

JUN 11 2020

CLERK OF THE COURT

BY: [Signature]
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14

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.

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

**STIPULATION AND [PROPOSED] ORDER
REGARDING CLASS MEMBER
ACKNOWLEDGMENT AND AGREEMENT
TO BE BOUND TO AMENDED
PROTECTIVE ORDER**

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

24 Plaintiff,

25 vs.

26 Sutter Health,

27 Defendant.

Dept.: 304
Judge: Hon. Anne-Christine Massullo

Action Filed: April 7, 2014

1 The Plaintiff Class and the People of the State of California (collectively “Plaintiffs”) and
2 Defendants Sutter Health *et al.* (“Sutter”) hereby submit, through their undersigned counsel of
3 record, the following Stipulation and Proposed Order.

4 WHEREAS, the Court entered the Amended Protective Order on February 22, 2018; and

5 WHEREAS, class members may request access to unredacted or sealed filings in this case
6 for the purpose of evaluating the settlement between Plaintiffs and Sutter (collectively, “Parties”).

7 NOW THEREFORE, the Parties hereby stipulate as follows:

- 8 1. Where, for the sole purpose of evaluating the Parties’ settlement, a class member in
9 this action requests access to unredacted copies of the filings identified in Exhibit B
10 (the “Disclosure Packet”¹), the Claims Administrator may provide such class
11 member electronic access to the Disclosure Packet for the sole purpose of
12 evaluating the Parties’ settlement, provided that (for each individual from each
13 class member that seeks such access) the class member executes the
14 Acknowledgment and Agreement to be Bound to the Amended Protective Order
15 attached as Exhibit A to this Stipulation and [Proposed] Order
16 (“Acknowledgement”).
- 17 2. If, after reviewing the Disclosure Packet, a class member reasonably believes that it
18 needs to review other filings beyond the Disclosure Packet and such other filings
19 do not constitute exhibits, and where such class member identifies on Exhibit B to
20 an executed Acknowledgment those specific further filings it seeks to access, class
21 member may request access to such further filings by providing the executed
22 Acknowledgement and Exhibit B listing them to the Claims Administrator.
- 23 3. If after reviewing such further filings a class member believes that for the sole
24 purpose of evaluating the Parties’ settlement it reasonably needs to review exhibits
25 to filing(s), then in addition to identifying on Exhibit B the further filing(s) it seeks
26 to review, it shall (i) identify the individual documents and exhibits it seeks for that

27
28 ¹ The Disclosure Packet consists of unredacted copies of key motions and orders, summary
judgement pleadings and orders, and expert reports, as identified by the Parties in this case.

1 filing, and (ii) explain why it is reasonably necessary to review each document or
2 exhibit.

3 4. The Claims Administrator shall promptly provide the Parties with (i) each
4 Acknowledgment and, where applicable, (ii) notice of all requests for further
5 filings, along with the corresponding Acknowledgement and Exhibit Bs. If Sutter
6 does not object to the class member's request for further filings within two (2)
7 business days of receipt of the notice and Acknowledgement and Exhibit B, the
8 Claims Administrator may provide such class member electronic access to the
9 further filings for the sole purpose of evaluating the Parties' settlement.² If Sutter
10 objects in writing to the Claims Administrator to any part of a class member's
11 specific request for further filings within two (2) business days of the Claims
12 Administrator providing the notice and executed Acknowledgement and Exhibit B
13 in section 2, above, then the Claims Administrator shall not provide the requested
14 further filings, in electronic format or otherwise. Instead, the Parties agree to
15 promptly meet and confer regarding the class member's requested access to those
16 filings. In the event the meet and confer does not resolve any dispute between the
17 Parties regarding the class member's access, the Parties agree to promptly seek the
18 Court's guidance at an informal conference with Department 304 and, if necessary,
19 to submit the dispute to the Court for expedited resolution.

20 5. Any class member that is an arm of the State of California or otherwise a public
21 entity subject to the Freedom of Information Act (5 U.S.C. § 552), the California
22 Records Act (California Government Code Title 1, Division 7, Chapter 3.5), the
23 Brown Act (California Government Code 54950 et seq.), or other public right to
24 access records (collectively, "Public Entity Class Members"), shall only access the
25 Disclosure Packet and/or any filings provided pursuant to this stipulation and the
26

27 ² This 2-business-day period may be extended to a period of 7 business days if the Parties
28 determine that the requested filings contain Protected Material of a nonparty and the nonparty
requires notice of the request.

1 Acknowledgement and Exhibit Bs in electronic format via a secure, non-
2 downloadable data site (specifically, a Google drive maintained by the Claims
3 Administrator from which it is not possible to print or save copies of this material
4 (“Data Room”)), and shall not print or otherwise take possession, custody or
5 control of such materials. The Claims Administrator shall establish and control the
6 Data Room. Additionally, the procedures set forth in Section 8 of the February 22,
7 2018 Amended Protective Order shall apply in the event the Public Entity Class
8 Member receives a request for the Disclosure Packet or any further filings pursuant
9 to the Freedom of Information Act (5 U.S.C. § 552), the California Records Act
10 (California Government Code Title 1, Division 7, Chapter 3.5), the Brown Act
11 (California Government Code 54950 et seq.), or any other statute providing a
12 public right to access records.

