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FILED
San Francisco County Superior Court

DEC 16 2021

CLERK OF THE COURT
BY: 
Deputy Clerk

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

11 UFCW & EMPLOYEES BENEFIT TRUST, et
12 al.,

13 Plaintiffs,

14 vs.

15 SUTTER HEALTH, et al.,

16 Defendants.

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

~~[PROPOSED]~~ ORDER GRANTING
REQUEST FOR APPROVAL OF
MONITORING RULES OF
COMPLAINT PROCEDURE

Assigned to All Purposes to Hon. Anne-
Christine Massullo

Dept.: 304

Judge: Hon. Anne-Christine Massullo

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

22 Plaintiff,

23 vs.

24 SUTTER HEALTH,

25 Defendant.
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ORDER

On November 30, 2021, Affiliated Monitors, Inc., the Court-appointed monitor in this matter, filed a Request for Approval of the Monitoring Rules of Complaint Procedure, pursuant to the Final Judgment (Sections V.B and C), the Final Monitor Agreement, dated March 1, 2021, and by stipulation of the parties.

GOOD CAUSE APPEARING, the Request is GRANTED and the Monitoring Rules of Complaint Procedure is hereby approved. *The Monitoring Rules are attached hereto as Exhibit 1.*

IT IS SO ORDERED

Dated: Dec. 3, 2021



HON. ANNE-CHRISTINE MASSULLO
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1



MONITORING RULES OF COMPLAINT PROCEDURE

COMPLAINT-RELATED COMMUNICATIONS AND CALCULATION OF TIME

Article 1

Unless otherwise determined by the Court or the Monitor, any complaint ("Complaint")¹, notice or other communication related to a Complaint, that may be or is required to be provided to the Monitor under these Rules shall be provided as follows:

- A. Submitting Complaints; Assigning Case Numbers; Advising the Parties. Under the Final Judgment, Insurers or Plaintiffs² may file a Complaint with the Monitor. All Complaints shall be initiated by the submittal of preliminary information regarding the Complainant and the dispute to the Monitor's public-facing Sutter Compliance Monitorship ("SCM") Website. Complainants will receive a link to a second non-public secure portal (the "Complaint Submission Portal" or "CSP"). The CSP will provide complainants with a standardized Complaint intake form and allow for the upload of documentation in support of the Complaint allegation(s). The CSP will also provide guidance on who has standing to file a Complaint and provide information as to where those without standing may present their grievances. Upon the Monitor's receipt of the completed Complaint intake form, and the Monitor's assignment of an investigation case number, the Monitor's investigation process will formally commence. The Monitor will advise the Parties of the Complaint within 24 hours of issuing a case number.
- B. Database of Cases. The Monitor will maintain a database of all active and concluded cases assigned an investigation case number. The investigation database will allow the Monitor to track the steps undertaken in the gathering of evidence, communications with the relevant parties, maintenance of supporting documentation collected, interviews

¹ For purposes of these Rules, a "Complaint" is an allegation that Sutter Health ("Sutter") is not in compliance with the Final Judgment, brought by an "Insurer" or "Plaintiff," as those terms are defined in the Final Judgment and in these Rules.

² Under Section V.B.2. of the Final Judgment, "Plaintiff(s) and Insurer(s)" may file complaints. "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." New insurers may be added if the Court has ruled that the provisions of IV.E.3 of the Final Judgment have been satisfied. "Plaintiffs" are not expressly defined under Section II; 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 these Rules the term Plaintiffs shall be the entities defined as Plaintiffs at Section 1.A. of the Settlement Agreement. The term "Parties" shall refer to counsel for the Office of the California Attorney General on behalf of the People of the State of California, Class Counsel and Sutter Health through its counsel.



conducted, and recordation of any other evidence or information used to reach an adjudication of a Complaint.

- C. Investigative Tracks for Complaints. The Monitor will establish investigative tracks for Complaints at her discretion taking into account the provisions of the Final Judgment implicated by a specific Complaint and whether those provisions require different evidentiary burdens.
- D. Release of Statistics. Subject to applicable confidentiality agreements and/or protective orders, the Monitor may, at the request of a Party, the Court or on its own, release statistics to the Parties and/or the Court as to the number of complaints received and/or investigations launched and resolved.
- E. Calculating Time. For the purpose of calculating a period of time under these Rules, days are calculated as calendar days. Such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- F. Extending or Shortening Time; Requests for Expedited Review. The Monitor may, at the request of a Party or on its own, extend or shorten periods of time fixed by these Rules. Any Party may request expedited review of a Complaint, determination of standing, or other process in connection with a Complaint, which request shall be granted at the Monitor's discretion.
- G. Notices. A notice or other communication shall be deemed to have been received on the day it is delivered. For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made, or transmitted if it is dispatched, in accordance with Paragraph A of this Article, prior to or on the day of the expiration of the time limit. The Monitor will, to the extent feasible, confirm receipt of all notices and communications submitted under these Rules.

