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UFCW & Employers Benefit Trust

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UFCW & Employers Benefit Trust, on behalf of itself and all others similarly situated,

Plaintiffs,

vs.

Sutter Health; Sutter East Bay Hospitals; Sutter West Bay Hospitals; Eden Medical Center; Sutter Central Valley Hospitals; Mills-Peninsula Health Services; Sutter Health Sacramento Sierra Region; Sutter Coast Hospital; Palo Alto Medical Foundation for Healthcare, Research and Education; and Sutter Medical Foundation,

Defendants.

CLASS ACTION COMPLAINT FOR VIOLATIONS OF: THE CARTWRIGHT ACT (BUS. & PROF. CODE §16720 *et seq.*); UNFAIR COMPETITION LAW (BUS. & PROF. CODE §17200 *et seq.*)

Jury Trial Demanded

CGC 14-538451

Plaintiff UFCW & Employers Benefit Trust (**"UEBT"**), on behalf of itself and all others similarly situated, brings this civil action against defendant Sutter Health and its affiliates (**"Sutter"**) for violations of California's Cartwright Act and Unfair Competition Law. Plaintiff UEBT demands a jury trial of all claims that properly can be tried thereby, and alleges the following on information and belief:

I. INTRODUCTION

1. Over the past several decades, rising healthcare costs have placed an enormous economic burden on citizens and businesses throughout Northern California and the rest of the United States. Healthcare spending in the United States accounts for nearly 18 percent of the gross domestic product -- a percentage that is at least 50 percent higher in the United States than any other developed nation, and growing.

2. A substantial portion of the high cost of healthcare in Northern California is directly attributable to the illegal, anticompetitive conduct of Sutter -- a large multi-market healthcare system with 27 state-licensed hospitals throughout the region. Sutter's illegal conduct has resulted in inflated prices that far exceed the prices its hospitals could charge in a free, competitive market.

3. Millions of people employed in Northern California, and often their dependents, are enrolled, as a benefit of employment, in group health plans that pay for the medical services and healthcare products they require (**"Health Plans"**). Each Health Plan allows its individual enrollees (**"Health Plan Enrollees"**) to obtain healthcare services and ancillary products from a select group of hospitals, medical practices, and other healthcare facilities (together, **"Healthcare Providers"**) at established rates.

4. Sometimes those healthcare benefits are funded directly by the Health Plan Enrollee's employer (the **"Employer"**). Sometimes the healthcare benefits are funded instead through a trust that is established and maintained under the terms of a collective bargaining agreement between a labor union and one or more Employers (a **"Healthcare Benefits Trust"**). Plaintiff UEBT is, among other things, a Healthcare Benefits Trust established and maintained by the largest unionized grocery companies in California for the purpose of providing Health Plans and other employment benefits to workers in the retail food industry and their dependents.

5. Each Health Plan has a network of Healthcare Providers that collectively provide Health Plan Enrollees with reasonable access to the eligible healthcare services and ancillary products they are likely to require (a **"Provider Network"**).

6. There is a small group of specialized companies that possess the expertise necessary to develop and assemble Provider Networks that will be useful to all of the people enrolled in the Health Plans offered by a variety of Employers and Healthcare Benefits Trusts operating in a variety of locations in Northern California (**"Network Vendors"**).

7. Network Vendors are in the business of assembling Provider Networks and negotiating the prices for the services and products sold by the Healthcare Providers that are included in those networks. The Network Vendors then offer Employers and Healthcare Benefits Trusts access to the Provider Networks they have created so that, in turn, the Employers and Healthcare Benefits Trusts may offer healthcare coverage to their Health Plan Enrollees as a benefit of employment. The Network Vendors operating in Northern California include such companies as Blue Shield of California, Anthem Blue Cross, Aetna, CIGNA, Health Net and United Healthcare.

8. Many Employers and Healthcare Benefits Trusts prefer to pay Healthcare Providers for their services and products out of their own funds (**"Self-Funded Payors"** also known as "self-insured entities"). Self-Funded Payors enter into contracts with Network Vendors to obtain access to their pre-assembled Provider Networks. Often they also purchase specified Health Plan administrative services from the chosen Network Vendor.

9. Plaintiff UEBT and each member of the proposed class is a Self-Funded Payor. Over 35 percent of California's workers now receive healthcare benefits for themselves—and often their dependents—through Self-Funded Payors.

10. Some Employers and Healthcare Benefits Trusts prefer to purchase a healthcare insurance policy (**"Commercial Healthcare Insurance"**) on behalf of their Health Plan Enrollees, often from a Network Vendor that also is in the business of selling insurance coverage (a **"Commercial Insurance Company"**). Thereafter, the Commercial Insurance Company is solely responsible for paying the costs of healthcare services and products that are covered by the Commercial Healthcare Insurance. Employers and Healthcare Benefits Trusts that purchase

Commercial Healthcare Insurance make regular insurance premium payments to a Commercial Insurance Company to obtain a risk avoidance product that insulates them from any liability to Healthcare Providers for the cost of the healthcare services and ancillary products utilized by their Health Plan Enrollees.

11. Regardless of whether healthcare benefits are provided to Health Plan Enrollees in the form of payments to Healthcare Providers out of the funds of a Self-Funded Payor or in the form of a Commercial Healthcare Insurance policy that makes the necessary payments to the Healthcare Providers, the prices charged by a hospital Healthcare Provider will be the prices that were previously established through negotiations between the hospital and the Network Vendor. Those negotiations begin with the hospital's list of undiscounted prices for all of the healthcare services and ancillary products the hospital offers (the **"Chargemaster"**). The Network Vendor then negotiates simplified pricing arrangements that generally result in pricing that is significantly lower than the undiscounted prices listed in the hospital's Chargemaster. Instead of agreeing to the separate individual prices for each item included on the Chargemaster, the Network Vendors negotiate formulas for determining lower reimbursement rates for broad categories of services and products.

12. The substantially higher prices for each individual item listed on the hospital's Chargemaster usually are charged only when a patient utilizes a hospital that is not part of the Health Plan's Provider Network or the patient is not enrolled in a Health Plan. The differences between the prices listed in the Chargemaster for each Sutter hospital and the lower reimbursement rates offered to Network Vendors that include Sutter hospitals in their Provider Networks are extraordinarily large and the amount of those differences are not related to any greater efficiency that Sutter could obtain through inclusion in a network. Instead, Sutter's extraordinarily high Chargemaster pricing is intended to economically punish any Health Plan that does not include all of Sutter's hospitals in its Provider Network.

13. The creation of Health Plans that are sufficiently comprehensive to address the healthcare needs of a variety of Health Plan Enrollees and sufficiently useful to a variety of Employers and Healthcare Benefits Trusts operating in different locations requires Network Vendors to contract with numerous Healthcare Providers and negotiate reduced, simplified pricing that will apply to all of

the healthcare services and products they offer.

14. Since at least 2002, Sutter has compelled all, or nearly all, of the Network Vendors operating in Northern California to enter into unduly restrictive and anticompetitive written Healthcare Provider agreements that have:

- Established, increased and maintained Sutter's power to control prices and exclude competition;
- Foreclosed price competition by Sutter's competitors; and
- Enabled Sutter to impose prices for hospital healthcare services and ancillary products that far exceed the prices it would have been able to charge in an unconstrained, competitive market.

15. The impetus for including anticompetitive terms in the agreements between Sutter and the Network Vendors comes entirely from Sutter. In many respects, the anticompetitive terms harm the Network Vendors that are compelled to agree to them. The offending terms constrain the types of Provider Networks the Network Vendors can offer to their customers and severely limit the ability of Network Vendors to promote price competition among hospitals. Moreover, because most Network Vendors also sell Commercial Healthcare Insurance, the higher hospital prices that result from the anticompetitive terms also will be borne by the Network Vendors when the enrollees in their Commercial Healthcare Insurance plans choose Sutter hospitals as their Healthcare Providers. No Network Vendors would have agreed to the offending contract terms if Sutter did not insist upon them. However, after weighing the harm they would sustain from inclusion of the offending terms against the harm they would sustain by excluding all Sutter hospitals from their Provider Networks, each Network Vendor has been compelled to agree to Sutter's terms.

16. Sutter exerts control over the sale of hospital healthcare services and ancillary products in Northern California through the anticompetitive terms of its contracts with the Network Vendors. Sutter has the power to impose those anticompetitive contract terms because there are geographic markets for hospital healthcare within Northern California where Sutter either owns the only general acute care hospital or controls a large enough share of the general acute care hospital business that it would be impossible to assemble a viable healthcare Provider Network in those markets without

including the Sutter hospitals that are located there. Sutter's market power in those specific geographic markets is magnified by the disruption that would be caused to any Health Plan that is forced to simultaneously exclude all 27 Sutter hospitals from its Provider Network. Sutter uses its resulting economic power to compel acceptance of anticompetitive contract terms that are applied to all geographic markets in Northern California.

17. The success of Sutter's illegal efforts to inflate its prices above competitive levels is clear. For example, in San Francisco, where Sutter has large, high-quality, well-funded, and prestigious hospital rivals, Sutter's hospital healthcare prices have exceeded some of its competitors' prices by as much as 56% or more. Moreover, because of Sutter's higher prices throughout Northern California, the cost of an overnight hospital stay in San Francisco or Sacramento has exceeded the cost of an overnight hospital stay in the more competitive Los Angeles area by at least 38%, even after Sutter's higher prices are averaged with its lower-priced Northern California rivals and any legitimate business cost differences between the geographic regions are factored out of the price comparison.

18. There is no plausible explanation for Sutter's persistent ability to so thoroughly immunize itself from price competition other than the illegal and anticompetitive conduct described in this complaint.

19. Plaintiff UEBT, and each member of the proposed class, has a self-funded healthcare plan that requires them to pay Sutter and other Healthcare Providers directly for most or all of the healthcare services and products utilized by their Health Plan Enrollees. The anticompetitive agreements that Sutter imposes upon the Network Vendors leave plaintiff UEBT, and all other entities that are similarly situated, with no alternative other than to pay Sutter's illegally inflated prices. Those contracts make it impossible for members of the plaintiff class to offer their Health Plan Enrollees a Provider Network that substitutes the hospital services of high-quality, but lower-priced, hospital competitors for the more costly services provided at Sutter's hospitals. Sutter's illegal contracts also expressly prohibit any effort to incentivize Health Plan Enrollees to choose a lower-priced hospital over a competing Sutter hospital.

