etc.).

13 a. Sutter shall have the right, to be exercised solely within Defendants'
14 discretion, to provide the Compliance Monitor with evidence to show that its invocation of the
15 exceptions for Clinical Integration and Patient Access Considerations was non-pretextual.

16 b. After considering all of the evidence offered by any applicable witness or
17 Party, the Compliance Monitor shall decide whether Defendants' invocation of the exception in
18 question was pretextual.

19 c. If the Compliance Monitor concludes that Defendants' invocation of the
20 exception in question was not pretextual, the Office of the California Attorney General and/or
21 Class Counsel shall then have the burden of presenting evidence and of proving that the invocation
22 of these exceptions was anticompetitive (for example, and without limitation, because the Group B
23 Hospital in question has market power, the anticompetitive effects of conditioning outweigh the
24 procompetitive benefits, etc.). Defendants may choose to present additional evidence supporting
25 the claimed benefits as part of this process. The Office of the California Attorney General and/or
26 Class Counsel shall retain the burden of showing that any evidence of claimed benefits presented
27 by Defendants is outweighed by their evidence of anticompetitive effects and/or that, upon
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1 meeting their burden of proving anticompetitive effects, this evidence of benefits is otherwise
2 unsupportable.

3 d. With respect to the Clinical Integration exception, the following provisions
4 also shall apply:

5 (i) The existence of a referral relationship, common electronic health
6 records, both a referral relationship and common health records, common county or geographic
7 area of Sutter Provider location, or a claim of patient or physician convenience alone shall not be
8 sufficient to establish that any group of Sutter Providers are Clinically Integrated.

9 (ii) The Compliance Monitor shall also consider whether the
10 arrangement is likely to improve the quality and/or affordability of the health care services that are
11 being provided and whether such an improvement reasonably can be achieved without
12 participation of all of the designated Sutter Providers in the same network or tier.

13 **D. Duty to Cooperate with Compliance Monitor**

14 The Parties shall cooperate with the Compliance Monitor in the performance of his or her
15 work and shall take no action to interfere with or impede the Compliance Monitor's ability to
16 monitor Sutter's compliance with this Order.

17 **E. Expenses of the Compliance Monitor**

18 The Compliance Monitor shall be entitled to receive reimbursement of its reasonable fees
19 and costs. The Court shall approve all claims for reimbursement, and the Parties shall be entitled
20 to submit to the Court comments on the reasonableness of the fees and costs. Defendants shall
21 pay the reasonable fees and costs for the Compliance Monitor by establishing a Monitor Fund to
22 be administered by the Office of the Attorney General as approved by the Court.

23 **F. Confidentiality**

24 1. The Parties may require the Compliance Monitor and each of the Compliance
25 Monitor's consultants, accountants, and other representatives, agents, and assistants to sign a
26 confidentiality agreement; *provided, however*, that such agreement shall not restrict the
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EXHIBIT A
to [Proposed] Final Judgment

Exhibit A
List of Ambulatory Surgery Centers Pursuant to IV.C.2.b.(2)

1. Peninsula Endoscopy Center LLC
2. Peninsula Eye Center

EXHIBIT 4



March 2, 2021

Via Email

Honorable Anne-Christine Massullo
Judge of the Superior Court
The Superior Court of California
County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Re: *UFCW & Employers Benefit Trust on behalf of itself and all others similarly situated v Sutter Health, et al*, Case No CGC-14-538451.

Dear Judge Massullo:

FedArb hereby respectfully submits its interest in serving as monitor in the above litigation.

FedArb's submission, attached hereto, was previously made to the parties in accordance with the RFP that had been published. For reasons that were never specified, FedArb was subsequently informed that the parties had decided on another potential monitor. Today, we were alerted that the parties had filed papers in support of their decision to retain the same firm, Affiliated Monitors, that was originally rejected by the court—by replacing the lead person rejected by the court in the place of Dionne Lomax. While we have no doubt that Ms. Lomax may be qualified, it appears curious and suspiciously preordained that the parties—for whatever reason—were determined to proceed with Affiliated Monitor.

As the court is aware, a judicial monitor is an adjunct of the court—they are the court's monitor, not the parties' monitor. While the parties may be afforded deference, their recommendation is only that—a recommendation.

Monitorship Expertise. Because of the unparalleled qualifications and the diversity of FedArb's local team, FedArb now submits directly to the court its proposal for Vaughn Walker and Ms Jackie Nakumura for the court's consideration. As set forth in the attached submission, numerous courts have selected FedArb to act as a judicial monitor in high profile, large and complicated court monitorships.

- FedArb is currently in the monitor appointed by the DOJ and approved by the DC District Court in connection with T-Mobile's acquisition of Sprint,
- FedArb is also the monitor in ensuring Global Growth Company's compliance with the TRO obtained by the North Carolina insurance commissioner.



