

Christopher L. Lebsock (Bar No. 184546)  
Arthur N. Bailey, Jr. (Bar No. 248460)  
Bruce J. Wecker (Bar No. 78530)  
HAUSFELD LLP  
600 Montgomery St., Suite 3200  
San Francisco, CA 94111  
(415) 633-1908  
clebsock@hausfeld.com  
abailey@hausfeld.com  
bwecker@hausfeld.com

*Counsel for Plaintiff*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

DISTRICT COUNCIL #16 NORTHERN  
CALIFORNIA HEALTH AND WELFARE  
TRUST FUND, individually and on Behalf of All  
Others Similarly Situated,

Plaintiffs,

vs.

SUTTER HEALTH; SUTTER BAY  
HOSPITALS; MARINHEALTH MEDICAL  
CENTER; SUTTER COAST HOSPITAL;  
SUTTER VALLEY HOSPITALS; SUTTER BAY  
MEDICAL FOUNDATION; SUTTER VALLEY  
MEDICAL FOUNDATION, and DOES 1-100.

Defendants

Case No. RG15753647

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE: Honorable Michael Markman  
DEPT: 23

**DECLARATION OF ARTHUR N. BAILEY,  
JR. IN SUPPORT OF MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT, ATTORNEYS' FEES,  
COSTS, AND CLASS REPRESENTATIVE  
SERVICE AWARD**

Date: July 24, 2025  
Time: 10:00 a.m.  
Reservation No.: A-15753647-022

Date Filed: January 6, 2015

1 I, Arthur N. Bailey, Jr., hereby declare:

2 1. I am Of Counsel at Hausfeld LLP, counsel for Plaintiff District Council #16 Northern  
3 California Health and Welfare Trust Fund (“DC16”) and the Class in this litigation. I am a member of  
4 the Bar of the State of California and duly admitted to practice law before this Court. I make this  
5 declaration in support of DC16’s Motion for Final Approval of Class Action Settlement, Attorneys’  
6 Fees, Costs, and a Class Representative Service Award. Except as otherwise stated, I have personal  
7 knowledge of the facts stated below, and if called to testify as a witness hereto, I could do so competently  
8 under oath.

9 2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed settlement  
10 agreement (“Settlement”) between Defendants Sutter Health, Sutter Bay Hospitals, Sutter Valley  
11 Hospitals, MarinHealth Medical Center, Sutter Coast Hospital, Sutter Bay Medical Foundation, and  
12 Sutter Valley Medical Foundation (collectively “Sutter” or “Defendants”), and DC16 and the class  
13 (“Class”).

14 3. The Court appointed Hausfeld LLP as Class Counsel for the Class.

15 4. I and the other attorneys at my firm who have worked on this case are experienced  
16 attorneys who have litigated many prior complex class actions such as this action. We have successfully  
17 resolved many of those cases. We have brought that experience and knowledge to bear on behalf of the  
18 Class and in this proposed Settlement.

19 5. The negotiations leading to the settlement with Defendants were vigorous, informed, and  
20 thorough; and were not concluded until after the completion of fact discovery and the exchange of expert  
21 reports and the briefing of dispositive motions regarding Defendants’ affirmative defenses. The parties  
22 conducted their negotiations in good faith on April 4, 2024 under the supervision of JAMS mediator,  
23 Robert A. Meyer, Esq. The settlement was reached after a mediator’s proposal was presented to the  
24 parties by Robert Meyer. The parties held an earlier mediation in February 2020 under the supervision  
25 of Hon. Vaughn R. Walker.

26 6. All settlement discussions were conducted at arm’s length, with each side aware of the  
27 strengths and weaknesses of Plaintiff’s claims and Sutter’s defenses. The Parties were willing to explore

1 a potential settlement but were also prepared to litigate their positions through trial and appeal if a  
2 settlement could not be reached. The parties negotiated the terms of the settlement agreement for several  
3 months after settlement in principle was reached and executed the Settlement Agreement on October  
4 22, 2024.

5 7. Plaintiff filed the motion for Preliminary Approval on November 22, 2024. The Court's  
6 February 27, 2025 order on the motion found, on a preliminary basis, that the settlement was fair,  
7 reasonable and adequate and granted the motion subject to Plaintiff submitting a revised notice and a  
8 revised proposed order within five days of notice of entry of the order. Plaintiff submitted the revised  
9 notice and proposed order and the Court granted preliminary approval of the Settlement on March 13,  
10 2025. The Final Approval Hearing was set for July 24, 2025.

11 8. JND Legal Administration ("JND"), was appointed the notice administrator for the notice  
12 of class certification which was mailed on April 8, 2022 to approximately 13,800 potential Class  
13 Members. Four Class members submitted requests for exclusion from the Class. Subsequently JND  
14 provided notice to the class of the proposed Settlement as directed by the preliminary approval order.  
15 On April 10, 2025, 14,506 Notices of Proposed Settlement and Claim Forms were mailed because  
16 approximately 700 additional Class Members were identified subsequent to the notice of pendency  
17 mailing in 2022. The Declaration of Gina M. Intrepido-Bowden Regarding Settlement Notice Plan  
18 Implementation is being filed concurrently herewith.

19 9. Under the preliminary approved proposed plan of allocation, Class members can make  
20 claims for their *pro rata* share of the Settlement fund weighted based on the cumulative total number of  
21 annual active participants in California between January 1, 2003 through December 31, 2013 as  
22 identified by Class members on their claim forms. Active participants are those individuals who reside  
23 in California and were employed at the end of the plan year and covered by the health plan.

24 10. The yearly number of patient encounters at Sutter that generate a bill for services that  
25 contain an alleged overcharge to Class members for anesthesia is generally proportional to the number  
26 of persons enrolled in the health plan for that year. Class Counsel chose to use this metric for the plan  
27 of allocation because sufficient, reliable claims data is not available. Most of the claims data produced

1 by Sutter does not include the name of the self-funded payer who ultimately pays the claim. Class  
2 Counsel also determined claims data produced by third party insurers was not reliable because it did not  
3 match the Sutter data in the aggregate.

4 11. Under the schedule, Class members have until June 9, 2025 to complete and submit the  
5 claim form. After all the claims have been received and tabulated, the settlement administrator under  
6 the supervision of Class Counsel will total the annual active participants of the claiming Class members  
7 and use it to calculate each Class member's *pro rata* share of the Settlement fund.

8 12. The Settlement provides that any uncashed checks will be redistributed to Class members  
9 according to the Plan of Allocation, and that any unclaimed funds will be distributed, *cy pres*, to  
10 Community HealthWorks and Journey Health to support patient navigation for uninsured and Medi-Cal  
11 patients. None of the fund reverts back to Sutter.

12 13. Class Counsel believe that the proposed Settlement provides more than adequate  
13 compensation to the Class and is fair, adequate, and reasonable.

14 14. Class Counsel is confident in their position, trials are risky, and there is no certainty as  
15 to what decisions would be reached. Liability is disputed by Sutter, and Sutter is expected to present  
16 evidence at trial to argue absence of double billing, the legality of chronometric billing, and that third  
17 party insurers did not find Sutter's bills unlawful, illegal, or unfair.

18 15. The Settlement was achieved after significant discovery and development of the case.  
19 The initial complaint was filed in January 2015 after Plaintiff's investigation of the allegations. This  
20 case followed a November 2013 settlement between Sutter and the State of California, in conjunction  
21 with a *qui tam* relator, Rockville Recovery Associates, Ltd., of litigation seeking civil penalties and  
22 injunctive relief which alleged that Defendants engaged in essentially the same fraudulent, unlawful,  
23 and unfair billing practices at issue in this action.

24 16. Sutter filed a Notice of Removal in this case on February 18, 2015, removing the case to  
25 the United States District Court for the Northern District of California arguing complete federal  
26 preemption under ERISA. Plaintiff filed a Motion to Remand on March 19, 2015. The Northern District  
27 of California vacated the hearing, decided the motion on the papers, and on May 19, 2015, ordered

1 remand.

2       17.       On June 18, 2015, Sutter moved to compel DC16 to individually arbitrate its claims  
3 against Sutter. After multiple rounds of briefing, an interim order issued on October 2, 2015, and Sutter  
4 was given leave to take limited discovery regarding the existence of a binding arbitration agreement.  
5 The Court issued an Order denying the motion to compel arbitration of DC16's claims on April 22,  
6 2016, finding DC16's contracts with health insurer Anthem did not confer Anthem with express agency  
7 authority to bind DC16 to an arbitration provision in Sutter's Systemwide Agreements. Sutter appealed  
8 and on July 9, 2018, the Court of Appeal issued an unpublished opinion affirming the trial court's order  
9 denying the motion to compel arbitration. On September 13, 2018, the Court of Appeal issued a  
10 remittitur sending the case back to the trial court.

11       18.       Class Counsel then engaged in extensive discovery and substantial briefing for class  
12 certification. As a result of those efforts, Class Counsel successfully obtained certification of the Class  
13 on June 29, 2021. Among other things, Class Counsel have reviewed approximately 1.7 million pages  
14 of documents and participated in approximately 27 depositions taken in this case including Person Most  
15 Qualified depositions of third-party intermediary health insurers. Class Counsel have reviewed over 35  
16 depositions taken in the *Rockville* case. Class Counsel have also conducted extensive written discovery,  
17 including serving interrogatories and requests for admission. Plaintiff propounded a set of form  
18 interrogatories, 7 sets of special interrogatories totaling 27 interrogatories, and 2 sets of requests for  
19 admission totaling 42 requests. Plaintiff responded to 1 set of form interrogatories, 44 special  
20 interrogatories, and 2 supplemental interrogatories issued by Defendants.

21       19.       The Parties also conducted expert discovery and briefed dispositive motions regarding  
22 defendants' affirmative defenses, with DC16 and the Defendants filing cross motions for summary  
23 judgment on various issues on April 11, 2022. Motions filed by Defendants included (1) Sutter's Motion  
24 to Compel Arbitration; (2) Sutter's Motion for Summary Adjudication as to Sutter's Release Defenses.  
25 Motions filed by DC16 were (1) Plaintiff's Motion for Summary Adjudication as to Sutter's Arbitration  
26 Defense; (2) Plaintiff's Motion to Exclude Modified Administrative Services Agreements Entered After  
27 January 6, 2015; (3) Plaintiff's Motion for Summary Adjudication as to Sutter's Release Defense Based

1 on Collateral Estoppel; and (4) Plaintiff's Motion for Summary Adjudication as to Sutter's Release  
2 Defenses. The Court's September 19, 2022 Order granted Plaintiff's Motion for Summary Adjudication  
3 as to Sutter's Release Defenses and denied all other motions.

4 20. DC16 hired five experts for use against Defendants: Robb Cohen (contracting and cost  
5 reporting), Allen Dobson (restitution), Erroll Lobo (anesthesiology), Henry Miller (medical billing), and  
6 Jack Needleman (healthcare markets). The Defendants hired five experts to oppose DC16's experts:  
7 Lundy Campbell (anesthesiology), Cheryl Farenholz (hospital billing), Lona Fowdur (healthcare  
8 markets and managed care contracting), M. Timothy Renjilian (restitution), and Brent Taylor (hospital  
9 cost reporting). The parties completed all expert reports on April 1, 2024 and settled just prior to expert  
10 depositions, which were scheduled to be completed by May 3, 2024.

11 21. All of this discovery, expert work, and motion practice has given Class Counsel more  
12 than sufficient information to evaluate DC16's claims. This parties have been litigating this action for  
13 more than nine years and at the time of the April 4, 2024 mediation were less than six months away  
14 from trial. Given the advanced stage of the litigation, Class Counsel is well-positioned to make an  
15 informed decision as to the value of the Settlement compared to the risks of continued litigation.

16 22. The trial in this case would present a substantial body of evidence obtained from the  
17 earlier *Rockville* litigation. In *Rockville*, three components of a 37x charge for anesthesia services were  
18 litigated: (1) the "anesthesia technician"; (2) the anesthesia machine; and (3) gases. Plaintiff anticipates  
19 presenting evidence that these items were not properly billed by Sutter under revenue code 37x,  
20 including evidence that (1) billing for the technician was billing for services not rendered because the  
21 technician is not present or otherwise assisting on the case throughout the chronometrically billed period,  
22 and the work was related to performing mainly small room turnover and set-up tasks that normally only  
23 take a few minutes at the beginning of each day or in between uses of the OR, (2) the anesthesia machine  
24 is OR equipment and therefore billed under the 36x OR charge, and (3) the gases were double billed  
25 under both the 37x and the 25x pharmacy charge.

26 23. Plaintiff anticipates Sutter would make several factual and legal arguments at trial which  
27 pose significant risks of an adverse outcome at trial. First, Sutter is expected to present expert and other

evidence to show that the anesthesia technician and anesthesia machine are appropriately included in the 37x charge, and that gases were not included in the amount of the charge.

24. Sutter is expected to argue Plaintiff's claims fail because Sutter did not make any misrepresentations, and specifically did not make any misrepresentations to the self-funded payers who are Class members because Sutter only sends its bills to insurance companies. Sutter is expected to present evidence that the insurance companies who received the bills did not find them to be false, fraudulent or misleading. Sutter is also expected to present evidence that the alleged misrepresentations are not material to insurers because (1) charges were paid at negotiated rates and therefore are unrelated to the billed charges, and (2) insurers focus only on the cost of procedures as a whole (e.g., for a knee-replacement surgery), not individual component costs such as anesthesia, and (3) insurers did not file suit or otherwise react in response to the *Rockville* settlement.

25. Plaintiff expects Sutter to present evidence that the statute of limitations eliminates a substantial number of the Class's claims, and that Plaintiff's restitution amounts are greatly inflated. Restitution experts for both parties prepared estimates of competing restitution amounts to be presented at trial. At the high end, Sutter's expert estimated restitution is approximately 1.5% of the lowest restitution estimate determined by Plaintiff's expert.

26. I have closely participated in, or closely coordinated and monitored, all facets of this case. My responsibilities have included exercising oversight of the attorneys working on this matter.

27. Hausfeld LLP has substantial experience in complex litigation matters including class actions. Hausfeld has been recognized as a leading claimant firm in antitrust and complex class action litigation, having recovered 129 settlements totaling over \$8.4 billion between 2009-2023 as recognized by the 2023 Antitrust Annual Report, published by the Center for Litigation and Courts, UC Law SF and The Huntington National Bank, Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, and mediation. Class Counsel have litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases.

28. Class Counsel has spent thousands of hours litigating this complex case since its

inception ten years ago in 2015. As also noted above, this work has included the following:

- Conducted Extensive Discovery. Reviewed approximately 1.7 million pages of documents and participated in approximately 27 depositions taken in this case; conducted extensive written discovery, including propounded a set of form interrogatories, 7 sets of special interrogatories totaling 27 interrogatories, and 2 sets of requests for admission totaling 42 requests while responding to 1 set of form interrogatories, 44 special interrogatories, and 2 supplemental interrogatories issued by Defendants.
- DC16 Motion to Remand. In March 2019, after Sutter removed the case to the United States District Court for the Northern District of California arguing complete federal preemption under ERISA. Plaintiff filed a Motion to Remand. The Northern District of California vacated the hearing, decided the motion on the papers, and on May 19, 2015, ordered remand.
- Sutter's Motions to Compel Arbitration. Successfully opposing Sutter's Motion to Compel Arbitration filed on June 18, 2015 directed toward DC16 individually, defeating arguments of agreement, agency, equitable estoppel, acceptance of the benefits, and operation of Health and Safety Code ("HSC") 1375.7(d), and again successfully opposing the HSC 1375.7(d) argument on appeal; successfully opposing a second motion to compel arbitration filed April 11, 2022, directed towards the Class, defeating arguments of agreement, agency and delegation.
- Class Certification and Expert Work. Creating viable expert models that demonstrate classwide impact and damages. Challenges included managing Sutter defenses of release and arbitration and defining the subclasses; establishing alternate restitution model that subtracts potentially allowable anesthesia costs; and establishing commonality of Sutter hospital billing under 37x including both percentage of billed charges vs. fixed rate payments.
- Summary Adjudication. Successfully arguing Plaintiff's Motion for Summary Adjudication as to Sutter Release Defenses, and successfully opposing Sutter's Motion



for Summary Adjudication as to Sutter's Release Defenses, that third party administrators could not as a matter of law release unfair competition law claims of class members without express permission, and successfully arguing claims could not be delegated to third parties who lack standing to bring their own claim.

- Merits Expert Work. Oversee and assist preparation of five expert reports on complex issues of liability and restitution including Plaintiff's (1) hospital billing expert's report and opinion that Sutter's charges for anesthesia services are not rendered, double, billed, and/or product of improper unbundling; (2) healthcare market expert's report and opinion that Sutter defendants have substantial market power resulting in the ability to require insurers to enter all of nothing contracts and raise prices; (3) hospital contracting and cost reporting expert's report and opinion that Sutter's cost-to-charge ratios for anesthesia are unusually high; (4) anesthesiology expert's report and opinion regarding the roles of anesthesiologists and anesthesia technicians; (5) restitution expert's report and opinions regarding the methodology to determine restitution amounts and the calculation of those amounts.

29. The schedule below sets forth Class Counsel's total hours and lodestar, computed at historic ranges, from the inception of this case through October 22, 2024, the date of the execution of the Settlement Agreement. During that time, Class Counsel spent 16,870.5 hours on tasks necessary for litigating this case, with a corresponding lodestar (at historic rates) of \$12,985,796.50. The schedule below identifies the individuals who worked on this matter, their titles (Partner, Of Counsel, Senior Associate, Associate, Staff Attorney, Paralegal, and Law Clerk), the total number of hours they worked, and their lodestar. The schedule was prepared from contemporaneous, daily time records prepared and maintained by Class Counsel in the regular course of business. Time expended after the date of the Settlement Agreement was not included in this request, and *de minimis* time billed by attorneys and staff with attributable lodestar of less than 10 hours was also not included. The attorneys and paralegals who have devoted their time to this case did so at the expense of time they would have devoted to other matters.

<b>Timekeeper</b>	<b>Title</b>	<b>Hours</b>	<b>Lodestar</b>
Armstrong, Robert	Staff Attorney	10.00	\$3,500.00
Bailey, Jr., Arthur N.	Of Counsel	5,859.35	\$4,995,717.50
Bayoumi, Jeanette	Senior Associate	1,119.50	\$543,277.00
Berkoh, Hazel	Paralegal	158.70	\$51,577.50
Boltax, Mandy	Associate	10.70	\$4,584.00
Cho, Stephanie	Associate	27.70	\$10,430.00
Coolidge, Melinda R.	Partner	23.10	\$10,206.00
Elder, Candice	Paralegal	83.40	\$25,837.00
Elkus, Daniel	Law Clerk	33.50	\$8,040.00
Gassman, Seth	Of Counsel	17.40	\$13,513.50
Giddings, Nathaniel	Partner	89.20	\$33,014.00
Harris, Shayla	Associate	24.00	\$6,240.00
Kenney, Molly	Senior Associate	201.70	\$89,929.00
Kim, Tae	Associate	1,539.80	\$766,326.00
Langford, Sierra	Law Clerk	52.40	\$13,624.00
Lebsock, Christopher L.	Partner	834.70	\$647,496.00
Lehmann, Michael P.	Partner	412.70	\$496,548.50
Lewis, Richard S.	Senior Counsel	27.00	\$24,165.00
Macdonald, Caleigh	Staff Attorney	38.20	\$15,280.00
McCune, Kenya	Paralegal	155.10	\$46,530.00
McPhail, Suzanne	Paralegal	26.60	\$8,957.50
Mitchell, James	Paralegal	23.20	\$7,452.50
Oborina, Darya	Paralegal	429.20	\$128,760.00
Oliver, Jim	Staff Attorney	11.00	\$5,500.00
Patel, Krishna	Paralegal	434.00	\$134,400.00
Robinson, Elliot	Paralegal	173.70	\$55,942.50
Rosset, Claire	Associate	88.70	\$23,062.00
Schumacher, Michael	Of Counsel	430.50	\$254,560.00
Shimizu, Season	Paralegal	158.20	\$52,625.00
Sittler, Edward	Paralegal	26.40	\$7,968.00
Sweeney, Bonny	Partner	11.40	\$10,374.00
Wang, Kevin	Law Clerk	41.00	\$10,660.00
Wecker, Bruce	Of Counsel	4,117.30	\$4,428,940.00
Wu, Claudia	Paralegal	181.20	\$50,760.00
<b>TOTAL</b>		<b>16,870.55</b>	<b>\$12,985,796.50</b>

30. The hourly rates for Class Counsel's attorneys and professional support staff included in the above table are the same as the regular rates charged for their services in non-contingent matters and/or which would have been accepted in other complex or class action litigation, subject to subsequent annual increases.

31. The hourly rate for attorneys ranged from \$350 to \$1,370. Hourly fees exceeding \$1,150 accounted for 440 hours, or 2.6% of the total hours billed. Hourly rates of litigation staff (paralegals and law clerks) ranged from \$240 to \$350.

32. Class Counsel litigated this case on an entirely contingent basis, and to date, Class Counsel have not been paid any money for their time and effort spent in the action.

33. The fee award that Class Counsel requests, is 30% of the Settlement Fund, net of costs. If granted in full, this amount is expected to be \$2,490,342.82. That amount is 19.2% of Class Counsel's lodestar.

34. Below is a list of the unreimbursed expenses Class Counsel incurred during the prosecution of this litigation. These expenses are reflected in the firm's books and records that are regularly maintained in the ordinary course of the firm's business and are based on the receipts and data maintained by the firm.