20. Specifically, Sutter has successfully demanded that all, or nearly all, of its written or oral contracts with the Network Vendors include:

a. An anticompetitive agreement that if a Sutter hospital at any location is included in the Health Plan's Provider Network, then all Sutter hospitals throughout Northern California also must be included in the Provider Network. Sutter thereby abuses its market power in some geographic areas to force Health Plans to include all Sutter hospitals in their healthcare Provider Networks -- even the Sutter hospitals that are located in areas where it would be far less costly to assemble a Provider Network using Sutter's lower-priced competitors instead of Sutter;

b. An anticompetitive agreement that prohibits anyone offering access to a Provider Network from giving incentives to patients that encourage them to utilize the healthcare facilities of Sutter's competitors -- even when those competitors offer higher quality healthcare and/or lower pricing; and

c. An anticompetitive agreement that Sutter's inflated prices for its hospital healthcare services and ancillary products may not be disclosed to anyone before the service or product is utilized and billed. The inflated hospital pricing in Sutter's agreements with the Network Vendors is thereby concealed from everyone else -- including the plaintiff class members that ultimately will have to pay those prices.

21. Each of Sutter's anticompetitive contract terms works in combination with the others to mutually reinforce and enhance their collective anticompetitive effects. Together, they allow Sutter to leverage its market power in certain Northern California local markets to illegally create and/or enhance market power in other local markets. They also create barriers to entry and expansion by existing and potential general acute care hospital competitors in each of the geographic markets where Sutter's hospitals are located. Those barriers are utilized by Sutter to illegally maintain and increase its market power in each of those locations.

22. Because of Sutter's anticompetitive contract terms, patients have no ability and little or no incentive to choose a high-quality competing hospital over Sutter's hospitals based upon the competing hospital's lower prices. Sutter thereby gains the power to illegally insulate itself from the

price competition that otherwise would be present in an unfettered free market. As a result, Sutter's competitors cannot effectively compete based on price, allowing Sutter to charge and maintain prices at levels that are significantly higher than the prices presently charged by its high-quality Northern California hospital competitors and substantially higher than the prices that could be charged in a competitive market that is unconstrained by Sutter's illegal conduct. Collectively, Sutter's anticompetitive contract terms unreasonably restrain price competition among general acute care hospitals in Northern California and enable Sutter to price its hospital healthcare services and ancillary products at artificially inflated levels.

23. Sutter's illegally inflated pricing has had a negative economic impact on the entities that directly pay for Sutter's hospital healthcare services and ancillary products and has caused substantial damage to each of them — including plaintiff UEBT and each member of the proposed class of similarly situated entities that self-fund the healthcare coverage they provide to their Health Plan Enrollees.

24. This lawsuit seeks to enjoin Sutter's anticompetitive agreements and practices, and to secure compensation, including treble damages, interest, restitution, disgorgement of improper monetary gains, and attorneys' fees and costs, for plaintiff UEBT and the entire class of entities described below that have been harmed by the anticompetitive effects of Sutter's illegal agreements and practices.

II. JURISDICTION AND VENUE

25. This action is brought under the Cartwright Act, Cal. Bus. & Prof. Code § 16720, *et seq.* and California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.* to recover damages and to obtain injunctive and other equitable relief for injury that plaintiff UEBT and the other members of the class have sustained due to Sutter's unlawful conduct, as hereinafter alleged.

26. This Court has personal jurisdiction over the defendants because each of them does business in the state of California, and the claims asserted herein arise from conduct occurring in California.

27. Venue is proper in the City and County of San Francisco, because some, if not all, defendants do business in San Francisco.

28. Venue is further proper in the City and County of San Francisco, because acts giving rise to the claims asserted herein were committed in San Francisco.

III. THE PARTIES

A. The Plaintiffs

29. Plaintiff UEBT is a Taft-Hartley Act Trust established by Northern California's largest unionized grocery companies over 50 years ago (under a different name) pursuant to Section 302(c)(5) of the Labor-Management Relations Act of 1947 (29 U.S.C. 186(c)(5)) for the purpose of providing benefits (including hospital and other medical care) to Northern California members of the United Food and Commercial Workers union (**"UFCW"**) and their dependents. Headquartered at offices located in Walnut Creek and Roseville, California, UEBT is managed by a Joint Board of Trustees, which includes representatives, with equal voting power, from the contributing retail food industry employers and the participating labor union locals. Among other benefits, UEBT provides group Health Plans to employees covered by collective bargaining agreements between the UFCW union locals in Northern California and the employers of UFCW's members.

30. During the entire period that is relevant to the legal issues raised in this action, UEBT has employed self-funded Health Plans that are required to provide funds to pay Sutter and other Healthcare Providers for the cost of the healthcare services and products utilized by its Health Plan Enrollees. Consequently, for many years UEBT has been, and remains, a direct purchaser of hospital healthcare services and ancillary products from Sutter's acute care hospitals, as well as other Healthcare Providers.

31. UEBT's current self-funded health plans are serviced by Blue Shield of California, which is paid on a per capita basis for certain administrative services and for access to the Provider Network assembled by Blue Shield. During past years relevant to this action, UEBT's self-funded Health Plans were serviced by Blue Cross of California and Interplan Health Group, which also allowed access to their Provider Networks.

32. At the present time there are over 60,000 enrollees in UEBT's self-funded Health Plans, including current employees, retirees, and their dependents. Enrollees live and work throughout Northern California, in an area stretching from the Pacific Coast east to the Nevada border and from

the Oregon border south at least as far as Fresno and other portions of the California Central Valley. UEBT's self-funded Health Plan Enrollees have previously obtained and will continue to obtain healthcare services and products from hospitals throughout the region, including the acute care hospitals owned by Sutter.

33. During every year over at least the past decade, UEBT has paid millions of dollars to Sutter for general acute care hospital healthcare services and ancillary products that Sutter provided to patients who receive healthcare benefits through UEBT's self-funded Health Plan. As described in this complaint, Sutter's anticompetitive conduct allowed Sutter to charge UEBT unlawfully inflated prices for those services and ancillary products.

34. UEBT brings this action on behalf of itself and a large class of other entities that are similarly situated, as defined more specifically below.

B. The Defendants

35. Sutter Health is a non-profit corporation, organized and existing under the laws of the State of California, with its principal place of business located in Sacramento, California. Sutter was incorporated in California in September 1981.

36. Sutter is the largest and most dominant healthcare provider in Northern California. It has a chain of at least 27 separately licensed hospitals; physicians' organizations with more than 5,000 members; medical research facilities; region-wide home health, hospice, and occupational health networks; and long-term care centers. It has over 47,000 employees and controls nearly 5,400 acute care and nursing facility beds.

37. Sutter initially achieved market power in particular geographic areas through a campaign of mergers and acquisitions beginning in the 1990s. Several of its current combined hospital facilities have multiple campuses assembled as a result of Sutter's prior acquisition of formerly independent hospitals.

38. Sutter has sustained and increased its market power through the illegal conduct described below. Sutter's website acknowledges that over 100 formerly independent Northern California hospitals have had to close their doors during the past decade.

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39. In its 2011 Annual Report, Sutter reported over $6.5 billion in net assets, including over $4.3 billion in cash and marketable securities.

40. In its 2012 Financial Results, Sutter reported operating revenues exceeding $9.5 billion—up nearly $500 million in just one year. Sutter's 2012 income was $735 million, up more than $100 million from the prior year.

41. Sutter is the largest provider of general acute care hospital services and ancillary products in Northern California. In 2012, Sutter had over 206,000 hospital discharges, over 798,000 emergency room visits, and over 10,310,000 outpatient visits.

42. Sutter provides healthcare services to individuals in more than 100 Northern California cities within the following counties: Yolo, Sutter, Yuba, Nevada, Placer, El Dorado, Amador, Sacramento, Solano, San Joaquin, Stanislaus, Merced, Contra Costa, Alameda, Santa Clara, Santa Cruz, San Francisco, San Mateo, Lake, Napa, Sonoma, Del Norte, and Marin.

43. Sutter Health directly owns or controls at least the following hospitals: Sutter Delta Medical Center, Alta Bates Medical Center, Summit Medical Center, Sutter Maternity and Surgery Center of Santa Cruz, Sutter General Hospital, Sutter Memorial Hospital in Sacramento, Sutter Auburn Faith Hospital, Sutter Roseville Medical Center, Sutter Davis Hospital, Sutter Solano Medical Center, Sutter Medical Center of Santa Rosa, Sutter Novato Community Hospital, Sutter Lakeside Hospital, and Sutter Amador Hospital.

44. Sutter controls other hospitals in its Northern California network through a web of affiliated, non-profit, California corporations that operate, and in some cases, directly own the hospitals. Defendant Sutter Health has the power and authority to directly or indirectly control each of these affiliated corporations:

45. Defendant Sutter East Bay Hospitals is a California non-profit corporation that operates Sutter Delta Medical Center, Alta Bates Medical Center and Summit Medical Center. Its principal place of business is located in Oakland, California.

46. Defendant Sutter West Bay Hospitals is a California non-profit corporation that operates and directly owns or controls the California Pacific Medical Center East Campus Hospital, California Pacific Medical Center West Campus Hospital, St. Luke's Hospital, Davies Hospital and

Pacific Hospital. It also operates Sutter Novato Community Hospital, Sutter Medical Center of Santa Rosa, and Sutter Lakeside Hospital. Its principal place of business is located in San Francisco, California.

47. Defendant Eden Medical Center is a California non-profit corporation that operates and directly owns or controls the Sutter Eden Medical Center. Its principal place of business is located in Castro Valley, California.

48. Defendant Sutter Central Valley Hospitals is a California non-profit corporation that operates and directly owns or controls Sutter Memorial Medical Center in Modesto, Sutter Memorial Hospital in Los Banos, and Sutter Tracy Community Hospital. Its principal place of business is located in Modesto, California.

49. Defendant Mills-Peninsula Health Services is a California non-profit corporation that operates and directly owns or controls Mills-Peninsula Medical Center. It also operates Menlo Park Surgical Hospital, and Sutter Maternity and Surgery Center of Santa Cruz. Its principal place of business is located in Burlingame, California.

50. Defendant Palo Alto Medical Foundation for Healthcare, Research and Education is a California non-profit corporation that directly owns or controls Menlo Park Surgical Hospital. Its principal place of business is in Palo Alto, California.

