


FILED
San Francisco County Superior Court

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CLERK OF THE COURT
BY: 
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN FRANCISCO

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

18 Plaintiffs,

19 vs.

20 Sutter Health, et al.,

21 Defendants.

22
23 People of the State of California, ex. rel.
Xavier Becerra,

24 Plaintiff,

25 vs.

26 Sutter Health,

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

**[AMENDED PROPOSED] ORDER
GRANTING PLAINTIFFS' UNOPPOSED
MOTION TO MODIFY THE CLASS
DEFINITION**

Dept.: 304
Judge: Hon. Anne-Christine Massullo
Hearing: July 10, 2019
Time: 9:15 a.m.

Action Filed: April 7, 2014
Trial Date: August 12, 2019

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AMENDED PROPOSED ORDER

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2 Plaintiffs UFCW & Employers Benefit Trust, et al. and the People of the State of
3 California (“Plaintiffs”) filed an unopposed motion to modify the class definition. The motion
4 came on for a hearing on July 10, 2019. Having considered all papers submitted in connection
5 with the motions and arguments of counsel, the Court rules as follows:

6 1. The Court GRANTS Plaintiffs’ Unopposed Motion to Modify the Class Definition.

7 The Class Definition shall be as follows:

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

- 10
- 11 • For services between January 1, 2003 and July 25, 2016 at prices set by contracts between
Sutter and Aetna;
 - 12 • For services between January 1, 2003 and December 31, 2016 at prices set by contracts
between Sutter and Anthem;
 - 13 • At any time between January 1, 2003 and June 25, 2016 at prices set by contracts between
Sutter and Blue Shield;
 - 14 • For services between January 1, 2003 and April 30, 2016 at prices set by contracts between
Sutter and Cigna; or
 - 15 • At any time between January 1, 2003 and June 30, 2016 at prices set by contracts between
Sutter and United Healthcare/PacifiCare.

16 If you qualify as a member of the class, your claims will include alleged overcharges paid to
17 Sutter:

- 18
- 19 • For services provided between January 1, 2003 and October 27, 2018 at prices set by
contracts between Sutter and Aetna;
 - 20 • For services provided between January 1, 2003 and October 31, 2018 at prices set by
contracts between Sutter and Anthem;
 - 21 • At any time from January 1, 2003 to December 31, 2018 at prices set by contracts between
Sutter and Blue Shield;
 - 22 • For services between January 1, 2003 and August 25, 2018 at prices set by contracts
between Sutter and Cigna; or
 - 23 • At any time from January 1, 2003 to January 26, 2019 at prices set by contracts between
Sutter and United.

24 Your claims will not include any alleged overcharges: (1) paid to Sutter in connection with Blue
25 Shield’s Flex Funded products; (2) paid through UMR, a subsidiary of UnitedHealthcare; or (3) in
26 connection with services or payments (whichever is applicable) later than the dates listed in the
preceding paragraph. Additionally, your claims will not be included if you opted-out of the
present litigation on or before June 11, 2018.

27 2. Plaintiffs shall provide notice to the class and to self-funded payors affected by the
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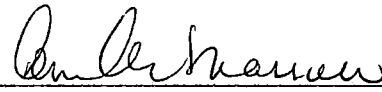
1 modification as provided in Exhibit 1 hereto.

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3 IT IS SO ORDERED.

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5 Dated: July 17, 2019



Hon. Anne-Christine Massullo
Judge of the San Francisco Superior Court

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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

**California Entities That Compensated Sutter Health for Their Members' Health Care
Could Be Included in a Class Action Lawsuit**

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

- You are receiving this Notice because you may be included in a class action lawsuit that impacts your rights and options. Your legal rights are affected whether or not you take action.
- A court has certified the lawsuit as a class action. You may have previously received a Notice, similar to this one, regarding this class action. This Notice is intended to provide you with updated information about the class definition and the claims that are included in this Lawsuit.

The class is defined as: 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.

If you qualify as a member of the class, your claims will include alleged overcharges paid to Sutter:

- For services provided between January 1, 2003 and October 27, 2018 at prices set by contracts between Sutter and Aetna;
- For services provided between January 1, 2003 and October 31, 2018 at prices set by contracts between Sutter and Anthem;
- At any time from January 1, 2003 to December 31, 2018 at prices set by contracts between Sutter and Blue Shield;
- For services between January 1, 2003 and August 25, 2018 at prices set by contracts between Sutter and Cigna; or
- At any time from January 1, 2003 to January 26, 2019 at prices set by contracts between Sutter and United.

