

7/22/05

ENDORSED

JUL 22 2005

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF SACRAMENTO

11 California Proceeding
 Special Title (Rule 1550(b))

J.C.C.P. No. 4388

13 **SUTTER HEALTH UNINSURED**
 14 **PRICING CASES**

**FIRST AMENDED CONSOLIDATED
 CLASS ACTION COMPLAINT FOR
 DAMAGES AND INJUNCTIVE RELIEF:**

- 15 1) VIOLATION OF THE CALIFORNIA
 UNFAIR COMPETITION ACT
 (BUSINESS AND PROFESSIONS CODE
 § 17200, ET SEQ.);
- 16 2) VIOLATION OF THE CONSUMERS
 LEGAL REMEDIES ACT
 (CALIFORNIA CIVIL CODE §§ 1750
 ET SEQ.).
- 17 3) UNJUST ENRICHMENT
- 18 4) BREACH OF CONTRACT
- 19 5) BREACH OF DUTY OF GOOD FAITH
 AND FAIR DEALING

20 **JURY TRIAL DEMANDED**

1 **INTRODUCTION**

2 1. Defendant Sutter Health (“Sutter” or “Defendant”), a California-based healthcare
3 provider, promotes itself as a hospital system that is “Community Based. Not For Profit.” In
4 truth, Sutter is one of the most profitable hospital systems in the state — it has more than
5 \$4.4 billion in assets, and earned more than half a billion dollars in profits in the past two years
6 alone.

7 2. Sutter operates more than two dozen hospitals throughout Northern California,
8 including, for example, Alta Bates Summit Medical Center in Berkeley; California Pacific
9 Medical Center in San Francisco; St. Luke’s Hospital in San Francisco; and Sutter Roseville
10 Medical Center in Roseville.

11 3. Although Sutter purports to operate as a charitable, non-profit entity that would
12 engage in business for a charitable purpose, in reality, Sutter earns substantial profits, and is
13 anything but charitable. While it promises to provide affordable care to the uninsured poor,
14 Sutter has engaged, and continues to engage, in a pattern and practice of charging unfair,
15 unreasonable and inflated prices for medical care to its uninsured patients who are typically the
16 least able to pay these inflated and unreasonable charges.

17 4. Sutter, as a self-proclaimed charity, also pursues aggressive collection techniques
18 that often result in lawsuits, judgments, garnishments and bankruptcies against uninsured patients.

19 5. Plaintiffs Nathaniel Pollack, Jef Whitehead, Iyabo Oladigbolu, Tammi Powell,
20 Linda Arrona, Duane Darr, and the Class are all uninsured patients (or the patient’s guardian, in
21 the case of Plaintiff Arrona) who, despite their financial status, were charged unfair, unreasonable
22 and unconscionable rates for medical care by Sutter.

23 6. Plaintiffs Nathaniel Pollack, Jef Whitehead, Iyabo Oladigbolu, Tammi Powell,
24 Linda Arrona, bring this case on behalf of themselves and a Class of similarly-situated uninsured
25 individuals who were treated at Sutter hospitals and were charged unfair, unreasonable and
26 unconscionable rates by Defendants. Plaintiff Duane Darr brings the case on his own behalf.
27
28

1 **JURISDICTION AND VENUE**

2 7. The Court has jurisdiction over this class action under article 6, § 10 of the
3 California Constitution, and § 410.10 of the California Code of Civil Procedure, in that Defendant
4 Sutter has its headquarters and primary place of business in California, and operates hospitals
5 throughout Northern California.

6 8. On March 2, 2005, the Coordination Motion Judge ordered that these coordinated
7 cases be venued in Sacramento County where Defendant Sutter has its headquarters.

8 **THE PARTIES**

9 9. Plaintiff Nathaniel Pollack is a resident of Albany, California and has been treated
10 at Alta Bates Summit Medical Center, a Sutter Health Affiliate, located in Berkeley, California.

11 10. Plaintiff Jef Whitehead is a resident of San Francisco, California and has been
12 treated at California Pacific Medical Center, a Sutter Health Affiliate, located in San Francisco,
13 California.

14 11. Plaintiff Iyabo Oladigbolu is a resident of San Francisco, California and has been
15 treated at St. Luke’s Medical Center, a Sutter Health Affiliate, located in San Francisco,
16 California.

17 12. Plaintiff Tammi Powell is a resident of Grass Valley, California and has been
18 treated at Sutter Roseville Medical Center, a Sutter Health Affiliate, located in Roseville,
19 California.

20 13. Plaintiff Linda Arrona is a California resident. Plaintiff Arrona’s minor son was
21 treated at Sutter Tracy Community Hospital, a Sutter Health Affiliate, located in Tracy,
22 California.

23 14. Plaintiff Duane Darr is a resident of Berkeley, California and has been treated at
24 Alta Bates Medical Center, a Sutter Health Affiliate, located in Berkeley, California.

25 15. Defendant Sutter Health is a private, non-profit corporation incorporated in
26 California and having its principal place of business at 2200 River Plaza Drive, Sacramento,
27 California. Sutter owns and operates more than two dozen hospitals in Northern California.
28

1 would “spend \$154 million to implement electronic health records throughout its 27 Northern
2 California hospitals,” on top of \$1.2 billion to augment the information technology infrastructure
3 for its hospitals. (www.sutterhealth.com/about/news/sutter-in-the-news2.html).

4 30. Sutter Health benefits by annually reporting the Community Benefit activities of
5 all of its affiliate hospitals..