51. Defendant Sutter Health Sacramento Sierra Region is a California non-profit corporation that operates Sutter Amador Hospital, Sutter Auburn Faith Hospital, Sutter Davis Hospital, Sutter General Hospital, Sutter Memorial Hospital in Sacramento, Sutter Roseville Medical Center, and Sutter Solano Medical Center. Its principal place of business is located in Sacramento, California.

52. Defendant Sutter Coast Hospital is a California non-profit corporation that operates and directly owns or controls Sutter Coast Hospital. Its principal place of business is located in Crescent City, California.

53. Defendant Sutter Medical Foundation is a California non-profit corporation that operates and directly or indirectly owns or controls Sutter Surgical Hospital, North Valley. Its principal place of business is located in Sacramento, California.

IV. HOSPITAL HEALTHCARE IN NORTHERN CALIFORNIA

54. There are at least two contractual arrangements that must be in place before any prospective patient is able to utilize a particular hospital as an in-network, healthcare employment benefit:

- A Network Vendor must agree to include the hospital in its Health Plan Provider Network at pricing levels established through contract negotiations between the hospital and the Network Vendor.
- The patient's Employer or Healthcare Benefits Trust must contract for access by its Health Plan Enrollees to the Network Vendor's previously assembled Provider Network.

55. Thereafter, as medical needs arise, Health Plan Enrollees must select the hospital from which they want to obtain the needed healthcare services and products.

56. The unique mechanics of the healthcare market provide an opportunity for hospital conglomerates with significant market power to illegally restrain trade through unduly restrictive agreements with Network Vendors. By requiring Network Vendors to sign contracts that are designed to interfere with the formation of competitive Provider Networks, restrict the incentives that Health Plans can offer their enrollees and restrain price competition, a powerful hospital chain like Sutter can improperly limit the ability of rival hospitals to effectively compete and can thereby exert control over the hospital prices paid by Employers and Healthcare Benefits Trusts.

A. The Formation of Health Plans and Provider Networks

57. Employers and Healthcare Benefits Trusts lack the expertise, personnel, and resources necessary to assemble Provider Networks that are sufficiently broad and geographically dispersed to address all of the expected medical needs of their Health Plan Enrollees. The vast majority of Employers and Healthcare Benefits Trusts also lack the expertise, experience, personnel and resources necessary to effectively negotiate pricing for all of the healthcare services and products that are likely to be needed by their Health Plan Enrollees. Moreover, it would be economically inefficient and financially unfeasible for each Employer and Healthcare Benefits Trust to obtain the expertise, personnel, and resources necessary to separately assemble their own Healthcare Provider Networks

and individually negotiate pricing. Hence, Employers and Healthcare Benefits Trusts do not negotiate prices and terms with the Healthcare Providers directly. Instead, they must rely upon Network Vendors that have developed expertise in creating comprehensive Provider Networks and negotiating pricing for all of the services and products sold by the Healthcare Providers included in those networks.

58. A Network Vendor's Provider Network will not be useful to Health Plan Enrollees, and therefore will not be commercially viable, unless it covers all of the geographic areas where the Health Plan's Enrollees are likely to need healthcare services. At a minimum, this includes all of the local areas where the Health Plan Enrollees live and work.

59. If there are geographic areas where a Network Vendor's Provider Network does not provide access to needed medical services, the network will not be attractive to Employers and Healthcare Benefits Trusts whose Health Plan Enrollees live or work in those geographic areas.

60. In areas where there are multiple hospitals with sufficient existing or potential capacity, a Network Vendor should be able to assemble a viable Provider Network that includes some, but not all, of those hospitals. In those locations, a Network Vendor would have the ability to assemble a more attractive, cost-efficient Provider Network by excluding a particularly expensive hospital to reduce the total cost of healthcare offered through its Provider Network. Under those circumstances, the particularly expensive hospital would have an incentive to respond to the price competition by lowering its prices.

61. Conversely, in local areas where one hospital has an overwhelming share of the market, every Network Vendor would need that hospital in its Provider Network in order to offer Employers and Healthcare Benefits Trusts a commercially viable Health Plan.

B. The Selection of Provider Networks by Employers and Healthcare Benefits Trusts

62. Employers and Healthcare Benefits Trusts are able to obtain access to a Provider Network for their workers in one of two ways:

a. **Commercial Healthcare Insurance**: Some Employers and Healthcare Benefits Trusts prefer to purchase a risk avoidance product and, therefore, obtain a Commercial Healthcare Insurance policy that provides access to a Provider Network but allows them to avoid all responsibility for the risk that healthcare

costs for their Health Plan Enrollees will exceed their projections. Employers and Healthcare Benefits Trusts that prefer to purchase a Commercial Healthcare Insurance product, choose among the insurance policies offered through competing Commercial Insurance Companies by comparing the insurance premiums charged by different competitors. The Commercial Insurance Company profits (often substantially) if healthcare expenses are less than the Commercial Healthcare Insurance premiums that are paid for the purchase of the healthcare insurance policy. However, the Commercial Insurance Company also bears the risk that healthcare costs will exceed the Commercial Healthcare Insurance premiums paid. Either way, when Employers or Healthcare Benefits Trusts purchase a healthcare insurance product from a Commercial Insurance Company, they do not buy healthcare services and products from the Healthcare Providers.

b. **Self-Funded Payors**: Some Employers and Healthcare Benefits Trusts prefer to avoid the extra cost of purchasing an insurance policy and, therefore choose to purchase healthcare services and products directly from Healthcare Providers and pay for them out of their own funds. Those Employers and Healthcare Benefits Trusts proceed as Self-Funded Payors because they are willing to bear the risk that healthcare costs for their Health Plan Enrollees will exceed their expectations. They contract with a Network Vendor for access to the Healthcare Providers in the vendor's Provider Network as well as the associated pricing that was previously negotiated by the Network Vendor. The healthcare costs that Self-Funded Payors will incur for the upcoming year cannot be determined until their Health Plan Enrollees actually utilize the healthcare they require. Hence, Self-Funded Payors select among the various Provider Networks available to them by comparing cost projections made by competing Network Vendors.

63. Self-Funded Payors do not shop for Provider Networks offered through competing Network Vendors by comparing the prices charged by participating Healthcare Providers for individual

healthcare services. Instead, they evaluate the projected total cost of providing their Health Plan Enrollees with access to the entire cluster of covered healthcare services and ancillary products that are available from each competing Provider Network under the simplified pricing formulas previously established in negotiations between the Network Vendors and the participating Healthcare Providers.

C. The Selection of Hospitals by Health Plan Enrollees

64. When Health Plan Enrollees obtain healthcare from a hospital that is included in their Health Plan's Provider Network (an **"In-Network Hospital"**), most or all of the hospital's charges are paid by the Self-Funded Payor (or Commercial Insurance Company) that provides the Health Plan. When Health Plan Enrollees obtain healthcare from a hospital that is not included in their Health Plan's Provider Network (an **"Out-Of-Network Hospital"**), a relatively small amount of the hospital charges are paid by the Self-Funded Payor (or Commercial Insurance Company) that provides the Health Plan, and the Health Plan Enrollees are obligated to pay the uncovered portion of the charges. In addition, when healthcare is obtained from an Out-Of-Network Hospital, the hospital's charges are generally billed at its full Chargemaster prices—not at the discounted in-network prices. As a result, Health Plan Enrollees have a considerable financial incentive to seek healthcare from an In-Network Hospital.

65. However, when choosing among the different hospitals that are included within their Health Plan's Provider Network, Health Plan Enrollees are largely insensitive to price differences between competing hospitals. This is because they often pay little or none of the cost of receiving care at In-Network Hospitals, and even large price differences between In-Network Hospitals often have little effect upon any amount the Health Plan Enrollees must pay. For example, a Health Plan Enrollee will generally pay the same out-of-pocket amount regardless of whether the total hospital bill is $20,000 or $30,000 or $100,000 or more.

66. Unless they are given significant incentives to consider price differences in making their selections of hospital Healthcare Providers, Health Plan Enrollees will choose among competing In-Network Hospitals largely on the basis of geographic proximity and other non-price factors.

67. Despite the initial apparent insensitivity of Health Plan Enrollees to differences in the prices charged for In-Network Hospital healthcare, Self-Funded Payors and Commercial Insurance

Companies have options they could employ to stimulate price competition in healthcare markets if they were not constrained by Sutter's illegal contracts. In geographic markets containing alternative hospitals with sufficient existing or potential capacity, Self-Funded Payors and Commercial Insurance companies could encourage price competition by simply utilizing Provider Networks that exclude any hospitals that charge supra-competitive prices. Alternatively, they could utilize a Provider Network that includes a wider variety of hospitals but financially incentivize their Health Plan Enrollees to choose the hospitals that offer the best economic value. For example, they could utilize a tiered network Health Plan to give Health Plan Enrollees a choice between a broader Provider Network that includes higher-priced hospitals at a greater out-of-pocket cost to the enrollee and a narrower Provider Network that excludes higher-priced hospitals but results in a lower out-of-pocket cost to the enrollee. Self-Funded Payors, Commercial Insurance Companies and Network Vendors in Northern California want to implement each of the options to encourage price competition that are described above.

68. Unfortunately, in Northern California, Sutter has found a way to illegally control price and severely limit competition by compelling Network Vendors to enter into contracts that improperly block any and all practical efforts to foster or encourage price competition between Sutter and its rival hospitals.

V. THE RELEVANT MARKETS

69. Judgment may be entered against Sutter for the illegal conduct described in this complaint without defining the particular economic markets that Sutter's conduct has harmed. Sutter's ability to impose anticompetitive contract terms in all, or nearly all, of its agreements with the Network Vendors and its ability to persistently charge supra-competitive prices to all of its customers are direct evidence of Sutter's market power that obviates any need for further analysis of competitive effects in particular defined markets. Moreover, market definitions are unnecessary because Sutter's anticompetitive behavior is a per se violation of the Cartwright Act.

70. Notwithstanding the foregoing, the markets that are relevant to the illegal conduct described in this complaint are properly defined as follows:

A. The Relevant Service/Product Market

71. The relevant market in this action is the cluster of general acute care hospital services,

and the ancillary products provided in connection with those services, that are made available for purchase, in whole or in part, out of the funds of Self-Funded Payors. The cluster of general acute care hospital services and ancillary products offered by each hospital includes a broad array of healthcare services and products connected to a variety of medical specialties. They are properly analyzed as a cluster of services and products because hospitals only offer group Health Plans access to them as a cluster and Network Vendors, Self-Funded Payors and Commercial Insurance Companies are required to contract for them as a cluster. Sutter and its hospital competitors generally do not offer separate contracts for each individual medical specialty, hospital service or ancillary product.

