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6 AFFILIATED MONITORS, INC.

**FILED**  
San Francisco County Superior Court

APR 25 2022

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

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

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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  
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**Appendix A**

<b>Document Title</b>	<b>Description</b>
<b>Exhibit 1</b> 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
<b>Exhibit 2</b> 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
<b>Exhibit 3</b> 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 3



## **UEBT ET AL. v. SUTTER HEALTH PROACTIVE MONITORING WORK PLAN**

### **I. BACKGROUND AND OVERVIEW**

Superior Court Judge Anne-Christine Massullo of the San Francisco County Superior Court has appointed AMI, through Dionne Lomax, to serve as the Settlement Compliance Monitor (“Monitor”) pursuant to the Settlement Agreement (“Settlement”) between UFCW & Employers Benefit Trust (“UEBT”) and the California Attorney General’s Office (collectively “Plaintiffs”) and Sutter Health (“Sutter”), and the Final Judgment (“FJ”) approved by the Court on August 27, 2021.<sup>1</sup>

Broadly, the Settlement, with certain specific exceptions, prohibits Sutter from engaging in actions that would prevent Insurers and/or Self-Funded Payers from introducing new narrow, tiered, or steering commercial products or value-based designs of any kind for commercial products, including reference pricing. The settlement further prohibits, with certain specific exceptions, Sutter from interfering with, or vetoing, Centers of Excellence programs (as defined in Paragraph IV.A.2.b. of the FJ).

Finally, with certain specific exceptions, the Settlement prohibits Sutter from enforcing provisions in prior, current, or future contracts that are inconsistent with the terms of the FJ. The terms of the Settlement, including the scope of the Monitor’s responsibilities, are set forth in the FJ.

### **II. MONITOR’S ROLE**

The Settlement provides that the Monitor shall have the following powers to monitor compliance: to investigate compliance with the FJ, to take complaints from Plaintiffs<sup>2</sup> and Insurers,<sup>3</sup> to compel disclosure of confidential documents subject to appropriate confidentiality protections, to interview witnesses, to inspect records, to hire staff and experts, and to make recommendations

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<sup>1</sup> This work plan is intended to be an evolving document as the work of the Monitor is conducted over the course of the FJ.

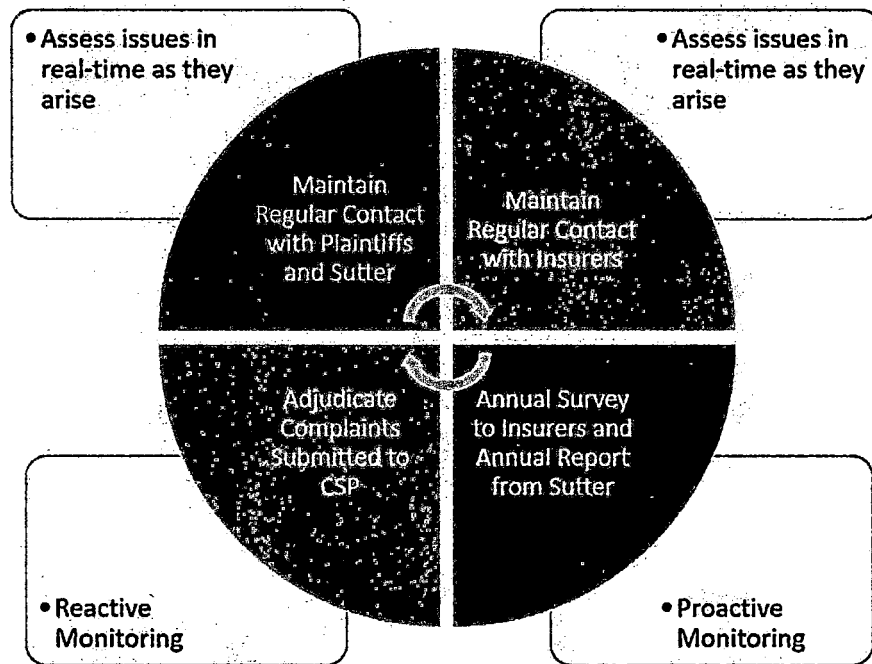
<sup>2</sup> “Plaintiffs” are not expressly defined under Section II of the FJ; however, “Plaintiffs” are defined in Section I.A. of the Settlement Agreement. For purposes of this Proactive Monitoring Work Plan, the term Plaintiffs shall be the entities defined as Plaintiffs at Section 1.A. of the Settlement 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.

<sup>3</sup> “Insurers” are defined under Section II of the FJ. New insurers may be added if the Court has ruled that the provisions of IV.E.3 of the FJ have been satisfied. For purposes of this Proactive Monitoring Work Plan, the term Insurers shall be the entities defined as Insurers under Section II of the FJ.

concerning enforcement to the Court. Such efforts could be proactive<sup>4</sup> in assessing whether Sutter is complying with the Settlement conditions, or reactive in responding to complaints from Plaintiffs or Insurers.

