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Attorneys for Court-Appointed Monitor,
AFFILIATED MONITORS, INC.

FILED
San Francisco County Superior Court

APR 25 2022

CLERK OF THE COURT

BY: *Nancy Brown*
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION**

UFCW & EMPLOYERS BENEFIT TRUST,
et al.,

Plaintiffs,

vs.

SUTTER HEALTH, et al.,

Defendants.

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

~~[PROPOSED]~~ ORDER APPROVING AND
ENTERING: (1) PROTECTIVE ORDER; (2)
JOINT STIPULATION AND PROPOSED
ORDER RE: SEALING PROCEDURES FOR
MONITOR'S INVOICES, REPORTS AND
RECOMMENDATIONS, AND OTHER
ADMINISTRATIVE FILINGS; AND (3)
PROACTIVE MONITORING WORK PLAN

PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. XAVIER BECERRA,

Plaintiff,

vs.

SUTTER HEALTH,

Defendant.

Assigned for All Purposes to the Hon. Anne-
Christine Massullo

Date: March 15, 2022
Time: 11:00 a.m.
Dept.: 306
Judge: Hon. Anne-Christine Massullo

~~[PROPOSED]~~ ORDER APPROVING AND ENTERING: (1) PROTECTIVE ORDER; (2) JOINT STIPULATION
AND PROPOSED ORDER RE: SEALING PROCEDURES FOR MONITOR'S INVOICES, REPORTS AND
RECOMMENDATIONS, AND OTHER ADMINISTRATIVE FILINGS; AND (3) PROACTIVE MONITORING
WORK PLAN; CASE NO. CASE NO.: CGC-14-538451

1 THE COURT, having considered Affiliated Monitors, Inc.'s Motion for Approval and Entry
2 of: (1) Protective Order; (2) Stipulation Regarding Sealing Procedures; and (3) Affiliated Monitors,
3 Inc.'s Proactive Monitoring Work Plan (the "Motion"); all parties having been given notice; and
4 GOOD CAUSE appearing therefor;

5 **HEREBY ORDERS THAT:**

6 1. The Motion is granted in its entirety;

7 2. The Protective Order, a true and correct copy of which is submitted as **Exhibit 1**,
8 and all the terms and conditions thereof, is approved in its entirety, and shall be entered into the
9 record as a Court order;

10 3. The Joint Stipulation and Proposed Re: Sealing Procedures for Monitor's Invoices,
11 Reports and Recommendations, and Other Administrative Filings, a true and correct copy of
12 which is submitted as **Exhibit 2**, and all the terms and conditions thereof, is approved in its
13 entirety, and shall be entered into the record as a Court order;

14 4. The Proactive Monitoring Work Plan, a true and correct copy of which is submitted
15 as **Exhibit 3**, and all the terms and conditions thereof, is approved in its entirety, and shall be
16 entered into the record as a Court order.

17 **IT IS SO ORDERED.**

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19 Dated: April 25, 2022


20 HON. ANNE-CHRISTINE MASSULLO
21 JUDGE OF THE SUPERIOR COURT
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Appendix A

Document Title	Description
Exhibit 1 to Declaration of Evan Nadel in Support of Affiliated Monitors, Inc.'s Motion for Approval and Entry of: (1) Protective Order; (2) Joint Stipulation and Proposed Order Re: Sealing Procedures for Monitor's Invoices, Reports and Recommendations, and Other Administrative Filings; and (3) Proactive Monitoring Work Plan	Protective Order
Exhibit 2 to Declaration of Evan Nadel in Support of Affiliated Monitors, Inc.'s Motion for Approval and Entry of: (1) Protective Order; (2) Joint Stipulation and Proposed Order Re: Sealing Procedures for Monitor's Invoices, Reports and Recommendations, and Other Administrative Filings; and (3) Proactive Monitoring Work Plan	Joint Stipulation and Proposed Order Re: Sealing Procedures for Monitor's Invoices, Reports and Recommendations, and Other Administrative Filings
Exhibit 3 to Declaration of Evan Nadel in Support of Affiliated Monitors, Inc.'s Motion for Approval and Entry of: (1) Protective Order; (2) Joint Stipulation and Proposed Order Re: Sealing Procedures for Monitor's Invoices, Reports and Recommendations, and Other Administrative Filings; and (3) Proactive Monitoring Work Plan	Proactive Monitoring Work Plan

