


JUN 09 2020

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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.
28

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

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER REGARDING OUT-
OF-NETWORK RATE CAPS AND
CHARGEMASTER AGGREGATE
ANNUAL INCREASES**

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

Action Filed: April 7, 2014

1 1. BACKGROUND

2 As set forth in the Parties' Settlement Agreement, the Parties have agreed that the
3 maximum out-of-network rates and the chargemaster aggregate annual increases in the Final
4 Judgment and Order attached as Exhibit B to the Settlement Agreement shall be confidential
5 pending Sutter's submission of a motion to seal to the Court requesting confidentiality and shall be
6 disclosed only to the Court, to the Monitor, and to Insurers as defined in the Final Judgment and
7 Order if said motion is granted. (Settlement Agreement, paragraph VII.A.1.) The Settlement
8 Agreement further provides that Class Members may apply to the Court, during the period
9 established by the Court for submission of objections, for access to the maximum out-of-network
10 rates and the chargemaster aggregate annual increases, and that the Parties will propose
11 appropriate provisions to protect the confidentiality of any information so disclosed. (Settlement
12 Agreement, paragraph VII.A.2.) Pursuant to this provision, the Parties propose this Protective
13 Order Regarding Out-Of-Network Rate Caps And Chargemaster Aggregate Annual Increases
14 ("Protective Order").

15 2. DEFINITIONS

16 For purposes of this Protective Order, the following definitions shall apply:

17 2.1 "Class or Class Member(s)" means self-funded payors that satisfy the class
18 definition set forth in the July 12, 2019 Amended Order Granting Plaintiffs' Unopposed Motion to
19 Modify the Class Definition, at page 2:8-16:

20 All self-funded payors that (1) are citizens of California for purposes of 28 U.S.C.
21 § 1332(d) or arms of the State of California and (2) compensated Sutter for general
 acute care hospital services or ancillary products:

- 22 • For services between January 1, 2003 and July 25, 2016 at prices set by contracts
23 between Sutter and Aetna;
- 24 • For services between January 1, 2003 and December 31, 2016 at prices set by
25 contracts between Sutter and Anthem;
- 26 • At any time between January 1, 2003 and June 25, 2016 at prices set by contracts
27 between Sutter and Blue Shield;
- 28 • 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.

1 Excluded from the class are all self-funded payors that opted out of the class on or before the
2 Court-ordered opt-out deadline of June 11, 2018. For the purposes of this Order, “Class Member”
3 refers only to the entity that falls within the Class Definition, and not that entity’s parents,
4 subsidiaries or other affiliates.

5 2.2 “Court” means the Superior Court of the State of California for the City and
6 County of San Francisco.

7 2.3 “Defendants” means Sutter Health; Sutter East Bay Hospitals (predecessor of
8 Sutter Bay Hospitals); Sutter West Bay Hospitals (n/k/a Sutter Bay Hospitals); Eden Medical
9 Center (formerly d/b/a of Sutter Medical Center, Castro Valley) (predecessor of Sutter Bay
10 Hospitals); Sutter Central Valley Hospitals (predecessor of Sutter Valley Hospitals); Mills-
11 Peninsula Health Services (predecessor of Sutter Bay Hospitals); Sutter Health Sacramento Sierra
12 Region (n/k/a Sutter Valley Hospitals); Sutter Coast Hospital; Palo Alto Medical Foundation for
13 Healthcare, Research and Education (n/k/a Sutter Bay Medical Foundation and d/b/a Palo Alto
14 Medical Foundation for Health Care, Research and Education); and Sutter Medical Foundation
15 (n/k/a Sutter Valley Medical Foundation).

16 2.4 “Defendants’ Counsel” means the law firms of Jones Day; Kecker Van Nest &
17 Peters LLP; Bartko, Zankel, Bunzel & Miller; and Redgrave LLP.

18 2.5 “Final Judgment and Order” means the Proposed Final Judgment and Order
19 Pursuant to Stipulation attached to the Settlement Agreement as Exhibit B.

20 2.6 “Health Care Provider (‘HCP’)” means any Class Member, whether directly or
21 through affiliates, that offers health care services to the public and satisfies the definition of
22 “health care provider” in either 29 C.F.R. § 825.125 or Cal. Code Civ. P. § 425.13.

23 2.7 “House Counsel” means attorneys and their staff who are employees of a Class
24 Member. House Counsel does not include Outside Counsel.