6 31. Sutter Health, through its conduct, including the above, as well as through its press
7 releases, Education Campaign and its advertising, purports to speak and act for and on behalf of
8 the Sutter affiliates and the Sutter network. For example, Sutter Health runs television
9 commercials touting Sutter hospitals in the name of Sutter Health, indicating that Sutter Health is
10 the controlling entity. In one commercial called “When We Were Born, We Weighed 2-½
11 Pounds . . . Each!” patients from different Sutter hospitals report the condition they had treated at
12 a Sutter hospital while a voiceover states, “The doctors and hospitals in the Sutter Health
13 Network share their expertise with each other,” “Improving lives all over Northern California,”
14 “Sutter Health. Community based. Not for profit.” Sutter Health runs numerous television
15 commercials that end with a still screen of Sutter Health’s logo and the text, “Sutter Health.
16 Community Based. Not For Profit.” As such, Sutter Health has caused Plaintiffs, the Class and
17 the general public to believe that the affiliate hospitals are agents of Sutter Health over which
18 Sutter Health exercises financial and policy-oriented control.

19 32. Similarly, at Sutter Health’s direction and with Sutter Health’s approval, each of
20 the Sutter affiliates puts itself forward as being part of Sutter Health by using Sutter in its name
21 and/or identifying itself as “A Sutter Health Affiliate.”

22 33. As a result of Sutter Health’s actions and representations, Plaintiffs and the Class
23 justifiably believe that the hospital affiliates acted on behalf of and were the agents of Sutter
24 Health.

25 34. At all relevant times, each and every hospital was and is the agent of Sutter Health.
26 In committing the acts alleged herein, each and every hospital acted in the course and scope of its
27 agency and was acting with the consent, permission, authorization, satisfaction and knowledge of
28 Sutter Health, and perpetuated and/or aided and abetted the violations of law described herein.

1 All actions of each hospital as alleged herein were ratified and approved by Sutter Health or its
2 officers, directors, controlling persons, agents, partners, or joint venturers.

3 35. At all relevant times, each and every collection agency was and is the agent of
4 Sutter Health. Sutter Health has established “standardized collection practices” for the patients
5 treated at Sutter hospitals. In committing the acts alleged herein, each and every collection
6 agency acted in the course and scope of its agency and was acting with the consent, permission,
7 authorization, satisfaction and knowledge of Sutter Health, and perpetuated and/or aided and
8 abetted the violations of law described herein. All actions of each collection agency as alleged
9 herein were ratified and approved by Sutter Health or its officers, directors, controlling persons,
10 agents, partners, or joint venturers.

11 36. At all relevant times, each and every Defendant was the agent of each and every
12 other Defendant. In committing the acts alleged herein, each and every Defendant acted in the
13 course and scope of its agency and was acting with the consent, permission, authorization and
14 knowledge of each of the remaining Defendants, and perpetuated and/or aided and abetted the
15 violations of law described herein. All actions of each Defendant as alleged herein were ratified
16 and approved by every other Defendant or their officers, directors, controlling persons, agents,
17 partners, or joint venturers.

18 **FACTS**

19 37. As a not-for-profit charity health care system, Defendant Sutter is required to
20 operate exclusively in furtherance of a charitable purpose. Contrary to its charitable purpose and
21 in violation of California law, Sutter engages in pricing and collection practices with regard to its
22 uninsured patients that are not charitable, but instead are unfair, discriminatory and unreasonable.

23 38. Sutter’s unreasonable, unconscionable and unlawful pricing practices have a
24 significant detrimental impact on the very population Sutter has obligated itself to assist, *e.g.*, the
25 uninsured who are generally the least able to afford medical care.

26 39. Hospitals, including Sutter, maintain documents called Chargemasters,
27 spreadsheets that list the gross charge for each product and service provided by the hospital.

1 These gross charges, however, rarely bear any relation to the hospital's costs for providing
2 treatment.

3 40. The gross charges might form the *starting point* for negotiations with insurance
4 companies and managed care organizations to reach reasonable reimbursements rates; or for
5 determining Medicare outlier payments to hospitals. In such instances, these payors are given
6 significant discounts from the gross charge listed in the Chargemasters. However, due to the
7 recognition that Chargemaster rates are rarely related to actual costs and can be artificially
8 inflated by hospitals, insurance companies and other group payors have begun to negotiate
9 reimbursement levels based upon the costs of providing the treatment, and *not* upon the inflated
10 Chargemaster rates. Significantly, uninsured patients are the *only* category of payors who are
11 actually charged the full excessive gross Chargemaster rates.

12 41. Based upon the data that all hospitals are required to provide to the government,
13 Sutter's Chargemaster prices – and, accordingly, the prices charged to uninsured patients – are
14 excessive and inflated. For example, based on 2002 data, Sutter's Chargemaster prices were, on
15 average, 420% of the Medicare reimbursement rates for non-outlier reimbursements, compared
16 with a national average of 258% and national median of 195%. Based upon these figures,
17 Sutter's prices, and, therefore, charges to uninsured patients, fall in the *top five percent* of all
18 hospitals (including both for profit and not-for-profit) across the country. Upon information and
19 belief, Sutter's charges have increased to even greater levels in the last two years.

20 42. In April and May of 2004, Health Access California (a statewide non-profit
21 organization founded in 1987 and dedicated to achieving quality, affordable health care for all
22 Californians) and Service Employers International Union (“SEIU”), Local 250 (the Health Care
23 Workers Union) issued two related reports regarding Sutter's pricing practices. The reports,
24 entitled, Your Money or Your Health: Discriminatory Pricing and Aggressive Debt Collection
25 Practices by Sutter Healthcare (April 2004) and Your Money or Your Health: Discriminatory
26 Pricing and Aggressive Debt Collection Practices by Sutter Health in San Francisco (May 2004)
27 (together, hereinafter “Discriminatory Pricing Reports”), describe that uninsured patients at
28 Sutter's California Pacific Medical Center (“CPMC”) were charged prices that were 300% higher

1 than those charged to insured patients, and that uninsured patients at Sutter Roseville Medical
 2 Center were charged prices that were 150% higher than those charged to insured patients.

