



**FILED**  
ALAMEDA COUNTY

MAY 10 2019

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

LATRICIA AMADEO, et al,

No. RG13-697528

Plaintiffs/Petitioners,

ORDER (1) GRANTING MOTION OF PLAINTIFFS TO DISMISS CLASS CLAIMS, (2) GRANTING MOTION OF PLAINTIFFS REGARDING NOTICE TO MEMBERS OF THE PUTATIVE CLASS, AND (3) GRANTING MOTION OF PLAINTIFFS TO SEAL.

v.

SUTTER HEALTH, et al,

Defendants/Respondents.

Date: 5/10/19  
Time: 10:00 a.m.  
Dept.: 21

The Motion of plaintiffs to dismiss class claims, the Motion of Plaintiffs regarding notice to members of the putative class, and the Motion of plaintiffs to seal came on for hearing on 5/10/19, in Department 21 of this Court, the Honorable Winifred Y. Smith presiding. Counsel appeared on behalf of Plaintiff and on behalf of Defendant. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The Motion of plaintiffs to dismiss class claims is GRANTED. The Motion of Plaintiffs regarding notice to members of the putative class is GRANTED. The Motion to plaintiffs to seal is GRANTED.

1  
2 MOTION OF PLAINTIFFS TO DISMISS CLASS CLAIMS

3 The Motion of plaintiffs to dismiss class claims is GRANTED.

4 This case was filed as a putative class action. Class claims cannot be settled or dismissed  
5 without Court approval. (CRC 3.769 and 3.770.)

6  
7 Class actions cannot be settled without Court approval to ensure that the named plaintiff  
8 and the class counsel have represented the absent class members adequately. (*7-Eleven Owners*  
9 *for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135.) In reviewing class  
10 settlements, the Court acts both as a neutral decision maker and as a guardian of the absent class  
11 members. (*In re Warfarin Sodium Antitrust Litig.* (3<sup>rd</sup> Cir. 2004) 391 F.3d 516, 534 [“the district  
12 court acts as a fiduciary who must serve as a guardian of the rights of absent class members”].)

13 Class actions cannot be dismissed without Court approval. CRC 3.770(a) states: “A  
14 dismissal of an entire class action, or of any party or cause of action in a class action, requires  
15 court approval. The court may not grant a request to dismiss a class action if the court has entered  
16 judgment following final approval of a settlement. Requests for dismissal must be accompanied  
17 by a declaration setting forth the facts on which the party relies. The declaration must clearly  
18 state whether consideration, direct or indirect, is being given for the dismissal and must describe  
19 the consideration in detail.”

20  
21 Class actions cannot be dismissed without Court approval to ensure that the named  
22 plaintiff and his or her counsel have not used the threat of a class action as leverage to obtain an  
23 unreasonable settlement for the individual named plaintiff. This serves two purposes.

24  
25 First, this ensures that the named plaintiff and his or her counsel do not enrich themselves  
26 in violation of their fiduciary duties to the absent class members. (*Earley v. Superior Court*

1 (2000) 79 Cal. App. 4th 1420, 1434 [duties of named plaintiff]; *Cal Pak Delivery, Inc. v. United*  
2 *Parcel Service, Inc.* (1997) 52 Cal. App. 4th 1, 11-12 [duties of counsel].) The Court must  
3 ensure that the immediate and tangible interests of the named plaintiff and class counsel do not  
4 overshadow the interests of the absent class members. (*Apple Computer, Inc. v. Superior Court*  
5 (2005) 126 Cal. App. 4th 1253.)

6  
7 Second, this protects the integrity of the Court and the judicial process. Settling or  
8 dropping class claims in exchange for settling with the named plaintiff appears to be a victimless  
9 crime – the named plaintiff and the settling defendant both agree to the terms of the settlement  
10 and the absent class members are not bound by any settlement or judgment. The victim,  
11 however, is the judicial process. Legislature permits class actions in C.C.P. 382 so that an  
12 individual may pursue claims on behalf of similarly situated persons, and the Legislature  
13 presumably intended that litigants make class allegations and seek class certification for that  
14 purpose. It is inconsistent with the Legislative purpose for a named plaintiff to make class  
15 allegations and seek class certification for the purpose of raising the stakes and then negotiating a  
16 favorable settlement solely for him or herself. This would amount to an abuse of the Court's  
17 process. If a named plaintiff settles his or her own claims, the settlement should reflect the value  
18 to the plaintiff of those individual claims, not the value to the defendant of eliminating the threat  
19 of a class action.  
20

21 Sutter is agreeing to provide monetary compensation to the named plaintiffs. (Stipulated  
22 Injunction, para I.K and IV.2.) CRC 3.770(a) requires that plaintiffs "must clearly state whether  
23 consideration, direct or indirect, is being given for the dismissal and must describe the  
24 consideration in detail." Plaintiffs have provided the required information. The claims of the  
25 named plaintiffs are significant and the settlements fairly reflect the value of the claims. (See  
26

1 cases cited at Plaintiffs' brief at fn 1.) The settlements would meet the requirement for a good  
2 faith settlement under the CCP 877.6 standard. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates*  
3 (1985) 38 Cal.3d 488, 499-500.)

