



FILED
San Francisco County Superior Court

MAR 09 2021

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

UFCW & Employers Benefit Trust, on behalf
of itself and all others similarly situated

Plaintiffs,

vs.

Sutter Health, et al.,

Defendants.

Case No. CGC 14-538451
Consolidated with
Case No. CGC-18-565398

**ORDER GRANTING PLAINTIFFS'
RENEWED MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

People of the State of California, ex rel.
Xavier Becerra,

Plaintiff,

vs.

Sutter Health,

Defendant.

Having read and considered the motion for preliminary approval of settlement ("Motion") filed by Plaintiffs People of the State of California, Plaintiff UFCW & Employers Benefit Trust and the Plaintiff Class (collectively, "Plaintiffs") on December 19, 2019, Plaintiffs' May 29, 2020 supplemental submission in response to the Court's February 25, 2020 Order, Plaintiffs' August 5, 2020 responses to the questions in the Court's June 16 and July 29 orders, the August 7, 2020 responses of Defendants Sutter Health *et al.* ("Sutter") to Plaintiffs' responses, Plaintiffs' August 13 supplemental submission in connection with Plaintiffs' motion for preliminary approval of settlement, the parties' August 24, 2020 joint submission in response to the Court's August 13,

1 2020 order re appointment of the monitor, Plaintiffs’ March 1, 2021 Renewed Motion for
2 Preliminary Approval, and having considered the oral argument presented to the Court on August
3 12, 2020, IT IS HEREBY ORDERED as follows:

- 4 1. The plan of notice presented in the Declaration of Cameron R. Azari in support of
5 Plaintiffs’ Motion is approved. The plan for distributing the notice meets the
6 requirements of due process and is the best notice practicable under the
7 circumstances. The form of notice previously attached as Appendix 1 to Plaintiffs’
8 August 13 supplemental submission in connection with Plaintiffs’ motion for
9 preliminary approval of settlement (re-attached hereto as Exhibit 1) and the claim
10 form in the form attached as Appendix 3 to Plaintiffs’ August 13 submission (re-
11 attached hereto as Exhibit 2) are approved. The notice and claim form shall be
12 disseminated to the class in accordance with the plan of notice.
- 13 2. The proposed settlement is within the range for which final approval may be granted,
14 such that notice should be given to the class. The proposed settlement is comprised of
15 the Settlement Agreement, which is attached as Appendix 1 to the Memorandum of
16 Points and Authorities filed on December 19, 2019, as modified by the Addendum to
17 the Settlement Agreement (“Addendum”), which is attached hereto as Exhibit 3. The
18 settlement and Proposed Final Judgment between Plaintiffs and Sutter is
19 preliminarily approved. Ms. Dionne Lomax is appointed to be the Monitor.¹

21 ¹ On March 2, 2021, FedArb sent a letter to the Court expressing its interest in serving as monitor
22 in this litigation. The letter is attached hereto as Exhibit A. At oral argument, FedArb argued that
23 it should be appointed as the monitor. First, the Court is persuaded, based on the full record, that
24 Ms. Lomax is qualified to be, and should be, appointed as the monitor. Ms. Lomax was selected
25 through a thorough selection process. The People of the State of California were represented in
26 that process by the Attorney General’s Office. Ms. Lomax is qualified. For these independent
27 reasons, the Court grants the parties’ request to appoint her as the monitor. Second, the parties’
28 monitor selection is, as the Court has previously observed, a material term of the settlement. (See
Sept. 22, 2020 Order, 11.) The Court cannot rewrite the parties’ agreement, it may approve it or
reject it. (See *id.* at 6.) In effect, FedArb is asking the Court to deny preliminary approval of the
settlement due to one term to which it objects. (*Id.* at 11.) Assuming that FedArb, a non-party to
this action, has standing to make such a request, a proposition that FedArb has not supported with
citation to authority, the Court remains persuaded that preliminary approval of the settlement, with
Ms. Lomax as the monitor, is appropriate.

3. The process for objecting to the settlement and giving notice of intent to appear at the final approval hearing, as set forth in the approved notice, which is attached as Exhibit 1, is approved.²
4. Epiq Class Action & Claims Solutions, Inc. shall serve as the claims administrator.
5. Plaintiffs shall pay the cost of implementing the plan of notice and shall be reimbursed from the settlement fund after final approval in an amount not to exceed \$25,000.
6. The hearing on Plaintiffs' motions for final approval and for fees, costs, and service award is set for July 19, 2021, at 9:15 a.m., and the following schedule is set:

Event	Deadline
Settlement website	Updated within 5 days of this Order (March 15, 2021)
Mailing of class notice and claim form	Postmarked within 20 days of this Order (March 29, 2021)
Motion for fees, costs, and service award	Filed within 20 days of this Order (March 29, 2021)
Motion for final approval	Filed within 30 days of the deadline for mailing class notice (April 28, 2021)
Deadline for claim form	Must be postmarked or submitted electronically within 60 days of the deadline for mailing class notice (May 28, 2021)
Objections to the settlement and/or motion for fees, costs, and service award	Must be postmarked within 60 days of the deadline for mailing class notice (May 28, 2021)
Any reply re motion for final approval	Filed within 90 days of the deadline for mailing class notice (June 28, 2021)
Class member Notice of Intent to Appear at Fairness hearing	Postmarked 10 days or more in advance of the Fairness hearing (July 9, 2021)

² The Settlement Agreement, at Section II(C), sets forth a different process “[u]nless the Court provides otherwise[.]” The Court does provide otherwise, as described herein.