Category	Amount Incurred
Airfare	\$2,799.29
Cellular Phone Charges	\$282.00
Certified Document	\$561.32
Expert	\$1,730,316.32
Filing Fees	\$15,991.83
Gasoline	\$91.90
Hotel Charges	\$6,184.07
Internet Access	\$13.99
Meals – Travel	\$1,271.29
Meals In House	\$593.81
Messenger, Delivery, Courier	\$12,556.97
Mileage - Non-Local	\$171.75
Miscellaneous Expenses	\$13,890.37
Outside Duplicating/Copying	\$132.97
Pacer Usage	\$995.23
Parking – Travel	\$338.75
Photocopying	\$10.92
Postage - Soft Cost	\$39.55
Printing	\$3,001.65
Purchased Services	\$688,737.62
Rental Car	\$674.24

Subscriptions	\$130.91
Taxi – Travel	\$591.41
Telephone	\$666.97
Tolls – Travel	\$197.00
Trainfare	\$600.55
Westlaw Usage	\$34,014.59
<b>TOTAL</b>	<b>\$2,514,857.27</b>

35. The expenses listed above--including computer research--were incurred specifically for this case and do not include any costs for general firm overhead. Purchased Services includes services for hosting documents and data, document productions, court reporting for depositions and court hearings, class certification notice administration, investigation and research, and mediation fees.

36. In addition to the above, JND has incurred and been paid from the Settlement Fund, pursuant to the Settlement Agreement, settlement administration expenses of \$51,834.18 as of the date of this filing. JND currently anticipates the total settlement administration costs will be \$184,000. Class Counsel has deducted the total paid costs amount and the anticipated settlement administration costs amount from the gross Settlement Fund for purposes of the attorneys' fee calculation.

37. Class Counsel will not seek payment for work, lodestar, or expenses related to this litigation other than those set forth in this declaration.

38. DC16 has faithfully represented the Class for nearly nine years, first as a putative class representative, and then as a representative for the certified Class. In 2014, the board of trustees of the health plan, in conjunction with Class Counsel, investigated and assessed the potential claims and made the decision to bring the suit. Prior to filing Trustees and their agents, notably Doug Christopher, head of DC16's third party administrator ATPA, had approximately 40 hours of calls or meetings with Class Counsel related to investigation of claims, the preservation of documents, and the decision to file a complaint.

39. In 2015 and after, Doug Christopher, Coleen Christophersen, and others charged with administration of the health plan including Jeff Kao of Segal Consulting and Joe Theirmann of Lindquist spent many hours assisting with the preservation, collection, review, and production of documents and

1 electronic data to respond to Defendants' document requests. Between 2014 and 2021, I estimate DC16  
2 spent at least 32 hours assisting with the collection and production of non-custodial documents and data.

3 40. The ten DC16 Trustee custodians, collectively, spent approximately 25-30 hours in  
4 interviews with Plaintiff's data consultant, Tom Matzen, and helping with the collection of their  
5 custodial documents and data between March and September of 2020.

6 41. Robert Williams III, DC16's current Chairman reviewed and verified nine sets of  
7 discovery responses including one set of responses to request for admission, five sets of responses to  
8 special interrogatories, and three sets of responses to form interrogatories. In addition, former Chairman  
9 Chris Christophersen reviewed and verified two sets of responses to special interrogatories. I estimate  
10 they collectively spent approximately 8 hours reviewing and verifying written discovery responses.

11 42. Doug Christopher, DC16's former Chairman, was deposed twice. He was deposed by  
12 Sutter as DC16's Person Most Qualified ("PMQ") on February 24, 2016, to obtain discovery for Sutter's  
13 motion to compel DC16 to arbitration (1.5 hours) and spent at least an additional 5 hours preparing for  
14 the deposition. He was deposed again as DC16's PMQ, on October 29, 2020, in connection with Sutter's  
15 opposition to class certification (9 hours). Three other DC16 witnesses also gave PMQ depositions  
16 related to class certification: Coleen Christophersen (October 29, 2020) (9.5 hours), Chris  
17 Christophersen (November 6, 2020) (7 hours), and John Maggiore (May 4, 2021) (3 hours). Collectively,  
18 these five depositions took approximately 30 hours. The time the witnesses spent preparing for the  
19 depositions were: Doug Christopher (4-5 hours), Coleen Christophersen (5 hours), John Maggiore (4  
20 hours). The time estimates are based on my review of contemporaneous time records and the deposition  
21 testimony.

22 43. DC16 also provided declarations in support of plaintiff's motions and other filings: the  
23 Declaration of Doug Christopher in opposition to Sutter Motion to Compel Arbitration (June 8, 2015),  
24 the Declaration of Jefferson Kao in Support of *Ex Parte* Application for Temporary Restraining Order  
25 and Order to Show Cause, the Declaration of Coleen Christophersen in Support of Plaintiff's Motion  
26 for Class Certification (September 14, 2020), and the Declaration of Chris Christophersen in Support of  
27 Motion for Class Certification (October 9, 2020). These declarants spent collectively approximately 12

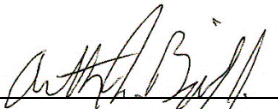
1 hours in connection with declarations filed in support of Plaintiff's motions.

2 44. The Board of Trustees also regularly monitored developments in the case at its board  
3 meetings throughout the litigation. Class Counsel would prepare periodic written status letters, which  
4 would be reviewed by all Trustees, and any major decisions brought to vote. Outside of the board  
5 meetings, Class Counsel periodically held calls and had meetings with DC16 personnel to discuss case  
6 updates and strategy. From January 2015 through the present, I estimate DC16 Trustees or agents spent  
7 approximately 80 hours participating in case status calls or meetings with Class Counsel.

8 45. Chris Christophersen, whose tenure as Chairman ran from before the inception of this  
9 case through December 2019, testified he devoted 1 to 2 hours per week to the case. Cumulatively, the  
10 time he devoted to the case from the date of filing through the end of his tenure was over 250 hours.

11 46. There was additional time spent by DC16 on the case beyond that quantified above. The  
12 time estimates contained within are based on my review of contemporaneous time records and the  
13 deposition testimony.

14  
15 Executed this 27th day of May 2025, in San Francisco, California.

16  
17   
18 ARTHUR N. BAILEY, JR.

# EXHIBIT A

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into by and between District Council #16 Northern California Health and Welfare Trust Fund (“DC16”) on behalf of itself and the class of self-funded payers (defined below) it represents (collectively, “Plaintiffs”), and Defendants Sutter Health, Sutter Bay Hospitals, Sutter Valley Hospitals, MarinHealth Medical Center, Sutter Coast Hospital, Sutter Bay Medical Foundation, and Sutter Valley Medical Foundation (collectively, “Sutter” or “Defendants”), through their authorized representatives.

### **1. RECITALS**

1.1. Sutter is a nonprofit, public benefit health system that provides healthcare services to communities throughout Northern California.

1.2. DC16, on behalf of itself and all others similarly situated, represents a class of self-funded payers that filed an action on January 6, 2015 captioned *District Council #16 Northern California Health and Welfare Trust Fund, et al., v. Sutter Health, et al.*, Case No. RG15753647, pending in Alameda County Superior Court (the “Action”).

1.3. The Action asserts claims under the unfair competition laws, Business and Professions Code Sections 17200 *et seq.*, and seeks recovery of, among other things, restitution, and attorneys’ fees and costs.

1.4. Plaintiffs and Defendants (collectively, the “Settling Parties”), have been engaged in substantial arm’s-length negotiations in an effort to resolve all claims arising from or related to the allegations in the Action, including through mediation with Robert Meyer, Esq., during which the terms of the agreement detailed herein were extensively negotiated.



1.5. The Settling Parties have reached an agreement providing for the settlement and termination with prejudice of the claims asserted in the Action on the terms and subject to the conditions set forth below, and are entering into this settlement to eliminate the burden, distraction, expense and uncertainty of further litigation.

1.6. Defendants have denied and continue to deny that they (and each of them) have engaged in any wrongdoing of any kind, or violated or breached any law, regulation or duty owed to Plaintiffs (and each of them) and further deny that they individually or collectively have any liability as a result of any and all allegations in the Action.

1.7. Based on their analysis of the merits of the claims and the benefits provided to the Class by the Settlement Agreement, including the evaluation of a number of factors including the substantial risks of continued litigation and the possibility that the litigation, if not settled now, might result in no recovery whatsoever for the Class or in a recovery that is less favorable to the Class, Class Counsel believe that it is in the interest of all members of the Class to resolve finally and completely their claims against the Defendants and that the terms of the Settlement Agreement are in the best interests of the Class and are fair, reasonable and adequate.

1.8. The Settling Parties have voluntarily entered into the Settlement Agreement to fully resolve the Action.

1.9. In consideration of the promises, agreements, covenants, representations and warranties set forth herein, and other good and valuable consideration provided for herein, the Settling Parties agree to a full, final and complete settlement of the Action on the below terms and conditions.

## **2. GENERAL TERMS OF THE SETTLEMENT AGREEMENT**

In addition to the terms identified elsewhere in this Settlement Agreement, and as used herein, the terms below shall have the following meanings:

2.1. “Attorneys’ Fees and Expenses” means the amounts approved by the Court for payment to Class Counsel, including attorneys’ fees, costs and litigation expenses as described herein.

2.2. “Class” or “Class Member(s)” means self-funded payers that satisfy the class definition set forth in the June 29, 2021 Order Granting Motion of Plaintiffs for Class Certification at page 40: “All self-funded payers that (1) are citizens of California or state and local governmental entities of the State of California and (2) compensated Sutter for any anesthesia services other than conscious sedation administered in operating rooms at its acute care hospitals at any time from January 1, 2003 to December 31, 2013.” Excluded from the Class are all self-funded payers that opted out of the Class on or before the Court-ordered opt-out deadline of June 7, 2022 and any entity in which the self-funded payer is a health plan offered by Sutter Health to its employees or a plan where a Sutter Health affiliate is ultimately financially responsible for the claims paid by the self-funded health plan. Self-funded payers that opted out are not entitled to any relief including monetary relief under this Settlement.

2.3. “Claims Administrator” means the entity which has been designated to provide Notice to the Class and administer the Settlement Fund pursuant to Section 9 below and by order of the Court.

2.4. “Class Counsel” means the law firm of Hausfeld LLP.

2.5. “Court” means Superior Court of the State of California for the County of Alameda.

2.6. “Defendants’ Counsel” means the law firm of Keker, Van Nest & Peters LLP.

2.7. “Effective Date” is the effective date of the Settlement Agreement as defined in Section 7 below.

2.8. “Escrow Agent” means The Huntington National Bank, or such successor escrow agent agreed upon by the Settling Parties or appointed by the Court.

2.9. “Final Approval” means the order of the Court granting final approval of the Settlement Agreement pursuant to California Rules of Court Rule 3.769.

2.10. “Final Approval Hearing” means the hearing at which the Court will consider Plaintiffs’ motion for judgment and Final Approval of the Settlement.

2.11. “Final Judgment and Order” means the Proposed Final Judgment and Order pursuant to Settling Parties’ stipulation which shall be submitted to the Court.

2.12. “Notice” means the Notice of Proposed Settlement.

2.13. “Plaintiffs” means DC16 and the Class, collectively.

2.14. “Plan of Allocation” means the formula and process by which the Settlement Fund will be allocated and distributed to Class Members.

2.15. “Plan of Notice” means the plan for distribution of the Notice to Class Members.

2.16. “Preliminary Approval” means the Court’s Order preliminarily approving the Settlement, the Plan of Notice, the forms of Notice, the Plan of Allocation and other related matters.

2.17. “Settlement,” “Agreement,” or “Settlement Agreement” each mean the settlement terms agreed to by the Settling Parties as reflected in this Settlement Agreement.

2.18. “Settlement Fund” means the eleven million dollars (\$11,000,000.00) that the Defendants shall pay as described in Section 8.1 to be held, administered and disbursed pursuant to this Settlement Agreement and applicable orders of the Court.

2.19. “Settling Parties” means the Plaintiffs and the Defendants.

### **3. COURT APPROVAL OF SETTLEMENT AND NOTICE**

#### **3.1. Retention of Claims Administrator**

Class Counsel shall retain a Claims Administrator, which shall be responsible, under the supervision of Class Counsel, for the Notice administration process, administering the Settlement Fund, distribution to Class Members as approved by the Court, withholding and paying applicable taxes, and performing other duties as provided herein. Plaintiffs shall obtain approval by the Court of the choice of the Claims Administrator. Class Counsel shall be responsible for calculating payments to the Class from the Settlement Fund based on the Plan of Allocation approved by the Court. The Claims Administrator shall sign and be bound by the Second Modified Stipulated Protective Order entered on March 12, 2019 governing the Action to treat information it receives or generates as part of the Notice administration process as confidential. The Claims Administrator shall agree to use confidential information solely for the purposes of Notice administration, administering the Settlement Fund and completing the functions associated therewith required by the Agreement, and shall keep the information confidential. The fees and expenses of the Claims Administrator shall be paid exclusively out of the Settlement Fund. In no event shall the Defendants be separately responsible for fees or expenses of the Claims Administrator.

#### **3.2. Preliminary Approval and Notice of Settlement**

3.2.1. Class Counsel shall file with the Court a Motion for Preliminary Approval of the Settlement, which will include a Proposed Preliminary Approval Order and a proposed Notice. In the event that the Court grants Preliminary Approval of the

Settlement, Class Counsel shall direct the Claims Administrator to provide the Class with Notice as ordered by the Court.

3.2.2. Attached as Exhibit A is the proposed Notice which Class Counsel shall file with the Court.

3.2.3. If the Court denies the Motion for Preliminary Approval without leave to re-file, and either no appeal is taken or an appeal is taken and the denial is affirmed, the case will proceed as if no settlement had been attempted, and the Settling Parties shall be returned to their respective procedural postures, (*i.e.*, the *status quo* as of April 4, 2024), so that the Settling Parties may take such litigation steps that the Settling Parties otherwise would have been able to take absent the pendency of this Settlement Agreement. In such event, the Settling Parties will negotiate and submit for Court approval a revised case schedule for any trial-related events previously scheduled for dates following April 3, 2024.

#### **4. OBJECTIONS**

Unless the Court provides otherwise, objections to the Settlement, if any, must be submitted in writing, and must include a detailed description of the basis of the objection. Objections must be filed with the Court, with copies served on Class Counsel and Defendants' Counsel, postmarked on or before a date certain to be specified in the Notice, which will be thirty (30) days after the Notice is initially mailed to Class Members. No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement without first having filed and served objections in writing postmarked on or before thirty (30) days after the Notice was initially mailed to Class members.

**5. CLASS MEMBER OPT-OUT**

The Court previously provided Class Members with notice of and an opportunity to opt out of the Action and set the opt-out deadline of June 7, 2022. Among other things, the notice advised Class Members: “[i]f you meet the definition of a Class member and do nothing, you will remain part of the Class and keep the possibility of getting money or other benefits that may come from a trial or settlement. If you remain part of the Class, you will be legally bound to any and all orders and judgments, whether favorable or not, that the Court makes regarding the claims in this class action.” On or before June 7, 2022, certain entities opted out of the class. The Settling Parties agree that, in light of the previous opportunity to opt out, Class Members should not be provided with another opportunity to opt out.

**6. FINAL APPROVAL**

6.1. Prior to the Final Approval Hearing, on the date set by the Court, Plaintiffs shall submit a motion for Final Approval by the Court of the Settlement and the entry of an order granting Final Approval of the Settlement and requesting that the Court, after inquiry:

6.1.1. find the Settlement and its terms to be fair within the meaning of California Rules of Court Rule 3.769, and direct its consummation pursuant to its terms;

6.1.2. find that the Notice given constitutes due, adequate and sufficient notice, and meets the requirements of due process and any applicable laws;

6.1.3. provide for payment of any Attorneys’ Fees and Expenses solely from the Settlement Fund (as provided in Section 11 herein);

6.1.4. set forth the method for allocating the Settlement Fund (set forth in the Plan of Allocation);

6.1.5. approve the release of claims specified herein as binding and effective as to the Plaintiffs and all Class Members, permanently barring and enjoining the Plaintiffs and Class Members from asserting any Released Claims (as defined in Section 10 herein);

6.1.6. pursuant to California Code of Civil Procedure § 664.6 and California Rule of Court 3.769(h), reserve exclusive and continuing jurisdiction over the Settlement, including the Final Judgment and Order and the Settlement Fund (as defined in Section 8 herein); and

6.1.7. direct that the Final Judgment and Order terminating with prejudice all claims asserted in this Action be entered.

6.2. If required by the Court in connection with approval of the Settlement, the Settling Parties agree to consider in good faith whether to accept non-material changes to this Settlement Agreement. However, the Settling Parties are not obligated to accept any changes to the monetary amount of relief, or any other change to the terms of this Settlement Agreement.

6.3. The Claims Administrator's affidavit of compliance with Notice requirements must be filed no later than thirty (30) days prior to the Final Approval Hearing.

## **7. EFFECTIVE DATE OF THE SETTLEMENT**

7.1. The Settlement shall become final and effective upon the occurrence of all of the following ("Effective Date"):

7.1.1. The Court grants Final Approval of the Settlement;

7.1.2. As provided for in Section 6 herein, entry is made of the Final Judgment and Order terminating with prejudice all claims asserted in this Action;  
and

7.1.3. Completion of any and all appeal(s) from the Court's Final Judgment and Order and/or Order granting Final Approval of the Settlement (including any such order on remand from a decision of an appeals court), provided, however, that a modification or reversal on appeal of any amount of the Attorneys' Fees and Expenses awarded by the Court from the Settlement Fund, or the amount of any service awards to the Plaintiffs, shall not by itself prevent this Settlement from becoming final and effective if all other aspects of the Final Judgment and Order and the Final Approval Order have been affirmed or not appealed.

7.2. If no appeal is filed from the Court's Final Judgment and Order and/or Final Approval of the Settlement, the Effective Date shall be the date on which the time for any such appeals has lapsed.

## **8. CONSIDERATION FOR SETTLEMENT**

### **8.1. Monetary Settlement Fund**

8.1.1. Within ten (10) calendar days from the court's order preliminarily approving the settlement, the Defendants shall deposit or cause to be deposited by wire transfer to the Escrow Agent five hundred thousand dollars (\$500,000.00) in cash to be used for the costs of settlement administration, subject to and in exchange for the promises, covenants and provisions herein, including without limitation, complete and final settlement and release of all Released Claims against the Defendants and the Released Parties in the Action, any claim for Attorneys' Fees and Expenses, costs, administrative costs, interest (pre- and post-judgment interest), and any and all amounts to be paid to Class Members. As set forth below, if this Agreement is not finally



approved, is nullified pursuant to Section 12.3, is overturned or is modified on appeal or as a result of further proceedings on remand of any appeal with respect to this Agreement, or if the Effective Date otherwise does not occur, the balance of the Monetary Settlement Fund, including all earned and accrued interest, shall be returned to Defendants pursuant to Section 12.3.1.

8.1.2. Within ten (10) calendar days from the Effective Date, the Defendants shall deposit or cause to be deposited by wire transfer to the Escrow Agent ten million and five hundred thousand dollars (\$10,500,000.00) in cash subject to and in exchange for the promises, covenants and provisions herein, including without limitation, complete and final settlement and release of all Released Claims against the Defendants and the Released Parties in the Action, any claim for Attorneys' Fees and Expenses, costs, administrative costs, interest (pre- and post-judgment interest), and any and all amounts to be paid to Class Members.

8.1.3. Deposit to the Escrow Agent shall be made by electronic transfer to the account of The Huntington National Bank using the account information provided by Class Counsel via letter to Defendants not later than seven (7) days after execution date of this agreement reflected below:

Bank Name	
Bank Address	
Location	
ABA Routing Number	
Account Number	
Account Name	

SWIFT Code	
Tax ID/EIN Number	

8.1.4. In the event that the Settling Parties agree upon, or the Court approves, an Escrow Agent other than The Huntington National Bank, Class Counsel shall furnish the information set forth in Section 8.1.3 for the Escrow Agent via letter to Defendants' Counsel sent no later than seven (7) days after appointment of the new Escrow Agent. Plaintiff and Class Members understand that furnishing the information set forth in Section 8.1.3 for the Escrow Agent is a condition precedent to depositing any sums with the Escrow Agent.

8.1.5. Defendants shall not, under any circumstances, be required to pay more than this amount. Defendants' transfer of the Settlement Fund to the Escrow Agent shall constitute full and complete satisfaction of their monetary obligations under this Settlement and to settle the Action, which will cover any and all forms of monetary relief to settle the Action and the Released Claims, including without limitation any and all compensation to Class Members, payments for any service awards, fees and costs of the Claims Administrator, Attorneys' Fees and Expenses, litigation and court costs (including without limitation expert fees), and all other monetary relief, fees, expenses or costs arising out of or related to the Action. Plaintiff and Class Members shall not be entitled to any further payment from any Defendant or any Released Party with respect to the Released Claims, the Action or the Settlement. Following such transfer of the Settlement Fund to the Escrow Agent, no Defendant or Released Party shall have any liabilities, obligations or responsibilities with respect to the payment, disbursement, disposition,

distribution or other administration or oversight of the Settlement Fund. No portion of the Settlement Fund will revert to the Defendants unless the Settlement is terminated, as described in Section 12.3, is modified as described in Section 6.2, or is not finally approved or does not become effective for any reason. Except as provided by order of the Court, no Plaintiff or Class Member shall have any interest in the Settlement Fund or any portion thereof.

8.1.6. The Escrow Agent will place the Settlement Fund in an interest-bearing account (the “Account”) created by order of the Court. The Settlement Fund shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court until it has been fully disbursed pursuant to orders of the Court. The Settling Parties agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg § 1.468B-1 and to refrain from taking any action inconsistent with such treatment. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent and shall promptly take all steps necessary so that the Settlement Fund qualifies as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

8.1.7. The Escrow Agent shall invest the Settlement Fund in interest-bearing instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or agency therefor, or in money market funds invested in such instruments.

8.1.8. Following the Defendants’ transfer of the Settlement Fund to the Escrow Agent, Defendants, Defendants’ Counsel and the Released Parties shall have no liability,

obligation or responsibility with respect to the payment, calculation of payments, disbursement, disposition, distribution or other administration or oversight of the Settlement Fund or Account and shall have no liability, obligation or responsibility with respect to any liability, obligation or responsibility of the Escrow Agent, Claims Administrator or Class Counsel, including but not limited to, liabilities, obligations or responsibilities arising in connection with the payment, calculation of payments, disbursement, disposition, distribution or other administration of the Settlement Fund and Account.

