EXHIBIT A

to Request for Proposal

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UFCW & Employers Benefit Trust, on behalf of itself and all others similarly situated Plaintiffs, vs. Sutter Health, et al., Defendants.	Case No. CGC 14-538451 Consolidated with Case No. CGC-18-565398 **[PROPOSED] FINAL JUDGMENT AND ORDER PURSUANT TO STIPULATION** Dept.: 304 Judge: Hon. Anne-Christine Massullo
People of the State of California, ex. rel. Xavier Becerra, Plaintiff, vs. Sutter Health, Defendant.	

WHEREAS, the People of the State of California, through its attorney, XAVIER BECERRA, Attorney General of the State of California (the "People") and UFCW & Employers Benefit Trust ("UEBT"), on behalf of itself and all others similarly situated, (the People and UEBT collectively, "Plaintiffs"), and Sutter Health; Sutter East Bay Hospitals (predecessor of Sutter Bay Hospitals);[1] Sutter West Bay Hospitals (n/k/a Sutter Bay Hospitals); Eden Medical Center (formerly d/b/a of Sutter Medical Center, Castro Valley) (predecessor of Sutter Bay Hospitals); Sutter Central Valley Hospitals (predecessor of Sutter Valley Hospitals); Mills-Peninsula Health Services (predecessor of Sutter Bay Hospitals); Sutter Health, Sacramento Sierra Region (n/k/a Sutter Valley Hospitals); Sutter Coast Hospital; Palo Alto Medical Foundation for Healthcare, Research and Education (n/k/a Sutter Bay Medical Foundation and d/b/a Palo Alto Medical Foundation for Health Care, Research and Education); and Sutter Medical Foundation (n/k/a Sutter Valley Medical Foundation and d/b/a Sutter Medical Foundation) (collectively "Defendants" or "Sutter," and together with Plaintiffs, the "Parties") have stipulated to the entry of this Final Judgment without trial,

WHEREAS, UEBT filed an action on April 7, 2014 captioned *UFCW & Employers Benefit Trust, on behalf of itself and all others similarly situated, v. Sutter Health*, *et al.*, Case No. CGC-14-538451, pending in the San Francisco Superior Court, and on March 29, 2018, the People filed a separate action against Sutter Health captioned *People of the State of California, ex rel. Xavier Becerra v. Sutter Health*, Case No. CGC-18-565398;

WHEREAS, on May 8, 2018, the actions were consolidated for all purposes (the "Consolidated Action");

WHEREAS, the Consolidated Action asserts claims under state antitrust and unfair competition laws and seeks recovery of, among other things, damages, disgorgement, interest, treble damages, attorneys' fees, costs, and injunctive relief;

[1] For avoidance of doubt, the renaming of the Defendants named in the Consolidated Action does not affect the applicability of this Final Judgment to the Defendants named in the lawsuits comprising the Consolidated Action.

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

WHEREAS, the Parties have reached an agreement providing for the settlement and a release of the claims asserted in the Consolidated Action on the terms and subject to the conditions set forth in a Settlement Agreement approved by the Court;

WHEREAS, this Final Judgment and Order Pursuant to Stipulation ("Final Judgment") results from and incorporates portions of the Parties' settlement of the claims asserted in the Consolidated Action;

WHEREAS, this Final Judgment does not constitute any evidence against, or any admission by, any party regarding any issue of fact or law;

WHEREAS, Plaintiffs and Defendants agree to be bound by the provisions of this Final Judgment upon its approval by this Court;

NOW THEREFORE, without trial and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the Parties to this Consolidated Action. The complaints in the Consolidated Action assert claims against Defendants under the Cartwright Act, Cal. Bus. & Prof. Code Section 16720, *et seq.* and/or the Unfair Competition Law, Cal. Bus. & Prof. Code Section 17200, *et seq.*

II. DEFINITIONS

For purposes of this Final Judgment, the following definitions apply:

1. "ABSMC" means the following general acute care hospitals: Alta Bates Summit Medical Center – Alta Bates Campus, Alta Bates Summit Medical Center – Herrick Campus, and Alta Bates Summit Medical Center – Summit Campus, and any new Sutter general acute care hospitals replacing them.

2. "Broad Network PPO Rates" shall be the in-network rates applicable to the Insurer's broad preferred provider organization ("PPO") networks (e.g., the in-network rates for the following broad PPO products in an Insurer's then-current contracts with Sutter, or their equivalent: Anthem Blue Cross – Prudent Buyer full network PPO; Aetna – Open Choice PPO full network PPO; Blue Shield – Full Network PPO; Cigna – PPO network-Open Access Plus; Health Net – PPO network; UHC – United Healthcare Choice Plus PPO).

3. "Commercial Products" are products that offer comprehensive commercial health care coverage offered by Insurers that are either fully insured or made available to Self-Funded Payers on a self-funded basis. Commercial Products do not include any government sponsored programs such as, for example, Medicare, Medi-Cal, Medicare Advantage, and Managed Medi-Cal.

4. "CPMC" means all Sutter general acute care hospital providers in the City and County of San Francisco, including but not limited to, California Pacific Medical Center – Davies Campus Hospital, California Pacific Medical Center – Mission Bernal Campus Hospital (opened 8/2018), and California Pacific Medical Center – Van Ness Campus (opened 3/2/2019).

5. "Group A Providers" means Rural Hospitals, ABSMC, CPMC, and PAMF.

