CONSTANTINE CANNON LLP
JEAN KIM (*pro hac vice*)
6 East 43rd Street, 26th Floor
New York, NY 10017
(212) 350-2700
(212) 350-2701 (fax)
jkim@constantinecannon.com

Lead Counsel for Plaintiffs and the Class

THE MEHDI FIRM, PC
AZRA Z. MEHDI (220406)
95 Third Street
2nd Floor #9122
San Francisco, CA 94103
(415) 293-0070
(415) 293-0070 (fax)
azram@themehdifirm.com

Co-Lead Counsel for Plaintiffs and the Class

SHINDER CANTOR LERNER LLP
MATTHEW L. CANTOR (*pro hac vice)*
ELLISON A. SNIDER (*pro hac vice*)
14 Penn Plaza, Ste. 1900
New York, NY 10122
(646) 960-8601
matthew@scl-llp.com
esnider@scl-llp.com

JAMES J. KOVACS (*pro hac vice*)
J. WYATT FORE (*pro hac vice*)
600 14th St NW, 5th Floor
Washington DC 20005
(646) 960-8601
james@scl-llp.com
wyatt@scl-llp.com

(*Additional counsel listed on signature page*)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DJENEBA SIDIBE, JERRY JANKOWSKI, SUSAN HANSEN, DAVID HERMAN, OPTIMUM GRAPHICS, INC., and JOHNSON POOL & SPA, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

SUTTER HEALTH,

Defendant.

Case No. 3:12-cv-4854-LB

CORRECTED [PROPOSED] PLAN OF DISTRIBUTION

Date: May 22, 2025
Time: 9:30 AM
Judge: The Honorable Laurel Beeler

Table Of Contents

I. INTRODUCTION

1. This [Proposed] Plan of Distribution ("Plan of Distribution" or "Plan") shall govern the distribution of the Settlement Fund provided for by the settlement reached between the Plaintiffs, on behalf of the certified Class, and Defendant Sutter Health ("Sutter") in the above-captioned case ("Settlement Agreement" or "Settlement", attached as Exhibit A to Plaintiffs' Motion for Preliminary Approval of Class Settlement).[1] This Plan is referenced at pages 7-8, 11, and 17 of the Settlement Agreement, and is subject to Court approval.

2. All capitalized terms used in this Plan of Distribution shall have the same meaning as provided for in the Settlement Agreement, unless expressly stated otherwise.

3. As set forth in section III.A.1. of the Settlement Agreement, Sutter shall pay an amount of $228.5 million into the Settlement Fund, which shall be held in the Escrow Account.

4. As set forth in section III.A.2. of the Settlement Agreement, portions of the Settlement Fund shall be used to pay certain costs and fees prior to determining a net amount that is available for distribution to Class Members (the "Net Settlement Fund"). The fees and other costs to be deducted from the Settlement Fund include:

a. $10 million of costs to cover Notice and Administration of the Settlement (with any excess costs above that amount subject to replenishment upon a showing of necessity if approved by the Court, and with any residual amount from the $10 million that is not needed for Notice and Administration to be returned to the Settlement Fund for distribution to Class Members).

b. Expenses incurred by Class Counsel of approximately $28 million in prosecuting the case, reimbursement of which shall be subject to a petition to and approval by the Court.

[1] All descriptions of the Settlement Agreement's terms are summary and are not intended to, and shall not be deemed to, modify the Settlement Agreement in any way, or have any bearing on the meaning or interpretation of the Settlement Agreement. The Settlement Agreement should be consulted for its actual terms and conditions.

c. Attorney's Fees, not to exceed one-third of the Gross Settlement Fund, to the counsel representing the Class, also subject to a petition to and approval by the Court. Kim Decl. ¶ 71.

d. Service Awards to the Class Representatives (as permitted by 9th Circuit precedent and awarded by the Court). Kim Decl. ¶ 71

e. Escrow Account fees and costs (including taxes incurred by the Class and tax expenses). Kim Decl. ¶ 71.

5. Assuming an Attorney's Fee Award of one-third of the Gross Settlement Fund, reasonable Service Awards, reasonable Escrow Account fees and costs, and an expense reimbursement award of $28 million, the Net Settlement Fund proceeds available for distribution to Class Members would be approximately $115 million (equal to $228.5 million, less aforementioned fees and expenses).