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Event	Deadline
Hearing on Plaintiffs' motions for final approval and for fees, costs, and service award	July 19, 2021 at 9:15 a.m.

IT IS SO ORDERED.

DATED: March 9, 2021



Hon. Anne-Christine Massullo
JUDGE OF THE SUPERIOR COURT

Exhibit A



March 2, 2021

Via Email

Honorable Anne-Christine Massullo
Judge of the Superior Court
The Superior Court of California
County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Re: *UFCW & Employers Benefit Trust on behalf of itself and all others similarly situated v Sutter Health, et al*, Case No CGC-14-538451.

Dear Judge Massullo:

FedArb hereby respectfully submits its interest in serving as monitor in the above litigation.

FedArb's submission, attached hereto, was previously made to the parties in accordance with the RFP that had been published. For reasons that were never specified, FedArb was subsequently informed that the parties had decided on another potential monitor. Today, we were alerted that the parties had filed papers in support of their decision to retain the same firm, Affiliated Monitors, that was originally rejected by the court—by replacing the lead person rejected by the court in the place of Dionne Lomax. While we have no doubt that Ms. Lomax may be qualified, it appears curious and suspiciously preordained that the parties—for whatever reason—were determined to proceed with Affiliated Monitor.

As the court is aware, a judicial monitor is an adjunct of the court—they are the court's monitor, not the parties' monitor. While the parties may be afforded deference, their recommendation is only that—a recommendation.

Monitorship Expertise. Because of the unparalleled qualifications and the diversity of FedArb's local team, FedArb now submits directly to the court its proposal for Vaughn Walker and Ms Jackie Nakumura for the court's consideration. As set forth in the attached submission, numerous courts have selected FedArb to act as a judicial monitor in high profile, large and complicated court monitorships.

- FedArb is currently in the monitor appointed by the DOJ and approved by the DC District Court in connection with T-Mobile's acquisition of Sprint,
- FedArb is also the monitor in ensuring Global Growth Company's compliance with the TRO obtained by the North Carolina insurance commissioner.



- Previously FedArb's team was the chair overseeing Microsoft's compliance with the DOJ's landmark antitrust order.

In addition, FedArb will also retain StoneTurn, a large consulting firm that FedArb has used in the T-Mobile monitoring engagement to provide hospital operational experience. StoneTurn was carefully selected because it is a global advisory firm that assists companies, their counsel and government agencies on regulatory, risk and compliance issues, investigations and business disputes. StoneTurn and its professionals have extensive experience serving as corporate compliance monitors, serving as forensic advisors to corporate compliance monitors and leading integrated corporate compliance monitor engagement teams. Importantly, StoneTurn professionals have developed best practice methodologies and processes to help lead and support corporate compliance monitorship engagements. As part of its roles and responsibilities, StoneTurn professionals build integrated teams of professionals, plan and execute efficient workplans and leverage its project management, forensic, risk, process, controls and audit resources to assess compliance with settlement agreements approved by government authorities.

Independence. Unlike the monitorship proposed by the parties, FedArb's monitors are truly independent of the consulting firm (i.e., StoneTurn) retained to perform much of the operational and implementation work overseen by the monitor. Ms Lomax is a member of Affiliated Monitor. She is captive and therefore cannot be as objective as a monitor outside of the consulting firm. Courts have approved, and seem to favor, FedArb's practice of retaining additional professional services from leading experts that are tailored to handle various issues that required specialized expertise.

Local Leadership. In addition to FedArb's corporate monitoring expertise, the co-leadership of its team will be spearheaded by two diverse antitrust experts with familiarity in hospital/health care matters at issue: the former and prominent chief judge for the Northern District of California (San Francisco) and a female lawyer with substantial intellectual property/antitrust expertise.

Given the importance of the matter to the State of California, we respectfully submit that having local team leaders backed by FedArb—a preeminent Bay Area firm with demonstrated expertise and national resources—is ideally situated to provide the parties unbiased, effective and cost-efficient monitoring of the parties' compliance with the Proposed Final Judgment.



With the court's permission, we are prepared to address any issues and answer any questions the court may have at the upcoming hearing on March 9, 2021.

Respectfully submitted,

Kennen D. Hagen
President and CEO
ken@fedarb.com

cc: Service list

UEBT@pillsburycoleman.com;
UEBTService@fbm.com;
UEBT@msh.law;
SERVICEUEBT@lists.kellogghansen.com;
UEBT@cohenmilstein.com;
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SutterService@BZBM.com
AG_AntitrustService@doj.ca.gov



RESPONSE OF FEDERAL ARBITRATION, INC. TO REQUEST FOR PROPOSAL

Federal Arbitration, Inc. ("FedArb") submits this response to the Request for Proposal dated October 26, 2020 in the matter of *UFCW & Employers Benefit Trust on behalf of itself and all others similarly situated v Sutter Health, et al*, Case No CGC-14-5384451.