- Previously FedArb's team was the chair overseeing Microsoft's compliance with the DOJ's landmark antitrust order.

In addition, FedArb will also retain StoneTurn, a large consulting firm that FedArb has used in the T-Mobile monitoring engagement to provide hospital operational experience. StoneTurn was carefully selected because it is a global advisory firm that assists companies, their counsel and government agencies on regulatory, risk and compliance issues, investigations and business disputes. StoneTurn and its professionals have extensive experience serving as corporate compliance monitors, serving as forensic advisors to corporate compliance monitors and leading integrated corporate compliance monitor engagement teams. Importantly, StoneTurn professionals have developed best practice methodologies and processes to help lead and support corporate compliance monitorship engagements. As part of its roles and responsibilities, StoneTurn professionals build integrated teams of professionals, plan and execute efficient workplans and leverage its project management, forensic, risk, process, controls and audit resources to assess compliance with settlement agreements approved by government authorities.

Independence. Unlike the monitorship proposed by the parties, FedArb's monitors are truly independent of the consulting firm (i.e., StoneTurn) retained to perform much of the operational and implementation work overseen by the monitor. Ms Lomax is a member of Affiliated Monitor. She is captive and therefore cannot be as objective as a monitor outside of the consulting firm. Courts have approved, and seem to favor, FedArb's practice of retaining additional professional services from leading experts that are tailored to handle various issues that required specialized expertise.

Local Leadership. In addition to FedArb's corporate monitoring expertise, the co-leadership of its team will be spearheaded by two diverse antitrust experts with familiarity in hospital/health care matters at issue: the former and prominent chief judge for the Northern District of California (San Francisco) and a female lawyer with substantial intellectual property/antitrust expertise.

Given the importance of the matter to the State of California, we respectfully submit that having local team leaders backed by FedArb—a preeminent Bay Area firm with demonstrated expertise and national resources—is ideally situated to provide the parties unbiased, effective and cost-efficient monitoring of the parties' compliance with the Proposed Final Judgment.



With the court's permission, we are prepared to address any issues and answer any questions the court may have at the upcoming hearing on March 9, 2021.

Respectfully submitted,

Kennen D. Hagen

President and CEO

ken@fedarb.com

cc: Service list

UEBT@pillsburycoleman.com;

UEBTService@fbm.com;

UEBT@msh.law;

SERVICEUEBT@lists.kellogghansen.com;

UEBT@cohenmilstein.com;

sutterservice@jonesday.com;

SutterService@BZBM.com

AG_AntitrustService@doj.ca.gov



RESPONSE OF FEDERAL ARBITRATION, INC. TO REQUEST FOR PROPOSAL

Federal Arbitration, Inc. ("FedArb") submits this response to the Request for Proposal dated October 26, 2020 in the matter of *UFCW & Employers Benefit Trust on behalf of itself and all others similarly situated v Sutter Health, et al*, Case No CGC-14-5384451.

A. EXECUTIVE SUMMARY

Antitrust Expertise with Resources to Meet all Contingencies.

FedArb proposes a distinguished and diverse group of professionals to provide the compliance monitoring services required in the parties' settlement agreement as set forth in the Proposed Final Judgment ("PFJ"). As it has done – and is now doing – in ongoing court appointed monitoring engagements, FedArb will strategically augment its team should new issues arise that require additional skills to monitor compliance with the PFJ or, if additional accounting, data management, specialized healthcare-related expertise are merited. In this way, FedArb's team is lean and efficient but also has the resources and internal depth to scale to meet any challenges. To avoid incurring unnecessary expenses, however, before employing outside consultants and service providers, the FedArb team will consult the parties with respect to the necessity and scope of such ancillary services.

Local Presence. FedArb's team possesses decades of high level judicial, legal and extensive experience in both federal and state antitrust laws, as well as dispute resolution. Indeed, the co-leader of the team is the former Chief Judge for the Northern District of California and has practiced law, served on the federal judiciary and been in ADR work in San Francisco for almost five decades. FedArb is based and its team members live and work in the San Francisco Bay area. They possess first-hand knowledge and experience concerning local healthcare needs, issues and resources, and they are readily accessible to the parties and the Court thereby be best able to perform the required monitoring services efficiently and thereby save time and money.



FedArb—Firm Resources, Experience and Responsiveness. FedArb is a prominent ADR firm that leading law firms and companies utilize to solve complex legal problems. It has a roster of 100 professionals, 60 of whom are former Article III judges and 40 of whom are leading lawyers and experts in their fields. All of these team members are available to assist depending on the needs of the case. FedArb was founded in 2007 by Abraham D Sofaer, who was a United States District Judge in the Southern District of New York until Secretary of State George P Shultz recruited him in 1985 to be the Legal Advisor to the United States Department of State. He founded FedArb with the mission of recruiting the best legal minds to provide highly responsive ADR services with the top flight management, scheduling and related support services on its engagements. FedArb proposes to provide such services in connection with the above proceeding on that same basis. To date, FedArb has administered over 1,000 cases for leading law firms and companies. FedArb has extensive back office capabilities, including a case and document management system to ensure that resources are available to meet all facets of ongoing projects and to provide periodic reports as may be required by the Court.