Your claims will not include any alleged overcharges: (1) paid to Sutter in connection with Blue Shield's Flex Funded products; (2) paid through UMR, a subsidiary of UnitedHealthcare; or (3) in connection with services or payments (whichever is applicable) later than the dates listed in the preceding paragraph. Additionally, your claims will not be included if you opted-out of the present litigation on or before June 11, 2018.

QUESTIONS? EMAIL SUTTERHEALTHLAWSUIT@COHENMILSTEIN.COM, CALL (866) 828-2466, OR VISIT WWW.SUTTERHEALTHLAWSUIT.COM

- You are a self-funded payor that compensated Sutter if you are an entity (such as an employer or healthcare benefits trust) that was contractually bound to pay for the health care expenses of your members or employees under your health plan incurred at a Sutter general acute care hospital. You are not a self-funded payor if someone else, such as an insurance company, is the one contractually bound to pay for the health care expenses of your members or employees under your health plan, even if you pay for the insurance. Further, you are not a self-funded payor if you are an individual. Records of Aetna, Anthem, Blue Shield, Cigna, PacifiCare or United Healthcare show you may have been contractually bound to pay for general acute care hospital services or ancillary products provided to members of your health plan by Sutter between January 1, 2003 and 2016.
- 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. For purposes of class membership, you are considered a citizen of California if you were a California citizen on April 7, 2014, regardless of whether you remained a California citizen after that date. If you are a California governmental entity (including, but not limited to, a city, a county, a hospital district, a school district, a fire protection district, a water or irrigation district, a transit or transportation district, a joint powers agency or authority, a public university, a department within the State, a superior court, the Judicial Council of California, or the Major Risk Medical Insurance Program) and are also a self-funded payor that compensated Sutter, you are included in the class, whether or not you are a California citizen.
 - If you believe you are a member of the Class, you are encouraged (but not required) to contact Class Counsel to ensure your damages are included in Plaintiff's damages calculations. You can do so by email to SutterHealthLawsuit@cohenmilstein.com or by mail at UFCW & Employers Benefit Trust v. Sutter Health, c/o Administrator, P.O. Box 9349, Dublin, OH 43017-4249.
- The Court has not determined whether Sutter did anything wrong. There are no benefits available now, and there is no guarantee that there will be.

BASIC INFORMATION

1. Why was this Notice issued?

This Notice is to inform you that this lawsuit has been "certified" as a Class Action, and that any claims filed after the dates specified on page 1 will not be included in this lawsuit.

The Hon. Anne-Christine Massullo of the Superior Court of California, County of San Francisco is overseeing this case. The case is known as *UFCW & Employers Benefit Trust v. Sutter Health*, San Francisco Superior Court Case No. CGC 14-538451. The entity that sued is called the Plaintiff, and the entity it sued is called the Defendant. The Plaintiff in this case is UFCW & Employers Benefit Trust and the Defendant is Sutter Health and several of its affiliates ("Sutter").

2. What is the lawsuit about?

This lawsuit was filed on April 7, 2014, and is pending in the Superior Court of California, County of San Francisco. The Plaintiff alleges that Sutter violated California's antitrust law, the Cartwright Act, and California's Unfair Competition Law. In particular, Plaintiff alleges that Sutter included provisions in its provider agreements with the major health insurance companies in California that have had the effect of restricting price competition between Sutter and other general acute care hospitals in Northern California. Plaintiff further alleges that this reduction in price competition has permitted Sutter to overcharge self-funded payors and others for its general acute care hospital services and ancillary products. Plaintiff seeks

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to recover damages on behalf of the class and to prohibit Sutter from continuing to engage in the alleged anticompetitive practices.

Sutter denies that it did anything wrong and denies that Plaintiff and the Class are entitled to receive any money or other relief from Sutter. This lawsuit is ongoing, and the Court has not yet decided who will win or lose this case.