To fulfill the Reactive Monitoring obligations, the Court has approved the Monitoring Rules of Complaint Procedure, which were designed to establish methodologies and processes for receiving and assessing complaints through the Sutter Monitorship Complaint Submission Portal (“CSP” or “Sutter Monitorship CSP”), obtaining relevant evidence, analyzing evidence in the context of the specific Settlement conditions and exceptions, and for reporting the Monitor’s analysis and findings to the Parties and the Court.

As depicted below, there are various components to the Monitor’s role in connection with fulfilling the Monitor’s obligations under the FJ. Proactive Monitoring is a limited, but important component of the Monitor’s overall work.



<sup>4</sup> **Proactive Monitoring** (i.e., “active”) refers to traditional monitoring activities requiring the monitor to periodically review Sutter’s adherence to the terms of the FJ. The Court has expressed a desire to have the Monitor provide ongoing informal updates regarding this matter. Either in her sole discretion, or as a consequence of such consultation with the Court, the Monitor may need to address certain compliance issues that arise in the context of reactive monitoring with proactive monitoring.



### **III. PROACTIVE MONITORING GOALS AND OBJECTIVES**

- a. To enable the Monitor to provide periodic updates and notify the Court of the status of adherence to the FJ, while seeking to fulfill the obligation under Paragraph V.B.1. of the FJ to “make recommendations concerning enforcement to the Court.”
- b. To assess Sutter’s compliance with the FJ holistically, in a manner that does not rely solely upon complaints received from Plaintiffs or Insurers.
- c. To gather data that when considered along with complaints received through the Sutter Monitorship CSP, responses to periodic Requests for Information, and annual certifications from Sutter regarding compliance with the FJ, enables the Monitor to respond to any queries by the Court regarding Sutter’s compliance with the FJ at any point in time.
- d. To provide the Monitor with a data point to check the veracity of complaints submitted via the CSP as it relates to allegations of Sutter’s violation of certain provisions of the FJ (e.g., if an Insurer submits a complaint via the CSP asserting that Sutter has been in violation of Paragraph “X” of the FJ for two years, but answered “no” on the surveys in the years prior regarding that issue, the Monitor can take this into account when assessing Sutter’s compliance with the FJ).
- e. To provide the Court and the parties with reasonable assurance that the Monitor is fulfilling her obligations consistently and in good faith.

### **IV. PROACTIVE MONITORING METHODOLOGY**

- a. The Monitor’s methodology for proactively assessing Sutter’s compliance with the FJ conditions will depend on the condition(s) being assessed and may be subject to change during the term of the FJ.
- b. The Monitor will annually survey the Insurers and Sutter regarding when contracts between Sutter and those Insurers are up for renewal, when contract negotiations are expected to begin, and at periodic intervals, the status of any contract negotiations between Sutter and those Insurers.
- c. The Monitor will issue Requests for Information (“RFI”) to the Insurers and Sutter Health. The Monitor will also issue an annual survey to Insurers asking a series of questions regarding various aspects of Sutter’s compliance with the FJ. Certain responses from the Insurers to survey questions may elicit a request for the Insurer to provide an explanation if their survey response(s) suggests non-compliance by Sutter.



The Monitor may engage in further inquiry; however, except in special cases,<sup>5</sup> the Monitor will not initiate a formal investigation unless the Insurer files a formal complaint through the CSP.

- d. The Monitor will issue an annual survey and/or RFI asking Sutter certain questions or requesting certain data regarding its compliance with the FJ.
- e. Each Insurer and Sutter will be required to have an officer of the respective entity certify that the responses to the survey and/or RFI are true and correct to the best of their knowledge after reasonable inquiry and due diligence.
- f. The Monitor proposes that her proactive report on Sutter's compliance will be completed on or about September 1 of each year. To meet this deadline, the Monitor anticipates sending a survey to each Insurer and Sutter on or about March 1 of each year and requiring responses by April 30 of each year.
- g. The Monitor will also maintain regular contact (e.g., routine meetings/calls, etc.) with Sutter, Plaintiffs and Insurers to assess any issues in real-time as they arise.

#### **V. SUTTER HEALTH: ANNUAL COMPLIANCE REPORT AND RFI**

- a. Sutter will prepare and submit to the Monitor an Annual Compliance Report on or before April 30 of each year identifying at a minimum:<sup>6</sup>
  - i. Sutter's efforts to comply with the FJ over the past 12 months, including training, communications and changes in policies or procedures to address requirements and prohibitions in the FJ, and revisions to its template managed care contracts that address or that implicate requirements and prohibitions in the FJ;
  - ii. any New Affiliate(s) over the past 12 months (as defined in the FJ);

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<sup>5</sup> The Monitor may initiate an investigation at her discretion if she determines that there is credible evidence of a violation. It is possible that credible evidence forming the basis of a "special case" necessitating an inquiry could stem, in certain limited instances, from survey responses. "Special cases" may include, for example, common issues arising across various insurers regarding certain conduct implicating the FJ.

<sup>6</sup> The survey questions may be augmented or revised, as necessary, to address issues that evolve over time.





