

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

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Case Number: CGC-14-538451

Filing Date: Apr-07-2014 10:52 am

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COMPLAINT

UFCW & EMPLOYEES BENEFIT TRUST ON BEHALF OF VS. SUTTER HEALTH
et al

001C04437047

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address):
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ATTORNEY FOR (Name): Plaintiff UFCW & Employers Benefit Trust

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COUNTY OF SAN FRANCISCO
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CLEAN COURT
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M.A. MORAN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: San Francisco

CASE NAME: UFCW & Employers Benefit Trust on behalf of itself and all others similarly situated v. Sutter Health, et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)
Complex Case Designation
 Counter **Joinder** **C**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CGC 14-538451**
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input checked="" type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 4

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: April 7, 2014
Richard L. Grossman
(TYPE OR PRINT NAME) *[Signature]* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (<i>not asbestos or toxic/environmental</i>) (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD</p> <p>Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (<i>not medical or legal</i>) Other Non-PI/PD/WD Tort (35)</p> <p>Employment Wrongful Termination (36) Other Employment (15)</p>	<p>Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (<i>not unlawful detainer or wrongful eviction</i>) Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (<i>not provisionally complex</i>) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p>Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)</p> <p>Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)</p> <p>Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)</p> <p>Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (<i>non-domestic relations</i>) Sister State Judgment Administrative Agency Award (<i>not unpaid taxes</i>) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case</p> <p>Miscellaneous Civil Complaint RICO (27) Other Complaint (<i>not specified above</i>) (42) Declaratory Relief Only Injunctive Relief Only (<i>non-harassment</i>) Mechanics Lien Other Commercial Complaint Case (<i>non-tort/non-complex</i>) Other Civil Complaint (<i>non-tort/non-complex</i>)</p> <p>Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (<i>not specified above</i>) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

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

23 Plaintiffs,


24 vs.

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

Defendants.

FILED
SUPERIOR COURT
CITY OF SAN FRANCISCO

2011 APR -7 AM 11:04

CLERK OF THE COURT
BY: 
DEPUTY CLERK

M.A. MORAN

**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

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

6 **I. INTRODUCTION**

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

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

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

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

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

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

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

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

20 9. Plaintiff UEFT and each member of the proposed class is a Self-Funded Payor. Over
21 35 percent of California’s workers now receive healthcare benefits for themselves—and often their
22 dependents—through Self-Funded Payors.

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

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

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

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

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

1 the healthcare services and products they offer.

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

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

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

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

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

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

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

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

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

- 1 a. An anticompetitive agreement that if a Sutter hospital at any location is included
2 in the Health Plan's Provider Network, then all Sutter hospitals throughout
3 Northern California also must be included in the Provider Network. Sutter
4 thereby abuses its market power in some geographic areas to force Health Plans
5 to include all Sutter hospitals in their healthcare Provider Networks -- even the
6 Sutter hospitals that are located in areas where it would be far less costly to
7 assemble a Provider Network using Sutter's lower-priced competitors instead of
8 Sutter;
- 9 b. An anticompetitive agreement that prohibits anyone offering access to a
10 Provider Network from giving incentives to patients that encourage them to
11 utilize the healthcare facilities of Sutter's competitors -- even when those
12 competitors offer higher quality healthcare and/or lower pricing; and
- 13 c. An anticompetitive agreement that Sutter's inflated prices for its hospital
14 healthcare services and ancillary products may not be disclosed to anyone before
15 the service or product is utilized and billed. The inflated hospital pricing in
16 Sutter's agreements with the Network Vendors is thereby concealed from
17 everyone else -- including the plaintiff class members that ultimately will have
18 to pay those prices.

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

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

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

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

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

19 **II. JURISDICTION AND VENUE**

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

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

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

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

3 **III. THE PARTIES**

4 **A. The Plaintiffs**

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

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

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

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

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

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

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

12 **B. The Defendants**

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

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

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

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

28 ///

1 39. In its 2011 Annual Report, Sutter reported over \$6.5 billion in net assets, including over
2 \$4.3 billion in cash and marketable securities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **IV. HOSPITAL HEALTHCARE IN NORTHERN CALIFORNIA**

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

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

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

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

20 **A. The Formation of Health Plans and Provider Networks**

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **C. The Selection of Hospitals by Health Plan Enrollees**

6 64. When Health Plan Enrollees obtain healthcare from a hospital that is included in their
7 Health Plan's Provider Network (an "**In-Network Hospital**"), most or all of the hospital's charges are
8 paid by the Self-Funded Payor (or Commercial Insurance Company) that provides the Health Plan.

9 When Health Plan Enrollees obtain healthcare from a hospital that is not included in their Health
10 Plan's Provider Network (an "**Out-Of-Network Hospital**"), a relatively small amount of the hospital
11 charges are paid by the Self-Funded Payor (or Commercial Insurance Company) that provides the
12 Health Plan, and the Health Plan Enrollees are obligated to pay the uncovered portion of the charges.

