

EXHIBIT B

to Request for Proposal

MONITOR AGREEMENT

This MONITOR AGREEMENT (“Agreement”) entered into this ___th day of _____ 20___, by and between [NAME] of [FIRM/ORGANIZATION] (“Monitor”) and the People of the State of California, through its attorney, XAVIER BECERRA, Attorney General of the State of California (the “People”) and UFCW & Employers Benefit Trust (“UEBT”), and Sutter Health et al. (collectively “Defendants” or “Sutter”) provides as follows:

WHEREAS, UEBT filed an action on April 7, 2014 captioned *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, and on March 29, 2018, the People filed a separate action against Sutter Health captioned *People of the State of California, ex rel. Xavier Becerra v. Sutter Health*, Case No. CGC-18-565398;

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

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

WHEREAS, UEBT and the People (collectively, “Plaintiffs” and together with Defendants, the “Parties”), and Defendants have reached an agreement providing for the settlement and a release of the claims asserted in the Consolidated Action;

WHEREAS, the Final Judgment and Order Pursuant to Stipulation (“Final Judgment”), pending approval by the Court, results from the Parties’ settlement of the claims asserted in the Consolidated Action;

WHEREAS, the Final Judgment, among other things, permits a Monitor to investigate compliance by Defendants, take complaints from Plaintiff(s) and Insurers, and make recommendations concerning enforcement to the Court as defined in the Final Judgment, and contemplates the appointment of a Monitor to monitor Defendants’ compliance with its obligations under the Final Judgment;

WHEREAS, the Parties have selected [NAME] of [FIRM/ORGANIZATION] as Monitor subject to the Court’s approval and pursuant to the Final Judgment, and [NAME] has consented to such appointment;

WHEREAS, this Agreement, although executed by Plaintiffs and Defendants, is not effective for any purpose, except for those obligations under the confidentiality provisions herein, until it has been approved by the Court; and

WHEREAS, the parties to this Agreement intend to be legally bound by the terms of this Agreement, subject only to the Court’s approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Final Judgment.

ARTICLE I

1.1 Powers of the Monitor. Monitor shall have all of the powers and responsibilities conferred upon Monitor by the Final Judgment, including but not limited to the following: investigate compliance with the Final Judgment, take complaints from Plaintiff(s) and Insurers, compel disclosure of confidential documents related to the duties, powers or role of the Monitor subject to appropriate confidentiality protections, interview witnesses, inspect records, hire staff and experts, set up a process by which evidence shall be presented for Monitor to make an appropriate recommendation to the Court, and make recommendations concerning enforcement to the Court. Monitor understands that in carrying out his responsibilities, he shall act as an officer of the Court.

1.2 Access to Relevant Information. The Parties shall cooperate with any reasonable request of Monitor. Subject to any demonstrated legally recognized privilege and confidentiality protections, Monitor shall have reasonable access to books, documents, and records kept in the normal course of business, personnel, and any other such relevant information as Monitor may reasonably request, related to Defendants' compliance with Defendants' obligations under the Final Judgment.

1.3 Confidentiality. Monitor shall:

(a) maintain the confidentiality of all confidential information provided to Monitor by Defendants, Plaintiffs or Insurers, and shall use such information only for the purpose of discharging his obligations as Monitor and not for any other purpose, including, without limitation, any other business, legal, or personal purpose. Monitor may disclose confidential information only to Defendants, Plaintiffs and/or Insurers as necessary, and to (1) the Court, subject to any requests to seal information pursuant to California Rules of Court, Rule 2.550, et seq.; and (2) persons employed by or working with Monitor under this Agreement provided those persons execute a confidentiality agreement pursuant to the Final Judgment upon commencement of their work. In the event Monitor wishes to disclose Sutter's confidential information to an Insurer or other party, or vice versa, Monitor shall provide notice to the party or the Insurer whose confidential information is subject to disclosure, and that party or Insurer shall have a reasonable opportunity to object to Monitor and/or the Court;

(b) require any consultants, attorneys, accountants, experts, and any other representatives, and/or assistants retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement prior to commencement of their work, which Monitor will provide if requested, that requires such third parties to treat confidential information with the same standards of care and obligations of confidentiality to which Monitor must adhere under this Agreement; and,

(c) upon the termination of Monitor's duties under this Agreement, Monitor shall consult with the Parties regarding disposition of any written and electronic materials (including materials that the Parties provided to Monitor) in the possession or control of Monitor that relate to Monitor's duties, and Monitor shall dispose of such materials in accord with the Parties' agreement and, in the absence of such agreement, in accordance with the directions of the Court. Nothing herein shall abrogate Monitor's duty of confidentiality.