A. EXECUTIVE SUMMARY

Antitrust Expertise with Resources to Meet all Contingencies.

FedArb proposes a distinguished and diverse group of professionals to provide the compliance monitoring services required in the parties' settlement agreement as set forth in the Proposed Final Judgment ("PFJ"). As it has done – and is now doing – in ongoing court appointed monitoring engagements, FedArb will strategically augment its team should new issues arise that require additional skills to monitor compliance with the PFJ or, if additional accounting, data management, specialized healthcare-related expertise are merited. In this way, FedArb's team is lean and efficient but also has the resources and internal depth to scale to meet any challenges. To avoid incurring unnecessary expenses, however, before employing outside consultants and service providers, the FedArb team will consult the parties with respect to the necessity and scope of such ancillary services.

Local Presence. FedArb's team possesses decades of high level judicial, legal and extensive experience in both federal and state antitrust laws, as well as dispute resolution. Indeed, the co-leader of the team is the former Chief Judge for the Northern District of California and has practiced law, served on the federal judiciary and been in ADR work in San Francisco for almost five decades. FedArb is based and its team members live and work in the San Francisco Bay area. They possess first-hand knowledge and experience concerning local healthcare needs, issues and resources, and they are readily accessible to the parties and the Court thereby be best able to perform the required monitoring services efficiently and thereby save time and money.



FedArb—Firm Resources, Experience and Responsiveness. FedArb is a prominent ADR firm that leading law firms and companies utilize to solve complex legal problems. It has a roster of 100 professionals, 60 of whom are former Article III judges and 40 of whom are leading lawyers and experts in their fields. All of these team members are available to assist depending on the needs of the case. FedArb was founded in 2007 by Abraham D Sofaer, who was a United States District Judge in the Southern District of New York until Secretary of State George P Shultz recruited him in 1985 to be the Legal Advisor to the United States Department of State. He founded FedArb with the mission of recruiting the best legal minds to provide highly responsive ADR services with the top flight management, scheduling and related support services on its engagements. FedArb proposes to provide such services in connection with the above proceeding on that same basis. To date, FedArb has administered over 1,000 cases for leading law firms and companies. FedArb has extensive back office capabilities, including a case and document management system to ensure that resources are available to meet all facets of ongoing projects and to provide periodic reports as may be required by the Court.

FedArb's Extensive Antitrust Monitoring Expertise. FedArb has experience in providing settlement monitoring services in large, complicated matters of national importance. Currently, FedArb has been appointed by the United States District Court for the District of Columbia as the corporate monitor overseeing T-Mobile's compliance with that court's order regarding T-Mobile's \$26 billion acquisition of Sprint. It is also acting as the chair of a five member review panel monitoring all corporate actions of the Global Growth conglomerate (with revenues of over \$1b) in connection with legal actions taken against it by the North Carolina insurance commissioner. In addition, FedArb board member, Harry J Saal, was chosen by the United States Department of Justice to be the Chair of the Technical Committee charged with monitoring and enforcing Microsoft Corp's compliance with the antitrust settlement with the Department of Justice.

Diverse Team. For this assignment, FedArb has assembled a diverse leadership team with distinguished experience and background to investigate



compliance with the settlement agreement, hear and decide complaints from parties to the settlement, compel disclosure of confidential documents subject to appropriate confidentiality protections, interview witnesses, inspect records, hire staff and experts, establish a process by which evidence may be presented in order to mediate and decide issues on which the parties find themselves in disagreement and, if necessary, make appropriate recommendations to the Court.

B. QUALIFICATIONS

FedArb proposes the following highly qualified and experienced professionals for this assignment.

Vaughn R Walker is the retired chief judge of the United States District Court for the Northern District of California. Judge Walker has long experience in antitrust, beginning as a litigation associate attorney and later partner in a prominent San Francisco law firm. As a federal district judge, (and as more fully set forth in the attached curriculum vitae), Judge Walker presided over a number of significant antitrust proceedings involving Apple, Microsoft, Oracle and the Antitrust Division of the United States Department of Justice. Judge Walker served for five years as the judicial representative of the American Bar Association Antitrust Section. Since leaving the bench in 2011, Judge Walker has engaged in an arbitration and mediation practice that has included work as a special master in antitrust litigation, among many other matters. Notably, in 2017, Judge Walker chaired an arbitration panel consisting of himself, Kenneth Feinberg and Lee A Freeman that dealt with modifications to the United States Department of Justice antitrust consent decrees in the music licensing field.

Judge Walker has taught at the Stanford Law School, the University of California Berkeley School of Law and most recently at UC Hastings College of Law where he recently conducted a seminar on mass tort litigation. He has also been active in teaching at the Bolch Judicial Institute at Duke University Law School. Judge Walker is a member of the American Law Institute and the former chair of the Saint Francis Memorial Hospital Foundation. Additional information is set forth in the attached curriculum vitae.



