

1 EVAN S. NADEL (SBN 213230)
enadel@mintz.com
2 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.
44 Montgomery Street, 36th Floor
3 San Francisco, CA 94104
Telephone: 415 432 6000
4 Facsimile: 415 432 6001

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

FILED
San Francisco County Superior Court

APR 25 2022

CLERK OF THE COURT
BY: *Nancy Brown* Deputy Clerk

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION**

10 UFCW & EMPLOYERS BENEFIT TRUST,
11 et al.,

12 Plaintiffs,

13 vs.

14 SUTTER HEALTH, et al.,

15 Defendants.

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

18 Plaintiff,

19 vs.

20 SUTTER HEALTH,

21 Defendant.

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

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

22
23
24
25
26
27
28 ~~[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.**

18
19 Dated: April 25, 2022

20 
21 HON. ANNE-CHRISTINE MASSULLO
22 JUDGE OF THE SUPERIOR COURT
23
24
25
26
27

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 1

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 306**

UFCW & EMPLOYERS BENEFIT TRUST, *et al.*,

Plaintiffs,

v.

SUTTER HEALTH, ET AL.,

Defendants.

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

Plaintiff,

v.

SUTTER HEALTH,

Defendant.

Case No. CGC-14-538451

Consolidated with

Case No. CGC-18-565398

PROTECTIVE ORDER

1. BACKGROUND

As set forth in the Final Judgment and Order Pursuant to Stipulation, dated August 27, 2021, entered in the above-captioned case, (the “Final Judgment”), Dionne Lomax of Affiliated Monitors, Inc. (“AMI”) shall serve as the Compliance Monitor (hereinafter the “Monitor” or

the “Compliance Monitor”) and have the powers set forth in the Final Judgment, including to take complaints from Plaintiff(s)¹ and Insurers².

Accordingly, as disclosure and the presentation of evidence to the Compliance Monitor are likely to involve the production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than that provided for in Section V. of the Final Judgment may be warranted, the Plaintiffs, Compliance Monitor, and Defendant³ propose this Protective Order. Insurers, not being parties to the underlying litigation matter that is the subject of the Final Judgment, shall be required to sign this Protective Order to take advantage of its express confidentiality protections when the Insurer submits complaints or other information to the Compliance Monitor in connection with Section V. of the Final Judgment. Insurers that become signatories to this Protective Order do not thereby become parties to the underlying litigation.

2. DEFINITIONS

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

¹ “Plaintiffs” are not expressly defined under Section II of the Final Judgment; however, “Plaintiffs” are defined in Section I.A. of the Settlement Agreement as “the Named Plaintiffs, the Class and the People of the State of California.”. For purposes of this Protective Order the term Plaintiffs shall be the entities defined as Plaintiffs at Section 1.A. of the Settlement Agreement, represented by counsel for the Office of the California Attorney General on behalf of the People of the State of California and Class Counsel.

² “Insurers” are defined under Section II of the Final Judgment to “include the following California licensed health care service plans and insurers: Aetna Health of California, Inc.; Aetna Health Management; Aetna Life Insurance Company; Anthem Blue Cross, Inc./Blue Cross of California; California Physicians’ Service (d/b/a Blue Shield of California); UnitedHealthcare Insurance Company; UnitedHealthcare of California; Cigna HealthCare of California, Inc.; Cigna Health and Life Insurance Company; Health Net of California, Inc. For purposes of this Final Judgment, Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals the Permanente Medical Group and Kaiser Permanente Insurance Corporation are not individually or collectively an Insurer.” For purposes of this Protective Order the term Insurers shall be the foregoing entities defined as Insurers under Section II of the Final Judgment. New insurers may be added if the Court has ruled that the provisions of IV.E.3 of the Final Judgment have been satisfied.

³ For purposes of this Protective Order, the term “Defendant” shall have the meaning set forth in the Final Judgment.