6. "Group B Hospitals" means the following general acute care hospitals: Eden Medical Center; Memorial Hospital Los Banos; Memorial Medical Center; Menlo Park Surgical Hospital; Mills-Peninsula Medical Center; Novato Community Hospital; Stanislaus Surgical Hospital LLC; Sutter Auburn Faith Hospital; Sutter Davis Hospital; Sutter Delta Medical Center; Sutter Maternity & Surgery Center of Santa Cruz; Sutter Medical Center, Sacramento; Sutter Roseville Medical Center; Sutter Santa Rosa Regional Hospital (f/k/a Sutter Medical Center Santa Rosa); Sutter Solano Medical Center; Sutter Surgical Hospital, North Valley (also d/b/a Twin Cities Surgical Hospital, LLC); and Sutter Tracy Community Hospital.

7. "Insurers" include the following California licensed health care service plans and insurers: Aetna Health of California, Inc.; Aetna Health Management; Aetna Life Insurance Company; Anthem Blue Cross, Inc./Blue Cross of California; California Physicians' Service

(d/b/a Blue Shield of California); UnitedHealthcare Insurance Company; UnitedHealthcare of California; Cigna HealthCare of California, Inc.; Cigna Health and Life Insurance Company; Health Net of California, Inc. For purposes of this Final Judgment, Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals the Permanente Medical Group and Kaiser Permanente Insurance Corporation are not individually or collectively an Insurer.

8. "PAMF" means Palo Alto Medical Foundation for Healthcare, Research and Education.

9. "Pretext" and "pretextual" shall be interpreted and applied consistent with California law.

10. "Rural Hospitals" means Sutter Lakeside Hospital, Sutter Amador Hospital, and Sutter Coast Hospital.

11. "Self-Funded Payers" means group health plans that are self-funded and administered by Insurers (e.g., health plans governed by Employee Retirement Income Security Act of 1974) for employers, Taft-Hartley trusts, and government entities like CalPERS or school districts, whose enrollees access one or more Sutter Providers through their contracts with Insurers for access to provider networks.

12. "Sutter Provider" means a person or entity that delivers any healthcare services (e.g., hospitals, physicians, ambulatory surgery centers, urgent care centers, imaging centers, laboratories, hospice, etc.) and on whose behalf Sutter negotiates managed care contracts with Insurers.

III. APPLICABILITY

1. This Final Judgment applies to Plaintiffs and Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Except as otherwise expressly provided herein, this Final Judgment applies to all Commercial Products.

2. Plaintiffs and Defendants, by their respective attorneys, have stipulated to the entry of this Final Judgment without trial of any issue of fact or law. This Final Judgment is not, nor

shall any of the terms, provisions, or anything herein, constitute any evidence against, an admission of liability by, or an estoppel by a third party against, any party to this Final Judgment. This Final Judgment shall not be construed as an admission of any type by Defendants.

3. Nothing in this Final Judgment authorizes Defendants to engage in conduct that would violate the antitrust laws. This Final Judgment shall not be construed as approval by the Plaintiffs of any future conduct not expressly approved by this Final Judgment. Each Defendant preserves all rights to raise this Final Judgment in defense, or to otherwise justify its conduct, against any claims related to the conduct at issue. This provision does not limit, expand, or alter the scope of the release in the Court-approved Settlement Agreement.

IV. PROHIBITED, REQUIRED, AND PERMITTED CONDUCT

A. General

1. Contract provisions

a. Defendants shall not enforce provisions in prior, existing, or future contracts with Insurers that violate or are inconsistent with the terms of this Final Judgment or promulgate in future contracts terms that violate or are inconsistent with the terms of this Final Judgment. Nothing in this Final Judgment addresses Defendants' right to apply prices in existing or past contracts for services provided before the entry of the Final Judgment.

b. Defendants shall not require that the terms of any narrow network, tiered network, center of excellence, reference pricing, or steering arrangement in existence at the time of the negotiation and execution of a contract with an Insurer automatically apply to newly created or modified Commercial Products that post-date the execution of that contract.

c. Except as otherwise provided in this Final Judgment, Defendants may negotiate and enforce contract terms that provide that an Insurer and/or Self-Funded Payer may not unilaterally change the participation status of a Sutter Provider in an existing Commercial Product during the performance of a contract term. Defendants may not use this provision to block an Insurer from introducing any new Commercial Products after execution of the contract between that Insurer and Defendants; however, Defendants retain the right to refuse participation

of any or all Sutter Providers in that Commercial Product. If Defendants agree to participate in a Commercial Product that is introduced by an Insurer during the term of a contract that includes some but not all Sutter Providers and which was not disclosed during renewal negotiations between the Insurer and Defendants, Defendants shall offer prices for such participating Sutter Providers that are equal to or less than the maximum rates set forth in Section IV.D.3 below.

2. Narrow, Tiered, and Steering products. Except as otherwise provided in this Final Judgment:

a. Defendants may not veto, interfere with, or otherwise engage in any action, direct or indirect, to prevent the introduction of new narrow, tiered, or steering Commercial Products or value-based designs of any kind for Commercial Products (i.e., benefit designs that attempt to reward providers for affordability and/or quality), including reference pricing. Defendants shall not penalize Insurers and/or Self-Funded Payers for selecting some but not all of Defendants' Providers for participation in Commercial Products. Defendants shall not impede Insurers' and/or Self-Funded Payers' use of differences in co-payments, co-insurance, and information as to quality, certification, ratings, and cost-effectiveness to incentivize patients to select the providers that are preferred by the Insurers and/or Self-Funded Payers for Commercial Products, *provided that* these policies and practices are disclosed to Defendants during the negotiation of a new contract or renewal of a contract and not changed during the term of that contract.

b. Defendants shall not require that Insurers and/or Self-Funded Payers include any or all Group A Providers or Group B Hospitals in the preferred tier(s) of tiered networks for Commercial Products, or designate them centers of excellence, or require that these Providers or Hospitals be included in any or all of an Insurer and/or Self-Funded Payer's narrow or tiered network Commercial Products. Defendants shall not require that any sub-set of services provided by a Group A Provider or Group B Hospital be included in the top tier of any Commercial Product.

