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Attorneys for Defendants

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

STEPHEN OLSON, SHARON THOMPSON,
DON BROWN, and KAYLEE
HELMANTOLER, a minor, through her
Guardian ad Litem, Alany Helmantoler, on
behalf of themselves, and all others similarly
situated,

Plaintiffs,

vs.

SUTTER HEALTH,
ALTA BATES SUMMIT MEDICAL CENTER,
CALIFORNIA PACIFIC MEDICAL CENTER,
EDEN MEDICAL CENTER,
MARIN GENERAL HOSPITAL,

ENDORSED
FILED
ALAMEDA COUNTY

JUL 11 2008

CLERK OF THE SUPERIOR COURT

By Bonnie Sabraw
Deputy

Case No. RG06-302354

**[PROPOSED] ORDER CERTIFYING A
SETTLEMENT CLASS AND FINALLY
APPROVING CLASS ACTION
SETTLEMENT**

Date: July 11, 2008

Time: 2:30 p.m.

Dept: 22

Judge: Hon. Bonnie Lewman Sabraw

1 NOVATO COMMUNITY HOSPITAL,
2 MEMORIAL HOSPITAL LOS BANOS
3 MEMORIAL HOSPITALS ASSOCIATION dba
4 MEMORIAL MEDICAL CENTER MODESTO,
5 MILLS-PENINSULA HEALTH SERVICES,
6 SUTTER AMADOR HOSPITAL,
7 SUTTER COAST HOSPITAL,
8 SUTTER DELTA MEDICAL CENTER,
9 SUTTER HEALTH SACRAMENTO SIERRA
10 REGION,
11 SUTTER LAKESIDE HOSPITAL,
12 SUTTER MEDICAL CENTER OF SANTA
13 ROSA,
14 SUTTER SOLANO MEDICAL CENTER,
15 SUTTER TRACY COMMUNITY HOSPITAL,
16 ST. LUKE'S HOSPITAL,
17 PALO ALTO MEDICAL FOUNDATION
18 HOSPITAL CORPORATION,
19 PALO ALTO MEDICAL FOUNDATION FOR
20 HEALTH CARE, RESEARCH AND
21 EDUCATION,
22 SUTTER GOULD MEDICAL FOUNDATION,
23 SUTTER NORTH MEDICAL FOUNDATION,
24 SUTTER MEDICAL FOUNDATION,
25 PHYSICIAN FOUNDATION at CPMC,
26 SUTTER REGIONAL MEDICAL
27 FOUNDATION,
28 SUTTER EAST BAY MEDICAL
FOUNDATION,
SUTTER VISITING NURSE ASSOCIATION
AND HOSPICE,
MILLS-PENINSULA SENIOR FOCUS,
ADOLESCENT TREATMENT CENTERS,
INC. dba THUNDER ROAD,
HEALTH VENTURES, INC., and
DOES 32-200,

Defendants.

1 The Joint Motion of Plaintiffs Stephen Olson, Sharon Thompson, Don Brown, and Kaylee
2 Helmantoler, a minor, through her Guardian ad Litem, Alany Helmantoler (“Plaintiffs”), and Sutter
3 Health and each of its separately-named Affiliate Facilities (hereinafter, collectively “Sutter”) for Class
4 Certification and Final Approval of Class Action Settlement came on for hearing before this Court on
5 July 11, 2008, at 2:30 p.m., the Honorable Bonnie Lewman Sabraw, Judge Presiding. Plaintiffs have
6 alleged in this Action that Sutter has discriminated against people with Physical Disabilities in
7 violation of the Americans With Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, California
8 Unruh Act, Civil Code § 51, *et seq.*, the California Health and Safety Code § 19955, *et seq.*, the
9 California Blind and Other Physically Disabled Persons Act, California Civil Code § 54, *et seq.*,
10 California Government Code § 11135, *et seq.*, Title 24 of the California Building Code, Section 504 of
11 the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, and the applicable implementing rules and regulations
12 related to these statutes. Plaintiffs have specifically alleged that (1) Sutter has not identified or
13 remedied Architectural Barriers, meaning physical impediments to Accessibility of patient-care
14 services or other visitor services, such as parking facilities, entrances, paths of travel, restrooms,
15 patient bedrooms, examination rooms, waiting areas, treatment rooms, laboratories, counters, public
16 telephones, drinking fountains, pharmacies, cafeterias, gift shops and any other fixed features within
17 the Affiliate Facilities that are regulated by Title 24 of the California Building Code (“Title 24”) and
18 the ADA Standards for Accessible Design (also commonly referred to as the Americans with
19 Disabilities Act Access Guidelines, or “ADAAG”). Plaintiffs have also alleged that Sutter has not
20 made reasonable modifications to policies, procedures, and staff and contractor training programs
21 related to the following subjects: alternative formats; communication Access; service animals;
22 scheduling exam room and patient room Access; location, maintenance and use of Accessible Medical
23 Equipment; weight measurement; Auxiliary Aids and Services; Accessible web-sites; lifting and
24 transferring patients with Mobility Disabilities; and maintenance of Accessible features, aids and
25 services. Finally, Plaintiffs have alleged that Sutter has failed to provide sufficient Accessible Medical
26 Equipment to provide patients with Physical Disabilities equal Access to health care services. Sutter
27 denies these allegations.