Jackie N Nakamura is an experienced federal Court litigator and counselor. Ms Nakamura has represented clients ranging from early stage to Fortune 500 companies on technologies including pharmaceuticals, biotech, medical devices, healthcare systems and e-commerce systems.

She has handled all aspects of federal Court patent litigation and strategic counseling. Ms Nakamura's international legal experience includes supervising and coordinating trial and appellate counsel in multiple jurisdictions, including the United Kingdom, Netherlands, Germany, Japan and Australia. As a law firm partner, Ms Nakamura led efforts to recruit, train and supervise large teams of attorneys and legal professionals. Since 2019, Ms Nakamura has served as a court-appointed judge pro tempore for the Santa Clara Superior Court, conducting mandatory settlement conferences.

Ms Nakamura and Judge Walker have worked extensively together over the years. Ms Nakamura began her legal career as one of Judge Walker's first law clerks. During the past several years, Ms Nakamura and Judge Walker have worked together on arbitration, mediation, special master and consulting assignments, in the antitrust and medical device fields, as well as other areas. Additional information is set forth in the attached curriculum vitae.

Tanveer Singh is office manager and administrator at FedArb where he has worked since 2016. Mr Singh manages arrangements for mediations, arbitrations, mock trials and monitoring activities and has handled over 250 cases at FedArb. Mr Singh graduated in May 2014 from San Jose State University with a BA in Psychology and a minor in Philosophy.

C. PROPOSED ACTIVITIES

1. General Principles

In addition to the terms of settlement in the PFJ herein, FedArb and the professionals it proposes for this assignment are guided by the principles set forth in the memorandum of March 7, 2008 by Acting Deputy Attorney General Craig S Morford to United States Attorneys. As relevant to this matter, these principles deal with the independence of the monitor, compliance with the terms



of settlement, communications with the parties and the Court and dispute resolution and decision-making by the monitor and reporting obligations.

The monitor should act as an independent third party, not an agent or employee of any party to the litigation that gave rise to the monitorship. Although the monitor may express views on appropriate compliance with the terms of settlement, the monitor should not act as an attorney for any party to the settlement and appropriate requirements for notice and methods of dispute resolution should be provided.

The monitor's primary responsibility should be to assess and monitor compliance with the settlement agreement. In this case, a monitor's primary role is to evaluate whether Sutter has adopted and effectively implemented practices that address the problems addressed in the parties' settlement. To carry out this responsibility, the monitor must understand the scope of the remedial purposes of the settlement and calibrate actions, recommendations and decisions to those purposes.

Communications among the monitor and the parties are essential to an effective monitorship. This requires identifying the individuals who may communicate to the monitor on behalf of the parties and, in turn, with whom the monitor may communicate. The monitor must be open to receiving communications from the parties that claim to be affected by non-compliance with the terms of settlement and to have access to information about Sutter's conduct relevant to those claims. The geographic proximity of Judge Walker, Ms Nakamura and Mr Singh to the parties in this matter will greatly aid in making these communications effective.

Importantly, the monitor should use every effort to mediate and resolve any dispute or disagreement between or among the parties, before making a decision regarding non-compliance with the terms of settlement and before making a recommendation to the Court. Finally, although the duration of the monitorship is that provided in the PFJ, the monitor should be free to recommend to the Court either that the monitorship should be extended or



curtailed due to facts, circumstances and developments not anticipated at the time the settlement agreement was approved.

2. Specific Proposed Monitoring Activities

The PFJ provides that the monitor shall have the powers to monitor and to investigate compliance with the settlement agreement, to take complaints from plaintiffs and insurers, to compel disclosure of confidential documents subject to appropriate confidentiality protections, to interview witnesses, to inspect records, to hire staff and experts and to make recommendations to the Court. See Section V.B. Although these powers appear comprehensive, as we understand the PFJ, this list is not exhaustive. Indeed, the Request for Proposal appears specifically to call for “methods and processes you would put in place to monitor compliance,” RFP at 5, and these evidently would be in addition to the powers enumerated in the PFJ.

We note two areas where such additional powers appear appropriate and consistent with the objectives of the monitorship. The first of these deals with establishing appropriate requirements of notice and the second with establishing channels for resolution of disputes short of resort to judicial intervention.

Establishing appropriate requirements of notice. The PFJ covers many aspects of Sutter’s operations and governance. It appears, however, that the PFJ anticipates that allegations of non-compliance with the terms of settlement will be brought to the monitor’s attention by one or more of the affected parties. This undoubtedly will occur in many, perhaps even most instances. But even if this proves to be the case, there remains the possibility that such allegations will not be brought to the monitor’s attention until the changes or practices giving rise to such allegations have been put into effect and practice. With respect to certain matters covered in the PFJ, advance notice of changes to these matters is implied. See, e.g., §IV.A. 3.c. (“If a center of excellence program is developed and marketed during the term of a contract with Defendants, but was not disclosed previously to Defendants that program shall



apply to Sutter Providers absent mutual agreement of the Insurer marketing the center of excellence program and Defendants.”)

