

Received 10/30/09

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Eden Township Healthcare District, and Does 1 through 20, Inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Sutter Health, a California Nonprofit Public Benefit Corporation

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 27 2009

CLERK OF SUPERIOR COURT
By Dorothy L. Lee, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte pueda decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorta.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorta.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Rene C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA 94612

Case Number: 481573
Alameda County

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Stephen L. Goff, Marcia L. Augburger (916) 444-3900
McDonough Holland and Allen PC
500 Capitol Mall, 18th Floor Sacramento, CA 95814

DATE: OCT 27 2009
(Fecha)

PAT S. SWEETEN

Clerk, by
(Secretario)

DOROTHY L. LEE

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[REAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **EDEN TOWNSHIP HEALTHCARE DISTRICT**
under:

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.80 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input checked="" type="checkbox"/> Other (specify): BUSINESS ORGANIZATION	
- by personal delivery on (date):

**BUSINESS ORGANIZATION
FORM UNKNOWN**

1 McDONOUGH HOLLAND & ALLEN PC
 Attorneys at Law
 2 STEPHEN L. GORF (SBN 114497)
 MARCIA L. AUGSBURGER (SBN 145686)
 3 500 Capitol Mall, 18th Floor
 Sacramento, California 95814
 4 Telephone: 916.444.3900
 Facsimile: 916.444.8989
 5

ENDORSED
 FILED
 ALAMEDA COUNTY

OCT 27 2009

CLERK OF THE SUPERIOR COURT
 By [Signature] Deputy

6 Attorneys for Plaintiff Sutter Health
 7
 8

9 SUPERIOR COURT OF CALIFORNIA,

10 COUNTY OF ALAMEDA

11 SUTTER HEALTH, a California Nonprofit
 Public Benefit Corporation)

Case No. **RG 09 - 481573**

12 Plaintiff,)

COMPLAINT FOR SPECIFIC
 PERFORMANCE OF WRITTEN
 AGREEMENT TO CONVEY REAL
 PROPERTY AND DAMAGES FOR DELAY
 (BREACH OF CONTRACT),
 CONSTRUCTIVE TRUST, AND
 DECLARATORY RELIEF .

13 v.)

14 EDEN TOWNSHIP HEALTHCARE
 DISTRICT, a California Local Healthcare
 District, and DOES 1 through 20, inclusive,)

15 Defendants.)
 16
 17

BY FAX

18
 19 Plaintiff Sutter Health ("Sutter") alleges as follows:

20 GENERAL ALLEGATIONS

21 1. Sutter is, and at all relevant times was, a nonprofit tax exempt public benefit
 22 corporation, duly organized and existing under the laws of the State of California. Sutter Health
 23 provides administrative support services to its affiliated hospitals, physician organizations, and
 24 ancillary health care service providers in Northern California.

25 2. Sutter is informed and believes, and thereon alleges, that defendant Eden Township
 26 Healthcare District (the "District") is a California healthcare district under the Local Health Care
 27 District Law, California Health & Safety Code sections 32000 *et seq.*. The District owns a general

28 ///



1 acute care hospital located at 13855 East 14th Street, San Leandro, California, commonly known as
2 San Leandro Hospital ("SLH").

3 3. Sutter does not know the true names and capacities, whether individual or corporate,
4 associate or affiliate, or otherwise, of defendants Does 1 through 20, inclusive, and therefore Sutter
5 sues those defendants by such fictitious names. When the true names and capacities of those
6 defendants become known, Sutter will seek leave to amend this complaint to include their true
7 names and capacities with proper charging allegations against those defendants. All references to
8 "defendants" and to the "District" in this pleading are deemed to include each and every defendant
9 sued by a fictitious name.

10 4. Sutter is informed and believes, and thereon alleges, that at all relevant times, each of
11 the defendants was the principal, agent, partner, employer or employee of each of the other
12 defendants and, in doing the acts alleged herein, each was acting within the scope of such agency,
13 partnership, or employment and with the permission and consent of the other defendants.

14 5. Venue in the Superior Court of California, County of Alameda, is proper because the
15 real property that is the subject matter of this action is located in the city of San Leandro, Alameda
16 County, California, and the written contracts between Plaintiff and the District that give rise to this
17 action state that proper venue for any disputes or claims related to or arising out of the contracts is in
18 Alameda County.

19 6. On or about January 14, 1998, the District transferred substantially all of the
20 operating assets and operations of Eden Medical Center and Laurel Grove Hospital in Castro Valley,
21 California, to Eden Medical Center, a Sutter-affiliated California nonprofit, tax-exempt public
22 benefit corporation ("EMC").

