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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 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES (REDACTED)**
People of the State of California, ex. rel. Xavier Becerra, Plaintiff, vs. Sutter Health, Defendant.	Date: February 25, 2020 Time: 10:00 a.m. Dept.: 304 Hon. Anne-Christine Massullo Action Filed: April 7, 2014 **PUBLIC – REDACTS MATERIAL FROM CONDITIONALLY SEALED RECORD**

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NOTICE OF MOTION AND MOTION

To the Court, the parties, and counsel of record:

Please take notice that, on February 25, 2020, at 10:00 a.m., or as soon thereafter as the parties may be heard, in Department 304 of the Superior Court, County of San Francisco, 400 McAllister Street, San Francisco, California 94102, Plaintiffs UFCW & Employers Benefit Trust, et al. and the People of the State of California ("Plaintiffs") will and hereby do move for an order regarding the preliminary approval of the settlement of the antitrust class action against Sutter Health and certain affiliates. Specifically, Plaintiffs seek an order which (1) preliminarily approves the settlement as within the range of possible final approval; (2) directs that notice be provided to class members; (3) approves the claim form, attached as Appendix 2; and (4) schedules a hearing at which the Court will consider final approval of the settlement, the application for an award of attorneys' fees and expenses and a service award for UEBT, and entry of final judgment.

This motion is based on California Rule of Court 3.769 subsection (c), the accompanying Memorandum of Points and Authorities, the supporting Declarations of Richard Grossman, Russell Taylor, Matthew Ruan, and Cameron Azari, the pleadings and documents on file in this action, and any argument and evidence the Court may permit at the hearing.

Dated: December 19, 2019

CALIFORNIA ATTORNEY GENERAL

By: *_/s/ Emilio Varanini_*
Emilio Varanini

Attorneys for the People of the State of California

Dated: December 19, 2019

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Dated: December 19, 2019

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INTRODUCTION

Plaintiffs UFCW & Employers Benefit Trust ("UEBT"), on behalf of the certified class, and the People of the State of California seek preliminary approval of a settlement reached on the eve of trial that resolves all claims in the antitrust class action against Sutter Health and certain affiliates. After five and a half years of litigation, the settlement is well "within the 'ballpark' of reasonableness." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Sutter has agreed to a one-time cash payment of $575 million to resolve the Class's damages claim and the People's claim for disgorgement. In addition, Sutter has agreed to comprehensive injunctive relief that will enjoin the alleged anticompetitive conduct at the heart of this litigation: Sutter's alleged restrictions on the ability of health plans to steer patients away from higher cost providers. The injunctive relief also imposes affirmative obligations designed to prevent Sutter from leveraging the alleged market power of certain Sutter providers in its contract negotiations with insurers. A Court-appointed monitor will monitor and investigate Sutter's compliance with the injunctive relief for a period of ten years, with the possibility of a one-time renewal for another three years.

The settlement was the product of a year of negotiations among experienced antitrust counsel, including the Antitrust Section of the California Attorney General's Office, Class Counsel, and Sutter's internal and external counsel, with the assistance of one of the nation's preeminent mediators, the Honorable Layn Phillips. Plaintiffs' all-cash monetary recovery represents approximately 60% of the damages Plaintiffs would have sought at trial (including damages for the seven-year period preceding the statute of limitations). Plaintiffs' recovery rate falls within the upper range of recovery rates approved by other courts. In addition, the injunctive relief is designed to allow health plans to create narrow networks that do not include all or any Sutter providers, to place Sutter providers in less attractive tiers of tiered networks, and to provide additional information that will help health plan enrollees make more informed decisions about whether to use Sutter providers. Accordingly, the settlement will ensure that Sutter competes on price over the ten-year injunctive relief period. Finally, the settlement provides fair, reasonable and adequate relief to the Class, particularly in light of the costs, risks of loss at trial, and potential

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delay of an appeal.

Plaintiffs' plans of notice, allocation, and distribution are fair, reasonable, and adequate. Plaintiffs' proposed form and plan of notice adequately apprise class members of the terms of the settlement and the options available to class members. Plaintiffs' proposed plan of allocation fairly distributes the settlement fund. The proposed plan of distribution provides class members with a reasonable opportunity to submit claims.

Plaintiffs respectfully request that the Court enter the accompanying proposed order which (1) preliminarily approves the settlement as within the range of possible final approval; (2) directs that notice be provided to class members; (3) approves the claim form attached as Appendix 2; and (4) schedules a hearing at which the Court will consider final approval of the settlement, the application for an award of attorneys' fees and expenses and a service award for UEBT, and entry of final judgment.

BACKGROUND

A. Procedural History

UEBT filed this action on April 7, 2014. UEBT alleged that Sutter had imposed price secrecy, all-or-nothing, and anti-tiering provisions in its contracts with the health plans, and that its restrictive conduct violated the Cartwright Act and Unfair Competition Law. *See* Compl. ¶¶ 117, 137–170. UEBT sought, among other things, certification of a class of California self-funded payers, damages, and an order enjoining Sutter from engaging in the challenged conduct. *See* UEBT's Compl. Prayer.

The People filed their complaint four years later in March 2018, also seeking to enjoin Sutter's challenged conduct and to implement measures to restore competition, as well as seeking disgorgement of alleged overcharges. *See* People's Compl. Prayer. The Court consolidated the two actions in May 2018.

The discovery taken during the 30-month fact discovery period was extraordinary by any measure. Collectively, the parties propounded 22 sets of requests for production of documents totaling 460 requests, 18 sets of form interrogatories, 20 sets of special interrogatories totaling 297 interrogatories, and 12 sets of requests for admission totaling 186 requests. Taylor Decl. ¶ 1. The

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parties also served scores of subpoenas on nonparties, including all the major health plans and all of the other major hospital providers in Northern California, as well as numerous providers outside of Northern California. Additionally, Sutter served subpoenas on over 60 absent class members. *Id*. Collectively, the parties and nonparties produced 2.4 million documents totaling 16.9 million pages, including document productions from approximately 160 different nonparties. *Id*. In addition, the health plans produced 870 million lines of claims data analyzed by the parties' experts. *Id*. In total, the parties took over 200 depositions. *Id*.

Both sides presented fully developed expert opinions. Plaintiffs served reports of their four experts on August 31, 2018. About two months later, Sutter served responsive reports of its five experts. These reports alone totaled approximately 1,800 pages. Exhaustive expert depositions were taken in November and December 2018. Multiple supplemental expert reports followed the initial reports and expert depositions.

Plaintiffs were going to seek approximately $980 million in damages at trial. Plaintiffs' damages expert Dr. Jeffrey Leitzinger, estimated an average overcharge of 15.5% and $788 million in damages, including $257 million in pre-statute of limitations for the period between 2003 and April 2010. *See* Oct. 1, 2019 Leitzinger Fifth Supplemental Expert Decl., ¶ 2; May 24, 2019 Third Supplemental Report at Ex. 3. In addition, the Court did not preclude Plaintiffs from asking the jury to infer damages of approximately $191 million by applying Dr. Leitzinger's overcharge percentage to recent payments by class members. *See* July 9, 2019 Order at 17; Leitzinger Fifth Supplemental Expert Decl.

The legal issues were thoroughly briefed. Sutter filed a motion to compel arbitration, demurred to UEBT's complaint, opposed class certification, moved to decertify the class, and moved for judgment on the pleadings. The parties filed, and the Court decided, four motions for summary judgment or summary adjudication, nine *Sargon* motions, and twenty motions in limine. A variety of procedural and substantive issues were briefed, including issues regarding antitrust standards and jury instructions, affirmative defenses, the statute of limitations (legal standards and procedural issues), class definition, bifurcation, and trial phasing.

The parties' trial preparations were complete by October 2019. The jury trial was

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scheduled for at least three months. The parties exchanged lists identifying 340 potential trial witnesses and 13,000 trial exhibits. A jury was selected. In addition, the Court was going to preside over a bench trial to decide whether Plaintiffs could rely on the equitable doctrine of fraudulent concealment to toll the statute of limitations. The length of trial was undetermined in part because it depended on whether Plaintiffs would be required to call class members to support fraudulent concealment. The parties were keenly aware of the strengths and weaknesses of the case.

B. Settlement Negotiations

The settlement was heavily negotiated between late 2018 and October 2019 by a committee for Plaintiffs consisting of representatives of each of the class counsel firms, joined by counsel from the Antitrust Section of the California Attorney General's Office. Grossman Decl. ¶¶ 2–3, 5–6. The members of Plaintiffs' settlement team have extensive experience litigating, trying, and settling antitrust, unfair competition, healthcare, and class action cases. *Id.* ¶¶ 2–3 & Ex. 1. From the outset, representatives from the Antitrust Section of the California Attorney General's Office were deeply involved in all negotiations. *Id.* ¶ 3. The parties were assisted by former U.S. Attorney and retired U.S. District Judge, the Honorable Layn Phillips, one of the nation's preeminent mediators. *Id.* ¶ 5. Between January 2019 and October 2019, the parties held numerous mediation sessions, meetings and negotiations. *Id.* ¶ 6. In total, the parties conducted ten joint mediation sessions with Judge Phillips and his staff. *Id.* ¶ 6. In addition to the joint sessions, Judge Phillips separately held numerous private meetings and telephone conferences with the parties. *Id.* ¶ 6. There were also dozens of meetings and teleconferences between the parties in 2019 regarding settlement. *Id.* ¶ 6. Throughout the mediation and negotiation process, Plaintiffs consulted with their experts, who include the nation's leading healthcare economists. *Id.* ¶ 8. The parties did not agree upon all the terms of the settlement until October 15, 2019, on the eve of opening statements. *Id.* ¶¶ 10-11.

C. The Settlement Agreement and Proposed Final Judgment

The settlement provides for a significant monetary payment and injunctive relief that will address Sutter's alleged anticompetitive contracting practices. The Settlement Agreement is

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attached as Appendix 1 to this brief; the Proposed Final Judgment ("PFJ") is Exhibit B to the Settlement Agreement.

Monetary Relief. Sutter has agreed to make a one-time cash payment of $575 million to satisfy the class's alleged damages and as compensation for the release of the California Attorney General's disgorgement claim. That payment, which will be made within ten days after final approval of the settlement by this Court, will also cover any award for attorneys' fees and expenses, any service award to UEBT, and all costs associated with administration of the settlement. Plaintiffs will be solely responsible for administration of claims; as described below, Plaintiffs propose to allocate the net settlement fund, after costs and fees are deducted, to class members who establish their membership in the class. Any unclaimed funds will be distributed to the other class members according to the same allocation formula; no funds will revert to Sutter.

Injunctive Relief. Plaintiffs alleged that Sutter leveraged the market power of certain of its "must have" providers – including those in the Inner East Bay, San Francisco, and three rural markets, as well as the Palo Alto Medical Foundation – to impose restrictions on health plans that insulated all Sutter providers from competition on price, thereby allowing Sutter to charge inflated prices for its services. The settlement includes a PFJ that contains detailed injunctive relief to address Sutter's conduct that Plaintiffs alleged to be anticompetitive.

As noted above, Plaintiffs contended that Sutter restrained competition by using its market power to restrict the ability of health plans to offer narrow networks that exclude certain Sutter providers and tiered networks that exclude certain Sutter providers from the most favored tier and to limit health plans' ability to disclose Sutter cost and quality information to self-funded payers and health-plan members. More specifically, Plaintiffs alleged that Sutter imposed the following restrictions: (1) contract provisions that required health plans to include all Sutter providers in networks by conditioning the participation of a "must have" provider on the participation of other providers that the health plan would otherwise exclude; (2) non-participating provider ("non-par") rates that applied when members used out-of-network Sutter providers (including for emergency services), which restricted the ability of health plans to exclude Sutter providers from plan networks; (3) anti-tiering provisions that restricted health plans' ability to place Sutter providers in

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a tier other than the most favored benefit tier; and (4) price- and quality- confidentiality provisions that restricted health plans' ability to provide effective comparisons. Plaintiffs were prepared to present testimony at trial that competition to be included in a network, or in a most favored tier, and competition fostered by effective information tools would incentivize healthcare providers to compete on price and quality.

For its part, Sutter was prepared to offer at trial testimony to support its contention that it does not have market power and to set forth alleged benefits for the challenged provisions. Although Sutter denies Plaintiffs' allegations and denies in particular that any of its conduct violates California's antitrust law, the Cartwright Act, the parties have agreed to injunctive relief that addresses Plaintiffs' concerns.

First, the PFJ includes injunctive relief designed to prevent Sutter from unreasonably restricting the ability of health plans to create narrow networks, steer, tier, or otherwise incentivize patients to choose non-Sutter providers. For example, the PFJ provides that, unless otherwise permitted by the PFJ, Sutter "may not veto, interfere, or otherwise engage in any action, direct or indirect, to prevent the introduction of new narrow, tiered, or steering Commercial Products or value-based designs of any kind for Commercial Products (i.e., benefit designs that attempt to reward providers for affordability and/or quality), including reference pricing." PFJ, § IV.A.2.

Second, the PFJ includes injunctive relief designed to prevent Sutter from using "must-have" providers to require health plans to include unwanted Sutter providers. The PFJ requires Sutter to "make the [three] Rural Hospitals and [Alta Bates Summit Medical Center] available to participate in any network for any Commercial Product to Insurers and/or Self-Funded Payers, other than [in certain situations], subject to … negotiation of mutually agreeable price terms… and (ii) the inclusion in the Commercial Product of all services available at each participating [provider]." And Sutter cannot condition participation or pricing of those hospitals on the inclusion of other providers in a network (with limited exceptions). PFJ, § IV.B.1. With respect to the other two alleged "must have" providers, Sutter hospitals in San Francisco (CPMC) and the Palo Alto Medical Foundation (PAMF), Sutter may not condition CPMC's or PAMF's participation on the participation of other providers except in limited circumstances set forth in the

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PFJ. CPMC and PAMF can decline to participate in a health-plan network provided they simultaneously provide the reasons in writing; if Plaintiffs believe the reasons are pretextual, they can challenge Sutter's refusal before the compliance monitor and, ultimately, the Court. PFJ, §§ IV.B.2, IV.C.2. Moreover, Sutter "shall not condition the participation of [the Rural Hospitals, ABSMC, CPMC or PAMF] on the tier in which the Insurer places them." PFJ § IV.C.1.c. As for Sutter's other hospitals (for example, Sutter hospitals located in the Central Valley), the PFJ still limits Sutter's ability to condition those hospitals' participation in a particular network on the participation of other Sutter providers unless the providers are "clinically integrated" (as that term is defined in the PFJ), or unless the participation of additional providers is necessary to ensure patient access to care or to protect patients from undue financial risk. PFJ, §§ IV.C.1.a, IV.C.3.