REQUEST FOR MONITOR DETERMINATION

Article 2

- A. Submitting a Complaint; Sharing the Complaint with Sutter Health and the Parties. Pursuant to Article 1 Paragraph A, any Insurer or Plaintiff seeking to submit a Complaint shall utilize the procedures outlined in these Rules. The Monitor will share the Complaint with Sutter and the Parties within 24 hours of the Monitor's receipt of the Complaint and the Monitor's assignment of an investigation case number, unless the Complaint is jointly filed by the Parties.



- B. Complaints Made to the Parties. To the extent the Parties to the Final Judgment receive complaints from persons seeking to initiate a formal Complaint with the Monitor, the Parties shall refer such complainants to the SCM website to initiate a formal Complaint process as described under Article 1.
- C. Complaint Process and Mechanics.
- i. As described in Article 1, the Monitor has established a “Sutter Compliance Monitorship (SCM) website” to receive Complaints. The site is public-facing and accessible to anyone with access to the Internet. A link to the website will also be maintained on the Affiliated Monitors website home page at www.affiliatedmonitors.com, and if necessary, a link to the SCM Website may be made available on the California Attorney General’s website, at Sutterhealthlawsuit.com and at sutterhealthpremiumlawsuit.com.
 - ii. As described in Article 1, the Monitor has established a non-public secure “Complaint Submission Portal (CSP)”. The complainant will receive access to the CSP, and the CSP will provide complainants with a standardized Complaint intake form and allow for the upload of documentation in support of the Complaint allegation(s).
- D. Standing to Maintain a Complaint. Upon receipt of a Complaint, the Monitor will proceed to investigate the Complaint. However, a good faith objection may be made by any Party as to standing within no more than seventy-two hours (72 hours) of receiving notice of the Complaint, unless a longer period is approved by the Monitor, setting out in reasonable detail the basis for that objection. Within seven (7) days of the submission of the good faith objection, the Monitor will determine whether the complainant has standing to seek an investigation by the Monitor as a Plaintiff or Insurer under the Final Judgment. The Monitor will approve or deny the complainant’s standing by way of a written notice transmitted electronically to the email address provided in the Complaint. The Monitor may move forward with an investigation of the Complaint contemporaneous with determining standing of the Complainant.
- E. Complainants Under the Final Judgment. A Complaint submitted to the CSP shall contain or be accompanied by:
- i. The names, addresses, telephone numbers, and e-mail addresses of the parties referenced in the Complaint, and the representatives of the complainant filing the Complaint;
 - ii. A description of the dispute;
 - iii. Citations to the specific conditions or rights in the Final Judgment alleged to have been violated;



- iv. Any documents or other information supporting the Complaint and the allegations of a violation of the Final Judgment; and
- v. Any information regarding significant timing and/or relevant deadlines that may necessitate expedited review of the issue by the Monitor.

F. Ripeness of the Complaint/Request for Monitor Determination.

- i. The Monitor will only consider actual cases, issues, and controversies under the Final Judgment that are ripe for review. The term “ripe” in this context means an actual dispute between the complainant and Sutter, or an actual alleged violation of the Final Judgment, and not anticipated or previously resolved disputes or violations, or hypothetical scenarios involving what should happen if certain events were to occur in the future, or hypothetical decisions regarding past events.
- ii. If the complainant has not made a good faith effort to resolve the dispute with Sutter in the absence of the Monitor’s involvement, then the parties are not at an impasse and the dispute may not be deemed ripe for review by the Monitor. Failure by Sutter to timely and substantively respond to such good faith efforts will not prejudice the complainant’s ability to have its Complaint considered by the Monitor.
- iii. To the extent feasible, the parties to the dispute should come to an agreement as to when they have reached an impasse. To the extent they cannot mutually agree, each party shall submit information regarding the number of times and/or the time frame within which the complainant and Sutter have discussed the issue and made a good faith effort to resolve the impasse without involving the Monitor. The Monitor will use this information to determine if a good faith effort has been made and an impasse requiring the Monitor’s determination exists.
- iv. Incomplete submissions to the SCM website or the CSP are not ripe for consideration by the Monitor. If the Complaint does not provide the necessary detail requested in Article 2.E, the submitting party will receive a notification from the Monitor that the Complaint is incomplete, and that further documentation is required before it can be considered by the Monitor. In some cases, the Monitor and/or a member of the Monitor’s team will contact the submitting party to seek further written clarification regarding the request and/or context of the Complaint.
- v. The Monitor may close an incomplete Complaint, at her discretion, without prejudice to the complainant to refile the Complaint or to file a new Complaint.

G. Mootness of the Complaint/Request for Monitor Determination. If the complainant and Sutter have resolved an impasse or dispute while the Monitor’s determination is pending,



the complainant shall notify the Monitor as soon as possible. The Monitor will not ordinarily make a determination on an issue that is moot or has otherwise been resolved by the complainant and Sutter.