8.1.9. Defendants shall have no liability, obligation or responsibility for any taxes on interest earned by the Settlement Fund that is for the benefit of the Class or for any reporting requirements relating to such interest. However, if the Settlement Fund, or a portion thereof, is returned to Defendants pursuant to Section 12.3 below with accrued interest, Defendant shall be responsible for any unpaid taxes on such accrued interest and for any related tax reporting requirements, provided that the Claims Administrator complied with its obligation pursuant to Section 9.2.2 below.

## **9. ADMINISTRATION AND DISTRIBUTION OF THE SETTLEMENT FUND**

### **9.1. Allocation and Distribution**

9.1.1. Class Counsel shall be solely responsible for the administration of Class Member claims. Expenses and costs of administration shall be paid for solely out of the Settlement Fund in such amounts as the Court orders. Defendants shall have no liabilities, obligations or responsibilities with respect to the payment, calculation of payments, disbursement, disposition, distribution or other administration or oversight of payments.

9.1.2. The proposed Plan of Allocation would allocate the settlement fund (net of Court-approved attorneys' fees, litigation and settlement administration expenses, and a service award to the named Plaintiff) *pro rata* as described below.

9.1.3. Claims are weighted based on the cumulative total number of annual active participants in California identified by Class Members between January 1, 2003 through December 31, 2013. Claiming Class Members will be required to provide its number of active participants for each year of the period, under penalty of perjury, to support calculation of its weighted claim. Active participants are those individuals who reside in California and were employed at the end of the plan year and covered by the plan.

9.1.4. A claim form will be sent to Class Members to provide the number of active California participants in the self-funded health plan for each year between January 1, 2003 through December 31, 2013, which Class Counsel will total and use to calculate each class member's pro-rata share of the Settlement Fund. A notice will be sent to each self-funded health plan that received the mailed notice of class certification previously, excluding those that opted out of the class. Notice will also be sent to any additional Class Members that have been identified subsequent to the prior mailing. Once each claiming class member's weighted claims have been determined, Class Counsel will apply the Court-approved plan of allocation to calculate each claiming Class Member's share of the net settlement fund. Those shares will be presented to the Court for approval before checks are mailed to claiming Class Members.

9.1.5. Class Counsel shall be responsible for calculating the monetary award that shall be paid to each eligible Class Member, which shall be approved by the Court. Under the supervision of Class Counsel, the Claims Administrator shall, among other

things, confirm the identify of each eligible Class Member based on the methodology set forth in the Plan of Allocation as approved by the Court. As will be reflected in the Final Approval Order, Defendants and the Released Parties shall have no responsibility, and may not be held liable, for any determination reached by Class Counsel or the Claims Administrator.

9.1.6. The total amount of all monetary awards paid to Class Members, as determined by the Claims Administrator, shall not exceed the net amount of the Settlement Fund (including accrued interest) after all costs, expenses, service awards, Attorneys' Fees and Expenses, and taxes have been paid.

9.1.7. Any uncashed checks will be redistributed to the other Class Members according to the Plan of Allocation.

9.1.8. After redistribution, any unpaid cash residue and unclaimed or abandoned funds, plus any interest that has accrued thereon, will be distributed evenly to Community HealthWorks and Journey Health to support patient navigation for uninsured and Medi-Cal patients.

## **9.2. Payment of Federal, State and Local Taxes**

9.2.1. Payments to DC16 and other Class Members from the Account may be subject to applicable tax withholding and reporting requirements. For avoidance of doubt, the Defendants, their counsel, and the Released Party shall not have any liability, obligation or responsibility for any tax obligations arising from payments from the Settlement Fund to DC16, any Class Member, or any other person or entity or based on the activities and income of the Account. In addition, neither the Defendants or any Released Party shall have any liability, obligation or responsibility for tax obligations

arising from payment to Class Counsel. Each recipient of payments from the Settlement Fund will be solely responsible for its/his/her tax obligations.

9.2.2. The Claims Administrator, as administrator of the Account, and on behalf of the Account, is responsible for withholding any applicable taxes and completing all reporting requirements. The Claims Administrator shall be responsible for satisfying any and all federal, state and local taxes from the Settlement Fund. Neither the Settling Parties nor their counsel shall have any responsibility or liability for the acts or omissions of the Claims Administrator.

## **10. RELEASES**

### **10.1. Release and Covenant Not to Sue**

10.1.1. Upon the Effective Date, DC16 and each Class Member (“Releasors”) shall release, forever discharge and covenant not to sue the Defendants, their past or present parents, subsidiaries, divisions, affiliates, offices, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing) (the “Released Parties”) from all claims, whether federal or state, known or unknown, asserted or unasserted, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, arising from or related to the facts, activities or circumstances alleged in the Action, including but not limited to claims regarding Defendants’ billing practices relating to anesthesia, including billing under the 37x, 36x, and 25x revenue codes. Claims within the scope of

this release shall be released up to the date on which the Settlement is signed by all parties. Claims released pursuant to this paragraph are the “Released Claims.”

10.1.2. Each Releasor expressly agrees that, having been advised by legal counsel, and having the specific intent to release all potential claims described in the foregoing Section upon the Effective Date, he, she or it waives and forever releases with respect to the Released Claims any and all provisions, rights and benefits conferred by either (a) 1542 of the California Civil Code or (b) any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to 1542 of the California Civil Code. Section 1542 of the California Civil Code reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

10.1.3. Releasors acknowledge that the Released Claims include any unknown claims the Releasors do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their settlement with, and release of, the Released Claims. The Releasors may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and



by operation of the Final Judgment and Order shall have fully, finally, and forever settled and released any and all of the Released Claims.

10.1.4. Upon the Effective Date, Class Members shall be bound by the release of the Released Claims set forth in this Section.

10.1.5. The Releasors agree not to sue or otherwise make a claim against any of the Defendants that is in anyway related to the Released Claims.

10.1.6. Class Members who have not previously executed the right to opt out of the Class, but who for any reason do not receive funds through the Plan of Allocation, agree to release Defendants from the Released Claims.

## **11. ATTORNEYS' FEES AND EXPENSES AND ADMINISTRATIVE EXPENSES**

### **11.1. Attorneys' Fees and Expenses**

11.1.1. Class Counsel may apply to the Court for an award of Attorneys' Fees and Expenses incurred on behalf of the Plaintiff and the Class. No Defendant or any Released Party has any liability or responsibility for fees, costs, expenses, or interest, including without limitation attorneys' fees, costs, expenses, expert fees and costs, consultant fees or costs or administrative fees or costs, which will be paid for solely out of the Settlement Fund.

11.1.2. Upon the Effective Date, Class Counsel and Plaintiff, individually and on behalf of the Class and each individual Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against the Defendants or any Released Party for Attorneys' Fees and Expenses or costs associated with the Action.

11.1.3. All Attorneys' Fees and Expenses and any interest due to any counsel (to the extent any interest is awarded) for the Plaintiff shall be payable solely out of the Settlement Fund in such amounts as the Court orders and may be deducted from the Settlement Fund prior to the distribution to Class Members, but only on or after entry of an Order by the Court approving any Attorneys' Fees and Expenses and only on or after the Effective Date.

## **12. OTHER CONDITIONS**

### **12.1. Confidentiality**

The terms of this Settlement Agreement shall remain confidential until Plaintiff files its Motion for Preliminary Approval, with the exception that the fact of the Settlement and the scope of the Class settled may be disclosed to non-parties to the Agreement. Prior to the filing of the Motion for Preliminary Approval, the Settling Parties are authorized to state that the parties have reached an agreement in principle, which will be subject to approval of the Court, and that they cannot comment further. The Settling Parties are also able to confidentially disclose the terms of the Settlement before Preliminary Approval submission to their auditors, legal and financial advisors, and as to Defendants as otherwise required by law or contract so long as parties receiving the terms agree in writing not to disclose terms to third parties.

### **12.2. Filing of a Second Amended Complaint**

Five (5) days after the execution of this Settlement Agreement, Class Counsel shall separately file with the Court a stipulation and proposed order filing an amended pleading, which will include a proposed Second Amended Complaint submitted for the sole purpose of correctly naming the Defendants, as shown in Exhibit B. Defendants reserve the right to object to the

filing of any amended pleadings that expand, alter, or otherwise change the allegations at issue in this Action.

### **12.3. Settlement Does Not Become Effective**

12.3.1. In the event that the Court (1) modifies or otherwise does not approve the Settlement Agreement as provided herein; (2) does not enter a Preliminary Approval Order pursuant to California Rule of Court 3.769(c); (3) does not enter a Final Judgment and Order which becomes final as a result of the occurrence of the Effective Date; (4) the Agreement is terminated or does not become effective for any reason; or (5) the Court fails to enter the Second Amended Complaint, then (a) this Settlement Agreement shall be null and void and of no force or effect upon the election of either of the Settling Parties by providing written notice to the opposing Party and the Escrow Agent within five (5) business days following the occurrence of such event; (b) the entire amount of the Settlement Fund and any and all interest earned thereon shall be returned to the Defendants by the Escrow Agent, less any Notice and administration expenses paid or actually incurred in accordance with the terms of the Settlement Agreement but not yet paid, and any unpaid taxes due, within ten (10) calendar days from the date the Escrow Agent receives written notice of the termination of the Settlement Agreement; and (c) any release pursuant to Section 10 herein shall be of no force or effect.

12.3.2. In such event, the case will proceed as if no settlement has been attempted, and the Settling Parties shall be returned to the respective procedural postures (*i.e.*, status quo as of April 4, 2024, so that the Settling Parties may take such litigation steps that Plaintiff or the Defendants otherwise would have been able to take absent the pendency of this Settlement.

12.3.3. In such event, the Settling Parties will negotiate and submit for Court approval a revised case schedule for any trial-related events previously scheduled for dates following April 3, 2024. However, any reversal, vacating, or modification on appeal of (1) any amount of Attorneys' Fees and Expenses awarded by the Court to Class Counsel, or (2) any determination by the Court to award less than the amount requested in Attorneys' Fees and Expenses, shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

#### **12.4. Preservation of Rights**

12.4.1. The Settling Parties expressly reserve all of their rights, contentions and defenses if this Settlement does not become final and effective in accordance with the terms of this Settlement Agreement.

12.4.2. The Settling Parties further agree that this Settlement Agreement, whether or not it shall become effective pursuant to Section 7 herein, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law; of any liability or wrongdoing by any Defendant or any Released Party; and shall not be deemed or construed to be an admission or evidence of the truth of any of the claims or allegations, or denials or defenses made in the Action, whether in this case or any other action or proceeding.

12.4.3. The Settling Parties further acknowledge and agree that the substance of the negotiations and discussions that led to this Settlement are fully protected from disclosure by the Federal Rule of Evidence Rule 408 and California Evidence Code §§ 1119 and 1152.

#### **12.5. Authority to Settle**

The undersigned represent and warrant each has authority to enter into this Settlement Agreement on behalf of the party indicated below his or her name.

#### **12.6. No Assignment**

Plaintiff and Class Counsel represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Action, and they further represent and warrant that they know of no such assignments or transfers on the part of any Class Member.

#### **12.7. Binding Effect**

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiff and Class Counsel shall be binding upon all Class Members.

#### **12.8. Mistake**

In entering and making this Settlement Agreement, the Settling Parties assume the risk of any mistake of fact or law. If the Settling Parties, or any of them, should later discover that any fact they relied upon in entering into this Settlement Agreement is not true, or that their understanding of the facts or law was incorrect, the Settling Parties shall not be entitled to seek rescission of this Settlement Agreement, or otherwise attack the validity of the Settlement Agreement, based on any such mistake. This Settlement Agreement is intended to be final and binding upon the Settling Parties regardless of any mistake of fact or law.

### **12.9. Advice of Counsel**

Except as set forth in this Settlement Agreement, the Settling Parties represent and warrant that they have not relied upon or been induced by any representation, statement or disclosure of the other Settling Parties or their attorneys or agents, but have relied upon their own knowledge and judgment and upon the advice and representation of their own counsel in entering into this Settlement Agreement. Each Settling Party warrants to the other Settling Parties that it has carefully read this Settlement Agreement, represents that it has been reviewed by independent counsel of its choice through all negotiations preceding the execution of this Settlement Agreement.

### **12.10. Integrated Agreement**

This Settlement Agreement contains the entire, complete and integrated statement of each and every term and provision of this Settlement Agreement agreed to by and among the Settling Parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by the undersigned in the representative capacities specified, or others who are authorized to act in such representative capacities.

### **12.11. Choice of Law**

All terms of this Settlement Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

### **12.12. Consent to Jurisdiction and Choice of Exclusive Forum**

Any and all disputes arising from or related to the Settlement, the Settlement Agreement, the Final Judgment Order, or the distribution of the Settlement Fund, including Attorneys' Fees and Expenses, must be brought by a Defendant, Released Party, Plaintiff, and/or each member of

the Class exclusively in the Court. Defendants, Plaintiff and each member of the Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability or interpretation of this Settlement Agreement, including, without limitation, any suit, action, proceeding or dispute relating to the release provisions herein or relating to the Final Judgment and Order, except that this paragraph shall not prohibit any Released Party from asserting in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim.

#### **12.13. Enforcement of Settlement**

Nothing in this Settlement Agreement prevents any Defendants or any Released Party from enforcing or asserting any release herein. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted by Plaintiff or any Class Member (who is not otherwise properly excluded as provided herein) with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

#### **12.14. Severability**

In the event any one or more of the provisions of this Settlement Agreement shall for any reason be held, after any proceeding in appellate court, to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision if Defendants' Counsel and Class Counsel mutually agree in writing to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Settlement Agreement.

#### **12.15. No Admission**

This Settlement shall not be deemed an admission of liability or wrongdoing on the part of any of the Defendants, who have denied, and continue to deny that they engaged in any wrongdoing of any kind, or violated any law or regulation, or breached any duty owed to Plaintiff or the Class Members. Defendants further deny that they are liable to or owe any form of compensation or damages to anyone with respect to the alleged facts or causes of action asserted in the Action. Defendants do not, by entering into this Settlement Agreement, admit that any or all of them have caused any damage or injury to any Class Member as a result of the facts alleged or asserted in the Action and do not admit that Plaintiff's calculations or methods of calculations of alleged damages are accurate or appropriate.

#### **12.16. Execution in Counterparts**

This Settlement Agreement may be executed in counterparts. Facsimile, PDF, or electronic signatures shall be considered as valid signature as of the date they bear. The Settlement Agreement shall be executed on the date the final signatory signs.

#### **12.17. Appeals**

The Final Approval Order shall provide that any Class Member that wishes to appeal the Final Approval Order and/or the Final Judgment Order, which will delay the distribution of the Settlement Fund to the Class and/or the Effective Date of the Final Judgment and Order, shall post a bond with this Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

#### **12.18. Waiver of Right to Appeal**

Provided the Judgment is consistent with the terms and conditions of this Agreement, Parties, their respective counsel, and all Class Members who did not object to the Settlement as



provided in this Agreement, waive all appeals from the Final Approval of the Settlement, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an Objector appeals the Judgment, Defendants' payment obligations under the Settlement will be suspended pending the final completion of any appeals process.

#### **12.19. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment**

If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. If possible, the Settling Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment. An appellate decision to vacate, reverse, or modify any payments to Class Counsel shall not constitute a modification of the Judgment within the meaning of this paragraph, as long as the amount of the Settlement Fund remains unchanged.

#### **12.20. Representation to the Court About Settlement Negotiations**

The Settling Parties confirm, and will so represent to the Court, that these settlement negotiations were arm's-length and facilitated through the aid of the mediator described above, and that there was no discussion of attorneys' fees prior to negotiating the Settlement. Class Counsel and Defendants' Counsel agree this Settlement is beneficial to the Class and will not represent otherwise to the Court.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys:

Dated: October 22, 2024

By: 

Christopher L. Lebsock (Bar No. 184546)

Arthur N. Bailey, Jr. (Bar No. 248460)

Bruce J. Wecker (Bar No. 78530)

Tae H. Kim (Bar No. 331362)

**HAUSFELD LLP**

600 Montgomery St., Suite 3200

San Francisco, CA 94111

(415) 633-1908

clebsock@hausfeld.com

abailey@hausfeld.com

bwecker@hausfeld.com

tkim@hausfeld.com

*Counsel for Plaintiff and the Class*

Dated: October 21, 2024

By: 

KEKER, VAN NEST & PETERS LLP

SHARIF E. JACOB - # 257546

sjacob@keker.com

ERIN E. MEYER - # 274244

emeyer@keker.com

ANJALI SRINIVASAN - # 304413

asrinivasan@keker.com

CONNIE SUNG - # 304242

csung@keker.com

MAILE YEATS-ROWE - # 321513

myeatsrowe@keker.com

RYAN J. HAYWARD - # 330924

rhayward@keker.com

MICHAEL K. DEAMER - # 322339

mdeamer@keker.com

IMARA H. MCMILLAN - # 337519

imcmillan@keker.com

NIHARIKA S. SACHDEVA - # 342058

nsachdeva@keker.com

633 Battery Street

San Francisco, CA 94111-1809

Telephone: 415 391 5400

Facsimile: 415 397 7188

*Attorneys for Defendants*

# **EXHIBIT A**

## **California self-funded payers that compensated Sutter Health for their members' anesthesia services could receive money from a class action settlement**

*A court authorized this notice. This is not a solicitation by a lawyer.*

### **YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT, SO PLEASE READ THIS NOTICE CAREFULLY**

- This is a notice of a proposed settlement of a class action lawsuit. This notice has important information if you are a member of the Class described below. You are receiving this notice because records in the case indicate that you may be a Class Member. On April 8, 2022, notice was given of the Court's certification of a Class in this lawsuit.
- Defendants have agreed to pay \$11 million ("Settlement Fund") to resolve the Class's claims against them. If approved by the Court, the Settlement will fully resolve the class action lawsuit against Defendants.
- If you are a Class Member and you do nothing, **you will not share in the Settlement Fund**, even if the Settlement is approved. To receive your share of the Settlement Fund if you are a Class Member, **you must complete, sign and return either the enclosed Claim Form or the online Claim Form according to its instructions**. Class Members are releasing the Released Claims regardless of whether or not they submit the Claim Form.
- The Court has preliminarily approved the Settlement and scheduled a hearing ("Fairness Hearing") to decide final approval of the Settlement, the plan for allocating the Settlement Fund to Class Members, and Plaintiff's Counsel's (or "Class Counsel's") forthcoming application for attorneys' fees and expenses and service award to Plaintiff District Council #16. The Fairness Hearing is scheduled for [DATE] before the Hon. Judge Michael Markman of the Superior Court of California, County of Alameda, in Department 23, Administration Building, 1221 Oak Street, Oakland, CA 94612. You may appear at the Fairness Hearing, either in person or through an attorney, to object to part or all of the proposed Settlement and/or Class Counsel's application, or otherwise be heard. You may also object to the proposed Settlement in writing, but you must follow the procedures and meet the deadline set forth below.
- The process by which Class Members can claim a share of the Settlement Fund is to complete, sign, and return the enclosed Claim Form to the Claims Administrator according to its instructions. The Claim Form may also be completed and submitted to the Claims Administrator online at [www.SutterAnesthesiaBillingLawsuit.com](http://www.SutterAnesthesiaBillingLawsuit.com). The completed and signed form must be mailed to the Claims Administrator at the address provided below, postmarked no later than [DATE], or completed and electronically signed online by [DATE].

If the Claim Form is timely submitted, the Class Member will receive a share of the Settlement Fund. The share of the Settlement Fund will be calculated *pro rata* based on information regarding the cumulative total of annual active participants in California between 2003 and 2013 as provided by each Class Member on the Claim Form pursuant to the Claim Form's instructions.

<b>CLASS MEMBERS' LEGAL RIGHTS AND OPTIONS</b>	
<b>PROMPTLY COMPLETE, SIGN, AND RETURN THE CLAIM FORM</b>	A Claim Form is enclosed with this notice. If you are a Class Member and you wish to claim your share of the Settlement Fund, you will need to complete and sign the Claim Form and mail it to the Claims Administrator, postmarked by [DATE], or complete, electronically sign, and submit the Claim Form online by [DATE]. If you do so, you will be mailed a check for a share amount calculated <i>pro rata</i> based on the number of active participants in your plan from 2003 through 2013 that you list.
<b>IF YOU DO NOTHING</b>	If you are a Class Member and do nothing, you will not share in the Settlement Fund. To receive a share of the Settlement Fund, you must complete, sign and return either the enclosed Claim Form, or the online Claim Form according to its instructions. Class Members are releasing the Released Claims regardless of whether they submit a Claim Form.
<b>OBJECT TO THE SETTLEMENT</b>	You may object to part or all of the Settlement and/or to Class Counsel's application for fees and expenses and a service award for the Class Representative. To do so, you must file your objection with the Court by [DATE] stating your objections to part or all of the Settlement and/or the joint application.
<b>GET MORE INFORMATION</b>	If you would like to obtain more information about the lawsuit or the Settlement, you can send questions to the Claims Administrator identified in this notice, or review documents at <a href="http://www.SutterAnesthesiaBillingLawsuit.com">www.SutterAnesthesiaBillingLawsuit.com</a>

## BASIC INFORMATION

### 1. Why was this notice issued?

You received this notice because according to available records you may be a member of the Class certified by the Court in the lawsuit *District Council #16 v. Sutter Health, et al.*, Alameda County Superior Court, Case No. RG15753647, pending in the Superior Court of California, County of Alameda. For information about whether you are a Class Member, see Question #3.

The Court has preliminarily approved the Settlement and will hold a Fairness Hearing on [DATE] to decide whether the proposed Settlement is fair, reasonable, and provides adequate compensation to members of the Class and whether to finally approve the Settlement.

### 2. What is the lawsuit about?

This lawsuit was filed on January 6, 2015, and is pending in the Superior Court of California, County of Alameda. The Honorable Michael Markman is presiding over this case. The entity that sued is called the Plaintiff, and the entities it sued are collectively called the Defendants.