Third, the PFJ places limits on Sutter's out-of-network rates, which Plaintiffs contended restrict health plans' ability to exclude Sutter hospitals. PFJ, § IV.D.3. Under many of Sutter's contracts, the non-par rate is set at 95% of billed charges, a rate that Plaintiffs contended was much higher than health plans typically pay for out-of-network care. Plaintiffs further alleged that Sutter's non-par rates eroded or eliminated savings from excluding certain higher priced Sutter providers. The PFJ limits out-of-network rates for out-of-network trauma care, for out-of-network emergency-room care, and for charges for Sutter physicians providing ER non-trauma care. When patients are admitted post-stabilization to hospitals from the emergency room, facilities and physician charges are also capped. *Id*. The PFJ limits the out-of-network rates for the rural hospitals; out-of-network rates for all other more easily steered in-patient and out-patient hospital care (other than for the rural hospitals) are also limited. *Id.* These caps are reinforced by limits on allowed annual increases in Sutter's billed charges for five years. PFJ § V.D.4.

The agreed upon out-of-network rate caps are designed to ensure that health plans can offer commercial products that place certain Sutter providers out of network and/or incentivize patients to select lower-cost providers without having to pay what Plaintiffs alleged were excessive out-of-network rates for services that Plaintiffs contended were not "steerable." At the same time, the out-of-network caps for "all other" in-patient and outpatient hospital services preserve Sutter's ability to offer discounts below the cap to persuade health plans to include Sutter providers in their

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networks.

Fourth, with respect to price and quality transparency, the PFJ provides that Sutter "shall not require Insurers and/or Self-Funded Payers to comply with additional process for disclosure of data related to Health & Safety Code Section 1367.49 & Insurance Code Section 10133.64 beyond what is expressly required by California law." PFJ § IV.F.5. Moreover, it makes clear that a health plan "may provide Self-Funded Payers [] access to the pricing terms in Defendants' agreements" and "provide a Self-Funded Payer … [its] own claims paid data from that Insurer…." PFJ §§ IV.F.1, F.2. The PFJ also provides that "Insurers and/or Self-Funded Payers may provide enrolled members with access to pricing, quality, and/or cost information concerning Sutter Providers for purposes of comparing such Providers' prices and/or quality for particular healthcare services and products to the prices and/or quality of the same healthcare services or products available from other providers." PFJ § IV.F.3.

Fifth, the PFJ preserves Sutter's ability to engage in discounting and generally allows Sutter to offer lower prices for bundles of providers as long as a standalone price is also offered separately for those providers subject to certain exceptions. At the same time, it also provides procedural safeguards to ensure that Sutter's use of bundled pricing does not prevent health plans from excluding certain Sutter providers from their networks. PFJ, § IV.D.2

Sixth, the PFJ includes limitations on Sutter's conduct with respect to health plans' ability to offer Centers of Excellence. Those limitations preserve health plans' ability to exclude Sutter providers from Centers of Excellence programs and to remove Sutter providers that fail to meet pre-disclosed criteria. PFJ § IV.A.3.

Seventh, the PFJ provides that Sutter "shall not enforce provisions in prior, existing, or future contracts with Insurers that violate or are inconsistent with the terms of this Final Judgment or promulgate in future contracts terms that violate or are inconsistent with the terms of this Final Judgment." PFJ § IV.A.1.a.

Finally, the PFJ provides for a Court-appointed monitor, who will ensure compliance with

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the PFJ. PFJ, § V. Jesse Caplan of Affiliated Monitors, Inc. will serve as monitor.[1] Mr. Caplan will have the authority to monitor and investigate Sutter's compliance with the PFJ, to take complaints from health plans and Plaintiffs, to hire necessary staff and experts, and to make recommendations to the Court about enforcing the order. Sutter will pay for the reasonable costs of the monitor; the costs of the monitor will not come out of the settlement fund. The Court will retain jurisdiction under Rule of Court 3.769(h) and Code of Civil Procedure Section 664.6 to enforce the PFJ and to review the recommendations of the monitor when challenged.

Effectiveness of the Injunctive Relief. The injunctive relief remedies Sutter's alleged restraints on competition for healthcare services in Northern California. Economic analyses demonstrate that, by being free to employ steering mechanisms (e.g., narrow and tiered networks and reference pricing), health plans will be able to promote competition in healthcare services, leading to greater choice and lower costs for patients. *See generally* Ex. 1 ("Expert Report of Meredith R. Rosenthal, PhD") to April 5, 2019 Weiner Decl. ISO Plaintiffs' Opposition to Defendants Motion to Exclude the Expert Testimony of Dr. Meredith Rosenthal at ¶¶ 11–46, 63–73; Ex. 50 ("Expert Report of Gregory. S. Vistnes, Ph.D.") to March 8, 2019 Spiers Decl. ISO Sutter's Motion for Summary Judgment at pp. 7–15. By imposing restrictions that prevent Sutter from using its alleged market power from must-have providers in a manner that could harm competition, the PFJ ensures that health plans are able to employ these mechanisms.

D. Proposed Plans of Notice, Allocation, and Distribution

Plaintiffs' proposed plans for notifying class members of the settlement and allocating and distributing the settlement fund are presented below.

Proposed Plan of Notice. Plaintiffs propose to provide notice to class members of the settlement via direct mail in the form attached to the Settlement Agreement (Appendix 1) as Exhibit A. This mailed notice, which is expected to reach over 90 percent of the class, will be supplemented with publication notice for even higher class member reach. Azari Decl. ¶ 17. The same publication notice that was provided in the class certification phase of this case will be provided again through short ads placed on LinkedIn and hrexecutive.com with a link to the

[1] Mr. Caplan's biography is attached as Exhibit 1 to the Taylor Declaration.

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Settlement website. *Id.* ¶ 19.

The form of notice for mailing concisely describes the litigation and the monetary compensation and injunctive relief provided under the settlement and includes a chart that explains class members' options and the deadlines to establish their membership in the class, supplement the data reflecting their payments to Sutter or to object to the settlement. The notice then provides more detailed information about the litigation, class definition, and settlement administration; advises class members that they may appear at the fairness hearing through their own attorney; includes contact information for the settlement administrator (Epiq[2]) and for Class Counsel; identifies a settlement website where class members can obtain important case documents, including the settlement agreement; advises class members that, in their application for attorneys' fees and costs, the Attorney General's Office and Class Counsel will seek reimbursement of attorneys' fees up to 33% of the monetary component of the settlement and will seek reimbursement of litigation costs up to $11.2 million for the Attorney General's Office and $13.8 million for Class Counsel, settlement administration costs (mostly future costs), and a service award for the Court-appointed class representative (UEBT).

Finally, the notice advises class members that the claims process has two stages. In the first, class members must complete a claim form (attached to this brief as Appendix 2), which will be mailed with the notice. This initial form requires class members to verify, under penalty of perjury, their membership in the class. As the notice explains, the second stage will occur after the settlement becomes effective, and will determine the class members' relevant payments to Sutter, which will be the basis of calculating their pro rata share of the Settlement money.

Notice will be provided to class members via First Class Mail. Epiq will use the addresses listed in the health plans' paid claims data, as was done in connection with class certification, and will use the National Address Database to attempt to locate addresses for the intended recipient of any mailed notices that are returned as undeliverable. Epiq will make reasonable efforts to contact

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[2] Epiq is one of the nation's leading class settlement administrators. Aziri Decl. ¶¶ 7-8. Epiq acquired Garden City Group ("GCG"), which had served as administrator in connection with notice of class certification. *Id.* ¶ 6. There are a number of efficiencies in using Epic/GCG as both notice and claims administrator. *See* Ruan Decl. ¶ 21.

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class members so that they may verify their membership in the class and contact information.

Proposed Plan of Allocation. Plaintiffs' proposed plan would allocate the settlement fund (net of Court-approved attorneys' fees, litigation and settlement administration expenses, and a service award to the named Plaintiff) pro rata based on relevant payments to Sutter, as adjusted for certain factors described below. The plan provides for the use of claims data produced in this litigation by the health plans. It weighs class member claims as follows:

(1) Claims are weighed based on the date of the services using the overcharge percentages calculated by Dr. Leitzinger in his regression measuring overcharges in two-year increments to reflect that alleged overcharge percentages would change over time (Aug. 31, 2018 Leitzinger Merits Report, Ex. 8); and

(2) Claims are weighed based on the alleged overcharges at the particular Sutter providers involved, using the overcharge percentages Dr. Leitzinger calculated for groups of Sutter hospitals (*id*., Ex. 10).

Proposed Plan of Distribution. During the second stage, a notice will be sent to each class member that established its class membership through the first claim form. The notice will provide claiming class members their total relevant payments to Sutter as calculated by Class Counsel's consultant, Econ One, based on the claims data produced in this litigation. Claiming class members will be given the option to accept the calculation and provide payment instructions or dispute the calculation and provide data in a specified form under penalty of perjury to support an alternative calculation of payments to Sutter. Once each claiming class member's total relevant payments have been determined, Class Counsel will apply the Court-approved plan of allocation to calculate each claiming class member's share of the net settlement fund. Those shares will be presented to the Court for approval before checks are mailed to claiming class members.

Proposed Schedule. In order to effectuate timely notice and distribution of the settlement, Plaintiffs propose the following schedule:

Event	**Deadline**
Settlement website	Updated within 5 days of preliminary approval

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Mailing of class notice and first claim form	Postmarked within 20 days of preliminary approval
Motions for fees and expenses	Filed within 20 days of preliminary approval
Deadline for first claim form	Must be postmarked or submitted electronically within 60 days of the deadline for mailing class notice
Objections to the settlement	Must be filed within 60 days of the deadline for mailing class notice
Motion for final approval	Filed within 90 days of the deadline for mailing class notice
Class member notice of intent to appear at fairness hearing	Filed 10 days or more in advance of fairness hearing
Hearing on motion for final approval	On a date to be set by the Court, but after the filing of the motion for final approval
Mailing of relevant payments notice to claiming class members	Postmarked within 60 days of Effective Date of settlement
Deadline for class members to dispute the calculation of their relevant payments to Sutter that was described in the relevant payments notice	Must be postmarked or submitted electronically within 120 days of Effective Date of settlement

LEGAL STANDARD

"The settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class." *Cellphone Term. Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). Rule of Court 3.769 establishes a two-step process for obtaining court approval. First, "the court preliminarily approves the settlement and the class members are notified as directed by the court." 180 Cal. App. 4th at 1118. Second, "the court conducts a final approval hearing to inquire into the fairness of the proposed settlement." *Id.*

At the first step, the court reviews the proposed settlement and makes only a preliminary determination regarding the reasonableness of its terms for purposes of proceeding with notice to the class and scheduling a fairness hearing. *Manual for Complex Litigation* (Fourth) § 21.632 (2019). Preliminary approval is "nothing more than [a determination] that 'there is, in effect, probable cause to submit the proposal to members of the class and to hold a full-scale hearing on its fairness.'" *California v. Levi Strauss & Co.*, 41 Cal. 3d 460, 485 (1986) (quoting Manual for

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Complex Litigation (Second) § 1.46 (1982) (quotation marks omitted)). Thus, "[a]t the preliminary approval stage, the settlement need only be potentially fair." *Uschold v. NSMG Shared Servs., LLC*, 2019 WL 4963261, at *7 (N.D. Cal. Oct. 8, 2019) (internal citation and quotation marks omitted)).[3]

Preliminary approval is warranted where "the proposed settlement appears to be the product of serious, informed, noncollusive negotiations" and "falls within the range of possible approval." *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal citation and quotation marks omitted); *accord Moreno v. Hathaway Dinwiddie Constr. Co.*, No. 554443, slip op. at 1 (Oct. 4, 2019 San Francisco Super. Ct.) (Massullo, J.) ("The Settlement preliminarily appears to be within the range of possible final approval, such that notice should be provided to the Settlement Class.").[4]

Courts' assessments of proposed settlements are informed by two general principles. First, "voluntary conciliation and settlement are the preferred means of dispute resolution." *7-Eleven Owners for Fair Franch. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (internal citation and quotation marks omitted). "This is especially true in complex class action litigation." *Id.* Second "[d]ue regard . . . should be given to what is otherwise a private consensual agreement between the parties." *Id.* (internal citation and quotation marks omitted); *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1302 (S.D. Cal. 2017), *aff'd*, 881 F.3d 1111 (9th Cir. 2018) ("Where both Parties are represented by experienced counsel, the recommendation of experienced counsel to adopt the terms of the proposed settlement is entitled to great deal of weight." (internal citation and quotation marks omitted)).

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[3] Because the Rules of Court do not set forth the standard governing preliminary approval, the Court may look to federal case law for guidance regarding the appropriate standard. *Cellphone Fee Term. Cases*, 186 Cal. App. 4th 1380, 1392 n.18 (2010).

[4] Ultimately, final approval involves a determination that the settlement is "fair and reasonable in relation to the range of possible results further litigation might have produced, including . . . zero or minimal recovery of damages by class members." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 55 (2008). Final approval is appropriate where "the class settlement is within the 'ballpark' of reasonableness." *Kullar*, 168 Cal. App. 4th at 133.

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ARGUMENT

I. THE SETTLEMENT IS THE PRODUCT OF SERIOUS, INFORMED, NONCOLLUSIVE NEGOTIATIONS.

Preliminary approval is appropriate where "the proposed settlement appears to be the product of serious, informed, noncollusive negotiations." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. Here, the settlement was negotiated by experienced antitrust counsel, including the Antitrust Section of the Attorney General's Office, Class Counsel, and Sutter's internal and external counsel, after a year of highly contentious negotiations and mediation overseen by one of the nation's preeminent mediators. There can be no doubt that the settlement was the product of serious, informed, noncollusive negotiations.