72. From the standpoint of an individual Health Plan Enrollee with a specific medical need at a given point in time, the different medical specialties generally are not substitutes for one another. However, those same individual Health Plan Enrollees require the Health Plans offered through their employment to provide access to the entire range of likely healthcare services and products they might need in the future. The Health Plans created in response to that demand must accommodate the potential healthcare needs of all enrollees.

73. The location of a hospital is an important factor to the vast majority of patients and Network Vendors in differentiating the service/product cluster offered by a local hospital from the service/product cluster offered by another hospital at a more distant location. For the same reason, Self-Funded Payors seeking to satisfy the demand from their Health Plan Enrollees for local hospital care do not view the service/product cluster offered by hospitals operating at distant locations to be substitutes for the service/product cluster offered by a local hospital. Therefore, the service/product cluster offered by each Sutter Health hospital is different than the cluster offered by more distant Sutter Health hospitals merely by virtue of their differing geographic locations.

74. The cluster of services and ancillary products that general acute care hospitals provide is significantly broader than the services provided by a facility that does not address acute medical problems as a substantial part of its business -- such as nursing homes and facilities focused primarily upon transitional care, long term psychiatric care, substance abuse treatment or rehabilitation services. Such specialty facilities are not viable substitutes for a hospital that offers general acute care hospital services and ancillary products. Hence, facilities that do not provide general acute care hospital

services among their primary services are not part of the relevant market.

75. All general acute care hospitals have the ability to provide healthcare services to patients that need to be admitted overnight for inpatient care. A Network Vendor's Provider Network will not be commercially viable if it does not include access to a sufficient number of hospitals that provide general acute care inpatient services and ancillary products. Self-Funded Payors and Commercial Insurance Companies could not practically offer such a network to their Health Plan Enrollees. Facilities that only offer out-patient care are not viable substitutes for a hospital that provides in-patient care when the medical problem requires an overnight stay. Therefore, general acute care hospitals do not view facilities that have no significant ability to provide in-patient hospital healthcare as meaningful competitors. Such facilities are properly excluded from the relevant market in this action.

76. All competitors in the relevant market sell general acute care hospital services and ancillary products through group Health Plans funded by Self-Funded Payors using Provider Networks developed by independent Network Vendors. Companies that sell Commercial Healthcare Insurance to Employers or Healthcare Benefits Trusts do not compete in the relevant market.

77. Hospitals that serve only military personnel and veterans also are excluded from the relevant market. These hospitals do not sell their healthcare services and products to the general public and do not permit independent Network Vendors to include them in their Provider Networks. They also will not allow independent Commercial Insurance Companies or Self-Funded Payors to include them in the Provider Networks they offer to their Health Plan Enrollees. In addition, the rates at which such hospitals are reimbursed for their services are established by government agencies. Those rates are not determined through competition with other hospitals. Thus, hospitals that serve only military personnel and veterans do not compete with Sutter and are not in the same market as Sutter.

78. Another system that is excluded from the relevant market is the sale of general acute care hospital services and products through government payors, which set the prices that, Healthcare Providers may charge. Government programs such as Medicaid, Medicare and TRICARE do not allow prices to be established by negotiation in a competitive market and therefore do not participate in the market that is relevant to this action.

B. The Relevant Geographic Markets

79. Patients generally seek general acute care hospital services and ancillary products in the local areas where they live and work and where their local physicians have admitting privileges. Generally, patients do not regard hospitals located many miles away from them as substitutes for local hospitals – particularly when they have little financial incentive to travel greater distances.

80. Recognizing the importance of consumer preferences for convenient hospital healthcare, regulations promulgated under California's Knox-Keene Health Care Service Plan Act of 1975, codified at California Health & Safety Code section 1340, *et seq.* (the Knox-Keene Act) require, among other things, that Health Maintenance Organization Health Plans offered by Commercial Insurance Companies must provide their enrollees with access to at least one hospital that is no more than 15 miles or 30 minutes of travel time from the enrollee's residence or workplace. California Code of Regulations § 1300.51(H)(ii). A hospital satisfies the Knox-Keene requirements for the region surrounding the hospital that is up to 15 miles away or within 30 minutes of travel time. Sutter Coast Hospital in Crescent City; Sutter Lakeside Hospital in Lakeport; and Sutter Memorial Hospital in Los Banos are the only hospitals within 15 miles or 30 minutes travel time of significant geographic regions where numerous Health Plan Enrollees live and work.

81. A Provider Network that does not satisfy patient demand for access to conveniently located hospitals will not be a commercially viable Provider Network for Network Vendors to offer to their Employer and Healthcare Benefits Trust customers. Hence, Network Vendors take patient tolerances for travel and their preferences for access to local hospitals into account when they decide whether or not to include a particular hospital in their Provider Networks.

82. The relevant geographic markets are those areas in which Health Plans must have one or more general acute care hospitals with sufficient capacity to reasonably handle the anticipated healthcare requirements of the Health Plan Enrollees located in the region. The need for a Health Plan to have a general acute care hospital in a particular location is driven primarily by the demand of Health Plan Enrollees living or working within the region. Hence, when Network Vendors assemble Provider Networks they attempt to determine the geographic regions within which Health Plan Enrollees can practically utilize alternative sources of general acute care hospital services and products.

83. Data showing patients' historical hospital utilization reflect their choices of competing hospitals based upon the options and incentives available to them. Patient choices among competing hospitals have been distorted by Sutter's insistence upon anticompetitive agreements with Network Providers that foreclose consideration of Sutter's inflated pricing as a significant factor in the patients' hospital selection process and such data may not fully capture the patient demand for particular hospital locations that would exist in a market unaffected by Sutter's anticompetitive conduct. Nevertheless, historical data concerning hospital utilization by patients are indicators of the geographic areas in which Health Plans and their enrollees have been willing to seek alternative sources of hospital healthcare in response to changes in hospital prices and quality over time.

84. Northern California hospital utilization data clearly indicate that over a significant period of changing prices, Health Plan Enrollees living or working in specific areas have been willing to choose primarily among hospitals located within identifiable geographic regions that each constitute a separate geographic market. The data show that Health Plan Enrollees living within the geographic vicinity of the hospital groupings described below overwhelmingly choose from among the hospitals in the group nearest to their residences or workplaces and rarely seek hospital healthcare outside of the geographic area where those local hospitals are found. Based upon the hospital utilization data currently available, but subject to further modification and refinement as more information is obtained through discovery about patient demand for hospitals at particular locations to be included in their Health Plan Provider Networks, plaintiffs allege that the relevant geographic markets are no larger than the regions in which the hospitals listed below are located (the "**Relevant Geographic Markets**"):

a. **The San Francisco Market**, which contains the following hospitals: Sutter California Pacific Medical Center ("CPMC") East; Sutter CPMC West; Sutter CPMC Davies; Sutter CPMC Pacific; Sutter CPMC St. Luke's; U.C. San Francisco Medical Center; St. Mary's Medical Center; St. Francis Memorial Hospital; Chinese Hospital; Laguna Honda Hospital; and San Francisco General Hospital.

b. **The San Francisco Peninsula Market**, which contains the following hospitals: Sutter Mills-Peninsula Medical Center; Sutter Menlo Park Surgical Hospital;

Seton Medical Center; Seton Medical Center, Coastside; San Mateo Medical Center; Mills Health Center; Sequoia Hospital; Lucile Packard Children's Hospital; and Stanford Hospital.

c. **The Inner East Bay Market**, which contains the following hospitals: Sutter Alta Bates Medical Center (including the Herrick Campus), Sutter Summit Medical Center; Doctor's Medical Center, San Pablo; Alameda County Medical Center, Highland Campus; Alameda Hospital; and Children's Hospital, Oakland.

d. **The Outer East Bay Market**, which contains the following hospitals: Sutter Delta Medical Center; Contra Costa Regional Hospital; John Muir Medical Center, Concord; and John Muir Medical Center, Walnut Creek.

e. **The Lower East Bay Market**, which contains the following hospitals: Sutter Eden Medical Center; San Leandro Hospital; Alameda County Medical Center, Fairmont Campus; Kindred Hospital, San Leandro; St. Rose Hospital; and Washington Hospital.

f. **The Santa Cruz Area Market**, which contains the following hospitals: Sutter Maternity and Surgery Center; Dominican Hospital; and Watsonville Community Hospital.

g. **The Tracy Area Market**, which contains the following hospitals: Sutter Tracy Community Hospital.

h. **The Greater Modesto Area Market**, which contains the following hospitals: Sutter Memorial Medical Center, Modesto; Oak Valley Hospital; Doctor's Medical Center, Modesto; Stanislaus Surgical Hospital; and Emanuel Medical Center.

i. **The Los Banos Area Market**, which contains the following hospitals: Sutter Memorial Hospital, Los Banos.

j. **The Central Sacramento Market**, which contains the following hospitals: Sutter General Hospital, Sacramento; Sutter Memorial Hospital, Sacramento;

Mercy General Hospital, Sacramento; U.C. Davis Medical Center, Sacramento; and Shriner's Hospitals for Children, Sacramento.

k. **The Northeast Sacramento Suburbs Market**, which contains the following hospitals: Sutter Roseville Medical Center; Mercy San Juan Medical Center; Mercy Hospital of Folsom; and Kindred Hospital, Folsom.

l. **The Auburn Region Market**, which contains the following hospitals: Sutter Auburn Faith Hospital and Sierra Nevada Memorial Hospital.

m. **The Yuba City Area Market**, which contains the following hospitals: Sutter Surgical Hospital, North Valley; Rideout Memorial Hospital; Fremont Medical Center.

n. **The West Sacramento Suburbs Market**, which contains the following hospitals: Sutter Davis Hospital and Woodland Memorial Hospital.

o. **The Greater Vallejo Area Market**, which contains the following hospitals: Sutter Solano Medical Center.

p. **The Santa Rosa Area Market**, which contains the following hospitals: Sutter Medical Center of Santa Rosa; Santa Rosa Memorial Hospital; Palm Drive Hospital; and Petaluma Valley Hospital.

q. **The San Rafael Area Market**, which contains the following hospitals: Sutter Novato Community Hospital; Marin General Hospital; and Kentfield Rehabilitation Hospital.

r. **The Lakeport Region Market**, which contains the following hospitals: Sutter Lakeside Hospital.

s. **The Jackson Area Market**, which contains the following hospitals: Sutter Amador Hospital and Mark Twain Medical Center.

t. **The Crescent City Area Market**, which contains the following hospitals: Sutter Coast Hospital.

