

# **Request for Proposal for Settlement Compliance Monitor Pursuant to Settlement Between Plaintiffs and Sutter Health**

**Issue Date: October 26, 2020**  
**Due Date: December 10, 2020**

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## **OVERVIEW**

UFCW & Employers Benefit Trust (“UEBT”), on behalf of a certified class of California self-funded payers, and the California Attorney General’s Office (collectively, “Plaintiffs”) invite you to submit a proposal for professional monitor services for the settlement agreement entered into by Plaintiffs and Sutter Health. Plaintiffs and Sutter Health (collectively, “the Parties”) have entered into a settlement agreement (“Settlement”) that resolves the claims in the antitrust action against Sutter Health and certain affiliates. Plaintiffs filed a Motion for Preliminary Approval of Settlement with San Francisco Superior Court on December 19, 2019.

The Settlement addresses Sutter’s contracting practices with health plan insurers and self-funded payers, and the resolution of disputes related thereto. The Settlement addresses Sutter provider network coverage, out of network rates and provisions for Sutter providers, Sutter network pricing and participation, prohibitions on restraints on tiering and steering by insurers, non-enforcement of certain existing or prior contract provisions, contract provisions applicable to Sutter new affiliates, price and quality transparency information, Centers of Excellence, and retaliation against any complainant providing information to the Court, monitor, or any party. The Settlement requires that implementation and enforcement of the various provisions and practices prohibited or required by the Settlement be monitored by a “Settlement Compliance Monitor.”

UEBT represents a class of self-funded payers that 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, which is pending in San Francisco Superior Court. UEBT is a health benefit trust fund that pays for the healthcare services of certain grocery store workers and others. UEBT filed this case on its own behalf and as a representative of a class of more than 1000 other health benefits trusts and California government and private employers that pay for healthcare services for their employees.

The California Attorney General’s Office represent the People of the State of California and filed a separate action against Sutter Health on March 30, 2018, captioned *People of the State of California, ex rel. Xavier Becerra v. Sutter Health*, Case No. CGC-18-565398. On May 8, 2018, the actions filed by UEBT and the People of the State of California were consolidated by the Court for all purposes (the “Consolidated Action”).

Defendants in the Consolidated Action are Sutter Health; Sutter East Bay Hospitals;

Sutter West Bay, Hospitals; Eden Medical Center; Sutter Central Valley, Hospitals; Mills Peninsula Health Services; Sutter Health, Sacramento Sierra Region; Sutter Coast Hospital; Palo Alto, Medical Foundation for Healthcare, Research and Education; and Sutter Medical Foundation (collectively “Sutter”). Sutter is a not-for-profit health system providing healthcare services to communities throughout Northern California.

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## SCOPE OF WORK

The responsibilities and specific duties of the Settlement Compliance Monitor are set forth in paragraph V of the Proposed Final Judgment (PFJ), attached as Appendix 1 to the Motion for Preliminary Approval of Settlement, and in the Monitor Agreement.<sup>1</sup> Please consider the provisions in the PFJ outlining the Settlement Compliance Monitor's responsibilities and the various provisions of the PFJ that require monitor oversight and/or engagement, as well as the duties and responsibilities detailed in the Monitor Agreement, as you consider a response to this Request for Proposal. The Settlement Compliance Monitor may associate individual(s) and/or subcontractor consultants as reasonably necessary to perform monitoring tasks (Exh. A, PFJ, p. 24, para. V, subd., B).

In order to monitor Sutter’s implementation of the Settlement as approved by the Court, the duties of the Settlement Compliance Monitor may include:

- (1) Exercise of specified powers to investigate compliance, take complaints from Plaintiffs and Insurers, compel confidential disclosure of documents, interview witnesses, inspect records, hire staff and experts, and make recommendations concerning enforcement to the Court (Exh. A, PFJ, at p. 24, para. V., subd. B.1);
- (2) In investigating compliance or taking complaints from Plaintiff(s) and Insurers, exercise discretion to fully investigate any such complaints to determine if there has been compliance with the provisions of the Settlement and to set up a process by which evidence shall be presented for the Settlement Compliance Monitor to make an appropriate recommendation to the Court (Exh. A, PFJ, at p. 24, Para. V., subd. B.2);
- (3) In investigating compliance or in taking complaints, consider all of the evidence offered by any applicable witness or party, and decide whether an exception to a condition in the Settlement applies to Sutter (Exh. A, PFJ, at pp. 24-26, para. V, subd. C);
- (4) Make recommendations on whether entities defined in the Settlement, Paragraph II.7, should expand to include new entities at the request of Plaintiffs (Exh. A, PFJ, at p. 19, para. IV, subd. E); and

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<sup>1</sup> The Proposed Final Judgment and Monitor Agreement are attached hereto as Exhibits A and B, respectively.

(5) Maintenance of all documents obtained from UEBT, California Attorney General's Office, Sutter, and Insurers, in a confidential manner, and protection against disclosure of non-public information except as specifically provided for in the Settlement (Exh. A, PFJ, at p. 26, para. V, subd. F).

Additionally, the Settlement Compliance Monitor must meet the following criteria:

(6) The Settlement Compliance Monitor, including all persons or entities associated by the Settlement Compliance Monitor to assist in monitoring tasks, shall be an officer of the Court and shall be subject to the supervision and orders of the Court, consistent with the Settlement. (Exh. B, Monitor Agmt., at para. 1.1);

(7) The Settlement Compliance Monitor cannot accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities, including being retained (on a paid or unpaid basis) by any future or current litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against UEBT, California Attorney General, or Sutter, unless such conflict is waived by both Plaintiffs and Sutter. (Exh. B, Monitor Agmt., at para. 2.4);

(8) The Settlement Compliance Monitor shall serve until the termination of the Parties' settlement agreement. (Exh. A, PFJ, at p. 27, para. VI; Exh. B, Monitor Agmt., at para. 3.1) The initial contract term will be for ten years, with an option to extend for an additional three-year term. The Settlement Compliance Monitor should expect to begin work no sooner than the date of the Court's final approval of the Settlement.