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

UFCW & EMPLOYERS BENEFIT TRUST, et
al.,

Plaintiffs,

vs.

SUTTER HEALTH, et al.,

Defendants.

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

**JOINT STIPULATION AND
PROPOSED ORDER RE: SEALING
PROCEDURES FOR MONITOR'S
INVOICES, REPORTS AND
RECOMMENDATIONS, AND OTHER
ADMINISTRATIVE FILINGS**

PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. XAVIER BECERRA,

Plaintiff,

vs.

SUTTER HEALTH,

Defendant.

Assigned for All Purposes to the Hon.
Anne-Christine Massullo

Dept.: 306
Judge: Hon. Anne-Christine Massullo

1 As set forth in the Final Judgment and Order Pursuant to Stipulation, dated August 27, 2021,
2 entered in the above-captioned case, (the “Final Judgment”), Dionne Lomax of Affiliated Monitors,
3 Inc. serves as the Compliance Monitor (hereinafter the “Monitor”) in this matter and has the powers
4 set forth in the Final Judgment, including, but not limited to, making recommendations concerning
5 enforcement to the Court. Additionally, the Monitor will regularly submit invoices in this matter,
6 and other administrative filings.

7 The Monitor’s Reports and Recommendations¹ are likely to include confidential,
8 proprietary, or private information for which special protection from public disclosure may be
9 warranted. They are also akin to dispositive motions and/or a motion for adjudication of a matter
10 other than discovery motions or proceedings, for which the statutory provisions of California Rule
11 of Court 2.550 and 2.551 apply. Conversely, the Monitor’s submissions of invoices or other
12 administrative filings would be more akin to discovery motions and/or non-dispositive motions in
13 a civil litigation, for which California Rule of Court 2.550 and 2.551 do not apply. As such, the
14 Monitor and the Parties² hereby submit this Joint Stipulation and Proposed Order regarding Sealing
15 Procedures for submissions by the Monitor, including both the submission of invoices or other
16 administrative filings, and the submission of the Monitor’s Reports and Recommendations.

17 **I. Submission of Invoices or Other Administrative Filings**

18 All Monitor invoices or other administrative filings in this case shall be lodged
19 conditionally under seal only when necessary and shall be treated as discovery-type motions for
20 purposes of the Court’s local rules and California Rules of Court. They will not require any motion
21 or application to seal once lodged conditionally under seal.

22 For all invoices or other administrative filings that the Monitor intends to make, the Monitor
23 shall prepare a copy (the “Courtesy Copy”) of the intended filing (“Intended Filing”), in which the
24

25 ¹ “Reports and Recommendations” shall refer to the Monitor’s final decisions, recommendations,
26 and reports, including all supporting exhibits.

27 ² “Parties” shall refer to counsel for the Office of the California Attorney General on behalf of the
28 People of the State of California, the Class through its Class Counsel and Sutter Health through its
counsel.

1 Monitor shall make a good faith effort to highlight or otherwise identify all material (or information
2 derived from material) that the Monitor believes has been designated as “CONFIDENTIAL” OR
3 “HIGHLY-CONFIDENTIAL MONITOR’S EYES ONLY” pursuant to the Protective Order
4 entered in this matter on [Date to be inserted when PO receives Court approval], as well as the
5 identity of the party that designated that material. At least seven (7) days prior to filing any such
6 invoices or other administrative filings, the Monitor shall provide an appropriately redacted
7 Courtesy Copy of the Intended Filing to any Party or parties who originally designated the material
8 as “CONFIDENTIAL” OR “HIGHLY-CONFIDENTIAL MONITOR’S EYES ONLY” pursuant
9 to the Protective Order entered in this matter, or whose confidential information would otherwise
10 be impacted by the filing.