85. Health Plan Enrollees living or working in the vicinity of the geographic areas described above are generally unwilling to consider a hospital located outside of their Relevant

Geographic Market as a viable substitute for hospitals located within their Relevant Geographic Market.

86. Network Vendors assembling Provider Networks for use by those Health Plan Enrollees are generally unwilling to consider a hospital outside of a particular Relevant Geographic Market as a viable substitute for the hospitals located within that Relevant Geographic Market.

87. Commercial Insurance Companies and Self-Funded Payors offering Health Plans to their Health Plan Enrollees are generally unwilling to consider a hospital outside of a particular Relevant Geographic Market as a viable substitute for the hospitals located within that Relevant Geographic Market.

88. Hence, a hypothetical monopolist controlling all of the general acute care hospitals within any of the Relevant Geographic Markets defined above, would be able to profitably impose a small, but significant, non-transitory price increase above the competitive level for its healthcare services and ancillary products.

89. Northern California hospital utilization data also show a large number of postal zip codes where Sutter has persistently maintained a share of more than 70% of the hospital patients living or working there. There are a significantly larger number of postal zip codes where Sutter has maintained more than a 60% share and an even larger number of postal zip codes where Sutter has maintained more than a 50% share. Sutter's high market shares within multiple geographic areas make it impossible, as a practical business matter, for Network Vendors to simultaneously eliminate all Sutter hospitals from their Provider Networks. The disruption caused by changing the hospital provider for such large numbers of Health Plan Enrollees in areas scattered throughout Northern California would destroy the commercial viability of the resulting Provider Network.

90. Network Vendors often consider a hospital that has a high market share across a significant geographic area, or unique consumer appeal, to be a "must have" hospital for their Provider Networks. There are several Sutter hospitals that are viewed by Network Vendors as "must have" hospitals.

91. If the Network Vendors were not restrained by the anticompetitive terms in their contracts with Sutter, they would be able to assemble more competitive, less costly, Provider Networks

by replacing Sutter hospitals with lower-priced competing hospitals in regions where patients do not require access to a Sutter hospital. Network Vendors might even be able to assemble commercially viable Provider Networks despite their exclusion of Sutter hospitals that have high market shares in a small number of less populated zip codes. However, because of Sutter's high market shares in a large number of zip code areas and the existence of certain "must have" Sutter hospitals, the Network Vendors are unable to assemble commercially viable Provider Networks that exclude all Sutter hospitals. Every Provider Network must contain at least some Sutter hospitals. However, as a direct result of Sutter's anticompetitive contracts, nearly every Provider Network is forced to include all of Sutter's hospitals.

VI. SUTTER'S MARKET POWER

92. Because of the anticompetitive terms in its contracts with the Network Vendors, Sutter has considerable market power within every market that is relevant to the claims described in this complaint. Each of Sutter's hospitals competes in a Relevant Geographic Market where it has been able to profitably impose and sustain at least a small but significant, non-transitory increase in price above the competitive price level. In other words, Sutter's significant, non-transitory increases in price above competitive price levels generally have not caused its hospitals to be excluded from Health Plans and have not caused Sutter's hospitals to lose enough patients to make the price increases unprofitable. Indeed, for many years, each of Sutter's hospitals has profitably imposed and sustained supra-competitive prices that are substantially higher than a competitive price level.

93. Sutter's ability to charge substantially higher prices than its competitors for the same services and products cannot be explained by legitimate market factors such as convenience or quality. In fact, Sutter's hospital competitors have reputations for high quality and good healthcare outcomes that generally equal or exceed the reputation for quality and healthcare outcomes at Sutter's hospitals within the same geographic markets. Nevertheless, Sutter has unlawfully obtained, maintained or enhanced the power to impose substantially higher prices for its hospital services and ancillary products.

94. There are significant barriers to entry into the hospital healthcare market. Building and staffing hospitals is expensive and hospital healthcare is highly regulated. However, it is Sutter's own

illegal conduct that presents the most effective barrier to entry. Because Sutter uses its market power to impose contractual restrictions that block efforts by Network Vendors, Commercial Insurance Companies and Self-Funded Payors to stimulate price competition, it has become virtually impossible for Sutter's more cost-effective rivals to effectively compete by offering lower prices.

95. Sutter's anticompetitive long term agreements with the Network Vendors make it virtually impossible for rival hospitals to gain any significant market share by providing customers with better value. Sutter's contractual restrictions hinder new entrants and existing competitors from successfully opening or expanding competing hospitals in geographic markets where Sutter currently has a substantial market share and, thereby, facilitate Sutter's illegal maintenance or enhancement of its economic power in those markets.

96. For example, Sutter Coast Hospital in Crescent City; Sutter Lakeside Hospital in Lakeport; Sutter Memorial Hospital in Los Banos; Sutter Amador Hospital in Jackson; Sutter Auburn Faith Hospital in Auburn; Sutter Tracy Hospital in Tracy; and Sutter Solano Hospital in Vallejo each have overwhelming market power in their Relevant Geographic Markets partly because they are the only hospitals with sufficient capacity within a reasonable distance of large portions of the geographic areas they serve (**"Sutter-Dominated Markets"**) and partly because of the anticompetitive terms of Sutter's contracts with the Network Vendors which maintain and enhance Sutter's existing market power. As a result, it is not possible to create a commercially viable Health Plan for enrollees living in the geographic markets served by those Sutter hospitals unless the Health Plan includes them in its Provider Network. A threat by Sutter to exclude the hospitals it owns in the Sutter-Dominated Markets from a Provider Network would be devastating to nearly every Network Vendor trying to assemble a commercially viable Provider Network for Health Plans serving those areas in Northern California.

97. Sutter enhances the market power it possesses in the Sutter-Dominated Markets through the substantial market shares it also has in many other Relevant Geographic Markets in Northern California. The disruption caused by a Sutter threat to exclude all of its hospitals throughout the region from a Provider Network would eliminate any such Provider Network as a commercially viable option for the vast majority of Health Plans available in Northern California.

98. Sutter has exploited its substantial market power to illegally tie each of its individual

hospitals to all of the other hospitals in its Northern California hospital network. Through its anticompetitive agreements with the Network Vendors, Sutter makes it impossible to substitute a high quality competing hospital in a Health Plan's Provider Network for a higher-priced Sutter hospital, in any geographic market served by a Health Plan without also losing access to all of Sutter's 26 other hospitals in Northern California. As a result of Sutter's conduct, members of the plaintiff class are forced to offer access to Sutter's higher-priced hospitals even in markets where there are more cost-effective competing hospitals. Class members are thereby forced to pay for more costly services and products they do not want to purchase.

99. Moreover, Sutter has obtained enormous market power to control price and exclude competition by contractually insulating itself from price competition. Sutter's contracts with the Network Vendors make it impossible to incentivize Health Plan Enrollees to choose a more cost-effective hospital competitor over a higher-priced Sutter hospital. Sutter thereby forecloses the ability of more cost-effective hospital rivals to compete with Sutter with lower prices and preserves Sutter's ability to charge supra-competitive prices to the detriment of each member of the plaintiff class. Sutter's persistent ability to charge supra-competitive prices, while simultaneously maintaining or growing its market share, provides direct evidence of Sutter's market power.

VII. SUTTER'S ANTICOMPETITIVE CONDUCT

100. Sutter has engaged in a number of acts and practices that have significant detrimental effects on competition in the sale and marketing of general acute care hospital healthcare services and products in Northern California. Collectively, these practices ensure that Sutter is immune from the forces of price competition and, as a result, can charge Self-Funded Payors and others significantly more than it could charge but for these practices. Because of Sutter's size and presence throughout Northern California, its supra-competitive prices cause a large regional reduction in price competition, resulting in market-wide hospital pricing above competitive levels in nearly every Northern California geographic market.

101. Beginning no later than 2003 and continuing until the present, Sutter has engaged in a single, continuous practice of repeatedly entering into anticompetitive agreements with the Network Vendors that offer Provider Networks through Self-Funded Payors or Commercial Insurance

Companies to Health Plan Enrollees living or working in Northern California. As those agreements expired, Sutter entered into extension or renewal agreements containing the identical or substantially similar anticompetitive terms. These agreements contain non-disclosure provisions that fraudulently conceal the anticompetitive terms of the agreements from those who are illegally harmed by them—including the Self-Funded Payors who bear the cost of the improperly inflated Sutter pricing that resulted from its agreements to unreasonably restrain trade. Rumors of the anticompetitive contracting practices described below were first publically disclosed during hearings before the San Francisco Board of Supervisors in April 2011 but Network Vendors were prevented from confirming those rumors for their customers by the non-disclosure provisions in Sutter's contracts with them. Sutter's fraudulent concealment has prevented Self-Funded Payors from discovering or confirming Sutter's misconduct, which could not have been discovered or confirmed earlier through the exercise of reasonable diligence.

102. Sutter utilizes punitively high Out-Of-Network Hospital Chargemaster pricing in combination with the anticompetitive provisions in its agreements with Network Vendors to make it economically unfeasible anywhere in Northern California for Network Vendors to choose high-quality, but lower-cost hospital competitors for inclusion in their Provider Networks instead of particular Sutter hospitals. The agreements between Sutter and the Network Vendors also make it virtually impossible to incentivize Health Plan Enrollees to choose lower-cost providers of general acute care hospital services and ancillary products. The terms of Sutter's agreements with the Network Vendors in Northern California illegally restrain trade by unfairly insulating Sutter's hospital services from competitive forces that normally discipline pricing in a free market and by imposing unlawfully inflated prices on every Commercial Insurance Company and on every Self-Funded Payor that have Health Plan Enrollees in Northern California. Hence, Sutter illegally controls prices and precludes price competition from high-quality, but lower-priced, hospital competitors through the agreements it makes with the Network Vendors.

