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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN FRANCISCO

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

18 Plaintiff,

19 vs.

20 Sutter Health, et al.,

21 Defendants.

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

23 Plaintiff,

24 vs.

25 Sutter Health,

26 Defendant.

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

**PLAINTIFFS' COUNSEL'S MOTION TO
EXCUSE TARDINESS OF OTHERWISE
VALID LATE CLAIMS; NOTICE OF
MOTION; MEMORANDUM IN SUPPORT**

Date: November 5, 2021
Time: 11:00 a.m.
Dept: 304
Judge: Hon. Anne-Christine Massullo

Action Filed: April 7, 2014

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NOTICE OF MOTION AND MOTION

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

Please take notice that, on November 5, 2021, at 11:00 a.m., in Department 304 of the Superior Court, County of San Francisco, 400 McAllister Street, San Francisco, California 94102, Plaintiffs’ Counsel will and hereby do move for an order excusing the tardiness of seven otherwise valid claim forms submitted after the May 28, 2021 deadline.

This motion is based on the accompanying Memorandum of Points and Authorities, the supporting Declaration of Matthew Ruan, the pleadings and documents on file in this action, and any argument and evidence the Court may permit at the hearing.

Dated: October 4, 2021

By: /s/ Justin J. Lowe
Justin J. Lowe
Attorneys for the People of the State of California

Dated: October 4, 2021

By: /s/ Richard Grossman
Richard Grossman
Lead Counsel for Plaintiff Class

TABLE OF AUTHORITIES

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246 F.3d 315 (3d Cir. 2001) 4, 5

1 In its order granting final approval to the settlement, the Court ruled that “[l]ate claims may
2 be considered, subject to Court approval.” Order at 3. Class Counsel have received 45 claim
3 forms that were submitted after the May 28, 2021 deadline. *See* Declaration of Matthew Ruan in
4 Support of Plaintiffs’ Counsel’s Motion to Excuse Tardiness of Otherwise Valid Late Claims
5 (“Ruan Decl.”) ¶ 1. Class Counsel reviewed these late claims and have determined that seven
6 establish the claimant’s membership in the Class.¹ *Id.* Class Counsel request that the Court
7 excuse the tardiness of these seven claims so that these Class Members can share in the Net
8 Settlement Fund.

9 Class Counsel seek this relief because (a) the settlement fund was obtained for the benefit
10 of the Class and, absent undue prejudice, the settlement’s purpose is more fully realized through
11 greater class member participation in the recovery, and (b) the claims process will not be delayed,
12 and no other undue prejudice will occur to other class members, if the seven late claims are
13 accepted. *See id.* ¶ 4.

14 As a federal court has recognized under Rule 23, “[s]ettlement administration in a complex
15 class action often requires courts to use their equitable powers under Rule 23 to manage the
16 disparate interests competing over a finite pool of assets with which to satisfy the class.” *In re*
17 *Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 321 (3d Cir. 2001). “A primary use of
18 [the court’s] equitable powers is balancing the goals of expedient settlement distribution and the
19 consideration due to late-arriving class members.” *Id.* Here, there is no tradeoff, as excusing the
20 tardiness of seven late claims would not slow the claims process. Ruan Decl. ¶ 4.

21 Accepting otherwise valid claims despite their tardiness aligns with Class Counsel’s and
22 the Court’s duty to the Class. “[T]he ultimate goal” of a class settlement “is to achieve a high
23 claims rate and payout to class members based on effective notice.” *In re Facebook Biometric*
24 *Info. Priv. Litig.*, No. 15-CV-03747, 2020 WL 4818608, at *4 (N.D. Cal. Aug. 19, 2020). A

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26 ¹ Intent upon moving the claims process forward expeditiously, Class Counsel, after the
27 Court announced its intention to grant final approval but before the Court issued its final approval
28 order, notified the seven claimants that their claims were accepted. *Id.* ¶ 3. If the Court does not
excuse the tardiness of their claims, Class Counsel will so notify them.