An additional method or process that the FedArb professionals will put in place is the requirement that Defendants provide notice to the Plaintiffs of material changes to Sutter’s practices and governance that relate to the matters that are the subject of the settlement. The particulars of such notice and whether in advance of implementation of changes, and if so, the period of advance notice are matters that should be worked out with Plaintiffs and Sutter. Notice of the kind recommend herein avoids unnecessary surprise, and it allows the parties to deal with matters before they become unnecessarily fraught.

Establishing channels for resolution of disputes. Another method or process that we would put in place is the requirement that before a dispute about compliance with the settlement comes to a decision by the monitor or is referred to the Court, the parties should be required to meet and confer in an effort to resolve the matter. If the parties are unable after a meet and confer session to resolve the dispute, the PFJ does not expressly call for a determination by the monitor before presentation of evidence to the Court. See Section V.C.1. Accordingly, before resort to adjudication by the Court is sought, Judge Walker and Ms Nakamura would require the parties to turn first to the monitor who would attempt to mediate the dispute; if mediation does not produce a resolution then invoking the powers expressly enumerated in the PFJ, the monitor would consider the evidence, make a determination whether in the monitor’s view the reasons given are pretextual and submit to the Court a recommendation that the Court should so find. In this manner, the Court will not only have a full record upon which to decide the question presented to it but will be able to make this decision on the basis of the consistency or inconsistency of the monitor’s determination with the terms of settlement.

Another area for which we propose augmentation of the monitor’s methods and processes deals with the exceptions provided in the PFJ for clinical integration and patient access considerations for Group B Hospitals. See Section IV.C.3.b.and c. The Compliance Monitor provisions provide detailed specific



burden-shifting procedures for dealing with these issues. Again, the procedures conspicuously omit to impose a requirement that the parties first seek to resolve their disagreement by mediation with the monitor which for the reasons noted above would be a helpful additional step.

The monitorship proposed in this litigation arose out of allegations that Sutter included in provisions in its agreements with major California health insurers that have had the effect of restricting price competition between Sutter and other general acute care hospitals in northern California. The issues thus require first and foremost familiarity and experience with competition issues generally and with the market for general acute hospital services and ancillary products in northern California. The long and varied experience with competition issues under both federal and California law of the professionals FedArb proposes for this monitorship make these professionals ideally equipped to obtain the information on market conditions for the services in northern California at issue here and to analyze these issues fairly and efficiently.

D. PERSONNEL

See B. QUALIFICATIONS, *supra*.

E. COSTS

The \$500,000 budget proposed should be sufficient for the first six months of this assignment.

F. POTENTIAL CONFLICTS/OTHER REPRESENTATIONS

If chosen for this assignment, neither Judge Walker or Ms Nakamura will represent or undertake work for the parties to these proceedings.



CURRICULUM VITAE

VAUGHN R WALKER

EDUCATION

AB distinction & high honors, 1966
Woodrow Wilson Fellow, 1966-67
JD, 1970

University of Michigan, Ann Arbor
University of California, Berkeley
Stanford University

BAR MEMBERSHIPS

State and federal courts in California, United States Supreme Court, United States Court of Appeals for the Fifth, Ninth and Tenth Circuits

PROFESSIONAL ENGAGEMENTS

ADR/Law Office of Vaughn R Walker, 2011 – present
Bentham Capital, LLC, US Investment Committee, 2016 – present
United States District Chief Judge, Northern District of California, 2004-2010
United States District Judge, Northern District of California, 1990-2004, 2011
Partner, 1978-1990, Pillsbury Madison & Sutro, San Francisco
Associate, 1972-1977, Pillsbury Madison & Sutro, San Francisco
Law Clerk, Honorable Robert J Kelleher, United States District Judge,
Central District of California, Los Angeles, 1971-72

TEACHING ENGAGEMENTS

Mass-Tort MDL Certificate & Advanced Certificate Program, Duke Law School, 2019, 2020
Lecturer, University of California, Hastings College of Law, 2014-15, 2018, 2020
Lecturer, University of California, Berkeley School of Law, Spring 2011, 2014
Lecturer, Stanford University Law School, 2011, 2012

INTERNATIONAL CONSULTING PRACTICE

Court of Appeal of Luxembourg, 4th Chamber – opinion re recovery of Madoff investments
Amsterdam Court of Appeal, Netherlands – opinion re United States securities laws
Supreme Court of New South Wales, Australia – opinion re California arbitration law
British Columbia Supreme Court, Canada – opinion re United States securities laws

SUBJECT MATTERS OF ILLUSTRATIVE ARBITRATIONS

Insurance coverage obligations under New York law
Enforceability of attorney contingent fee award under California law
Distributor termination and Robinson-Patman Act claims under Tennessee and federal law
Franchisee claims under New Jersey law
Defective installation and malfunction of financial management systems under New York law
Radio music licensing agreements and payments under federal and various state laws
Accounting malpractice under New York law



Pension advisory services and liability under Washington and federal law
Product liability claims under various state laws
National securities exchange regulation under federal law
Gambling licensing requirements under Nevada and federal law