6. The mechanics of this Plan shall operate in the same manner regardless of whether the Net Settlement Fund available for distribution to Class Members is precisely $115 million or some different amount.

II. DISTRIBUTION OF THE NET SETTLEMENT FUND

7. As reflected in the Settlement Agreement and pursuant to various Orders of the Court, including its Order certifying a Rule 23(b)(3) Class dated July 30, 2020, the Class Members potentially eligible to receive a payment are those members of the certified Class who were previously given an opportunity to opt-out of the Class and did not opt out of the Class by the Court-ordered deadline of March 8, 2021; they are referred to in this Plan as "the Class" or "Class Members." The "Class Period" is January 1, 2011 to March 8, 2021. Class Members are:

> All entities in California Rating area 1, 2, 3, 4, 5, 6, 8, 9 or 10 (the "Nine Rating Areas" or "Nine RAs"), and all individuals that either live or work in one of the Nine RAs, that paid premiums for a fully-insured health insurance policy from Blue Shield, Anthem Blue Cross, Aetna, Health Net or UnitedHealthcare from January 1, 2011 to [March 8, 2021]. This class definition includes Class Members that paid premiums

> for individual health insurance policies that they purchased from these health plans and Class Members that paid premiums, in whole or in part, for health insurance policies provided to them as a benefit from an employer or other group purchaser located in one of the Nine RAs. The "Class" includes any person that paid any portion of a premium for a fully-insured health insurance policy from any of the five class health plans at any time from January 1, 2011 to [March 8, 2021] if, during the period the person paid those premiums, the person lived or worked (or, if an employer, had an office located) in one of the following California counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Merced, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo or Yuba. Members of the Federal Rule of Civil Procedure 23(b)(3) Class are all such persons who had an opportunity to opt-out of the Class on or before the Court-ordered opt-out deadline of March 8, 2021. Excluded from the terms "Class" or "Class Members" are all entities or individuals that opted out of the Class on or before the Court-ordered opt-out deadline of March 8, 2021. Those that opted out are no longer Class Members and they are not entitled to any relief under this Settlement, including any monetary relief, or to object to this Settlement.

Ex. A at section I.A.3.

8. This Plan of Distribution shall provide for a recovery to each Class Member that makes a timely claim for payment from the Net Settlement Fund. This includes:

a. Individuals who paid premiums for fully-insured policies directly and not through any employer or group coverage, including policies that provided health care coverage for that individual and, if applicable, that individual's dependents during the Class Period ("Individual Claimants").

b. Employers or Groups (including Taft-Hartley plans, multi-employer welfare arrangements, association health plans, retiree groups, and other non-employer groups) that paid premiums, or a portion thereof, for fully-insured policies that provided health care coverage for their employees/group members and, if applicable, their employees'/group members' dependents, during the Class Period ("Group Claimants").

c. Natural persons, including employees, that shared in the payment of premiums with their employers or groups for fully-insured policies that provided health care coverage for themselves and, if applicable, their dependents, during the Class Period ("Employee Claimants").

d. Individual Claimants, Group Claimants, and Employee Claimants with a valid claim are together referred to as "Authorized Claimants" for the purposes of this Plan. Dependents and beneficiaries, whether of Individual Claimants, Group Claimants, or Employee Claimants, are not Authorized Claimants.

9. To the extent that Authorized Claimants to the Net Settlement Fund do not submit claims, that will result in increased compensation to Authorized Claimants who submit claims, and not to all Authorized Claimants overall.

III. DISTRIBUTION OF THE NET SETTLEMENT FUND[2]

10. The payment for a claim submitted by an Authorized Claimant (e.g., "Claimant A") shall be determined by the following equation:

"Total Premiums Paid" (as defined below by this Plan)

during Class Period by Claimant A

Divided by

Total Premiums Paid during Class Period by

all Authorized Claimants who submit claims

Multiplied by

Total dollars in Net Settlement Fund

= Claimant A's claim payment

11. The foregoing calculation shall be called the "Claim Payment Calculation" and the result of this calculation shall be the "Claim Payment" for each Authorized Claimant who submits a claim.