103. Beginning no later than 2003, and continuing unabated through the present, Sutter has exploited its market power to compel Network Vendors operating in Northern California to enter into agreements with Sutter that unreasonably restrain trade through a variety of anticompetitive terms,

including, but not limited to, the contract terms described in the paragraphs below:

A. Sutter's All-or-Nothing Contract Terms

104. Sutter's written or oral agreements with Network Vendors in Northern California include terms collectively requiring every Health Plan that offers its enrollees the services and products available at any single Sutter hospital to also offer, through its Provider Network, the services and products available at every other Sutter hospital (**"All-or-Nothing Terms"**). Sutter imposes this requirement even though the prices charged at Sutter's hospitals are dramatically higher than the prices charged by general acute care hospitals competing with Sutter in the same Relevant Geographic Markets. Through its de facto All-or-Nothing Terms and the other agreement provisions described below, Sutter illegally ties the price-inflated services and products available at Sutter hospitals located in potentially more price competitive markets to its entire network of other hospitals (including the Sutter hospitals in Sutter-Dominated Markets) to force Self-Funded Payors and Commercial Insurance Companies to pay for services and products they do not want to offer their Health Plan Enrollees at prices that dramatically exceed the prices Sutter could charge absent the illegal tie.

105. In Relevant Geographic Markets where there are competing hospitals with sufficient existing or potential capacity it would be economically feasible to create lower-cost Provider Networks assembled entirely from the high-quality, lower-priced hospitals that compete with Sutter in those locations. Those cost-efficient Provider Networks then could be made available to Self-Funded Payors that would like to offer their Health Plan Enrollees high-quality healthcare at a much lower cost. Thereafter, Sutter would have to choose between lowering its prices to meet the competition of its more efficient rivals or maintaining its inflated pricing at the risk of losing business to its competitors.

106. Unfortunately, the All-or-Nothing Terms in Sutter's agreements with the Network Vendors make it impossible to assemble such lower-cost Provider Networks. Instead, Network Vendors are required to enter into contracts that include access to Sutter's higher-priced hospitals in the Provider Networks assembled for every geographic market in Northern California—even in markets where it otherwise would be feasible to assemble a Provider Network consisting entirely of Sutter's lower-priced hospital competitors. This prevents more cost-efficient Healthcare Providers from effectively competing with Sutter based on price.

107. By utilizing its All-or-Nothing Terms in combination with the other anticompetitive agreement terms described below, Sutter has improperly tied the sale of services and products at each of its individual hospitals to its entire network of hospitals in Northern California and has thereby illegally immunized itself from the discipline provided by price competition in a free market.

108. Sutter's use of its All-or-Nothing Terms and other anticompetitive agreement provisions to immunize itself from price competition also has provided it with the ability to illegally maintain its dominant market power and charge higher prices in the geographic markets like the Sutter-Dominated Markets where there are significantly fewer rival hospitals. By contractually making it impossible for a lower-priced competitor to be included in any commercially viable Provider Network as a substitute for a higher-priced Sutter hospital, the Sutter All-or-Nothing Terms make it futile for small hospital competitors in those geographic markets to compete by expanding the capacity of their hospitals to a level where they could displace Sutter in Provider Networks with hospitals that offer lower-priced services and products. Likewise, the All-or-Nothing Terms make it futile for competitors in adjoining geographic markets or other new entrants to attempt to compete where Sutter has substantial market power. As a result of its illegal All-or-Nothing Terms and the other anticompetitive agreement terms described below, Sutter can improperly charge dramatically inflated prices in all of the Relevant Geographic Markets without fear that its high prices will attract entry or expansion by more cost-effective competitors.

B. Sutter's Anti-Incentive Contract Terms

109. In most other service or product markets in our economy, the person who makes the purchase decision and the person who ultimately pays for the service or product are one and the same. In those markets, the differing prices charged by competing vendors are important factors that are considered in making the ultimate purchase decision. The hospital healthcare market is different—and Sutter has illegally exploited those differences by requiring restrictions in its agreements with the Network Vendors that insulate its hospitals from the salutary price discipline and efficiencies that flow from vigorous competition.

110. Generally, in the healthcare market the person who makes the purchase decision is not the person who pays the bulk of the purchase price. In the hospital healthcare market it is the patient

who ultimately chooses the hospital that will be utilized, sometimes with the recommendation of a medical professional. However, it is the Self-Funded Payor or the Commercial Insurance Company that pays all or most of the price charged by the chosen hospital for the healthcare provided to a Health Plan Enrollee.

111. Sutter generally does not tell the patient what the actual hospital prices are expected to be before its hospital is selected by the patient to be the Healthcare Provider, so under the terms of Sutter's current agreements with the Network Vendors there is little opportunity for patients to choose a hospital based upon a price comparison. More importantly, because most (if not all) of the healthcare costs will be paid by the Self-Funded Payor or Commercial Insurance Company, the patient has little or no incentive to consider price differences when making a choice between rival hospitals, under the terms of Sutter's current agreements with the Network Vendors.

112. Absent Sutter's illegal restraint of trade, normal market forces would remedy this market inefficiency. Health Plans that included Sutter's higher-priced hospitals in their Provider Networks would provide incentives encouraging Health Plan Enrollees to choose a high-quality, but lower-priced, Sutter competitor over Sutter's higher-priced hospitals. By placing some of the financial burden for choosing a higher-priced provider on the Health Plan Enrollee, the Health Plan would, to some extent, normalize the competitive landscape by bringing price considerations back into the purchase decision made by the Health Plan Enrollee, thereby stimulating price competition.

113. One strategy that Self-Funded Payors and Commercial Insurance Companies in other markets have utilized to incentivize Health Plan Enrollees to choose more cost-efficient Healthcare Providers is the creation of Health Plans that have tiered Provider Networks. These arrangements include one network tier that includes the higher-priced Healthcare Providers but also requires Health Plan Enrollees to incur a higher out-of-pocket cost -- and another network tier that includes only lower-priced Healthcare Providers but requires little or no out-of-pocket cost to be incurred by the Health Plan Enrollees. After weighing the financial incentives to choose the network tier requiring the lowest patient cost contribution against the benefit of a more inclusive network, each Health Plan Enrollee has the opportunity to select the tier that he or she prefers. Such tiered Provider Networks provide an economic incentive for Health Plan Enrollees to consider healthcare pricing as part of their purchase

decision.

114. With the ability to offer tiered Provider Networks or other financial incentives, Health Plans would be able to exert some influence over their enrollees to choose more cost-efficient or better quality Healthcare Providers—even if they were constrained by Sutter's All-or-Nothing Terms. However, to further insulate itself from any possibility of price or quality competition, Sutter's written or oral agreements with Network Vendors also include terms that forbid or severely penalize Health Plans that utilize tiered Provider Networks or any other incentive for the Health Plan Enrollee to choose a competing hospital over a higher-priced or inferior quality Sutter hospital (**"Anti-Incentive Terms"**). Such penalties can include elimination or near elimination of the Health Plan's negotiated price discounts off of the Sutter hospital's Chargemaster pricing. These penalties are sufficiently severe that they effectively eliminate the commercial viability of any Health Plan that tries to incentivize more cost-effective or better quality purchase choices.

115. Health Plan Enrollees would frequently choose a high-quality, lower-cost hospital if they had a financial incentive to do so. However, by including Anti-Incentive Terms in its contracts, Sutter prevents Network Vendors (and thus Self-Funded Payors) from offering Health Plans that incentivize their Health Plan Enrollees to select healthcare services and products from Sutter's lower-priced competitors instead of selecting higher-priced services and products from Sutter.

116. The Anti-Incentive Terms reinforce and exacerbate the pernicious effect of the All-or-Nothing Terms in Sutter's agreements with the Network Vendors, effectively preventing price competition in the sale of general acute care hospital services and ancillary products. The All-or-Nothing Terms force Network Vendors and Self-Funded Payors to include all Sutter hospitals in their Provider Networks but they do not prevent them from incentivizing Health Plan Enrollees to select more cost-effective or better quality hospitals for their healthcare needs. By adding the Anti-Incentive Terms into its contracts, Sutter eliminates most or all of the motivation that Health Plan Enrollees might have to select their hospital Healthcare Provider based upon the value the hospital provides. The addition of the Anti-Incentive Terms to Sutter's contracts guarantees that a much larger percentage of Health Plan Enrollees will select Sutter's higher-priced hospitals because those terms all but eliminate price as a consideration in the hospital selection process. Such Anti-Incentive Terms cause damage to

members of the class by forcing them to pay higher prices for such services and products than they would pay but for this anticompetitive conduct.

C. Sutter's Price Secrecy Contract Terms

117. In properly functioning competitive markets pricing information is freely available, allowing purchasers to determine the prices they will be obligated to pay their suppliers if they purchase the suppliers' services and products. The ability to determine the amount of the purchase price before the purchase decision is made allows the customer to compare the prices offered by various competitors and allows the purchase decision to be influenced by price competition. However, to prevent the Self-Funded Payors and purchasers of Commercial Healthcare Insurance from searching out or demanding better hospital pricing, Sutter requires terms in its written or oral contracts with each Network Vendor that forbid them from disclosing the prices that Sutter Health has negotiated for the healthcare services and products offered through the Health Plans that are made available to Health Plan Enrollees (**"Price Secrecy Terms"**).

118. As a result of the Price Secrecy Terms, Self-Funded Payors are unable to determine the prices they will later have to pay to Sutter for the hospital healthcare services and products included in their Health Plans at the time they select among the Provider Network options offered by competing Network Vendors. Because the Price Secrecy Terms prevent the Self-Funded Payors from determining what they will be obligated to pay Sutter for the hospital healthcare services and products included in their Health Plans (and how much those prices exceed the prices charged by Sutter's competitors) they are less able to exert commercial pressure on Sutter to moderate its inflated pricing.

119. These Price Secrecy Terms reinforce the anticompetitive effects of Sutter's All-or-Nothing Terms and Anti-Incentive Terms. Together, these terms effectively eliminate price competition for Sutter's hospital healthcare services and ancillary products throughout Northern California's Relevant Geographic Markets. Sutter has unreasonably restrained trade in each of the Relevant Geographic Markets by continuously entering into successive agreements with each of the significant Network Vendors that make it impossible for rival hospitals to effectively compete by offering lower prices for the hospital healthcare services and products they sell. This conduct has damaged plaintiff class members by requiring them to pay higher prices for hospital healthcare than

they would have to pay in the absence of Sutter's anticompetitive contract terms.