25 2.8 “Insurers” include the following California licensed health care service plans and
26 insurers: Aetna Health of California, Inc.; Aetna Health Management; Aetna Life Insurance
27 Company; Anthem Blue Cross, Inc./Blue Cross of California; California Physicians’ Service
28 (d/b/a Blue Shield of California); UnitedHealthcare Insurance Company; UnitedHealthcare of

1 California; Cigna HealthCare of California, Inc.; Cigna Health and Life Insurance Company;
2 Health Net of California, Inc.

3 2.9 "Non-Party" means any natural person, partnership, corporation, association, or
4 other legal entity not named as a party to this action.

5 2.10 "Non-Health Care Provider (Non-HCP)" means any Class Member that is not a
6 Health Care Provider.

7 2.11 "Parties" or "Settling Parties" means UFCW & Employers Benefit Trust, as Class
8 Representative and as represented by Class Counsel; the People of the State of California, *ex rel.*
9 Xavier Becerra; and the Defendants.

10 2.12 "Outside Counsel" means attorneys and their staff who are not employees of a
11 Class Member but who are retained to represent or advise a Class Member.

12 2.13 "Plaintiffs" means UFCW & Employers Benefit Trust, as Class Representative and
13 as represented by Class Counsel; the Class; and the People of the State of California, *ex rel.*
14 Xavier Becerra, collectively.

15 2.14 "Plaintiffs' Counsel" means Class Counsel and counsel for the Office of the
16 Attorney General on behalf of the People of the State of California.

17 2.15 "Protected Material" means the maximum out-of-network rates and the
18 chagemaster aggregate annual increases set out in Sections IV.D.3.f, IV.D.3.g, and IV.D.4.a of
19 the Final Judgment and Order attached as Exhibit B to the Settlement Agreement, and specifically,
20 the information redacted from the publicly-filed copy of the Final Judgment and Order.

21 2.16 "Receiving Party" means a Class Member that receives Protected Material under
22 the terms of this Order.

23 2.17 "Settlement Agreement" means the settlement terms agreed to by the Settling
24 Parties as reflected in the Settlement Agreement filed as Appendix 1 to the Motion for Preliminary
25 Approval of Settlement on December 19, 2019.

26 3. SCOPE

27 The protections conferred by this Protective Order apply not only to Protected Material,
28 but also to any reproduction, written or oral, of any or all of the content of Protected Material,

1 including any summary of or analysis derived from the Protected Material. The obligations
2 imposed by this Protective Order likewise apply to Protected Material, and written or oral
3 reproduction of Protected Material in any format, and any summary of or analysis derived from
4 the Protected Material.

5 The access to the Protected Materials pursuant to this Protective Order is available only to
6 Class Members.

7 4. DURATION

8 The confidentiality obligations imposed by this Protective Order shall remain in effect
9 (i) for five (5) years after the last maximum out-of-network rate or the last chargemaster aggregate
10 annual increases deemed Protected Material; (ii) until the Parties to this action agree otherwise in
11 writing; or (iii) a court order otherwise directs.

12 5. ACCESS TO AND USE OF PROTECTED MATERIAL

13 5.1 Basic Principles. A Class Member (and only a Class Member) may obtain
14 Protected Material using the procedures set forth in Section 5.2, below. Such Protected Material
15 may be disclosed only to the categories of persons and under the conditions described in this
16 Protective Order.

17 5.2 Procedure. To obtain Protected Material pursuant to this Protective Order, a Class
18 Member must complete, sign, and serve on all Parties the Declaration attached hereto as
19 Exhibit A.

20 5.3 Health Care Providers (“HCP”). Unless otherwise ordered by the Court or
21 permitted in writing by the Parties to this action, a HCP may disclose Protected Material only to:

- 22 (a) The employees of the HCP’s Outside Counsel;
- 23 (b) A designated business person employed by the HCP;
- 24 (c) House Counsel and their staff;
- 25 (d) Consultants, actuaries and other experts retained by the HCP;

26 In each case (a) – (d) above, any designated business person, other employee, counsel, staff,
27 actuary, consultant or other person may have access to the Protected Materials only if that person
28 (i) is a person to whom disclosure is reasonably necessary to evaluate and/or object to the

1 Settlement; (ii) has no current involvement, and is not reasonably expected to become involved
2 going forward, in the negotiation and/or setting of any HCP's rates; (iii) does not represent, and is
3 not reasonably expected to represent, any HCP in direct, substantive contract negotiations relating
4 to the pricing of health care services or the evaluation of competition with respect to health care
5 services (but not including settlement negotiations) during the period to which any maximum out-
6 of-network rates or chagemaster aggregate annual increase applies. HCPs also may disclose
7 Protected Material to the Parties to this action, the counsel of record for the Parties to this action;
8 and the Court and its personnel.