- 2.1 “Information” means all documents, electronically stored information, transcripts of interviews, testimony, and any other materials, items, communications, and information.
- 2.2 “Party” or “Parties” means any of the following persons/entities that are subject to this Protective Order: Insurers (as defined above) that have filed a complaint with the Monitor or otherwise submitted documents to the Monitor and have signed the Protective Order, Plaintiffs (as defined above), and Defendant (as defined above).
- 2.3 “Employee Personal Information” means extremely sensitive personal and private information regarding current or former employees of the Parties, such as employee personnel files, employee disciplinary actions, or employee severance agreements, whose disclosure to another Party would create an invasion of privacy that could not be avoided by less restrictive means.
- 2.4 “Expert” means a person with specialized knowledge or experience retained by a Party, the Compliance Monitor, or their respective counsel to serve as an expert witness or as a consultant in connection with a matter pertinent to the Final Judgment, who is not (a) a current employee of a Party or AMI, (b) a current employee of a Party’s competitor, or (c) anticipating becoming an employee of a Party or a Party’s competitor in the next two (2) years.
- 2.5 “Protected Health Information” includes information or items that has the same scope and definition as set forth in 45 C.F.R. §§ 160.103 and 160.501 and information covered under the California Confidentiality of Medical Information Act (Civil Code Section 56 *et seq.*) or the Lanterman-Petris-Short Act (Welfare & Institutions Code Section 5000 *et seq.*).

- 2.6 “Strategic Competitive Information” means extremely sensitive information from a Producing Party that reflects(s): (i) how that Producing Party or a non-Party evaluates and responds to competitive threats, including the confidential evaluation of other markets, the confidential evaluation of a Party or non-Party, and the confidential planned introduction of new products or value-based designs; (ii) pricing provisions from agreements or negotiations between the Producing Party and any other Party or non-Party; (iii) internal discussions within the Producing Party regarding negotiations between the Producing Party and a Party or non-Party or regarding developments involving a Party or non-Party; or (iv) discussions with the Monitor in connection with her Proactive Monitoring efforts as set forth in the Proactive Monitoring Workplan approved by the Court.
- 2.7 “Producing Party” means a Party, or their counsel, that produces or discloses documents, electronically stored information, transcripts of interviews, and any other materials, items, communications, or information, whether in documentary form or verbally, i.e., via testimony.
- 2.8 “CONFIDENTIAL” Information means information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under the Code of Civil Procedure § 2030.90(b)(6); Rules 2.550, 2.551, or 2.585 of the California Rules of Court or under other provisions of California law.
- 2.9 “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” Information means extremely sensitive information or items, such as Protected Health Information (as defined above), Employee Personal Information (as defined above), and/or Strategic Competitive Information (as defined above), disclosure of

which, upon a request and good cause showing by a Party to the Monitor, could create a substantial risk of harm that could not be avoided by less restrictive means.

- 2.10 “Confidential Information” means all documents, electronically stored information, transcripts of interviews, testimony, and any other materials, items, communications, and information designated “CONFIDENTIAL”, or provisionally designated “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” by the Producing Party.
- 2.11 “Court” means the Superior Court of the State of California for the City and County of San Francisco.
- 2.12 “House Counsel” means attorneys and their staff who are employees of a Party. House Counsel does not include Outside Counsel.
- 2.13 “Local Counsel” means attorneys and their staff who are not employees of the Compliance Monitor or AMI but are retained to represent the Compliance Monitor or are affiliated with a law firm that has been retained to represent the Compliance Monitor in court proceedings in connection with the Final Judgment.
- 2.14 “Outside Counsel” means attorneys and their staff who are not employees of a Party but are retained to represent or advise a Party or are affiliated with a law firm that has been retained to represent or advise a Party.
- 2.15 “Receiving Party” means a Party or the Compliance Monitor that receives Confidential Information from any other Party.

3. SCOPE

The protections conferred by this Protective Order apply not only to Confidential Information (as defined above), but also to any reproduction, written or oral, of any or all of

the content of Confidential Information, including any summary or analysis containing the Confidential Information. The obligations imposed by this Protective Order likewise apply to Confidential Information and written or oral reproduction of Confidential Information in any format, and any summary of or analysis derived from the Confidential Information. However, the protections conferred by this Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Party or the Compliance Monitor or becomes part of the public domain after its disclosure to a Party or the Compliance Monitor as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to a Party or the Compliance Monitor prior to the disclosure or obtained by a Party or the Compliance Monitor after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to Plaintiffs, Insurers, or Defendant.