A Year of Contentious Negotiations by Experienced Antitrust Counsel. In contentious arm's-length negotiations spanning a year and dozens of in-person and telephonic mediation and negotiation sessions, Plaintiffs' settlement committee – comprised of experienced antitrust attorneys – negotiated the best possible settlement. Such arm's-length negotiations by experienced counsel ensure adequate representation of the class. *Kullar*, 168 Cal. App. 4th at 129 ("The Court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct"; "an agreement under these circumstances presumably will be fair to all concerned"). Indeed, courts have found settlements fair and reasonable that were not nearly as heavily negotiated. *See, e.g., Smith v. R.F. Fisher Elec. Co.*, 2018 WL 2568271, at *5 (D. Kan. June 4, 2018) ("proposed settlement agreement is a product of 'deliberate consideration of the action's merits and uncertainties'" (citation omitted) where "counsel reports that they have exchanged several offers, damage computations, and evaluations of the merits").

Participation of the Attorney General. The Attorney General's Office was heavily involved in the year of settlement negotiations. The participation of the Attorney General and his office weighs heavily in favor of preliminary approval. *Wellman v. Dickinson*, 497 F. Supp. 824, 830 (S.D.N.Y.1980) ("[T]he participation in the negotiations resulting in the proposals by a

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government agency committed to the protection of the public interest and its endorsement of the agreement are additional factors which weigh heavily on the side of approval of the settlement."); *In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 351 (E.D.N.Y. 2000) ("the participation of the State Attorneys General furnishes extra assurance that consumers' interests are protected."); *see also California v. eBay, Inc.*, 2014 WL 4273888, at *6 (N.D. Cal. Aug. 29, 2014) (in granting preliminary approval, "the fact that the [California] Attorney General is involved is given great weight"); *In re Lorazepam Antitrust Litig.*, 205 F.R.D. 369, 380 (D.D.C. 2002) ("Court may place greater weight on [opinion of class counsel] in addressing a settlement negotiated by government attorneys committed to protecting the public interest").

Numerous Mediation Sessions Conducted by One of the Nation's Preeminent Antitrust Mediators. Over the course of over nine months, the parties were assisted by the Honorable Layn Phillips – one of the nation's preeminent mediators. The supervision and participation of Judge Phillips confirms the absence of any collusive negotiations. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) ("presence of a neutral mediator . . . weigh[s] in favor of a finding of non-collusiveness"); *In re Toys R Us Antitrust Litig.*, 191 F.R.D. at 352 ("Most significantly, the settlements were reached only after arduous settlement discussions conducted in a good faith, non-collusive manner, over a lengthy period of time, and with the assistance of a highly experienced neutral mediator with a background in antitrust law, retired federal judge Charles B. Renfrew.")

Settlement on the Eve of Opening Statements Following Five and a Half Years of Litigation. The settlement occurred after five and a half years of litigation that included fact and expert discovery, class certification, extensive briefing of numerous legal issues, the exchange of witness and exhibit lists, jury selection, and exchange of opening slides. The fact that the case settled at such an advanced stage of the litigation, when the parties had a clear view of the merits and potential risks, weighs in favor of approval. *Trump Univ.*, 246 F. Supp. 3d at 1302 ("Where a case is near trial, and the parties have conducted extensive discovery and thoroughly litigated the issues, the extent of discovery and the stage of the proceedings weigh in favor of the proposed settlement" (internal citation and quotation marks omitted); *Chun-Hoon v. McKee Foods Corp.*,

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716 F. Supp. 2d 848, 851–52 (N.D. Cal. 2010) ("The parties have engaged in several years of litigation, including depositions, substantial research, an interlocutory appeal and several motions. By the time the settlement was reached, therefore, the litigation had proceeded to a point at which both plaintiffs and defendants ha[d] a clear view of the strengths and weaknesses of their cases." (internal citation and quotation marks omitted)).

Negotiation of the settlement by experienced antitrust counsel, including the Antitrust Section of the Attorney General's Office, following five and a half years of litigation and a year of negotiations and mediation overseen by one of the nation's preeminent antitrust mediator, weighs heavily in favor of preliminary approval.

II. THE SETTLEMENT IS INDISPUTABLY WITHIN THE RANGE OF POSSIBLE APPROVAL.

A. Plaintiffs' All-Cash Monetary Recovery Is Substantial.

"[T]he most important variable in assessing a class settlement is the amount of relief obtained for the class." *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1001 (N.D. Cal. 2015). Assuming Plaintiffs would have prevailed on their claim for fraudulent concealment and recovered damages dating back to 2003, Plaintiffs' all-cash monetary recovery represents 60% of damages Plaintiffs intended to ask the jury to award. The monetary recovery is in the upper range of the recovery rates in settlements approved by courts.[5] *See, e.g.*, *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 2019 WL 4746744, at *7 (E.D. Mich. Sept. 30, 2019) ("Courts have approved settlements in class action antitrust settlements anywhere between 5.35%

[5] In assessing the reasonableness of settlements, including antitrust settlements, courts compare the recovery to actual damages, not treble damages. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009) ("[c]ourts do not traditionally factor treble damages into the calculus for determining a reasonable settlement value."); *Lorazepam Antitrust Litig.*, 205 F.R.D. at 376 n.12 ("[T]he standard for evaluating settlement involves a comparison of the settlement amount with the estimated single damages."); *Cty. of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1324 (2d Cir. 1990) (same); *Carnegie v. Household Int'l, Inc.*, 445 F. Supp. 2d 1032, 1035 (N.D. Ill. 2006) ("[I]n determining a settlement value, the potential for treble damages should not be taken into account."). Courts have reasoned that requiring that a settlement be compared against treble damages "distort[s] the entire theoretical foundation which underlies the settlement process" because it effectively "force[s] defendants automatically to concede guilt at the outset of negotiations" and "upset[s] the delicate settlement balance by giving too great an advantage to the claimants." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 459 (2d Cir. 1974).

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to 28% of estimated damages in [ ] complex antitrust class actions."); *In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 3247396, at *6 (S.D.N.Y. Nov. 8, 2006) (approving settlement for "roughly 10-15%" of the allegedly illegal fees collected from the class); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement in which class received payments in excess of 6% of potential damages); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving settlement in which amount of settlement amounted to 25% to 35% of potential damages). Plaintiffs' monetary recovery is significant by any standard. *See In Re: N.C.A.A. Athletic Grant-In-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *7 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (settlement for "66% of single damages was a result almost never achieved in large, complex antitrust cases."); *Trump Univ.*, 246 F. Supp. 3d at 1302 (settlement that recovers 80% of damages for the class is "extraordinary"); *In re: CRT Antitrust Litig.*, 2016 WL 3648478, at *7 (N.D. Cal. July 7, 2016) (settlement for 20% of single damages is "without question a good recovery and firmly in line with the recoveries in other case.").

Moreover, the terms of the monetary recovery are highly favorable to the class. First, the monetary portion of the settlement is in cash; it does not involve coupons or in-kind recovery. *Rodriguez*, 563 F. 3d at 965 ("The [monetary recovery] is in cash, not in kind, which is a good indicator of a beneficial settlement."). Second, the settlement does not involve the return of any undistributed funds to Sutter. *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 172 (3rd Cir. 2013) (*cy pres* distribution of residual funds is preferable to reversion of residual funds to defendants because reversion "risks undermining the deterrent effect of class actions by rewarding defendants for the failure of class members to collect their share of the settlement.").

The $575 million all-cash monetary recovery alone warrants preliminary approval of the settlement. However, the settlement also provides comprehensive injunctive relief that enjoins the alleged anticompetitive conduct at the heart of this litigation.

B. The Injunctive Relief Also Warrants Preliminary Approval.

In assessing a settlement, "courts rightly consider the value of injunctive *and* monetary relief in assessing whether a class action settlement provides sufficient relief to the class."

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Montoya v. PNC Bank, N.A., 2016 WL 1529902, at *14 (S.D. Fla. Apr. 13, 2016) (collecting cases); *Sykes v. Harris*, 2016 WL 3030156, at *1 (S.D.N.Y. 2016) ("The monetary relief is significant, but the benefits that will result from [the injunctive relief] are just as important"). Both the California Supreme Court and the Legislature have affirmed the special significance of injunctive relief to the Attorney General. *See, e.g., People v. Pac. Land Research Co.*, 20 Cal. 3d 10, 17 (1977) ("An action filed by the People seeking injunctive relief and civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. . . . The request for restitution on behalf of vendees in such an action is ancillary to the primary remedies sought for the benefit of the public."); Cal. Bus. & Prof. Code § 16754.5.

In assessing the settlement, the Court should consider the comprehensive injunctive relief obtained by Plaintiffs. The PFJ prevents Sutter from engaging in the alleged anti-steering restraints and remedies other alleged conduct at the heart of this litigation, while restricting Sutter's conduct to avoid a recurrence of its alleged anticompetitive conduct in different forms. Over the next ten years, these provisions will help competition by ensuring that health plans can more easily create narrow networks that exclude high-priced providers, put high-priced providers in lower tiers of tiered networks, continue to develop innovative value-based designs, and provide additional information that will help enrollees make more informed decisions about their choice of providers. Class members are expected to benefit from the increased competition. A monitor will investigate compliance with the PFJ, as well as serve as a mechanism for resolving disputes, subject to review by the Court.

The injunctive relief warrants preliminary approval of the settlement. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 49 (E.D.N.Y. 2019) ("the value of . . . injunctive relief cannot be ignored in assessing the range of reasonableness of th[e] settlement.").

C. The Costs, Risks, and Length of Trial and Appeal Favor Preliminary Approval.

In assessing the settlement, any possible recovery should be "discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation." *Kullar*,

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168 Cal. App. 4th at 129; *In re Sept. 11 Litig.*, 723 F. Supp. 2d 534, 544 (S.D.N.Y. 2010) (proposed settlement should be compared against "the difficulties in marshaling proofs, the difficulties in proving damages, and other risks inherent in court and trial processes"). Consideration of the costs, risks, and length of a four-month trial, post-trial proceedings, and subsequent appeal further confirm that the settlement is well within the range of possible approval.

First, a four-month trial involving complex managed care contracting issues that spanned 16 years would have presented a number of challenges. To satisfy their burden, Plaintiffs would have needed to prevail on a number of abstruse antitrust issues, including market power, causation, and damages. Sutter provided expert reports from leading economists and industry experts challenging Plaintiffs' allegations of market power, the impact on competition, and damages. Sutter's experts intended to offer testimony about the alleged benefits of the challenged restraints. The court largely denied Plaintiffs' and Sutter's motions to exclude each other's experts.

Second, Plaintiffs faced a significant risk of a mistrial. Due to the length of the trial, multiple jurors were lost in the few weeks between jury selection and opening statements.

Third, because Plaintiffs were not parties to Sutter's systemwide contracts, Plaintiffs would have relied heavily upon nonparty witnesses, including nonparty health-plan witnesses beyond Plaintiffs' control.

Fourth, Sutter repeatedly attacked Dr. Leitzinger's use of reimbursement rates to measure the alleged overcharge. Due to a lack of claims data, Dr. Leitzinger could not examine allowed amounts; instead, he estimated an impact on reimbursement rates. Although the court denied Sutter's motion to exclude, there was a risk that a jury would credit Sutter's attacks on his methodology or credibility at trial. Challenges in proving damages strongly favor settlement. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 39 ("The history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." (internal citation and quotation marks omitted)).

Fifth, the presentation of Plaintiffs' damages depended upon the admission of claims data

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produced by five health plans at various points throughout the litigation. Sutter attacked the admissibility of such data, arguing that it was unreliable. As a result, Plaintiffs would have faced a substantial burden in getting that data admitted into evidence.

Sixth, there was a risk that Plaintiffs would not have prevailed on their claim for fraudulent concealment to toll the statute of limitations. In the year leading up to trial, Sutter vigorously attacked Plaintiffs' pre-limitations-period claims, including through a motion for summary judgment, a motion to phase the trial to eliminate those early claims before the merits trial, and a motion in limine, followed by separate additional briefing arguing that Plaintiffs could not establish class-wide proof of reliance, an element of fraudulent concealment. The Court ultimately ordered Plaintiffs to submit "a written opening statement" that detailed Plaintiffs' anticipated proof of fraudulent concealment, so that "Sutter may direct its motion for nonsuit to that written opening statement." Oct. 3, 2019 Order at 5. Moreover, the Court ordered that Plaintiffs make that submission "on or before October 18, 2019," *id.*, just two days after opening statements on the merits, *see* Oct. 15, 2019 Order at 2. Based on how the evidence would come in, there was a significant risk that the Court was going to require Plaintiffs to have individual class members testify regarding their individual reliance.

Seventh, liability for both damages and injunctive relief was going to be determined by a jury. *See* May 8, 2018 Order at 4:7-8). Jury trials are inherently unpredictable.

Eighth, even if Plaintiffs prevailed on every issue at trial, a favorable jury verdict only would have guaranteed years of appeals, which would have cost millions of dollars to litigate and delayed relief. *In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) ("[T]he extremely large sums of money at issue almost guarantee that any outcome . . . would be appealed."). Sutter made clear that, if it lost at trial, it would appeal the Court's interlocutory rulings on motions, decisions on the jury instructions, and the verdict. The settlement provides value by securing immediate relief that otherwise would not have been available for years. *Sykes v. Harris*, 2016 WL 3030156, at *1 (S.D.N.Y. 2016) ("[m]uch of the value of a settlement lies in the ability to make funds available promptly" (internal citation and quotation marks omitted)); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001) ("Settlement also

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confers an immediate benefit. . . . Add on time for a trial and appeals, and the class would have seen no recovery for years. Class counsel properly considered this factor as well.").

The settlement is significant on its own terms, but even more so when measured against the costs, risks, and length of trial and appeal.

III. THE COURT SHOULD APPROVE PLAINTIFFS' PROPOSED PLAN OF NOTICE AND CLAIM FORM.

A. Plaintiffs' Proposed Form and Plan of Notice Adequately Apprise Class Members of the Settlement Terms and the Available Options.