23 7. On or about March 21, 2008, Sutter, EMC, and the District entered into a
24 Memorandum of Understanding ("MOU") and an Amended and Restated Lease and Hospital
25 Operations Agreement ("Lease"). The MOU addressed the future of SLH, including Sutter's
26 obligation to construct a replacement hospital on the Eden Hospital campus. The Lease addressed
27 EMC's right to possess SLH and the right of Sutter to purchase SLH at its option. The District's

28 ///



1 grant of an option to Sutter for the purchase of SLH was a material inducement for Sutter's
2 agreement to construct the replacement hospital on the Eden hospital campus.

3 8. Section 4.02 of the MOU provides that where any inconsistencies exist between the
4 MOU and the Amended Lease, the Amended Lease shall control.

5 9. Article V of the Lease provides Sutter with an unconditional option to purchase SLH
6 (defined in the Lease as "Hospital") from the District (defined in the Lease as "Landlord").

7 Section 5.1 sets forth the grant of option as follows:

8 5.1 Grant of Option to Tenant. Landlord grants to Sutter or
9 Sutter Affiliate (collectively referred to in this Article V as "Sutter")
10 the option to purchase (the "Purchase Option") the Hospital and the
11 property described as the Hospital Employee Parking Lot and
12 designated APN 77D-1429-3-5 (collectively, the "Option Property") in
13 accordance with the provisions of this Article V. The Hospital and the
14 Medical Arts Office Building are situated on a single legal parcel
15 designated as APN 77D-1429-19. The Option Property does not
16 include the portion of that parcel containing the Medical Arts Office
17 Building which will be retained by Landlord. After Sutter's exercise
18 of the Purchase Option and prior to the close of escrow, Sutter and
19 Landlord, at Sutter's cost, shall cooperatively create the land occupied
20 by the Medical Arts Office Building as a separate legal parcel, by
21 either a lot line adjustment or a parcel map in a configuration
22 reasonably approved by Landlord and Sutter (in either case, the "Land
23 Subdivision").

24 10. Section 5.2 sets forth the time period for Sutter's exercise of the option as follows:

25 5.2 Option Period. Sutter shall have the right to exercise the
26 Purchase Option between July 1, 2009 and June 30, 2010 (the "Option
27 Period").

28 11. Section 5.3 sets forth the method of exercising the option and the time period for
close of escrow of the transfer as follows:

5.3 Method of Exercising Option. Sutter shall exercise the option
by giving notice ("Option Notice") to Landlord within the Option
Period. The Option Notice shall specify the date for close of escrow
on Sutter's purchase, which date shall be at least 30 days, but not later
than 90 days, after delivery of the Option Notice. Notwithstanding the
foregoing, if necessary, the date for the close of escrow will be
automatically extended until immediately after the recordation of the
Land Subdivision.

12. Section 5.4 sets forth the purchase price of the option as follows:

///



1 **5.4 Purchase Price.** The purchase price for the Option Property
 2 shall be an amount equal to the net book value of the Hospital as of the
 3 Effective Date less an amount equal to (a) the total cash losses
 4 attributable to the Hospital, and (b) capital expenditures made by
 5 Tenant and/or Sutter for the Hospital since the Commencement Date
 6 that were not otherwise required as rental payments pursuant to
 7 Section 1.2 of the Lease (the "Purchase Price"). The parties
 8 acknowledge and agree that if the total of (a) and (b) above exceed the
 9 net book value of the Hospital as of the Effective Date, Sutter shall be
 10 deemed to have paid the Purchase Price in full and no balance shall be
 11 due to effect the purchase under the Purchase Option. An example of
 12 the computation of the Purchase Price is attached for informational
 13 purposes only as Schedule 5.4.

14 The Lease defines "Commencement Date" as July 1, 2004.

15 13. Section 5.6 obligates the District to deliver an executed grant deed to Sutter as
 16 follows:

17 **5.6 Title to Premises.** Landlord shall deliver to Sutter or a Sutter
 18 Affiliate designated by Sutter an executed grant deed in recordable
 19 form and other appropriate conveyance documents conveying title to
 20 the Option Property. Title to the Option Property shall be conveyed by
 21 Landlord to Sutter free and clear of all liens, encumbrances, covenants,
 22 conditions, restrictions, easements and rights-of-way of record, leases
 23 or other tenancy agreements, and other matters of record, except
 24 current taxes, a lien not yet delinquent, those portions of current
 25 assessments not yet due and payable, anything of record or not of
 26 record that in any way affects title to the Option Property resulting
 27 from the acts or omissions of Tenant and other matters approved by
 28 Sutter. Following such purchase and until the Start Service Date (as
 defined in the MOU), Sutter agrees that it shall not cause the transfer
 of ownership of Hospital to an entity other than a Sutter Affiliate or
 the East Bay regional corporation described in Section 5.04 of the
 MOU without District prior written consent.