13 In addition, when healthcare is obtained from an Out-Of-Network Hospital, the hospital's charges are
14 generally billed at its full Chargemaster prices—not at the discounted in-network prices. As a result,
15 Health Plan Enrollees have a considerable financial incentive to seek healthcare from an In-Network
16 Hospital.

17 65. However, when choosing among the different hospitals that are included within their
18 Health Plan's Provider Network, Health Plan Enrollees are largely insensitive to price differences
19 between competing hospitals. This is because they often pay little or none of the cost of receiving care
20 at In-Network Hospitals, and even large price differences between In-Network Hospitals often have
21 little effect upon any amount the Health Plan Enrollees must pay. For example, a Health Plan Enrollee
22 will generally pay the same out-of-pocket amount regardless of whether the total hospital bill is
23 \$20,000 or \$30,000 or \$100,000 or more.

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

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

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

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

17 **V. THE RELEVANT MARKETS**

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

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

27 **A. The Relevant Service/Product Market**

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

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

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

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

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

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

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

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

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

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

1 **B. The Relevant Geographic Markets**

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

6 80. Recognizing the importance of consumer preferences for convenient hospital
7 healthcare, regulations promulgated under California’s Knox-Keene Health Care Service Plan Act of
8 1975, codified at California Health & Safety Code section 1340, *et seq.* (the Knox-Keene Act) require,
9 among other things, that Health Maintenance Organization Health Plans offered by Commercial
10 Insurance Companies must provide their enrollees with access to at least one hospital that is no more
11 than 15 miles or 30 minutes of travel time from the enrollee’s residence or workplace. California Code
12 of Regulations § 1300.51(H)(ii). A hospital satisfies the Knox-Keene requirements for the region
13 surrounding the hospital that is up to 15 miles away or within 30 minutes of travel time. Sutter Coast
14 Hospital in Crescent City; Sutter Lakeside Hospital in Lakeport; and Sutter Memorial Hospital in Los
15 Banos are the only hospitals within 15 miles or 30 minutes travel time of significant geographic
16 regions where numerous Health Plan Enrollees live and work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 3 k. **The Northeast Sacramento Suburbs Market**, which contains the following
4 hospitals: Sutter Roseville Medical Center; Mercy San Juan Medical Center;
5 Mercy Hospital of Folsom; and Kindred Hospital, Folsom.
- 6 l. **The Auburn Region Market**, which contains the following hospitals: Sutter
7 Auburn Faith Hospital and Sierra Nevada Memorial Hospital.
- 8 m. **The Yuba City Area Market**, which contains the following hospitals: Sutter
9 Surgical Hospital, North Valley; Rideout Memorial Hospital; Fremont Medical
10 Center.
- 11 n. **The West Sacramento Suburbs Market**, which contains the following
12 hospitals: Sutter Davis Hospital and Woodland Memorial Hospital.
- 13 o. **The Greater Vallejo Area Market**, which contains the following hospitals:
14 Sutter Solano Medical Center.
- 15 p. **The Santa Rosa Area Market**, which contains the following hospitals: Sutter
16 Medical Center of Santa Rosa; Santa Rosa Memorial Hospital; Palm Drive
17 Hospital; and Petaluma Valley Hospital.
- 18 q. **The San Rafael Area Market**, which contains the following hospitals: Sutter
19 Novato Community Hospital; Marin General Hospital; and Kentfield
20 Rehabilitation Hospital.
- 21 r. **The Lakeport Region Market**, which contains the following hospitals: Sutter
22 Lakeside Hospital.
- 23 s. **The Jackson Area Market**, which contains the following hospitals: Sutter
24 Amador Hospital and Mark Twain Medical Center.
- 25 t. **The Crescent City Area Market**, which contains the following hospitals:
26 Sutter Coast Hospital.

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

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

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

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

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

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

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

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

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

10 **VI. SUTTER'S MARKET POWER**

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

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

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

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

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

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

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

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

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

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

17 **VII. SUTTER'S ANTICOMPETITIVE CONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

19 **B. Sutter's Anti-Incentive Contract Terms**

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

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

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

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

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

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

1 decision.

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

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

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

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

3 **C. Sutter's Price Secrecy Contract Terms**

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

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

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

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

2 **VIII. THE ANTICOMPETITIVE EFFECTS OF SUTTER'S ILLEGAL CONDUCT**

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

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

19 122. For example, in 2009-2010, active employees of the City and County of San Francisco
20 enrolled in the San Francisco Health Service System were charged an average price of \$7,030 per day
21 for admittance into the University of California, San Francisco hospital system. During the same time
22 period they were charged 56% more for admittance into a Sutter hospital at an average price of
23 \$10,949 per day. The average price per day at a Sutter hospital was 49% higher than the average price
24 at John Muir Hospital, 25% higher than the average price at the Catholic Healthcare West hospital
25 system (now Dignity Health) and 13% higher than the average price at Stanford Hospital. However,
26 the dramatic price differences described above do not fully explain the profound negative effect of
27 Sutter's illegal conduct on Northern California's hospital healthcare markets. Sutter's supra-
28 competitive prices allowed competing hospitals in Northern California to charge higher prices than