Plaintiff alleges that Sutter Health violated California's Unfair Competition Law, Business & Professions Code § 17200. Specifically, Plaintiff alleges that Sutter Health engaged in fraudulent, unlawful, and unfair business practices by submitting and receiving payment on bills for "anesthesia services" that were not rendered, were double-billed, and were described in a misleading manner, and that this resulted in self-funded payers paying more for anesthesia services than they should have.

Sutter Health denies the allegations and denies that any of its practices were unfair or deceptive. Sutter Health asserts that its practices fully complied with all applicable laws, and it denies that Plaintiff and the Class are entitled to receive any money or other relief from Sutter Health. A copy of the Complaint is available at [www.SutterAnesthesiaBillingLawsuit.com](http://www.SutterAnesthesiaBillingLawsuit.com).

### 3. Who is included in the Class?

On June 30, 2021, this Court certified a Class consisting of all self-funded payers that were citizens of California on January 6, 2015 or that are state and local governmental entities of the State of California, and that compensated Sutter Health for any anesthesia services, other than conscious sedation, administered in Sutter Health's operating rooms at acute care hospitals at any time from January 1, 2003 to December 31, 2013.

You are a self-funded payer if you are an entity (such as an employer, union, or healthcare benefits trust) that funds the healthcare expenses of your employees or members, meaning that you pay for claims submitted by healthcare providers out of your own health plan funds, as the claims are presented. You are not a self-funded payer if you are an individual.

You are a citizen of California if: (a) you are organized under the laws of California, or (b) you have your principal place of business in California. For purposes of class membership, you are considered a citizen of California if you were a California citizen on January 6, 2015, regardless of whether you remained a California citizen after that date. If you are a California governmental entity (including, but not limited to, a city, a county, a hospital district, a school district, a fire protection district, a water or irrigation district, a transit or transportation district, a joint powers agency or authority, a public university, a department within the State, a superior court, the Judicial Council of California, or the Major Risk Medical Insurance Program) and are also a self-funded payer that compensated Sutter Health, you are included in the Class, whether or not you are a California citizen.

Excluded from the Class are: (1) Sutter Health and any entity in which Sutter Health has a controlling interest or which has a controlling interest in Sutter Health; (2) Sutter Health's legal representatives, assigns, and successors; and (3) the judge(s) to whom this case is assigned and any member of the judge's immediate family.

You are not a Class Member if you timely opted out of the Class after it was certified by the Court. The Court's deadline to opt out was June 7, 2022.

#### **4. Why is there a Settlement?**

The Court has not decided which side is correct or whether any laws were violated. Instead, Defendants, District Council #16 individually and on behalf of the Class, agreed to settle the case and avoid the cost, risk, and delay of trial and possible appeals.

The Settlement is the product of extensive negotiations between Plaintiffs and Defendants with the assistance of a private mediator after lengthy, hard-fought litigation. Class Counsel negotiated with counsel for Defendants a Settlement Agreement providing for a payment of \$11 million in exchange for a release to resolve the claims Plaintiffs brought against the Defendants.

#### **5. What does the Settlement provide?**

If the Court approves the Settlement, the Settlement Fund (\$11 million), plus accrued interest and minus the amounts the Court awards for attorneys' fees, expenses, and a Class Representative service award, will be distributed according to a plan of allocation approved by the Court to Class Members who timely submit the enclosed Claim Form or the online Claim Form. After the distribution process is complete, any unpaid cash residue and unclaimed or abandoned funds, plus any interest that has accrued thereon, will be distributed evenly to Community HealthWorks and Journey Health to support patient navigation for uninsured and Medi-Cal patients.

In exchange for the \$11 million payment, Defendants and related entities will be released from all claims that were made or could have been made by Class Members arising from or relating to the conduct alleged in the complaint. The Released Claims include but are not limited to claims

regarding Defendants' billing practices relating to anesthesia, including billing under the 37x, 36x, and 25x revenue codes. The full text of the release is included in the Settlement Agreement available at [www.SutterAnesthesiaBillingLawsuit.com](http://www.SutterAnesthesiaBillingLawsuit.com).

The Settlement will become effective after it has been approved by the Court, the Court has entered a Final Judgment and Order, and after completion of any appeals(s) that affirm the Court's approval of the Settlement. Plaintiffs and Defendants each have the right to terminate the Settlement if a term of the Settlement is held unenforceable. If the Settlement Agreement is terminated or not approved by the Court, or if the approval is appealed and not affirmed on appeal, the lawsuit will proceed as if the Settlement had not been reached.

#### **6. How much will my payment be?**

Class Counsel have proposed to the Court a plan for allocating the Settlement Fund to Class Members who submit valid claims ("Claiming Class Members."). The Settlement Fund will be distributed to Claiming Class Members minus the amounts awarded to Class Counsel as fees and expenses and to Plaintiff District Council #16 as a service award (the "Net Settlement Fund"). If approved by the Court, the plan of allocation will distribute the Net Settlement Fund to Claiming Class Members *pro rata* based on the cumulative total of annual active participants listed by the Class Members on the Claim Form in the Class Member's health plan in California between 2003 through 2013.

Active participants are those individuals who were employed at the end of the plan year and covered by the plan. If all your active participants are in California, this number is identified in your Form 5500, line 6a (2), or Form 5500-SF, line 5b. If Class Members do not have information regarding the number of active California participants for a particular year between 2003 and 2013, Class Members may still submit the Claim Form with information for the years they have it. Calculations regarding *pro rata* share will be determined based on the participants listed. Class Members who share in the Settlement will be provided information by Class Counsel about the weight of their claim based on the *pro rata* calculation, with their payments.

#### **7. When will I get a payment?**

The Net Settlement Fund can be distributed to Claiming Class Members only after certain events have occurred:

- The Court must approve the Settlement.
- The Claims Administrator will calculate Claiming Class Members' *pro rata* shares according to the plan of allocation. Class Counsel will present the proposed distribution to the Court for approval.
- If the Court's approval is appealed to one or more higher courts, the approval must be affirmed on appeal. An appeal can take two years or more.



- Once the Settlement is approved, and after completion of any appeal, or if no appeal is filed, the Claims Administrator will process and mail checks to Claiming Class Members.

It is difficult to predict how long the total process will take. Class Counsel estimates the process could take a year, and much longer if an appeal is filed.

## **8. What am I giving up to get a payment?**

In exchange for the payment of \$11 million, Class Members are releasing Defendants and related entities and individuals from all claims that were asserted or could have been asserted arising from or relating to the conduct alleged in the complaint. The Released Claims are described fully in the Settlement Agreement available at [www.SutterAnesthesiaBillingLawsuit.com](http://www.SutterAnesthesiaBillingLawsuit.com). Class Members are releasing the Released Claims regardless of whether or not they submit a Claim Form.

## **THE LAWYERS REPRESENTING YOU**

## **9. Do I have a lawyer in this case?**

The following lawyers represent Plaintiff and all Class Members in this lawsuit as Class Counsel:

Christopher L. Lebsack  
 Arthur N. Bailey, Jr.  
 Bruce J. Wecker  
 Tae Kim  
 Hausfeld LLP  
 600 Montgomery St., Suite 3200  
 San Francisco, CA 94111  
 (415) 633-1908

## **10. Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel are working on your behalf in this lawsuit. If you want your own lawyer to represent you at court hearings in this lawsuit, you must pay for that lawyer, except to the extent that state and local governmental entities of the State of California may be represented by the Attorney General free of charge.

## **11. How will the lawyers be paid?**

Class Counsel will apply to the Court for an award of attorneys' fees from the Settlement Fund up to 33 1/3% of the Settlement Fund. In the application, Class Counsel will apply to the Court for reimbursement of their litigation expenses from the Settlement Fund.

Class Counsel will also apply to the Court for payment from the Settlement Fund of Settlement-related expenses, which include the charges of the Claims Administrator for providing class notice,

responding to Class Member inquiries, mailing and processing Claim Forms, distributing the Settlement Fund, and calculating Claiming Class Members' shares of the Settlement Fund.

Class Counsel's requests for fees, expenses and a service award will be paid only to the extent approved by the Court. Any such payments awarded by the Court will be deducted from the Settlement Fund. You will not have to pay these fees, expenses, or service awards out of your own pocket.

The application of Class Counsel for an award of attorneys' fees, reimbursement and payment of expenses, and a service award to the Class Representative will be filed with the Court and made available for download and/or viewing on or before [DATE] on [www.SutterAnesthesiaBillingLawsuit.com](http://www.SutterAnesthesiaBillingLawsuit.com).

#### **12. Who is the Plaintiff and why is it seeking a service award?**

The Plaintiff is District Council #16 Northern California Health & Welfare Trust Fund ("District Council #16"), a health and welfare trust for the eligible union members of District Council #16 International Union of Painters and Allied Trades.

District Council #16 filed this lawsuit on January 6, 2015. On June 29, 2021, the Court appointed District Council #16 as the Class Representative to represent the Class.

In class actions, the Court may provide the Class Representative a "service award" in recognition of the time and effort expended in the case on behalf of the Class. In the application, Class Counsel will apply to the Court for a service award of \$10,000.00 from the Settlement Fund to Plaintiff District Council #16 for its services as Class Representative.

#### **OBJECTING TO THE SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES, EXPENSES AND A SERVICE AWARD**

You can object – tell the Court you do not agree with – part or all of the Settlement and/or the application for attorneys' fees, expenses, estimated settlement administration costs, and a service award for District Council #16.

#### **13. How do I tell the Court that I do not agree with part or all of the Settlement and/or the application for fees, expenses and a service award?**

If you are a Class Member, you can object to and/or tell the Court that you do not agree with part or all of the Settlement and ask the Court to deny approval of the Settlement by filing an objection. You may file an objection to object to and/or tell the Court that you do not agree with and/or to deny part or all of Class Counsel's application for attorneys' fees and expenses and a service award to District Council #16, the Class Representative. You cannot ask the Court to order a larger Settlement; the Court can only approve or deny the Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the lawsuit will continue against the

Defendants. If that is what you want to happen, you should object. If the Court rejects your objections, you will still be bound by the Settlement.

Any objection to all or part of the proposed Settlement of the application for attorneys' fees, expenses, and a service award to District Council #16 must be submitted in writing and filed with the Court, with copies served on Class Counsel and Defendants' Counsel, by [DATE]. You may also appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you or your attorney wishes to appear, you must file with the Court no later than ten (10) days before the hearing a notice of your intent to appear. All written objections and supporting papers and written notices of intent to appear at the Fairness Hearing should identify the case name and number, *District Council #16 Northern California Health and Welfare Trust Fund, individually and on behalf of itself and all others similarly situated v. Sutter Health, et al.*, Case No. RG115753647. In addition, all written objections should (a) clearly identify the part of the Settlement or application for attorneys' fees, expenses, and a service award to District Council #16 to which the objection pertains, (b) explain the reason for the objection, (c) be filed with the Court, with copies served on Class Counsel and Defendants' Counsel, on or before [DATE].

THE COURT	CLASS COUNSEL	DEFENDANTS' COUNSEL
Department 23 Superior Court of the State of California, County of Alameda 1221 Oak Street Oakland, CA 94612	Christopher L. Lebsock Arthur N. Bailey, Jr. Bruce J. Wecker Tae Kim Hausfeld LLP 600 Montgomery St., Suite 3200 San Francisco, CA 94111 (415) 633-1908	Sharif E. Jacob Erin E. Meyer Anjali Srinivasan Connie Sung Maile Yeats-Rowe Ryan J. Hayward Michael K. Deamer Imara H. McMillan Niharika S. Sachdeva KEKER, VAN NEST & PETERS LLP 633 Battery Street San Francisco, CA 94111 (415) 391-5400

#### THE COURT'S FAIRNESS HEARING

The Court will hold a Fairness Hearing to decide whether to approve the Settlement and whether to approve Class Counsel's application for attorneys' fees, expenses, and a service award to District Council #16.

#### 14. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at [DATE and TIME] in Department 23, California Superior Court, 1221 Oak Street, Oakland, CA 94612. At this hearing, the Court will consider whether to approve the Settlement as fair, reasonable and adequate. The Court will also consider

whether to approve Class Counsel's application for attorneys' fees, expenses, and a service award for District Council #16. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the Settlement and/or Class Counsel's application. Counsel do not know how long these decisions will take.

**IMPORTANT:** The time and date of the hearing may change without additional mailed notice and without publication notice. For information updates on the hearing, visit [www.SutterAnesthesiaBillingLawsuit.com](http://www.SutterAnesthesiaBillingLawsuit.com).

#### **15. Do I have to come to the hearing?**

No. Class Counsel will answer questions that the Court may have. But you are welcome to come at your own expense. If you timely file an objection, you do not have to come to the Court to talk about it. As long as you file your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Moreover, attendance is not necessary to receive a *pro rata* share of the Net Settlement Fund.

#### **16. May I speak at the hearing?**

You may ask the Court for permission to speak at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

### **IF YOU DO NOTHING**

#### **17. What happens if I do nothing at all?**

If you are a Class Member and do nothing, **you will not share in the Settlement Fund**, even if the Settlement is approved. To receive a share of the Settlement Fund if you are a Class Member, **you must complete, sign and return either the enclosed Claim Form or the online Claim Form according to its instructions**. Class Members are releasing the Released Claims regardless of whether or not they submit the Claim Form.

### **GETTING MORE INFORMATION**

#### **18. How do I get more information?**

You may obtain more information by contacting the Claims Administrator at [info@SutterAnesthesiaBillingLawsuit.com](mailto:info@SutterAnesthesiaBillingLawsuit.com), or by contacting Class Counsel at (415) 633-1908 or [abailey@hausfeld.com](mailto:abailey@hausfeld.com). You can get a copy of the complaint, the Settlement Agreement, and other important information about the lawsuit at [www.SutterAnesthesiaBillingLawsuit.com](http://www.SutterAnesthesiaBillingLawsuit.com).

**DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR  
INFORMATION.**

# **EXHIBIT B**

**HAUSFELD LLP**

Christopher L. Lebsock (Bar No. 184546)

clebsock@hausfeld.com

Arthur N. Bailey, Jr. (Bar No. 248460)

abailey@hausfeld.com

Bruce J. Wecker (Bar. No. 78530)

bwecker@hausfeld.com

Tae Kim (Bar No. 331362)

tkim@hausfeld.com

600 Montgomery St., Suite 3200

San Francisco, CA 94111

(415) 633-1908

*Attorneys for Plaintiff District Council #16*

*Northern California Health and Welfare Trust*

*Fund and the Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

DISTRICT COUNCIL #16 NORTHERN  
CALIFORNIA HEALTH AND WELFARE  
TRUST FUND, individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

SUTTER HEALTH; SUTTER BAY  
HOSPITALS; MARINHEALTH MEDICAL  
CENTER; SUTTER COAST HOSPITAL;  
SUTTER VALLEY HOSPITALS; SUTTER  
BAY MEDICAL FOUNDATION; SUTTER  
VALLEY MEDICAL FOUNDATION, and  
DOES 1-100.

Defendants.

No. RG15753647

**CLASS ACTION**

**AMENDED COMPLAINT FOR  
FRAUDULENT, UNLAWFUL AND  
UNFAIR BUSINESS ACTS AND  
PRACTICES IN VIOLATION OF CAL.  
BUS. & PROF. CODE §§ 17200, ET SEQ.**

ASSIGNED FOR ALL PURPOSES TO:  
Judge: Honorable Michael Markman  
Dept: 23

Date Filed: January 6, 2015

Trial Date: None Set

**Unredacted Version  
May Not Be Examined Without Court  
Order – Contains Materials from  
Conditionally Sealed Record**

## TABLE OF CONTENTS

I.	NATURE OF THE ACTION .....	1
II.	JURISDICTION AND VENUE .....	1
III.	PARTIES .....	2
IV.	ALLEGATIONS .....	6
A.	ANESTHESIA GENERALLY .....	6
B.	OVERVIEW OF DEFENDANTS' BILLING PRACTICES .....	7
C.	THE PAYMENT OF DEFENDANTS' BILLS .....	10
D.	DEFENDANTS' FRAUDULENT, UNLAWFUL, AND UNFAIR USE OF THE 37X REVENUE CODE.....	11
1.	THE "CHARGEMASTER STANDARDIZATION PROJECT" .....	11
2.	DEFENDANTS' ILLEGAL USE OF THE 37X REVENUE CODE .....	12
3.	DEFENDANTS' 37X REVENUES VERSUS EXPENDITURES .....	14
E.	EVIDENCE OF DEFENDANTS' KNOWLEDGE OF THEIR MISUSE OF THE 37X REVENUE CODE.....	15
1.	THE WORK DONE BY ANESTHESIA TECHNICIANS.....	16
2.	BILLING PRACTICES FOR ANESTHESIA IN PARALLEL SITUATIONS .....	17
3.	BILLING FOR THE ANESTHESIA MACHINE .....	18
4.	BILLING FOR ANESTHESIA GASES.....	19
5.	THE HIDING OF THE 37X CHARGES. ....	20
F.	SUTTER I AND ITS SETTLEMENT.....	20
V.	ADDITIONAL SCIENTER ALLEGATIONS.....	22
VI.	TOLLING OF THE STATUTE OF LIMITATIONS .....	24
VII.	CLASS ACTION ALLEGATIONS.....	24
VIII.	CLAIMS FOR RELIEF .....	30
FIRST CLAIM FOR RELIEF .....		30
FRAUDULENT BUSINESS ACTS AND PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, <i>ET SEQ.</i> .....		30
SECOND CLAIM FOR RELIEF .....		32
UNLAWFUL BUSINESS ACTS AND PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, <i>ET SEQ.</i> .....		32
THIRD CLAIM FOR RELIEF .....		34
UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, <i>ET SEQ.</i> .....		34
IX.	PRAYER FOR RELIEF .....	36



1 X. JURY DEMAND ..... 36

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **I. NATURE OF THE ACTION**

2 1. This action seeks recovery under California’s Unfair Competition Law (“UCL”),  
3 Cal. Bus. & Prof. Code §§ 17200, *et seq.*, against Sutter Health and its hospital affiliate co-  
4 Defendants for their routine practice of submitting and receiving payment from Plaintiff and the  
5 Class – self-funded health benefit plans – on fraudulent, unlawful, and unfair bills for supposed  
6 “anesthesia services” provided during medical procedures at their facilities, when such services  
7 were (a) not provided, (b) separately billed by a third-party anesthesiologist, or (c) reimbursed  
8 through other charges on the hospitals’ bills. Defendants’ illegal conduct centered on anesthesia  
9 services supposedly administered to patients in their operating rooms (“ORs”).

10 2. Defendants’ fraudulent, unlawful, and unfair business practices resulted in Plaintiff  
11 and members of the Class paying more for anesthesia services than they should have. Specifically,  
12 on information and belief, between 2001 and 2013, Defendants submitted tens of thousands of  
13 fraudulent, unlawful, and unfair bills for anesthesia services that resulted in members of the Class  
14 overpaying Defendants for the anesthesia services purportedly rendered. Through this action,  
15 Plaintiff and the Class seek to recover these overpayments.

16 3. In November 2013, the State of California, in conjunction with a *qui tam* relator,  
17 Rockville Recovery Associates, Ltd., settled litigation, which alleged that the Defendants engaged  
18 in the fraudulent, unlawful, and unfair billing practices at issue in this Complaint (“*Sutter I*”).  
19 *Sutter I* sought civil penalties and injunctive relief under the Insurance Frauds Prevention Act, Ins.  
20 Code §§ 1871, *et seq.* The settlement does not foreclose Plaintiff’s action.

21 **II. JURISDICTION AND VENUE**

22 4. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
23 California Constitution, Article VI § 10 because this case is a cause not given by statute to other  
24 trial courts. Federal jurisdiction does not exist in this case because there is no federal question and  
25 Plaintiff, Class members, and Defendants reside in the State of California. In addition, Defendants’  
26 principal place of business is within California.

27 5. This Court has jurisdiction over Defendants because their principal place of  
28

business is located in California and they are authorized to, and do in fact, conduct business in California and have intentionally availed themselves of the laws and markets of California through the promotion, marketing, distribution, and sale healthcare services in California.

6. Venue is proper in this Court because (a) Defendants, or some of them, can be found, reside, or transact or have transacted business in Alameda County; (b) Defendants performed many of the relevant acts and omissions in Alameda County; and (c) Plaintiff was injured in Alameda County.

### **III. PARTIES**

7. Plaintiff District Council #16 Northern California Health and Welfare Trust Fund (“Plaintiff” or the “Fund”) is a health and welfare fund that serves eligible union members of District Council #16 International Union of Painters and Allied Trades, which has its offices at 2705 Constitution Drive, Livermore, California 94551 (the “Union”). The Fund is administered by Associated Third Party Administrators, whose offices are located at 1640 South Loop Road, Alameda, California, 94502. The Fund paid fraudulent, unlawful, and unfair charges for anesthesia services to one or more Defendants throughout the Class Period.

8. Defendant Sutter Health is a California corporation headquartered in Sacramento County, California and owns, controls, and/or operates affiliated hospitals throughout California, including but not limited to each of the facilities identified in the following paragraphs unless otherwise stated.

9. Defendant Sutter Valley Hospitals is a California corporation in the business of providing medical services, with its principal place of business in Sacramento County. Its sole member is Sutter Health. Prior to June 2016, Sutter Valley Hospitals was named Sutter Health Sacramento Sierra Region. In May 2017, Sutter Central Valley Hospitals merged into Sutter Valley Hospitals. Defendant Sutter Valley Hospitals operates various healthcare facilities that have engaged in misconduct described herein, including but not limited to the following:

a. Sutter Amador Hospital, located in Jackson, California.

b. Sutter Auburn Faith Hospital, located in Auburn,

- 1 California.
- 2 c. Sutter Davis Hospital, located in Davis, California.
- 3 d. Sutter Medical Center Sacramento, located in
- 4 Sacramento, California.
- 5 e. Sutter Roseville Medical Center, located in Roseville,
- 6 California.
- 7 f. Sutter Solano Medical Center, located in Vallejo,
- 8 California.
- 9 g. Memorial Medical Center, located in Modesto, California.
- 10 h. Memorial Hospital Los Banos, located in Los Banos,
- 11 California.
- 12 i. Sutter Tracy Community Hospital, located in Tracy,
- 13 California.