12. The Total Premiums Paid for each Authorized Claimant who submits a claim will be the sum of premiums paid for fully-insured policies for that Authorized Claimant's coverage during the Class Period. For Authorized Claimants who are natural persons, the Total Premiums Paid will include any premiums paid as an Individual Claimant and/or an Employee Claimant. Class Counsel have obtained Health Plan data that will be used to identify Authorized Claimants and estimate their Total Premiums Paid without requiring the Authorized Claimant to submit any

[2] *See* Declaration of Daniel J. Boada dated April 25, 2025 for further discussion concerning the operation and reasonableness of this Distribution Plan.

premium data. To the extent no data is available, the Claims Administrator will seek additional information from the Authorized Claimant as necessary.

13. For Authorized Claimants who are Individual Claimants and who submit claims, premiums during the Class Period shall be estimated from the data provided by the Health Plans, along with any data the Class Administrator obtains.

14. For the Group Claimants and Employee Claimants who submit claims, the determination of the premiums to be included in an Authorized Claimant's Total Premiums Paid to any and all of the Health Plans during the Class Period shall be estimated from (a) the data produced by the Health Plans, which generally provides for the total amount of premiums paid by any Group, and (b) an allocation of the Total Premiums Paid between each specific Group that paid premiums ("Group") and any employees of that Group who submits claims ("Group/Employee Allocation Process").

A. Group/Employee Allocation Process

15. If a Group Claimant submits a claim, but none of the employees for that Group Claimant submits any claims, then the full premium paid by that Group Claimant shall be allocated entirely to that Group Claimant and shall constitute the "Total Premiums Paid" for that Group Claimant for purposes of the Claim Payment Calculation set forth above.

16. If a Group Claimant submits a claim and one or more of its employees also submits a claim, then there shall be an allocation of the Group premium between the Group Claimant and each Employee Claimant who submits a claim.

a. To perform that allocation, the first step will be to determine how much of the total premiums paid by a particular Group during the Class Period were paid to provide coverage for each specific Employee Claimant who submits a claim. This will require using the data produced by the Health Plans, or, where relevant, provided by the Employer Claimant or Employee Claimant, to estimate the dates when each Employee Claimant received coverage by any Group, and the number of covered

lives under that Employee Claimant's policy (the employee plus any covered dependents) during each year of those coverage dates. Using data from the Health Plans, the Claims Administrator shall then estimate the total premiums paid by a Group during the Class Period to provide coverage for that claiming Employee Claimant ("Unallocated Employee Premium").

b. The Unallocated Employee Premium will be calculated on an annual basis for each employee X in year Y to be allocated between the Group Claimant and Employee Claimant, and will be estimated as follows:

Total Group Premium for year Y (from Health Plan data, or calculated as described below)

Divided by

Annual average number of members[3] (employees and covered dependents) under the Group Plan during year Y

Multiplied by

Number of members on employee X's policy during year Y

= Unallocated Employee Premium for employee X during year Y

c. If an employee Class Member does not submit a claim, the entire Unallocated Employee Premium for that non-claiming employee shall be allocated to the Group Claimant that was the employer of that non-claiming employee.

[3] Where the health plan data does not specifically identify the number of members associated with a group, those members will be estimated based upon the health plan data and public information.

d. For each Group, where an Employee Claimant submits a claim, the Claims Administrator shall allocate this Unallocated Employee Premium between (1) the Group from which the specific claiming Employee Claimant obtained coverage, and (2) the specific claiming Employee Claimant.

e. The Claims Administrator's allocation of the Unallocated Employee Premium may be done pursuant to either a "Default" option or an "Alternative" option, depending upon the elections made by the relevant Employee Claimant and/or the Group Claimant from which that employee obtained coverage..