Notice of the final approval hearing "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." Cal. Rules of Court rule 3.769(f). The notice must "fairly apprise the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *Cellphone Fee Term. Cases*, 186 Cal. App. 4th at 1393 (internal citation and quotation marks omitted). Trial courts have "virtually complete discretion as to the manner of giving notice to class members." *Chavez*, 162 Cal. App. 4th at 57 (internal citation and quotation marks omitted).

The notice adequately apprises the class of both the terms of the settlement and the options available to them. The proposed notice, attached to the Settlement Agreement (Appendix 1) as Exhibit A, states in plain, easily understood language, (i) the nature of the action; (ii) the definition of the class that was certified; (iii) the class claims; (iv) the basic terms of the agreement; (v) the ability to enter an appearance through an attorney if the class member so desires; (vi) the method by which a class member may object to the settlement; (vii) the time and manner for objecting; (viii) the binding effect of a class judgment on members and the terms of the releases;[6] (ix) the claim-filing process and a description of the allocation plan; and (x) the maximum requests for an award of attorneys' fees, reimbursement of costs, and a service award to the Court-appointed class representative. The notice further directs class members to the settlement website and provides

[6] The full text of the release will be available on the settlement website, www.SutterHealthLitigation.com.

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contact information for the settlement administrator. The notice thus "provide[s] all of the detail required by statute or court rule, in a highly accessible form," and is consistent with notices that have been approved in other cases. *See Chavez*, 162 Cal. App. 4th at 57–58 (approving settlement notice and holding that a notice that also directed class members to a website "was a perfectly acceptable manner of giving notice").[7]

The comprehensive, 15-page notice will be directly mailed to class members. *See Bui v. Sprint Corp.*, 2016 WL 727163, at *9 (E.D. Cal. Feb. 24, 2016) (approving notice "via first class U.S. mail or its equivalent"). Class counsel and the settlement administrator will use data produced by health plans in this litigation to identify class members' addresses, as was done in connection with the notice of class certification, and will supplement that data with updated addresses where necessary. In addition, the same publication notice that was provided following class certification will further enhance class member reach.

Class members were previously given the opportunity to opt out. Ruan Decl. ¶ 16 & Ex. 1. The notice made it clear that class members who remained in the class would participate in any settlement and would be unable to later opt out and file their own action. *Id*. at Ex. 1 at 3 ("By doing nothing, you remain part of the Class and may be entitled to receive a share of any money or other benefits awarded to the Class after trial *or through a settlement*" (emphasis added)); *id*. at 1 ("If you do nothing . . . . you will not be able to sue, or continue to sue, Sutter as part of any other lawsuit for the same legal claims that Plaintiff has asserted in this lawsuit."). Accordingly, class members decided over a year ago "whether to remain members of the class represented by plaintiffs' counsel and become bound by a favorable or unfavorable judgment in the action, whether to intervene in the action through counsel of their own choosing, or whether to 'opt out' of the action and pursue their own independent remedies, such as negotiation with defendants, initiation of their own action, or intervention in some other action." *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th

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[7] *See also Cellphone Fee Term. Cases*, 186 Cal. App. 4th at 1391, 1393 (approving notice where the long-form notice explained that payments would be made on a pro rata basis and explained "the total amount of the common fund recovery, the nature of the costs and fees to be deducted from the common fund," and "[t]he settlement Web site included the "'Plan of Allocation,'" detailing how payments would be made to class members").

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562, 581–82 (2010) (citations and quotation marks omitted); *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019) (after receiving notice of certification, class members "must decide whether to intervene, opt out, or do nothing and live with the consequences"). Of the approximately 1,500 class members – sophisticated entities, including large corporations, government entities, and union trusts – only five class members timely elected to opt out. Ruan Decl. ¶ 16.

The parties agree there should be no second opt out. As an initial matter, there is no right under California law to opt out after the class has been certified and the parties have reached a settlement. Although Rule of Court 3.766, regarding notice of class certification, expressly requires notice that class members may opt out, Rule of Court 3.769, regarding settlement of class actions, contains no such notice requirement. The absence of any such language confirms a second opt out following settlement is not contemplated. *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006) ("a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute").[8] Moreover, there "is no authority of any kind suggesting that due process requires that members of a [damages] class be given a second chance to opt out." *Trump Univ.*, 881 F.3d at 112 (citation omitted). When, as here, "the parties had been given notice of the action, the opportunity to opt out, notice of the proposed settlement, and the opportunity to object," the court is "not required to grant those who objected to the proposed settlement a second opportunity to opt out." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F. 3d 96, 114 (2d Cir. 2005); *Trump Univ.*, 881 F.3d at 1121 (recognizing that objectors' "rights are protected by the mechanism provided in the rule: approval by the district court after notice to the class and a fairness hearing at which dissenters can voice their objections, and the availability of review on appeal." (citation omitted)).[9]

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[8] Unlike the California Rules of Court, the Federal Rules of Civil Procedure expressly do permit courts to provide a second opt out. *See* Rule 23(e)(3). However, "[t]he decision whether to approve a settlement that does not allow a new opportunity to elect exclusion is confided to the court's discretion." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 271 (2d Cir. 2006) (quoting Adv. Comm. Notes of the 2003 Amendment). "[T]he court is under no obligation to do so." *Id.* And "while some class action settlements allow a second opt-out opportunity, they are unusual." *Trump Univ.*, 881 F.3d at 1121 (internal citation and quotations omitted)

[9] Not only is a second opt out not required, it would undermine settlement. "[A] second opportunity

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The proposed form of notice adequately explains the settlement terms and options available to class members. Direct mail is an acceptable method of notice. The proposed form and plan of notice should be approved.

B. The Proposed Plan of Allocation Fairly Distributes the Settlement Fund.

"Approval of a plan of allocation of settlement proceeds in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate." *Rieckborn v. Velti PLC*, 2015 WL 468329, at *8 (N.D. Cal. Feb. 3, 2015) (citation omitted). "[A]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." *Id.* Plaintiffs' plan satisfies all of these criteria.

The plan calls for allocating the net settlement fund pro rata based on class members' total relevant purchases from Sutter as adjusted for relevant factors. *See In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2015 WL 9266493, at *8 (N.D. Cal. Dec. 17, 2015) (use of pro rata allocation plan "has frequently been determined to be fair, adequate, and reasonable in comparable cases") (collecting cases).

Each class member's relevant paid amounts will be determined based on claims data produced in this litigation by the health plans. Those amounts will be adjusted according to Dr. Leitzinger's calculation of overcharges by time periods and by Sutter hospital groups. This adjustment recognizes that the alleged overcharge on the claims varied by time period and hospital.

In sum, the allocation plan provides for a logical, straightforward, and equitable allocation of the net settlement fund to class members. The plan accounts for the relative strengths and weaknesses of the claims based on relevant and measurable factors, while ensuring that all valid

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to opt out after the terms of the settlement have been disclosed to the class would impede the settlement process so favored in the law" when the settlement was negotiated with the understanding that class members would be bound the judgment. *See Trump Univ.*, 881 F.3d at 1121–22 (internal citation and quotations omitted). Indeed, "non-opt out settlements often benefit plaintiffs classes . . . because the promise of obtaining global peace provides an incentive for defendants to offer a more generous settlement than they otherwise would." *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 665 (N.D. Tex. 2010).

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claimants receive a pro rata share of the net settlement fund. *See, e.g., In re Omnivision Techs.*, 559 F. Supp. 2d at 1045 ("It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits"); *Vinh Nguyen v. Radient Pharm. Corp.*, 2014 WL 1802293 at *5 (C.D. Cal., May 6, 2014) (allocation plan is adequate where it accounts for "the relative strengths and weaknesses of class members' individual claims" (citation omitted)); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2015 WL 9266493, at *8 (approving use of pro rata allocation plan). Plaintiffs' proposed plan of allocation should be approved.

C. The Proposed Plan of Distribution Provides a Fair Opportunity to Submit Claims and Informs Class Members of the Consequences of Not Doing So.

The distribution process should provide "a full and fair opportunity to submit a claim for proceeds in connection with the Settlement" and ensure that class members are "fairly, accurately, and reasonably inform[ed] . . . that failure to complete and submit a Claim Form, in the manner and time specified, shall constitute a waiver of any right to obtain any share of the Settlement Payment." *Jaffe v. Morgan Stanley & Co., Inc.*, 2008 WL 346417, at *12 (N.D. Cal., Feb. 7, 2008). Plaintiffs' proposed plan for distribution provides such a process.

To receive a payment under the Settlement Agreement, class members need only establish their class membership by completing a simple form that will be mailed to them with the notice. This step is important given the potential difficulties (absent input from the class member) of confirming California citizenship and ascertaining which entity of multiple related entities is the class member entitled to relief.

Determination of the amount of relevant payments class members made to Sutter is confirmed in a second notice that will be mailed to class members after the settlement becomes effective. The second step is potentially more costly and time-consuming than the first, and thus will be undertaken only once the settlement becomes effective.

In the second step, the settlement administrator will mail a second notice to class members that established their class membership with the original claim form. The second notice provides class members with information about how their total relevant payments were calculated, sets out

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the total calculated, and allows them to accept the calculation and provide payment instructions or to dispute it and provide an alternative amount supported by their own data. If the class member accepts class counsel's calculation, no action is required; payment based on the amount in the notice will still be mailed to the class member. If the class member wishes to challenge class counsel's calculation, the class member may provide claims data in a specified form to support their alternative calculation, certifying, under penalty of perjury, that the information provided is accurate to the best of the claimant's knowledge. *See In re Optical Disk Drive Prods. Antitrust Litig.*, 2016 WL 7364803, at *15 (N.D. Cal. Dec. 19, 2016) ("courts in this district have required similar attestations [in claims forms] that the information provided is accurate"). Payment based on the class member's properly submitted and certified claims data will be mailed to the class member.

CONCLUSION

The settlement is a significant result that follows five and a half years of contentious litigation. The Court should preliminarily approve the settlement, approve Plaintiffs' proposed plan and form of notice and claim form, and set a hearing for final approval.

Dated: December 19, 2019

CALIFORNIA ATTORNEY GENERAL

By: */s/ Emilio Varanini*
Emilio Varanini

Attorneys for the People of the State of California

Dated: December 19, 2019

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Lead Counsel for Plaintiff Class

Dated: December 19, 2019

FARELLA BRAUN & MARTEL

By: */s/ Christopher C. Wheeler*
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APPENDIX 1
to
Memorandum of Points and Authorities

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Settlement Agreement" or "Settlement") is made and entered into on December 17, 2019, by and between: (a) UFCW & Employers Benefit Trust ("UEBT"), on behalf of itself and the Class of self-funded payers (defined below) it represents, and the People of the State of California, *ex rel.* Xavier Becerra, 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"),[1] on the other hand.

WHEREAS, Sutter Health is a not-for-profit healthcare system that provides healthcare services to communities throughout Northern California;

WHEREAS, UEBT, on behalf of itself and all others similarly situated, represents a class of self-funded payers that 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;

[1] The renaming here of the Defendants named in the Consolidated Action does not affect the applicability of this Settlement Agreement to the Defendants in the Consolidated Action. The purpose of the changes is to reflect Sutter's representation of the proper corporate legal name of each Defendant.

WHEREAS, on March 29, 2018, the People of the State of California 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 (S.F. Super. Ct.);

WHEREAS, on May 8, 2018, the actions filed by UEBT and the People of the State of California were consolidated by the Court for all purposes (UEBT and the People of State of California, hereinafter referred to collectively as "Plaintiffs");

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

WHEREAS, the Defendants have vigorously defended against the Consolidated Action;

WHEREAS, Plaintiffs and Defendants (collectively the "Settling Parties") have been engaged in substantial arm's-length negotiations in an effort to resolve all claims arising from or related to the allegations in the Consolidated Action, including through mediations before the Hon. Layn Phillips (Retired), as well as through numerous in-person and telephone conferences during which the terms of the agreement detailed herein were extensively negotiated;

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

WHEREAS, the Settling Parties have reached an agreement providing for the settlement and dismissal with prejudice of the claims asserted in the Consolidated Action on the terms and subject to the conditions set forth below, and are entering the settlement to eliminate the burden, distraction, expense, and uncertainty of further litigation; and

WHEREAS, based on their analysis of the merits of the claims and the benefits provided to the Class by the Settlement Agreement, including an evaluation of a number of factors including the substantial risks of continued litigation and the possibility that the litigation, if not settled now, might result in no recovery whatsoever for the Class or in a recovery that is less favorable to the Class, Class Counsel believe that it is in the interest of all members of the Class to resolve finally and completely their claims against the Defendants and that the terms of the Settlement Agreement are in the best interests of the Class and are fair, reasonable, and adequate;

NOW, THEREFORE, in consideration of the promises, agreements, covenants, representations, and warranties set forth herein, and other good and valuable consideration provided for herein, the Settling Parties agree to a full, final and complete settlement of the Consolidated Action on the following terms and conditions:

I. GENERAL TERMS OF THE SETTLEMENT AGREEMENT

A. Definitions

In addition to terms identified and defined elsewhere in this Settlement Agreement, and as used herein, the terms below shall have the following meanings:

1. "Attorneys' Fees and Expenses" means the amounts approved by the Court for payment to Plaintiffs' Counsel, including attorneys' fees, costs, and litigation expenses, as described in Section VI herein.

2. "Class" or "Class Member(s)" means self-funded payers that satisfy the class definition set forth in the July 12, 2019 Amended Order Granting Plaintiffs' Unopposed Motion to Modify the Class Definition, at page 2:8-16:

> 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:

- For services between January 1, 2003 and July 25, 2016 at prices set by contracts between Sutter and Aetna;
- For services 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;
- For services 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.

Excluded from the class are all self-funded payers that opted out of the class on or before the Court-ordered opt-out deadline of June 11, 2018; self-funded payers that opted out are not entitled to any relief including monetary relief under this Settlement.

3. "Claims Administrator" means the entity which has been designated to provide Notice to the Class and administer the Settlement Fund pursuant to Section IV below and by order of the Court.

4. "Class Counsel" means the law firms of Pillsbury & Coleman, LLP; Farella Braun + Martel LLP; Cohen Milstein Sellers & Toll PLLC; Kellogg Hansen Todd Figel & Frederick PLLC; and McCracken, Stemerman & Holsberry, LLP.