Nothing in this Protective Order shall restrict the Compliance Monitor or the Parties' ability to provide any information, whether designated confidential or not, to the Court, subject to any requests to seal information pursuant to California Rules of Court Rule 2.550, *et seq.*

4. DURATION

Notwithstanding any document destruction obligations contained herein, the confidentiality obligations imposed by this Protective Order shall remain in effect until otherwise ordered by this Court.

5. DESIGNATING CONFIDENTIAL INFORMATION

5.1 Exercise of Restraint and Care in Designating Information for Protection. Each Producing Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate

standards. To the extent it is practical to do so, the Producing Party must designate for protection only those parts of material, documents, items, testimony, or communications that qualify so that other portions of the material, documents, items, testimony, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or impede the Compliance Monitor from fulfilling her duties and responsibilities under the Final Judgment or to impose unnecessary expenses and burdens on another Party) expose the Producing Party to punishment by the Court.

If it comes to a Producing Party's attention that information or items that it designated for protection do not qualify for protection or the level of protection, that Producing Party must promptly notify the Receiving Party that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Protective Order, or as otherwise stipulated or ordered, Confidential Information must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Protective Order requires:

- (a) for information proposed to be designated as "HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR'S EYES ONLY," the Producing Party must make a request and a good cause showing to the Monitor, by a Party declaration submitted with the production;
- (b) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of interviews), that the Producing Party affix the notice "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR'S

EYES ONLY” to each page that contains material it intends to protect pursuant to this Order. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

- (c) for testimony given in interviews requested by the Compliance Monitor, that the interviewee, their counsel, or a Party (or their Counsel) whose Confidential Information is the subject of the testimony, identify on the record, before the close of the interview, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the interviewee, their counsel, or a Party (or their Counsel) whose Confidential Information is the subject of the testimony, may invoke on the record (before the interview is concluded) a right to have up to 15 days, unless the Monitor specifies otherwise, to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection within the 15 days, assuming the Monitor does not specify a different period of time, shall be covered by the provisions of this Protective Order. Alternatively, the interviewee, their Counsel, or a Party (or their Counsel) whose Confidential Information is the subject of the testimony, may specify, at the interview or up to 15 days afterwards if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY”. The use of a document as an exhibit at an interview shall not in any way affect its

designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY”.

Transcripts containing information a Party seeks to protect as Confidential Information shall have an obvious notice on the title page that the transcript contains Confidential Information, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL– COMPLIANCE MONITOR’S EYES ONLY”. The Party seeking to designate the testimony as confidential shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 15-day period for designation, assuming the Monitor does not specify a different period of time, shall be treated during that period as if it had been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(d) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the notice “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY”. If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

By placing or affixing this “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” designation on any document or electronically

stored file, the Producing Party represents that they reasonably believe, in good faith, that such material constitutes “Confidential Information”.

5.3 Inadvertent Failures to Designate. If a Producing Party discovers an inadvertent failure to designate information or items and corrects such failure as soon as practicable following this discovery, such failure to designate does not, standing alone, waive the Producing Party’s right to secure protection under this Protective Order for such material. Upon timely correction of a designation, as described in the preceding sentence, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, such inadvertent production shall not constitute a waiver of privilege pursuant to California Evidence Code section 912. The obligations of the Receiving Parties are those set forth in *State Comp. Ins. Fund v. WPS Inc.* (1999) 70 Cal.App.4th 644, and Code of Civil Procedure section 2031.285.

7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7.1 Timing of Challenges. Any Party and/or the Compliance Monitor can challenge a designation of confidentiality at any time, except that the Compliance Monitor in her sole discretion may impose the HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY designation provisionally invoked by a Party, subject to the disclosure requirements in Section 8.4, subdivision (g) below. A Party and/or the Compliance Monitor do not waive their right to challenge a CONFIDENTIAL designation by electing not to mount a challenge promptly after the original designation is disclosed.