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## REQUEST FOR PROPOSAL PROCESS

Plaintiffs invite you to submit a proposal for your engagement as Settlement Compliance Monitor for the Parties' settlement agreement.

The services sought under this proposal are considered to be professional services. UEBT and the California Attorney General's Office reserve the right to reject or accept any proposal for reasons it deems appropriate. Copies of your proposal must be submitted by [TIME] PST on [DATE], as follows:

Please submit your proposal by email to the following email addresses: a) for personnel within the Attorney General, to Renuka George ([Renuka.George@doj.ca.gov](mailto:Renuka.George@doj.ca.gov)); Emilio Varanini ([Emilio.Varanini@doj.ca.gov](mailto:Emilio.Varanini@doj.ca.gov)); Cheryl Johnson ([Cheryl.Johnson@doj.ca.gov](mailto:Cheryl.Johnson@doj.ca.gov)); Malinda Lee ([Malinda.Lee@doj.ca.gov](mailto:Malinda.Lee@doj.ca.gov)) and Melanie Rainer ([Melanie.Rainer@doj.ca.gov](mailto:Melanie.Rainer@doj.ca.gov)); for UEBT to Richard Grossman ([rgrossman@pillsburycoleman.com](mailto:rgrossman@pillsburycoleman.com)); Sarah Grossman-Swenson ([sgs@msh.law](mailto:sgs@msh.law)); Aaron Panner ([apanner@kellogghansen.com](mailto:apanner@kellogghansen.com)); Daniel A. Small

([DSmall@cohenmilstein.com](mailto:DSmall@cohenmilstein.com)); Chris Wheeler ([cwheeler@fbm.com](mailto:cwheeler@fbm.com)) for Sutter, to David Kiernan ([DKiernan@JonesDay.com](mailto:DKiernan@JonesDay.com)); Margaret (Peggy) Ward ([Maward@JonesDay.com](mailto:Maward@JonesDay.com)); and Jeff LeVee ([jleee@jonesday.com](mailto:jleee@jonesday.com)).

Your proposal must, at a minimum, include the information requested below in the section titled “Required Proposal Content.” The Parties will expeditiously review the proposals received and conduct interviews of selected Proposers/organizations, via video conference. All Proposers are asked to keep these dates available. The interview will consist of a short presentation by the Proposer limited to one-hour and the Parties may ask questions related to the Proposer’s proposal and qualifications.

The Settlement Compliance Monitor will be paid by Sutter through a settlement fund to be administered by the California Attorney General’s Office. The terms of the contract will be based upon the accepted proposal, the Settlement, and Monitor Agreement.

### **Required Proposal Content**

#### **A. Executive Summary:**

Provide a brief description of the manner in which you would complete the monitoring duties. The summary should include an outline of your proposed monitoring team (e.g. individual(s) and/or subcontractor consultants proposed to be involved and reporting/responsibility hierarchy).

#### **B. Qualifications:**

Describe your qualifications and experience in the following areas:

1. Healthcare operations in California and/or the United States, including but not limited to managed care contracting;
2. Representation of healthcare providers and/or insurers;
3. Knowledge of California and/or federal antitrust law;
4. A description of your organization’s and proposed monitor team’s commitment to equity, diversity, and inclusion;
5. Auditing, investigating, or reviewing compliance of organizations, including experience in monitoring settlements or court orders, specifically in healthcare and/or antitrust matters, together with references for each project or experience listed;
6. Experience with dispute resolution or in preparing recommendations as a judge, counsel, or neutral; and
7. Any other information relevant to your ability to satisfy the duties outlined in Paragraph V of the PFJ;
8. A brief narrative describing the unique characteristics of your organization and/or personnel that you believe would be best suited to perform the duties described herein.

**C. Proposed Activities:**

Describe the activities you would propose to undertake in order to monitor compliance based on your review of this RFP, PFJ, and Monitor Agreement. Please generally describe the methods and processes you would put in place to monitor compliance.

**D. Personnel:**

Explain how this project would be integrated into the total operation of your business. Include the name(s) of the individual(s) and/or subcontractor consultant(s) who would be primarily responsible for monitoring activities, the individual(s) expertise, experience, qualifications, billing rates, and references (refer to the Qualification and Experience sections above for the type of information that should be provided for individual(s) and/or subcontractor consultant(s) proposed to be part of your monitoring team). If the identity of the individuals or entities who would assist in performing the monitoring function are unknown at the present time, state the areas of expertise you would seek to retain and your organization's process for contracting for such services.

**E. Costs:**

We recognize that providing a budget for this activity over a ten-year period would be extremely difficult at this time. We ask, however, that you provide a budget for your activities for the first six months, taking into account the activities that are provided in the Memorandum, staff costs, any travel costs, and so forth. Please provide sufficient detail so that the parties can inquire about various line items in your proposed budget.

**F. Potential Conflicts/Other Representations:**

Disclose any potential conflicts of interest involving yourself, your firm, an employee assigned to the project, or a proposed subcontractor, including current or former employment, contracts or grants with any of the Parties, or in the case of Sutter, any of its affiliates, and any involvement in the last eight years (whether paid or unpaid) with a claim or lawsuit against UEBT, the California Attorney General's Office, Sutter, or any of their officers, agents, or employees. Please also advise if you have represented any of the following: Anthem Blue Cross, Blue Shield of California, Cigna, Aetna, UnitedHealthcare, and HealthNet. If so, describe the nature and scope of your representation/work.