3. Centers of Excellence

a. Insurers and/or Self-Funded Payers shall have the freedom to design, develop, maintain, and market centers of excellence programs without veto or interference from Defendants. Defendants may not terminate or threaten to terminate an agreement or refuse to negotiate a potential agreement with an Insurer as a result of a Sutter Provider's non-inclusion, exclusion, or threatened exclusion from a center of excellence, provided that such non-inclusion, exclusion, or threatened exclusion is based on criteria previously disclosed by the Insurer in writing during contract negotiations. Defendants shall not require that their affiliated doctors, medical groups, independent physician associations ("IPAs"), hospitals, or outpatient facilities receive particular quality, certification, and/or cost effectiveness ratings from Insurers and/or Self-Funded Payers.

b. If a Sutter Provider participates in any center of excellence program disclosed to Defendants during contract negotiations, Insurers and/or Self-Funded Payers shall have the discretion to exclude any such Sutter Provider from those centers of excellence during the contract term for failure to comply with the criteria for those programs which were disclosed in writing to Defendants during contract negotiations.

c. If a center of excellence program is developed and marketed during the term of a contract with Defendants, but was not disclosed previously to Defendants, that program shall not apply to Sutter Providers absent mutual agreement of the Insurer marketing the center of excellence program and Defendants.

B. Participation of Group A Providers and Group B Hospitals

1. Rural Hospitals and ABSMC

a. During contract negotiations, at the request of an Insurer, Defendants will make the Rural Hospitals and ABSMC available to participate in any network for any Commercial Product to Insurers and/or Self-Funded Payers, other than as set forth in Section IV.B.4 below pertaining to co-branded products, subject to (i) negotiation of mutually agreeable price terms so long as the price terms offered by Defendants are not tantamount to conditioning the participation

of the Rural Hospital(s) or ABMSC on the participation, pricing, or tiered status of other Sutter Providers and (ii) the inclusion in the Commercial Product of all services available at each participating Rural Hospital or ABMSC.

2. CPMC and PAMF

a. Subject to Section IV.B.2.c below, during contract negotiations, at the request of an Insurer, Defendants will make available all CPMC hospitals available to participate in any network for any Commercial Product to Insurers and/or Self-Funded Payers, other than as set forth in Section IV.B.4 below pertaining to co-branded products, subject to (i) negotiation of mutually agreeable price terms so long as the price terms offered by Defendants are not tantamount to conditioning the participation of CPMC on the participation, pricing, or tiered status of other Sutter Providers; (ii) the inclusion in the Commercial Product of all services available at CPMC; and (iii) Section IV.D.2.b & c below.

b. Subject to Section IV.B.2.c below, during contract negotiations, at the request of an Insurer, Defendants will make PAMF available to participate in any network for any Commercial Product to Insurers and/or Self-Funded Payers, other than as set forth in Section IV.B.4 below pertaining to co-branded products, subject to (i) negotiation of mutually agreeable price terms so long as the price terms offered by Defendants are not tantamount to conditioning the participation of PAMF on the participation, pricing, or tiered status of other Sutter Providers and (ii) Section IV.D.2.b & c below.

c. Except as prohibited in Section IV.A.2.a above and IV.C.1.a and IV.C.1.c below, CPMC and PAMF shall have the option to decline to participate in any Commercial Product, for reasons including but not limited to those described in Section IV.C below titled "Conditional Participation" (if applicable) and Section IV.C.3.c below titled "Patient Access Considerations," provided Defendants simultaneously provide the reasons in writing in detail to the Insurer and to the Office of the California Attorney General and counsel for UEBT and the class (*i.e.*, Pillsbury & Coleman, LLP; Cohen Milstein Sellers & Toll PLLC; Farella Braun + Martel LLP; Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.; McCracken, Stemerman &

Holsberry, LLP) (hereinafter, "Class Counsel"). If an Insurer in good faith believes that CPMC's or PAMF's reason(s) for declining to participate in a Commercial Product are a pretext for (1) conditioning CPMC's or PAMF's participation, pricing, or tiered status on the participation, pricing, or tiered status of any other Sutter Provider except as permitted by this Final Judgment, or (2) interfering with, preventing, or penalizing the Insurer's efforts to introduce or offer tiered, steered, or narrow network products except as permitted by this Final Judgment, the Insurer shall make a reasonable effort to meet and confer with Defendants. If the meet and confer process does not swiftly resolve the dispute, or at the election of the Office of the California Attorney General or of Class Counsel, the Office of the California Attorney General or Class Counsel may challenge Defendants' refusal before the Compliance Monitor and ultimately the Court pursuant to the procedures in Section V below.

3. Group B Hospitals

a. Except as otherwise provided in this Final Judgment, any Group B Hospital shall have the option to decline to participate in any Commercial Product, including without limitation because of the tier in which the Insurer places the Group B Hospital.

4. Co-Branded Products

a. A Sutter Provider may refuse to participate in any co-branded Commercial Product arising from a joint venture, partnership, or similar alliance or affiliation between an Insurer and a non-Sutter provider, which may be administered by an Insurer (e.g., Western Health Advantage).