FedArb's Extensive Antitrust Monitoring Expertise. FedArb has experience in providing settlement monitoring services in large, complicated matters of national importance. Currently, FedArb has been appointed by the United States District Court for the District of Columbia as the corporate monitor overseeing T-Mobile's compliance with that court's order regarding T-Mobile's \$26 billion acquisition of Sprint. It is also acting as the chair of a five member review panel monitoring all corporate actions of the Global Growth conglomerate (with revenues of over \$1b) in connection with legal actions taken against it by the North Carolina insurance commissioner. In addition, FedArb board member, Harry J Saal, was chosen by the United States Department of Justice to be the Chair of the Technical Committee charged with monitoring and enforcing Microsoft Corp's compliance with the antitrust settlement with the Department of Justice.

Diverse Team. For this assignment, FedArb has assembled a diverse leadership team with distinguished experience and background to investigate



compliance with the settlement agreement, hear and decide complaints from parties to the settlement, compel disclosure of confidential documents subject to appropriate confidentiality protections, interview witnesses, inspect records, hire staff and experts, establish a process by which evidence may be presented in order to mediate and decide issues on which the parties find themselves in disagreement and, if necessary, make appropriate recommendations to the Court.

B. QUALIFICATIONS

FedArb proposes the following highly qualified and experienced professionals for this assignment.

Vaughn R Walker is the retired chief judge of the United States District Court for the Northern District of California. Judge Walker has long experience in antitrust, beginning as a litigation associate attorney and later partner in a prominent San Francisco law firm. As a federal district judge, (and as more fully set forth in the attached curriculum vitae), Judge Walker presided over a number of significant antitrust proceedings involving Apple, Microsoft, Oracle and the Antitrust Division of the United States Department of Justice. Judge Walker served for five years as the judicial representative of the American Bar Association Antitrust Section. Since leaving the bench in 2011, Judge Walker has engaged in an arbitration and mediation practice that has included work as a special master in antitrust litigation, among many other matters. Notably, in 2017, Judge Walker chaired an arbitration panel consisting of himself, Kenneth Feinberg and Lee A Freeman that dealt with modifications to the United States Department of Justice antitrust consent decrees in the music licensing field.

Judge Walker has taught at the Stanford Law School, the University of California Berkeley School of Law and most recently at UC Hastings College of Law where he recently conducted a seminar on mass tort litigation. He has also been active in teaching at the Bolch Judicial Institute at Duke University Law School. Judge Walker is a member of the American Law Institute and the former chair of the Saint Francis Memorial Hospital Foundation. Additional information is set forth in the attached curriculum vitae.



Jackie N Nakamura is an experienced federal Court litigator and counselor. Ms Nakamura has represented clients ranging from early stage to Fortune 500 companies on technologies including pharmaceuticals, biotech, medical devices, healthcare systems and e-commerce systems.

She has handled all aspects of federal Court patent litigation and strategic counseling. Ms Nakamura's international legal experience includes supervising and coordinating trial and appellate counsel in multiple jurisdictions, including the United Kingdom, Netherlands, Germany, Japan and Australia. As a law firm partner, Ms Nakamura led efforts to recruit, train and supervise large teams of attorneys and legal professionals. Since 2019, Ms Nakamura has served as a court-appointed judge pro tempore for the Santa Clara Superior Court, conducting mandatory settlement conferences.

Ms Nakamura and Judge Walker have worked extensively together over the years. Ms Nakamura began her legal career as one of Judge Walker's first law clerks. During the past several years, Ms Nakamura and Judge Walker have worked together on arbitration, mediation, special master and consulting assignments, in the antitrust and medical device fields, as well as other areas. Additional information is set forth in the attached curriculum vitae.

Tanveer Singh is office manager and administrator at FedArb where he has worked since 2016. Mr Singh manages arrangements for mediations, arbitrations, mock trials and monitoring activities and has handled over 250 cases at FedArb. Mr Singh graduated in May 2014 from San Jose State University with a BA in Psychology and a minor in Philosophy.

C. PROPOSED ACTIVITIES

1. General Principles

In addition to the terms of settlement in the PFJ herein, FedArb and the professionals it proposes for this assignment are guided by the principles set forth in the memorandum of March 7, 2008 by Acting Deputy Attorney General Craig S Morford to United States Attorneys. As relevant to this matter, these principles deal with the independence of the monitor, compliance with the terms



of settlement, communications with the parties and the Court and dispute resolution and decision-making by the monitor and reporting obligations.