4 Plaintiffs are agreeing to the dismissal of the class allegations. (Stipulated Injunction,  
5 para VI.A.)

6 Sutter is agreeing to injunctive relief. (Stipulated Injunction, para III.A.) Individual  
7 plaintiffs prosecuting their own individual claims may seek and obtain injunctive relief that  
8 affects the workplace as a whole. That is consistent with FEHA's purpose of preventing and  
9 deterring unlawful discrimination in the workplace. (Govt Code 12920, 12921; *Harris v. City of*  
10 *Santa Monica* (2013) 56 Cal.4<sup>th</sup> 203, 211.) Injunctive relief benefits both the named plaintiffs  
11 and the members of the putative class. As structured, the members of the putative class appear to  
12 be intended third party beneficiaries of the settlement agreement. (Civil Code 1559.)  
13

14 Sutter is agreeing to provide attorneys' fees compensation to counsel for the named  
15 plaintiffs. Plaintiffs have provided information for the court to evaluate whether counsel used the  
16 threat of a class action to leverage a claim for attorneys' fees. Based on the lodestar/multiplier,  
17 the compensation for counsel is consistent with, if not less than, the range of attorneys' fees that  
18 the court would likely award were the individual plaintiffs to prevail at trial. (Govt. Code  
19 12965(b).)  
20

21 The court has no interest in or responsibility for reviewing or approving the settlement.  
22 Even if the court were to accept and file the individual settlement agreement, the court would not  
23 endorse or enforce any provision in a settlement agreement or stipulation that is illegal, contrary  
24 to public policy, or unjust. (*Timney v. Lin* (2003) 106 Cal.App.4<sup>th</sup> 1121, 1127.) That noted, the  
25 court has identified two questionable provisions.  
26

1 Stipulated Injunction para V.B states that certain documents are “inadmissible in any  
2 proceeding” except an action to enforce the Stipulated Injunction. Only the individual plaintiffs  
3 and Sutter are parties to the Stipulated Injunction. This provision might not be enforceable  
4 regarding other persons.

5 Stipulated Injunction para VI.A states that any subsequent related case “shall be  
6 transferred” to this court. If a case is filed in the Superior Court in another county, a judge will  
7 decide whether to transfer the case to the Superior Court, Alameda County, and the judge will  
8 not be bound by the Stipulated Injunction. Similarly, if a subsequent case is filed in this court and  
9 is related under CRC 3.300, whether the case is assigned to this judge or department is a matter  
10 of internal court administration.  
11

#### 12 MOTION REGARDING NOTICE TO THE CLASS 13

14 The motion regarding notice to the class is GRANTED. Stipulated Injunction para VI.D  
15 states generally that notice must be sent to the persons who were sent the prior *Belair* notice on  
16 or about 12/1/14 and to employees who meet the same definition as was used to generate that  
17 notice through the date of entry of the Stipulated Injunction and Judgment.  
18

19 CRC 3.770(c) states: “If the court has certified the class, and notice of the pendency of  
20 the action has been provided to class members, notice of the dismissal must be given to the class  
21 in the manner specified by the court. If the court has not ruled on class certification, or if notice  
22 of the pendency of the action has not been provided to class members in a case in which such  
23 notice was required, notice of the proposed dismissal may be given in the manner and to those  
24 class members specified by the court, or the action may be dismissed without notice to the class  
25 members if the court finds that the dismissal will not prejudice them.”  
26

1 Plaintiffs sent a *Belaire* notice to the members of the putative class on 12/1/14. The  
2 parties have agreed that a notice will be sent to persons but disagree on whether to send the  
3 notices to (1) the people who go the 12/1/14 notices or (2) the people who go the 12/1/14 notices  
4 and employees after 12/1/14.

5 The law in this area appears to have developed. In 2006, *Experian Information Solutions,*  
6 *Inc. v. Superior Court* (2006) 138 Cal.App.4th 122, 131, held, “In non-class-action litigation, it is  
7 not the court's role to order notification to third parties of their possible legal claims.” In 2009,  
8 the Supreme Court adopted CRC 3.770(c), which permits notice to potential class member of  
9 their potential claims. In 2011, the court in *Pirjada v. Superior Court* (2011) 201 Cal.App.4th  
10 1074, 1088, states, “the obligation to notify absent class members before dismissing the case  
11 rests with the superior court, not the lead plaintiff or class counsel.”

12 Under current law, the court can order notice and the court's inquiry is whether the  
13 dismissal will prejudice the members of the putative class. The people who got the 12/1/14  
14 notices would be prejudiced by dismissal because they got the 12/1/14 notice and are presumably  
15 relying on the continued prosecution of the case as a class action. The persons employed after  
16 12/1/14 might know of the case through discussions with their peers and other informal  
17 communications.

