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By *D. Rogers*
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SACRAMENTO

Coordination Proceeding
Special Title (Rule 1550(b))
**SUTTER HEALTH UNINSURED
PRICING CASES**

J.C.C.P. NO. 4388

Hon. Judge David W. Abbott
Coordination Trial Judge

First Amended Complaint Filed July 22, 2005

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT AND RELATED
MATTERS**

1 **I. INTRODUCTION**

2 Plaintiffs have moved the Court for an Order (1) provisionally certifying a
3 settlement class; (2) preliminarily approving the Settlement; (3) directing distribution of Notice to
4 the Class and finding the proposed notice plan to comport with all due process requirements;
5 (4) appointing a claims administrator; and (5) setting a hearing date for final approval of the
6 settlement.

7 This Court, having fully considered Plaintiffs' Notice of Motion and Motion, the
8 memorandum of points and authorities in support thereof, the declaration in support thereof, the
9 Settlement Agreement itself, the proposed form of class notice and claim form, and the oral
10 arguments presented to the Court at the hearing on July 31, 2006, and in recognition of the
11 Court's duty to make a preliminary determination as to the reasonableness of any proposed class
12 action settlement and to conduct a final fairness hearing as to good faith, fairness, adequacy, and
13 reasonableness of any proposed settlement, has issued its final ruling on the Motion, which ruling
14 was dated August 3, 2006. Pursuant to that final ruling, the Court **HEREBY ORDERS and**
15 **MAKES DETERMINATIONS** as follows:

16 **I. Definitions**

17 The capitalized terms used in this Order shall have the meanings and/or definitions
18 given to them in the Settlement Agreement, a copy of which was filed with the Court on June 30,
19 2006.

20 **II. Order Provisionally Certifying Settlement Class**

21 The Court provisionally finds that certification of the following Class, for
22 settlement purposes only, is appropriate under Section 382 of the California Code of Civil
23 Procedure, Rule 1859 of the California Rules of Court, and related case law:

24 All Uninsured Patients who received Hospital Services at a Sutter-
25 affiliated hospital during the Class Period (September 3, 2000
through August 3, 2006).

26 Certification of the Settlement Class for settlement purposes is the best means for
27 protecting the interests of all of the Settlement Class members. Specifically, the Court finds, for
28 the purposes of settlement only, that: (a) the Settlement Class is ascertainable; (b) the members

1 of the Settlement Class are so numerous that joinder would be impractical; (c) there is a
2 community of interest between the members of the Settlement Class; (d) there are questions of
3 law and fact that are common to the Settlement Class and those common questions predominate
4 over individual questions; (e) the claims of the proposed representatives of the Settlement Class
5 are typical of the claims of absent members of the Settlement Class to which they belong; and
6 (f) the proposed representatives of the Settlement Class and the proposed counsel for the
7 Settlement Class will fairly and adequately represent the interests of the absent members.

8 **III. Preliminary Approval Of The Settlement Agreement**

9 The Court has reviewed the Settlement Agreement and the proposed Class Notice
10 and Claim Form, which are incorporated herein by reference. The Court finds that the Settlement
11 appears to be within the range of reasonableness of a settlement that could ultimately be given
12 final approval by this Court.

13 **IV. Approval Of Distribution Of The Notice Of Settlement**

14 This Court finds the proposed Class Notice and Claim Form fairly and adequately
15 advise the potential Class Members of the terms of the proposed settlement. Specifically, the
16 Class Notice describes the nature of the litigation; the scope of the Class; the terms of the
17 proposed Settlement; the procedure by which Class Members may submit Claims; Class
18 Counsel's proposed fee and cost application; Service Awards for the Class Representatives; the
19 date, time and place of the final approval hearing; and the procedure and deadlines for opting out
20 of the proposed Settlement or for submitting comments and objections.

21 The Notice also fulfills the requirement of neutrality in class notices.
22 Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality
23 required of a combined settlement-certification Class Notice disseminated under authority of the
24 Court.