ARTICLE II

2.1 Retention and Payment of Consultants, Experts, and other Assistants. Monitor shall have the authority to retain third party consultants, attorneys, accountants, experts, representatives and/or assistants as are reasonably necessary to carry out Monitor's duties and responsibilities pursuant to the Judgment and Order. Monitor shall provide notice to the Parties of any proposal to retain third party consultants, attorneys, accountants, experts, representatives and/or assistants so that the Parties can identify and evaluate any conflicts, the reasonableness of proposed fees, or other concerns. Defendants shall pay the reasonable expenses for such third-party consultants, experts, and other assistants either directly as approved by the Court or out of the Monitor Fund as approved by the Court. The Parties may agree either beforehand or prior to Court approval as to the reasonableness of proposed expenditures by Monitor such that Court approval shall be unnecessary. Payments for expenses under this section shall be made within 15 days of Court approval of the expenses, or if such approval is not necessary, within 30 days of receipt of the invoices for such expenses.

2.2. Monitor Compensation. Defendants shall pay the reasonable fees and costs for Monitor (including costs for anyone at the Firm assisting Monitor) by establishing and maintaining a Monitor Fund in the initial amount of \$500,000 to be administered by the Office of the Attorney General as approved by the Court. Defendants shall be obligated to make continued payments of any reasonable fees and costs as approved by the Court once the Monitor Fund is exhausted unless the Parties renew the Monitor Fund. Monitor shall be entitled to receive reimbursement of the reasonable fees and costs incurred by Monitor as approved by the Court in the performance of Monitor's duties under this Agreement, and shall receive such reimbursement within 15 days of the Court's approval. The Court shall review and approve all claims for reimbursement, and the Parties shall be entitled to submit to the Court comments on the reasonableness of the fees and costs. Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations, and requirements pertaining to work permits, income, and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

Monitor's fees shall be as set forth in the separate letter of this date. Monitor shall provide invoices to the Parties on a monthly basis for fees and costs accrued in that month, if any, within thirty (30) days of the conclusion of the month, including details and an explanation of all matters for which Monitor submits an invoice. After twenty-one (21) days, Monitor may file these invoices with the Court for its approval. Monitor shall send the invoice to the Parties as follows:

If to the People, to:

ATTN: Renuka George
Senior Assistant Attorney General
Office of the California Attorney General
1300 I Street
Sacramento, CA 95814
Renuka.George@doj.ca.gov

ATTN: Cheryl Johnson
Deputy Attorney General
Office of the California Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Cheryl.Johnson@doj.ca.gov

ATTN: Emilio Varanini
Deputy Attorney General
Office of the California Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102
Emilio.Varanini@doj.ca.gov

ATTN: Malinda Lee
Deputy Attorney General
Office of the California Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Malinda.Lee@doj.ca.gov

If to UEBT, to:

ATTN: Richard Grossman
Pillsbury & Coleman
100 Green Street
San Francisco, CA 94111
rgrossman@pillsburycoleman.com

ATTN: Daniel Small
Cohen Milstein
1100 New York Ave. NW
Fifth Floor
Washington, DC 20005
dsmall@cohenmilstein.com

ATTN: Christopher Wheeler
Farella Bruan + Martel
235 Montgomery Street
17th Floor
San Francisco, CA 94104
cwheeler@fbm.com

ATTN: Aaron Panner
Kellogg, Hansen, Todd, Figel & Frederick
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
apanner@kellogghansen.com

ATTN: Sarah Grossman-Swenson
McCracken Stemerma & Holsberry
595 Market Street, Suite 800
San Francisco, CA 94105
sgs@msh.law

ATTN: Rick A. Silva
UFCW & Employers Trust, LLC
1000 Burnett Avenue, Suite 110
Concord, CA 94520
rsilva@UFCWtrust.com

If to Defendants, to:

ATTN: David Kiernan
Jones Day
555 California Street, 26th Fl.
San Francisco, CA 94104
dkiernan@jonesday.com