14 10. Defendant Sutter Bay Hospitals is a California corporation in the business of

15 providing medical services, with its principal place of business in Alameda County. Its sole

16 member is Sutter Health. Prior to February 2016, Defendant Sutter Bay Hospitals was named

17 Sutter West Bay Hospitals. In March 2018, Sutter East Bay Hospitals merged into Sutter Bay

18 Hospitals. Sutter Bay Hospitals operates or has operated various healthcare facilities that have

19 engaged in the misconduct described herein, including but not limited to the following:

- 20 a. Alta Bates Summit Medical Center, located in Berkeley,
- 21 California.
- 22 b. Alta Bates Summit Medical Center, Herrick Campus,
- 23 located in Berkeley, California.
- 24 c. Alta Bates Medical Center, Summit Campus, located in
- 25 Oakland, California.
- 26 d. Sutter Delta Medical Center, located in Antioch, California.
- 27 e. Mills-Peninsula Medical Center, located in Burlingame,
- 28

1 California.

2 f. Eden Medical Center located in Castro Valley, California.

3 g. California Pacific Medical Center, California Campus,  
4 located in San Francisco, California.

5 h. California Pacific Medical Center, Davies Campus, located  
6 in San Francisco, California.

7 i. California Pacific Medical Center, Pacific Campus, located  
8 in San Francisco, California.

9 j. California Pacific Medical Center, St. Luke's Campus,  
10 formerly located in San Francisco, California.

11 k. Novato Community Hospital, located in Novato,  
12 California.

13 l. Sutter Lakeside Hospital, located in Lakeport, California.

14 m. Sutter Santa Rosa Regional Hospital, located in Santa Rosa,  
15 California

16 n. Sutter Maternity & Surgery Center of Santa Cruz,  
17 California.

18 o. Menlo Park Surgical Hospital, located in Menlo Park,  
19 California

20  
21 11. Defendant MarinHealth Medical Center is a California corporation in the business  
22 of providing medical services, with its principal place of business in Marin County. Its sole  
23 member was Sutter Health up until July 1, 2010. After that date, Marin General Hospital was no  
24 longer part of the Sutter system. Prior to 2019, MarinHealth Medical Center was named Marin  
25 General Hospital.

26 12. Defendant Sutter Coast Hospital is a California corporation in the business of  
27 providing medical services, with its principal place of business in Crescent City, Del Norte  
28 County. Its sole member is Sutter Health.

1           13. Defendant Sutter Bay Medical Foundation is a California corporation in the  
2 business of providing medical services, with its principal place of business in Emeryville,  
3 California. It is affiliated with Sutter Health. Defendant Sutter Bay Medical Foundation operates  
4 various healthcare facilities that have engaged in misconduct described herein, including but not  
5 limited to the following:

6           a. Surgical Offices, including but not limited to the following:

- 7           1. Fremont Center, in Fremont, California.
- 8           2. Palo Alto Center, in Palo Alto, California.
- 9           3. Mountain View Center, in Mountain View, California.
- 10          4. Redwood City Center, in Redwood City, California.
- 11          5. Chanticleer Office (2900), located in Santa Cruz,  
12             California.
- 13          6. Chanticleer Office (2911), located in Santa Cruz,  
14             California.
- 15          7. Dominican Way Office, located in Santa Cruz,  
16             California.
- 17          8. Research Park Office, located in Soquel, California.

18          14. Defendant Sutter Valley Medical Foundation is a California corporation, in the  
19 business of providing medical services, with its principal place of business in Modesto,  
20 California. It is affiliated with Sutter Health. Defendant Sutter Valley Medical Foundation  
21 operates various healthcare facilities that have engaged in misconduct described herein,  
22 including but not limited to the following:

- 23          a. Stockton Medical Plaza, located in Stockton, California.
- 24          b. Stockton Surgery Center, located in Stockton, California.
- 25          c. Briggsmore Specialty Clinic, located in Modesto, California.

26          15. Defendants Sutter Health, Sutter Bay Hospitals, MarinHealth Medical Center,  
27 Sutter Coast Hospital, Sutter Valley Hospitals, Sutter Bay Medical Foundation, and Sutter Valley  
28

1 Medical Foundation are sometimes hereafter referred to collectively as the “Sutter Defendants”.

2 16. On information and belief, each Defendant was the agent, joint venture and/or  
3 employee of each of the remaining Defendants, and in acting as described herein, each  
4 Defendant was acting within the scope of said agency, employment and/or joint venture, with the  
5 advance knowledge, acquiescence or subsequent ratification of each and every remaining  
6 Defendant.

7 17. The true names and capacities, whether individual, corporate, associate,  
8 representative, or otherwise of Defendants named herein as Does One through One Hundred are  
9 unknown to Plaintiffs at this time, and they are therefore sued by such fictitious names pursuant  
10 to the California Code of Civil Procedure, Section 474.

11 18. Plaintiffs will amend this Complaint to allege the true names and capacities of  
12 Does One through One Hundred when Plaintiffs ascertain their identities. Each of Does One  
13 through One Hundred is in some manner legally responsible for the violations of law alleged  
14 herein.

15 19. The term “Defendants” shall include the Doe Defendants.

16 20. The acts alleged by this Complaint to have been done by each of the Doe  
17 Defendants were authorized, ordered or done by duly authorized officers, agents, employees or  
18 representatives of such Doe Defendants, while actively engaged in the management, direction or  
19 control of such Doe Defendants’ business or affairs.

20 **IV. ALLEGATIONS**

21 **A. Anesthesia Generally**

22 21. Anesthesia involves the use of medicines to block pain sensations during surgery  
23 and other medical procedures.

24 22. For purposes of this Complaint, there are three types of anesthesia, listed from  
25 least to most severe, administered in hospitals: local anesthesia, conscious sedation (“CS”), and  
26 general anesthesia.

27 23. Local anesthesia provides loss of sensation to pain in a limited area of the body.

1 In general, the local anesthetic is injected into the cutaneous and subcutaneous tissue of the  
2 patient. Local anesthesia can be administered by registered nurses (“RNs”).

3 24. CS is a drug-induced depression of consciousness during which the patient is able  
4 to respond purposefully to verbal commands and/or tactile stimulation but otherwise should not  
5 feel pain. Because the patient can slip into a deep sleep, the patient must be monitored while  
6 under CS. The provider monitoring the patient should have no other responsibilities during the  
7 procedure and should remain with the patient at all times. CS anesthetics must be administered  
8 by a physician, an anesthesiologist, or a Certified Registered Nurse Anesthetists (“CRNA”).<sup>1</sup>

9 25. General anesthesia is the controlled and reversible state of unconsciousness  
10 accompanied by the partial or complete loss of reflexes. While under general anesthesia, the  
11 patient loses the ability to independently maintain his airway and to purposefully respond to  
12 physical stimulation and verbal command. General anesthesia includes a pre-anesthetic  
13 examination and evaluation, prescription of the anesthesia required, administration of the  
14 anesthetic drugs, and the intra-operative monitoring of the patient’s vitals. Thus, general  
15 anesthesia necessitates the continuous and actual presence of an anesthesiologist or a CRNA.

16 26. In a typical hospital, nearly all procedures that take place in the operating room  
17 (“OR”) require anesthesia of some form.

18 27. Most hospitals, including Defendants, do not directly employ their own  
19 anesthesiologists or CRNAs. Instead, Defendants contract with third parties such as medical  
20 corporations or physician groups to provide anesthesiologists when needed. In exchange, the  
21 hospital provides the anesthesiologist with the anesthesia agents (i.e., the pharmaceutical drugs)  
22 and the facilities for administering the anesthesia.

23 28. When these third party anesthesiologists are used, they bill the patient’s insurer  
24 for their time directly. That being the case, hospitals should not also bill for the  
25 anesthesiologists’ time. To do so would be to double bill for the exact same service.

26 **B. Overview of Defendants’ Billing Practices**

27 <sup>1</sup> Dentists and oral surgeons are also qualified to administer CS anesthetics. In addition,  
28 specially trained RNs may *assist* in the administration of CS.



1           29.     Hospital claims are reported on claim forms using “revenue codes.” The claims  
2 are supposed to follow the National Uniform Billing Committee’s (“NUBC”) guidelines. These  
3 guidelines are set forth in a periodically updated manual: the NUBC Official UB-04 Data  
4 Specifications Manual (the “Manual”).

5           30.     The Manual lists the revenue codes that hospitals use to bill for their services and  
6 the use of their facilities. The Manual is comprehensive; it covers every conceivable cost item a  
7 hospital may incur for any given procedure.

8           31.     Revenue codes are four digits long, with the first three reflecting a general  
9 category and the fourth reflecting the specific item within that category. The general revenue  
10 codes relevant to this action are as follows:

11               a.   025x: “pharmacy,” which captures the charges for anesthesia agents  
12                   *(i.e., the pharmaceutical drugs)*;

13               b.   036x: “operating room,” which captures charges for the OR  
14                   suite/theater, including equipment, monitors, supplies, and staffing;  
15                   and

16               c.   037x: “anesthesia,” which captures the minor gap in hospital  
17                   charges related to anesthesia that are not captured by other revenue  
18                   codes such as the services of a non-skilled hospital employee (*i.e., a*  
19                   technical assistant) to prepare the OR for the anesthesiologist and  
20                   certain anesthesia inhalation gases not covered by the pharmacy  
21                   revenue code.<sup>2</sup>

22           32.     Of these, only the 36x revenue code is properly billed on a chronometric (time-  
23  
24

---

25           <sup>2</sup> Hospitals may also use the 096x revenue code for “professional services,” such as the  
26 services of an anesthesiologist or CRNA directly employed by the hospital. However, as noted  
27 above, hospitals, including Defendants’ hospitals, do not generally employ their own  
28 anesthesiologists. This being the case, this revenue code should be rarely, if ever, used; it is  
exceedingly rare in the industry.

spent) basis; the 25x and 37x revenue codes should be billed on a flat-fee basis.<sup>3</sup> There is no conceivable reason that pharmacy items under the 25x revenue code, which can only be used once, should be billed on a time-spent basis. Similarly, because the 37x only captures ancillary, one-time charges, it is not properly billed on a time-spent basis. In comparison, the OR revenue code, 36x, covers the time spent by OR staff, including doctors, such that billing on a time-spent basis is appropriate.

33. Generally, when billing on a chronometric basis, the hospital bills for the first half hour (or fraction thereof) and fifteen minute increments thereafter.

34. Hospitals, including Defendants' hospitals, maintain a "chargemaster," which is a schedule of every potential charge it could incur in its day-to-day business. Although some end-payers contract with Defendants for discounts off these chargemaster rates, a hospital's chargemaster rates generally apply equally to all patients that access the hospital through private health insurance plans. Each charge code on the chargemaster is assigned one of the NUBC revenue codes described above.

1 Any Hospital 123 Any Street Philadelphia PA 19103		2 Any Hospital 456 Any Street Philadelphia PA 19103		3a PAT. ONT. # 1234 b MED. REC. # 98765		4 TYPE OF BILL 0111	
5 FE D. TAX NO. 221234567		6 STATEMENT FROM 11 03 06		7 COVERS PERIOD THRU 11 04 06		RESERVED	
8 PATIENT NAME Doe, John		9 PATIENT ID if different from Sub 1234 Main Street		10 PATIENT ADDRESS Philadelphia		11 PA 19111 Country code if other than USA	
12 BIRTH DATE 03 20 1971		13 SEX M		14 DATE 11 03 06		15 ADMISSION 13 HR 08 14 TYPE 3 15 SRC 3 16 DHR 12 17 STAT 01	
18 OCCURRENCE CODE 31		19 OCCURRENCE DATE 32		20 OCCURRENCE CODE 33		21 OCCURRENCE DATE 34	
22 OCCURRENCE CODE 35		23 OCCURRENCE DATE 36		24 OCCURRENCE CODE 37		25 OCCURRENCE DATE 38	
26 OCCURRENCE CODE 39		27 OCCURRENCE DATE 40		28 OCCURRENCE CODE 41		29 OCCURRENCE DATE 42	
30 OCCURRENCE CODE 43		31 OCCURRENCE DATE 44		32 OCCURRENCE CODE 45		33 OCCURRENCE DATE 46	
34 OCCURRENCE CODE 47		35 OCCURRENCE DATE 48		36 OCCURRENCE CODE 49		37 OCCURRENCE DATE 50	
38 OCCURRENCE CODE 51		39 OCCURRENCE DATE 52		40 OCCURRENCE CODE 53		41 OCCURRENCE DATE 54	
42 OCCURRENCE CODE 55		43 OCCURRENCE DATE 56		44 OCCURRENCE CODE 57		45 OCCURRENCE DATE 58	
46 OCCURRENCE CODE 59		47 OCCURRENCE DATE 60		48 OCCURRENCE CODE 61		49 OCCURRENCE DATE 62	
50 OCCURRENCE CODE 63		51 OCCURRENCE DATE 64		52 OCCURRENCE CODE 65		53 OCCURRENCE DATE 66	
54 OCCURRENCE CODE 67		55 OCCURRENCE DATE 68		56 OCCURRENCE CODE 69		57 OCCURRENCE DATE 70	
58 OCCURRENCE CODE 71		59 OCCURRENCE DATE 72		60 OCCURRENCE CODE 73		61 OCCURRENCE DATE 74	
62 OCCURRENCE CODE 75		63 OCCURRENCE DATE 76		64 OCCURRENCE CODE 77		65 OCCURRENCE DATE 78	
66 OCCURRENCE CODE 79		67 OCCURRENCE DATE 80		68 OCCURRENCE CODE 81		69 OCCURRENCE DATE 82	
70 OCCURRENCE CODE 83		71 OCCURRENCE DATE 84		72 OCCURRENCE CODE 85		73 OCCURRENCE DATE 86	
74 OCCURRENCE CODE 87		75 OCCURRENCE DATE 88		76 OCCURRENCE CODE 89		77 OCCURRENCE DATE 90	
78 OCCURRENCE CODE 91		79 OCCURRENCE DATE 92		80 OCCURRENCE CODE 93		81 OCCURRENCE DATE 94	
82 OCCURRENCE CODE 95		83 OCCURRENCE DATE 96		84 OCCURRENCE CODE 97		85 OCCURRENCE DATE 98	
86 OCCURRENCE CODE 99		87 OCCURRENCE DATE 100		88 OCCURRENCE CODE 101		89 OCCURRENCE DATE 102	
90 OCCURRENCE CODE 103		91 OCCURRENCE DATE 104		92 OCCURRENCE CODE 105		93 OCCURRENCE DATE 106	
94 OCCURRENCE CODE 107		95 OCCURRENCE DATE 108		96 OCCURRENCE CODE 109		97 OCCURRENCE DATE 110	
98 OCCURRENCE CODE 111		99 OCCURRENCE DATE 112		100 OCCURRENCE CODE 113		101 OCCURRENCE DATE 114	
102 OCCURRENCE CODE 115		103 OCCURRENCE DATE 116		104 OCCURRENCE CODE 117		105 OCCURRENCE DATE 118	
106 OCCURRENCE CODE 119		107 OCCURRENCE DATE 120		108 OCCURRENCE CODE 121		109 OCCURRENCE DATE 122	
110 OCCURRENCE CODE 123		111 OCCURRENCE DATE 124		112 OCCURRENCE CODE 125		113 OCCURRENCE DATE 126	
114 OCCURRENCE CODE 127		115 OCCURRENCE DATE 128		116 OCCURRENCE CODE 129		117 OCCURRENCE DATE 130	
118 OCCURRENCE CODE 131		119 OCCURRENCE DATE 132		120 OCCURRENCE CODE 133		121 OCCURRENCE DATE 134	
122 OCCURRENCE CODE 135		123 OCCURRENCE DATE 136		124 OCCURRENCE CODE 137		125 OCCURRENCE DATE 138	
126 OCCURRENCE CODE 139		127 OCCURRENCE DATE 140		128 OCCURRENCE CODE 141		129 OCCURRENCE DATE 142	
130 OCCURRENCE CODE 143		131 OCCURRENCE DATE 144		132 OCCURRENCE CODE 145		133 OCCURRENCE DATE 146	
134 OCCURRENCE CODE 147		135 OCCURRENCE DATE 148		136 OCCURRENCE CODE 149		137 OCCURRENCE DATE 150	
138 OCCURRENCE CODE 151		139 OCCURRENCE DATE 152		140 OCCURRENCE CODE 153		141 OCCURRENCE DATE 154	
142 OCCURRENCE CODE 155		143 OCCURRENCE DATE 156		144 OCCURRENCE CODE 157		145 OCCURRENCE DATE 158	
146 OCCURRENCE CODE 159		147 OCCURRENCE DATE 160		148 OCCURRENCE CODE 161		149 OCCURRENCE DATE 162	
150 OCCURRENCE CODE 163		151 OCCURRENCE DATE 164		152 OCCURRENCE CODE 165		153 OCCURRENCE DATE 166	
154 OCCURRENCE CODE 167		155 OCCURRENCE DATE 168		156 OCCURRENCE CODE 169		157 OCCURRENCE DATE 170	
158 OCCURRENCE CODE 171		159 OCCURRENCE DATE 172		160 OCCURRENCE CODE 173		161 OCCURRENCE DATE 174	
162 OCCURRENCE CODE 175		163 OCCURRENCE DATE 176		164 OCCURRENCE CODE 177		165 OCCURRENCE DATE 178	
166 OCCURRENCE CODE 179		167 OCCURRENCE DATE 180		168 OCCURRENCE CODE 181		169 OCCURRENCE DATE 182	
170 OCCURRENCE CODE 183		171 OCCURRENCE DATE 184		172 OCCURRENCE CODE 185		173 OCCURRENCE DATE 186	
174 OCCURRENCE CODE 187		175 OCCURRENCE DATE 188		176 OCCURRENCE CODE 189		177 OCCURRENCE DATE 190	
178 OCCURRENCE CODE 191		179 OCCURRENCE DATE 192		180 OCCURRENCE CODE 193		181 OCCURRENCE DATE 194	
182 OCCURRENCE CODE 195		183 OCCURRENCE DATE 196		184 OCCURRENCE CODE 197		185 OCCURRENCE DATE 198	
186 OCCURRENCE CODE 199		187 OCCURRENCE DATE 200		188 OCCURRENCE CODE 201		189 OCCURRENCE DATE 202	
190 OCCURRENCE CODE 203		191 OCCURRENCE DATE 204		192 OCCURRENCE CODE 205		193 OCCURRENCE DATE 206	
194 OCCURRENCE CODE 207		195 OCCURRENCE DATE 208		196 OCCURRENCE CODE 209		197 OCCURRENCE DATE 210	
198 OCCURRENCE CODE 211		199 OCCURRENCE DATE 212		200 OCCURRENCE CODE 213		201 OCCURRENCE DATE 214	
202 OCCURRENCE CODE 215		203 OCCURRENCE DATE 216		204 OCCURRENCE CODE 217		205 OCCURRENCE DATE 218	
206 OCCURRENCE CODE 219		207 OCCURRENCE DATE 220		208 OCCURRENCE CODE 221		209 OCCURRENCE DATE 222	
210 OCCURRENCE CODE 223		211 OCCURRENCE DATE 224		212 OCCURRENCE CODE 225		213 OCCURRENCE DATE 226	
214 OCCURRENCE CODE 227		215 OCCURRENCE DATE 228		216 OCCURRENCE CODE 229		217 OCCURRENCE DATE 230	
218 OCCURRENCE CODE 231		219 OCCURRENCE DATE 232		220 OCCURRENCE CODE 233		221 OCCURRENCE DATE 234	
222 OCCURRENCE CODE 235		223 OCCURRENCE DATE 236		224 OCCURRENCE CODE 237		225 OCCURRENCE DATE 238	
226 OCCURRENCE CODE 239		227 OCCURRENCE DATE 240		228 OCCURRENCE CODE 241		229 OCCURRENCE DATE 242	
230 OCCURRENCE CODE 243		231 OCCURRENCE DATE 244		232 OCCURRENCE CODE 245		233 OCCURRENCE DATE 246	
234 OCCURRENCE CODE 247		235 OCCURRENCE DATE 248		236 OCCURRENCE CODE 249		237 OCCURRENCE DATE 250	
238 OCCURRENCE CODE 251		239 OCCURRENCE DATE 252		240 OCCURRENCE CODE 253		241 OCCURRENCE DATE 254	
242 OCCURRENCE CODE 255		243 OCCURRENCE DATE 256		244 OCCURRENCE CODE 257		245 OCCURRENCE DATE 258	
246 OCCURRENCE CODE 259		247 OCCURRENCE DATE 260		248 OCCURRENCE CODE 261		249 OCCURRENCE DATE 262	
250 OCCURRENCE CODE 263		251 OCCURRENCE DATE 264		252 OCCURRENCE CODE 265		253 OCCURRENCE DATE 266	
254 OCCURRENCE CODE 267		255 OCCURRENCE DATE 268		256 OCCURRENCE CODE 269		257 OCCURRENCE DATE 270	
258 OCCURRENCE CODE 271		259 OCCURRENCE DATE 272		260 OCCURRENCE CODE 273		261 OCCURRENCE DATE 274	
262 OCCURRENCE CODE 275		263 OCCURRENCE DATE 276		264 OCCURRENCE CODE 277		265 OCCURRENCE DATE 278	
266 OCCURRENCE CODE 279		267 OCCURRENCE DATE 280		268 OCCURRENCE CODE 281		269 OCCURRENCE DATE 282	
270 OCCURRENCE CODE 283		271 OCCURRENCE DATE 284		272 OCCURRENCE CODE 285		273 OCCURRENCE DATE 286	
274 OCCURRENCE CODE 287		275 OCCURRENCE DATE 288		276 OCCURRENCE CODE 289		277 OCCURRENCE DATE 290	
278 OCCURRENCE CODE 291		279 OCCURRENCE DATE 292		280 OCCURRENCE CODE 293		281 OCCURRENCE DATE 294	
282 OCCURRENCE CODE 295		283 OCCURRENCE DATE 296		284 OCCURRENCE CODE 297		285 OCCURRENCE DATE 298	
286 OCCURRENCE CODE 299		287 OCCURRENCE DATE 300		288 OCCURRENCE CODE 301		289 OCCURRENCE DATE 302	
290 OCCURRENCE CODE 303		291 OCCURRENCE DATE 304		292 OCCURRENCE CODE 305		293 OCCURRENCE DATE 306	
294 OCCURRENCE CODE 307		295 OCCURRENCE DATE 308		296 OCCURRENCE CODE 309		297 OCCURRENCE DATE 310	
298 OCCURRENCE CODE 311		299 OCCURRENCE DATE 312		300 OCCURRENCE CODE 313		301 OCCURRENCE DATE 314	
302 OCCURRENCE CODE 315		303 OCCURRENCE DATE 316		304 OCCURRENCE CODE 317		305 OCCURRENCE DATE 318	
306 OCCURRENCE CODE 319		307 OCCURRENCE DATE 320		308 OCCURRENCE CODE 321		309 OCCURRENCE DATE 322	
310 OCCURRENCE CODE 323		311 OCCURRENCE DATE 324		312 OCCURRENCE CODE 325		313 OCCURRENCE DATE 326	
314 OCCURRENCE CODE 327		315 OCCURRENCE DATE 328		316 OCCURRENCE CODE 329		317 OCCURRENCE DATE 330	
318 OCCURRENCE CODE 331		319 OCCURRENCE DATE 332		320 OCCURRENCE CODE 333		321 OCCURRENCE DATE 334	
322 OCCURRENCE CODE 335		323 OCCURRENCE DATE 336		324 OCCURRENCE CODE 337		325 OCCURRENCE DATE 338	
326 OCCURRENCE CODE 339		327 OCCURRENCE DATE 340		328 OCCURRENCE CODE 341		329 OCCURRENCE DATE 342	
330 OCCURRENCE CODE 343		331 OCCURRENCE DATE 344		332 OCCURRENCE CODE 345		333 OCCURRENCE DATE 346	
334 OCCURRENCE CODE 347		335 OCCURRENCE DATE 348		336 OCCURRENCE CODE 349		337 OCCURRENCE DATE 350	
338 OCCURRENCE CODE 351		339 OCCURRENCE DATE 352		340 OCCURRENCE CODE 353		341 OCCURRENCE DATE 354	
342 OCCURRENCE CODE 355		343 OCCURRENCE DATE 356		344 OCCURRENCE CODE 357		345 OCCURRENCE DATE 358	
346 OCCURRENCE CODE 359		347 OCCURRENCE DATE 360		348 OCCURRENCE CODE 361		349 OCCURRENCE DATE 362	
350 OCCURRENCE CODE 363		351 OCCURRENCE DATE 364		352 OCCURRENCE CODE 365		353 OCCURRENCE DATE 366	
354 OCCURRENCE CODE 367		355 OCCURRENCE DATE 368		356 OCCURRENCE CODE 369		357 OCCURRENCE DATE 370	
358 OCCURRENCE CODE 371		359 OCCURRENCE DATE 372		360 OCCURRENCE CODE 373		361 OCCURRENCE DATE 374	
362 OCCURRENCE CODE 375		363 OCCURRENCE DATE 376		364 OCCURRENCE CODE 377		365 OCCURRENCE DATE 378	
366 OCCURRENCE CODE 379		367 OCCURRENCE DATE 380		368 OCCURRENCE CODE 381		369 OCCURRENCE DATE 382	
370 OCCURRENCE CODE 383		371 OCCURRENCE DATE 384		372 OCCURRENCE CODE 385		373 OCCURRENCE DATE 386	
374 OCCURRENCE CODE 387		375 OCCURRENCE DATE 388		376 OCCURRENCE CODE 389		377 OCCURRENCE DATE 390	
378 OCCURRENCE CODE 391		379 OCCURRENCE DATE 392		380 OCCURRENCE CODE 393		381 OCCURRENCE DATE 394	
382 OCCURRENCE CODE 395		383 OCCURRENCE DATE 396		384 OCCURRENCE CODE 397		385 OCCURRENCE DATE 398	
386 OCCURRENCE CODE 399		387 OCCURRENCE DATE 400		388 OCCURRENCE CODE 401		389 OCCURRENCE DATE 402	
390 OCCURRENCE CODE 403		391 OCCURRENCE DATE 404		392 OCCURRENCE CODE 405		393 OCCURRENCE DATE 406	
394 OCCURRENCE CODE 407		395 OCCURRENCE DATE 408		396 OCCURRENCE CODE 409		397 OCCURRENCE DATE 410	
398 OCCURRENCE CODE 411		399 OCCURRENCE DATE 412		400 OCCURRENCE CODE 413		401 OCCURRENCE DATE 414	
402 OCCURRENCE CODE 415		403 OCCURRENCE DATE 416		404 OCCURRENCE CODE 417		405 OCCURRENCE DATE 418	
406 OCCURRENCE CODE 419		407 OCCURRENCE DATE 420		408 OCCURRENCE CODE 421		409 OCCURRENCE DATE 422	
410 OCCURRENCE CODE 423		411 OCCURRENCE DATE 424		412 OCCURRENCE CODE 425		413 OCCURRENCE DATE 426	
414 OCCURRENCE CODE 427		415 OCCURRENCE DATE 428		416 OCCURRENCE CODE 429		417 OCCURRENCE DATE 430	
418 OCCURRENCE CODE 431		419 OCCURRENCE DATE 432		420 OCCURRENCE CODE 433		421 OCCURRENCE DATE 434	
422 OCCURRENCE CODE 435		423 OCCURRENCE DATE 436		424 OCCURRENCE CODE 437		425 OCCURRENCE DATE 438	
426 OCCURRENCE CODE 439		427 OCCURRENCE DATE 440		428 OCCURRENCE CODE 441		429 OCCURRENCE DATE 442	
430 OCCURRENCE CODE 443		431 OCCURRENCE DATE 444		432 OCCURRENCE CODE 445		433 OCCURRENCE DATE 446	
434 OCCURRENCE CODE 447		435 OCCURRENCE DATE 448		436 OCCURRENCE CODE 449		437 OCCURRENCE DATE 450	
438 OCCURRENCE CODE 451		439 OCCURRENCE DATE 452		440 OCCURRENCE CODE 453		441 OCCURRENCE DATE 454	
442 OCCURRENCE CODE 455		443 OCCURRENCE DATE 456		444 OCCURRENCE CODE 457		445 OCCURRENCE DATE 458	
446 OCCURRENCE CODE 459		447 OCCURRENCE DATE 460		448 OCCURRENCE CODE 461		449 OCCURRENCE DATE 462	
450 OCCURRENCE CODE 463		451 OCCURRENCE DATE 464		452 OCCURRENCE CODE 465		453 OCCURRENCE DATE 466	
454 OCCURRENCE CODE 467		455 OCCURRENCE DATE 468		456 OCCURRENCE CODE 469		457 OCCURRENCE DATE 470	
458 OCCURRENCE CODE 471		459 OCCURRENCE DATE 472		460 OCCURRENCE CODE 473		461 OCCURRENCE DATE 474	
462 OCCURRENCE CODE 475		463 OCCURRENCE DATE 476		464 OCCURRENCE CODE 477		465 OCCURRENCE DATE 478	
466 OCCURRENCE CODE 479		467 OCCURRENCE DATE 480		468 OCCURRENCE CODE 481		469 OCCURRENCE DATE 482	
470 OCCURRENCE CODE 483		471 OCCURRENCE DATE 484		472 OCCURRENCE CODE 485		473 OCCURRENCE DATE 486	
474 OCCURRENCE CODE 487		475 OCCURRENCE DATE 488		476 OCCURRENCE CODE 489		477 OCCURRENCE DATE 490	
478 OCCURRENCE CODE 491		479 OCCURRENCE DATE 492		480 OCCURRENCE CODE 493		481 OCCURRENCE DATE 494	
482 OCCURRENCE CODE 495		483 OCCURRENCE DATE 496		484 OCCURRENCE CODE 497		485 OCCURRENCE DATE 498	
486 OCCURRENCE CODE 499		487 OCCURRENCE DATE 500		488 OCCURRENCE CODE 501		489 OCCURRENCE DATE 502	
490 OCCURRENCE CODE 503		491 OCCURRENCE DATE 504		492 OCCURRENCE CODE 505		493 OCCURRENCE DATE 506	
494 OCCURRENCE CODE 507		495 OCCURRENCE DATE 508		496 OCCURRENCE CODE 509		497 OCCURRENCE DATE 510	
498 OCCURRENCE CODE 511		499 OCCURRENCE DATE 512		500 OCCURRENCE CODE 513		501 OCCURRENCE DATE 514	
502 OCCURRENCE CODE 515		503 OCCURRENCE DATE 516		504 OCCURRENCE CODE 517		505 OCCURRENCE DATE 518	
506 OCCURRENCE CODE 519		507 OCCURRENCE DATE 520		508 OCCURRENCE CODE 521		509 OCCURRENCE DATE 522	
510 OCCURRENCE CODE 523		511 OCCURRENCE DATE 524		512 OCCURRENCE CODE 525		513 OCCURRENCE DATE 526	
514 OCCURRENCE CODE 527		515 OCCURRENCE DATE 528		516 OCCURRENCE CODE 529		517 OCCURRENCE DATE 530	
518 OCCURRENCE CODE 531		519 OCCURRENCE DATE 532		520 OCCURRENCE CODE 533		521 OCCURRENCE DATE 534	
522 OCCURRENCE CODE 535		523 OCCURRENCE DATE 536		524 OCCURRENCE CODE 537		525 OCCURRENCE DATE 538	
526 OCCURRENCE CODE 539		527 OCCURRENCE DATE 540		528 OCCURRENCE CODE 541		529 OCCURRENCE DATE 542	
530 OCCURRENCE CODE 543		531 OCCURRENCE DATE 544		532 OCCURRENCE CODE 545		533 OCCURREN	