3 43. The gross Chagemaster rates charged to the uninsured are unreasonable and
 4 excessive. According to the Discriminatory Pricing Reports, Sutter hospitals charged the
 5 uninsured four times the cost of providing such services. The same reports reveal that Sutter’s
 6 gross Chagemaster rates are, on average, higher than non-Sutter hospitals, by as much as 80%.
 7 Accordingly, not only are the uninsured being charged more than the insured at Sutter hospitals,
 8 they are also being charged more than the average charged to uninsured patients at non-Sutter
 9 hospitals.

10 44. A separate report issued by SEIU Local 250 reveals similar overcharging to
 11 California’s uninsured population. (See Briefing: Sutter Health Over-Pricing, Monopoly
 12 Practice, Skyrocketing Profits and Government Investigations (visited April 18, 2005)
 13 <<http://www.seiu250.org/docUploads/SutterCalPERSReportYES.pdf>> (“Briefing”).) The SEIU
 14 Briefing reports that according to Year 2000 Office of Statewide Health Planning and
 15 Development data, CPMC charges greatly exceeded the average charges of other Northern
 16 California hospitals (excluding Sutter and Tenet hospitals), as follows:

17 **Average Charges Per Discharge for Selected Procedures:**
 18 **Sutter Health Hospitals vs. Northern California General Acute-Care Hospitals Averages**
 19 **(excluding Tenet & Sutter Hospitals) (2000)**

20 Procedure	21 N. California Average (Non Tenet-Non Sutter)	22 Sutter’s California Pacific Medical Center	23 CPMC % Above N. California Average	24 Sutter’s Memorial Hospital Modesto	25 Memorial Hosp. Modesto % Above N. California Avg.
26 Pacemaker Implant	\$38,990	\$56,385	44.6%	\$70,722	81.4%
27 Vaginal Delivery	\$6,003	\$14,339	138.9%	\$8,805	46.7%
28 Tracheostomy	\$377,580	\$448,250	18.7%	\$588,257	55.8%

Source: Office of Statewide Health Planning and Development (OSHPD),
 Patient Discharge Data, Calendar Year 2000 as analyzed by SEIU Local 250.

1 45. In May 2004, the California Public Employees’ Retirement System (“CalPERS”)

2 removed 38 hospitals, including 13 Sutter hospitals, from its Blue Shield HMO network, citing

3 high costs: “most of the savings would come through excluding selected Sutter hospitals. . . .

4 Sutter Health is a huge outlier. Its costs are 60 percent higher than its Northern California peers

5 and 80 percent higher than the statewide average.” (Press Release: CalPERS Adopts Hospital

6 Pricing Reform; Reduced Hospital Network Promises Long-Term Savings (May 19, 2004)

7 <[http://www.calpers.ca.gov/index.jsp?bc=/about/press/archived/pr-2004/may/hospital-

8 pricing.xml](http://www.calpers.ca.gov/index.jsp?bc=/about/press/archived/pr-2004/may/hospital-pricing.xml)> (visited Apr. 13, 2005.))

9 46. While gouging the uninsured, Sutter has reported massive – and rising – profits.

10 In 2000, 2001, and 2002, Sutter reported operating profits of \$107 million, \$121 million and

11 \$322 million, respectively. For the first nine months of 2003, Sutter reported operating profits of

12 \$326 million, a 52% increase from the same period in 2002, and more than for all of 2002. Sutter

13 reported \$465 million of income for the year 2003.

14 47. Moreover, Sutter hospitals have an operating profit margin that is far greater than

15 the statewide average, as demonstrated in the following chart from Briefing:

16 **Sutter Health Hospitals with Operating Margins¹ Exceeding 10%
vs. Statewide Average for All Nonprofit General Acute Hospitals Non-Sutter (2002)**

17 Facility	Operating Margin	Net Income (Profit)
18 Statewide Average for Nonprofit General Acute Hosp. (Non-Sutter)	2.9%	\$5,240,842
19 Sutter Tracy Community Hospital	33.1%	\$20,199,857
20 Sutter Roseville Medical Center	23.9%	\$48,735,089
21 California Pacific Medical Center	19.8%	\$135,383,131
22 Sutter Solano Medical Center	17.8%	\$13,845,592
23 Sutter Delta Medical Center	15.7%	\$14,258,252
24 Sutter Amador Hospital	17.0%	\$7,759,037
25 Memorial Hospital Modesto	12.9%	\$46,839,494
26 Sutter Maternity & Surgery Center	13.6%	\$2,916,633

27 *Source: Office of Statewide Health Planning and Development (OSHPD),
Hospital Annual Financial Data, 2002, as analyzed by SEIU Local 250.*

28 ¹ Operating Margin = Net From Operations/(Net Patient Revenue + Other Operating Revenue).

1 48. For all of its hospitals combined, Sutter Health reported a 2003 operating margin
2 of 7%, still more than twice the statewide average.