C. Conditional Participation

1. General Provisions

a. Except as otherwise provided in this Final Judgment, Defendants shall not condition the participation, pricing, or tiered status of any Group A Provider or Group B Hospital in a network upon the participation, pricing, or tiered status of any other Sutter Provider.

b. Defendants may not condition the participation or tiered status of some or all Sutter Providers in one Commercial Product on the participation or tiered status of some or all

Sutter Providers in a different Commercial Product or other product, including, without limitation, any product for government-sponsored programs. Defendants may not condition the pricing of some or all Sutter Providers in one Commercial Product on the pricing of one or more Sutter Providers in a different Commercial Product or any government-sponsored program if doing so would constitute an illegal tie or other violation of the law.

c. Defendants shall not condition the participation of its Group A Providers on the tier in which the Insurer places them.

d. Defendants shall have the option to offer bundled discounts in accordance with Section IV.D.2 below.

e. Nothing in this Final Judgment limits any Sutter Provider's ability to condition its participation in a Commercial Product upon the participation of other Sutter Providers that collectively (i) accept a prepaid capitation payment in exchange for delivering healthcare services to enrollees under a risk arrangement, (ii) participate in a qualified ACO under federal law, federal regulations, or any state law or regulations promulgated in the future, or (iii) participate in a Commercial Product that is similar to a qualified ACO, which incentivizes groups of doctors, hospitals, and other health care providers, to collectively agree to financial incentives and/or disincentives that involve the sharing of material upside risk (i.e., shared savings) and/or material downside risk (i.e., shared losses) to provide coordinated care designed to cost-effectively manage a population in a manner consistent with Medicare Shared Savings Programs (an "ACO-like Arrangement"). The Office of the California Attorney General and/or Class Counsel may seek review of any ACO-like Arrangement by the Compliance Monitor and ultimately by the Court, which shall consider any challenge upon the motion of a Party after the Compliance Monitor makes a timely recommendation to the Parties and the Court concerning resolution of the challenge, *provided however*, that the Compliance Monitor shall also consider whether the arrangement, at the time that Sutter sought to participate in the arrangement, is expected to significantly or materially improve the quality and/or affordability of the health care services being provided and whether such an improvement reasonably can be achieved without

participation of all of the designated Sutter providers in the same network or tier of a Commercial Product.

2. PAMF

a. Unless otherwise permitted under this Final Judgment, Defendants shall not condition the participation, pricing, or tiered status of PAMF in a network of a Commercial Product upon the participation, pricing, or tiered status of any other Sutter Provider except:

(i) Defendants shall have the option to offer bundled discounts in accordance with Section IV.D.2.b & c below; and

(ii) Defendants shall have the option to condition PAMF's participation in a Commercial Product on the participation of ABSMC, CPMC, Mills-Peninsula Medical Center, Eden Medical Center, Sutter Maternity & Surgery Center of Santa Cruz, and/or Menlo Park Surgical Hospital, *provided however* that (1) Menlo Park Surgical Hospital may condition its participation in a network of a Commercial Product upon the participation, pricing or tiered status of PAMF; (2) ABSMC and CPMC may not condition their participation in a network of a Commercial Product upon the participation, pricing, or tiered status of PAMF, unless otherwise permitted under this Final Judgment, (3) Mills-Peninsula Medical Center, Eden Medical Center, and Sutter Maternity & Surgery Center of Santa Cruz may condition participation in a network of a Commercial Product (a) upon the participation or tiered status of PAMF if Sutter first satisfies the Clinical Integration Exception of Section IV.C.3.b.; or (b) upon the participation of PAMF if Sutter first satisfies the Patient Access Considerations Exception of Section IV.C.3.c; (c) but may not otherwise condition their participation, pricing, or tiered status on that of PAMF unless permitted under this Final Judgment, and (4) upon request of the Insurer, ABSMC, CPMC, Mills-Peninsula Medical Center, Eden Medical Center, and Sutter Maternity & Surgery Center of Santa Cruz shall offer separate pricing from PAMF for participation in a network of a Commercial Product.

b. Defendants may not condition the participation of PAMF in a Commercial Product upon the participation of any Ambulatory Surgical Centers or Endoscopy Centers

("ASCs"), unless (1) PAMF has an ownership interest in that ASC and a pattern of regular admission of patients to that ASC or (2) the ASC is listed in Exhibit A, which lists ASCs in which Sutter or any of its affiliates has an ownership interest and to which PAMF has a pattern of regular admission of patients, subject to the right of the Office of the California Attorney General and/or of Class Counsel, after meeting and conferring in good faith with Defendants to attempt to agree to the list of ASCs in Exhibit A, to challenge inclusion of any ASC on Exhibit A before the Compliance Monitor and ultimately the Court, which shall consider any challenge upon the motion of a Party after the Compliance Monitor makes a timely recommendation to the Parties and the Court concerning resolution of the challenge.

3. Group B Hospitals

a. Except as otherwise permitted by this Final Judgment, if an Insurer and/or Self-Funded Payer selects one or more Group B Hospitals for inclusion in a network of a Commercial Product, the selected Group B Hospitals may condition their participation or tiered status on the participation or tiered status of any other Sutter Provider(s) (except Group A Providers) subject to the requirements governing the Clinical Integration Exception or Patient Access Considerations Exception as set forth in Section IV.C.3.b and IV.C.3.c below or under other applicable exceptions in this Final Judgment.

b. **Clinical Integration Exception**: Defendants may condition the participation or tiered status of its Group B Hospitals in a network of a Commercial Product upon the participation or tiered status of other Sutter Providers if all affected Sutter Providers are clinically integrated with respect to the services covered by the Commercial Product and if, in the case of conditional tiering, such conditional tiering is reasonably necessary to achieve the benefits of clinical integration. Defendants shall not designate Group B Hospitals and other Sutter Providers to be part of a clinically integrated group specifically for these purposes unless the specified Sutter Hospitals and Sutter Providers satisfy the standards for clinical integration described in the 2009 Alta Bates Medical Group consent decree with the Federal Trade Commission and in the similarly worded Washington Attorney General's 2019 settlement with

CHI Franciscan and The Doctors Clinic. For purposes of interpreting and enforcing this Final Judgment, the standards set forth in those consent decrees, and Section V.C.2.d.i and (ii) below, shall govern whether any Group B Hospitals and other Sutter Providers are clinically integrated.