RESPONSE TO THE COMPLAINT

Article 3

- A. 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.
- B. The Response shall address, as applicable: (i) whether the Complaint is ripe; (ii) the specific allegations in the Complaint; and (iii) any substantive defenses under the Final Judgment. The Response shall be accompanied by any additional documents or other supporting information. Any Party may seek an extension from the Monitor of the deadline for the Response, which will be granted at the Monitor's sole discretion. Failure to provide a timely Response could result in the Monitor determining any or all issues raised in the Complaint based on the record before the Monitor at the Response deadline.

MONITOR DETERMINATION PROCESS

Article 4

- A. Monitor's Process for Investigations and Determinations. Subject to these Rules and the Final Judgment, the Monitor's process for investigating and issuing her determinations shall be conducted as the Monitor considers appropriate.
- B. Monitor's Timelines for Investigations and Determinations. The Monitor shall use best efforts to complete Monitor determinations expeditiously and will strive to have a determination completed within thirty (30) days of receiving a complete Complaint and timely Response(s), and fifteen (15) days of receiving a complete Complaint and timely Response(s) in expedited cases, or as soon as practicable. The complainant and each Party shall cooperate in good faith with the Monitor for this purpose.
- C. Monitor's Investigation Process. If the Monitor deems necessary, the Monitor may, at the Monitor's own determination or at the request of one or more Parties:
 - i. Hold a meeting or hearing between the Monitor, complainant, and Sutter, with any other Parties having the option to attend if they are not the complainant. Such meeting or hearing may be held remotely or in person;



- ii. Hold *ex parte* meetings between the Monitor and the complainant, Sutter, and/or any other Parties. Such meetings may occur remotely or in person;
 - iii. In addition to the information submitted with the Complaint and the Response(s), the Monitor may, at the request of a Party or the Monitor's own determination, allow or require further submissions, including the submission of relevant documents, written or oral statements or testimony, expert opinions, or other information in a Party's possession or control.
 - iv. At the request of a Party or on its own determination, the Monitor may record or use a stenographer to take sworn testimony from one or more witnesses, and/or otherwise memorialize the information being provided to the Monitor for purposes of adjudicating a Complaint. The Monitor will provide the participants with sufficient notice of the use of such means if such use is to occur.
- D. Monitor's Intended Decision. To the extent consistent with the Final Judgment, and at the Monitor's discretion, the Monitor will provide the parties to the dispute that has resulted in a Complaint, as well as any other Party if they are not the complainant, with a draft of the Monitor's intended decision or recommendation for review and comment before the final decision or recommendation is issued. The Monitor may, at her own discretion, limit the time for such review and comment, limit the materials, if any, that can be submitted by the Parties, and can choose not to consider any such comments or materials so submitted.

DEFAULT

Article 5

- A. Failure to Cooperate with the Monitor. If a party to a dispute, without showing good cause, fails to comply with any provision or requirement under these Rules, or any direction given by the Monitor, the Monitor may draw the inferences therefrom that it considers appropriate. The Monitor may also report such failure to comply to the Court.
- B. Ex Parte Communications. In order to help facilitate a resolution to a dispute raised in a Complaint, the Monitor has the right to communicate *ex parte* with any complainant, any Party to the underlying Final Judgment, or with the Court.
- C. Mediation. At her discretion, the Monitor may request that the complainant and Sutter participate in voluntary mediation before adjudicating the dispute. It is anticipated that such mediation would not be conducted by the Monitor but would be conducted by a member of the Monitor's firm, and that any rights, privileges and confidentiality conferred under Evidence Code Section 1119 shall apply.



CONFIDENTIALITY AND HANDLING OF CONFIDENTIAL INFORMATION

Article 6

- A. Designating Confidential Information. It is the responsibility of the complainant and the Parties to designate documents and other information submitted in connection with a Complaint and the Monitor's investigation as Confidential consistent with Confidentiality Agreement(s) and or Protective Order(s) applicable to monitoring under the Final Judgment.

MONITOR'S DISCRETION; REVIEW BY AND APPEALS TO THE COURT

Article 7

- A. Monitor's Discretion. During the term of the Final Judgment, the Monitor has the flexibility to make any decisions necessary to fulfill the obligations under the Final Judgment. As such, to the extent consistent with the Final Judgment, the Monitor has the discretion to make decisions on an ad hoc basis that may be viewed as inconsistent with the processes and procedures outlined in these Rules.³
- B. Review by and Appeals to the Court. Final determinations, recommendations and reports made by the Monitor of a Complaint may be reviewed by and/or appealed to the Court consistent with the Final Judgment.

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³ After notice to the Parties, including the parties to the dispute, the Monitor shall have the discretion to make procedural decisions on an ad hoc basis. No challenge may be made to the Monitor's procedural decisions before the Court until after the Monitor renders her final substantive recommendation, unless a Party or party to the dispute can show that the Monitor's procedural decisions will cause a substantial risk of irreparable harm. Any such challenges must be raised to the Court in good faith, must clearly articulate the substantial risk of irreparable harm, and must be supported by evidence rather than speculation.