Default option:

f. The Default option shall allocate the Unallocated Employee Premium according to one of two fixed percentages: (1) 18% to the Employee Claimant during periods in which the employee had only individual coverage, and (2) 29% to the Employee Claimant during periods in which there is evidence that the person had family coverage (i.e., where coverage that covered dependents). The residual amounts in both cases (82% and 71%, respectively) shall be allocated to the Group. Those Default fixed percentages were determined by Class Counsel based on consideration of numerous factors, including the fact that:

i. Most Health Plans do not have data showing how much, if anything, each employee contributed, directly or indirectly, through payroll deductions or otherwise, toward the premiums paid by the relevant Group.

ii. There is publicly available data regarding employee health care contribution percentages from an annual report published by The Kaiser Family Foundation ("Kaiser Report") based on its annual survey of employer health benefits.[4] The Kaiser Report is available annually throughout the Class

[4] 2019 Employer Health Benefits Survey, September 25, 2019, https://www.kff.org/health-costs/report/2019- employer-health-benefits-survey/.

Period. The Kaiser Reports show that the average employee contribution percentage for Groups is consistently higher for those with family coverage over the Class Period.

iii. Some employees do not contribute any out-of-pocket amount for their health insurance premiums.

iv. Economic literature supports the fact that employees may bear part of the cost of employer-sponsored health insurance through a reduction in their total compensation, rather than only in the form of their out-of-pocket contribution toward premiums.

v. The Group retains 100% of the value of any unclaimed Employee premiums along with the value of any Employee Claimant claims for that Group falling below the $5 minimum payment threshold (discussed in ¶ 19 below).

g. If both the Group Claimant and all the Employee Claimants of that Group Claimant who submit claims accept the Default option, then the Default option shall be applied to determine the allocation of the premiums paid for Group coverage between the Group Claimants and the Employee Claimants who submit claims.

Alternative option:

h. If either the Group Claimant or an Employee Claimant of that Group Claimant believes that their contribution percentage was greater than the Default option, then they may (but do not have to) elect the Alternative option on their claim form. Any Claimant whose counterpart (for a claiming Employer Claimant, the employee; and for a claiming Employee Claimant, its Group Claimant) elects the Alternative option will be contacted by the Claims Administrator and provided with the opportunity to submit additional evidence to assist in the ultimate determination of how to allocate their Unallocated Employee Premiums.

i. If a Group Claimant or an Employee Claimant elects the Alternative option, the Claimant making the election must submit sufficient data, records, or other materials supporting a greater contribution percentage together with the claim form that is sent to the Claims Administrator.

    i. If the Claims Administrator determines there is sufficient data to establish an Alternative allocation based upon sufficient data, records, or other materials provided by the Claimant, then the Alternative option shall be used to allocate the Unallocated Employee Premium.

    ii. If the Claims Administrator determines that a Claimant seeking to elect the Alternative option has provided insufficient data, records, or other materials to establish a specific Alternative allocation, the Default option shall apply.

    iii. If the Claims Administrator determines that a Claimant has provided sufficient data, records, or other materials to support a higher contribution percentage for time periods within the relevant coverage period(s), then the Alternative option shall be used to allocate the Unallocated Employee Premium for those time periods, but the Default option shall apply to time periods for which there is insufficient data to apply the Alternative options.

j. If an Employee Claimant elects the Alternative option and the Group Claimant does not contest the Alternative option, and if the Claims Administrator determines the Alternative option applies, it shall apply only to the Employee Claimants who elected the Alternative option. If the Group Claimant contests the Alternative option, and the Claims Administrator determines the Alternative option applies, it shall apply to all Employee Claimants within that Group.

k. In determining whether the Default or the Alternative option shall apply, the Claims Administrator shall consider the following:

i. Any supporting data, records or other materials presented by Claimants in support of their election of the Alternative Option, considering both the reliability and the comprehensiveness of the materials;

ii. any additional data, records, or other materials that the Claims Administrator may receive from parties impacted by the election of the Alternative option; and

iii. The same factors listed above that were taken into account by Class Counsel in determining the Default percentages, and any associated data, records, or other materials submitted by the parties regarding those factors.

l. The Claims Administrator will notify all Claimants within the Group whose Claim Payments may be impacted by the Claim Administrator's determination. The Claims Administrator's determination shall be final.

17. If an Employee Claimant submits a claim as a member of a Group that does not submit a claim, then the amounts that would have been allocated to that Group shall remain in the balance of the Net Settlement Fund for distribution to all other Authorized Claimants in accordance with this Plan.