(i) Section IV.C.3.b does not contravene any rights, protections, or defenses that Defendants may have under State or Federal statutes or regulations in effect at the time of the challenge to their invocation of the clinical integration exception.

c. **Patient Access Considerations Exception**: Defendants may condition the participation of Group B Hospitals in a network for a Commercial Product upon the participation of other Sutter Providers if the failure to condition the participation of those specific Providers raises substantial and material patient access or financial risk issues as set forth below.

(i) Patient Access: The Commercial Product adversely affects patient access to healthcare services if it offers inadequate specialty care, requires transfers of patients for extended distances or extended travel time, or otherwise creates a substantial risk of disruption of discharge planning, or other serious continuum of care/access problems (e.g., lack of access to physician follow-up, lack of ancillary providers, etc.), or for a hospital, does not provide a sufficient number of physicians that admit to that facility in the Commercial Product (regardless of whether they are affiliated with Defendants) or that refer patients to that hospital to permit the hospital to provide the full range of its services, provided that the insufficiency of physicians is not caused by Defendants' conduct.

(ii) Financial Risk: The Commercial Product raises a financial risk issue if it creates a substantial risk of unforeseeable patient financial hardship through substantially different patient out-of-pocket costs between the admitting physician and the hospital that the physician regularly admits to, or if it is a Commercial Product that has a minimum average cost sharing, otherwise known as actuarial value, of less than 60% in the tier in which the provider is offered. The calculation of the actuarial value of a tier in a tiered product shall be made in accordance with the Center for Medicare and Medicaid's Final 2019 Actuarial Value Calculator Methodology (Dec. 28, 2017), p. 23, or any federal or state replacement thereto. Commercial

Products that do not have an out of pocket maximum or that cause unlimited liability for patients who access Sutter Providers in the tier in which Sutter Providers have been asked to participate shall be deemed to fall within the financial risk exception.

d. Should Defendants invoke the Clinical Integration or Patient Access Considerations Exceptions and the Insurer in good faith believes that Defendants' conditional participation is not justified under this Final Judgment, the Insurer shall notify Defendants and Defendants shall put in writing to the Insurer, the Office of the California Attorney General, and Class Counsel the basis for doing so with sufficient detail that the Insurer and the Office of the California Attorney General and Class Counsel can understand the basis for Defendants' invocation of the exception. If the Insurer then believes in good faith that Defendants' invocation of the Clinical Integration or Patient Access Considerations exception violates this Final Judgment, then the Insurer shall make a reasonable effort to meet and confer with Defendants. If the meet and confer process does not resolve the dispute, or at the election of the Office of the California Attorney General and/or of Class Counsel, the Office of the California Attorney General and/or Class Counsel may challenge Defendants' invocation of these exceptions before the Compliance Monitor and/or the Court pursuant to the procedures set forth in Section V below.

D. Pricing

1. Right To Offer Lower Prices for Increased Expected Volume

a. An individual Sutter Provider may offer lower prices for networks or products that may provide for increased expected volume to that Sutter Provider (e.g., networks or products featuring that Provider, co-branded products in which that Provider would participate, placing that Provider in more favorable tiers, or otherwise steering patients to that Sutter Provider, including through financial incentives).

2. Right To Offer Bundled Pricing

a. Defendants may offer an Insurer lower prices for one or more Group B Hospitals as part of a bundle with one or more other Group B Hospitals provided that Defendants,

on an Insurer's request, offer a separate standalone price for any of the included Hospitals requested by the Insurer.

b. Defendants may offer an Insurer lower prices for bundles of one or more of its Group B Hospitals together with CPMC and/or PAMF *provided that* Defendants and the Insurer, before Defendants offer a bundled price for bundles including CPMC and/or PAMF, first reach a written agreement on the pricing terms for CPMC and/or PAMF on a standalone basis, subject to execution of a binding agreement including all non-monetary terms. Sutter may not otherwise offer lower bundled prices for its Group A Providers.

c. Defendants are not required to offer a standalone price where an Insurer seeks to include all Sutter hospitals in a network of a Commercial Product or where Defendants condition participation of PAMF or Group B Hospitals pursuant to Sections IV.C.2 and IV.C.3 above.

d. The restrictions on bundling in this Final Judgment do not apply to bundling of Sutter Providers that are not Group A Providers or Group B Hospitals as such bundling is beyond the scope of this Final Judgment.

3. Out of Network Rates

a. Maximum OON Rates: The maximum that a Sutter Provider may charge an Insurer and/or Self-Funded Payer (and/or its respective enrollee) that contracts with at least one Sutter Provider for services for any out-of-network healthcare will be the multiples of the contract rates or the percentage of billed charges set forth in this Section IV.D.3. Insurers may negotiate lower out-of-network rates, but out-of-network rates shall not exceed the maximums set forth in this Section IV.D.3 while this Final Judgment remains in effect.

b. The maximum out-of-network rates set forth in this Section IV.D.3 are applicable to services by Sutter primary or specialty care physicians on whose behalf Defendants negotiate contracts with Insurers and that are billed as part of a hospital visit for trauma, emergency room, and post-stabilization services for patients admitted through the emergency room ("Covered Physicians Hospital Services"). Office visits, other inpatient services (aside from

post-stabilization services for patients admitted through the emergency room), and outpatient services are not covered by this Final Judgment as they are beyond the scope of this Final Judgment.

c. The contract rates used for determining the maximum out-of-network rates will be separately computed for each Insurer. For any additional Insurer approved by the Court, the maximum out-of-network rates will be calculated using the same multiples or percentage of billed charges listed below.

d. Notwithstanding any fluctuation in Defendants' contract rates, the agreed-upon multiples of contract rates or percentage of billed charges will be utilized to determine the maximum out-of-network rates, regardless of the circumstances, while this Final Judgment remains in effect.