5. "Consolidated Action" means the lawsuits pending in San Francisco Superior Court that were consolidated in the matter captioned, *UFCW & Employers Benefit Trust, on behalf of itself and all others similarly situated, v. Sutter Health, et al.*, Case No. CGC-14-538451 and *People of the State of California, ex rel. Xavier Becerra v. Sutter Health*, Case No. CGC-18-565398.

6. "Court" means the Superior Court of the State of California for the City and County of San Francisco.

7. "Defendants" means 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).

8. "Defendants' Counsel" means the law firms of Jones Day; Keker Van Nest & Peters LLP; and Bartko, Zankel, Bunzel & Miller.

9. "Effective Date" is the effective date of the Settlement Agreement, as defined in Section II.F herein.

10. "Escrow Agent" means The Huntington National Bank, which, assuming it agrees to do so, shall enter into an Escrow Agreement agreed to by the Settling Parties to carry out the tasks more fully detailed in that Escrow Agreement, including to receive, hold, and disburse the Settlement Fund, subject to the direction of Class Counsel as authorized and approved by the Court. The Settling Parties may replace The Huntington National Bank with another mutually agreeable financial institution.

11. "Final Approval" means the order of the Court granting final approval of the Settlement Agreement pursuant to California Rules of Court Rule 3.769.

12. "Final Approval Hearing" or "Fairness Hearing" means the hearing at which the Court will consider Plaintiffs' motion for judgment and Final Approval of the Settlement.

13. "Final Judgment and Order" means the Proposed Final Judgment and

Order Pursuant to Stipulation attached as Exhibit B, which shall be submitted to the Court as described in Section II.B & E herein and entered by the Court as described in Section II.E & F herein.

14. "Lead Class Counsel" means the law firm of Pillsbury & Coleman, LLP.

15. "Named Plaintiffs" mean UEBT and the People of the State of California.

16. "Notice" means the Notice of Proposed Settlement, which is to be mailed directly to Class Members substantially in the form attached as Exhibit A.

17. "Plaintiffs" means the Named Plaintiffs, the Class, and the People of the State of California, collectively.

18. "Plaintiffs' Counsel" shall mean Class Counsel and counsel for the Office of the Attorney General on behalf of the People of the State of California.

19. "Plan of Allocation" means the formula and process by which the Settlement Fund will be allocated and distributed to Class Members.

20. "Plan of Notice" means the plan for distributing the Notice to Class Members.

21. "Preliminary Approval" means the Court's Order preliminarily approving the Settlement, the Plan of Notice, the form of the Notice, the Plan of Allocation, and other related matters.

22. "Released Claims" means those claims specified in Section V *infra*.

23. "Released Parties" means those entities specified in Section V *infra.*

24. "Settlement," "Agreement," and "Settlement Agreement" each mean the settlement terms agreed to by the Settling Parties as reflected in this Settlement Agreement and attachments hereto, including the Final Judgment and Order attached as Exhibit B setting forth

the injunctive relief terms.

25. "Settlement Fund" means the five hundred seventy-five million dollars ($575,000,000.00) that the Defendants shall pay as described in Section III.A, to be held, administered, and disbursed pursuant to this Settlement Agreement and applicable orders of the Court.

26. "Settling Parties" means Plaintiffs and Defendants.

II. COURT APPROVAL OF SETTLEMENT AND CLASS NOTICE

A. Retention of Claims Administrator

1. Plaintiffs' Counsel shall retain a Claims Administrator, which shall be responsible, under the supervision of Plaintiffs' Counsel, for the notice administration process, administering the Settlement Fund, distribution to Class Members as approved by the Court, withholding and paying applicable taxes, and performing other duties as provided herein. Plaintiffs shall obtain approval by the Court of the choice of the Claims Administrator. Class Counsel shall be responsible for calculating payments to the Class from the Settlement Fund based on the Plan of Allocation approved by the Court. The Claims Administrator shall sign and be bound by the Protective Order governing the Consolidated Action and be required to agree in writing in a form approved by the Defendants, such approval not to be unreasonably withheld, to treat information it receives or generates as part of the notice administration process as confidential. The Claims Administrator shall agree to use confidential information solely for the purposes of notice administration, administering the Settlement Fund, and completing the functions associated therewith or required by this Agreement, and shall keep the information confidential. The fees and expenses of the Claims Administrator shall be paid exclusively out of the Settlement Fund. In no event shall the Defendants be separately responsible for fees or expenses of the Claims Administrator.

B. Preliminary Approval and Notice of Settlement

1. Plaintiffs' Counsel shall file with the Court a motion for Preliminary Approval of the Settlement and Exhibits to the Settlement Agreement, which will include a Proposed Preliminary Approval Order and a proposed Notice. The Court has set a hearing for Preliminary Approval on February 25, 2020. Plaintiffs' Counsel shall provide the Defendants with the draft motion for Preliminary Approval and supporting documents five court days before the motion is filed.

2. In the event that the Court grants Preliminary Approval of the Settlement, Class Counsel shall direct the Claims Administrator to provide the Class with Notice as ordered by the Court.

3. If the Court denies the motion for Preliminary Approval without leave to re-file, and either no appeal is taken or an appeal is taken and the denial is affirmed, the case will proceed as if no settlement had been attempted, and the Settling Parties shall be returned to their respective procedural postures, *i.e.*, the *status quo* as of October 15, 2019, so that the Settling Parties may take such litigation steps that the Settling Parties otherwise would have been able to take absent the pendency of this Settlement Agreement. In such event, the Settling Parties will negotiate and submit for Court approval a revised case schedule for any trial-related events previously scheduled for dates following October 15, 2019.

4. The Settling Parties intend that the Claims Administrator provide actual notice to each Class Member. Unless otherwise ordered by the Court, the Notice attached as Exhibit A shall be mailed in that form unless changed by the Court to all Class Members. Recognizing that the Court may make changes to the Notice, Defendants shall be provided with the actual form of Notice approved by the Court no later than five court days before the Notice is mailed to Class Members.

C. Objections

1. Unless the Court provides otherwise, objections to the Settlement, if any, must be submitted in writing, and must include a detailed description of the basis of the objection. Objections must be filed with the Court, with copies served on Plaintiffs' Counsel and Defendants' Counsel, postmarked on or before a date certain to be specified in the Notice, which will be sixty (60) days after the Notice is initially mailed to Class Members. No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement without first having filed and served objection(s) in writing postmarked on or before sixty (60) days after the Notice was initially mailed to Class Members.

D. Class Member Opt-Out

1. The Court previously provided Class Members with notice of and an opportunity to opt out of the class action and set the opt-out deadline of June 11, 2018. Among other things, the notice advised Class Members that "[b]y doing nothing, you remain part of the Class and may be entitled to receive a share of any money or other benefits awarded to the Class after trial or through a settlement." On or before June 11, 2018, certain entities opted out of the class; a list of those opt outs are attached in Exhibit C hereto. By order of the Court, on or about July 18, 2019, Plaintiffs sent a second notice to Class Members that clarified the definition of the Class. This second notice did not include an opportunity to opt out and again advised Class Members that they would "be entitled to receive a share of any money or benefits awarded to the Class after trial or through a settlement." The Parties agree that, in light of the previous opportunity to opt out, Class Members should not be provided with another opportunity to opt out. The Settling Parties shall oppose any efforts by a Class Member to opt out or any effort by an objector or other person/entity to require an additional opportunity to opt out.

E. Final Approval

1. Prior to the Final Approval Hearing, on the date set by the Court, Plaintiffs shall submit a motion for final approval by the Court of the Settlement and the entry of an order granting Final Approval of the Settlement and requesting that the Court, after inquiry:

a. find the Settlement and its terms to be fair within the meaning of California Rules of Court Rule 3.769, and direct its consummation pursuant to its terms;

b. find that the Notice given constitutes due, adequate and sufficient notice, and meets the requirements of due process and any applicable laws;

c. provide for payment of any Attorneys' fees and Expenses solely from the Settlement Fund (as provided in Section VI herein);

d. set forth the method for allocating the Settlement Fund (set forth in the Plan of Allocation);

e. enjoin all conduct by Defendants that would violate the terms of the Final Judgment and Order attached as Exhibit B;

f. approve the release of claims specified herein as binding and effective as to the Plaintiffs and all Class Members, permanently barring and enjoining the Plaintiffs and Class Members from asserting any Released Claims (as defined in Section V herein);

g. pursuant to California Code of Civil Procedure 664.6 and California Rule of Court 3.769(h), reserve exclusive and continuing jurisdiction over the Settlement, including the Final Judgment and Order and the Settlement Fund (as defined in Section III herein) and the administration, consummation and interpretation of this Settlement Agreement; and

h. direct that the Final Judgment and Order be entered.

2. Plaintiffs' Counsel shall provide the Defendants with the draft motion for Final Approval and supporting documents at least five court days prior to the date such motion is filed.

3. If required by the Court in connection with approval of the Settlement, the Settling Parties agree to accept non-material changes to this Settlement Agreement. However, the Settling Parties are not obligated to accept any changes to the monetary amount of relief, changes to the Final Judgment and Order, or any other substantive change or material change to the terms of this Settlement Agreement.

4. The Claims Administrator's affidavit of compliance with Notice requirements must be filed no later than 30 days prior to the Final Approval Hearing.

F. <u>Effective Date of the Settlement</u>

1. The Settlement shall become final and effective upon the occurrence of all of the following ("Effective Date"):

a. The Settlement, including the Final Judgment and Order attached as Exhibit B, receives Final Approval by the Court;

b. As provided for in Section II.E herein, entry is made of the Final Judgment and Order; and

c. Completion of any and all appeal(s) from the Court's Final Judgment and Order and/or Order granting Final Approval of the Settlement (including any such order on remand from a decision of an appeals court), provided, however, that a modification or reversal on appeal of any amount of the Attorneys' Fees and Expenses awarded by the Court from the Settlement Fund, or the amount of any service awards to the Plaintiffs, shall not by itself prevent this Settlement from becoming final and effective if all other aspects of the Final Judgment and Order and the Final Approval Order have been affirmed or not appealed. If no

appeal is filed from the Court's Final Judgment and Order and/or Final Approval of the Settlement, the Effective Date shall be the date on which the time for any such appeals has lapsed.

III. CONSIDERATION FOR SETTLEMENT

A. Monetary Settlement Fund

1. Within ten (10) calendar days from the date of the Court's order granting Final Approval of the Settlement, whether or not Final Approval is appealed, the Defendants shall deposit or cause to be deposited by wire transfer to the Escrow Agent approved by the Court five hundred seventy-five Million Dollars ($575,000,000.00) cash in lawful money of the United States, subject to and in exchange for the promises, covenants and provisions herein, including without limitation, complete and final settlement and release of all Released Claims against the Defendants and the Released Parties in the Consolidated Action, any claim for Attorneys' Fees and Expenses, costs, administrative costs, interest (pre- and post-judgment interest), and any and all amounts to be paid to Class Members, the People of the State of California, the Attorney General and any other person or entity. Except as provided in paragraph III.A.2 below related to payment of Monitor expenses, Defendants shall not, under any circumstances, be required to pay more than this amount; *i.e.*, the Settlement Fund is the maximum amount that the Defendants shall be required to pay for settlement of the Consolidated Action. The Defendants' transfer of the Settlement Fund to the Escrow Agent shall constitute full and complete satisfaction of their monetary obligations under this Settlement and to settle the actions, which will cover any and all forms of monetary relief to settle the Consolidated Action and the Released Claims, including without limitation any and all compensation to Class Members, payment for the People of the State of California's claim for disgorgement, any service awards, fees and costs of the Claims Administrator, Attorneys' Fees and Expenses,

litigation and court costs (including without limitation expert fees), and all other monetary relief, fees, expenses or costs arising out of or related to the Consolidated Action. Plaintiffs and Class Members shall not be entitled under any circumstance to any further payment from any Defendant or any Released Party with respect to the Released Claims, the Consolidated Action or the Settlement. Following such transfer of the Settlement Fund to the Escrow Agent, no Defendant nor any Released Party shall have any liabilities, obligations or responsibilities with respect to the payment, disbursement, disposition or distribution or other administration or oversight of the Settlement Fund. No portion of the Settlement Fund will revert to the Defendants unless the Settlement is terminated, as described in Section VII.C, or is not finally approved or does not become effective for any reason. Except as provided by Order of the Court, no Defendant, Plaintiff or Class Member shall have any interest in the Settlement Fund or any portion thereof.

2. Notwithstanding the foregoing, Defendants shall pay the costs of the Monitor as set forth in the Final Judgment and Order with additional funds, and not from the Settlement Fund. However, Defendants shall have no obligation to compensate Plaintiffs or others who might assert rights under this Settlement, including the injunctive relief set forth in the Final Judgment and Order (Exhibit B), for attorneys' fees or costs to enforce the terms of this Settlement including the Final Judgment and Order.

3. The Escrow Agent will place the Settlement Fund in an interest-bearing account (the "Account") created by order of the Court. The Settlement Fund shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court until it has been fully disbursed pursuant to orders of the Court. The Settling Parties agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the

meaning of Treas. Reg. §1.468B-1 and to refrain from taking any action inconsistent with such treatment. For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent and shall promptly take all steps necessary so that the Settlement Fund qualifies as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1.

4. The Escrow Agent shall invest the Settlement Fund in interest-bearing instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or agency thereof, or in money market funds invested in such instruments.

5. Following the Defendants' indefeasible transfer of the Settlement Fund to the Escrow Agent, Defendants, Defendants' Counsel, and Released Parties shall have no liability, obligation or responsibility with respect to the payment, calculation of payments, disbursement, disposition or distribution or other administration or oversight of the Settlement Fund or Account and shall have no liability, obligation or responsibility with respect to any liability, obligation or responsibility of the Escrow Agent, Claims Administrator or Class Counsel, including but not limited to, liabilities, obligations or responsibilities arising in connection with the payment, calculation of payments, disbursement, disposition, distribution or other administration of the Settlement Fund and Account.