14. In addition, Section 5.12 provides for termination of the Lease on close of escrow and
 the District's obligation to cooperate in the transfer as follows:

5.12 Termination of Lease; Cooperation. On close of escrow this
 Lease shall terminate. Landlord shall support the transfer of the
 facility license and provider number, as appropriate, and reasonably
 cooperate in the transition to reduce disruption of operations and
 reimbursement.

15. The balance of Article V. of the Lease addresses other matters concerning, for
 example, method of payment (Section 5.5), escrow (Section 5.7), title insurance (Section 5.8), costs
 (Sections 5.9 and 5.10), and Sutter's right to unilaterally assign the option (Section 5.11).

///



1 16. On July 27, 2009, Sutter exercised its option to purchase SLH by written notice to
2 both the District and its legal counsel, in compliance with Sections 5.2 and 5.3 of the Lease.

3 17. At all times thereafter, Sutter expressed that it was ready, willing, and able to perform
4 the purchase by, *inter alia*, requesting information from the District on August 5, 2009, about the net
5 book value of SLH (a component of the purchase price), and by entering into a lease dated July 31,
6 2009 ("ACMC Lease") with Alameda County Medical Center ("ACMC"), pursuant to which ACMC
7 would operate SLH as an acute inpatient rehabilitation facility and urgent care center.

8 18. ACMC is a public hospital authority that has served the healthcare needs of Alameda
9 County residents for over 100 years, including providing health maintenance services to all County
10 residents regardless of their ability to pay. ACMC is a key component in the County's healthcare
11 safety net and trauma systems, providing intensive care, medical and surgical, labor and delivery,
12 acute psychiatric, skilled nursing, acute rehabilitation, and medical and psychiatric emergency
13 services on three campuses (Highland, Fairmont, and John George), and is the level II trauma center
14 for northern Alameda County. ACMC also operates 39 specialty and primary care outpatient clinics.

15 19. In order for ACMC to continue its critically important work, it is necessary to move
16 the acute inpatient rehabilitation program from Fairmont Hospital to SLH because Fairmont Hospital
17 is seismically vulnerable. Fairmont Hospital is classified as a SPC-1 or "collapse-hazard" facility.
18 As such, Fairmont Hospital must be rebuilt pursuant to SB 1953, which mandates that all acute in-
19 patient facilities statewide comply with stringent seismic standards by 2013 or close. ACMC
20 estimates that Fairmont Hospital, which straddles the Hayward Fault, would cost a minimum of \$100
21 million to rebuild. ACMC has informed Sutter that the County of Alameda does not have sufficient
22 funds to rebuild Fairmont Hospital.

23 20. The ACMC Lease was designed to permit Fairmont Hospital to remain open and
24 more fully meet the needs of Alameda County residents. Under the ACMC Lease, ACMC will
25 convert the current acute inpatient beds to acute rehabilitation beds, nearly doubling ACMC's
26 rehabilitation capacity while maintaining the capacity to treat at least 70% of the current emergency
27 room visits at SLH in an urgent care center. In the ACMC Lease, Sutter agreed to provide grants to
28 ACMC totaling \$6.5 million dollars to assist with the acute rehabilitation and urgent care

1 conversions. ACMC has informed Sutter that the ACMC Board has committed to invest more than
2 \$20 million in the SLH campus.

3 21. By facilitating ACMC's conversion and use of SLH, Sutter is preserving a crucial
4 component in the Alameda County health care delivery system. ACMC has been one of the
5 foremost providers of rehabilitation services in Northern California and a Center of Excellence for
6 over 50 years. ACMC has expressed concern that if it is not able to continue providing acute
7 rehabilitation services, ACMC will not be able to continue operating its trauma service, because
8 acute rehabilitation is a mandated component for all trauma centers. If ACMC loses its trauma
9 designation, it will be unable to continue providing critical services to the community.

10 22. Despite Sutter's proper exercise of its option to purchase SLH, the District voted on
11 August 18, 2009, not to transfer SLH to Sutter and, despite demand, has refused to proceed with the
12 sale of SLH, all in repudiation and breach of the Lease and of the purchase and sale agreement that
13 was formed upon Sutter's exercise of the option.