3 49. At the same time, Sutter Health's top executives are paid at enormous and growing
4 rates:

	2001 Compensation	2002 Compensation	2003 Compensation
5 Van Johnson, CEO	\$1.35 million	\$1.44 million	\$2.34 million
6 Pat Fry, COO	\$770,000	\$808,000	\$1.26 million
7 Robert Reed, CFO	\$516,000	\$535,700	\$808,400

8
9 50. According to Sutter affiliates' IRS Form 990's (Return of Organization Exempt
10 From Tax), Sutter Health also pays compensation to some or all of the executives of Sutter's
11 affiliate hospitals, often several hundred thousand dollars or more per year.

12 51. Sutter Health provides minimal charity care (*i.e.*, free care to the uninsured). In
13 2002, Sutter hospitals spent only 0.6% of its revenues on charity care, substantially less than the
14 statewide average of 1% spent by private (both for profit and not-for-profit) hospitals. (See
15 Discriminatory Pricing Reports, infra).

16 52. Additionally, Sutter's agents regularly refer substantial numbers of patients to
17 collection when they are unable to pay. As Sutter Health admits on its website, it has established
18 "standardized collection practices" for Sutter hospitals to follow. ([www.sutterhealth.com/about](http://www.sutterhealth.com/about_ab_ethics.html)
19 [ab_ethics.html](http://www.sutterhealth.com/about_ab_ethics.html)). Other than a prohibition on wage garnishments, bench warrants and property
20 foreclosures, all other collection tactics are fair game for Sutter hospitals. (Id.) As such, Sutter
21 Health's agents and/or other Sutter affiliates or subsidiaries working on Sutter Health's behalf,
22 have used and continue to use coercive, unfair and fraudulent collection methods, including the
23 institution of lawsuits, to collect the improper sums charged, and have made negative credit
24 reports about patients who fail to pay the exorbitant charges. According to the Discriminatory
25 Pricing Reports, in 2003, Sutter sued nearly 300 patients for collection in Sacramento, and since
26 2002, Sutter have sued 134 patients in San Francisco.

27 53. Absent an order from the Court, Plaintiffs and the Class will not be made whole
28 nor will justice be provided for Sutter's uninsured patients. Plaintiffs thus seek injunctive relief

1 requiring the immediate cessation of the foregoing practices, including but not limited to charging
2 uninsured patients unfair, unconscionable, unreasonable and discriminatory rates; and pursuing
3 collection actions against uninsured patients to collect the unfair and illegal charges. Plaintiffs
4 also seek restitution and appropriate damages for themselves and the Class.

5 **REPRESENTATIVE PLAINTIFF ALLEGATIONS**

6 54. Plaintiff Nathaniel Pollack has been treated multiple times at Alta Bates Summit
7 Medical Center from the Fall of 2002 through the Spring of 2003. On or about March 21, 2003,
8 Plaintiff Pollack went to Alta Bates Summit Medical Center, a Sutter Health Affiliate, because he
9 was experiencing kidney failure. At the time he was treated, he was uninsured. He remained in
10 the hospital until March 31, 2003 for treatment largely consisting of giving him intravenous fluids
11 to flush out his kidney. He also received some basic bloodwork and other lab tests. Plaintiff
12 Pollack received a bill for \$40,939.70, not including separate bills received from the doctor and
13 for x-rays and other lab tests. For other hospital visits on September 5, 2002, March 10, 2003 and
14 April 1, 2003, each of which was for minimal outpatient treatment, Plaintiff Pollack was charged
15 \$765.64, \$358, and \$269, respectively. At the time of each treatment, Plaintiff Pollack was
16 uninsured. Upon information and belief, these charges are unreasonable and unconscionable and
17 more than the amounts charged to insured patients for the same treatment. Plaintiff Pollack has
18 paid a portion of his Sutter bill. Plaintiff Pollack brings this action on behalf of himself and all
19 others similarly situated.

20 55. Plaintiff Jef Whitehead was admitted to California Pacific Medical Center in San
21 Francisco through its emergency room for a lymph node infection in 2001. He remained in the
22 hospital for five days. He was uninsured and unemployed at the time. While hospitalized,
23 Whitehead was not provided with any information about payment options or eligibility for public
24 or charity care. Whitehead was billed over \$17,000 for the hospital stay and \$600 for emergency
25 room treatment. Upon information and belief, these charges are unreasonable and
26 unconscionable and more than the amounts charged to insured patients for the same treatment.
27 He was not able to pay and no one from Sutter Health or California Pacific Medical Center
28 provided him with any information regarding payment plans or charity care. Whitehead's bills

1 were sent to two collection agencies, the \$17,000 hospital bill to Grant Weber, and the \$600
2 emergency room bill to Rash Curtis. Although Whitehead attempted to negotiate a reasonable
3 payment plan with Grant Weber, the collection agency did not agree. It thereafter sued
4 Whitehead, obtained a default judgment, and attached Whitehead's bank account, obtaining
5 approximately \$400 for payment. Whitehead continues to receive calls and letters regarding
6 collections. Plaintiff Whitehead brings this action on behalf of himself and all others similarly
7 situated.

8 56. Plaintiff Iyabo Oladigbolu was the victim of a hit and run accident in San
9 Francisco in September 2001. The accident injured her back. She took herself to the emergency
10 room of St. Luke's Hospital – the nearest hospital – to be examined. She informed the emergency
11 room staff that she was unemployed and uninsured. She was not given any information about the
12 hospital's charity care policy or interviewed by a financial counselor. She was examined for
13 twenty minutes and released without medication or an x-ray. She received a bill for \$574. Upon
14 information and belief, these charges are unreasonable and unconscionable and more than the
15 amounts charged to insured patients for the same treatment. Oladigbolu was unable to pay and no
16 one from Sutter Health or St. Luke's provided her with any information about payment options or
17 charity care. Oladigbolu's bill was sent to collections. Plaintiff Oladigbolu brings this action on
18 behalf of herself and all others similarly situated.