The monitor should act as an independent third party, not an agent or employee of any party to the litigation that gave rise to the monitorship. Although the monitor may express views on appropriate compliance with the terms of settlement, the monitor should not act as an attorney for any party to the settlement and appropriate requirements for notice and methods of dispute resolution should be provided.

The monitor's primary responsibility should be to assess and monitor compliance with the settlement agreement. In this case, a monitor's primary role is to evaluate whether Sutter has adopted and effectively implemented practices that address the problems addressed in the parties' settlement. To carry out this responsibility, the monitor must understand the scope of the remedial purposes of the settlement and calibrate actions, recommendations and decisions to those purposes.

Communications among the monitor and the parties are essential to an effective monitorship. This requires identifying the individuals who may communicate to the monitor on behalf of the parties and, in turn, with whom the monitor may communicate. The monitor must be open to receiving communications from the parties that claim to be affected by non-compliance with the terms of settlement and to have access to information about Sutter's conduct relevant to those claims. The geographic proximity of Judge Walker, Ms Nakamura and Mr Singh to the parties in this matter will greatly aid in making these communications effective.

Importantly, the monitor should use every effort to mediate and resolve any dispute or disagreement between or among the parties, before making a decision regarding non-compliance with the terms of settlement and before making a recommendation to the Court. Finally, although the duration of the monitorship is that provided in the PFJ, the monitor should be free to recommend to the Court either that the monitorship should be extended or



curtailed due to facts, circumstances and developments not anticipated at the time the settlement agreement was approved.

2. Specific Proposed Monitoring Activities

The PFJ provides that the monitor shall have the powers to monitor and to investigate compliance with the settlement agreement, to take complaints from plaintiffs and insurers, to compel disclosure of confidential documents subject to appropriate confidentiality protections, to interview witnesses, to inspect records, to hire staff and experts and to make recommendations to the Court. See Section V.B. Although these powers appear comprehensive, as we understand the PFJ, this list is not exhaustive. Indeed, the Request for Proposal appears specifically to call for “methods and processes you would put in place to monitor compliance,” RFP at 5, and these evidently would be in addition to the powers enumerated in the PFJ.

We note two areas where such additional powers appear appropriate and consistent with the objectives of the monitorship. The first of these deals with establishing appropriate requirements of notice and the second with establishing channels for resolution of disputes short of resort to judicial intervention.

Establishing appropriate requirements of notice. The PFJ covers many aspects of Sutter’s operations and governance. It appears, however, that the PFJ anticipates that allegations of non-compliance with the terms of settlement will be brought to the monitor’s attention by one or more of the affected parties. This undoubtedly will occur in many, perhaps even most instances. But even if this proves to be the case, there remains the possibility that such allegations will not be brought to the monitor’s attention until the changes or practices giving rise to such allegations have been put into effect and practice. With respect to certain matters covered in the PFJ, advance notice of changes to these matters is implied. See, e.g., §IV.A. 3.c. (“If a center of excellence program is developed and marketed during the term of a contract with Defendants, but was not disclosed previously to Defendants that program shall



apply to Sutter Providers absent mutual agreement of the Insurer marketing the center of excellence program and Defendants.”)

An additional method or process that the FedArb professionals will put in place is the requirement that Defendants provide notice to the Plaintiffs of material changes to Sutter’s practices and governance that relate to the matters that are the subject of the settlement. The particulars of such notice and whether in advance of implementation of changes, and if so, the period of advance notice are matters that should be worked out with Plaintiffs and Sutter. Notice of the kind recommend herein avoids unnecessary surprise, and it allows the parties to deal with matters before they become unnecessarily fraught.

Establishing channels for resolution of disputes. Another method or process that we would put in place is the requirement that before a dispute about compliance with the settlement comes to a decision by the monitor or is referred to the Court, the parties should be required to meet and confer in an effort to resolve the matter. If the parties are unable after a meet and confer session to resolve the dispute, the PFJ does not expressly call for a determination by the monitor before presentation of evidence to the Court. See Section V.C.1. Accordingly, before resort to adjudication by the Court is sought, Judge Walker and Ms Nakamura would require the parties to turn first to the monitor who would attempt to mediate the dispute; if mediation does not produce a resolution then invoking the powers expressly enumerated in the PFJ, the monitor would consider the evidence, make a determination whether in the monitor’s view the reasons given are pretextual and submit to the Court a recommendation that the Court should so find. In this manner, the Court will not only have a full record upon which to decide the question presented to it but will be able to make this decision on the basis of the consistency or inconsistency of the monitor’s determination with the terms of settlement.