SUBJECT MATTERS OF ILLUSTRATIVE MEDIATIONS

Antitrust direct and indirect purchaser claims in technology products under federal and state laws
Privacy protection claims under California and Federal law
Corporate acquisition dispute under United States and Canadian law
Cartwright Act claims under California law
Shareholder derivative claims under Delaware law
Attorney-client dispute under California law
Patent licensing disputes under federal law
Employment termination claims under California law
Commodities regulation claims under federal law
Grower and food processor dispute under California law
Automobile supplier claims under federal law
Environmental pollution claims under California law
Winery trademark dispute under federal and state law
Telecommunications equipment carrier and supplier dispute under federal law
Transpacific airline passenger competition claims under federal law
Copyright and trademark claims under federal law
Whistleblower claims under federal and various state laws
Subrogation insurance claims under California law

AWARDS AND HONORARY LECTURES

Judges and the Facts, 2014	University of Miami Law Review Symposium, Miami
Competition in the Americas, 2013	CFC Regional Competition Center, Mexico City
Justice Lester Roth Lecture, 2012	University of Southern California, Los Angeles
4th Annual Chief Justice Ronald M George Distinguished Lecture, 2012	Golden Gate University Law School, San Francisco
Maurer School of Law Lecture, 2011	Indiana University School of Law, Bloomington
David C Baum Memorial Lecture on Civil Liberties and Civil Rights, 2011	University of Illinois College of Law, Urbana
Commencement Address, 2011	Hastings College of Law, University of California
Justin L Quackenbush Lecture, 2011	Gonzaga University School of Law, Spokane
Distinguished Jurist Lecture, 2006	University of Pennsylvania Law School, Philadelphia
Outstanding Jurist Award, 1993	World Computer Law Congress

ADVISORY POSITIONS AND MEMBERSHIPS

Trustee, San Francisco War Memorial & Performing Arts Center Trust, 2016-2019
Giffords Law Center to Prevent Gun Violence, 2012 - present
Director, Saint Francis Foundation, 1990-1996, 1998-2012
Member, American Law Institute, 1991-present
Advisory Board, Arthur and Toni Rembe Rock Center for Corporate Governance, 2012-2016
Member, Civil Rules Advisory Committee of the Judicial Conference of the United States, 2006-2011



Judicial Representative, ABA Section on Antitrust Law, 1990-1995
California Law Revision Commission, 1986-1990
Lawyers' Club of San Francisco, President, 1986-1987

NOTABLE JUDICIAL DECISIONS

Civil Liberties and National Security

In re National Security Agency Telecommunications Records Litigation, MDL No 06-1791, 633 F Supp 2d 949 (N D

Cal 2009)(upholding Foreign Intelligence Surveillance Amendments Act) and including the following individual cases:

Al-Haramain Islamic Foundation v Bush, 700 F Supp 2d 1182 (N D Cal 2010)(Foreign Intelligence Surveillance Act allows private remedy); 595 F Supp 2d 1077 (N D Cal 2009)(classified information in litigation); 564 F Supp 2d 1109 (N D Cal 2008)(state secrets privilege); 2010 WL 5663950 (N D Cal 2010)(attorney fees awarded)

Hepting v A T & T Corporation, 439 F Supp2d 974 (N D Cal 2006) (state secrets privilege)

Clayton v AT & T Communications of the Southwest, Inc, 630 F Supp 2d 1092 (N D Cal 2009) (Foreign Intelligence Surveillance Act upheld)

Perry v Schwarzenegger, 704 F Supp 2d 921 (N D Cal 2010) (provision prohibiting recognition of same sex marriages unconstitutional)

In re World War II Era Japanese Forced Labor Litigation, 114 F Supp 2d 939 (N D Cal 2000); 164 F Supp 2d (N D Cal 2001), affirmed sub nom Deutsch v Turner Corp, 317 F 3d 1005 (9th Cir 2003), reh denied, 324 F 3d 692; certiorari denied 540 US 820 (2003)(reparations barred by United States-Japan Peace Treaty)

California First Amendment Coalition v Calderon, 2000 WL 33173913 (N D Cal 2000) affirmed 299 F 3d 868 (9 Cir 2002) (media access to executions)

Technology

UniRAM Technology, Inc v Taiwan Semiconductor Mfg Co, 617 F Supp 2d 938 (N D Cal 2007)

3Com Corp v D-Link Systems, Inc, 473 F Supp 2d 1001 (N D Cal 2007)

Reiffin v Microsoft Corp, 281 F Supp 2d 1149 (N D Cal 2003) affirmed 410 Fed Appx 332 (Fed Cir 2011); 270 F Supp 2d 1132 (N D Cal 2003); 158 F Supp 2d 1016 (N D Cal 2001)

Apple Computer, Inc v Microsoft Corp, 821 F Supp 616 (N D Cal 1993); 799 F Supp 1006 (N D Cal 1992); affirmed except on attorney fees, 353 F 3d 1435 (9 Cir 1994), certiorari denied 513 US 1184 (1995)

Xerox Corp v Apple Computer, Inc, 734 F Supp 1542 (N D Cal 1990)