19 57. Plaintiff Tammi Powell was admitted to the emergency room of Sutter Roseville
20 Medical Center in July 2001 after suffering from smoke inhalation from a fire that destroyed her
21 home. Upon being admitted to the emergency room, Plaintiff Powell informed hospital staff that
22 she was uninsured. She spent one night at Sutter Roseville and was charged approximately
23 \$20,000 for treatment received during her stay, including a bill from Sutter for \$11,548, and
24 related charges. Upon information and belief, these charges are unreasonable and unconscionable
25 and more than the amounts charged to insured patients for the same treatment. Plaintiff Powell
26 requested a charity care discount following her release from Sutter Roseville, but upon
27 information and belief, the request was never considered by the hospital. Powell was unable to
28 pay her hospital bill, and no one from Sutter Roseville or Sutter Health provided Powell with any

1 information regarding payment plans or charity care. Plaintiff Powell's bill was sent to a
2 collections agency. Plaintiff Powell has attempted to pay the hospital bill by making regular
3 monthly payments. Plaintiff Powell brings this action on behalf of herself and all others similarly
4 situated.

5 58. Plaintiff Linda Arrona's minor son was treated at Sutter Tracy Community
6 Hospital in September 2003. On or about September 12, 2003, Jose Arrona, Jr. the minor son of
7 Plaintiff Linda Arrona, was taken to Sutter Tracy Community Hospital, a Sutter hospital, for
8 treatment of a head laceration after he was attacked and beaten in the streets of Tracy. He was
9 taken by his friends to the emergency room for treatment. Jose received several stitches for his
10 laceration, had blood taken for lab tests, and was given two CT scans. At the time of treatment,
11 Jose and his family, including his mother Plaintiff Linda Arrona were uninsured. He was released
12 after approximately three hours. Plaintiff Arrona, as the parent of Jose Arrona, received multiple
13 bills for this medical treatment, including a bill for \$4660.60 from Sutter Tracy Community
14 Hospital. Upon information and belief, these charges are unreasonable and unconscionable and
15 more than the amounts charged to insured patients for the same treatment. Arrona was unable to
16 pay her hospital bill, and no one from Sutter Tracy Community Hospital or Sutter Health
17 provided Arrona with any information regarding payment plans or charity care. Plaintiff
18 Arrona's account was sent to the collections department from which she received letters that
19 demanded payment and threatened to forward the account to a collection agency. Plaintiff Arrona
20 has been attempting to pay the bill by making monthly payments. Defendant Sutter has been
21 charging excessive and unreasonable interest on the account despite Plaintiff Arrona's efforts to
22 pay the bill. Plaintiff Arrona brings this action on behalf of herself and all others similarly
23 situated.

24 **INDIVIDUAL PLAINTIFF ALLEGATIONS**

25 59. On or about May 17, 2004, Plaintiff Duane Darr was taken to the Alta Bates
26 Summit Medical Center, a Sutter hospital, for treatment after slipping at a local grocery store. At
27 the time of treatment, Plaintiff Darr was uninsured. He was transported to the emergency room
28 by ambulance. Over several hours, Plaintiff Darr underwent basic testing including blood tests, a

1 hip x-ray and an EKG. He was also given a pharmaceutical. He did not stay at the hospital
2 overnight, and has not had any follow-up treatment. For this hospital visit, Plaintiff Darr was
3 billed \$4,599.10. Upon information and belief, these charges are unreasonable and
4 unconscionable and more than the amounts charged to insured patients for the same treatment.
5 Plaintiff Darr was unable to pay his bill and no one from Alta Bates or Sutter Health provided
6 him with any information regarding payment plans, charity care or the Sutter Health Charity Care
7 and Low Income Uninsured Program. Plaintiff Darr brings this action on his own behalf.

8 CLASS ACTION ALLEGATIONS

9 60. Plaintiffs Pollack, Whitehead, Oladigbolu, Powell and Arrona bring this action on
10 behalf of themselves and a class of all other persons similarly situated, under Cal. Civ. Proc. Code
11 382 and Cal. Civ. Code 1781, defined as follows:

12 All individuals (or their guardians) who, from September 3, 2000
13 through the date of judgment received any form of medical
14 treatment at a Sutter hospital and were uninsured at the time of
15 treatment. Excluded from the Class are Defendants, any entity in
16 which any Defendant has a controlling interest, and any officers or
17 directors of Defendants, the legal representatives, heirs, successors,
18 and assigns of Defendants, and any judicial officer assigned to this
19 matter and his or her immediate family.

20 61. The members of the Class are so numerous that joinder of all members is
21 impracticable. Plaintiffs do not know the exact number of Class members, but are informed and
22 believe that thousands of uninsured patients are regularly subjected to Sutter's standardized,
23 predatory and discriminatory pricing and collection practices, and that there are at least tens of
24 thousands of persons in the proposed Class. Upon information and belief, the identities of the
25 Class members may be ascertained from various public and private information sources and
26 through Sutter's files and records.

27 62. There are common questions of law and fact which predominate over any issues
28 affecting only individual class members, including but not limited to:

a. Whether Sutter's practice of charging uninsured patients (Plaintiffs and the
Class), and only uninsured patients its full Chargemaster rates for medical treatment is unlawful
under any of Plaintiffs' causes of action.