Another area for which we propose augmentation of the monitor’s methods and processes deals with the exceptions provided in the PFJ for clinical integration and patient access considerations for Group B Hospitals. See Section IV.C.3.b.and c. The Compliance Monitor provisions provide detailed specific



burden-shifting procedures for dealing with these issues. Again, the procedures conspicuously omit to impose a requirement that the parties first seek to resolve their disagreement by mediation with the monitor which for the reasons noted above would be a helpful additional step.

The monitorship proposed in this litigation arose out of allegations that Sutter included in provisions in its agreements with major California health insurers that have had the effect of restricting price competition between Sutter and other general acute care hospitals in northern California. The issues thus require first and foremost familiarity and experience with competition issues generally and with the market for general acute hospital services and ancillary products in northern California. The long and varied experience with competition issues under both federal and California law of the professionals FedArb proposes for this monitorship make these professionals ideally equipped to obtain the information on market conditions for the services in northern California at issue here and to analyze these issues fairly and efficiently.

D. PERSONNEL

See B. QUALIFICATIONS, supra.

E. COSTS

The \$500,000 budget proposed should be sufficient for the first six months of this assignment.

F. POTENTIAL CONFLICTS/OTHER REPRESENTATIONS

If chosen for this assignment, neither Judge Walker or Ms Nakamura will represent or undertake work for the parties to these proceedings.



CURRICULUM VITAE

VAUGHN R WALKER

EDUCATION

AB distinction & high honors, 1966
Woodrow Wilson Fellow, 1966-67
JD, 1970

University of Michigan, Ann Arbor
University of California, Berkeley
Stanford University

BAR MEMBERSHIPS

State and federal courts in California, United States Supreme Court, United States Court of Appeals for the Fifth, Ninth and Tenth Circuits

PROFESSIONAL ENGAGEMENTS

ADR/Law Office of Vaughn R Walker, 2011 – present
Bentham Capital, LLC, US Investment Committee, 2016 – present
United States District Chief Judge, Northern District of California, 2004-2010
United States District Judge, Northern District of California, 1990-2004, 2011
Partner, 1978-1990, Pillsbury Madison & Sutro, San Francisco
Associate, 1972-1977, Pillsbury Madison & Sutro, San Francisco
Law Clerk, Honorable Robert J Kelleher, United States District Judge, Central District of California, Los Angeles, 1971-72

TEACHING ENGAGEMENTS

Mass-Tort MDL Certificate & Advanced Certificate Program, Duke Law School, 2019, 2020
Lecturer, University of California, Hastings College of Law, 2014-15, 2018, 2020
Lecturer, University of California, Berkeley School of Law, Spring 2011, 2014
Lecturer, Stanford University Law School, 2011, 2012

INTERNATIONAL CONSULTING PRACTICE

Court of Appeal of Luxembourg, 4th Chamber – opinion re recovery of Madoff investments
Amsterdam Court of Appeal, Netherlands – opinion re United States securities laws
Supreme Court of New South Wales, Australia – opinion re California arbitration law
British Columbia Supreme Court, Canada – opinion re United States securities laws

SUBJECT MATTERS OF ILLUSTRATIVE ARBITRATIONS

Insurance coverage obligations under New York law
Enforceability of attorney contingent fee award under California law
Distributor termination and Robinson-Patman Act claims under Tennessee and federal law
Franchisee claims under New Jersey law
Defective installation and malfunction of financial management systems under New York law
Radio music licensing agreements and payments under federal and various state laws
Accounting malpractice under New York law



Pension advisory services and liability under Washington and federal law
Product liability claims under various state laws
National securities exchange regulation under federal law
Gambling licensing requirements under Nevada and federal law

SUBJECT MATTERS OF ILLUSTRATIVE MEDIATIONS

Antitrust direct and indirect purchaser claims in technology products under federal and state laws
Privacy protection claims under California and Federal law
Corporate acquisition dispute under United States and Canadian law
Cartwright Act claims under California law
Shareholder derivative claims under Delaware law
Attorney-client dispute under California law
Patent licensing disputes under federal law
Employment termination claims under California law
Commodities regulation claims under federal law
Grower and food processor dispute under California law
Automobile supplier claims under federal law
Environmental pollution claims under California law
Winery trademark dispute under federal and state law
Telecommunications equipment carrier and supplier dispute under federal law
Transpacific airline passenger competition claims under federal law
Copyright and trademark claims under federal law
Whistleblower claims under federal and various state laws
Subrogation insurance claims under California law