On August 14, 2017, the Court authorized Plaintiff to represent a Class of self-funded payors. On September 29, 2017, the Court modified the class definition, and Plaintiffs provided Notice thereafter to the Class of Plaintiffs. On June 20, 2019, the Court denied Sutter's Motion for Decertification. On July 10, 2019, the Court granted Plaintiffs' motion to modify the class definition to the one described in this Notice.

Your options as a Class Member and the deadlines to exercise them are explained in this Notice.

3. Who is included in the Class?

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.

If you qualify as a member of the class, your claims will include alleged overcharges paid to Sutter:

- For services provided between January 1, 2003 and October 27, 2018 at prices set by contracts between Sutter and Aetna;
- For services provided between January 1, 2003 and October 31, 2018 at prices set by contracts between Sutter and Anthem;
- At any time from January 1, 2003 to December 31, 2018 at prices set by contracts between Sutter and Blue Shield;
- For services between January 1, 2003 and August 25, 2018 at prices set by contracts between Sutter and Cigna; or
- At any time from January 1, 2003 to January 26, 2019 at prices set by contracts between Sutter and United.

Your claims will not include any alleged overcharges: (1) paid to Sutter in connection with Blue Shield's Flex Funded products; (2) paid through UMR, a subsidiary of UnitedHealthcare; or (3) in connection with services or payments (whichever is applicable) later than the dates listed in the preceding paragraph.

QUESTIONS? EMAIL SUTTERHEALTHLAWSUIT@COHENMILSTEIN.COM, CALL (866) 828-2466, OR VISIT WWW.SUTTERHEALTHLAWSUIT.COM

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. For purposes of class membership, you are considered a citizen of California if you were a California citizen on April 7, 2014, regardless of whether you remained a California citizen after that date. If you are a California governmental entity (including, but not limited to, a city, a county, a hospital district, a school district, a fire protection district, a water or irrigation district, a transit or transportation district, a joint powers agency or authority, a public university, a department within the State, a superior court, the Judicial Council of California, or the Major Risk Medical Insurance Program) and are also a self-funded payor that compensated Sutter, you are included in the class, whether or not you are a California citizen.

You are a self-funded payor that compensated Sutter if you are an entity (such as an employer or healthcare benefits trust) that was contractually bound to pay for the health care expenses of your members or employees incurred at a Sutter general acute care hospital under your health plan. You are not a self-funded payor if someone else, such as an insurance company, is the one contractually bound to pay for the health care expenses of your members or employees under your health plan, even if you pay for the insurance. Further, you are not a self-funded payor if you are an individual. Records of Aetna, Anthem, Blue Shield, Cigna, PacifiCare or United Healthcare show you may have been contractually bound to pay for general acute care hospital services or ancillary products provided to members of your health plan by Sutter between January 1, 2003 and the present.

If you have questions about whether you are a class member or you have any other questions, you may email SutterHealthLawsuit@cohenmilstein.com or mail your questions to UFCW & Employers Benefit Trust v. Sutter Health, c/o Administrator, P.O. Box 9349, Dublin, OH 43017-42490.

4. What is a class action?

In a class action, one or more persons or entities called “class representatives” sue on behalf of a group of people or entities who have similar claims. All of these persons or entities are called a “class” or “class members.” In a class action, the Court resolves the issues for all class members, except for those who exclude themselves from the class. In this lawsuit, the Class Representative is UFCW & Employers Benefit Trust.

YOUR RIGHTS AND OPTIONS

You were previously provided with a choice about whether to remain a member of the Class and be represented by the Class Representatives and by Class Counsel, or to exclude yourself from the Class.

Plaintiffs’ modified class definition excludes self-funded payors unless they had claims arising before the following dates:

- July 25, 2016 for services provided at prices set by contracts between Sutter and Aetna;
- December 31, 2016 for services provided at prices set by contracts between Sutter and Anthem;
- June 25, 2016 for claims paid at prices set by contracts between Sutter and Blue Shield;
- April 30, 2016 for services provided at prices set by contracts between Sutter and Cigna; and/or
- June 30, 2016 for claims paid at prices set by contracts between Sutter and United Healthcare/PacifiCare.