ATTN: Margaret Ward
Jones Day
555 California Street, 26th Fl.
San Francisco, CA 94104
maward@jonesday.com

ATTN: Pamela Marino
Sutter Health
2200 River Plaza Drive
Sacramento, CA 95833
marinop@sutterhealth.org

ATTN: Cheryl King
Sutter Health
2200 River Plaza Drive
Sacramento, CA 95833
KingC3@sutterhealth.org

2.3 Hold Harmless. Monitor, his Firm, third party consultants, attorneys, accountants, experts, representatives and/or assistants working for Monitor, will not have an attorney-client relationship with any of the Parties, and will not be rendering legal advice to any of the Parties. As an independent officer of the Court, the Monitor, and his services and determinations, are ultimately subject to the final authority of the Court. Monitor makes no guarantee that his services will protect any of the Parties from disciplinary or legal action by any Federal or State authority or protect any Party from any civil or criminal liability. The Parties agree not to initiate any civil action against Monitor, his Firm, third party consultants, attorneys, accountants, experts, representatives and/or assistants working for Monitor for any of the following:

- a. Any claim arising out of any legal action that may be initiated by or against any Party which results from any report submitted in good faith by Monitor per the terms of this Agreement and the Final Judgment;
- b. Any civil action arising out of any act or omission of Monitor, his Firm, third party consultants, attorneys, accountants, experts, representatives and/or assistants working for Monitor which may occur directly related to Monitor's performance of the services described in this Agreement and Final Judgment, unless such acts or omissions are the result of intentional misconduct, reckless disregard, gross negligence, or violation of this Agreement or any statutory or regulatory obligation.

2.4 Conflicts of Interest. In the event that, during the term of this Agreement, Monitor becomes aware he or his Firm has or may have a conflict of interest that may affect, or could have the appearance of affecting, performance by Monitor or persons employed by, or working with, Monitor, of any of his duties under this Agreement, Monitor shall promptly inform the Parties of any such conflict or potential conflict. The Parties shall agree to discuss the conflict or potential conflict in an attempt to resolve the conflict in good faith. Absent an agreement, the Parties and Monitor may seek court resolution of the conflict. It is understood that Monitor shall act as a third party neutral and will not enter into an attorney-client relationship with any of the Parties nor the complainants, including any of the Insurers operating in California, which may cause a matter to be brought before Monitor. In the event the Monitor or any of the lawyers working with him leave the Firm, the Parties agree to address at that time any conflicts that may be associated with his/their new firm.

ARTICLE III

3.1 Duration. This Agreement shall remain in effect for ten (10) years unless, prior to the expiration of the Final Judgment, Plaintiff(s) apply for, and the Court grants, a one-time, three-year extension of the term, or unless the Final Judgment is terminated earlier by order of the Court. Monitor shall be required to give written notice to the Parties with at least ninety (90)

days advance notice in the event of Monitor's resignation. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

3.2 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive laws of the State of California, including all matters of construction, validity and performance. The Final Judgment shall govern this Agreement and any provisions herein which conflict or are inconsistent with it may be declared null and void by the Court and any provision not in conflict shall survive and remain a part of this Agreement. In the event of any disputes relating to the interpretation of this Monitor Agreement, the Parties shall refer those disputes to the Court.

3.3 Assignment. This Agreement may not be assigned or otherwise transferred by Monitor without notice to the Parties and approval of the Court. Any such assignment or transfer shall be consistent with the terms of the Final Judgment.

3.4 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all parties, and approved by the Court. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Final Judgment.

3.5 Approval by the Court. This Agreement shall have no force or effect until approved by the Court, other than the Parties' obligations under the confidentiality provisions herein.

3.6 Entire Agreement. This Agreement, which was negotiated by all of the Parties hereto, incorporates by reference the Final Judgment and constitutes the entire agreement of the parties and supersedes any and all prior agreements and understandings between the parties, written or oral, with respect to the subject matter hereof.

3.7 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

MONITOR

[NAME]
[FIRM]

OFFICE OF THE ATTORNEY GENERAL
BY: [NAME]

Deputy Attorney General
Counsel for The People of the State of California

UEBT
BY: Richard Grossman

Lead Counsel for UEBT

SUTTER HEALTH
BY: Florence L. Di Benedetto

Senior Vice President &
General Counsel, Sutter Health