- 13 6. Any unredacted copies of filings or documents received by a class member
14 pursuant to an executed Acknowledgement and this stipulation are governed by the
15 Amended Protective Order in this case, including sections 8, 10, and 11 of that
16 Order, which provide procedures for dealing with Protected Material subpoenaed or
17 ordered produced in other litigation, unauthorized disclosure, or inadvertent
18 production.
- 19 7. Any class member that wishes to refer to Protected Material in an objection to the
20 Settlement may do so, provided that Plaintiffs’ Counsel—who will file the
21 objection—comply with Section 12.3 of the Amended Protective Order. Either
22 before or immediately upon filing, Plaintiffs’ Counsel will consult with Sutter as to
23 which third parties must be notified of the filing.
- 24 8. The Claims Administrator shall simultaneously provide Sutter with a copy of the
25 credentials issued to any class member authorized to review further filings pursuant
26 to paragraphs 3 or 4. Sutter may use those credentials solely to verify that the
27 further filings made available for review to the class members are the ones
28 requested. Sutter shall promptly notify the Claims Administrator of any errors.

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IT IS SO STIPULATED.

Dated: June 2, 2020

CALIFORNIA ATTORNEY GENERAL

By: /s/ Emilio Varanini
Emilio Varanini
Attorneys for The People of the State of California

Dated: June 2, 2020

FARELLA BRAUN & MARTEL LLP

By: /s/ Christopher C. Wheeler
Christopher C. Wheeler
Attorneys for Plaintiff Class

Dated: June 2, 2020

BARTKO-ZANKEL BUNZEL & MILLER

By: /s/ Oliver Dunlap
Oliver Dunlap
Attorneys for Sutter Health, et al.


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[PROPOSED] ORDER

Pursuant to the foregoing stipulation, and good cause appearing,

IT IS SO ORDERED.

DATED: June 11, 2020



Hon. Anne-Christine Massullo
JUDGE OF THE SUPERIOR COURT

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], _____ [title] of
4 _____ [entity name], located at _____ [address] declare under
5 penalty of perjury that I have read in its entirety and understand the Amended Protective order that
6 was issued by the California Superior Court for the City and County of San Francisco on February
7 22, 2018 in the case of *UFCW & Employers Benefit Trust, et al. v. Sutter Health, et al.*, Case No.
8 CGC-14-538451.

9 I certify that _____ [entity name] is a self-funded payor that (1) is a citizens of
10 California for purposes of 28 U.S.C. § 1332(d) or an arm of the State of California that (2)
11 compensated Sutter for general acute care hospital services or ancillary products:

- 12 • At any time between January 1, 2003 and July 25, 2016 at prices set by contracts between
13 Sutter and Aetna;
- 14 • At any time between January 1, 2003 and December 31, 2016 at prices set by contracts
15 between Sutter and Anthem;
- 16 • At any time between January 1, 2003 and June 25, 2016 at prices set by contracts between
17 Sutter and Blue Shield;
- 18 • At any time between January 1, 2003 and April 30, 2016 at prices set by contracts between
19 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.

20 _____ [Entity] requests that the Claims Administrator provide it with access to
21 unredacted electronic copies of the filings identified in Exhibit B to the Stipulation and [Proposed]
22 Order Regarding Class Member Acknowledgment and Agreement to be Bound to Amended
23 Protective Order (the "Disclosure Packet"), for the sole purpose of evaluating the settlement in this
24 action

25 [Complete only as necessary, after reviewing the Disclosure Packet] _____ [Entity]
26 reasonably believes that it also needs to review other filings from the docket in this case, and that
27 such further filings are reasonably necessary for the sole purpose of evaluating the settlement.

28 _____ [Entity] identifies on Attachment B below those specific further filings it seeks to access.

1 I understand that any such further access may be subject to Party and/or Court approval.

2 [Complete only as necessary, after reviewing the further requested filings] _____ [Entity]
3 further attests that for the sole purpose of evaluating the Parties' settlement it reasonably needs to
4 review exhibits to filing(s) not included in the Disclosure Packet. _____ [Entity] therefore
5 identifies on Exhibit B below the exhibits it seeks to review and explains why it is reasonably
6 necessary to review such exhibits. I understand that any further access may be subject to Party
7 and/or Court approval.

8 I agree to comply with and to be bound by all the terms of this Amended Protective order
9 and I understand and acknowledge that all remedies authorized by law are available in the event I
10 fail to so comply. I solemnly promise that I will not disclose in any manner any Protected
11 Material—which includes any information copied or extracted from Protected Material, all copies,
12 excerpts, summaries, or compilations of Protected Material, and any testimony, conversations, or
13 presentations that might reveal Protected Material—to any person or entity except in strict
14 compliance with the provisions of the Amended Protective Order.³ I also agree that I will return
15 or destroy all unredacted copies of the Disclosure Packet and any filings or documents I receive
16 pursuant to this executed Acknowledgement and Exhibit B within five (5) days of the Effective
17 Date of the settlement, or if I require them for objection, within five (5) days of the termination of
18 the settlement.