e. At the option of any Insurer, the maximums set forth in this Section IV.C.3 shall also apply to the transition period (as defined in the Insurer's contract with Defendants) between the expiration of the contract between that Insurer and Defendants and the earlier of (1) any renewal of that contract or (2) ultimate termination of that contract without renewal.

f. Maximum Out-of-Network Rates and Other Out-of-Network Rate Provisions for Sutter Hospital Providers:

Category of Care	**Multiple of Contract Rates Used To Compute Out-Of-Network Rates**
Trauma (IP/OP)	[redacted] rate applicable to that Insurer or Self-Funded Payer
ER Non-Trauma	[redacted] rate applicable to that Insurer or Self-Funded Payer
Post-Stabilization Admitted Through ER	[redacted] Billed Charges
All Other IP	[redacted] Billed Charges
All Other OP	[redacted] Billed Charges
Rural Hospitals	[redacted] rate applicable to that Insurer or Self-Funded Payer

g. Maximum Out-of-Network Reimbursement and Other Out-of-Network Reimbursement Provisions for Covered Physician Hospital Services:

Category of Care	Multiple of Contract Rates Used To Compute Out-Of-Network Rates
Trauma (IP/OP)	[redacted] rate applicable to that Insurer or Self-Funded Payer
ER Non-Trauma	[redacted] rate applicable to that Insurer or Self-Funded Payer
Post-Stabilization Admitted Through ER	[redacted] rate applicable to that Insurer or Self-Funded Payer

4. Chargemaster Commitment

a. Defendants will limit the aggregate annual increase for chargemasters for the Sutter general acute care hospitals subject to this Final Judgment to less than [redacted], and [redacted] measured by the process described below.

b. Chargemaster Measurement: The chargemaster increase for the Sutter general acute care hospitals that are Group A Providers or Group B Hospitals will be measured using information submitted to California's Office of Statewide Health Planning and Development (OSHPD) under penalty of perjury, as required by Health and Safety Code Section 1339.55. Commencing in the calendar year following the date when this Final Judgment is entered, the percentage change in each general acute care hospital's gross revenue as submitted to OSHPD shall be multiplied by the total gross revenue for that hospital for the prior year. This product will be summed for these hospitals. The resulting sum will be divided by the total gross revenue for all Sutter general acute care hospitals subject to this Final Judgment. The resulting number shall be Sutter's chargemaster increase.

E. New Affiliates, New PAMF Hospitals/ASCs, New Insurers

1. New Affiliates

a. In the event Defendants acquire a hospital not included in the Group B Hospital definition ("New Sutter Hospital"), the Office of the California Attorney General and Class Counsel shall make a reasonable effort to meet and confer with Defendants in an effort to reach agreement to include such New Sutter Hospital in the definition of Group B Hospital above. In the event the Office of the California Attorney General and/or Class Counsel and Defendants do not agree, the Office of the California Attorney General and/or Class Counsel may petition the Court, after seeking the recommendation of the Compliance Monitor, to include such New Sutter Hospital in the definition of Group B Hospital.

b. Whenever Defendants acquire an ownership interest, stock, or assets of any Hospital or ASC as set out below ("New Affiliate") during the term of a contract with an Insurer and/or Self-Funded Payer and Defendants seek to apply the terms of the contract between the Defendants and the Insurer and/or Self-Funded Payer to the New Affiliate in any respect whatsoever, the following provisions shall apply:

(i) If an Insurer and/or Self-Funded Payer had an existing agreement with the New Affiliate prior to Defendants' acquiring the hospital or ASC as a New Affiliate, and Insurer and/or Self-Funded Payer notifies Sutter that Insurer and/or Self-Funded Payer wants the New Affiliate to participate in one or more of Insurer and/or Self-Funded Payer's Commercial Products, then the Commercial Product's fee for service (FFS) rates in Insurer and/or Self-Funded Payer's existing agreement with the New Affiliate ("Prior Rates") shall apply to the applicable Commercial Product for a period of two year(s) after the acquisition of the New Affiliate, or until the expiration of such agreement in accordance with its provisions, whichever is sooner. Nothing in this paragraph shall prevent Defendants and Insurer and/or Self-Funded Payer from negotiating capitation rates and related agreements, including, without limitation, shared risk budgets or rates for participation in government-sponsored products. Upon expiration of the Prior Rates as set forth above, the Insurer and/or Self-Funded Payer may elect at its option to treat the New Affiliate

as being out-of-network of any Commercial Product through the expiration of the term of the contract between the Insurer and Defendants. The provisions of this Section IV.E.1.b shall apply regardless of whether Defendants maintain the New Affiliate as a separate entity or merge it into an existing Sutter Provider as an expansion of that Provider's operations. Notwithstanding the provisions of this Section IV.E.1.b, the Insurer may, with Defendants' consent, opt to renegotiate its agreement with the New Affiliate prior to the expiration of the Prior Rates as set forth above.

(ii) If an Insurer does not have an existing agreement with a New Affiliate, the Insurer may exclude the New Affiliate from its networks after the New Affiliate is acquired by Defendants.

(iii) In the event any Defendant acquires a hospital or the assets of a hospital, the provisions of this Section IV.E.1 will be superseded by any requirements or conditions, regarding pricing or contracting imposed by any of the regulatory authorities who have oversight and approval of the acquisition, that are inconsistent with this Section IV.E.1.

(iv) The provisions of this Section IV.E.1 shall not apply to the acquisition of any non-Sutter medical group, any individual non-Sutter medical practice, or any purchase of assets or goodwill of a non-Sutter medical group, by any Defendant or by a Sutter-affiliated medical foundation. The provisions of this Section IV.E.1 likewise shall not apply to the hiring of individual physicians from a non-Sutter medical practice or group. Any such acquisitions or hiring are outside the terms of this Final Judgment as they are beyond the scope of this Final Judgment.

c. The provisions of this Section IV.E.1 shall not operate to bar, immunize, or estop any state or federal regulatory or law enforcement action to bar or condition the acquisition under any law, including antitrust, unfair competition, or charitable trust law.