- iii. any violations of the FJ over the past 12 months and how they were addressed and/or resolved;
  - iv. The number of physicians over the past 12 months who have newly applied for staff membership and/or privileges at a Sutter hospital, the number of physicians who were newly granted staff membership and/or privileges, the number of physicians who were denied staff membership and/or privileges, and the number of physicians who withdrew their application or request for staff membership and/or privileges; and
  - v. An attestation indicating whether Sutter is aware of any violations of the Admitting Privileges provision (Paragraph IV.G.1.a.) of the FJ over the past 12 months.
- b. Sutter will provide the following information to the Monitor on or before April 30 of each year along with its Annual Compliance Report.

**Sutter Requests for Information:**

**a. Out-of-Network Rates**

- i. Please provide information sufficient to show the Out-of-Network rates in effect for each Insurer and/or Self-Funded Payer (and/or its respective enrollee) for the most recent compliance reporting year that are subject to Section IV.D.3.a of the Final Judgment.
- ii. Please provide information sufficient to show that the contract rates Sutter used to determine the maximum Out-of-Network rates were separately computed for each Insurer.

**b. Chagemaster Commitment**

- i. Please provide information sufficient to show for the most recent compliance reporting year, the aggregate annual increases in any chagemasters that are subject to Section IV.D.4 of the Final Judgment.

**c. New Affiliates**

- i. Please provide a list of New Affiliates acquired by Sutter during the most recent compliance reporting year.
- ii. For each New Affiliate acquired by Sutter during the most recent compliance reporting year, please provide information on which Insurers and/or Self-Funded Payers had an existing agreement with the



New Affiliate prior to Sutter's acquisition, and any communication received from an Insurer and/or Self-Funded payer regarding a request for the New Affiliate to participate in one or more of Insurer and/or Self-Funded Payer's Commercial Products.

## **VI. INSURERS: ANNUAL SURVEY QUESTIONS**

- a. Insurers will provide the Monitor with responses to an Annual Survey identifying any violations of the Final Judgment.
- b. Insurers will also be asked a series of questions designed to elicit information on their interaction with the Monitor. The Monitor will take the responses and feedback received under consideration regarding the effectiveness of the monitoring methodology.

### **Insurer Annual Survey Questions:**

The Insurer Annual Survey Questions will at a minimum include the following:<sup>7</sup>

#### **a. Interactions with Monitor and Complaint Process Mechanics**

- i. Have you had an opportunity to speak with the Monitor and/or a member of her team?
- ii. Have you had any difficulties accessing the Monitor and/or a member of her team? If your answer to this question is in the affirmative, please explain.
- iii. Are you aware of how to allege an instance of noncompliance with the Final Judgment?
- iv. Do you have any questions about the monitoring process or timelines for resolving complaints alleging noncompliance? If your answer to this question is in the affirmative, please explain.

#### **b. Contracting Cycle**

- i. Please indicate when your current managed care contracting agreements with Sutter are subject to renewal.

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<sup>7</sup> See, *supra*, fn. 6.



ii. Do you have any agreement(s) with Sutter that are subject to renewal at the end of this calendar year?

iii. When do you anticipate commencing negotiations for contract renewal?

**c. New Product Introductions**

i. Do you anticipate introducing new products during the term of your current agreement that could implicate the Final Judgment? If so, please describe them.

**d. Out-of-Network Rates**

i. Please identify the maximum Out-of-Network rates your organization or company negotiated and applied during the relevant period.

ii. Please identify the contract rates used for determining the maximum Out-of-Network rates your organization or company negotiated and applied during the relevant period.

**e. Alleged Violations of the Final Judgment**

i. Do you contend or have evidence or information that Sutter has violated any of the provisions of the Final Judgment? If your answer to this question is "yes" please:

1. Specify the provision(s) of the Final Judgment at issue.

2. As to each provision at issue, please specifically describe the evidence/information relevant to Sutter's alleged violation and otherwise specify the basis for any contention that Sutter violated the provision(s) of the Final Judgment at issue.

3. Please state whether you advised Sutter, Plaintiff's Counsel, the Attorney General (the "parties"), and/or the Monitor, as specified in the Final Judgment, of any alleged violations of the Final Judgment.

4. If you advised any of the parties and/or the Monitor of the alleged violation, did you obtain a timely response and/or resolution to your concerns?

5. If you did not advise any of the parties and/or the Monitor of the alleged violation, please state why you did not?



**f. Retaliation**

- i. Has Sutter retaliated against or discouraged your organization or company based on the company or any person affiliated with your organization or company providing information in conjunction with the Settlement or providing any information to any party, the Monitor, or the Court? If your answer to this question is “yes” please explain.
  
- ii. Has Sutter sought to provide pricing or other concessions to your company or organization in return for not answering the Monitor’s annual survey, or not providing information in conjunction with the Monitor’s preliminary investigation of a matter relevant to Sutter’s compliance with the Final Judgment? If your answer to this question is “yes” please explain.