6. Half of the interest earned by the Settlement Fund in the Account during the period between the deposit of the Settlement Fund into the Account and the Effective Date shall be for the benefit of Defendants, and shall be paid to Sutter Health, and half of such interest shall be for the benefit of the Class and shall become part of the Settlement Fund. Interest earned by the Settlement Fund in the Account after the Effective Date shall be for the benefit of

the Class. Defendants shall have no liability, obligation or responsibility for any taxes on interest earned by the Settlement Fund that is for the benefit of the Class or for any reporting requirements relating to such interest. However, if the Settlement Fund, or a portion thereof, is returned to Defendants pursuant to Section VII.C below with accrued interest, Defendants shall be responsible for any unpaid taxes on such accrued interest and for any related tax reporting requirements, provided that the Claims Administrator complied with its obligations pursuant to Section IV.B.2 and Section IV.B.3.

7. Any tax liability, together with any interest or penalties imposed thereon, incurred and paid by any Defendant or any Released Party resulting from income earned on the Settlement Fund or the Account for the benefit of the Class or payments made from the Account (or the receipt of any payment under this Section III.A) shall be reimbursed from the Account in the amount of such tax liability, interest or penalties promptly upon and in no event later than five (5) days after any Defendant's or any Released Party's written request to the Claims Administrator and Plaintiffs' Counsel. Promptly upon learning of such tax liability, or asserted tax liability, the Defendant or Released Party in question shall promptly notify Plaintiffs' Counsel thereof in writing, to afford Plaintiffs a timely opportunity to investigate, dispute and/or pay such liability.

B. INJUNCTIVE RELIEF

1. The Settling Parties have reached agreement on injunctive relief as set forth in the Final Judgment and Order attached as Exhibit B, the terms of which are material terms of this Settlement.

IV. ADMINISTRATION AND DISTRIBUTION OF SETTLEMENT FUND

A. Allocation and Distribution

1. Class Counsel shall be solely responsible for the administration of Class

Member claims. All expenses and costs of administration shall be paid for solely out of the Settlement Fund in such amounts as the Court orders. Defendants shall have no liabilities, obligations or responsibilities with respect to the payment, calculation of payments, disbursement, disposition or distribution or other administration or oversight of the Settlement Fund or Account.

2. The Plan of Allocation shall be determined by Plaintiffs after consultation with Defendants and shall be approved by the Court.

3. Class Counsel shall be responsible for calculating the monetary award that shall be paid to each eligible Class Member, which shall be approved by the Court. Under the supervision of Class Counsel, the Claims Administrator shall, among other things, confirm the identity of each eligible Class Member based on the methodology set forth in the Plan of Allocation as approved by the Court. As will be reflected in the Final Approval Order, Defendants and the Released Parties shall have no responsibility, and may not be held liable, for any determination reached by Class Counsel or the Claims Administrator.

4. The Claims Administrator shall reserve Fifty Million Dollars ($50,000,000) from the Settlement Fund to resolve any Class Member disputes or payment issues ("Dispute Fund") that arise within 180 days of the first date on which distribution of the Settlement Fund is made to Class Members. Disputes arising after the 180-day period shall be deemed untimely and shall not result in any (further) payment. Money shall be distributed from the Dispute Fund only as approved by the Court. Any money remaining in the Dispute Fund after all timely disputes have been resolved shall be distributed to eligible Class Members in accordance with the Plan of Allocation.

5. The total amount of all monetary awards paid to Class Members, as

determined by the Claims Administrator, shall not exceed the net amount of the Settlement Fund (including accrued interest) after all costs, expenses, service awards, Attorneys' fees and Expenses and taxes have been paid, and the Dispute Fund has been reserved or fully utilized.

6. Any uncashed checks will be redistributed to the other Class Members according to the Plan of Allocation.

B. Payment of Federal, State and Local Taxes

1. Payments to UEBT and other Class Members from the Account may be subject to applicable tax withholding and reporting requirements. For avoidance of doubt, neither the Defendants, their counsel, nor any Released Party shall have any liability, obligation or responsibility whatsoever for tax obligations arising from payments from the Settlement Fund to UEBT, any Class Member, or any other person or entity or based on the activities and income of the Account. In addition, neither the Defendants nor any Released Party shall have any liability, obligation or responsibility whatsoever for tax obligations arising from payments to Plaintiffs' Counsel. Each recipient of payments from the Settlement Fund will be solely responsible for its/his/her tax obligations.

2. The Claims Administrator, as administrator of the Account, and on behalf of the Account, is responsible for withholding any applicable taxes and completing all reporting requirements.

3. The Claims Administrator shall be responsible to satisfy from the Settlement Fund any and all federal, state and local taxes.

V. RELEASES

A. Release And Covenant Not To Sue

1. Upon the Effective Date, UEBT, each Class Member, and the People of the State of California (the "Releasors") 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").

2. Each Releasor 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.

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

VI. ATTORNEYS' FEES AND EXPENSES AND ADMINISTRATIVE EXPENSES

A. Attorneys' Fees and Expenses

1. Plaintiffs' Counsel may apply to the Court for an award of Attorneys' Fees and Expenses incurred on behalf of the Plaintiffs. No Defendant nor any Released Party has any liability or responsibility for fees, costs, expenses, or interest, including without limitation attorneys' fees, costs, expenses, expert fees and costs, consultant fees or costs or administrative fees or costs, which will be paid for solely out of the Settlement Fund.

2. Upon the Effective Date, the People of the State of California, the California Attorney General, Class Counsel and Named Plaintiffs, individually and on behalf of the Class and each individual Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against the Defendants or any Released Party for Attorneys' Fees and Expenses or costs associated with the Consolidated Action, the original action filed by UEBT, and Plaintiffs' Counsel's representation of UEBT, the Class or the People of the State of California in the Consolidated Action and the original action filed by UEBT.

3. All Attorneys' Fees and Expenses and any interest due any counsel (to the extent any interest is awarded) for the Plaintiffs shall be payable solely out of the Settlement Fund in such amounts as the Court orders and may be deducted from the Settlement Fund prior to the distribution to Class Members, but only on or after entry of an Order by the Court approving any Attorneys' Fees and Expenses and only on or after the Effective Date.

VII. OTHER CONDITIONS

A. Confidentiality of Highly Sensitive Pricing Information

1. The maximum out-of-network rates and chargemaster increase caps in the Final Judgment and Order attached hereto as Exhibit B shall be confidential pending Sutter's

submission of a motion to seal to the Court requesting confidentiality and, subject to subparagraph (2) below, shall be disclosed only to the Court, to the Monitor, and to Insurers as defined in Exhibit B if said motion is granted. UEBT and the Class will not oppose Sutter's motion to seal. Actual negotiated amounts shall be governed by the confidentiality clauses in the governing agreements between Sutter and Insurers as defined in Exhibit B. Except as otherwise provided herein, the amount of and limits to the out-of-network rate and chargemaster increase caps referenced in Exhibit B shall not otherwise be disclosed to any other person or entity.

2. Notwithstanding the foregoing, during the period established by the Court for submission of objections, any Class Member may apply to the Court for disclosure of the maximum out-of-network rates and chargemaster increase caps. The Settling Parties will propose appropriate provisions to protect the confidentiality of any information so disclosed, including an appropriate protective order.

3. The terms of this Settlement Agreement shall remain confidential until Plaintiffs file their Motion for Preliminary Approval, with the exception that the fact of the Settlement and the scope of the class settled may be disclosed to non-parties to the Agreement. Prior to the filing of the Motion for Preliminary Approval, the Settling Parties are authorized to state that the parties have reached an agreement in principle, which will be subject to approval of the Court, and that they cannot comment further. The Settling Parties are also able to confidentially disclose the terms of the Settlement before Preliminary Approval submission to their auditors, legal and financial advisers, monitor candidates, and, as to Sutter, (1) as otherwise required by law or contract so long as parties receiving the terms agree in writing not to disclose terms to third parties or (2) to the plaintiffs in the *Sidibe Action* in connection with any mediation under applicable mediation and settlement privileges.

B. Press Release

1. Upon submission of a settlement agreement for preliminary approval by the Court, UEBT and Sutter will issue a joint press release regarding the settlement, in substantially the form that is attached hereto as Exhibit D, without limiting statements to the public.

C. Settlement Does Not Become Effective

1. In the event that the Settlement Agreement is terminated, is not finally approved or does not become effective for any reason, judgment is not entered in accordance with this Agreement, or such judgment does not become final, then (a) this Settlement Agreement shall be null and void and of no force and effect, (b) the entire amount of the Settlement Fund and any and all interest earned thereon shall be returned to the Defendants within ten (10) calendar days from the date the Settlement Agreement becomes null and void, and (c) any release pursuant to Section V herein shall be of no force or effect. In such event, the case will proceed as if no settlement has been attempted, and the Settling Parties shall be returned to their respective procedural postures, i.e., *status quo* as of October 15, 2019, so that the Settling Parties may take such litigation steps that Plaintiffs or the Defendants otherwise would have been able to take absent the pendency of this Settlement. In such event, the Settling Parties will negotiate and submit for Court approval a revised case schedule for any trial-related events previously scheduled for dates following October 15, 2019. However, any reversal, vacating, or modification on appeal of (1) any amount of Attorneys' Fees and Expenses awarded by the Court to Plaintiffs' Counsel, or (2) any determination by the Court to award less than the amount requested in Attorneys' Fees and Expenses, shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

D. Preservation of Rights

1. The Settling Parties expressly reserve all of their rights, contentions and defenses if this Settlement does not become final and effective in accordance with the terms of this Settlement Agreement. The Settling Parties further agree that this Settlement Agreement, whether or not it shall become effective pursuant to Section II.F herein, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party; shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by any Defendant, any Released Party, or any other Defendant; and shall not be deemed or construed to be an admission or evidence of the truth of any of the claims or allegations, or denials or defenses made in the Action, whether in this case or any other action or proceeding. The Settling Parties further acknowledge and agree that the substance of the negotiations and discussions that led to this Settlement are fully protected from disclosure by Federal Rule of Evidence 408 and California Evidence Code Sections 1119 and 1152.

E. Authority to Settle

1. The undersigned represent and warrant each has authority to enter into this Settlement Agreement on behalf of the party indicated below his or her name.

F. No Assignment

1. Plaintiffs and Plaintiffs' Counsel represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Consolidated Action or any related action, and they further represent and warrant that they know of no such assignments or transfers on the part of any Class Member.

G. Binding Effect

1. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and Class Counsel shall be binding upon all Class Members.

H. Mistake

1. In entering and making this Settlement Agreement, the Settling Parties assume the risk of any mistake of fact or law. If the Settling Parties, or any of them, should later discover that any fact they relied upon in entering into this Settlement Agreement is not true, or that their understanding of the facts or law was incorrect, the Settling Parties shall not be entitled to seek rescission of this Settlement Agreement, or otherwise attack the validity of the Settlement Agreement, based on any such mistake. This Settlement Agreement is intended to be final and binding upon the Settling Parties regardless of any mistake of fact or law.

I. Advice of Counsel

1. Except as set forth in this Settlement Agreement, the Settling Parties represent and warrant that they have not relied upon or been induced by any representation, statement or disclosure of the other Settling Parties or their attorneys or agents, but have relied upon their own knowledge and judgment and upon the advice and representation of their own counsel in entering into this Settlement Agreement. Each Settling Party warrants to the other Settling Parties that it has carefully read this Settlement Agreement, knows its contents, and has freely executed it. Each Settling Party, by execution of this Settlement Agreement, represents that it has been represented by independent counsel of its choice throughout all negotiations preceding the execution of this Settlement Agreement.

J. Integrated Agreement

1. This Settlement Agreement, including exhibits, contain the entire, complete, and integrated statement of each and every term and provision of this Settlement Agreement agreed to by and among the Settling Parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by the undersigned in the representative capacities specified, or others who are authorized to act in such representative capacities.

K. Headings

1. The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

L. No Drafting Presumption

1. All counsel to all Settling Parties hereto have materially participated in the drafting of this Settlement Agreement. No party hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

M. Choice of Law

1. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

N. Consent to Jurisdiction and Choice of Exclusive Forum

1. Any and all disputes arising from or related to the Settlement, the Settlement Agreement, the Final Judgment Order, or distribution of the Settlement Fund, including Attorneys' fees and Expenses, must be brought by a Defendant, a Released Party,

Plaintiffs, and/or each member of the Class, exclusively in the Court. Defendants, Plaintiffs and each member of the Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability or interpretation of this Settlement Agreement, including, without limitation, any suit, action, proceeding or dispute relating to the release provisions herein or relating to the Final Judgment and Order, except that this paragraph shall not prohibit any Released Party from asserting in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim.

O. <u>Enforcement of Settlement</u>

1. Nothing in this Settlement Agreement prevents Defendants or any Released Party from enforcing or asserting any release herein. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted by any Plaintiff or Class Member (who is not otherwise properly excluded as provided herein) with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

P. <u>Severability</u>

1. In the event any one or more of the provisions of this Settlement Agreement shall for any reason be held, after any proceedings in appellate courts, to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision if Defendants' Counsel and Plaintiffs' Counsel mutually agree in writing to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Settlement Agreement.

Q. No Admission

1. This Settlement shall not be deemed an admission of liability or wrongdoing on the part of any of the Defendants, who have denied, and continue to deny that they engaged in any wrongdoing of any kind, or violated any law or regulation, or breached any duty owed to the Plaintiffs or the Class Members. Defendants further deny that they are liable to or owe any form of compensation or damages to anyone with respect to the alleged facts or causes of action asserted in the Action. Defendants do not, by entering into this Settlement Agreement, admit that any or all of them have caused any damage or injury to any Class Member or the People of the State of California as a result of the facts alleged or asserted in the Consolidated Action and do not admit that Plaintiffs' calculations or methods of calculations of alleged damages are accurate or appropriate.

R. Execution in Counterparts

1. This Settlement Agreement may be executed in counterparts. Facsimile or PDF signatures shall be considered as valid signatures as of the date they bear.