1 b. Whether Sutter has charged and continues to charge Plaintiffs and the Class
2 unreasonable and/or unconscionable charges for medical care in breach of contract or the
3 covenant of good faith and fair dealing;

4 c. Whether Sutter's pricing practices as to Plaintiffs and the Class are unfair,
5 unconscionable, deceptive and/or illegal;

6 d. Whether Sutter's representation that it is a not-for-profit business, or that it
7 is "Community Based. Not for Profit," has a tendency to deceive the public;

8 e. Whether Sutter's representations in its 2004 Education Campaign have a
9 tendency to deceive the public;

10 f. Whether Sutter has engaged in unfair business practices that are injurious
11 to Plaintiffs and the Class;

12 g. Whether Sutter, through its conduct, has been unjustly enriched to the
13 detriment of Plaintiffs and the Class;

14 h. Whether Sutter has utilized aggressive, unfair, abusive, harassing and
15 illegal collection practices, lawsuits, liens, and garnishments to collect medical payments from
16 Plaintiffs and the Class; and

17 i. Whether the foregoing acts and conduct of Sutter render Sutter liable to
18 Plaintiffs and the Class for restitution, injunctive relief and/or damages.

19 63. The crucial, dispositive issues that will determine whether Sutter's conduct has
20 violated and continues to violate the law, are based upon entirely or predominately common facts
21 with respect to Sutter's practices.

22 64. The claims of the Plaintiffs are typical of the claims of the Class as a whole. Each
23 of the Representative Plaintiffs is a member of the Class and has suffered harm and is likely to
24 continue to suffer harm due to the unfair, unreasonable, and unconscionable practices of Sutter as
25 described herein.

26 65. The Representative Plaintiffs will fairly and adequately protect the interests of the
27 Class. The interests of Representative Plaintiffs are consistent with and not antagonistic to the
28

1 interests of the Class. Representative Plaintiffs have retained counsel experienced in prosecuting
2 complex consumer and healthcare class actions.

3 66. The prosecution of separate actions by individual members of the Class would
4 create a risk that inconsistent or varying adjudications with respect to individual members of the
5 Class would establish incompatible standards of conduct for the parties opposing the Class and
6 would substantially impair or impede the interests of the other members of the Class to protect
7 their interests.

8 67. Plaintiffs are informed and believe and thereon allege that Sutter has acted on
9 grounds generally applicable to the Class, thereby making appropriate final injunctive relief or
10 declaratory relief with respect to the Class as a whole.

11 68. This class action is superior to other available methods for the fair and efficient
12 adjudication of the controversy between the parties. Upon information and belief, the interests of
13 members of the Class in individually controlling the prosecution of a separate action is low, in
14 that most Class members would be unable to individually prosecute any action at all. The
15 amounts at stake for individuals, while significant, are sufficiently small for most or all Class
16 members relative to the costs of prosecution, that separate suits would be impractical and
17 uneconomical, and most members of the Class would not be able to find counsel to represent
18 them. Concentrating litigation in one forum will promote judicial efficiency by resolving the
19 common questions of law and fact in one forum, rather than in multiple courts.

20 69. A class action would be manageable. Individualized litigation also presents a
21 potential for inconsistent or contradictory judgments. By contrast, the class action device
22 presents far fewer management difficulties; allows the hearing of claims that might otherwise go
23 unaddressed because of the relative expense of bringing individual lawsuits; and provides the
24 benefits of single adjudication, economies of scale, and comprehensive supervision by a single
25 court.

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FIRST CAUSE OF ACTION
Violation of the California Unfair Competition Act
(Business and Profession Code §§ 17200, *et seq.*)

70. Plaintiffs hereby incorporate the paragraphs and allegations set forth above, as though set forth in full herein.

71. Defendant’s conduct constitutes unfair competition within the meaning of the Unfair Competition Act, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “Act”), insofar as the Act prohibits “any unlawful, unfair or fraudulent business act or practice” or “unfair, deceptive, untrue or misleading advertising.”

72. Defendant Sutter unfairly and unlawfully charges its uninsured patients unfair, unreasonable and/or discriminatory rates that are significantly higher than those charged to its insured patients.

73. Defendant Sutter provides very little charity care to its patients; charges the highest prices to its uninsured patients; and through its agents, and pursuant to its policies, engages in aggressive and unrelenting collection practices against those unable to pay.

74. Defendant Sutter’s conduct amounts to “unfair” business practices insofar as the Act forbids all wrongful business activities in any context in which they appear. Defendant Sutter has charged and continues to charge Plaintiffs and the Class excessive, unreasonable and discriminatory rates for healthcare products and services. As described herein, Defendant Sutter’s practices offend established public policies, and are immoral, unethical, oppressive, and unscrupulous. The impact of Defendant Sutter’s practices is in no way mitigated by any justifications, reasons or motives. Defendant Sutter’s conduct has no utility when compared to the harm done to Plaintiffs and members of the Class.

75. Defendant Sutter’s conduct also constitutes “fraudulent” business practices within the meaning of the Act in that members of the public, including Plaintiffs and members of the Class, are likely to be deceived by Sutter’s representing itself as a not-for-profit entity, including through the use of its advertising tag line that it is “Community Based. Not for Profit.” In reality, Sutter is making enormous profits on the backs of the members of the community.

1 76. Plaintiffs and the Class are also likely to be deceived by Sutter’s so-called “Charity
2 Care and Low Income Uninsured Program” in that Sutter has a pattern or practice of not
3 following the program or informing patients that it exists. This also constitutes an unfair business
4 practice.

5 77. Plaintiffs and the Class are also likely to be deceived by Sutter’s 2004 “Education
6 Campaign.” In 2004, Sutter Health launched a series of print ads to educate the public about “the
7 current health care financing system and what we are doing to help make it better.”