9 5.4 Non-Health Care Providers ("Non-HCP"). Unless otherwise ordered by the Court
10 or permitted in writing by the Parties to this action, a Non-HCP may disclose Protected Material
11 only to:

- 12 (a) The employees of the Non-HCP's Outside Counsel;
- 13 (b) The officers, directors, trustees, and employees (including House Counsel)
14 of the Non-HCP;
- 15 (c) Consultants, actuaries, and other experts retained by the Non-HCP;

16 In each case (a) – (c), any employee, designated business representative, counsel, staff, actuary,
17 consultant or other person may have access to the Protected Materials only if that person (i) is a
18 person to whom disclosure is reasonably necessary to evaluate and/or object to the Settlement; and
19 (ii) does not represent, and is not reasonably expected to represent going forward, any HCP in
20 direct, substantive contract negotiations relating to the pricing of health care services or the
21 evaluation of competition with respect to health care services (but not including settlement
22 negotiations) during the period to which any maximum out-of-network rates or chagemaster
23 aggregate annual increase applies..

24
25 Non-HCPs also may disclose Protected Material to the Parties to this action, the counsel of
26 record for the Parties to this action, the Court and its personnel.

27 5.5 Redactions to Court Filings. A Receiving Party who wishes to refer to Protected
28 Material in an objection to the Settlement may do so, provided the Receiving Party provides

1 Plaintiffs' Counsel with redacted and unredacted copies of its objection. Plaintiffs' Counsel will
2 conditionally lodge an unredacted copy of the Receiving Party's objection under seal and publicly
3 file a copy that redacts all Protected Material. Any Receiving Party should refer to the publicly-
4 filed copy of the proposed Final Judgment and Order rather than a new copy as an exhibit to any
5 objection. The Class Plaintiffs will not oppose any motion to seal the Protected Materials.

6 5.6 Public Entity Class Members. For Class Members that are arms of the State of
7 California or other public entities subject to the Freedom of Information Act (5 U.S.C. § 552), the
8 California Records Act (California Government Code Title 1, Division 7, Chapter 3.5), the Brown
9 Act (California Government Code § 54950 et seq.) or other public right to access records
10 (collectively, "Public Entity Class Members"), shall only access the Protected Material in
11 electronic format via a secure, non-downloadable data site (specifically, a Google drive
12 maintained by the Claims Administrator from which it is not possible to print the Protected
13 Material or save copies of the Protected Material), and shall not print or otherwise take possession,
14 custody or control of such materials. Additionally, the procedures set forth in Section 8 of the
15 February 22, 2018 Amended Protective Order shall apply in the event the Public Entity Class
16 Member receives a request for the Disclosure Packet pursuant to the Freedom of Information Act
17 (5 U.S.C. § 552), the California Records Act (California Government Code Title 1, Division 7,
18 Chapter 3.5), the Brown Act (California Government Code 54950 et seq.), or any other statute
19 providing a public right to access records.

20 5.7 Return/Destruction. Unless otherwise ordered by the Court or permitted in writing
21 by the Parties to this action, Class Members shall return or destroy all Protected Material within
22 five (5) days of the Effective Date of the Settlement or the termination of the Settlement,
23 whichever the case may be, and provide a written certification under oath to the Parties to that
24 effect.

25 6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
26 LITIGATION

27 If a Receiving Party is served with a subpoena or a court order issued in other litigation
28 that compels disclosure of any Protected Material, the Receiving Party must:

1 (a) promptly notify the Parties in writing. Such notification shall include a copy
2 of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this Protective Order. Such notification shall include a copy of this Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by
7 any Party to this action.

8 If a Party to this action timely seeks a protective order, the Receiving Party served with the
9 subpoena or court order shall not produce any Protected Material before a determination by the
10 court from which the subpoena or order issued, unless the Receiving Party has obtained the
11 Party's permission. Subject to 6(c) above, the Party moving for a protective order shall bear the
12 burden and expense of seeking protection in that court of the Protected Material, and nothing in
13 these provisions should be construed as authorizing or encouraging a Receiving Party to disobey a
14 lawful directive from another court.