7.2 Meet and Confer. The Party challenging a confidential designation (“Challenger”) shall initiate the challenge process by initiating a meet and confer with the Producing Party (or the Party seeking to designate challenged testimony as confidential) in good faith and in a timely manner, describing in that meet and confer each designation it is challenging and describing the basis for each challenge.

7.3 Monitor and Judicial Intervention. If a challenge to a confidentiality designation cannot be resolved through the meet and confer process described in Section 7.2 above, then the Party challenging the confidentiality designation may file a request to resolve the designation dispute with the Monitor, with copies to all Parties, to resolve the dispute. That request shall explain succinctly the nature of the dispute and should include a short statement as to why the challenge to the confidentiality dispute should be granted by the Monitor. The written request filed with the Monitor shall be accompanied by a competent declaration from the challenging Party that includes the initial written notice to the Producing Party (or the Party seeking to designate challenged testimony as confidential) of each designation that was challenged and description for the basis for each challenge (as well as any response from the Producing or designating Party), and a description of the compliance of the challenging Party with the meet and confer requirements.

Once this challenge is filed with the Monitor, the burden of persuasion in any such challenge proceeding shall be on the Producing Party (or the Party seeking to designate challenged testimony as confidential). The Producing Party (or the Party seeking to designate challenged testimony as confidential) may file a response to the challenge/written request to the Monitor within 7 (seven) calendar days of receiving service of that written notice to the Monitor from the challenging Party or less if the Monitor so orders, again providing the basis

for the chosen designation, if no change in designation is offered, and any supporting declaration or materials, that the responding Party believes are appropriate.

Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may suffice for the Monitor to reject the challenge in her discretion. Upon review of the written request from the challenging Party and any response from the Producing or designating Party, the Monitor shall provide her recommendation as to the challenged confidentiality designation(s). If the challenging Party and the Producing or designating Party still cannot resolve the dispute based on the Monitor's recommendation, then the Monitor shall submit her recommendation to the Court with any final report and recommendation that refers to those documents and the Court shall rule on the challenge (with further input or submissions by the Parties, as requested by the Court) at the time that she rules on the final report and recommendation that refer to those documents.

Unless the Producing Party (or the Party seeking to designate challenged testimony as confidential) has waived the confidentiality designation by failing to respond to a written request to the Monitor challenging confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's/designating Party's designation until the Monitor issues a recommendation and the Court rules on the challenge, as applicable, in the event that the Party making the challenge indicates to the Monitor and to all other Parties that it intends to challenge the recommendation of the Monitor. All relevant confidentiality designation issues should be resolved by the time the Monitor issues her report as to a given dispute, except as otherwise provided for in this Section 7.3.

When ruling upon any challenge to a designation by a Producing Party (or the Party seeking to designate challenged testimony as confidential), and in issuing her recommendation as to the challenged confidentiality designation(s), the Monitor shall consider and be guided by the definitions of CONFIDENTIAL and HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY in Sections 2.8 and 2.9, above.

8. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION

8.1 Basic Principles. A Receiving Party may use Confidential Information that is disclosed or produced by the Producing Party in connection with the Final Judgment only for purposes of Section V. of the Final Judgment. Such Confidential Information may be disclosed only to the categories of persons and under the conditions described in this Protective Order. When the Final Judgment expires, a Receiving Party must comply with the provisions of Section 11 below (EXPIRATION OF FINAL JUDGMENT). Other than as is discussed below, a Receiving Party may not share Confidential Information.

Confidential Information must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Protective Order.

8.2 Disclosure of “CONFIDENTIAL” Information. Unless otherwise ordered by a court or permitted in writing by the Producing Party, a Receiving Party, except for the Compliance Monitor for purposes of this Section 8.2, may disclose any Information designated “CONFIDENTIAL” only to:

- (a) the Receiving Party’s Outside Counsel, as well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the information for purposes of Section V. of the Final Judgment, provided a representative of said Outside

Counsel shall have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, trustees, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment, provided a representative of the Receiving Party shall have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Protective Order), accountants, and any other representatives, and/or assistants of the Receiving Party to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment, provided a representative of said Experts shall have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew this information;

(g) Class Counsel and the Office of the Attorney General, provided a representative of each office or firm shall have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A (“Plaintiffs’ Counsel”);

(h) the Compliance Monitor to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment.