1 Plaintiffs and Sutter (“the Parties”) have negotiated a resolution to this dispute. The Parties
2 jointly seek final approval of the Class Action Consent Decree attached hereto as Exhibit 1. The
3 Decree provides for class settlement of injunctive relief claims regarding Architectural Barriers;
4 policies, practices and procedures (including the provision of Auxiliary Aids and Services); and
5 Accessible Medical Equipment. It does not address damages for Class Members other than the four
6 (4) Named Plaintiffs and the eighty-three (83) individuals with Physical Disabilities who provided
7 information to Class Counsel prior to December 31, 2007, about their experiences with Access barriers
8 at Sutter Affiliate Facilities and whose information assisted Class Counsel in the negotiations that
9 resulted in the Consent Decree. Those eighty-three (83) individuals are hereinafter referred to as
10 “Known Class Members.”

11 The Parties have jointly moved this Court to certify a settlement class and finally approve the
12 Consent Decree. The Court, having considered the papers submitted in support of the joint motion and
13 having heard oral argument of the Parties, and the Defendant having joined in the Motion, **HEREBY**
14 **ORDERS and MAKES DETERMINATIONS as follows:**

15 This Court has jurisdiction over the subject matter of this litigation and over all Parties to this
16 litigation, including all Class Members.

17 **ORDER FINDING ADEQUATE DISTRIBUTION OF NOTICE**

18 Distribution of the notice directed to Class Members as set forth in the Decree has been
19 completed in accordance with the Preliminary Approval Order and as directed by the Court during the
20 Preliminary Approval hearing, as follows: (a) direct notice by first class mail to each Named Plaintiff
21 and Known Class Member, (b) notice by first class mail or electronic mail to a list of community
22 organizations serving individuals with mobility and/or sensory disabilities (the specific list of
23 organizations to which notice was directed is attached to the Consent Decree as Exhibit F), and (c)
24 published notice to absent class members via publication in a list of newspapers intended to serve all
25 communities where Sutter facilities are located (the specific list of publications in which notice was
26 published is attached to the Consent Decree as Exhibit G), which was the best notice practicable under
27 the circumstances. This notice provided due and adequate notice of the proceedings and of the matters
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1 set forth therein, including the Decree, to all persons entitled to such notice, and the notice fully
2 satisfied the requirement of due process. No Class Member objected to the Decree.

3 **ORDER CERTIFYING SETTLEMENT CLASS**

4 The Court finds that certification of the following Class for injunctive relief only for the
5 purposes of settlement is appropriate under California Code of Civil Procedure § 382, California Rule
6 of Court 3.769, and related case law:

7 Each Individual with a Mobility and/or Sensory Disability who has used or attempted to use the
8 Facilities, equipment and/or health care services of one or more Sutter Affiliate, and who
9 alleges or could allege denial of equal Access to such Facility, equipment, and/or health care
10 service due to Architectural Barriers, lack of Accessible Medical Equipment, lack of effective
11 Auxiliary Aids and Services, and/or other inaccessible features and/or policies at any time on or
12 after October 27, 2002 to and including the Compliance Period.