S. Appeals

1. The Final Approval Order shall provide that any Class Member that wishes to appeal the Final Approval Order and/or the Final Judgment and Order, which appeal will delay the distribution of the Settlement Fund to the Class and/or the effective date of the Final Judgment and Order, shall post a bond with this Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

T. Representations to the Court About Settlement Negotiations

1. The Settling Parties confirm, and will so represent to the Court, that these settlement negotiations were arm's-length and facilitated through the aid of the mediator described above, and that there was no discussion of attorneys' fees prior to negotiating the

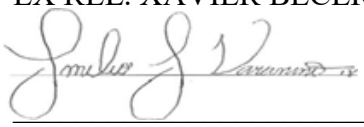
Settlement. Class Counsel and Defendants' Counsel agree this Settlement is beneficial to the Class and will not represent otherwise to the Court.

IN WITNESS WHEREOF, the Settling Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement on the date first herein above written.

ACCEPTED AND AGREED:

Dated: December 17, 2019

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



Emilio E. Varanini
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Dated: December __, 2019

UFCW & EMPLOYERS BENEFIT TRUST

Jacques Loveall
Trustee and Board Chairperson

Frank Jorgensen
Trustee and Board Secretary

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

_____
Emilio E. Varanini
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Dated: December 19, 2019

UFCW & EMPLOYERS BENEFIT TRUST

_____
Jacques Loveall
Trustee and Board Chairperson

_____
Frank Jorgensen
Trustee and Board Secretary

Dated December 17, 2019

SUTTER HEALTH 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

Dated: December __, 2019

On behalf of UFCW & Employers Benefit Trust and the Class

PILLSBURY & COLEMAN LLP

_____

Richard L. Grossman
100 Green Street
San Francisco, CA 94111
Counsel for UFCW & Employers Benefit Trust and Lead Counsel for the Certified Plaintiff Class

Dated: December __, 2019

On behalf of Sutter Health Defendants

JONES DAY

_____

David C. Kiernan
555 California Street, 26th Floor
San Francisco, CA 94104
Counsel for Defendants

Dated December __, 2019

SUTTER HEALTH DEFENDANTS

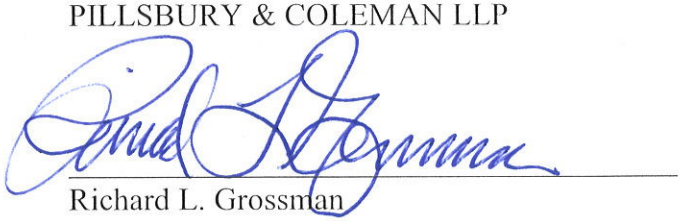
_____

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

Dated: December 17, 2019

On behalf of UFCW & Employers Benefit Trust and the Class

PILLSBURY & COLEMAN LLP



_____

Richard L. Grossman
100 Green Street
San Francisco, CA 94111
Counsel for UFCW & Employers Benefit Trust and Lead Counsel for the Certified Plaintiff Class

Dated: December __, 2019

On behalf of Sutter Health Defendants

JONES DAY

_____

David C. Kiernan
555 California Street, 26th Floor
San Francisco, CA 94104
Counsel for Defendants

Dated December __, 2019

SUTTER HEALTH 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

Dated: December __, 2019

On behalf of UFCW & Employers Benefit Trust and the Class

PILLSBURY & COLEMAN LLP

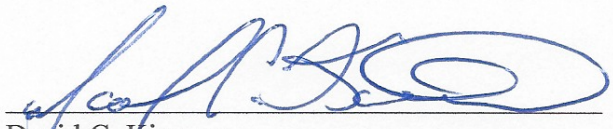
_____

Richard L. Grossman
100 Green Street
San Francisco, CA 94111
Counsel for UFCW & Employers Benefit Trust and Lead Counsel for the Certified Plaintiff Class

Dated: December 17, 2019

On behalf of Sutter Health Defendants

JONES DAY



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David C. Kiernan
555 California Street, 26th Floor
San Francisco, CA 94104
Counsel for Defendants

INDEX OF EXHIBITS
to
SETTLEMENT AGREEMENT

Exhibit A.....Notice of Proposed Settlement

Exhibit B.....[Proposed] Final Judgment

Exhibit C.....Exclusion Requests Postmarked on or Before June 11, 2018

Exhibit D.....Press Release

EXHIBIT A

SAN FRANCISCO SUPERIOR COURT

NOTICE OF PROPOSED SETTLEMENT

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.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU 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. You previously were mailed a notice on June 11, 2018 to notify you of the Court's certification of a class in this lawsuit and were mailed another notice on July 18, 2019.

- Defendants have agreed to pay $575 million ("Settlement Fund") and to change certain alleged contracting practices with insurance companies to resolve the Class's claims against them. 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, ***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.

- 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 forthcoming joint application 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 courtroom 304, 400 McAllister St., San Francisco, CA 94102. You may appear at the Fairness Hearing, either in person or through an attorney, to object to part or all of the proposed Settlement and/or Plaintiffs' Counsel's joint application, or otherwise be heard. You may also object to the proposed Settlement in writing, but you must follow the procedures and meet the deadline set forth below.

- 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 under penalty of perjury online. 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 and ancillary products.

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

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT	
PROMPTLY COMPLETE, SIGN, AND RETURN THE CLAIM FORM	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.
IF YOU DO NOTHING	If you are a Class Member and do nothing, ***you will not share in the Settlement Fund.*** To receive a share of the Settlement Fund, ***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 they submit the Claim Form.
OBJECT TO THE SETTLEMENT	You may object to part or all of the Settlement and/or to Plaintiffs' Counsel's joint application for fees and expenses and a service award for the Class Representative. To do so, you must file your objection with the Court by [date] stating why you do not like part or all of the Settlement and/or the joint application.
GET MORE INFORMATION	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.

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** or by accessing the Court's docket in this case through https://webapps.sftc.org/ci/CaseInfo.dll?CaseNum=CGC14538451&SessionID=2FF1ED65B3A40D90547FCF9E686718D43E9268E7, or by visiting the office of the Clerk of the Superior Court of California, County of San Francisco, 400 McAllister St, Room 103, San Francisco, CA 94102, from 8:30 a.m. to 2:00 p.m., Monday through Friday, excluding Court holidays.

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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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 approval 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 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 further alleged that the resulting reduction in price competition permitted Defendants to overcharge self-funded payors for its 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. Notice of class certification was mailed on June 11, 2018. On September 29, 2017, the Court modified the class definition. 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, 2019, the Plaintiffs entered into a Settlement Agreement with Defendants. The Settlement Agreement provides for payment of $575 million for the benefit of the Class. 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 UEBT.

The class representative and the entities on whose behalf they sue together constitute the "Class" or "Class Members." They are also called the "Plaintiffs." 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); Eden Medical Center; 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. Notice of this certification was mailed on June 11, 2018. The Court modified the class definition on July 10, 2019 and mailed a second notice 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, UEBT 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 accrued interest 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.

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.SutterHealthLawuit.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, the Court has entered a

Final Judgment and Order defined in the Settlement, 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. How much will my payment be?

Class Counsel have proposed to the Court a plan for allocating the Settlement Fund to Class Members who submit valid claims ("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.

Relevant payments are payments by Claiming Class Members to Defendants for general acute care hospital services and ancillary products between January 1, 2003 and various end dates depending on the insurance company that administered the Claiming Class Member's health plan, as follows:

Aetna:	January 1, 2003 to October 27, 2018
Anthem:	January 1, 2003 to October 31, 2018
Blue Shield:	January 1, 2003 to December 31, 2018
Cigna:	January 1, 2003 to August 25, 2018
United:	January 1, 2003 to January 26, 2019

Class Counsel selected these end dates to match the end dates of the claims data produced by these insurance companies in this 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 overcharge percentages for different groups of Sutter hospitals, and those percentages will be used to weight the relevant payments.

- Relevant payments will be weighted by time period. Plaintiffs' damages expert estimated overcharge percentages in two-year increments to account for changes in prices over time, and those percentages will be used to weight the relevant payments.

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

8. 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 7.

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 individual 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 under penalty of perjury 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 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. 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 Form to Claiming Class Members. Claiming Class Members have the option to complete, support, sign, and return the Form. 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 distribution 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.

10. 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. 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 REPRESENTING YOU

11. 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
600 Montgomery St., 31st Fl.
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

12. 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.

13. How will the lawyers be paid?

Class Counsel and the California Attorney General's Office will jointly apply to the Court for an award of attorneys' fees from the Settlement Fund up to 33 percent of the Settlement Fund. Class Counsel's share of this joint request will not exceed $172.5 million. The California Attorney General's Office's share of this joint request will not exceed $16.5 million plus accrued interest.

In the joint application, Class Counsel will apply to the Court for reimbursement of their litigation expenses from the Settlement Fund not to exceed $13.8 million, and the California Attorney General's Office will apply to the Court for reimbursement of its litigation expenses from the Settlement Fund not to exceed $11.2 million.

Class Counsel will also apply to the Court for payment from the Settlement Fund of settlement-related expenses, which 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'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 application 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 will be filed with the Court and made available for download and/or viewing on or before [date] 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 through www.SutterHealthLawsuit.com.

14. 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 application, Class Counsel will apply to the Court 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 application for attorneys' fees, expenses, estimated settlement administration costs, and a UEBT service award.

15. 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 or ask the Court to deny approval of the Settlement by filing an objection. You may file 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 application 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 objections, you will still be bound by the Settlement.

Any objection to all or part of the proposed Settlement or the joint application for attorneys' fees, and expenses and a service award to UEBT must be submitted in writing and filed with the Court by [date]. You may also appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you or your attorney wishes to appear, you must file with the Court no later than ten (10) days before the hearing a notice of your intent to appear. All written objections and supporting papers and written notices of intent to appear at the Fairness Hearing should 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). In addition, all written objections should (a) clearly identify the part of the Settlement or joint application for attorneys' fees and expenses and a service award to UEBT to which the objection pertains, (b) explain the reason for the objection, (c) be filed with the Court by mail to Department 304, 400 McAllister St. San Francisco, CA 94102, or via http://www.fileandservexpress.com/, and (d) be filed or postmarked on or before [date].

THE COURT'S FAIRNESS HEARING

The Court will hold a Fairness Hearing to decide whether to approve the Settlement and whether to approve Plaintiffs' Counsel's joint application for attorneys' fees and expenses and a service award to UEBT.

16. 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 as fair, reasonable and adequate. The Court will also consider whether to approve Plaintiffs' Counsel's joint application 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 application. 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.SutterhHealthLawsuit.com.

17. 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 file an objection, you do not have to come to Court to talk about it. So long as you file 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.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IF YOU DO NOTHING

19. 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

20. 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.

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

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EXHIBIT B

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.	

WHEREAS, 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"), on behalf of itself and all others similarly situated, (the People and UEBT collectively, "Plaintiffs"), and Sutter Health; Sutter East Bay Hospitals (predecessor of Sutter Bay Hospitals);[1] 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 and d/b/a Sutter Medical Foundation) (collectively "Defendants" or "Sutter," and together with Plaintiffs, the "Parties") have stipulated to the entry of this Final Judgment without trial,

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;

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

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

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

WHEREAS, this Final Judgment and Order Pursuant to Stipulation ("Final Judgment") results from and incorporates portions of the Parties' settlement of the claims asserted in the Consolidated Action;

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

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

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

I. JURISDICTION

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

II. DEFINITIONS

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

1. "ABSMC" means the following general acute care hospitals: Alta Bates Summit Medical Center – Alta Bates Campus, Alta Bates Summit Medical Center – Herrick Campus, and Alta Bates Summit Medical Center – Summit Campus, and any new Sutter general acute care hospitals replacing them.

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

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

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

5. "Group A Providers" means Rural Hospitals, ABSMC, CPMC, and PAMF.

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

7. "Insurers" include the following California licensed health care service plans and insurers: Aetna Health of California, Inc.; Aetna Health Management; Aetna Life Insurance Company; Anthem Blue Cross, Inc./Blue Cross of California; California Physicians' Service

(d/b/a Blue Shield of California); UnitedHealthcare Insurance Company; UnitedHealthcare of California; Cigna HealthCare of California, Inc.; Cigna Health and Life Insurance Company; Health Net of California, Inc. For purposes of this Final Judgment, Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals the Permanente Medical Group and Kaiser Permanente Insurance Corporation are not individually or collectively an Insurer.

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

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

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

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

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

III. APPLICABILITY

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

2. Plaintiffs and Defendants, by their respective attorneys, have stipulated to the entry of this Final Judgment without trial of any issue of fact or law. This Final Judgment is not, nor

shall any of the terms, provisions, or anything herein, constitute any evidence against, an admission of liability by, or an estoppel by a third party against, any party to this Final Judgment. This Final Judgment shall not be construed as an admission of any type by Defendants.

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

IV. PROHIBITED, REQUIRED, AND PERMITTED CONDUCT

A. General

1. Contract provisions

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

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

c. Except as otherwise provided in this Final Judgment, Defendants may negotiate and enforce contract terms that provide that an Insurer and/or Self-Funded Payer may not unilaterally change the participation status of a Sutter Provider in an existing Commercial Product during the performance of a contract term. Defendants may not use this provision to block an Insurer from introducing any new Commercial Products after execution of the contract between that Insurer and Defendants; however, Defendants retain the right to refuse participation

of any or all Sutter Providers in that Commercial Product. If Defendants agree to participate in a Commercial Product that is introduced by an Insurer during the term of a contract that includes some but not all Sutter Providers and which was not disclosed during renewal negotiations between the Insurer and Defendants, Defendants shall offer prices for such participating Sutter Providers that are equal to or less than the maximum rates set forth in Section IV.D.3 below.

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

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

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

3. Centers of Excellence

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

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

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 not apply to Sutter Providers absent mutual agreement of the Insurer marketing the center of excellence program and Defendants.

B. Participation of Group A Providers and Group B Hospitals

1. Rural Hospitals and ABSMC

a. During contract negotiations, at the request of an Insurer, Defendants will make the Rural Hospitals and ABSMC available to participate in any network for any Commercial Product to Insurers and/or Self-Funded Payers, other than as set forth in Section IV.B.4 below pertaining to co-branded products, subject to (i) negotiation of mutually agreeable price terms so long as the price terms offered by Defendants are not tantamount to conditioning the participation

of the Rural Hospital(s) or ABMSC on the participation, pricing, or tiered status of other Sutter Providers and (ii) the inclusion in the Commercial Product of all services available at each participating Rural Hospital or ABMSC.