1 revenue codes 0129, 0250, and 0360, the bill would include a line for each of those revenue  
2 codes and the aggregate amount due under that revenue code; the underlying charges for each of  
3 the revenue codes would not be listed. This is demonstrated in the below picture:

4 36. As a result, Plaintiff and the Class did not (and do not) receive a bill from  
5 Defendants that sets forth precisely what services or items were provided for under each revenue  
6 code or how those services and items were billed (*i.e.*, on a chronometric/time-spent basis or on a  
7 flat-fee basis).

8 37. Defendants maintain electronic chargemaster files (“CDMs”) that include, for  
9 each charge code entry, the charge code, charge description, billing description, department,  
10 other medical codes, and, most importantly, the revenue code to which that entry is assigned.  
11 However, Defendants’ publicly-disclosed chargemasters (as opposed to other non-Defendant  
12 California hospitals) are far more limited; notably, they exclude the revenue code column, which  
13 would permit a payor (or a patient) such as Plaintiff and the Class to identify which charges are  
14 assigned to the revenue code that appears on the hospitals’ bills.

15 **C. The Payment of Defendants’ Bills**

16 38. Plaintiff and the Class are self-funded health benefit plans. Self-funded health  
17 benefit plans act as the insurer for their members; they assume the risk of their members’  
18 medical expenses and pay medical providers when one of their members receives medical  
19 treatment.

20 39. Self-funded health benefit plans are often administered by third party  
21 administrators (“TPAs”). The self-funded health benefit plans pay the TPA a per-member  
22 administrative service fee for undertaking various administrative tasks (e.g., preparation of plan  
23 documents, member enrollment, record keeping, claim processing, etc.). The self-funded health  
24 benefit plans, however, remains responsible for the actual payment of the medical expenses.

25 40. In exchange for a fee, Preferred Provider Organizations (“PPOs”) and Health  
26 Maintenance Organizations (“HMOs”) provide a network of healthcare providers, including  
27 Defendants, to self-funded health benefit plans. Plaintiff contracted with Anthem Blue Cross  
28

1 Life and Health Insurance Company (“Anthem”) for this service and for claims processing  
2 services during the class period.

3 41. Plaintiff and the Class paid Defendants’ fraudulent, unlawful, and unfair bills.

4 42. According to the pleadings in *Sutter I*, the “systemwide agreements” between  
5 Defendants on the one hand and PPOs and HMOs on the other hand contain provisions that  
6 prevent the HMOs and PPOs from challenging the reasonableness of Defendants’ bills. This is  
7 accomplished through “hospital audit policies,” which expressly provide that questions and  
8 opinions regarding “medical necessity,” “reasonableness of charges,” and “the propriety of a  
9 provider’s usual and customary practices,” are beyond the scope of an audit. Similarly, these  
10 contracts impose strict audit time limits and prohibitions on line-item review of bills. Plaintiff is  
11 not a party to these “systemwide agreements” and has never seen them. They are considered  
12 proprietary or confidential information of Defendants, the HMOs and PPOs.

13 **D. Defendants’ Fraudulent, Unlawful, and Unfair Use of the 37x Revenue Code**

14 43. Beginning on or around January 1, 2001 and continuing through at least  
15 November 1, 2013, Defendants engaged in the fraudulent, unlawful, and unfair business acts or  
16 practices in violation of the UCL described below. On information, between 2001 and 2013,  
17 Defendants’ submitted tens of thousands of fraudulent, unlawful, and unfair bills for anesthesia  
18 services that resulted in members of the Class overpaying Defendants for anesthesia related  
19 services. This conduct was established, implemented, and/or ratified at the highest levels of  
20 Sutter Health.

21 **1. The “Chargemaster Standardization Project”**

22 44. In November 2000, Sutter Health’s Senior Management Team approved a project  
23 aimed at standardizing the charge description masters used at Defendants’ hospitals. The Senior  
24 Management Team retained the services of Arthur Andersen to assist Defendants’ clinical  
25 department directors and personnel in this project. The project became known as the  
26 “chargemaster standardization project.”

27 45. The goal of this project was to develop standardized charging descriptions and  
28

1 methodologies for the hospital services provided to patients and billed to Plaintiff and the Class.

2 46. The “chargemaster standardization team . . . decided that standardized time-  
3 based level charges for operating room services, time-based level charges for general anesthesia  
4 services, and time based charges for monitored anesthesia care and conscious sedation would be  
5 appropriate. . . .”

6 47. These decisions resulted in Defendants implementing the fraudulent, unlawful,  
7 and unfair business practice of billing anesthesia under the 37x revenue code on a chronometric  
8 basis for the entire time a patient was under general anesthesia.

9 **2. Defendants’ Illegal Use of the 37x Revenue Code**

10 48. Because the 37x revenue code is meant to capture only ancillary, one-time  
11 charges, the costs billed under this code should generally be less than a few hundred dollars.  
12 However, throughout the Class Period, Defendants were billing Plaintiff and the Class as much  
13 as \$5500 per hour under the 37x revenue code. These 37x charges for “Anesthesia Services”  
14 were in addition to the Defendants’ chronometric 36x revenue code charges for “Operating  
15 Room Service,” which reached as high as \$13,329 per hour, and the thousands of dollars that  
16 were separately charged by the third-party anesthesiologists and CRNAs.

17 49. Defendants are unable to provide a rational explanation for these charges.  
18 Indeed, in sworn statements, Defendants have acknowledged that they are not able to specify the  
19 costs that were being recouped by the 37x revenue code.

20 50. Defendants’ misuse of the 37x revenue code took three forms.

21 51. First, Defendants routinely used the 37x code when there was no legitimate basis  
22 for doing so. For instance, and as described above, many procedures require no anesthesia or  
23 only (a) CS administered by the attending physician or surgeon or (b) local anesthesia  
24 administered via injection. In these instances, there is no reason to use the 37x revenue code, as  
25 the charges incurred by Defendants are properly covered by other revenue codes. However,  
26 Defendants billed the 37x revenue code in these situations. Similarly, Defendants used the 37x  
27 revenue code when no anesthesia was provided, such as where the patient was in a radiology  
28

1 suite.

2 52. Second, even where it was appropriate to bill the 37x revenue code, Defendants  
3 grossly inflated their bills by improperly billing the 37x revenue code on a time-spent basis  
4 rather than on a flat-fee basis. In particular and as described above, after application of the 25x  
5 and 36x revenue codes, the only remaining anesthesia-related costs incurred by Defendants are  
6 for anesthesia agents not captured by the 25x revenue code, some disposable supplies, and the  
7 cost of OR or tray setup by unskilled technicians. Because of the nature of these charges, they  
8 should all be billed on a flat-fee basis. However, Defendants systematically billed the 37x  
9 revenue code on a chronometric basis for the entire time a patient was in the OR.

10 53. Defendants' use of chronometric billing for the 37x revenue code constitutes an  
11 independent fraudulent, unlawful, and unfair business act or practice. Time-based billing under  
12 37x implies that the patient is being billed for the time spent by an anesthesiologist or other  
13 professional, when, in fact, the anesthesiologist bills separately and any time-based services that  
14 could result in significant charges by Defendants are captured in other revenue codes, including  
15 the 36x revenue code. The only person associated with Defendant's time-based anesthesia charge  
16 is the anesthesia technician; however, this technician has limited to no medical training, is not  
17 present for medical procedures involving anesthesia, and has no ongoing obligation or  
18 responsibilities to the patient during the billed period. At best, the technician is one of several  
19 OR personnel who prepare the ORs between patients such that the technician generally has just  
20 several minutes of involvement in any given procedure. Nonetheless, Defendants charged the  
21 technician as if he was in the OR the entire time. Indeed, Defendants billed the technician  
22 simultaneously in multiple ORs and anesthetizing locations at a time, for the entirety of each of  
23 these procedures. This resulted in double, triple, or quadruple billing, if not worse. Indeed, there  
24 are no other circumstances in which Defendants bill on a time-spent basis when its employees do  
25 not have patient care responsibility over the billed period, let alone circumstances in which  
26 Defendants billed two time-spent charges simultaneously (here, the OR and anesthesia charges)  
27 without providing two distinct services for them throughout the billed period.

54. Third, Defendants charged entities such as Plaintiff and the Class twice for anesthesia gases, under both the 25x and the 37x revenue codes more than ten thousand times during the Class Period. After learning of this double charging, Defendants' key personnel, including CDM Director Cathy Meeter and ethics and compliance officer Kelly Wittmeyer did nothing to advise patients or payors. Indeed, one of Defendants' largest facilities continued to bill for anesthesia gases in this manner through at least September 9, 2013.

55. Defendants' double billing for anesthesia gases using both the 37x and 25x revenue codes constitutes an independent fraudulent, unlawful, and unfair business act or practice.

### **3. Defendants' 37x Revenues versus Expenditures**

56. As a consequence of the foregoing unlawful acts, each Defendant routinely charged, on average, \$3000 to \$5000 under the 37x revenue code when each was actually entitled to just several hundred dollars under this code, if anything at all. Indeed, Defendants charged as much as \$5,500 per hour under the 37x revenue code (in addition to the as much as \$13,329 per hour OR charge and the separate bill from the third-party anesthesiologist).

57. The true cost of the anesthesia services provided by the Defendants is set forth below.

<b>Average Cost, Hospital Technical Component of Anesthesia Services (2012)</b>	
<b>Sutter Hospital</b>	<b>Average Anesthesia Cost per Surgery<sup>4</sup></b>
Alta Bates Summit Medical Center (Berkeley)	\$ 114
California Pacific Medical Center (San Francisco)	\$ 218
Eden Medical Center (Castro Valley)	\$ 207
Memorial Medical Center (Modesto)	\$ 78
Memorial Hospital (Los Banos)	\$ 135

<sup>4</sup> The averages for Alta Bates Summit Medical Center, Memorial Hospital Los Banos, Mills Peninsula, Menlo Park, Santa Cruz Maternity & Surgery Center, Sutter Amador Hospital, Sutter Medical Center Santa Rosa, St Luke's Hospital, and Marin General are estimated based on internal records, rather than anesthesia cost data reported in the Medicare cost reports. San Leandro Hospital is combined with Eden Medical Center for 9 months of 2012.



1	Menlo Park Surgical Hospital (Menlo Park)	\$ 111
2	Mills-Peninsula Health Services (Burlingame)	\$ 187
3	Novato Community Hospital (Novato)	\$ 260
4	Sutter Amador Hospital (Jackson)	\$ 165
5	Sutter Auburn Faith Hospital (Auburn)	\$ 66
6	Sutter Coast Hospital (Crescent City)	\$ 45
7	Sutter Davis Hospital (Davis)	\$ 50
8	Sutter Delta Medical Center (Antioch)	\$ 213
9	Sutter Lakeside Hospital (Lakeport)	\$ 101
10	Sutter Maternity & Surgery Center of Santa Cruz	\$ 148
11	Sutter Medical Center (Sacramento)	\$ 207
12	Sutter Medical Center of Santa Rosa	\$ 186
13	Sutter Roseville Hospital (Roseville)	\$ 102
14	Sutter Solano Medical Center (Vallejo)	\$ 70
15	Sutter Tracy Community Hospital (Tracy)	\$ 68
16	Marin General Hospital	\$ 286

58. As this chart shows, the average cost of the technical component of Defendants' anesthesia services across all of their hospitals was approximately \$143.67.

59. Defendants' cost for the "average patient receiving general anesthesia" in the OR ranged from \$3.24 to \$24.72 for the gas administered.

60. Combining the technical component and the gas costs, Defendants' average cost for their "anesthesia services" was less than \$200. Yet, each Defendant was charging thousands of dollars for these anesthesia "services."

61. The resulting overcharges render the purported "discounts" negotiated by PPOs and HMOs for the Plaintiff and the Class illusory. For example, many HMOs and PPOs are able to negotiate discounts ranging from 10% to 35% off Defendants' chargemaster rates. However, by fraudulently, unlawfully, and unfairly inflating their bills through improper use of the 37x revenue code, Defendants submitted claims which were laden with false and inflated charges, notwithstanding any purported "discounting" of the chargemasters.