1 higher claims rate is better for the class as a whole. *Cf. Butler v. Rydell Enters., LLC*, No.
2 BC389166, 2010 WL 6620237 (Cal. Super. Sept. 07, 2010) (noting that “high claims rate”
3 counseled in favor of settlement approval); *In re Google LLC St. View Elec. Commc’ns Litig.*, No.
4 10-MD-02184, 2020 WL 1288377, at *12 (N.D. Cal. Mar. 18, 2020) (noting that a “a high claims
5 rate” is “ordinarily a measure of success” of a class settlement). Thus, courts in California have
6 accepted late claim forms. *See, e.g., McPhail v. First Command Fin. Plan., Inc.*, No. 05-CV-179,
7 2009 WL 839841, at *9 (S.D. Cal. Mar. 30, 2009) (“Before the distribution of a settlement, a
8 district court has discretion to grant untimely claims under Rule 23.”); *Murphy v. Check ‘N Go of*
9 *Cal., Inc.*, No. 06-449394, 2010 WL 4267834 (Cal. Super. Aug. 31, 2010); *Cohorst v. BRE*
10 *Props., Inc.*, No. 10-CV-2666, 2012 WL 153754, at *4 (S.D. Cal. Jan. 18, 2012).

11 The factors adopted by federal courts to determine whether to permit late-filed settlement
12 claims are instructive. Those factors are: “1) the danger of prejudice to the nonmovant; 2) the
13 length of the delay and its potential effect on judicial proceedings; 3) the reason for the delay,
14 including whether it was within the reasonable control of the movant; and 4) whether the movant
15 acted in good faith.” *Orthopedic Bone Screw*, 246 F.3d at 322–23 (quoting *Pioneer Inv. Servs.*
16 *Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380 (1993)); *see also Barnes v. D.C.*, 38 F. Supp.
17 3d 131, 133 (D.D.C. 2014) (same). Here, each of the factors supports accepting the seven late
18 claims.

19 There is no risk of undue prejudice from accepting these late claims. There are just seven
20 late but otherwise valid claims out of hundreds of valid claim forms in the case. Ruan Decl. ¶ 5.
21 *See Orthopedic Bone Screw*, 246 F.3d at 324 (“Assuming all of these [late] claimants present valid
22 claims for inclusion in the class, . . . they would still represent only a minuscule fraction of the
23 total settlement class”). This strongly favors permitting these claims. *See In re Cipro Cases I and*
24 *II*, No. JCCP4154, 2014 WL 12573336, at *1 (Cal. Super. Dec. 05, 2014) (“There being no
25 prejudice, claims filed by Class members after the claims-filing deadline . . . are hereby accepted
26 and deemed eligible for payment from the Settlement Fund, provided they have otherwise been
27 determined to be eligible for payment.”).

28 The other factors further support permitting the seven late claims here. Accepting these

1 claims would not delay the processing of the timely claims. Ruan Decl. ¶ 4. Moreover, the Class
2 Members' delays are justifiable. Some did not receive notice, and some received late notice as a
3 result of mail delays during a global pandemic.² *Id.*, Exh. 1. Other late claims were due to
4 pandemic office closures and staff shortages and individual error. *Id.* One late claimant contends
5 an online claim form was timely submitted. *Id.* Although Class Counsel do not have a record of
6 that submission, they believe it is fair to accept the claimant's mailed claim form sent shortly after
7 the deadline. Another late claimant has a complicated merger and acquisition history and,
8 although notice was mailed to the company, it was not directed to the correct subsidiary and was
9 not received by someone with authority to act on it in time for a timely submission. *Id.* Class
10 Counsel have no reason to believe that these Class Members acted other than in good faith. Under
11 these circumstances, accepting otherwise valid late claims is appropriate. *Cf. In re Cendant Corp.*
12 *PRIDES Litig.*, 235 F.3d 176, 183 (3d Cir. 2000) (finding excusable neglect where "[t]he reason
13 for the delay . . . [was] a mailroom which did not operate as it should have in the ordinary course
14 of business.").

15 For the above reasons, Plaintiffs' Counsel request that the Court excuse the tardiness of the
16 seven late but otherwise valid claim forms and allow these seven Class Members to share in the
17 Net Settlement Fund.

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27 ² This motion does not identify the seven claimants by name to protect their
28 confidentiality. One such claimant requested such confidentiality, and Plaintiffs' Counsel believe
that the motion can appropriately be decided without disclosing the claimants' identity.

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Dated: October 4, 2021

By: /s/ Justin J. Lowe
Justin J. Lowe
Attorneys for the People of the State of California

Dated: October 4, 2021

By: /s/ Richard Grossman
Richard Grossman
Lead Counsel for Plaintiff Class