B. Allocations Where a Group Purchases Health Plans on Behalf of Employer Groups

18. If a Group has purchased one or more health plans from a Health Plan during the Class Period on behalf of one or more other employer or member groups, as is the case, for example, with Professional Employer Organizations ("PEOs"), unions, certain benefit plans (such as CalPERS) and similar member associations, then both that purchasing entity and the corresponding employer and member groups (on behalf of whom that purchasing entity acquired health insurance) shall be eligible to file a claim. The claim form shall provide an opportunity to indicate whether the claiming Group is either (a) an employer or member group who acquired its

insurance through another purchasing entity (a "Covered Entity"), or (b) a purchasing entity (such as a PEO) that purchased insurance on behalf of the employer and/or member groups (a "Purchasing Entity"). The Claims Administrator shall review the claim form submissions along with the data made available by the Health Plans to determine whether any Group falls into either of these two categories. If the Claims Administrator determines that both a Purchasing Entity and one or more Covered Entities for a single Group have submitted claims, the Claims Administrator will first contact those claiming parties to see if an allocation can be agreed upon in the first instance. If no such allocation agreement can be reached, the Claims Administrator shall make an allocation determination in light of all the facts and circumstances and available data it can collect with respect to each such purchasing association and the respective employers on behalf of whom it made purchases. The Claims Administrator's determination is final. Once that allocation determination is made, either through agreement or by the Claims Administrator, the allocation between any specific Group subject to this paragraph and any Employee Claimant of that Group shall be determined in the same way as it is for all other Groups (i.e., in accordance with the Default and Alternative options and procedures set forth above).

IV. MINIMUM VALUE OF DISTRIBUTIONS FROM NET SETTLEMENT FUND

19. If the total Claim Payment for any Authorized Claimant who submits a claim is equal to or less than **$5.00** for the entire Class Period, then no distribution shall be made to that Claimant and the Claimant will be notified that there will be no distribution given the *de minimis* value. If the Authorized Claimant is an Individual Claimant or a Group Claimant, the amount of the Claim Payment for that Authorized Claimant shall remain in the Net Settlement Fund for distribution to Authorized Claimants who have Claim Payments in excess of $5.00.[5] If the Authorized Claimant is an Employee Claimant, the Claim Payment will revert to the respective Group for distribution to the Group and other Employee Claimants.[6]

[5] To implement this calculation, the Settlement Administrator will perform the calculation in ¶ 10 excluding from "Total Premiums Paid" any Authorized Claimant with a combined Claim Payment less than the minimum threshold.

[6] To implement this calculation, the Settlement Administrator will perform the Group/Employee Allocation Process treating any Authorized Claimant with a combined Claim Payment less than the minimum threshold as not having submitted a claim. However, if the Group does not submit a claim, that Group's allocation of premiums paid will be

V. AUTHORIZED CLAIMANT REVIEW OF TOTAL PREMIUMS PAID

20. Authorized Claimants will be provided the opportunity to review the Total Premiums Paid upon which their Claim Payment is based prior to distribution of the Net Settlement Fund. To the extent an Authorized Claimant seeks to adjust their Total Premiums Paid and the necessary materials to support that adjustment, the Claims Administrator will review any data in support of that proposed adjustment and determine whether to alter the Total Premiums Paid for that Authorized Claimant. The Claims Administrator's determination is final.

VI. RESIDUAL FUNDS

22. Upon the completion of the initial distribution to Authorized Claimants that filed a claim, a second distribution of any unredeemed payments will be made *pro rata* to those Authorized Claimants who redeemed their initial payment, subject to Paragraph 20 above.

21. Pursuant to section V.A.3. of the Settlement Agreement, if any part of the Settlement Fund remains in the Escrow Account after the Claims Administrator has made the second distribution Class Counsel and Sutter's counsel will jointly seek Court approval to disburse the remainder of the Settlement Fund pursuant to section V.A.6 of the Settlement Agreement. The Claims Administrator will follow the directions approved by the Court.

Dated:

Hon. Laurel Beeler
UNITED STATES DISTRICT COURT

excluded from the Total Premiums Paid in the formula in ¶ 16 and therefore returned to the Net Settlement Fund.