62. Defendants benefitted from unlawful, unfair, and fraudulent billing practices by receiving money from Plaintiff and the Class that they were not otherwise entitled to receive.

**E. Evidence of Defendants' Knowledge of Their Misuse of the 37x Revenue Code**

63. At the summary judgment stage in *Sutter I*, the court concluded that the State of



1 California had offered evidence sufficient to support the reasonable inference that Defendants  
2 knew that they were “submitting false, fraudulent, or misleading claims for payment” under the  
3 37x revenue code. This evidence, which is partially described below,<sup>5</sup> affirmatively demonstrates  
4 Defendants’ knowledge that their use of the 37x revenue code was fraudulent, unlawful, and  
5 unfair.

6 **1. The Work Done by Anesthesia Technicians.**

7 64. In depositions, Defendants’ employees confirmed that three to four anesthesia  
8 technicians were responsible for covering between nine and fifteen anesthetizing locations, that  
9 these technicians did not keep track of how much time they spent in any given room, and that  
10 these technicians were not in any one room for the entire time the patient was anesthetized.  
11 Consistent with these depositions, Defendants’ Vice President of Revenue Cycle Management,  
12 Mr. Brian Hunter, submitted a declaration that anesthesia technicians do not stay in the room the  
13 entire time the patient is anesthetized.

14 65. More simply, technicians perform simple “room turnover” tasks, such as “wiping  
15 down” equipment and restocking between surgical procedures. These tasks take a few minutes to  
16 complete. Beyond these duties, technicians are not permitted to be involved in patient care, as the  
17 technician position only requires a high school diploma. Yet Defendants bill the 37x revenue  
18 code for the entire time the patient is in the OR.

19 66. Further, a technician covers multiple ORs concurrently, with each OR generating  
20 its own time-based anesthesia charge. To bill multiple patients for these technicians for every  
21 minute of each patient’s OR procedure, even though the technician is not participating in any one  
22 of these procedures, is to double, triple, or quadruple bill for the technician’s time, or worse.

23 67. In comparison, Defendants’ employees have acknowledged that Defendants do  
24 not bill for OR staff who are on standby but not providing a service in the OR. The underlying  
25 rationale of these practices – that an employee needs to be working to bill for that employee –  
26 further demonstrates defendants’ knowledge that its billing practices are fraudulent, unfair, or

27 <sup>5</sup> Much of the record in *Sutter I* is sealed or redacted such that Plaintiff does not have access  
28 to all the evidence available to the State of California in that case.

1 unlawful.

2 68. Because these technicians are not present the entire time the patient is  
3 anesthetized, yet Defendants charge Plaintiff and the Class for the technicians' time as if the  
4 technician were present during the entire OR procedure, Defendants had knowledge that their  
5 billing practices for anesthesia technicians were fraudulent, unlawful, and unfair.

6 **2. Billing Practices for Anesthesia in Parallel Situations**

7 69. Defendants' knowledge is also demonstrated by the fact that they do not charge  
8 for anesthesia services in two parallel situations – Concious Sedation (“CS”) and Labor and  
9 Delivery (“L&D”) – where no Defendant-employed personnel is monitoring or providing those  
10 services.

11 70. Regarding Defendants' CS billing, although Defendants billed chronometrically  
12 for CS, they provided personnel during the entire billed period. Internal documents show that  
13 time and again Defendants acknowledged that they should not be adding a time-based 37x  
14 charge to patients' bills unless one of their nurses provided an additional anesthesia service to the  
15 patient throughout the entire billed period.

16 71. For instance, Cathy Meeter, Defendants' Chargemaster Director, stated in an  
17 email that CS charges applied only “if there is a dedicated staff person that does nothing else but  
18 assist the physician in monitoring the patient while sedated.” Ms. Meeter also wrote that “[t]he  
19 [37x] charge is for the persons, not the monitoring equipment or overhead cost. Those [i.e., the  
20 monitoring equipment and overhead] ought to be part of the procedure charge itself. . . .” In yet  
21 another email, Ms. Meeter represented that “Hospital billing represents the technical component  
22 – labor expenditure by the hospital . . . this code represents that labor expenditure by the hospital  
23 . . . if you supply an additional nurse to be the independent, trained observer . . . you should  
24 generate a separate charge.”

25 72. The Special Master concluded in *Sutter I*: “This evidence shows that Sutter only  
26 charges for CS if there is a Sutter professional present, and infers Sutter's knowledge that  
27 anesthesia charges under the 37x code are for persons, not equipment.” Defendants willfully  
28

1 ignored this basic principle for its other anesthesia charges, thereby reaping fraudulent, unlawful,  
2 and unfair profits.

3 73. Regarding Defendants' L&D billing, L&D patients sometimes required  
4 anesthesia (e.g., an epidural) and physiological monitoring, just as a patient receiving general  
5 anesthesia in the OR would require. Thus, both patients incur time-based charges. However,  
6 while patients receiving anesthesia in the OR received 37x charges in addition to the hourly OR  
7 charge, Defendants do not impose a 37x charge on L&D patients beyond the L&D hourly charge  
8 unless a Defendant-employed CRNA provides the epidural. This is the case even though the  
9 same anesthesia equipment might be in use in the L&D room as in the OR.

10 74. Several of Defendants' high-ranking employees described the rationale for  
11 Defendants not imposing a 37x charge on L&D patients. Ms. Meeter wrote that an additional  
12 charge was inappropriate because "there is no real expense carrie[d] by the hospital . . . to start  
13 and monitor the epidural. Similarly, Ms. Kathy Johnson, Defendants' Director of Billing and  
14 Compliance & Revenue Quality, wrote in an email to Ms. Meeter stating that when Defendants'  
15 facilities did apply a time-based anesthesia charge to L&D patients even though there was no  
16 additional Defendant-employed personnel, "[w]e, in essence, were double charging for the same  
17 service."

18 75. The Special Master in *Sutter I* concluded: "A jury could infer from the evidence  
19 by Plaintiff related to CS and L&D, that Sutter knew when it was separately billing for  
20 anesthesia in the OR, it was double billing and thereby submitting a false, fraudulent, or  
21 misleading bill." The *Sutter I* Court upheld this finding.

22 **3. Billing for the Anesthesia Machine**

23 76. In *Sutter I*, the Defendants argued "that the anesthesia charge under 37x is not  
24 only for personnel, but also for 'equipment and supplies that the anesthesiologist uses to deliver  
25 anesthesia and monitor the patient.'" However, the Special Master determined at the summary  
26 judgment stage that the plaintiff there had offered evidence creating a factual dispute as to  
27 whether this equipment was properly billed under the 37x revenue code.

1           77.       For instance, Defendants’ internal policies provides that “routine supplies” such  
2 as “cost of gowns, drapes, reusable instruments and capital equipment (whether owned or rented)  
3 used in the surgery of OR” are “non-billable” and “should be factored into the setting or  
4 procedure charge.”

5           78.       Defendants’ “Policy for Establishment of Charge Codes and Supplies” further  
6 elaborates on which supplies are routine (and therefore not billable). This policy states, “Routine  
7 supplies are usually used during the customary course of treatment, are included in the unit  
8 supplies and are not designated as for a specific patient.” And “Routine supply items . . . would  
9 generally be available to all patients receiving supplies in that location i.e. emergency room,  
10 operating room, cast room, routine nursing area, etc.”

11           79.       Ms. Meeter testified that anesthesia is a routine part of surgical procedures in the  
12 OR: “If you’re in the OR, you’re going to have anesthesia. You don’t go to the OR without a  
13 need for anesthesia.” As stated above, Ms. Meeter also wrote that “[t]he [37x] charge is for the  
14 persons, not the monitoring equipment or overhead cost. Those [i.e., the monitoring equipment  
15 and overhead] ought to be part of the procedure charge itself. . . .”

16           80.       Thus, the anesthesia machine is and always has been a “routine supply” that is  
17 not a proper basis to justify a stand-alone 37x charge for the entire period of the anesthesia  
18 service and the Defendants’ attempt to justify the 37x charge on this basis demonstrates their  
19 knowledge that its billing of the 37x charge is fraudulent, unlawful, and unfair.

#### 20                   **4.       Billing for Anesthesia Gases**

21           81.       Further, the billing of anesthesia gases by some of Defendants’ hospitals under  
22 both the 25x and 37x revenue codes demonstrates that Defendants had knowledge of the  
23 illegality of its billing practices.

24           82.       Specifically, Defendants’ internal anesthesia policy lists gases that are “included  
25 in charge” for the general anesthesia charge under the 37x revenue code but after the  
26 chargemaster standardization project, some of Defendants’ hospitals charged for these gases  
27 under the 25x revenue code. When Defendants finally got around to correcting this double-

1 billing, they chose not to follow up with Plaintiff and the Class (or patients) to correct the double  
2 bills that had already gone out.<sup>6</sup>

3 83. Even if Defendants “corrected” this practice, the fact that Defendants did not  
4 even attempt to notify Plaintiff and the Class of the error – which would have resulted in  
5 substantial reimbursement of fees paid to Defendants – demonstrates Defendants knowledge that  
6 they were double billing.

7 **5. The Hiding of the 37x Charges.**

8 84. Defendants made a policy decision to obfuscate their charges on their bills.  
9 Relying on Defendants’ guidelines, Ms. Meeter acknowledged that a charge description should  
10 give the patient “some semblance of what it was.” However, Defendants’ bills offered no  
11 meaningful insight into the charges.

12 85. In particular, the 37x “Anesthesia” line items on patient bills did not describe the  
13 underlying charges, and Defendants did not provide information on what charges fell under  
14 which revenue codes in their publicly disclosed chargemasters. Other, non-Defendant hospitals  
15 in California do not hide the relationship between their revenue codes and the underlying charges  
16 in their public chargemasters.

17 86. That Defendants felt it necessary to hide the basis of the 37x charges further  
18 demonstrates their knowledge of the fraudulent, unlawful, and unfair nature of their use of the  
19 37x revenue code.

20 **F. Sutter I and its Settlement**

21 87. Defendants’ fraudulent, unlawful, and unfair business acts or practices described  
22 herein resulted in an insurance fraud lawsuit by the State of California and a subsequent  
23 settlement with the State on or around November 1, 2013.<sup>7</sup> The acts complained of herein are  
24 substantially the same as the acts complained of in *Sutter I*.

25 88. Prior to reaching a settlement, Defendants engaged in numerous (and ultimately

26 <sup>6</sup> Defendants did not dispute this fact in *Sutter I*.

27 <sup>7</sup> See *State of California v. MultiPlan, et al.*, Case No. 34-2010-00079432 (Sup. Ct., Cnty.  
28 of Sacramento).

1 unsuccessful) tactics at the pleadings stage. In particular, the court in that case denied at least  
2 three demurrers, two motions to strike, a motion to compel arbitration, and a motion to strike the  
3 State's jury demand.<sup>8</sup> The court also dismissed Defendants' cross-complaint against the State.

4 89. Defendants filed several summary judgment motions in that case, including one  
5 concerning the "falsity" requirement of the States' insurance fraud claim. The Special Master  
6 recommended that this motion be denied, and the Court agreed, overruling Defendants'  
7 objections and denying the summary judgment motion. The Court of Appeals summarily denied  
8 Defendants' writ concerning the denial of the motion.

9 90. Defendants also filed a summary judgment motion in *Sutter I* concerning the  
10 specific intent elements of the State's insurance fraud claim. The Court denied Defendants'  
11 motion, accepted the Special Master's recommendation, and adopted his findings. In denying  
12 Defendants' summary judgment motion on specific intent, the Special Master stated:

13           There is no dispute that the Sutter Defendants presented claims to  
14 insurers for payment. The court has already found that there is a  
15 triable issue of fact regarding whether the claims for payment here  
16 were false or fraudulent. . . . If a jury finds that Sutter had knowledge  
17 of the falsity or fraudulent nature of the submitted or presented  
18 claims, then an intent to defraud will be inferred. As stated by the  
19 court in *People v. Scofield*, 17 Cal. App. 3d 1018, 1026 (1971), a  
20 person or entity "who willfully submits a claim, knowing it to be  
21 false, necessarily does so with intent to defraud."<sup>9</sup>

22 91. Defendants' counsel in those proceedings admitted the same during a hearing on  
23 that motion: "[I]f you know when you submit a claim that it is fraudulent, the inference arises  
24 that you did it to try to get money that you would not otherwise have been entitled to get . . . ."<sup>10</sup>

25 92. As part of the settlement, Defendants agreed to change the way in which they  
26 used the 37x revenue code. In relevant part, Defendants agreed to the following terms:

27           a. For general and complex anesthesia services in the OR, the 37x

28 <sup>8</sup> See Orders of Jan. 11, 2011; Mar. 11, 2011; Sept. 1, 2011; and Dec. 19, 2011.

<sup>9</sup> Special Master's July 18, 2013 Order on Mot. Of Sutter Defs. For Summ. J. on Specific  
element of Pls.' Claims at 6:22-7:2.

<sup>10</sup> Desai Decl., Ex. 39 at 13:1-4 (Tr. of June 27, 2013 Proceeding); see also *id.* at 14:1-7.  
AMENDED CLASS ACTION COMPLAINT CASE NO. RG15753647

revenue code is now billed on a two-level flat-fee basis: one charge for anesthesia services through 180 minutes and one charge for anesthesia services greater than 180 minutes.

b. The flat-fee structure described above is “directly related to the specific equipment, supplies, and staff typically provided and available for patients” requiring anesthesia services that are not billed under any other revenue code.

c. The charge descriptions for anesthesia services billed under the 37x revenue code now clearly identify the medical services provided to the patient.

d. The specific UB-04 revenue codes assigned for charges in the Defendants’ chargemasters was provided to the State for future publication on the internet.

93. Nothing in the settlement forecloses Plaintiff or the Class’s right to seek the remedies requested through this Complaint.

**V. Additional Scienter Allegations**

94. As described above, through Defendants’ sophisticated knowledge of the applicable billing and reporting provisions to insurers and use of contract that limit Plaintiff and the Class’s ability to challenge charges, Defendants authored, created, and/or approved fraudulent, unlawful, and unfair medical reports, records, and bills that they submitted to Plaintiff and the Class for payment. Defendants submitted these documents in support of their fraudulent, unlawful, and unfair use of the 37x revenue code.

95. Plaintiff makes the following specific scienter allegations against defendants.

96. **Who:** Defendants, through their employees, officers, and agents, submitted claims for payment to Plaintiff and the Class that contained fraudulent, unlawful, and unfair charges. Inflated bills are submitted directly or indirectly to Plaintiff and the Class for payment by Defendants. Prior allegations in this Complaint detail the role Ms. Meeter played as Director

1 of Chargemasters and the statements she made about how Defendants should have been using the  
2 37x revenue code, but were not.

3 97. **What:** The Defendants knew, or were reckless in not knowing, that the charges  
4 they submitted under the 37x revenue code were already captured in other revenue codes,  
5 including the 25x and 36x revenue codes and in third-party anesthesiologists' separate bills.

6 98. **When:** Defendants engaged in the fraudulent, unfair, and unlawful practice of  
7 submitting 37x revenue codes for services not rendered or services already compensated from  
8 roughly January 1, 2001 through at least November 1, 2013. In that time, Defendants have  
9 submitted tens of thousands of claims for payment by Plaintiff and the Class that contained  
10 fraudulent, unlawful, or unfair 37x revenue code charges as described herein.

11 99. **Where:** Defendants prepared bills containing fraudulent, unlawful, and unfair  
12 37x revenue code charges in the California counties in which Defendants' hospitals are located  
13 and submitted these charges directly or indirectly for payment by Plaintiff and the Class.

14 100. **How:** Defendants imposed the fraudulent, unfair, and unlawful 37x revenue code  
15 charges by billing for "Anesthesia Services" or "Anesthesia" on a time-basis for the entirety of a  
16 patient's underlying procedure, which misleadingly implied that the 37x revenue code captured  
17 the services of trained professionals or nurses when, in reality, all such charges were already  
18 captured by other revenue codes (such as the 25x and 36x revenue codes) and in separate bills  
19 from third-party anesthesiologists.

20 101. **Why:** Defendants engaged in this practice in order to increase revenues per  
21 patient and thereby increase their profits.

22 102. Based on publicly available documents in the *Sutter I* case, Plaintiff believes the  
23 following sealed documents will contain additional proof of Defendants' scienter:

- 24 a. November 28, 2000 minutes of the meeting of the Sutter Health Senior  
25 Management Team ("SMT");  
26 b. January 2001 "FAQs" prepared by Sutter's outside retained consultant, Arthur  
27 Anderson, concerning the Charge Master standardization;



- c. February 2002 Presentation, Surgery Thought Leadership;
- d. Surgery Crosswalk reference (attachment to October 23, 2002 Bieker email);
- e. The Desai *Scienter* Declaration, and accompanying exhibits; and
- f. Supplemental Desai Declaration, and accompanying exhibits.

## **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

103. Plaintiff lacked actual knowledge of Defendants' fraudulent, unlawful, and unfair billing practices and its injury until after the State of California announced its settlement of *Sutter I* in November 2013, and could not have discovered, through the exercise of reasonable diligence, that Defendants had engaged in fraudulent, unlawful, or unfair billing practices, or that it was injured by them until the settlement of *Sutter I* and its terms were disseminated in the press.

104. The contracts between Defendants and the HMOs and PPOs forbid the questioning of charges. Because the validity of the charges could not be questioned and were purposefully obscured in Defendants' chargemasters and by the billing arrangements that Defendants had with the PPOs and HMOs, Plaintiff and the Class were foreclosed from discovering the injury until Defendants' fraudulent, unlawful, and unfair billing practices filtered down to Plaintiff through public dissemination of the announcement of the settlement in *Sutter I*.

105. Accordingly, the claims of Plaintiff and the Class were tolled up to and through at least November 2013. Plaintiff brings this action within the four year statute of limitations set forth in Cal. Bus. & Prof. Code § 17208.

## **VII. CLASS ACTION ALLEGATIONS**

106. This lawsuit is brought on behalf of Plaintiff individually and on behalf of all those similarly situated pursuant to California Code of Civil Procedure §382. Plaintiff seeks relief on behalf of itself and Class Members defined as follows:

All self-funded payers that (1) are citizens of California or state and local governmental entities of the State of California and (2) compensated Sutter for any anesthesia services other than conscious sedation administered in operating rooms at its acute care hospitals

at any time from January 1, 2003 to December 31, 2013.

107. On October 15, 2019 Plaintiff filed its motion for class certification. In their opposition, Defendants argued that two of their affirmative defenses concerning arbitration and settlement and release involved individual issues preventing class certification. *See* Defendants' Answer to Complaint, dated December 14, 2018 -- Affirmative Defense Nos. 15 (Arbitration Required), 16 (Release), 22 (Settlement) and 27 (Accord and Satisfaction). The Court heard oral argument on the motion on May 26, 2021. On June 29, 2021, the Court issued its Order Deciding Evidence Motions and Granting Motion for Class Certification. The Court ruled that the class is certified and directed the Plaintiff to meet and confer with Defendants to discuss appropriate procedures to manage the resolution of Sutter's two affirmative defenses. In its order the Court also directed Plaintiff to file "an amendment to the complaint that identifies subclasses that (1) are defined "in terms of objective characteristics and common transactional facts" (*Noel*, 7 Cal.5th 955, 961, 967, 974) and (2) permit Sutter to "fairly and efficiently" present its defenses of release and arbitration (*Duran*, 59 Cal.4th at 29)." Order at 41.

108. After nearly three years of discovery, Sutter has yet to identify a single absent class member who has released any of its claims alleged in this action or agreed to arbitrate them. Its motion to compel arbitration against Plaintiff was denied in an order entered by the Court on April 22, 2016 in part due to the undisputed fact that Sutter's arbitration clause was never shown to Plaintiff and Plaintiff's consent to be bound to it was never obtained, causing the Court to agree with Plaintiff's characterization of the circumstances as a "secret agreement to arbitrate." After full discovery regarding the assertion that Plaintiff could be bound to such an agreement, the Court ruled, "In sum, the court concludes that Sutter has failed to demonstrate the existence of an arbitration agreement that is binding on Plaintiff." This ruling was affirmed by the Court of Appeal in a non-published decision, dated July 9, 2018. Sutter has identified no circumstance that suggests the result would be different for any class member.

109. The Court in its April 22, 2016 ruling did not reach the issue of unconscionability of application of the provisions of the Sutter arbitration clause to non-party class members. For an Insurance Company to make an overpayment claim, according to the

1 confidential SWAs, it must have made a request for refund within one year of the initial payment  
2 of the claim. No discovery rule is permitted to toll this requirement, including any possible  
3 claims for inherently secret violations such as fraud or misrepresentation. Moreover, discovery in  
4 Sutter's arbitrations is severely limited. The parties are required by the confidential SWAs to  
5 exchange spreadsheets identifying each claim in dispute providing the identification of the claim  
6 and reason under the contract for the claim of under or overpayment. After the completion of the  
7 arbitration, adjusted payments may be made as part of the ordinary claims processing systems of  
8 Sutter and the Insurance Companies, without the class members ever knowing that an arbitration  
9 process was ever invoked. No class member has ever been advised that the claims asserted in  
10 this action have been settled as part of any arbitration or subject to any release.

11       110. Sutter's arbitration clause is thus unconscionable when applied to a class  
12 member seeking to assert a violations of California's unfair competition law against Sutter. The  
13 unconscionability is not mitigated in the circumstances of this case by any purported provision of  
14 the arbitration agreement that allows the Insurance Company to invoke arbitration on a class  
15 member's behalf. In this case, the Insurance Company intermediaries could have been named as  
16 defendants for their aid provided to Sutter in repricing the fraudulent claims, as was the case with  
17 defendant MultiPlan in the *Rockville* case. This conflict of interest also infects the settlement and  
18 release agreements discussed in the next paragraph.

