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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 **DECLARATION OF SUZANNE F. DELBANCO, Ph.D., IN SUPPORT OF PLAINTIFFS' OPPOSITION TO SUTTER'S MOTION TO CONTINUE PRELIMINARY APPROVAL HEARING**
People of the State of California, ex. rel. Xavier Becerra, Plaintiff, vs. Sutter Health, Defendant.	Date: July 9, 2020 Time: 9:15 am Judge: Hon. Anne-Christine Massullo Dept.: 304 Action Filed: April 7, 2014

I, Suzanne F. Delbanco, Ph.D, hereby declare as follows:

1. For the past ten years, I have served as the executive director of Catalyst for Payment Reform (CPR). CPR is a national, independent, nonprofit 501c3 organization. Our mission is to catalyze the health care industry on behalf of employers and other health care purchasers to produce higher-value health care and improve the functioning of health care markets.

2. CPR's membership comprises 33 members from across the United States including private employers, state Medicaid, employee and retiree agencies, and multi-employer union trust funds. Together, they push for higher-quality, more affordable health care. Among our members are California-based CalPERS, Google, Hilmar Cheese, the San Francisco Health Services System, Self-Insured Schools of California, and Qualcomm Incorporated.

3. In my role as executive director of CPR, I work with our members and others to identify strategies they can use as they purchase health care to enhance its quality and affordability for their health plan members. We conduct research and analyses and provide education, thought leadership, and tools. For example, I have designed and provided model questionnaires and contract language for our members to use when they select and contract with health plans and other vendors. Relatedly, I moderate user groups between CPR health care purchasers and the nation's largest health plans. I have also conducted assessments of local and regional health care markets to understand the implications of their characteristics and dynamics for potential reforms to how doctors and hospitals are paid. Furthermore, starting in 2011, I helped to lead a national movement for greater transparency into health care prices. This included testifying in 2013 before the U.S. Senate Committee on Finance regarding the importance of price transparency from the perspective of employers and consumers.

4. Prior to running CPR, I was the founding executive director of The Leapfrog Group. Leapfrog is a nonprofit, national consortium of Fortune 500 companies and other large private and public health care purchasers working to trigger leaps in the safety, quality and affordability of health care. At Leapfrog, I helped employers and other purchasers push for standard measures of health care quality as well as public reporting by hospitals on their

performance on those measures. I hold a Ph.D. in Public Policy from the Goldman School of Public Policy and a M.P.H. from the School of Public Health at the University of California, Berkeley.

5. I submit this declaration to the Court on behalf of CPR. CPR urges the Court to move along the settlement process expeditiously. COVID-19 does not provide a legitimate excuse for Sutter Health to delay implementation of the settlement, especially given how thoughtfully it has been devised. Furthermore, the way in which the settlement would improve health care markets in northern California is now more important than even before.

6. There is no doubt that the United States and the State of California are in a moment of crisis between the COVID-19 pandemic and the economic downturn it produced. CPR is indebted to the courageous frontline health care providers in California who have been preparing for and treating COVID-19 patients. We also recognize the enormous difficulties being posed to health care providers whose livelihoods depend on the revenue they generate from elective health care services, the use of which has dropped significantly amidst shelter-in-place orders.

7. However, from the perspective of CPR, our members, and given our extensive involvement in health care, we find Sutter's arguments about the potential damage posed by ongoing low utilization of elective health care services and limits on chargemaster increases to be speculative. When markets have adequate competition among health care providers, evidence suggests providers can make sufficient financial margins even on Medicare and Medicaid (e.g., Medi-Cal) payments, which are lower than commercial health plan payments. When there is insufficient competition, such as in northern California, hospitals and health systems lack the drive to root out unnecessary costs, finding it easier simply to raise prices to commercial payers. To the extent that the elective procedures are medically necessary, we can expect that patients will seek to meet their medical needs in the near term.

8. Therefore, it is now even more essential, in this time of economic crisis and during the recovery, that employers and other health care purchasers are able to exercise a full range of options when offering health care coverage to their health plan members. This requires transparency into health care prices and quality. It also requires the ability to encourage or even

steer health plan members to providers offering the best combination of quality and cost as well as away from lower-value providers. This can be done if purchasers are able to implement innovative health insurance benefit designs and selective networks of health care providers.

9. Steering is an important competitive mechanism that commercial payers, as agents for employers and other purchasers in the procurement of health care services, use to obtain higher quality, more efficient and more affordable care for employers and their employees. For employees, the availability of steered plans, both at open enrollment and, in the case of tiered plans, throughout the course of the plan year, allows them to decide how and where to spend their health care dollars, and allows them to take advantage of information on which providers may offer higher quality and/or more affordable care. The injunctive relief included in the settlement will help prevent restraints on the development of innovative health insurance benefit and provider network designs.

10. As part of its mission, CPR regularly examines the evidence on the effectiveness of various benefit and network designs, as well as payment reforms, and educates employer-purchasers about the impacts of these programs. Research suggests that health care coverage strategies that connect plan members to higher-value providers can save purchasers and their plan members significant money. Employers and other health care purchasers are increasingly turning to these approaches in markets outside of northern California. For example, researchers from the National Bureau of Economic Research found that when the Commonwealth of Massachusetts Group Insurance Commission (GIC), which provides insurance for state employees and retirees, introduced narrow network plans for its members, it reduced the GIC's total spending by 4.2%. A study of Blue Cross Blue Shield of Massachusetts' three-tiered hospital network by Harvard University researchers found a 7.6% shift away from providers in the bottom hospital tier, resulting in 5% total cost of care savings.

11. During the economic recovery, we need health care markets to be as competitive as possible so that health care providers cannot use market power, unfettered, to demand higher and higher prices. Health care prices are, after all, the single biggest driver of health care cost growth today.

12. With a depressed economy, employers and other health care purchasers have less money than ever to spend on health care. Indeed, to avoid further layoffs and the folding of more businesses, employers need every tool at their disposal to keep expenses under control. Moreover, the members of the class, many of whom are likely now facing dire economic circumstances, would be in a stronger economic position today if they had not for years overpaid for health care services due to the behavior of Sutter Health. They need the funds agreed to in the proposed settlement as well as the proposed injunctive relief to help to minimize future costs.

13. Without this settlement proceeding, the temptation of Sutter Health and other providers will be to try to recoup their costs on the backs of employers. The members of the class cannot afford such increases. This will lead to more layoffs and eat further into the wages of workers, further slowing our economic recovery. Additionally, without the injunctive relief, employers and other health care purchasers in northern California, and their plan members, will be in a far worse position to control costs going forward.

14. The proposed settlement is still crucial in this new COVID-19 world. It would have a meaningful impact on health care markets in northern California. We urge the court to proceed with approving the settlement.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on this 24th day of June, 2020, at Berkeley, California.

Suzanne F. Delbanco, Ph.D.

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