VIII. THE ANTICOMPETITIVE EFFECTS OF SUTTER'S ILLEGAL CONDUCT

120. Hospital Healthcare Providers offer pricing below their artificially inflated Chargemaster prices only through access negotiated by the Network Vendors that arrange for hospital participation in their Provider Networks. Self-Funded Payors and Commercial Insurance Companies can obtain the access necessary to offer a commercially viable Health Plan to their Health Plan Enrollees only by utilizing those same Provider Networks through agreements with the Network Vendors that assembled them. Hence, it is the agreements between Sutter and the Network Vendors for Health Plan access to Sutter's hospitals that determines the amounts that will be paid by Self-Funded Payors and Commercial Insurance Companies when their Health Plan Enrollees utilize the Sutter hospitals included in their Health Plans.

121. The All-or-Nothing Terms, Anti-Incentive Terms, and Price Secrecy Terms in the agreements between Sutter and the Network Vendors are components of an overarching restraint of trade that unreasonably prevents the salutary price competition that is the hallmark of our free-market economic system. By contractually insulating itself from the price discipline that flows from unconstrained price competition, Sutter is able to charge and maintain prices for its general acute care hospital services and products that dramatically exceed the prices it could charge in an unrestrained competitive market.

122. For example, in 2009-2010, active employees of the City and County of San Francisco enrolled in the San Francisco Health Service System were charged an average price of $7,030 per day for admittance into the University of California, San Francisco hospital system. During the same time period they were charged 56% more for admittance into a Sutter hospital at an average price of $10,949 per day. The average price per day at a Sutter hospital was 49% higher than the average price at John Muir Hospital, 25% higher than the average price at the Catholic Healthcare West hospital system (now Dignity Health) and 13% higher than the average price at Stanford Hospital. However, the dramatic price differences described above do not fully explain the profound negative effect of Sutter's illegal conduct on Northern California's hospital healthcare markets. Sutter's supra-competitive prices allowed competing hospitals in Northern California to charge higher prices than

they otherwise would, while still charging less than the prices charged by Sutter. In effect, Sutter creates a price umbrella under which all of its competitors can safely raise their prices above competitive levels. As a result, the prices of all hospital Healthcare Providers in Northern California are artificially inflated due to Sutter's illegal conduct. In fact, prices for hospital healthcare in San Francisco and Sacramento are, on average, at least 38% higher than prices for the same care in Southern California where Sutter is not present.

123. Despite its dramatically inflated prices, Sutter's anticompetitive agreements with the Network Vendors have resulted in all of Sutter's Northern California healthcare facilities being included in nearly every significant Health Plan offered in the relevant markets. As a result of Sutter's unreasonable contractual restraints of trade, the plaintiff class members have been forced to pay illegally inflated prices to Sutter that have caused substantial financial damage to each of them.

124. Sutter's illegal practices foreclose the sale of billions of dollars of lower-priced hospital healthcare services and ancillary products in the relevant markets. Because more than a third of California workers obtain their healthcare through a Health Plan offered by a Self-Funded Payor, the economic damage to members of the class is enormous.

125. So long as Sutter can compel Network Vendors to enter into anticompetitive contracts that prevent price considerations from influencing the purchase decisions of their Health Plan Enrollees, Sutter will be able to evade the competitive forces that make a free market economy work properly for the benefit of consumers. Competitors will remain powerless to challenge Sutter, and Self-Funded Payors will continue to pay supra-competitive prices for general acute care hospital services and products.

IX. CLASS ALLEGATIONS

126. Plaintiff UEBT prosecutes this lawsuit as a class action on behalf of itself and the following class of entities (the **"Class"**):

> All Self-Funded Payors that are considered citizens of California for purposes of 28 U.S.C. §1332 and compensated Sutter for general acute care hospital services or ancillary products during any period that Sutter

has utilized an All-or-Nothing, Anti-Incentive or Price Secrecy Term in one or more agreements with Network Vendors (the **"Class Period"**).

127. The Class is ascertainable because it is objectively defined to include only Self-Funded Payors that are California entities and caused at least one Health Plan Enrollee claim to be paid to a Sutter hospital during the Class Period.

128. Plaintiff UEBT does not yet know the exact size of the Class. Based upon the nature of the trade and commerce involved, plaintiff believes that there are many hundreds of Class members. Class members are so numerous and geographically dispersed that joinder is impracticable.

129. There is a well-defined community of interest among plaintiff UEBT and members of the Class. Because Sutter has acted in a manner generally applicable to the Class, questions of law and fact common to members of the Class predominate over questions, if any, that may affect only individual Class members. Such generally applicable conduct is inherent in Sutter's wrongful and anticompetitive conduct.

130. Among those common questions of law or fact are:

- Whether Sutter implemented contract provisions that unreasonably restrain trade by imposing All-or-Nothing, Anti-Incentive, and Price Secrecy Terms restricting and immunizing Sutter from competition;
- Whether Sutter's conduct allows it to charge unlawful supra-competitive prices;
- Whether Sutter's ongoing conduct continues to restrain trade and reinforce its market power;
- The existence and duration of the anticompetitive conduct alleged herein;
- Whether Sutter's anticompetitive conduct results in diminished competition;
- Whether Sutter's conduct violates the Cartwright Act, Cal. Bus. & Prof. Code section 16720, *et seq.*;
- Whether Sutter's conduct violates California's Unfair Competition Law, Cal. Bus. & Prof. Code section 17200, *et seq.*;
- Whether plaintiff and other Class members have sustained and/or continue to sustain monetary damages in the nature of higher healthcare costs as a result of

Sutter's wrongful conduct and, if so, the aggregate amount of such damages;

- Whether injunctive relief prohibiting Sutter's anticompetitive behavior is appropriate.

131. There are no defenses of a unique nature that may be asserted against plaintiff UEBT individually, as distinguished from the other members of the Class, and the relief sought is common to the Class.

132. Plaintiff UEBT is a member of the Class, and its claims are typical of the claims of the members of the Class. Plaintiff UEBT and all members of the Class were damaged by the same wrongful conduct of Sutter, i.e., they paid illegally inflated prices for hospital healthcare services and ancillary products as a result of Sutter's wrongful conduct.

133. Plaintiff UEBT will fairly and adequately protect the interests of other Class members because it has no interests that are antagonistic to, or that conflict with, those of any other Class member. Plaintiff UEBT is committed to the vigorous prosecution of this action and has retained competent counsel, experienced in litigation of this nature, to represent plaintiff and other members of the Class.

134. A class action is the superior method for the fair and efficient adjudication of this controversy. Class treatment will permit a large number of similarly situated persons or entities to prosecute their claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce.

135. In the absence of a class action, defendants would retain the benefits of their wrongful conduct.

136. This case will be manageable as a class action. Plaintiff UEBT knows of no difficulty to be encountered in the prosecution of this action that would preclude its maintenance as a class action.

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X. CAUSES OF ACTION

COUNT I

Price Tampering in Violation of the Cartwright Act

(Cal. Bus. & Prof. Code Section 16720, *et seq.*)

137. Plaintiffs incorporate by reference and reallege as though fully set forth herein, each and every allegation as set forth in the preceding paragraphs of this Complaint.

138. Sutter has entered into contracts with Network Vendors that unlawfully control and tamper with the price terms that Self-Funded Payors may offer the enrollees in their Health Plans. The purpose of Sutter's contractual restrictions is to eliminate price competition and thereby stabilize and maintain prices for general acute care hospital services and ancillary products at supra-competitive levels in violation of California Bus. & Prof. Code §16720 *et seq.*

139. Sutter unlawfully controls and tampers with prices through the Anti-Incentive, Price Secrecy and All-or-Nothing Terms that it compels Network Vendors to accept. The combined effect of these agreement terms is to:

- Force Self-Funded Payors to accept Provider Networks that include all Sutter hospitals or no Sutter hospitals, preventing them from selecting only those Sutter hospitals that offer pricing that is competitive with other hospitals in the area.
- Prevent Self-Funded Payors from promoting price competition for the sale of general acute care hospital services and ancillary products by offering more favorable price terms to their Health Plan Enrollees that select more cost-effective competing hospitals instead of higher-priced Sutter hospitals.

140. The Anti-Incentive Terms guarantee that whenever Sutter is included in a Provider Network, no other Healthcare Provider in that network will receive more preferential treatment than Sutter with respect to the price terms offered by Self-Funded Payors to their Health Plan Enrollees. Sutter thus interferes with the freedom of Self-Funded Payors to set the prices they charge Health Plan Enrollees in accordance with their best judgment and in response to competitive market conditions.

141. The purpose and combined effect of the All-or-Nothing, Anti-Incentive and Price Secrecy Terms is to insulate Sutter from price competition for the sale of general acute care hospital

services and ancillary products. These terms enable Sutter to charge, maintain, and collect supra-competitive prices from Self-Funded Payors, and they unreasonably restrain the ability of Sutter's competitors to compete with Sutter.

142. Sutter's anticompetitive conduct constitutes price tampering, a per se violation of California's antitrust laws and is, in any event, an unreasonable and unlawful restraint of trade. The anticompetitive effects of Sutter's conduct far outweigh any purported non-pretextual, pro-competitive justifications.

143. As a proximate result of Sutter's unlawful conduct, plaintiff UEBT and the members of the Class it seeks to represent, have been injured in their business or property in violation of the Cartwright Act, Cal. Bus. & Prof. Code §16750, by, inter alia, being subjected to and paying supra-competitive pricing for general acute care hospital services and ancillary products during the Class Period. Such overcharges are the type of injury the antitrust laws were designed to prevent and they flow directly from Sutter's unlawful conduct. Plaintiff UEBT and members of the Class are proper entities to bring a case concerning this conduct.

144. Under Cal. Bus. & Prof. Code §16750, plaintiff and the members of the Class it seeks to represent, have standing to and do hereby seek monetary relief (including treble damages) together with injunctive, declaratory and other equitable relief, as well as attorneys' fees and costs, as redress for Sutter's violations of the Cartwright Act.

COUNT II

Unreasonable Restraint of Trade in Violation of the Cartwright Act

(Cal. Bus. & Prof. Code Section 16720, *et seq.*)

145. Plaintiffs incorporate by reference and reallege as though fully set forth herein, each and every allegation as set forth in the preceding paragraphs of this Complaint.

146. Sutter has entered into contracts with Health Plan Vendors and engaged in anticompetitive conduct that was and continues to be an unreasonable restraint of trade and commerce in violation of California Bus. & Prof. Code §16720.