25 The Court further finds that the Class Notice and proposed distribution of such
26 Notice by first-class mail to those Class Members that defendant has been able to identify, at their
27 last known addresses (updated using the National Change of Address System), supplemented by
28

1 publication notice, readily comports with all constitutional requirements, including those of due
2 process, and also fully complies with Cal. Rule of Court 1859(f).

3 Accordingly, good cause appearing therefor, the Court hereby approves the
4 proposed Class Notice and Claim Form (attached to the Settlement Agreement and incorporated
5 by reference), and adopts the following dates and deadlines:

6 7	August 23, 2006:	Sutter to provide database of Settlement Class Members to Claims Administrator.
8	September 11, 2006	Direct mailing of Notice and Publication of Notice completed by Claims Administrator
9 10 11	October 10, 2006	Last day for Claims Administrator, Rust Consulting, to provide affidavits to the Court attesting to the measures undertaken to effect Notice
12 13 14 15	October 26, 2006 (w/in 45 days after Direct Mailing of Notice and Publication of Notice):	Last day for Class Members to submit a request for exclusion from the proposed Settlement. Last day for Class Members to submit objections to or comments on the proposed Settlement
16 17	November 13, 2006 (no later than 14 days before Final Fairness Hearing):	Last day for filing and service of papers in support of final Settlement approval and requests for attorneys' fees and expenses
18	November 27, 2006:	Final Fairness Hearing
19 20 21	January 17, 2007:	Postmark deadline for Class Members to submit Claims Form (except for those Class Members whose Notice was re-mailed due to an incorrect address, or for good cause shown).

22 **V. Approval Of Claims Administrator**

23 The parties have jointly selected Rust Consulting, an appropriate third party class
24 action claims administrator, to administer the settlement. The Court has reviewed declarations
25 submitted by Rust Consulting and hereby approves that selection.
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1 **VI. Final Approval Hearing**

2 **A. Logistics**

3 The Court hereby grants Plaintiffs' motion to set a fairness hearing for final
4 approval of the Settlement Agreement on November 27, 2006 at 4:00 a.m./p.m. in Dept. 60 of the
5 Lorenzo Patiño Hall of Justice. At the Fairness Hearing, the Court will consider: (a) the fairness,
6 reasonableness and adequacy of the proposed Settlement; (b) whether the Settlement should be
7 finally approved by the Court; (c) the application for an award of attorneys' fees and costs to
8 Class Counsel in this action; (d) objections to the Settlement, or any of its terms; and (e) such
9 other matters as the Court may deem proper and necessary.

10 Any briefs and other papers in support of the final approval of the Settlement, and
11 Class Counsel's application for an award of attorneys' fees and costs, shall be filed with the Court
12 no later than fourteen (14) days before the Fairness Hearing. After the Fairness Hearing, the
13 Court may enter an order approving the Settlement and enter final judgment in this action, which
14 will adjudicate the rights of all Settlement Class Members. The Fairness Hearing may be
15 postponed, adjourned, or continued by order of the Court without further notice to the Settlement
16 Class.

17 **1. Objections**

18 Members of the class who object to the proposed settlement may appear and
19 present such objections at the Final Approval Hearing in person or by counsel, provided that the
20 objecting Class Member submits a written statement containing the name and address of the
21 objecting Class Member and the basis of that person's objections, together with a notice of the
22 intention to appear, if appropriate, which must be sent to the Claims Administrator no later than
23 October 26, 2006 (within 45 days after Direct Mailing of Notice and Publication of Notice). No
24 person shall be heard, and no briefs or papers shall be received or considered, unless the
25 foregoing documents have been sent to the Claims Administrator as described in this Order,
26 except as this Court may permit for good cause shown.

1 2. Requests for Exclusion (Opt-Outs)

2 Members of the Settlement Class may elect to opt out of this Settlement
3 Agreement, relinquishing their rights to benefits thereunder (except to the extent that prospective
4 relief under the Settlement Agreement shall apply to such persons). Members of the Settlement
5 Class who opt out of the Settlement will not release their claims under the terms of the Settlement
6 Agreement. All notices of intent to opt out of the Settlement must also be postmarked by
7 October 26, 2006 (within 45 days after Direct Mailing of Notice and Publication of Notice), and
8 must include the Settlement Class members' name, address and telephone number, with a
9 statement that includes the following language: "I wish to opt out of this Settlement to the Sutter
10 Uninsured Pricing Cases."