11 Within five (5) days of receipt of the Courtesy Copy, any Party or parties that wish to
12 discuss the proposed sealing shall meet and confer by video or telephone with the Monitor. The
13 purpose of engaging in this meeting will be to discuss how the Monitor’s Intended Filing might be
14 revised to omit, in part or all, the information sought to be sealed, and thus obviate any filing
15 conditionally under seal.

16 Based upon any such meet and confer, the Monitor shall prepare a final version of the
17 Intended Filing, to be filed conditionally under seal (as noted above) should any sealable
18 information still remain in the filing.

19 **II. Submission of the Monitor’s Reports and Recommendations**

20 **A. The Monitor’s Good Faith Notice to the Parties**

21 The Monitor shall prepare an Intended Filing for any Report and Recommendation in which
22 the Monitor shall make a good faith effort to highlight or otherwise identify all material (or
23 information derived from material) that the Monitor believes has been designated as
24 “CONFIDENTIAL” OR “HIGHLY-CONFIDENTIAL MONITOR’S EYES ONLY” pursuant to
25 the Protective Order entered in this matter on [Date to be inserted when PO receives Court
26 approval], as well as the identity of the party that designated that material. At least ten (10) days
27 prior to filing any such Report and Recommendation with the Court, the Monitor shall provide an
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1 appropriately redacted Courtesy Copy of the Intended Filing to 1) the parties to a dispute that has
2 resulted in a Complaint, 2) any other Party if they are not one of the parties to the dispute, and 3)
3 any other party that originally designated the material as "CONFIDENTIAL" OR "HIGHLY-
4 CONFIDENTIAL MONITOR'S EYES ONLY" pursuant to the Protective Order entered in this
5 matter.

6 **B. Meet and Confer Obligations**

7 Before any party files an application to seal with the Court, the Monitor, or a representative
8 of the Monitor, the Parties, and any party or parties seeking or opposing sealing shall meet and
9 confer by video or telephone within the ten (10) day time period prior to the Intended Filing with
10 the Court. When engaging in this process, the concerned parties must discuss how the Monitor's
11 Intended Filing could be revised to omit, in part or all, the information sought to be sealed.

12 If the Monitor and the parties to the meet and confer reach an agreement to omit the
13 information sought to be sealed in all, the Monitor will not file the Intended Filing within the ten
14 (10) day time period, but rather, within seven (7) days from the meet and confer the Monitor will
15 circulate to all said parties a revised Monitor's Report and Recommendation which reflects said
16 agreement. The revised Monitor's Report and Recommendation then will be filed with the Court
17 publicly no more than 24 hours after being circulated to all said parties.

18 **C. The Monitor's Filing of Conditionally Sealed Versions of Reports and**
19 **Recommendations**

20 In the event that an agreement is not reached, or is only reached in part, pursuant to the meet
21 and confer process set forth *supra*, in Section B, the Monitor shall prepare a Conditionally Sealed
22 version of the Monitor's Report and Recommendation with redactions so that the confidential
23 contents of the Report and Recommendation are not disclosed. Pursuant to California Rules of
24 Court, Rule 2.551, subdivision (b)(3), the Monitor shall file publicly the Conditionally Sealed
25 version, and lodge the unredacted version of the Report and Recommendation for the Court and
26 Parties to use while the following sealing process is completed.

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D. Applications to Seal

Any party and non-party that intends to request any portion of a Report and Recommendation, including any exhibits thereto, be filed under seal (the “Sealing Party”) must provide an application for an order sealing the record within ten (10) calendar days of the Monitor’s filing of the Conditionally Sealed Version of the Report and Recommendation. The Sealing Party may seek an extension of the ten (10) calendar days if they have a particularly extensive sealing request or need additional time to compile the materials to support sealing.