19       111. Sutter's settlement and release affirmative defense is premised on a series of 22  
20 settlement agreements that it entered with Insurance Companies acting as the claims processing  
21 intermediary between class members, including Plaintiff, and medical care providers, including  
22 Sutter. The majority of the claims for hospital services at issue in this case are processed by five  
23 such intermediaries, Anthem, Blue Shield, Cigna, Aetna and United. Pursuant to Sutter's  
24 arbitration clause, these companies agree to arbitrate disputes over the processing of claims in  
25 order to ensure proper enforcement of the contractually agreed upon rates for services provided.  
26 Periodically, approximately every two or three years, Sutter and each of these Insurance  
27 Companies initiate an arbitration proceeding to resolve disputes over the relatively small number  
28

1 of claims that are alleged to have been improperly processed under the then existing agreement  
2 between Sutter and the Insurance Company, called the Systemwide Amendment (“SWA”).  
3 These arbitrations are designed to enforce uniform compliance of the SWA for all contractual  
4 payments, with Sutter advancing claims that a particular claim was unpaid or underpaid  
5 (“underpayments”) and the Insurance Company asserting claims for overpayments. These  
6 arbitrations are referred to as “claims arbitrations” because they are focused on resolving  
7 disputes regarding individual patient bills on a claim-by-claim basis.

8       112.     Sutter has reached 22 settlement agreements (listed in Appendix A) that it  
9 contends have released class member claims in this action. These settlement and release  
10 agreements were reached between Sutter and the five major Insurance Companies without any  
11 participation of a class member, and no class member was aware of the scope of the releases  
12 contained in these agreements. They generally resolve claims arbitrations or result from a SWA  
13 mandated pre-arbitration meet and confer process. The settlement agreements typically  
14 characterize the disputes being settled as “Overpayment Disputes” or “Underpayment Disputes.”  
15 In such cases, the releases are explicitly limited to those particular disputes. After the filing of  
16 this case and a similar class action antitrust case, *UEBT v. Sutter Health, et al.* San Francisco  
17 Sup.Ct. No. CGC-14-538451, Sutter took efforts to undermine any ruling by the court that the issues  
18 presented in these cases could be decided on a class basis. These efforts include strong-arm monopolistic  
19 demands including Sutter’s campaign to have class members to sign “Attestations” to bind them to its  
20 unconscionable arbitration clause.

21       113.     In a further effort to undermine these class actions, Sutter embarked on a practice  
22 of demanding (and receiving) release clauses in its claims arbitration settlement agreements that  
23 it contends broaden the releases in those agreements to cover more than the claims disputes  
24 raised in the arbitrations and made other changes adverse to putative class members. As part of  
25 these revisions, Sutter entered into three settlement agreements with Anthem and United dated in  
26 late 2016 or 2017 (identified on Appendix A). These agreements included language stating that  
27 that if a self-funded payer successfully argues it is not bound to the releases of overpayment  
28

1 claims effected by that agreement, then Sutter will no longer be bound to the releases of  
2 underpayment claims as to that self-funded payer. One of these agreements with Blue Shield had  
3 similar language but that agreement expressly carved the claims asserted in this case from the  
4 release. While these releases do not cover any of the claims for unfair competition alleged in this  
5 complaint, Sutter has asserted that these provisions create a potential conflict of interest between  
6 Plaintiff and other class members. This provision is unenforceable, but even if it were not should  
7 Sutter revoke any releases for underpayment as retaliation for a class member's participation in  
8 this class action, it would only serve to entitle the applicable class member to the return of the  
9 money paid for those medical services, which would be impractical to calculate since the  
10 settlement agreements contain only undifferentiated consideration for combined and offsetting  
11 overpayment and underpayment claims for both class members and the intermediaries own fully-  
12 insured business.

13 114. For the purposes of litigating Defendants' affirmative defenses of settlement and  
14 release and arbitration only, two subclasses are defined as follows:

- 15 a. All self-funded payers who contracted with one of the five major intermediaries --  
16 Anthem, Blue Shield, Cigna, Aetna and United -- for claims processing services,  
17 where that intermediary entered into an agreement with Sutter that included an  
18 arbitration clause ("Arbitration Subclass").
- 19 b. All self-funded payers who contracted with one of the five major intermediaries --  
20 Anthem, Blue Shield, Cigna, Aetna and United -- for claims processing services,  
21 where that intermediary entered into a settlement and release agreement with  
22 Sutter as identified in Appendix A. ("Release Subclass").

23 115. This lawsuit is properly brought as a class action for the following reasons: (a)  
24 the Class is composed of hundreds of geographically dispersed self-funded payers, the joinder of  
25 whom in one action is impracticable; (b) the disposition of Plaintiff and Class Members' claims  
26 in a class action will provide substantial benefits to the parties and the Court; and (c) the Class is  
27 ascertainable and there is a well-defined community of interest in the questions of law or fact

1 alleged herein, since the rights of Plaintiff and each Class Member were infringed or violated in  
2 the same or virtually the same fashion based upon Defendants' uniform misrepresentations and  
3 material omissions.

4 116. The questions of law and fact common to the Class predominate over questions  
5 that may affect particular Class Members. Such common questions include the following:

- 6 a. Whether Defendants' conduct was and is unlawful, unfair or  
7 fraudulent;
- 8 b. Whether Defendants' conduct was and is false, misleading or likely  
9 to deceive;
- 10 c. Whether Defendants were and will continue to be unjustly enriched  
11 by virtue of their fraudulent, unlawful and unfair billing practices;
- 12 d. Whether Plaintiff and Class Members have been harmed and the  
13 proper measure of relief; and
- 14 e. Whether Plaintiff and Class Members are entitled to an award of  
15 attorneys' fees and expenses against Defendants.

16 117. Plaintiff DC 16 is a member of the Class, the Arbitration Subclass and the  
17 Release Subclass. Plaintiff is a member of the Arbitration Subclass because it contracted with  
18 Anthem for claims processing services, where Anthem entered into agreements with Sutter that  
19 included an arbitration clause and required Anthem to take steps to assure that its other payers be  
20 bound to terms of the agreement, including its dispute resolution and arbitration provisions.  
21 Plaintiff is a member of the Release Subclass because Anthem entered into settlement and  
22 release agreements with Sutter listed in Appendix A.

23 118. Plaintiff's claims are typical of the Class and Subclass Members' claims  
24 including with respect to all issues raised by Sutter's affirmative defenses. While arbitrability of  
25 the putative class member claims have yet to be litigated, the same issues are involved in  
26 presenting and opposing the arbitration defense as were litigated in Defendants' unsuccessful  
27 motion to compel arbitration as to DC16 claims.

1           119. Plaintiff will fairly and adequately protect the interests of the Class and  
2 Subclasses in that it has no interests antagonistic to or in conflict with the other Class or Subclass  
3 Members' interests and Plaintiff has retained attorneys experienced in class actions and complex  
4 litigation.

5           120. With respect to a portion of the Release Subclass potentially impacted by the  
6 three agreements with Anthem or United that contain the revocation of Sutter's underpayment  
7 release provision, no actual conflict is presented. As alleged above, the provision is  
8 unenforceable and it is speculative that such provision should not be permitted to be invoked in a  
9 retaliatory manner for a class member's participation in this case.

10          121. A class action is superior to other available methods for the fair and efficient  
11 adjudication of this controversy for at least the following reasons:

12          122. Given the relatively modest amount of each individual Class Member's claim  
13 and the expense of litigating their claims individually, few, if any, Class Members could afford  
14 to pay for competent legal counsel to pursue their individual claims or would seek legal redress  
15 individually for the wrongs Defendants committed against them; and absent Class Members have  
16 no substantial interest in individually controlling the prosecution of individual actions;

17          123. This action will promote an orderly and expeditious administration and  
18 adjudication of the Class claims, economies of time, effort and resources will be fostered and  
19 uniformity of decisions will be ensured; and

20          124. Plaintiff knows of no difficulty that will be encountered in the management of  
21 this litigation which would preclude its maintenance as a class action.

22          125. Plaintiff seeks equitable relief on behalf of the entire Class on grounds generally  
23 applicable to the entire Class.

24 **VIII. CLAIMS FOR RELIEF**

25 **FIRST CLAIM FOR RELIEF**

26 **Fraudulent Business Acts and Practices in Violation of  
27 California Business & Professions Code §§ 17200, *et seq.***

28          126. Plaintiff re-alleges and incorporates herein by reference, as though fully set forth



1 here, all preceding paragraphs of this Complaint.

2 127. Plaintiff brings this cause of action individually and on behalf of the Class.

3 128. California Business and Professions Code §§ 17200, et seq. prohibits acts of  
4 unfair competition, which mean and include any “fraudulent . . . business practices.”

5 129. As more fully described above, Defendants’ acts and practices with respect to the  
6 37x revenue code have a tendency to deceive, and have deceived, Plaintiff and the Class, thus  
7 constituting a fraudulent business act or practice.

8 130. Defendants presented bills for payment by Plaintiff and the Class that were false  
9 and that contained material omissions as to how the charges presented for payment were  
10 computed. As the Special Master in *Sutter I* concluded:

11 The court has already found that there is a triable issue of fact regarding  
12 whether the claims for payment here were false or fraudulent. . . . If a jury  
13 finds that Sutter had knowledge of the falsity or fraudulent nature of the  
14 submitted or presented claims, then an intent to defraud will be inferred. As  
15 stated by the court in *People v. Scofield*, 17 Cal. App. 3d 1018, 1026 (1971),  
16 a person or entity “who willfully submits a claim, knowing it to be false,  
17 necessarily does so with intent to defraud.

18 131. As just one example of several provided in earlier sections of this Complaint,  
19 Cathy Meeter, Defendants’ Chargemaster Director, stated in an email that “[t]he [37x] charge is  
20 for the persons, not the monitoring equipment or overhead cost. Those [i.e., the monitoring  
21 equipment and overhead] ought to be part of the procedure charge itself. . . .” In yet another  
22 email, Ms. Meeter represented that “Hospital billing represents the technical component – labor  
23 expenditure by the hospital . . . this code represents that labor expenditure by the hospital . . . if  
24 you supply an additional nurse to be the independent, trained observer . . . you should generate a  
25 separate charge.”

26 132. Defendants either knew, recklessly disregarded, or should have known that their  
27 bills—which contained 37x revenue charges that were un-tethered from the legitimate use of this  
28 revenue code—were false, misleading, untrue, deceptive, or likely to deceive or mislead the  
public, Plaintiff and the Class.

133. Plaintiff and the Class relied upon Defendants’ material omissions,



1 nondisclosures and representations to their detriment.

2 134. Plaintiff and the Class have suffered injury in fact and have lost money as a  
3 result of Defendants' unfair competition and violations of law in that they paid Defendants for  
4 services that were never rendered or were grossly inflated; they would not have agreed to pay  
5 Defendants had they known that Defendants were mischarging them; and they are therefore  
6 entitled to the relief available under Business and Professions Code §§17200, et seq., as detailed  
7 herein.

8 **SECOND CLAIM FOR RELIEF**  
9 **Unlawful Business Acts and Practices in Violation of**  
10 **California Business & Professions Code §§ 17200, et seq.**

11 135. Plaintiff re-alleges and incorporates herein by reference, as though fully set forth  
12 here, all preceding paragraphs of this Complaint.

13 136. Plaintiff brings this cause of action individually and on behalf of the Class.

14 137. California Business and Professions Code §§ 17200, et seq. prohibits acts of  
15 unfair competition, which mean and include any "unlawful . . . business practices."

16 138. As alleged herein, during the Class Period, Defendants uniformly failed to  
17 inform Plaintiff and the Class of the true cost of anesthesia services it charges them. Specifically,  
18 Defendants submitted bills for anesthesia services using the 37x revenue code that were never  
19 administered by Defendants or were grossly inflated.

20 139. As a result, Defendants' uniform policies, acts, omissions, and practices, among  
21 others, violate numerous provisions of California statutory and common law, including, but not  
22 limited to the following:

- 23 a. California Penal Code § 550, which provides, in relevant part, that  
24 "[i]t is unlawful to . . . [k]nowingly prepare, make, or subscribe any  
25 writing, with the intent to present or use it, or to allow it to be  
26 presented, in support of any false or fraudulent claim" Defendants  
27 violated this provision of the Penal Code by omitting material facts,  
28 including, but not limited to, an explanation of the services actually

1 rendered using the 37x revenue code, that fact that technicians were  
2 double, triple and quadruple billing for the time they spent in the  
3 OR, and that Defendants were billing for gas separately when it was  
4 also included in other revenue codes, all as set forth more fully  
5 elsewhere in this Complaint; and

6 b. California Civil Code §§ 1709-10 (Deceit). Section 1709 provides,  
7 in relevant part, that “[o]ne who willfully deceives another with  
8 intent to induce him to alter his position to his injury or risk, is liable  
9 for any damage which he thereby suffers.” Section 1710 defines  
10 deceit, in part, as “[t]he suggestion, as a fact, of that which is not  
11 true, by one who does not believe it to be true” and “[t]he assertion,  
12 as a fact, of that which is not true, by one who has no reasonable  
13 ground for believing it to be true.” Defendants’ conduct with respect  
14 to billing Plaintiff and the Class for anesthesia service under the 37x  
15 revenue code was fraudulent and deceptive, as set forth more fully  
16 elsewhere in this Complaint.

17 140. Plaintiff and the Class relied upon these material omissions and  
18 misrepresentations to their detriment.

19 141. Plaintiff reserves the right to allege other violations of law that constitute  
20 unlawful business acts or practices based upon the above-described conduct. Such conduct is  
21 ongoing and continues to this date.

22 142. Plaintiff and the Class have suffered injury in fact and have lost money as a  
23 result of Defendants’ unfair competition and violations of law in that they paid Defendants for  
24 services that were never rendered or were grossly inflated; they would not have agreed to pay  
25 Defendants had they known that Defendants were mischarging them; and they are therefore  
26 entitled to the relief available under Business and Professions Code §§17200, et seq., as detailed  
27 herein.

**THIRD CLAIM FOR RELIEF**  
**Unfair Business Acts and Practices in Violation of**  
**California Business & Professions Code §§ 17200, *et seq.***

143. Plaintiff re-alleges and incorporates herein by reference, as though fully set forth here, all preceding paragraphs of this Complaint.

144. Plaintiff brings this cause of action individually and on behalf of the Class.

145. California Business and Professions Code §§ 17200, *et seq.* prohibits acts of unfair competition, which mean and include any “unfair . . . business practices.”

146. Defendants’ conduct constitutes “unfair” business acts and practices because Defendants’ practices have caused and are “likely to cause substantial injury” to Plaintiff and Class Members which injury is not “reasonably avoidable” by Plaintiff and the Class and is “not outweighed” by the practices’ benefits to Plaintiff and the Class.

147. Alternatively, Defendants’ conduct constitutes “unfair” business acts and practices because Defendants’ practices are unfair under the legislatively declared policy of section 1871(h) of the California Insurance Code, which provides:

The Legislature finds and declares as follows:

\* \* \* \* \*

Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily.

148. As more fully described above, Defendants’ concealment of charging Plaintiff and the Class for anesthesia services that were never provided or were grossly inflated and not defining or explaining the amounts charged and for each service provided under the 37x revenue code, constitute unfair business acts or practices within the meaning of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, in that the justification for Defendants’ conduct is outweighed by the gravity of the consequences to the general public.

149. Defendants have reasonably available alternatives to further their business interests other than by misleading Plaintiff and the Class about its billing practices under the 37x

1 revenue code. Indeed, the burden and expense of defining the amounts billed for each service  
2 under the 37x revenue code and explaining those charges or disclosing how it calculated the  
3 services provided under the 37x revenue code would be infinitesimal in comparison to the  
4 negative impact and injury to Plaintiff and the Class.

5 150. Plaintiff and members of the Class could not have reasonably avoided injury  
6 because, as more fully described above, Defendants' scheme is designed to keep Plaintiff and the  
7 Class from knowing they were improperly charged an inflated cost for anesthesia services under  
8 the 37x revenue code and to keep Plaintiff and the Class from discovering that they will be or  
9 were charged grossly inflated anesthesia services or anesthesia services that were never actually  
10 provided by Defendants.

11 151. Defendants' failure to disclose these facts, coupled with their restrictive auditing  
12 agreements with PPOs and HMOs made it nearly impossible for Plaintiff and the Class to know  
13 how much they actually paid for each anesthesia service captured by the 37x revenue code.

14 152. Plaintiff and the Class were never in a position to avoid injury, due to  
15 Defendants' active concealment of material information, and Plaintiff and the Class became  
16 trapped between paying the higher 37x revenue code charges, on the one hand, and continuing  
17 their legal obligation to pay for their members' healthcare costs on the other.

18 153. The practice of not defining the amounts charged for each anesthesia service  
19 provided in the 37x revenue code deceives Plaintiff and the Class into paying for services that  
20 were never rendered or the value of which was grossly inflated, which is contrary to public  
21 policy, immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers.

22 154. Defendants' conduct has violated statutory and common law and the policy and  
23 spirit of California's statutory law including, but not limited to, California Insurance Code  
24 section 1871(h), and significantly harmed Plaintiff and the Class.

25 155. Plaintiff and the Class have suffered injury in fact and have lost money as a  
26 result of Defendants' unfair competition and violations of law in that they paid Defendants for  
27 services that were never rendered or were grossly inflated; they would not have agreed to pay

1 Defendants had they known that Defendants were mischarging them; and they are therefore  
2 entitled to the relief available under Business and Professions Code §§17200, et seq., as detailed  
3 herein.

4 **IX. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment and relief against Defendants and each of  
6 them as follows:

7 A. That the Court certify and maintain this action as a class action and certify the Class  
8 defined above;

9 B. That the Court declare that Defendants' conduct, as detailed above, violates the law,  
10 and permanently enjoin Defendants from engaging in the conduct;

11 C. That the Court award Plaintiff and the Class the costs to investigate and prosecute  
12 this lawsuit, and reasonable attorneys' fees and expenses as authorized by law, including pursuant  
13 to California Code of Civil Procedure § 1021.5;

14 D. That the Court award pre-judgment and post-judgment interest at the legal rate;

15 E. That the Court award equitable monetary relief, including restitution of all ill-gotten  
16 proceeds, and the imposition of a constructive trust upon Defendants, or otherwise restrict  
17 Defendants from transferring ill-gotten funds to ensure that Plaintiff and Class Members have an  
18 effective remedy;

19 F. That the Court award restitution sufficient to prevent Defendants from being  
20 unjustly enriched at the expense of Plaintiff and the Class and to provide for return of the funds  
21 Defendants unjustly obtained from Plaintiff and the Class as alleged herein; and

22 G. Afford such other and further legal and equitable relief as this Court may deem just  
23 and proper.

24 **X. JURY DEMAND**

25 Plaintiff demands a trial by jury on all causes of action so triable.

26  
27 Respectfully submitted,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

HAUSFELD LLP

Dated:      October \_\_, 2024

/s/ Arthur N. Bailey, Jr.  
Christopher L. Lebsock (Bar No. 184546)  
clebsock@hausfeld.com  
Arthur N. Bailey, Jr. (Bar No. 248460)  
abailey@hausfeld.com  
Bruce J. Wecker (Bar. No. 78530)  
bwecker@hausfeld.com  
Tae Kim (Bar No. 331362)  
tkim@hausfeld.com  
600 Montgomery St., Suite 3200  
San Francisco, CA 94111  
(415)633-1908  
  
*Attorneys for Plaintiff District Council #16  
Northern California Health and Welfare Trust  
Fund and the Class*

**APPENDIX A**

Settlement and Release Agreement by Anthem and Sutter (effective April 26, 2011)  
(SHDC00698238)

Settlement and Release Agreement by Anthem and Sutter (effective January 1, 2012)  
(SHDC00698243)

Settlement and Release Agreement by Anthem and Sutter (effective September 8, 2014)  
(SHDC00698252)

Settlement and Release Agreement by Anthem and Sutter (effective October 31, 2014)  
(SHDC00698455)

Settlement and Release Agreement by Sutter and Anthem (effective November 14, 2016)  
(SHDC00698491) [includes Sutter revocation of underpayment release provision]

Settlement and Release Agreement by Sutter and Anthem (effective March 9, 2017)  
(SHDC00698499) [includes Sutter revocation of underpayment release provision]

Settlement and Release Agreement by Aetna and Sutter (countersigned July 14, 2010)  
(SHDC00698224)

Settlement and Release Agreement by Aetna and Sutter (effective April 5, 2013)  
(SHDC00698228)

Settlement and Release Agreement by Sutter and Aetna (effective December 31, 2015)  
(SHDC00698468)

Settlement and Release Agreement by Blue Shield and Sutter (effective January 6, 2012)  
(BSCA\_025327)

Settlement and Release Agreement by Blue Shield and Sutter (effective March 6, 2013)  
(SHDC00698313)

Settlement and Release Agreement by Blue Shield and Sutter (effective January 30, 2014)  
(SHDC00698442)

Settlement and Release Agreement by Blue Shield and Sutter (effective April 18, 2014)  
(SHDC00698448)

Settlement and Release Agreement by Sutter and Blue Shield (effective November 15, 2017)  
(SHDC00698195)

Settlement and Release Agreement by Sutter and Blue Shield (effective February 15, 2018)  
(SHDC00698186)

Settlement and Release Agreement by and between Sutter and Cigna (effective July 13, 2015)

1 (SHDC00698204)

2 Settlement and Release Agreement by PacifiCare and Sutter (effective November 28, 2005)  
3 (SHDC00698383)

4 Settlement and Release Agreement by PacifiCare and Sutter (effective May 26, 2006)  
5 (SHDC00698430)

6 Settlement and Release Agreement by PacifiCare and Sutter (effective August 10, 2006)  
7 (SHDC00698387)

8 Settlement and Release Agreement by United/PacifiCare and Sutter (effective December 7,  
9 2008) (SHDC00698405)

10 Settlement and Release Agreement by United/PacifiCare and Sutter (effective June 7, 2010)  
11 (SHDC00698219)

12 Settlement and Release Agreement by Sutter and United (effective November 2, 2016)  
13 (SHDC00698485) [includes Sutter revocation of underpayment release provision]