11 Requests for exclusion should be mailed to the Claims Administrator, who will
12 forward them to counsel for the parties and to the Clerk of the Court.

13 Members of the Settlement Class who fail to submit a valid and timely request for
14 exclusion shall be bound by all terms of the Settlement Agreement and the Final Order and
15 Judgment, regardless of whether they have requested exclusion from the Settlement. Any member
16 of the Settlement Class who submits a timely request for exclusion or opt-out may not file an
17 Objection to the Settlement and shall be deemed to have waived any rights or benefits under the
18 Settlement Agreement (except to the extent that prospective relief under the Settlement
19 Agreement shall apply to such persons).

20 **VII. Opposition by Mr. Stowers**

21 The objections to preliminary settlement approval raised by Plaintiff Stowers from
22 the case Stowers v. NCO Financial Systems, Inc., No. 01AS06661, are rejected, as set forth
23 below.
24

25 Mr. Stowers is not a member of the settlement class and may lack standing to
26 object to the proposed settlement. *In re Fine Paper*, 632 F.2d 1081, 1087 (3d. Cir. 1980). Mr.
27 Stowers is a plaintiff in a separate lawsuit coordinated with this proceeding and does not qualify
28 as a member of the proposed settlement class in the Sutter Health Cases. The proposed class

1 consists of uninsured individuals that received treatment at a Sutter facility after September 3,
2 2000. Mr. Stowers alleges he was treated before that date and proposes a class consisting of
3 uninsured persons who received treatment after October 30, 1997.

4 Mr. Stowers sites no authority to support his objection that failure to include him
5 in the settlement class will result in an inefficient "piece-meal" resolution and therefore the
6 settlement should not be approved. Mr. Stowers' opposition fails to set forth facts demonstrating
7 good cause to withhold approval of the proposed settlement. Although omission of Mr. Stowers
8 and those similarly situated from the settlement may result in additional litigation or subsequent
9 resolution on different terms, the proposal involves a resolution on behalf of a substantial
10 majority of the plaintiffs, except those who may opt out of the settlement. Those opting out of the
11 settlement could litigate their claims in the coordinated action along with Mr. Stowers.

12 Even if Mr. Stowers has standing to object to the settlement, the court does not
13 find his objections persuasive:

- 14 1) Mr. Stowers asserts that the 25% to 45% discount on care already provided is not
15 adequate in light of evidence that some persons have been overcharged 70% to 99%. The
16 extent of overcharging is a fact that is in significant dispute in this litigation. The
17 settlement terms present a reasonable compromise based upon disputed facts. Mr.
18 Stowers' assertion that uninsured persons were charged 99 times more than insured
19 persons is erroneous.
- 20 2) The objection that the 20% prospective discount for uninsured individuals seeking
21 treatment in the next three years is insufficient for the same reasons set forth above. For
22 the reasons stated above, the court finds this proposal represents a reasonable compromise
23 of facts in dispute.
- 24 3) *Cy pres* relief is not required as a provision of the proposed settlement as a matter of law.
- 25 4) Class members that were overcharged can appropriately be required to use claim forms to
26 obtain the discounts provided by the settlement. This provision of the settlement
27 established a reasonable method to afford relief to those plaintiffs benefiting from the
28 settlement.

29 Counsel for Mr. Stowers shall be provided with photocopies of all discovery
30 propounded and all responses to date, except for personal information regarding any settling
31 plaintiff or to discovery to which objection was lodged and sustained by the court.

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IT IS FURTHER ORDERED that, if for any reason the Court does not grant final approval of the Settlement, all documents, evidence, interactions and proceedings in connection therewith shall be without prejudice to the status quo ante rights of the parties to the litigation, as more specifically set forth in the Settlement Agreement.

IT IS SO ORDERED.

August 25, 2006



Hon. David W. Abbott
JUDGE OF THE SUPERIOR COURT