2. CPMC and PAMF

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

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

c. Except as prohibited in Section IV.A.2.a above and IV.C.1.a and IV.C.1.c below, CPMC and PAMF shall have the option to decline to participate in any Commercial Product, for reasons including but not limited to those described in Section IV.C below titled "Conditional Participation" (if applicable) and Section IV.C.3.c below titled "Patient Access Considerations," provided Defendants simultaneously provide the reasons in writing in detail to the Insurer and to the Office of the California Attorney General and counsel for UEBT and the class (*i.e.*, Pillsbury & Coleman, LLP; Cohen Milstein Sellers & Toll PLLC; Farella Braun + Martel LLP; Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.; McCracken, Stemerman &

Holsberry, LLP) (hereinafter, "Class Counsel"). If an Insurer in good faith believes that CPMC's or PAMF's reason(s) for declining to participate in a Commercial Product are a pretext for (1) conditioning CPMC's or PAMF's participation, pricing, or tiered status on the participation, pricing, or tiered status of any other Sutter Provider except as permitted by this Final Judgment, or (2) interfering with, preventing, or penalizing the Insurer's efforts to introduce or offer tiered, steered, or narrow network products except as permitted by this Final Judgment, the Insurer shall make a reasonable effort to meet and confer with Defendants. If the meet and confer process does not swiftly resolve the dispute, or at the election of the Office of the California Attorney General or of Class Counsel, the Office of the California Attorney General or Class Counsel may challenge Defendants' refusal before the Compliance Monitor and ultimately the Court pursuant to the procedures in Section V below.

3. Group B Hospitals

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

4. Co-Branded Products

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

C. Conditional Participation

1. General Provisions

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

b. Defendants may not condition the participation or tiered status of some or all Sutter Providers in one Commercial Product on the participation or tiered status of some or all

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

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

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

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

participation of all of the designated Sutter providers in the same network or tier of a Commercial Product.

2. PAMF

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

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

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

b. Defendants may not condition the participation of PAMF in a Commercial Product upon the participation of any Ambulatory Surgical Centers or Endoscopy Centers

("ASCs"), unless (1) PAMF has an ownership interest in that ASC and a pattern of regular admission of patients to that ASC or (2) the ASC is listed in Exhibit A, which lists ASCs in which Sutter or any of its affiliates has an ownership interest and to which PAMF has a pattern of regular admission of patients, subject to the right of the Office of the California Attorney General and/or of Class Counsel, after meeting and conferring in good faith with Defendants to attempt to agree to the list of ASCs in Exhibit A, to challenge inclusion of any ASC on Exhibit A before the Compliance Monitor and ultimately the Court, which shall consider any challenge upon the motion of a Party after the Compliance Monitor makes a timely recommendation to the Parties and the Court concerning resolution of the challenge.

3. Group B Hospitals

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

b. **Clinical Integration Exception**: Defendants may condition the participation or tiered status of its Group B Hospitals in a network of a Commercial Product upon the participation or tiered status of other Sutter Providers if all affected Sutter Providers are clinically integrated with respect to the services covered by the Commercial Product and if, in the case of conditional tiering, such conditional tiering is reasonably necessary to achieve the benefits of clinical integration. Defendants shall not designate Group B Hospitals and other Sutter Providers to be part of a clinically integrated group specifically for these purposes unless the specified Sutter Hospitals and Sutter Providers satisfy the standards for clinical integration described in the 2009 Alta Bates Medical Group consent decree with the Federal Trade Commission and in the similarly worded Washington Attorney General's 2019 settlement with

CHI Franciscan and The Doctors Clinic. For purposes of interpreting and enforcing this Final Judgment, the standards set forth in those consent decrees, and Section V.C.2.d.i and (ii) below, shall govern whether any Group B Hospitals and other Sutter Providers are clinically integrated.

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

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

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

(ii) Financial Risk: The Commercial Product raises a financial risk issue if it creates a substantial risk of unforeseeable patient financial hardship through substantially different patient out-of-pocket costs between the admitting physician and the hospital that the physician regularly admits to, or if it is a Commercial Product that has a minimum average cost sharing, otherwise known as actuarial value, of less than 60% in the tier in which the provider is offered. The calculation of the actuarial value of a tier in a tiered product shall be made in accordance with the Center for Medicare and Medicaid's Final 2019 Actuarial Value Calculator Methodology (Dec. 28, 2017), p. 23, or any federal or state replacement thereto. Commercial

Products that do not have an out of pocket maximum or that cause unlimited liability for patients who access Sutter Providers in the tier in which Sutter Providers have been asked to participate shall be deemed to fall within the financial risk exception.

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

D. Pricing

1. Right To Offer Lower Prices for Increased Expected Volume

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

2. Right To Offer Bundled Pricing

a. Defendants may offer an Insurer lower prices for one or more Group B Hospitals as part of a bundle with one or more other Group B Hospitals provided that Defendants,

on an Insurer's request, offer a separate standalone price for any of the included Hospitals requested by the Insurer.

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

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

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

3. Out of Network Rates

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

b. The maximum out-of-network rates set forth in this Section IV.D.3 are applicable to services by Sutter primary or specialty care physicians on whose behalf Defendants negotiate contracts with Insurers and that are billed as part of a hospital visit for trauma, emergency room, and post-stabilization services for patients admitted through the emergency room ("Covered Physicians Hospital Services"). Office visits, other inpatient services (aside from

post-stabilization services for patients admitted through the emergency room), and outpatient services are not covered by this Final Judgment as they are beyond the scope of this Final Judgment.

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

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

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

f. Maximum Out-of-Network Rates and Other Out-of-Network Rate 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

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

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

4. Chargemaster Commitment

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

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

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

1. New Affiliates

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

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

(i) If an Insurer and/or Self-Funded Payer had an existing agreement with the New Affiliate prior to Defendants' acquiring the hospital or ASC as a New Affiliate, and Insurer and/or Self-Funded Payer notifies Sutter that Insurer and/or Self-Funded Payer wants the New Affiliate to participate in one or more of Insurer and/or Self-Funded Payer's Commercial Products, then the Commercial Product's fee for service (FFS) rates in Insurer and/or Self-Funded Payer's existing agreement with the New Affiliate ("Prior Rates") shall apply to the applicable Commercial Product for a period of two year(s) after the acquisition of the New Affiliate, or until the expiration of such agreement in accordance with its provisions, whichever is sooner. Nothing in this paragraph shall prevent Defendants and Insurer and/or Self-Funded Payer from negotiating capitation rates and related agreements, including, without limitation, shared risk budgets or rates for participation in government-sponsored products. Upon expiration of the Prior Rates as set forth above, the Insurer and/or Self-Funded Payer may elect at its option to treat the New Affiliate

as being out-of-network of any Commercial Product through the expiration of the term of the contract between the Insurer and Defendants. The provisions of this Section IV.E.1.b shall apply regardless of whether Defendants maintain the New Affiliate as a separate entity or merge it into an existing Sutter Provider as an expansion of that Provider's operations. Notwithstanding the provisions of this Section IV.E.1.b, the Insurer may, with Defendants' consent, opt to renegotiate its agreement with the New Affiliate prior to the expiration of the Prior Rates as set forth above.

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

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

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

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

2. New PAMF Hospital or ASC

a. In the event that PAMF seeks to add a Sutter Hospital or ASC to the list in Sections IV.C.2.a.(ii) or IV.C.2.b above ("New PAMF Hospital or ASC")," Defendants shall make a reasonable effort to meet and confer with the Office of the California Attorney General

and Class Counsel in an effort to reach agreement to include such New PAMF Hospital(s) or ASC(s) under Section IV.C.2.a.(ii) and IV.C.2.b above. In the event Defendants and the Office of the California Attorney General and/or Class Counsel do not agree, Defendants may petition the Court, after seeking the recommendation of the Compliance Monitor, to include such New PAMF Hospital(s) or ASC(s) pursuant to the procedures in Section V below.

3. New Insurers

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

F. Price and Quality Transparency:

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

2. An Insurer may provide a Self-Funded Payer, which has a contract with that Insurer to access Sutter Providers, that Self-Funded Payer's own claims paid data from that Insurer, which

that Self-Funded Payer may use for any purpose subject to reasonable protections against further disclosure of price information.

3. Insurers and/or Self-Funded Payers may provide enrolled members with access to pricing, quality, and/or cost information concerning Sutter Providers for purposes of comparing such Providers' prices and/or quality for particular healthcare services and products to the prices and/or quality of the same healthcare services or products available from other providers. Defendants' remedy for the posting of allegedly inaccurate pricing or quality information by Insurers and/or Self-Funded Payers is (1) to post the allegedly correct information on its own website, (2) to seek a court or, if applicable, arbitration order requiring the correction of the information, and/or (3) to pursue any other remedies authorized by law.

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

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

G. Miscellaneous

1. Admitting Privileges

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

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

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

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

V. COMPLIANCE MONITOR

A. Settlement Compliance Monitor

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

B. Powers of the Compliance Monitor

1. The Compliance Monitor shall have the following powers to monitor compliance with this Final Judgment: to investigate compliance; to take complaints from Plaintiff(s) 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 concerning enforcement to the Court.

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

C. Specific Procedures

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

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

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

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

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

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

meeting their burden of proving anticompetitive effects, this evidence of benefits is otherwise unsupportable.

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

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

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

D. Duty to Cooperate with Compliance Monitor

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

E. Expenses of the Compliance Monitor

The Compliance Monitor shall be entitled to receive reimbursement of its reasonable fees and costs. The Court shall 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. Defendants shall pay the reasonable fees and costs for the Compliance Monitor by establishing a Monitor Fund to be administered by the Office of the Attorney General as approved by the Court.

F. Confidentiality

1. The Parties may require the Compliance Monitor and each of the Compliance Monitor's consultants, accountants, and other representatives, agents, and assistants to sign a confidentiality agreement; *provided, however,* that such agreement shall not restrict the

Compliance Monitor from providing any information to the Court, subject to any requests to seal information pursuant to California Rules of Court Rule 2.550, *et seq*.

2. The Compliance Monitor shall comply with the confidentiality obligations that will be set forth in the Monitor Agreement between the Compliance Monitor and the Parties, and shall protect against disclosure of non-public information except as specifically provided for in this Order.

VI. DURATION

This Final Judgment shall remain in effect for ten (10) years unless, prior to the expiration of this Final Judgment, Plaintiff(s) apply for, and the Court grants, a one-time, three-year extension of the term.

VII. RETENTION OF JURISDICTION & CHANGED CIRCUMSTANCES

Pursuant to California Civil Code Section 3424, Code of Civil Procedure Sections 533 and 664.6 and Rules of Court Rule 3.769(h) the Court shall retain jurisdiction over these consolidated actions and the parties thereto for the purpose of enabling any of the parties to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe the terms of this Final Judgment, to enforce compliance, to modify any of its provisions, and to punish any violation of its provisions.

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 C

EXHIBIT C

EXCLUSION REQUESTS POSTMARKED ON OR BEFORE JUNE 11, 2018

1	ADVENTIST HEALTH; ADVENTIST HEALTH SYSTEM/WEST
2	CEDARS-SINAI HEALTH SYSTEM; CEDARS-SINAI HEALTH SYSTEMS
3	GREAT WEST LIFE AND ANNUITY INS CO-CANUS; GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY; GREAT-WEST LIFE & ANNUITY COMPANY; GREAT-WEST, CANUS PLAN GREAT-WEST/LGSCAEOP 5TI
4	AMERIPRISE FINANCIAL, INC.*
5	NATIONSTAR MORTGAGE LLC*
6	SIERRA PACIFIC INDUSTRIES
7	TRUST FOR CONSERVATION INNOVATION*

* According to Plaintiffs' information, entity was not a California citizen on the date the complaint was filed and thus not a Class Member.

Names that Plaintiffs believe are for the same entity are grouped together.

EXHIBIT D

Today, a settlement agreement reached between the UFCW & Employers Benefit Trust on behalf of a class of California Self-Funded Payers, California's Attorney General and Sutter Health was submitted for preliminary approval to the San Francisco Superior Court. The parties are pleased to have reached an agreement to resolve this lawsuit and believe a long and costly trial that could be tied up in the courts for years is not in anyone's best interest. There is no admission of wrongdoing on the part of Sutter Health.

APPENDIX 2
to
Memorandum of Points and Authorities

UFCW & Employers Benefit Trust v. Sutter Health
c/o Administrator
P.O. Box 9349
Dublin, OH 43017-4249
Forwarding Service Requested

<<control_no>> <<nme_idno>>
<<name_addr_1>>
<<name_addr_2>>
<<name_addr_3>>
<<name_addr_4>>
<<name_addr_5>>
<<city>>, <<state>> <<zip_5>><<zip_4>>

Must be Postmarked No Later Than

_____

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 under penalty of perjury 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

To view Epiq's Privacy Notice, please visit https://www.epiqglobal.com/en-us/privacy-statement

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 receive a share of the Settlement Fund.

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:**

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 III - SPECIFIC INSTRUCTIONS (CONTINUED)

9. If your answer to Question 8 is "yes," identify which of the following insurance companies provided the network that was used by the Claimant's self-funded health plan during the time period of such payments to Sutter, and whether any such payments were made during the following time periods.

Health Insurance Company	Were any such payments made to Sutter during:		
Aetna	January 1, 2003 – July 25, 2016	Yes	No
Anthem	January 1, 2003 – December 31, 2016	Yes	No
Blue Shield	January 1, 2003 – June 25, 2016	Yes	No
Cigna	January 1, 2003 – April 30, 2016	Yes	No
United Healthcare	January 1, 2003 – June 30, 2016	Yes	No
Other	N/A		

PART IV - CERTIFICATION UNDER PENALTY OF PERJURY

You declare, under penalty of perjury under the laws of the State of California that the foregoing information provided by the undersigned is true and correct:

Date: / / at **City:** , **State:**

Sign your name here:

Type/Print your name here:

Type/Print your company name here. Please include all related entities:

Capacity of person signing, e.g., President, Partner:

I affirm that I have authority to sign on behalf of the claimant.

Signor's Email Address (Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.):

Signor's Telephone Number:

- -

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 "Releasors") 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 Releasor 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.

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 9349
Dublin, OH 43017-4249