19 _____ [Entity] further understands that if it wishes to refer to Protected Material in
20 an objection to the Settlement it may do so, provided that it complies with Section 12.3 of the
21 Amended Protective Order. I understand that I may need to consult with Class Counsel and Sutter
22 as to which third parties must be notified of the filing, based on the Protected Materials to which I
23 refer.

24 If _____ [Entity] is a public entity subject to the Freedom of Information Act (5
25 U.S.C. § 552), the California Records Act (California Government Code Title 1, Division 7,
26 _____

27 ³ This includes, *inter alia*, not providing any materials designated Highly Confidential-AEO-
28 Strategic Competitive Data to any "Competitive Decision Maker" as defined in the Amended
Protective Order.

1 Chapter 3.5), the Brown Act (California Government Code 54950 et seq.), or other public right to
2 access records, I understand that the procedures set forth in Section 8 of the Amended Protective
3 Order shall apply in the event _____ [Entity] receives a request for the Disclosure Packet
4 pursuant to the Freedom of Information Act (5 U.S.C. § 552), the California Records Act
5 (California Government Code Title 1, Division 7, Chapter 3.5), the Brown Act (California
6 Government Code 54950 et seq.), or any other statute providing a public right to access records. I
7 further understand I shall only access the Disclosure Packet and/or any filings or documents I
8 receive pursuant this executed Acknowledgement and Exhibit B via a secure, non-downloadable
9 data site established and controlled by the Claims Administrator, and shall not print, download,
10 save, or otherwise take possession, custody or control of such materials.

11 _____ [Entity] understands that all Protected Material received by a class member
12 pursuant to an executed Acknowledgement are governed by the Amended Protective Order in this
13 case, including sections 8, 10, and 11 of that Order, which provide procedures for dealing with
14 Protected Material subpoenaed or ordered produced in other litigation, unauthorized disclosure, or
15 inadvertent production. I further agree to submit to the jurisdiction of the California Superior
16 Court for the City and County of San Francisco for the purpose of enforcing the terms of this
17 Amended Protective order, even if such enforcement proceedings occur after termination of this
18 action.

19 I hereby appoint _____ [print or type full
20 name] of _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with this action or
22 any proceedings related to enforcement of this Amended Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____
26 [printed name]

27 Signature: _____
28 [signature]

1 **EXHIBIT B**

2 **Disclosure Packet**

3 **Key Motions and Filings**

4 *(Including unredacted copies of all motions, memoranda of points and authorities, and separate*
5 *statements, but without declarations and attachments except where otherwise noted.)*

- 6 • Plaintiffs’ Motion for Class Certification, Defendants’ Opposition, Plaintiffs’ Reply, and
7 Order Granting Class certification.
- 8 • Defendants’ Motion for Summary Adjudication on Statute of Limitations and Fraudulent
9 Concealment, Plaintiffs’ Opposition, Defendants’ Reply, and Order.
- 10 • Defendants’ Motion for Summary Judgement, Plaintiffs’ Opposition, Defendants’ Reply,
11 and Order.
- 12 • Defendants’ Motion for Summary Adjudication on Counts I and III, Plaintiffs’ Opposition,
13 Defendants’ Reply, and Order.
- 14 • Defendants’ Motion to Decertify Class, Plaintiffs’ Opposition, Defendants’ Reply, and
15 Order.
- 16 • Plaintiffs’ Motion for Preliminary Approval of Settlement (including all declarations and
17 attachments)*
- 18 • Plaintiffs’ Supplemental Submission Related to Preliminary Approval of Settlement
19 (including all declarations and attachments)**

20 * Access to the unredacted Proposed Final Judgment shall be governed by the [Proposed] Order
21 Regarding Out-Of-Network Rate Caps and Chargemaster Aggregate Annual Increases.

22 ** Pending Sutter’s review of Plaintiffs’ Supplemental Submission.

23 **Expert Reports**

24 *(The “Report” is the expert’s work product, including figures, appendices and expert-created*
25 *exhibits.)*

- 26 • Expert Reports of Dr. Leitzinger
- 27 • Expert Reports of Dr. Vistnes
- 28 • Expert Reports of Dr. Dranove
- Expert Reports of Dr. Rosenthal
- Expert Reports of Dr. Willig

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- Expert Reports of Dr. Gowrisankaran
- Expert Reports of Dr. Skinner
- Expert Reports of Mr. Pilch
- Expert Reports of Mr. Travis

Request for Further Filings [As Needed]

_____ [Entity] requests that Claims Administrator provide it with access to unredacted copies of the following filings, solely for the purpose of evaluating the settlement in this action.