Competition and Antitrust

Theme Promotions, Inc v News America Marketing FSI, Inc, 731 F Supp 2d 937 (N D Cal 2010)

Pecover v Electronic Arts, Inc, 633 F Supp 2d 976



NOTABLE LITIGATION IN LAW PRACTICE

Legislature v Deukmejian, 34 Cal 3d 658 (1983)

State of California v County of Santa Clara, 142 Cal App 3d 608 (1983)

International Olympic Committee v San Francisco Arts & Athletics, 219 USPQ 983 (N D Cal 1982), affirmed 707 F 2d 517 (9 Cir 1983), 483 US 522 (1987)

Doe v City & County of San Francisco, 136 Cal App 3d (1982)

Olson Farms, Inc v Safeway Stores, Inc, 649 F 2d 1370 (10 Cir 1979)

Zylstra v Safeway Stores, Inc, 578 F 2d 102 (5 Cir 1978)

ARTICLES

"Merger Trials: Looking for the Third Dimension," 5 Competition Pol'y Int'l 35 (2009)

"The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings about 'Reasonable Percentage' Fees in Common Fund Cases," 18 Georgetown Journal of Legal Ethics 1453 (2005)

Comment, "Federalizing Organized Crime," 46 Hastings L J 1127 (1995)

SELECTED SPEECHES AND EDUCATIONAL PRESENTATIONS

"Evidencia científica para jueces," Consejo de la Judicatura y Comisión Federal de Competencia, Ciudad de México, Mexico, 2017

"Unfinished Business," Annual Meeting and Installation Dinner, Anti-Defamation League, Central Pacific Region, San Francisco, 2013

"Who's Paying? New Developments in Funding," 5th Annual Conference on Globalization of Class Actions and Mass Litigation, Tilburg University Law School, The Hague, 2011

"Private Anti-Monopoly Litigation," University of International Business & Economics, Beijing, 2011

"Anti-Cartel Criminal Sanctions," 8th Annual Trade Practices Workshop, University of South Australia, Adelaide, 2010

"Rules of Evidence," Thailand-United States Judicial Conference, Bangkok, 2010

"Handling Classified Information," Federal Judicial Center Workshop, Washington, DC 2010

Keynote Speaker, ABA Antitrust Masters Course V, Williamsburg, VA, 2010

"Evidence in Competition Cases," EU Competition Law and Policy Workshop, Florence, Italy, 2009

"Recent Supreme Court Decisions," Practising Law Institute, 50th Annual Antitrust Law Institute, San Francisco, 2009

"Assessing Economic Evidence in Competition Cases," Federal Competition Commission (CFC) Conference, Mexico City, 2008

"Comparing the Trinidad Fair Trade Law," United Nations Conference on Trade & Development Judicial Conference, Port of Spain, Trinidad, 2007

"The Art & Science of Serving as a Special Master," ALI/ABA Conference, San Francisco, 2006

"Standards of Proof for Relevant Market Determinations," United Nations Conference on Trade & Development Judicial Conference, Bali, Indonesia, 2006

"Search for a Competition Metric," International Bar Association Annual Meeting, Prague, 2005



**"Roles of Courts in Competition Cases and Policy," United Nations Conference on Trade & Development
Competition Conference, Cairo, Egypt, 2005**

**"Techniques for Multi-district Transferee Judges," XXXIII Transferee Judges Conference, Palm Beach, Florida,
2002**

Lead-Off Speaker, XXIV Multi-district Transferee Judges' Conference, Palm Beach, FL, 1993

Keynote Speaker, 9th Annual Biotechnology Law Institute, San Francisco, 1993

Jackie Nakamura

An experienced federal court litigator and counselor, Jackie has represented clients ranging from early-stage to Fortune 500 companies on technologies including pharmaceuticals, biotech, medical devices, healthcare systems and e-commerce systems. She has handled all aspects of federal court patent litigation and strategic counseling. Jackie's international legal experience includes supervising and coordinating trial and appellate counsel in multiple jurisdictions, including the United Kingdom, Netherlands, Germany, Japan and Australia. As a law firm partner, she led efforts to recruit, train and supervise large teams of attorneys and legal professionals. Since 2019, Jackie has served as a court-appointed judge pro tempore for the Santa Clara Superior Court, conducting mandatory settlement conferences.

EXPERIENCE

Nakamura Law, Founder (2012 - current)

Client counseling, federal court and administrative law litigation and discovery involving complex commercial matters including antitrust, patent and securities law

Howrey LLP, East Palo Alto, CA, Partner (2009 – 2011)

Represented and advised clients on patent litigation and strategy involving medical devices, pharmaceuticals, drug discovery, business software and internet systems

- Litigated dispute on drug discovery technologies: *Alzheimer's Institute of America, Inc v Élan Pharmaceuticals et al*, ND Cal (patent infringement action on Alzheimer's drug discovery patent)
- *GlaxoSmithKline v Genentech*, ED Cal (declaratory judgment action on biotech patents)
- Advised medical device and pharmaceutical companies on strategic patent issues, e.g, claim strategy, validity analyses, patent term extensions, parallel litigation and reexamination strategies
- Counseled international pharmaceutical company on partnering relationships for highest revenue generating products
- Delivered seminars on patent litigation and administrative procedures, including depositions, *inter partes* and *ex parte* reexamination to law firms and corporate legal departments
- Assisted Professor Henry Hecht with deposition course at Boalt Hall, UC Berkeley