2. New PAMF Hospital or ASC

a. In the event that PAMF seeks to add a Sutter Hospital or ASC to the list in Sections IV.C.2.a.(ii) or IV.C.2.b above ("New PAMF Hospital or ASC")," Defendants shall make a reasonable effort to meet and confer with the Office of the California Attorney General

and Class Counsel in an effort to reach agreement to include such New PAMF Hospital(s) or ASC(s) under Section IV.C.2.a.(ii) and IV.C.2.b above. In the event Defendants and the Office of the California Attorney General and/or Class Counsel do not agree, Defendants may petition the Court, after seeking the recommendation of the Compliance Monitor, to include such New PAMF Hospital(s) or ASC(s) pursuant to the procedures in Section V below.

3. New Insurers

a. In the event a California licensed health care service plan or insurance company, other than a provider owned or affiliated plan ('New Insurer"), newly enters or substantially expands its operations in the Northern California market for Commercial Products and is licensed to sell fully-funded or self-funded products directly to employers or health benefit trusts and such New Insurer (1) is of similar size and scope to the entities defined as Insurers above either in California, in a region of the United States, or nationwide, or would likely have been covered by this Final Judgment had they entered or re-entered the Northern California market prior to October 15, 2019, and (2) has demonstrated a commitment to entering the Northern California market for Commercial Products, the Office of the California Attorney General and Class Counsel shall meet and confer with Defendants to include the New Insurer within the definition of Insurer under this Final Judgment. If the Parties do not reach agreement, the Office of the California Attorney General and/or Class Counsel may petition the Court, after seeking the recommendation of the Compliance Monitor, to amend the Final Judgment to include the New Insurer as an Insurer covered by the terms of this Final Judgment.

F. Price and Quality Transparency:

1. Subject to reasonable confidentiality protections against further disclosure, an Insurer may provide Self-Funded Payers (a) access to the pricing terms in Defendants' agreements with that Insurer as soon as those agreements are fully executed.

2. An Insurer may provide a Self-Funded Payer, which has a contract with that Insurer to access Sutter Providers, that Self-Funded Payer's own claims paid data from that Insurer, which

that Self-Funded Payer may use for any purpose subject to reasonable protections against further disclosure of price information.

3. Insurers and/or Self-Funded Payers may provide enrolled members with access to pricing, quality, and/or cost information concerning Sutter Providers for purposes of comparing such Providers' prices and/or quality for particular healthcare services and products to the prices and/or quality of the same healthcare services or products available from other providers. Defendants' remedy for the posting of allegedly inaccurate pricing or quality information by Insurers and/or Self-Funded Payers is (1) to post the allegedly correct information on its own website, (2) to seek a court or, if applicable, arbitration order requiring the correction of the information, and/or (3) to pursue any other remedies authorized by law.

4. Insurers and/or Self-Funded Payers shall have discretion to publish their subjective views or ratings of the relative cost and/or quality of Sutter Providers and competing providers, including without limitation the option to separately rate the cost or quality of individual doctors in a medical practice.

5. Defendants shall not require Insurers and/or Self-Funded Payers to comply with additional process for disclosure of data related to Health & Safety Code Section 1367.49 & Insurance Code Section 10133.64 beyond what is expressly required by California law.

G. Miscellaneous

1. Admitting Privileges

a. Defendants shall continue to offer physicians, including independent physicians an opportunity to apply for and enjoy medical staff membership and privileges at their hospitals in accordance with California law and the medical staff bylaws, rules, regulations, criteria, and standards. Defendants shall also continue to offer physicians, including independent physicians, the opportunity to admit patients to, participate in, and practice at these hospitals (including through on call schedules) in accordance with California law and the medical staff bylaws, rules, regulations, criteria, and standards.

2. Retaliation

a. Retaliation or threats of retaliation based on any entity or individual having provided information in conjunction with the lawsuit or providing any information going forward to any party, the Compliance Monitor, or the Court, is prohibited.

3. Notices

All communications required to be made under this Final Judgment shall be sent to the respective parties at the following addresses:

If to Defendants:

Florence L. Di Benedetto
SVP & General Counsel
Sutter Health
Office of the General Counsel
2200 River Plaza Drive
Sacramento, CA 95833
dibenef@sutterhealth.org

If to the People:

Emilio Varanini
Deputy Attorney General
455 Golden Gate Avenue, Ste. 11000
San Francisco, Ca. 94102
E-mail: Emilio.Varanini@doj.ca.gov

If to Class Counsel:

Pillsbury & Coleman, LLP
100 Green Street
San Francisco, CA 94111
Attn: Richard L. Grossman
E-mail: rgrossman@pillsburycoleman.com

Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, N.W., Suite 500
Washington, DC 20005
Attn: Daniel A. Small
E-mail: dsmall@cohenmilstein.com

Farella Braun + Martel
Russ Building
235 Montgomery Street
San Francisco, CA 94104
Attn: Christopher Wheeler
E-mail: cwheeler@fbm.com

Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C
1615 M Street, N.W., Suite 400
Washington, DC 20036
Attn: Daniel Bird
E-mail: dbird@kellogghansen.com

McCracken, Stemerman & Holsberry, LLP
595 Market Street, Suite 800
San Francisco, CA 94105
Attn: Sarah Grossman-Swenson
E-mail: sgs@msh.law

V. COMPLIANCE MONITOR

A. Settlement Compliance Monitor

For the purpose of monitoring compliance with this Final Judgment, Jesse Caplan of Affiliated Monitors, Inc. shall serve as the Compliance Monitor pursuant to an agreement among the Compliance Monitor and the Parties, which shall be submitted to the Court.