15 7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
17 Material to any person or in any circumstance not authorized under this Protective Order, the
18 Receiving Party must immediately: (a) notify Defendants' Counsel and Plaintiffs' Counsel in
19 writing of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies
20 of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
21 made of all the terms of this Protective Order; and (d) request that such persons to whom the
22 disclosure was made to review the Protective Order and execute Exhibit A.

23 8. ENFORCEMENT

24 The Court shall maintain jurisdiction to enforce the terms of this Protective Order for five
25 (5) years after the last applicable date of any maximum out-of-network rates or chargemaster
26 aggregate annual increase as listed in Sections IV.D.3.f, IV.D.3.g, and IV.D.4.a of the Final
27 Judgment and Order. Any Settling Party may pursue enforcement of this Protective Order against
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1 any Receiving Party or other person for breach of the terms of the Protective Order or, where
2 applicable, Exhibit A.

3 The Court's sanction of any Receiving Party or any other person for violation of the terms
4 of this Protective Order may include all remedies authorized by law, including injunctive relief,
5 fines, or other remedies as the Court may deem appropriate. Nothing in this Protective Order is
6 intended to limit or curtail the remedies available.

7 **IT IS SO STIPULATED.**

8

9 Dated: June 2, 2020

CALIFORNIA ATTORNEY GENERAL

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11

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

12

13 Dated: June 2, 2020

FARELLA BRAUN & MARTEL LLP

14

15

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

16

17 Dated: June 2, 2020

JONES DAY

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By: /s/ Brian Selden
Brian Selden
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 8, 2020



Hon. Anne-Christine Massullo
JUDGE OF THE SUPERIOR COURT

1 **EXHIBIT A**

2 **CLASS MEMBER DECLARATION**

3 I, _____, declare as follows:

4 1. I am [Title] and am authorized to submit this declaration on behalf of [Entity].

5 2. [Entity] is located at [Address].

6 3. I can be contacted at [email address] and [telephone number].

7 4. I understand that to be a Class Member, [Entity] must be a member of the
8 following Class:

9 All self-funded payors that (1) are citizens of California for purposes of 28 U.S.C.
10 § 1332(d) or arms of the State of California and (2) compensated Sutter for general acute
11 care hospital services or ancillary products:

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

22 5. [Entity] is a member of this Class.

23 6. [Entity] requests access to an unredacted copy of the Final Judgment and Order.

24 7. I have read the Protective Order Regarding Out-Of-Network Rate Caps And
25 Aggregate Annual Increases (“Protective Order”) entered by the Court on [date].

26 8. [Entity] _____ is/_____ is not a Health Care Provider as defined in Section 2.7 of
27 the Protective Order.

28 9. I understand that an unredacted copy of the Final Judgment and Order sets out
maximum out-of-network rates and chargemaster increase caps. I further understand that such

1 information is confidential, and that [Entity] must comply with the Protective Order with respect
2 to this information.

3 10. [Entity] agrees to be bound by the Protective Order. [Entity] further agrees that
4 [Entity] will not provide the Protected Material to any individual, either directly or indirectly, until
5 that individual executes the Acknowledgement and Agreement to be Bound in the form attached
6 hereto as Attachment 1. [Entity] shall maintain all executed Acknowledgements and, for good
7 cause shown (with disputes as to good cause to be resolved by the Court), shall provide to any
8 Settling Party (a) a copy of all executed Acknowledgements and (b) a list of all individuals
9 provided the Protected Material by [Entity]. I understand that all remedies authorized by law are
10 available in the event [Entity] fails to comply with the Protective Order.

11 11. I agree to submit to the jurisdiction of the California Superior Court for the City
12 and County of San Francisco for the purpose of enforcing the terms of the Protective Order, even
13 if such enforcement proceedings occur after termination of this action.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed this ____ day of _____ 2020, at _____

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[Signature of Declarant]

[Print name of Declarant]

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ATTACHMENT 1

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], [title] of [employer] at _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the PROTECTIVE ORDER REGARDING OUT-OF-NETWORK RATE CAPS AND CHARGEMASTER AGGREGATE ANNUAL INCREASES that was issued by the California Superior Court for the City and County of San Francisco on _____ in the case of *UFCW & Employers Benefit Trust, et al. v. Sutter Health, et al.*, Case No. CGC 14-538451. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that all remedies authorized by law are available in the event I fail to so comply. I solemnly promise that I will not disclose in any manner any Protected Material to any person or entity except in strict compliance with the provisions of this Stipulated Protective Order.

I agree to submit to the jurisdiction of the California Superior Court for the City and County of San Francisco for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]