AWARDS AND HONORARY LECTURES

Judges and the Facts, 2014	University of Miami Law Review Symposium, Miami
Competition in the Americas, 2013	CFC Regional Competition Center, Mexico City
Justice Lester Roth Lecture, 2012	University of Southern California, Los Angeles
4th Annual Chief Justice Ronald M George Distinguished Lecture, 2012	Golden Gate University Law School, San Francisco
Maurer School of Law Lecture, 2011	Indiana University School of Law, Bloomington
David C Baum Memorial Lecture on Civil Liberties and Civil Rights, 2011	University of Illinois College of Law, Urbana
Commencement Address, 2011	Hastings College of Law, University of California
Justin L Quackenbush Lecture, 2011	Gonzaga University School of Law, Spokane
Distinguished Jurist Lecture, 2006	University of Pennsylvania Law School, Philadelphia
Outstanding Jurist Award, 1993	World Computer Law Congress

ADVISORY POSITIONS AND MEMBERSHIPS

Trustee, San Francisco War Memorial & Performing Arts Center Trust, 2016–2019
Giffords Law Center to Prevent Gun Violence, 2012 - present
Director, Saint Francis Foundation, 1990-1996, 1998-2012
Member, American Law Institute, 1991-present
Advisory Board, Arthur and Toni Rembe Rock Center for Corporate Governance, 2012-2016
Member, Civil Rules Advisory Committee of the Judicial Conference of the United States, 2006-2011



Judicial Representative, ABA Section on Antitrust Law, 1990-1995
California Law Revision Commission, 1986-1990
Lawyers' Club of San Francisco, President, 1986-1987

NOTABLE JUDICIAL DECISIONS

Civil Liberties and National Security

In re National Security Agency Telecommunications Records Litigation, MDL No 06-1791, 633 F Supp 2d 949 (N D

Cal 2009)(upholding Foreign Intelligence Surveillance Amendments Act) and including the following individual cases:

Al-Haramain Islamic Foundation v Bush, 700 F Supp 2d 1182 (N D Cal 2010)(Foreign Intelligence Surveillance Act allows private remedy); 595 F Supp 2d 1077 (N D Cal 2009)(classified information in litigation); 564 F Supp 2d 1109 (N D Cal 2008)(state secrets privilege); 2010 WL 5663950 (N D-Cal 2010)(attorney fees awarded)

Hepting v A T & T Corporation, 439 F Supp2d 974 (N D Cal 2006) (state secrets privilege)

Clayton v AT & T Communications of the Southwest, Inc, 630 F Supp 2d 1092 (N D Cal 2009) (Foreign Intelligence Surveillance Act upheld)

Perry v Schwarzenegger, 704 F Supp 2d 921 (N D Cal 2010) (provision prohibiting recognition of same sex marriages unconstitutional)

In re World War II Era Japanese Forced Labor Litigation, 114 F Supp 2d 939 (N D Cal 2000); 164 F Supp 2d (N D Cal 2001), affirmed sub nom Deutsch v Turner Corp, 317 F 3d 1005 (9th Cir 2003), reh denied, 324 F 3d 692; certiorari denied 540 US 820 (2003)(reparations barred by United States-Japan Peace Treaty)

California First Amendment Coalition v Calderon, 2000 WL 33173913 (N D Cal 2000) affirmed 299 F 3d 868 (9 Cir 2002) (media access to executions)

Technology

UniRAM Technology, Inc v Taiwan Semiconductor Mfg Co, 617 F Supp 2d 938 (N D Cal 2007)

3Com Corp v D-Link Systems, Inc, 473 F Supp 2d 1001 (N D Cal 2007)

Reiffin v Microsoft Corp, 281 F Supp 2d 1149 (N D Cal 2003) affirmed 410 Fed Appx 332 (Fed Cir 2011); 270 F Supp 2d 1132 (N D Cal 2003); 158 F Supp 2d 1016 (N D Cal 2001)

Apple Computer, Inc v Microsoft Corp, 821 F Supp 616 (N D Cal 1993); 799 F Supp 1006 (N D Cal 1992); affirmed except on attorney fees, 353 F 3d 1435 (9 Cir 1994), certiorari denied 513 US 1184 (1995)

Xerox Corp v Apple Computer, Inc, 734 F Supp 1542 (N D Cal 1990)

Competition and Antitrust

Theme Promotions, Inc v News America Marketing FSI, Inc, 731 F Supp 2d 937 (N D Cal 2010)

Pecover v Electronic Arts, Inc, 633 F Supp 2d 976



NOTABLE LITIGATION IN LAW PRACTICE

Legislature v Deukmejian, 34 Cal 3d 658 (1983)

State of California v County of Santa Clara, 142 Cal App 3d 608 (1983)

International Olympic Committee v San Francisco Arts & Athletics, 219 USPQ 983 (N D Cal 1982), affirmed 707 F 2d 517 (9 Cir 1983), 483 US 522 (1987)

Doe v City & County of San Francisco, 136 Cal App 3d (1982)

Olson Farms, Inc v Safeway Stores, Inc, 649 F 2d 1370 (10 Cir 1979)