8.3 Compliance Monitor's Disclosure of "CONFIDENTIAL" Information. Unless otherwise ordered by a court or permitted in writing by the Producing Party, the Compliance Monitor may in her discretion disclose any Information designated "CONFIDENTIAL" only to:

(a) the Compliance Monitor's Local Counsel, as well as employees of said Local Counsel to whom it is reasonably necessary to disclose the information for purposes of Section V. of the Final Judgment, provided a representative of said Local Counsel shall have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, trustees, and employees of AMI to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment, provided a representative of AMI shall have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Protective Order), accountants, and any other representatives, and/or assistants of the Compliance Monitor to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment, provided a representative of said Experts shall have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew this information; and

(g) Plaintiffs' Counsel or a Party (and their House Counsel, Outside Counsel, and Experts) where necessary for the Compliance Monitor to discharge her obligations as Compliance Monitor. The Compliance Monitor shall disclose all information designated "CONFIDENTIAL" to Plaintiffs' Counsel and any Party (and their House Counsel, Outside Counsel and Experts) required to submit or respond to a complaint alleging violations of the Final Judgment based upon such "CONFIDENTIAL" information, provided a representative of each said Party, including representatives of Plaintiffs' Counsel, shall have signed Exhibit A. If Plaintiffs are not a Party required to submit or respond to a Complaint, Plaintiffs' Counsel may petition the Monitor to receive access to Information designated "CONFIDENTIAL" in order to exercise their rights under Article 3, Paragraph A of the Monitoring Rules of Complaint Procedure⁴, approved by the Court on December 3, 2021.

8.4 Compliance Monitor's Disclosure of "HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR'S EYES ONLY" Information. Unless otherwise permitted in writing by the Producing Party, the Compliance Monitor may in her discretion disclose any Information designated "HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR'S EYES" ONLY" to:

⁴ Article 3, Paragraph A of the Monitoring Rules of Complaint Procedure provides: "When a Complaint is not jointly filed by the Parties to the Final Judgment or jointly filed by the complainant and Sutter, the Parties may submit through the CSP, within ten (10) calendar days of the date of commencement of the Monitor determination, a Response to the Complaint. A Party may seek an extension of time to file a Response, which will be granted at the discretion of the Monitor."

(a) the Compliance Monitor's Local Counsel, as well as employees of said Local Counsel to whom it is reasonably necessary to disclose the information for purposes of Section V. of the Final Judgment, provided a representative of said Local Counsel shall have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, trustees, and employees of AMI to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment, provided a representative of AMI shall have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Protective Order), accountants, and any other representatives, and/or assistants of the Compliance Monitor to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment, provided a representative of said Experts shall have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff to whom disclosure is reasonably necessary for purposes of Section V. of the Final Judgment and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew this information; and

(g) Plaintiffs' Counsel or a Party (and their House Counsel, Outside Counsel, and Experts) where necessary for the Compliance Monitor to discharge her obligations as Compliance Monitor. The Compliance Monitor shall disclose all information designated

“HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” upon which the Monitor intends to rely in any report and recommendation concerning an investigation or concerning a complaint alleging violations of the Final Judgment to Plaintiffs’ Counsel and any Party (and their House Counsel, Outside Counsel and Experts) required to submit or respond to a complaint alleging violations of the Final Judgment, provided a representative of each said Party, including representatives of Plaintiffs’ Counsel, shall have signed Exhibit A; but in no case shall the Monitor disclose Personal Employee Information or Protected Health Information. All Parties to whom the disclosure of “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” information is made shall have a reasonable opportunity to respond to any issues raised by that information. If Plaintiffs are not a Party required to submit or respond to a Complaint, Plaintiffs’ Counsel may petition the Monitor to receive access to Information designated “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” in order to exercise their rights under Article 3, Paragraph A of the Monitoring Rules of Complaint Procedure⁵, approved by the Court on December 3, 2021. If the Monitor discloses “HIGHLY CONFIDENTIAL – COMPLIANCE MONITOR’S EYES ONLY” information pursuant to this Section, the Receiving Party is prohibited from further disclosing said information absent a showing by the Receiving Party that further disclosure to specific individual(s) is necessary to submit or respond to a complaint alleging violations of the Final Judgment.