8 78. Through its Education Campaign, Sutter Health represented to the public the
9 following:

- 10 • At Sutter Health, we understand how vital our hospitals are
11 to the health of our communities. That’s why our doors are
12 open 24 hours a day, to all patients, regardless of their
13 ability to pay. We’re also doing all we can to address issues
14 such as cuts in government funding and growing numbers of
15 uninsured patients.

- 16 • **SUTTER HEALTH: PROTECTING LOW-INCOME
17 PATIENTS**

18 We believe everyone should have access to health
19 insurance. Until a comprehensive solution is found, Sutter
20 Health is doing its part to help relieve the problem. For
21 example:

- 22 • We’re protecting low-income uninsured patients by
23 offering significant discounts and expanding our charity
24 care policies.
- 25 • Families earning less than two times the Federal Poverty
26 Level may qualify for full write-offs of their hospital
27 bills through our Charity Care Program.
- 28 • Families earning less than four times the Federal
 Poverty Level may qualify for generous discounts.
- Low-income uninsured patients whose bills are more
 than 30 percent of their family’s income for the year can
 qualify for catastrophic medical coverage.
- We also spent a record \$649 million in 2003 on services for
 the poor and underserved and other benefits for the broader
 community — up 39 percent from 2002.

- **QUALITY HEALTH CARE AT A FAIR PRICE**

- **FAIR AND COMPETITIVE CHARGES**

- 1 • Sutter Health is committed to fair pricing of our services. In
2 fact, the overall average charges of our hospitals are right in
3 line with those of other Northern California hospitals. Two
4 separate studies of publicly available government data
5 confirm this fact.
- 6 • We're also doing our part to help hold the line on rising
7 health care costs and to make health care more affordable to
8 everyone.
- 9 • We're committed to fair pricing for our services.
10 Independent analyses of government data show our charges
11 on average are right in line with those of other hospitals in
12 Northern California.
- 13 • We're providing generous discounts to those without
14 insurance and expanding our charity care policies to help
15 low-income families in need.

16 79. The public is likely to be deceived by these representations into falsely believing
17 that Sutter Health charges reasonable prices to the uninsured, provides significant charity care and
18 other assistance to the uninsured, and that Sutter Health is committed to fair pricing.

19 80. In fact, Sutter Health charges unreasonable prices, provides minimal "traditional
20 charity care" which Sutter describes as "health care services provided to persons who meet
21 certain criteria and cannot afford to pay," provides little if any assistance to the uninsured and
22 does not engage in fair pricing.

23 81. The public is also likely to be deceived by Sutter's representation that
24 "independent analyses" show that its charges are "right in line with those of other hospitals in
25 Northern California."

26 82. In fact, Sutter's prices have been shown to be greater than other hospitals by
27 various sources including Health Access California, SEIU Local 250 and CalPERS. Moreover,
28 the one study cited by Sutter was not independent, but commissioned by Sutter.

83. Further, Defendant Sutter has engaged in an unfair, unlawful and deceptive
collection scheme to collect inflated charges from the Class.

84. In addition, Defendant Sutter's conduct constitutes "unlawful" business practices
within the meaning of the Act in that it violates laws and regulations, including but not limited to:

1 (1) California’s Consumers Legal Remedies Act, Civil Code §§ 1750, *et seq.*; and (2) California’s
2 Fair Debt Collection Practices Act, Civil Code §§ 1788, *et seq.*

3 85. As a result of the aforementioned conduct, Plaintiffs and Class members are
4 entitled to equitable relief, including restitution of all charges, attorneys’ fees and costs, and
5 permanent injunctive relief to prevent such conduct in the future.

6 **SECOND CAUSE OF ACTION**
7 **Violation of the Consumers Legal Remedies Act**
8 **(California Civil Code §§ 1750, *et seq.*)**

9 86. Plaintiffs hereby incorporate the paragraphs and allegations set forth above, as
10 though set forth in full herein.

11 87. The Consumers Legal Remedies Act (“CLRA”) proscribes unfair methods of
12 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
13 intended to result, or which results, in the sale of services to any consumer.

14 88. At all relevant times, Sutter violated numerous provisions of the CLRA by
15 engaging in and continuing to engage in deceptive practices, unlawful methods of competition,
16 and/or unfair acts to the detriment of Plaintiffs and the Class, including the following:

17 a. In violation of Civil Code § 1770(a)(5), Sutter represents that the goods
18 and services it provides have characteristics and/or benefits that they do not have;

19 b. In violation of Civil Code § 1770(a)(9), Sutter advertised its services with
20 intent not to sell them as advertised; and

21 c. In violation of Cal. Civ. Code § 1770(a)(16), Sutter represents that the
22 subject of a transaction has been supplied in accordance with a previous representation, when it
23 has not;

24 d. In violation of California Civil Code § 1770(a)(19), Sutter inserted an
25 unconscionable provision in its contracts with Plaintiffs and the Class. Upon information and
26 belief, Sutter has recently begun using an admission form that requires the patient to pay the full
27 charges of treatment. Because Sutter’s full charges are unconscionable, this provision violates
28 § 1770(a)(19).

1 95. Sutter has been unjustly enriched at the expense of Plaintiffs and the Class.

2 96. To the detriment of Plaintiffs and members of the Class, Sutter has been, and
3 continues to be, unjustly enriched as a result of the unfair, unlawful and/or wrongful billing and
4 collection of unreasonable and unconscionable charges for medical products and services. Sutter
5 is enriched not only by the collection of wrongful charges, but through the debts owed to it by
6 Plaintiffs and members of the Class.