Zylstra v Safeway Stores, Inc, 578 F 2d 102 (5 Cir 1978)

ARTICLES

"Merger Trials: Looking for the Third Dimension," 5 Competition Pol'y Int'l 35 (2009)

"The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings about 'Reasonable Percentage' Fees in Common Fund Cases," 18 Georgetown Journal of Legal Ethics 1453 (2005)

Comment, "Federalizing Organized Crime," 46 Hastings LJ 1127 (1995)

SELECTED SPEECHES AND EDUCATIONAL PRESENTATIONS

"Evidencia científica para Jueces," Consejo de la Judicatura y Comisión Federal de Competencia, Ciudad de Mexico, Mexico, 2017

"Unfinished Business," Annual Meeting and Installation Dinner, Anti-Defamation League, Central Pacific Region, San Francisco, 2013

"Who's Paying? New Developments in Funding," 5th Annual Conference on Globalization of Class Actions and Mass Litigation, Tilburg University Law School, The Hague, 2011

"Private Anti-Monopoly Litigation," University of International Business & Economics, Beijing, 2011

"Anti-Cartel Criminal Sanctions," 8th Annual Trade Practices Workshop, University of South Australia, Adelaide, 2010

"Rules of Evidence," Thailand-United States Judicial Conference, Bangkok, 2010

"Handling Classified Information," Federal Judicial Center Workshop, Washington, DC 2010

Keynote Speaker, ABA Antitrust Masters Course V, Williamsburg, VA, 2010

"Evidence in Competition Cases," EU Competition Law and Policy Workshop, Florence, Italy, 2009

"Recent Supreme Court Decisions," Practising Law Institute, 50th Annual Antitrust Law Institute, San Francisco, 2009

"Assessing Economic Evidence in Competition Cases," Federal Competition Commission (CFC) Conference, Mexico City, 2008

"Comparing the Trinidad Fair Trade Law," United Nations Conference on Trade & Development Judicial Conference, Port of Spain, Trinidad, 2007

"The Art & Science of Serving as a Special Master," ALI/ABA Conference, San Francisco, 2006

"Standards of Proof for Relevant Market Determinations," United Nations Conference on Trade & Development Judicial Conference, Bali, Indonesia, 2006

"Search for a Competition Metric," International Bar Association Annual Meeting, Prague, 2005



**"Roles of Courts in Competition Cases and Policy," United Nations Conference on Trade & Development
Competition Conference, Cairo, Egypt, 2005**

**"Techniques for Multi-district Transferee Judges," XXXIII Transferee Judges Conference, Palm Beach, Florida,
2002**

Lead-Off Speaker, XXIV Multi-district Transferee Judges' Conference, Palm Beach, FL, 1993

Keynote Speaker, 9th Annual Biotechnology Law Institute, San Francisco, 1993

Jackie Nakamura

An experienced federal court litigator and counselor, Jackie has represented clients ranging from early-stage to Fortune 500 companies on technologies including pharmaceuticals, biotech, medical devices, healthcare systems and e-commerce systems. She has handled all aspects of federal court patent litigation and strategic counseling. Jackie's international legal experience includes supervising and coordinating trial and appellate counsel in multiple jurisdictions, including the United Kingdom, Netherlands, Germany, Japan and Australia. As a law firm partner, she led efforts to recruit, train and supervise large teams of attorneys and legal professionals. Since 2019, Jackie has served as a court-appointed judge pro tempore for the Santa Clara Superior Court, conducting mandatory settlement conferences.

EXPERIENCE

Nakamura Law, Founder (2012 - current)

Client counseling, federal court and administrative law litigation and discovery involving complex commercial matters including antitrust, patent and securities law

Howrey LLP, East Palo Alto, CA, Partner (2009 – 2011)

Represented and advised clients on patent litigation and strategy involving medical devices, pharmaceuticals, drug discovery, business software and internet systems

- Litigated dispute on drug discovery technologies: *Alzheimer's Institute of America, Inc v Élan Pharmaceuticals et al*, ND Cal (patent infringement action on Alzheimer's drug discovery patent)
- *GlaxoSmithKline v Genentech*, ED Cal (declaratory judgment action on biotech patents)
- Advised medical device and pharmaceutical companies on strategic patent issues, e.g, claim strategy, validity analyses, patent term extensions, parallel litigation and reexamination strategies
- Counseled international pharmaceutical company on partnering relationships for highest revenue generating products
- Delivered seminars on patent litigation and administrative procedures, including depositions, *inter partes* and *ex parte* reexamination to law firms and corporate legal departments
- Assisted Professor Henry Hecht with deposition course at Boalt Hall, UC Berkeley

Day Casebeer Madrid & Batchelder LLP, Cupertino, CA, Partner (1999 – 2009)