B. Powers of the Compliance Monitor

1. The Compliance Monitor shall have the following powers to monitor compliance with this Final Judgment: to investigate compliance; to take complaints from Plaintiff(s) and Insurers; to compel disclosure of confidential documents subject to appropriate confidentiality protections; to interview witnesses; to inspect records; to hire staff and experts; and to make recommendations concerning enforcement to the Court.

2. In investigating compliance, or in taking complaints from Plaintiff(s) and Insurer(s), the Compliance Monitor may, in his or her discretion, fully investigate any such complaints to determine compliance with the terms of this Final Judgment and/or set up a process by which evidence shall be presented for the Compliance Monitor to make an appropriate recommendation to the Court.

C. Specific Procedures

1. With respect to Section IV.B.2.c above, related to a challenge by the Office of the California Attorney General and/or Class Counsel to a decision by CPMC or PAMF not to participate in a Commercial Product, the Office of the California Attorney General and/or Class

Counsel may present evidence that the refusal is pretextual. If it is determined by the Court that CPMC's or PAMF's refusal is pretextual, CPMC or PAMF shall participate in the product, subject to the negotiation of mutually agreeable price terms so long as the price terms offered by Sutter are not tantamount to conditioning the participation of CPMC or PAMF on the participation, pricing, or tiered status of other providers.

2. With respect to Sections IV.C.3.b and IV.C.3.c above, governing the Clinical Integration and/or Patient Access Considerations, the process set up by the Compliance Monitor shall include the presentation of evidence supporting or contesting the invocation of the exceptions for conditioning access set forth in those sections and supporting or contesting any claim by Plaintiff(s) that the invocation of those exceptions is anticompetitive (for example, and without limitation, because the Group B Hospital in question has market power, the anticompetitive effects of conditioning outweigh the procompetitive benefits, etc.).

a. Sutter shall have the right, to be exercised solely within Defendants' discretion, to provide the Compliance Monitor with evidence to show that its invocation of the exceptions for Clinical Integration and Patient Access Considerations was non-pretextual.

b. After considering all of the evidence offered by any applicable witness or Party, the Compliance Monitor shall decide whether Defendants' invocation of the exception in question was pretextual.

c. If the Compliance Monitor concludes that Defendants' invocation of the exception in question was not pretextual, the Office of the California Attorney General and/or Class Counsel shall then have the burden of presenting evidence and of proving that the invocation of these exceptions was anticompetitive (for example, and without limitation, because the Group B Hospital in question has market power, the anticompetitive effects of conditioning outweigh the procompetitive benefits, etc.). Defendants may choose to present additional evidence supporting the claimed benefits as part of this process. The Office of the California Attorney General and/or Class Counsel shall retain the burden of showing that any evidence of claimed benefits presented by Defendants is outweighed by their evidence of anticompetitive effects and/or that, upon

meeting their burden of proving anticompetitive effects, this evidence of benefits is otherwise unsupportable.

d. With respect to the Clinical Integration exception, the following provisions also shall apply:

(i) The existence of a referral relationship, common electronic health records, both a referral relationship and common health records, common county or geographic area of Sutter Provider location, or a claim of patient or physician convenience alone shall not be sufficient to establish that any group of Sutter Providers are Clinically Integrated.

(ii) The Compliance Monitor shall also consider whether the arrangement is likely to improve the quality and/or affordability of the health care services that are being provided and whether such an improvement reasonably can be achieved without participation of all of the designated Sutter Providers in the same network or tier.

D. Duty to Cooperate with Compliance Monitor

The Parties shall cooperate with the Compliance Monitor in the performance of his or her work and shall take no action to interfere with or impede the Compliance Monitor's ability to monitor Sutter's compliance with this Order.

E. Expenses of the Compliance Monitor

The Compliance Monitor shall be entitled to receive reimbursement of its reasonable fees and costs. The Court shall approve all claims for reimbursement, and the Parties shall be entitled to submit to the Court comments on the reasonableness of the fees and costs. Defendants shall pay the reasonable fees and costs for the Compliance Monitor by establishing a Monitor Fund to be administered by the Office of the Attorney General as approved by the Court.

F. Confidentiality

1. The Parties may require the Compliance Monitor and each of the Compliance Monitor's consultants, accountants, and other representatives, agents, and assistants to sign a confidentiality agreement; *provided, however,* that such agreement shall not restrict the

Compliance Monitor from providing any information to the Court, subject to any requests to seal information pursuant to California Rules of Court Rule 2.550, *et seq*.

2. The Compliance Monitor shall comply with the confidentiality obligations that will be set forth in the Monitor Agreement between the Compliance Monitor and the Parties, and shall protect against disclosure of non-public information except as specifically provided for in this Order.

VI. DURATION

This Final Judgment shall remain in effect for ten (10) years unless, prior to the expiration of this Final Judgment, Plaintiff(s) apply for, and the Court grants, a one-time, three-year extension of the term.

VII. RETENTION OF JURISDICTION & CHANGED CIRCUMSTANCES

Pursuant to California Civil Code Section 3424, Code of Civil Procedure Sections 533 and 664.6 and Rules of Court Rule 3.769(h) the Court shall retain jurisdiction over these consolidated actions and the parties thereto for the purpose of enabling any of the parties to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe the terms of this Final Judgment, to enforce compliance, to modify any of its provisions, and to punish any violation of its provisions.

EXHIBIT A

to [Proposed] Final Judgment

Exhibit A
List of Ambulatory Surgery Centers Pursuant to IV.C.2.b.(2)

1. Peninsula Endoscopy Center LLC
2. Peninsula Eye Center