Plaintiffs’ modified class definition also excludes claims arising after the following dates:

- October 27, 2018 for services provided at prices set by contracts between Sutter and Aetna;
- October 31, 2018 for services provided at prices set by contracts between Sutter and Anthem;
- December 31, 2018 for claims paid at prices set by contracts between Sutter and Blue Shield;

QUESTIONS? EMAIL SUTTERHEALTHLAWSUIT@COHENMILSTEIN.COM, CALL (866) 828-2466, OR VISIT WWW.SUTTERHEALTHLAWSUIT.COM

- August 25, 2018 for services provided at prices set by contracts between Sutter and Cigna; and/or
- January 26, 2019 for claims paid at prices set by contracts between Sutter and United Healthcare/PacifiCare.

Plaintiffs' modified class definition also excludes:

- Any alleged overcharges paid to Sutter in connection with Blue Shield's Flex Funded products; and/or
- Any alleged overcharges paid to Sutter through UMR, a subsidiary of UnitedHealthcare;
- Any class members that opted out of the present litigation on or before June 11, 2018.

For the claims that are excluded from the Class, you won't get any money or other benefits from this lawsuit even if the Class wins at trial or settles the case. However, you may be able to sue Sutter in a separate action for these claims. If you bring your own lawsuit against Sutter, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. For the claims that are excluded, you should talk to your own lawyer soon, because your claims may be subject to a time limit (known as a statute of limitations).

5. What happens if I do nothing?

If you meet the definition to be a class member, you do not have to do anything now if you want to keep the possibility of getting money or other benefits from this lawsuit. 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.

Regardless of whether the Class wins or loses at trial, 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 on behalf of the Class in this lawsuit. You will also be legally bound by any and all orders the Court issues and judgments the Court makes regarding the claims in this class action.

THE LAWYERS REPRESENTING YOU

6. Do I have a lawyer in this case?

The Court appointed the following lawyers to represent Plaintiff and all Class Members in this lawsuit ("Class Counsel"):

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

Kit A. Pierson
Daniel A. Small
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San Francisco, CA 94104
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Michael K. Kellogg
Mark C. Hansen
Daniel G. Bird
**Kellogg, Hansen, Todd, Figel
& Frederick, P.L.L.C.**
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Washington, DC 20036
(202) 326-7900

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

Email: SutterHealthLawsuit@cohenmilstein.com

7. Should I get my own lawyer?

For the Class claims, you do not need to hire your own lawyer because Class Counsel are working on your behalf in this lawsuit. If you want your own lawyer to represent you with regard to claims excluded from this lawsuit, you must pay for that lawyer, except to the extent that arms of the State of California may be represented by the Attorney General free of charge.

8. How will the lawyers be paid?

If Class Counsel are successful and obtain money or other benefits for the Class, they may ask the Court for fees and expenses. If the Court grants Class Counsel's request, the fees and expenses will either be deducted from any money obtained for the Class or paid separately by Sutter. If Class Counsel do not obtain money or other benefits for the Class, they will not receive any attorneys' fees or any reimbursement of their expenses.

THE TRIAL

9. How and when will the Court decide the claims in this case?

If the case is not resolved by a settlement or by motion, Class Counsel will have to prove the Class's claims in this lawsuit at a trial. There is no guarantee that the Class will win or that the Class will get any money. The Court has set a trial date of September 3, 2019 to take place at Superior Court of California, County of San Francisco, 400 McAllister St., San Francisco, CA 94102. This date may be continued without further notice to the Class.

10. Do I have to come to the trial?

You do not need to attend the trial unless you are subpoenaed as a witness. Class Counsel will present the case for the Class Members, and Sutter will present its defenses. You are welcome to come at your own expense. If you wish to participate in the trial, you should contact Class Counsel.

11. Will I get money after the trial?

If the Class obtains money or other benefits as a result of the trial or a settlement, you will be notified about how to share in the money or other benefits, if you have not excluded yourself from this class action. We do not know how long this will take. Please let Class Counsel know if your contact information changes.

QUESTIONS? EMAIL SUTTERHEALTHLAWSUIT@COHENMILSTEIN.COM, CALL (866) 828-2466, OR VISIT WWW.SUTTERHEALTHLAWSUIT.COM

GETTING MORE INFORMATION

12. How do I get more information?

You may obtain more information by contacting Class Counsel at the phone numbers or email address above. You can get a copy of the complaint and other important information about the lawsuit at www.SutterHealthLawsuit.com.

Please Do Not Contact the Court or Sutter's Counsel About This Notice.