Represented clients on domestic and international patent litigation and strategic IP counseling

- Strategic coordination of large international patent portfolio, including patent prosecution, opposition, and enforcement in multiple jurisdictions
- *Trilogy v SAP*, ED Texas (patent infringement action on configuration, pricing and e-commerce software patents filed by a non-practicing entity)
- *Conor Medsystems v Angiotech Pharmaceuticals*, United Kingdom House of Lords (landmark decision upholding the validity of client's medicated stent patent)
- *Amgen v TKT, Hoechst Marion Roussel (Aventis)*, D Mass, Federal Circuit (declaratory judgment patent case involving patents covering polynucleotide, host cell, and recombinant protein claims, resulting in two trial victories, affirmed on appeal)
- Initiated *inter partes* and *ex parte* reexamination of software patents
- Litigation and reexamination on patent involving erectile dysfunction treatment (patent invalidated after successful *ex parte* reexamination)
- Led due diligence on acquisition of patent portfolio covering ground-breaking stem cell technology, including multiple board presentations and meetings with executive team



EXPERIENCE (continued)

Day Casebeer Madrid & Batchelder LLP, Cupertino, CA, Partner (1999 – 2009) (continued)

- Partner responsible for developing and implementing firm-wide attorney training program on federal court litigation and patent law

Cooley Godward LLP, Palo Alto, CA, Associate Attorney (1995 – 1998)

Patent prosecution involving biotech, medical device, chemical, analytical, diagnostic, and mechanical inventions

- Patent application drafting, day-to-day prosecution, including European oppositions and supervising foreign associates
- Portfolio management for startup clients
- Due diligence on patent portfolios for IPOs and acquisitions
- Invalidity and non-infringement analyses and opinions
- Presentations to board members on strategic patent matters
- *Genentech v. Amgen*, N.D. Cal. (defended patent infringement action involving \$600M recombinant cancer drug, developed invalidity bases and claim construction positions, prepared expert for Markman hearing, drafted Markman hearing slides, second chair at Markman hearing)
- Co-coordinator of summer associate program

Morrison & Foerster LLP, Palo Alto and San Francisco, CA, Associate Attorney (1991-1995)

IP litigation and patent prosecution

- *Chiron v. Abbott*, N.D. Cal. (represented Chiron in patent infringement re HIV immunoassay)
- *Hitzeman v. Rutter* (represented UC Regents in interference on Hepatitis B Surface Antigen)

Law Clerk to the Honorable Vaughn R. Walker, United States District Court for the Northern District of California, San Francisco, CA (1990-1991)

Imperial Cancer Research Fund, Sir Walter Bodmer, London, Research Assistant (1984-1985)

- Conducted recombinant DNA research to locate the gene for familial polyposis coli

EDUCATION

Boalt Hall School of Law, University of California, Berkeley, JD 1990

- *Coursework in Intellectual Property*
- *Senior Notes and Comments Editor, Berkeley Technology Law Journal*

Stanford University, BS Biological Sciences with honors, 1984



ADMISSIONS

California State Bar (Bar No 148531, active member in good standing) Massachusetts State Bar (inactive status)
United States Courts of Appeals for the Federal Circuit, Ninth Circuit, Eleventh Circuit
United States District Courts for the Northern District of California, Southern District of California, District of Massachusetts
United States Patent and Trademark Office (Attorney Reg No 35,966)

PUBLICATION AND PRESENTATIONS

United States Patent Marking and Notice Statute, P Moore and J Nakamura, 22 AIPLA Q. J. 85 (1994)
Strategies for Concurrent Patent Litigation and Reexamination, Patent Law Institute, San Francisco and New York (2010)
US Patent Law Reform, DeClercq Brants and Partners, Sint-Martens-Latem, Belgium (2010)
US Patent Reexamination and Litigation, Novartis, Basel, Emeryville, Élan Pharmaceuticals, South San Francisco, and Geron, Menlo Park (2009)

PROFESSIONAL AND COMMUNITY INTERESTS

Santa Clara County Superior Court, Court-Appointed Temporary Judge (2019 - present) Member of Advisory Committee on Protective Orders to the United States District Court for the Northern District of California (2010)
Member of Asian Law Alliance Board and Advisory Board, San Jose (2007 - present)
Japanese American Citizens' League, San Jose Chapter, sponsor of Masuo Nakamura Memorial Scholarship for college-bound high school seniors (2000 - present)

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

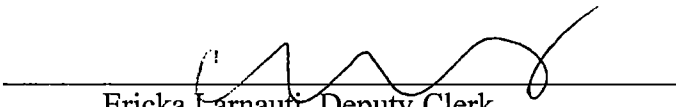
I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 10, 2021, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: March 10, 2021

T. Michael Yuen, Clerk

By: _____


Ericka Larnauti, Deputy Clerk