The Monitor shall receive and compile all applications to seal into a single Joint Motion to Seal, to be filed with the Court within seven (7) calendar days of the latest Sealing Party deadline to submit materials to the Monitor, and simultaneously with that filing, the Monitor will lodge copies of all delta documents accompanying the applications. The Joint Motion to Seal will provide the basic law and argument for sealing, attach a combined chart (based on Exhibit 1, attached hereto) that provides all requested sealing for all portions of the Monitor Report and Recommendation and/or any exhibits thereto, and attach all declarations required to support the requested sealing. The Joint Motion to Seal will also include a Proposed Order Granting the requested sealing, based upon the Court’s rulings in the combined chart. Additionally, and simultaneous to the filing of the Joint Motion to Seal, the Monitor shall lodge all delta documents for the requested sealing.

To prepare the Joint Motion to Seal, the Sealing Party must provide the following materials to the Monitor within ten (10) calendar days of the Monitor’s filing of the Conditionally Sealed Version as part of its application:

- a. Proposed line-item redactions of the Report and Recommendation, in the form of a “delta document”³ that highlights portions for which sealing is requested;
- b. A declaration from the client that provides the support for sealing;

³ The term “delta document” shall refer to the original version of the document showing proposed sealing redactions in highlight, so that a single document shows what information the party seeks to seal without there having to be a comparison of two (2) documents.

1 c. A single chart (or the functional equivalent) that compiles all proposed redactions
2 and provides citations to legal and factual support.

3 For each proposed sealing redaction, the chart must describe the portion that the party wants
4 sealed (identified in the delta document with highlighting) by describing the preceding and
5 succeeding sentence or words for context. A sample chart, with sample entries, is attached hereto
6 as **Exhibit 1**.

7 Technology permitting, the Sealing Party and/or Monitor can—in addition to or as an
8 alternative to lodging all delta documents—prepare a copy of Exhibit 1 with hyperlinks to each
9 relevant delta document, again with such copy to be lodged with the Court, but not filed.

10 **E. Discussion of the Reports and Recommendations While Sealing Application**
11 **Pending**

12 Pending the Court’s ruling on any application to seal a Report and Recommendation made
13 by the Monitor, the parties shall not discuss the information that is the subject of the application on
14 the record or in open court. However, the parties and the Court may freely discuss any information
15 in the Report and Recommendation that is not the subject of a pending sealing request.

16 **F. Filed Redactions**

17 Within one week of the Court’s issuance of an order granting an application to seal, the
18 Monitor shall prepare and publicly file the final redacted version of the Report and
19 Recommendation, including any relevant exhibits thereto, based upon the Court’s order.

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

21
22
23 Dated: February 18, 2022

Respectfully submitted on behalf of the Monitor,
MINTZ LEVIN COHN FERRIS GLOVSKY AND
POPEO, P.C.

24
25 /s/
26 By: Evan S. Nadel
27 Attorneys for Court-Appointed Monitor
28 AFFILIATED MONITORS, INC.

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Dated: February 18, 2022

On behalf of the Class,
PILLSBURY & COLEMAN, LLP
/s/ Richard L. Grossman
By: Richard L. Grossman
100 Green Street
San Francisco, CA 94111
Lead Counsel for the Certified Plaintiff Class

Dated: February 18, 2022

On behalf of People of the State of California,
OFFICE OF THE CALIFORNIA ATTORNEY
GENERAL
/s/ Malinda Lee
By: Malinda Lee
Supervising Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Attorneys for People of the State of California

Dated: February 18, 2022

On behalf of Sutter Health,
JONES DAY
/s/ Margaret A. Ward
By: Margaret A. Ward
555 California Street, 26th Floor
San Francisco, CA 94104
Attorneys for Sutter Health