147. The Sutter hospitals located in the Sutter-Dominated Markets have overwhelming market power in each of their Relevant Geographic Markets. The market power that Sutter possesses in

the Sutter-Dominated Markets is greatly enhanced because Sutter allows Health Plan access to its 27 hospitals only on a bundled all-or-nothing basis. Sutter uses that market power to compel the Network Vendors to include the anticompetitive All-or-Nothing, Anti-Incentive and Price Secrecy Terms in their written agreements with Sutter.

148. By compelling Network Vendors to agree to the All-or-Nothing, Anti-Incentive and Price Secrecy Terms, Sutter unlawfully restrains trade and restricts the ability of its competitors to compete in the Relevant Geographic Markets for general acute care hospital services and ancillary products.

149. The purpose and combined effect of the All-or-Nothing, Anti-Incentive and Price Secrecy Terms is to dramatically reduce or eliminate price considerations from the purchase decisions made by Health Plan Enrollees when they select a hospital Healthcare Provider in Northern California and thereby eliminate the ability of more cost-efficient rival hospitals to compete with Sutter hospitals on the basis of lower prices. These same anticompetitive contract terms dramatically reduce or eliminate price considerations from the decisions made by Network Vendors to either include or exclude individual Sutter hospitals in their Provider Networks.

150. The purpose and combined effect of the All-or-Nothing, Anti-Incentive and Price Secrecy Terms is to restrain competition for general acute care hospital services and ancillary products in the Relevant Geographic Markets, which in turn allows Sutter to command supra-competitive prices, as described in detail above.

151. Through its All-or-Nothing, Anti-Incentive and Price Secrecy Terms, Sutter unlawfully conditions the sale of general acute care hospital services and ancillary products on an In-Network price basis at any Sutter hospital to an agreement to offer and pay for Sutter's price-inflated services and products at all of Sutter's hospitals. These terms together ensure not only that all Sutter hospitals will be included in nearly every Provider Network, but also that Health Plan Enrollees will actually tend to use higher-priced Sutter hospitals because they have no economic incentive to choose a more cost-effective competing hospital instead. Sutter's use of these terms in its agreements with the Network Vendors forecloses millions of dollars of commerce that would otherwise go to lower-priced hospital competitors at substantial savings to members of the plaintiff Class.

152. Sutter's anticompetitive conduct unlawfully restrains competition in the relevant markets. Sutter's anticompetitive conduct constitutes a per se violation of California's antitrust laws and is, in any event, an unreasonable and unlawful restraint of trade. The anticompetitive effects of Sutter's conduct far outweigh any purported non-pretextual, pro-competitive justifications.

153. As a proximate result of Sutter's unlawful conduct, plaintiff UEBT and the members of the Class it seeks to represent, have been injured in their business or property in violation of the Cartwright Act, Cal. Bus. & Prof. Code §16750, by, inter alia, being subjected to and paying supra-competitive pricing for general acute care hospital services and ancillary products during the Class Period. Such overcharges are the type of injury the antitrust laws were designed to prevent and they flow directly from Sutter's unlawful conduct. Plaintiff UEBT and members of the Class are proper entities to bring a case concerning this conduct.

154. Under Cal. Bus. & Prof. Code §16750, plaintiff and the members of the Class it seeks to represent, have standing to and do hereby seek monetary relief (including treble damages) together with injunctive, declaratory and other equitable relief, as well as attorneys' fees and costs, as redress for Sutter's violations of the Cartwright Act.

COUNT III

Combination to Monopolize in Violation of the Cartwright Act

(Cal. Bus. & Prof. Code Section 16720, *et seq.*)

155. Plaintiffs incorporate by reference and reallege as though fully set forth herein, each and every allegation as set forth in the preceding paragraphs of this Complaint.

156. Sutter has entered into contracts with Health Plan Vendors and engaged in anticompetitive conduct that constitutes a combination to monopolize the market for general acute care hospital services and ancillary products in each of the Relevant Geographic Markets in violation of California Bus. & Prof. Code §16720.

157. By compelling Health Plan Vendors to agree to the All-or-Nothing, Anti-Incentive, and Price Secrecy Terms, Sutter unlawfully restrains trade with the purpose and effect of obtaining or maintaining monopoly power in each of the Relevant Geographic Markets. This in turn allows Sutter to demand supra-competitive prices, as described in detail above.

158. Sutter's anticompetitive conduct constitutes a per se violation of California's antitrust laws and is, in any event, an unreasonable and unlawful restraint of trade. The anticompetitive effects of Sutter's conduct far outweigh any purported non-pretextual, pro-competitive justifications.

159. As a proximate result of Sutter's unlawful conduct, plaintiff UEBT and the members of the Class it seeks to represent, have been injured in their business or property in violation of the Cartwright Act, Cal. Bus. & Prof. Code §16750, by, inter alia, being subjected to and paying supra-competitive pricing for general acute care hospital services and ancillary products during the Class Period. Such overcharges are the type of injury the antitrust laws were designed to prevent and they flow directly from Sutter's unlawful conduct. Plaintiff UEBT and members of the Class are proper entities to bring a case concerning this conduct.

160. Under Cal. Bus. & Prof. Code §16750, plaintiff and the members of the Class it seeks to represent, have standing to and do hereby seek monetary relief (including treble damages) together with injunctive, declaratory and other equitable relief, as well as attorneys' fees and costs, as redress for Sutter's violations of the Cartwright Act.

COUNT IV

Unfair Competition

Violation of Cal. Bus. & Prof. Code Section 17200, *et seq.*

161. Plaintiffs incorporate by reference and reallege each and every allegation set forth in the preceding paragraphs of this Complaint.

162. Plaintiffs bring this claim under §§17203 and 17204 of the Cal. Bus. & Prof. Code to enjoin, and obtain restitution and disgorgement of all monetary gains that resulted from, acts that violated §17200 of the Cal. Bus. & Prof. Code, commonly known as the UCL.

163. Plaintiff UEBT has standing to bring this action under the UCL because it has suffered injury as a result of Sutter's anticompetitive conduct. Plaintiff UEBT and other members of the Class it seeks to represent have been overcharged and have paid inflated prices for general acute care hospital services and ancillary products due to Sutter's anticompetitive conduct.

164. Sutter's anticompetitive conduct through the use of All-or-Nothing, Anti-Incentive, and Price Secrecy Terms constitutes unfair competition in violation of the UCL. Sutter carried out these

unlawful business acts and practices mainly within the state of California, and Sutter's conduct injured the members of the Class.

165. Sutter has committed and continues to commit acts of unfair competition, as defined by §17200, *et seq.* of the Cal. Bus. & Prof. Code, by engaging in the acts and practices described above.

166. Sutter's anticompetitive behavior constitutes a common and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of Cal. Bus. & Prof. Code §17200, *et seq.*, including, but not limited to violations of §16720, et seq., of the Cal. Bus. & Prof. Code as set forth above.

167. Sutter's anticompetitive behavior, as described above, is unfair, unconscionable, unlawful, and fraudulent, and in any event it is a violation of the policy or spirit of the Cartwright Act because it significantly harms and threatens competition.

168. Sutter's anticompetitive behavior and unfair business practices are part of an ongoing practice, and any purported utility of its conduct is outweighed by the gravity of the consequences to plaintiff UEBT and the Class members.

169. As a proximate result of Sutter's unlawful and unfair business practices, plaintiff UEBT and the members of the Class it seeks to represent have been injured in violation of the UCL by being forced to pay supra-competitive prices for hospital services and products at Sutter hospitals.

170. Plaintiff UEBT and the Class members have standing to and do seek equitable relief against Sutter, including an injunction to prohibit Sutter's illegal conduct as well as an order of equitable restitution and disgorgement of the monetary gains that Sutter obtained from its unfair competition.

XI. PRAYER FOR RELIEF

WHEREFORE, plaintiff UEBT prays that this Court enter judgment on its behalf, and on behalf of those similarly situated, against defendants, jointly and severally, adjudging and decreeing that:

A. This action may be maintained as a class action under Section 382 of the California Code of Civil Procedure and/or Section 1781 of the California Civil Code, and certifying plaintiff UEBT as representative of the Class and designating its counsel as counsel for the Class;

B. Defendants have engaged in a trust, contract, combination, or conspiracy in violation of California Business and Professions Code §16750(a), and Plaintiff and members of the Class have been damaged and injured as a result of this violation;

C. The unlawful conduct, contract or combination alleged herein be adjudged and decreed to be:

a. An unlawful effort to maintain, control, or tamper with prices in violation of the Cartwright Act;

b. An unreasonable restraint of trade in violation of the Cartwright Act;

c. An unlawful tying arrangement in violation of the Cartwright Act;

d. An unlawful agreement to attain or maintain monopoly power in violation of the Cartwright Act; and

e. An unlawful, unfair, and/or fraudulent business practice within the meaning of California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*

D. Judgment be entered against defendants and in favor of plaintiff UEBT and the Class for damages arising from defendants' unreasonable restraint of trade as determined to have been sustained by them, in an amount to be trebled to the extent permitted by law, together with the costs of suits, including reasonable attorneys' fees;

E. Judgment be entered against defendants and in favor of plaintiff UEBT and members of the Class for restitution and disgorgement of ill-gotten monetary gains determined to have been obtained by them, as allowed by law and equity, together with the costs of suit, including reasonable attorneys' fees;

F. Sutter, its affiliates, successors, transferees, assignees, and the officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from continuing, maintaining, or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other illegal agreement, conspiracy or combination alleged herein, or from entering into any other conspiracy alleged herein, or from entering into any other contract, conspiracy or combination having a similar

purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

G. The Court enter an order providing injunctive relief and precluding Sutter from continuing to implement the All-or-Nothing, Anti-Incentive, and Price Secrecy Terms that are used to facilitate the anticompetitive conduct alleged herein;

H. Plaintiff and members of the Class be awarded monetary damages (trebled as appropriate), restitution and disgorgement of the monetary gains obtained by Sutter as a result of its acts of unfair competition;

I. Plaintiff and members of the Class be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

J. Plaintiff and members of the Class recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

K. Plaintiff and members of the Class have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

Dated: April 7, 2014

Pillsbury & Coleman, LLP

By: _____
Richard L. Grossman (#112841)
Lead Counsel for Plaintiff
UFCW & Employers Benefit Trust