11 The Court finds that the settlement class meets the ascertainability and numerosity
12 requirements because there are hundreds if not thousands of patients and visitors with Mobility and/or
13 Sensory Disabilities who have visited or will visit any of Sutter Health's separately-named Affiliate
14 Facilities during the relevant period. The commonality requirement is also met. In the absence of
15 class certification and settlement, each individual Class Member would be forced to litigate core
16 common issues of law and fact, all relating to whether Access barriers allegedly encountered by Class
17 Members and Sutter's alleged failure to remove such Access barriers, violate the Disability Rights
18 Laws, as defined in the proposed Consent Decree. Because the Plaintiffs' and Class Members' claims
19 all arise from the same alleged events and course of conduct, and are based on the same legal theories,
20 the typicality requirement is also satisfied. The adequacy of representation requirement is also met
21 here because the Named Plaintiffs have the same interests as the Class Members, and are represented
22 by experienced and competent counsel.

23 The Court further finds that common issues predominate over individual issues in this litigation
24 and that class treatment is superior to other means of resolving the instant dispute. Employing the
25 class certification device here is superior to individual litigation because class treatment allows
26 hundreds of Sutter patients and visitors who are Individuals with Mobility and/or Sensory Disabilities
27 to resolve their injunctive relief claims regarding Access in one forum at one time, thereby eliminating
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1 repetitive litigation or the risk of inconsistent obligations on Sutter. The Court confirms its finding that
2 the Named Plaintiffs and Plaintiffs' Counsel are adequate representatives of the Class, that the Named
3 Plaintiffs are appointed Class Representatives, and that Plaintiffs' Counsel are appointed Class
4 Counsel.

5 The Court recognizes that certification under this Order is for settlement purposes only, and
6 shall not constitute or be construed as an admission by Sutter that this action is appropriate for class
7 treatment for litigation purposes. The Court finds that because this settlement provides the Class with
8 injunctive relief only, does not address damages claims other than for the Named Plaintiffs and Known
9 Class Members, and because the risk of inconsistent injunctive relief obligations could unduly burden
10 Sutter, Class Members may not exclude themselves from the action and will be bound by the terms of
11 the settlement.

12 **ORDER FINALLY APPROVING THE SETTLEMENT**

13 The Court has reviewed the Consent Decree, which is attached hereto as Exhibit 1, and
14 incorporates the definitions of capitalized terms as set forth in the Consent Decree. The Court hereby
15 approves the Decree and finds that the Decree is, in all respects, fair, adequate, and reasonable and
16 directs the Parties to effectuate the Decree according to its terms. The injunctive relief provided is fair
17 and reasonable to all potential Class Members when balanced against the probable outcome of further
18 litigation. Extensive investigation and negotiations have been conducted such that counsel for the
19 Parties at this time are able to reasonably evaluate their respective positions. Settlement at this time
20 will avoid additional substantial costs which have already been incurred by the Parties, as well as avoid
21 the delay and risks that would be presented by the further prosecution of the litigation. The Settlement
22 has been reached as a result of intensive, serious, and noncollusive arms' length negotiations. The
23 Court finally approves the settlement, including the proposed attorneys' fees and costs payments of
24 \$691,500 for work performed by Class Counsel up to and including December 31, 2007; \$185,000 for
25 work performed from January 1, 2008 through April 28, 2008; (3) and up to \$75,000 for work
26 performed from April 29, 2008 through the Effective Date; and an amount to be later negotiated
27 between the Parties for time spent from the Effective Date through the Compliance Period of the
28 Decree.

1 As of the Effective Date, each and every released claim for injunctive or declaratory relief
2 and/or attorneys' fees and costs of each and every Class member is and shall be deemed to be
3 conclusively released as against Sutter. All Class Members as of the Effective Date are hereby forever
4 barred and enjoined from prosecuting the released claims for injunctive or declaratory relief and/or
5 attorneys' fees and costs against Sutter, as provided in Sections XII.B.1. and B.2. of the Decree.

6 IT IS SO ORDERED, this 11th day of July, 2008.

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8
9 **Bonnie Sabraw**

Honorable Bonnie Lewman Sabraw
JUDGE OF THE SUPERIOR COURT

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11 The Court sets a compliance hearing for
12 October 14, 2009 in Department 17 for settlement
13 distributor reporting.
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