7 97. Accordingly, Plaintiffs and members of the Class seek full disgorgement and
8 restitution of the Defendant Sutter's enrichment, benefits and ill-gotten gains acquired as a result
9 of the unlawful and/or wrongful conduct alleged herein.

10 **FOURTH CAUSE OF ACTION**
11 **Breach of Contract**

12 98. Plaintiffs hereby incorporate and adopt by reference each and every allegation set
13 forth in the preceding paragraphs of the Complaint.

14 99. If Plaintiffs and the Class of uninsured patients have any obligation to pay Sutter
15 hospitals for treatment, it is because the law recognizes an implied contract arising from Sutter
16 hospitals' provision of services to them. The consideration for such an implied contract is the
17 provision of services on the one hand and payment for such services on the other hand. Implied
18 in any obligation to pay for such services is the reasonableness of the prices charged by Sutter.

19 100. By accepting and admitting Plaintiffs and the Class members into its hospitals for
20 medical care, Defendant Sutter, through its agents, undertook an implied contractual obligation to
21 charge Plaintiffs and the Class no more than a fair and reasonable charge for such medical care.

22 101. Sutter was and is a beneficiary of these contracts since the revenue and profits
23 from the contracts were upstreamed to Sutter Health, reported in Sutter Health's financial reports,
24 and used for the benefit of the Sutter network. Further, Sutter set the policy of charging the
25 inflated Chargemaster rates, rendering Sutter responsible for the breach.

26 102. Beginning at a time uncertain, but believed to be in or around April 2004, Sutter
27 began using a "Conditions of Admission; Consent for Outpatient Services" form at its hospitals.
28 As to patients who signed such a form, Sutter entered into a contractual relationship with its

1 patients. The patient – or his or her agent – consented to the contracts. The contract is for a
2 lawful object, *i.e.*, the provision of health care services. The contract provides that “In
3 consideration of the services to be rendered to the patient, the undersigned, whether signing as
4 patient or as agent of the patient, agrees to pay all charges made against the patient by the hospital
5 and authorized providers of care therein, ...”

6 103. Because the price term is not included in this contract, the law implies an
7 obligation to charge patients subject to the contract no more than a fair and reasonable charge for
8 services rendered.

9 104. Sutter Health, itself and through its agents, charged Plaintiffs and the Class rates
10 that are unfair, unreasonable, unconscionable, and bear no reasonable relation to the actual cost of
11 providing such services. As such, Sutter breached the contractual obligations under such
12 contracts and Plaintiffs and the Class are entitled to damages for that breach.

13 105. The aforementioned breaches of contract have proximately caused Plaintiffs and
14 the Class injury.

15
16 **FIFTH CAUSE OF ACTION**
Breach of Duty of Good Faith and Fair Dealing

17 106. Plaintiffs hereby incorporate and adopt by reference each and every allegation set
18 forth in the preceding paragraphs of the Complaint.

19 107. Defendant Sutter’s conduct, as alleged above, also constitutes a breach of its duty
20 of good faith and fair dealing.

21 108. Plaintiffs and the Class entered into an implied or express contractual relationship
22 with Sutter hospitals wherein Plaintiffs and Class members were admitted to a Sutter hospital for
23 the purpose of receiving medical care, as described above.

24 109. Sutter was and is a beneficiary of these contracts since the revenue and profits
25 from the contracts were upstreamed to Sutter Health, reported in Sutter Health’s financial reports,
26 and used for the benefit of the Sutter network. Further, Sutter set the policy of charging the
27 inflated Chargemaster rates, rendering Sutter responsible for the breach.

1 E. For any additional orders necessary to restore to the general public any money or
2 property that Sutter may have acquired as a result of any act or practice constituting unfair
3 competition under California Business & Professions Code §§ 17200, *et seq.*, including the
4 appointment of a receiver pursuant to California Business & Professions Code § 17203;

5 F. For distribution of any residual from monies recovered on behalf of the general
6 public or the Class of similarly-situated consumers as provided in California Code of Civil
7 Procedure § 384;

8 G. For permanent injunctive relief preventing Sutter from engaging in any act or
9 practice constituting unfair competition under California Business & Professions Code §§ 17200,
10 *et seq.*;

11 H. For an order requiring Sutter to implement a meaningful program of charitable
12 care and to operate in a manner appropriate to a charitable public benefit corporation;

13 I. For an order requiring Sutter to take appropriate steps to correct and expunge the
14 credit records of Plaintiffs and other Class Members with respect to their indebtedness to Sutter;

15 J. For disgorgement and restitution of the full value of all benefits and enrichment
16 Sutter has obtained, and continues to obtain, at the expense of Plaintiffs and each member of the
17 Class;

18 K. For the return of all money unlawfully charged to Plaintiffs and the Class members
19 by Sutter and all interest accumulated thereon, by imposition of a constructive trust;

20 L. For compensatory and consequential damages suffered by Plaintiffs and members
21 of the Class;

22 M. For an order establishing an ongoing monitoring system, fully funded by
23 Defendants, to ensure compliance with the Court's orders;

24 N. For Plaintiffs' attorneys' fees and costs;

25 O. For pre-judgment interest;

26 P. For costs of suit; and

27 Q. And for such other and further legal and equitable relief as this Court may deem
28 appropriate.

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs, on behalf of themselves, and Representative Plaintiffs, on behalf of themselves
3 and the Class, request trial by jury on all claims so triable.

4
5 Dated: July 22, 2005

Respectfully submitted,

6 LIEFF, CABRASER, HEIMANN &
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