Day Casebeer Madrid & Batchelder LLP, Cupertino, CA, Partner (1999 – 2009)

Represented clients on domestic and international patent litigation and strategic IP counseling

- Strategic coordination of large international patent portfolio, including patent prosecution, opposition, and enforcement in multiple jurisdictions
- *Trilogy v SAP*, ED Texas (patent infringement action on configuration, pricing and e-commerce software patents filed by a non-practicing entity)
- *Conor Medsystems v Angiotech Pharmaceuticals*, United Kingdom House of Lords (landmark decision upholding the validity of client's medicated stent patent)
- *Amgen v TKT, Hoechst Marion Roussel (Aventis)*, D Mass, Federal Circuit (declaratory judgment patent case involving patents covering polynucleotide, host cell, and recombinant protein claims, resulting in two trial victories, affirmed on appeal)
- Initiated *inter partes* and *ex parte* reexamination of software patents
- Litigation and reexamination on patent involving erectile dysfunction treatment (patent invalidated after successful *ex parte* reexamination)
- Led due diligence on acquisition of patent portfolio covering ground-breaking stem cell technology, including multiple board presentations and meetings with executive team



EXPERIENCE (continued)

Day Casebeer Madrid & Batchelder LLP, Cupertino, CA, Partner (1999 – 2009) (continued)

- Partner responsible for developing and implementing firm-wide attorney training program on federal court litigation and patent law

Cooley Godward LLP, Palo Alto, CA, Associate Attorney (1995 – 1998)

Patent prosecution involving biotech, medical device, chemical, analytical, diagnostic, and mechanical inventions

- Patent application drafting, day-to-day prosecution, including European oppositions and supervising foreign associates
- Portfolio management for startup clients
- Due diligence on patent portfolios for IPOs and acquisitions
- Invalidity and non-infringement analyses and opinions
- Presentations to board members on strategic patent matters
- *Genentech v. Amgen*, N.D. Cal. (defended patent infringement action involving \$600M recombinant cancer drug, developed invalidity bases and claim construction positions, prepared expert for Markman hearing, drafted Markman hearing slides, second chair at Markman hearing)
- Co-coordinator of summer associate program

Morrison & Foerster LLP, Palo Alto and San Francisco, CA, Associate Attorney (1991-1995)

IP litigation and patent prosecution

- *Chiron v. Abbott*, N.D. Cal. (represented Chiron in patent infringement re HIV immunoassay)
- *Hitzeman v. Rutter* (represented UC Regents in interference on Hepatitis B Surface Antigen)

Law Clerk to the Honorable Vaughn R. Walker, United States District Court for the Northern District of California, San Francisco, CA (1990-1991)

Imperial Cancer Research Fund, Sir Walter Bodmer, London, Research Assistant (1984-1985)

- Conducted recombinant DNA research to locate the gene for familial polyposis coli

EDUCATION

Boalt Hall School of Law, University of California, Berkeley, JD 1990

- *Coursework in Intellectual Property*
- *Senior Notes and Comments Editor, Berkeley Technology Law Journal*

Stanford University, BS Biological Sciences with honors, 1984



ADMISSIONS

California State Bar (Bar No 148531, active member in good standing) Massachusetts State Bar (inactive status)
United States Courts of Appeals for the Federal Circuit, Ninth Circuit, Eleventh Circuit
United States District Courts for the Northern District of California, Southern District of California, District of Massachusetts
United States Patent and Trademark Office (Attorney Reg No 35,966)

PUBLICATION AND PRESENTATIONS

United States Patent Marking and Notice Statute, P Moore and J Nakamura, 22 AIPLA Q. J. 85 (1994)
Strategies for Concurrent Patent Litigation and Reexamination, Patent Law Institute, San Francisco and New York (2010)
US Patent Law Reform, DeClercq Brants and Partners, Sint-Martens-Latem, Belgium (2010)
US Patent Reexamination and Litigation, Novartis, Basel, Emeryville, Élan Pharmaceuticals, South San Francisco, and Geron, Menlo Park (2009)

PROFESSIONAL AND COMMUNITY INTERESTS

Santa Clara County Superior Court, Court-Appointed Temporary Judge (2019 - present) Member of Advisory Committee on Protective Orders to the United States District Court for the Northern District of California (2010)
Member of Asian Law Alliance Board and Advisory Board, San Jose (2007 - present)
Japanese American Citizens' League, San Jose Chapter, sponsor of Masuo Nakamura Memorial Scholarship for college-bound high school seniors (2000 - present)

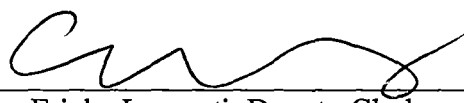
CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 9, 2021, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: March 9, 2021

T. Michael Yuen, Clerk

By: 

Ericka Larnauti, Deputy Clerk