⁵ Article 3, Paragraph A of the Monitoring Rules of Complaint Procedure provides: “When a Complaint is not jointly filed by the Parties to the Final Judgment or jointly filed by the complainant and Sutter, the Parties may submit through the CSP, within ten (10) calendar days of the date of commencement of the Monitor determination, a Response to the Complaint. A Party may seek an extension of time to file a Response, which will be granted at the discretion of the Monitor.”

9. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION

If a Receiving Party learns that, by inadvertence or otherwise, Confidential Information has been disclosed to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately: (a) notify in writing the Producing Party or designating party (in the case of testimony) of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the Confidential Information; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request such person or persons to execute the “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit A.

10. MISCELLANEOUS

10.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any person to seek its modification by the Court in the future.

10.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order.

10.3 Filing Protected Material. Without written permission from the Producing Party or a court order secured after appropriate notice of all interested persons, a Receiving Party may not file in the public record in this action any Confidential Information. A Receiving Party that seeks to file under seal any Confidential Information must comply with Section 8 above. Confidential Information may only be filed under seal pursuant to a court order authorizing the sealing of the specific Confidential Information at issue. If a Receiving Party’s request to file Confidential Information under seal pursuant to CRC 2.550 *et seq.* is denied by the court, then

the Receiving Party may file the Confidential Information in the public record pursuant to CRC 2.551(b)(6) unless otherwise instructed by the court.

10.4 HIPAA: To the extent that certain documents produced or disclosed in this matter contain medical information regarding or relating to individuals who have a privacy interest in such information, disclosure thereof would be contrary to the law and public interest. Such documents and information are subject to the Standards of Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); California Code § § 56 et seq.; or other similar statutory or regulatory privacy protections. The procedures for the protection of such confidential information or items as set forth in this Protective Order provide sufficient protection such that this Order meets the requirements for a “qualified protective order” under 45 C.F.R. § 164.512(e)(1)(v).

10.5 Confidential Information Produced Pursuant to RFI. Any Confidential Information produced to the Compliance Monitor in response to a Request for Information prior to the formal entry of this Protective Order shall be subject to this Order.

10.6 Scope of Protective Order. This Protective Order governs the use of Confidential Information produced and utilized in connection with Section V. of the Final Judgment. All Parties and the Compliance Monitor reserve the right to petition the Court for appropriate protective orders or modifications to this Protective Order to be issued during the duration of the Final Judgment.

11. EXPIRATION OF FINAL JUDGMENT

Within 90 days after expiration of the Final Judgment, each Receiving Party must return all Confidential Information to the Producing Party or use reasonable best efforts to destroy

such material. As used in this subdivision, “all Confidential Information” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Confidential Information. Whether the Confidential Information is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party by the 90-day deadline that affirms that the Receiving Party has used reasonable best efforts not to retain any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Confidential Information. Notwithstanding this provision, Parties, the Compliance Monitor, and their respective counsel are entitled to retain copies of all pleadings, motion papers, interview transcripts, memoranda, correspondence, interview exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Information. Any such copies that contain or constitute Confidential Information remain subject to this Protective Order, and electronic access to Confidential Information in any such copies shall be restricted to those who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

IT IS SO ORDERED.

DATED: _____, 2022

The Hon. Anne-Christine Massullo, Judge
Superior Court of the State of California for the City
and County of San Francisco

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

On behalf of [PARTY] _____, I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the California Superior Court for the City and County of San Francisco on _____ in connection with the Final Approval of the case of *UFCW & Employers Benefit Trust, et al. v. Sutter Health, et al.*, Case No. CGC-14-538451 consolidated with CGC-18-565398. [PARTY] agrees to comply with and to be bound by all the terms of this Protective Order and understands and acknowledges that failure to so comply could expose [PARTY] to Court imposed sanctions. [PARTY] solemnly promises not to disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

[PARTY] further agrees 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, notwithstanding that such enforcement proceedings may occur after expiration of the Final Judgment.

[PARTY] hereby appoints _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this matter or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____