18 The court ORDERS that Sutter must provide notice to all persons who were sent the prior  
19 *Belaire* notice on or about 12/1/14 and to employees who meet the same definition as was used  
20 to generate that notice through the date of entry of the Stipulated Injunction and Judgment.  
21 Regarding receipt of the notice, there is a substantial possibility that the post 12/1/14 persons  
22 would have received notice about this lawsuit through informal communications. The court finds  
23  
24  
25  
26

1 that there is a substantial possibility of prejudice if they are not informed that the class claims  
2 have been dismissed.

3  
4 MOTION TO SEAL

5 The motion to seal is GRANTED.

6  
7 A motion to seal under C.R.C. 2.550 is different from most motions because the  
8 “opposition” is not really the opposing party but the people of the State of California and their  
9 interest in an open and transparent judicial system. Even where the motion is not opposed, the  
10 Court has an obligation to review the motion and seal only those documents that meet the  
11 requirements of C.R.C. 2.550.

12 Under C.R.C. 2.550, the Court may order that a court record be filed under seal only if it  
13 expressly finds facts that establish: (1) There exists an overriding interest that overcomes the  
14 right of public access to the record; (2) The overriding interest supports sealing the record; (3) A  
15 substantial probability exists that the overriding interest will be prejudiced if the record is not  
16 sealed; (4) The proposed sealing order is narrowly tailored; and (5) No less restrictive means  
17 exist to protect the overriding interest.  
18

19 The party seeking to seal a document in a Court file has the burden of presenting facts  
20 sufficient to justify the sealing. C.R.C. 2.551(b)(1). Although C.R.C. 2.550 and *NBC*  
21 *Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal. 4th 1178, 1181, both require that  
22 the trial court find that the party moving to seal satisfies each of the five factors, the trial court  
23 exercises its discretion in determining whether those criteria have been met. (*In re Providian*  
24 *Credit Card Cases* (2002) 96 Cal. App. 4th 292, 299-300.) This suggests that the trial court can  
25  
26

1 use a sliding scale or balancing approach where a strong showing on one factor can compensate  
2 for a weak showing on another factor.

3 The court does not consider the need to have documents in the file public for the benefit  
4 of the members of the putative class. There is no class settlement and the members of the  
5 putative class are not releasing any claims.

6 The court settlement is between private parties, so the public interest in the expenditure of  
7 public money to settle claims is not applicable.

8 The motion to seal is under CRC 2.550 et seq. The court applies the CRC 2.551(d)  
9 factors. The motion to seal is GRANTED as the all of the following:

10 Documents Lodged With the Court on 2/26/19

- 11 1. Stipulated Injunction, Exhs A and B
- 12 2. Plaintiffs' Notice of Motion and Memorandum
- 13 3. Declaration of Peter Rukin.
- 14 4. Declaration of Bryan Schwartz.
- 15 5. Declaration of Jean K. Hyams.

16 Documents Lodged With the Court on 4/16/19

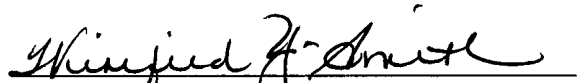
- 17 6. Plaintiffs' Supplemental Memorandum filed 4/16/19.
- 18 7. Supplemental Declaration of Peter Rukin and Exhs A and C-F filed 4/16/19.
- 19 8. Declaration of Bryan Schwartz and Exhs A-C filed 4/16/19.
- 20 9. Declaration of Jean Hyams and Exhs A-B filed 4/16/19.
- 21 10. Declaration of Latricia Amadeo filed 4/16/19.
- 22 11. Declaration of Patricia Minton filed 4/16/19.

1 12. Declaration of Reiko Sales filed 4/16/19.

2 The Declaration of Peter Rukin Exhs A-B relate to attorneys' fees and Exhs C-F are the  
3 settlement agreements. The court generally will not seal a court record "solely because one party  
4 paid money to the other or because the parties stipulated." (*Wilson v. Science Applications*  
5 *Internat. Corp.* (1997) 52 Cal.App.4th 1025, 1030-1031.) (See also *Huffy Corp. v. Superior*  
6 *Court* (2003) 112 Cal.App.4th 97, 106-107.) In addition, there is "no authority that the amount  
7 of money a person receives in judgment or court-approved settlement as the result of tortious  
8 conduct is confidential. The fact of a damage award, whatever size, is not in itself a private fact  
9 deserving protection." (*Copley Press, Inc. v. Superior Court* (1998) 63 Cal.App.4th 367, 376.)  
10 On the facts of this case, the court finds that the plaintiffs have provided specific evidence  
11 demonstrating an overriding interest in the confidentiality of the settlement terms and amounts.  
12

13 The Declarations of Bryan Schwartz and Exhs A-C, Jean Hyams and Exhs A-B, and  
14 Latricia Amadeo, Patricia Minton, and Reiko Sales set out background information regarding the  
15 dismissal of the class claims and the settlement of the individual claims. The court finds that the  
16 plaintiffs have provided specific evidence demonstrating an overriding interest in the  
17 information.  
18

19  
20 Dated: May 10, 2019

21   
22 Winifred Y. Smith  
23 Judge of the Superior Court  
24  
25  
26