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

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

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

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

22 **IX. CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ///

26 ///

27 ///

28 ///

1 **X. CAUSES OF ACTION**

2 **COUNT I**

3 **Price Tampering in Violation of the Cartwright Act**

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

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

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

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

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

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

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

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

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

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

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

19 **COUNT II**

20 **Unreasonable Restraint of Trade in Violation of the Cartwright Act**

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

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

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

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

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

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

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

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

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

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

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

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

16 **COUNT III**

17 **Combination to Monopolize in Violation of the Cartwright Act**

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

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

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

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

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

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

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

15 **COUNT IV**

16 **Unfair Competition**

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

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

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

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

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

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

3 165. Sutter has committed and continues to commit acts of unfair competition, as defined by
4 §17200, *et seq.* of the Cal. Bus. & Prof. Code, by engaging in the acts and practices described above.

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

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

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

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

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

22 **XI. PRAYER FOR RELIEF**

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

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

- 1 **B.** Defendants have engaged in a trust, contract, combination, or conspiracy in violation of
2 California Business and Professions Code §16750(a), and Plaintiff and members of the
3 Class have been damaged and injured as a result of this violation;
- 4 **C.** The unlawful conduct, contract or combination alleged herein be adjudged and decreed
5 to be:
- 6 a. An unlawful effort to maintain, control, or tamper with prices in violation of the
7 Cartwright Act;
- 8 b. An unreasonable restraint of trade in violation of the Cartwright Act;
- 9 c. An unlawful tying arrangement in violation of the Cartwright Act;
- 10 d. An unlawful agreement to attain or maintain monopoly power in violation of the
11 Cartwright Act; and
- 12 e. An unlawful, unfair, and/or fraudulent business practice within the meaning of
13 California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*
- 14 **D.** Judgment be entered against defendants and in favor of plaintiff UEFT and the Class
15 for damages arising from defendants' unreasonable restraint of trade as determined to
16 have been sustained by them, in an amount to be trebled to the extent permitted by law,
17 together with the costs of suits, including reasonable attorneys' fees;
- 18 **E.** Judgment be entered against defendants and in favor of plaintiff UEFT and members of
19 the Class for restitution and disgorgement of ill-gotten monetary gains determined to
20 have been obtained by them, as allowed by law and equity, together with the costs of
21 suit, including reasonable attorneys' fees;
- 22 **F.** Sutter, its affiliates, successors, transferees, assignees, and the officers, directors,
23 partners, agents, and employees thereof, and all other persons acting or claiming to act
24 on their behalf or in concert with them, be permanently enjoined and restrained from
25 continuing, maintaining, or renewing the conduct, contract, conspiracy, or combination
26 alleged herein, or from entering into any other illegal agreement, conspiracy or
27 combination alleged herein, or from entering into any other conspiracy alleged herein,
28 or from entering into any other contract, conspiracy or combination having a similar

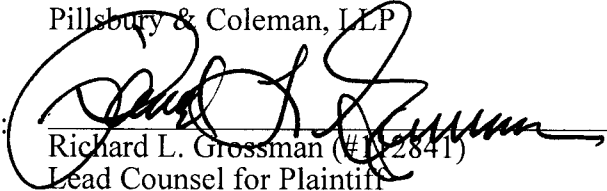
1 purpose or effect, and from adopting or following any practice, plan, program, or device
2 having a similar purpose or effect.

- 3 **G.** The Court enter an order providing injunctive relief and precluding Sutter from
4 continuing to implement the All-or-Nothing, Anti-Incentive, and Price Secrecy Terms
5 that are used to facilitate the anticompetitive conduct alleged herein;
- 6 **H.** Plaintiff and members of the Class be awarded monetary damages (trebled as
7 appropriate), restitution and disgorgement of the monetary gains obtained by Sutter as a
8 result of its acts of unfair competition;
- 9 **I.** Plaintiff and members of the Class be awarded pre- and post-judgment interest as
10 provided by law, and that such interest be awarded at the highest legal rate from and
11 after the date of service of the initial complaint in this action;
- 12 **J.** Plaintiff and members of the Class recover their costs of suit, including reasonable
13 attorneys' fees, as provided by law; and
- 14 **K.** Plaintiff and members of the Class have such other, further, and different relief as the
15 case may require and the Court may deem just and proper under the circumstances.

16 Dated: April 7, 2014

Pillsbury & Coleman, LLP

17
18 By:


Richard L. Grossman (#12841)
Lead Counsel for Plaintiff
UFCW & Employers Benefit Trust

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):** 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

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
UFCW & Employers Benefit Trust, on behalf of itself and all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Francisco County Superior Court
400 McAllister Street | San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC 14-538451

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Richard L. Grossman, SBN 112841, Pillsbury & Coleman LLP
600 Montgomery Street, 31st Floor, San Francisco, CA 94111, 415/433-8000

DATE: APR 07 2014
(Fecha)

CLERK OF THE COURT

Clerk, by
(Secretario)

M.A. MORAN
M. Ann Moran

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date):