14 23. Section 15.3 of the Lease requires that the parties meet and confer and mediate any
15 dispute under the Lease and that, if the parties cannot resolve a dispute in mediation, they shall
16 submit to binding arbitration. On September 8, 2009, Sutter and the District entered into a written
17 Stipulation for Meet and Confer/Mediation Process ("Mediation Agreement"). The Mediation
18 Agreement provides that completion of the meet-and-confer/mediation process will satisfy the
19 condition precedent to arbitration under the parties' dispute resolution provisions concerning the
20 option to purchase SLH.

21 24. Sutter and Eden completed the meet-and-confer/mediation process, yet SLH
22 continues to refuse to convey SLH to Sutter. Accordingly, Sutter has filed an arbitration demand
23 and is filing, with this Complaint, an application that this action be stayed pending the arbitration,
24 pursuant to Code of Civil Procedure section 1298.5.

25 25. The filing of this action, and recording of a notice of pending action pursuant to Code
26 of Civil Procedure section 409, is necessary to preserve Sutter's interest in and rights to the real
27 property and SLH while the dispute is arbitrated pursuant to the arbitration provisions set forth in the
28 Lease.

1 **FIRST CAUSE OF ACTION**

2 **(Specific Performance Brought by Sutter Against the District)**

3 26. Sutter incorporates here by reference the allegations contained in paragraphs 1
4 through 25 above.

5 27. The terms of the Lease, including, without limitation, Sutter's option to purchase
6 SLH, are clear and certain.

7 28. The option is supported by adequate consideration.

8 29. Sutter properly exercised the option on July 27, 2009, giving rise to the purchase and
9 sale agreement with Defendants pursuant to which Defendants were obligated to transfer the
10 property on or before September 1, 2009, which date is at least 30 days but not more than 90 days
11 after delivery of the option notice, as required by the Lease.

12 30. Sutter is, and at all times has been, willing, ready, and able to perform according to
13 the purchase and sale agreement and the Lease, and has attempted to perform, and continues to seek
14 performance of, the purchase and sale agreement.

15 31. The option is reasonable and just as to Defendants. Defendants have realized
16 considerable benefits under the MOU and Lease, including the agreement of EMC and Sutter to
17 build a replacement facility for EMC's general acute care hospital, Eden Hospital. EMC and Sutter
18 proceeded in good faith to build the replacement hospital, and construction began in July, 2009.

19 32. Sutter has no adequate remedy at law because SLH is unique and the transfer is
20 necessary to facilitate the ongoing delivery of comprehensive, quality medical treatment, health
21 promotion, and health maintenance services to Alameda County residents by and through APMC, as
22 alleged above.

23 33. Accordingly, Sutter is entitled to specific performance of the purchase and sale
24 agreement, including without limitation the provisions set forth in Section 5.4 of the Lease regarding
25 the purchase price of SLH; Section 5.6, which obligates the District to deliver and convey title to
26 SLH to Sutter by way of an executed grant deed in recordable form and other appropriate
27 conveyance documents; and Section 5.12, which requires that Defendants support the transfer of
28 SLH's license and provider number and reasonably cooperate in the transition.

1 43. Defendants' should be deemed to be holding SLH, and any funds or advantages
2 received through their refusal to convey SLH, in a constructive trust for the benefit of Sutter,
3 according to proof.

4 Wherefore, Sutter seeks judgment as set forth below.

5 **FOURTH CAUSE OF ACTION**

6 **(Declaratory Relief Brought by Sutter Against Defendants)**

7 44. Sutter incorporates by reference the allegations contained in paragraphs 1 through 43
8 above.

9 45. An actual controversy has arisen and now exists between Sutter and Defendants
10 concerning their respective rights and duties in that Sutter contends that it is entitled to transfer of
11 title to SLH and Sutter is informed and believes and thereon alleges that Defendants contend that
12 they are not obligated to transfer title.

13 46. A judicial determination is necessary and appropriate at this time so that Sutter and
14 Defendants may ascertain their rights and duties and avoid multiple suits and so that Sutter may
15 continue delivering medical care to Alameda residents, avoid the loss of licensing and other
16 privileges and designations as health care providers, and avoid irreparable harm to the Alameda
17 community.

18 47. Sutter desires a judicial determination of the respective rights and duties of the parties
19 with regard to the transfer of title of SLH to Sutter and, specifically, a declaration as follows:

20 a. That escrow should rightfully have closed pursuant to Sutter's exercise of its option to
21 purchase SLH and that, accordingly, Sutter may treat SLH as its own between the date of a final and
22 binding arbitration award, and/or judgment herein, and close of escrow;

23 b. That the Lease is and shall be terminated as of the date of a final and binding
24 arbitration award and/or judgment herein;

25 c. That Sutter, by and through EMC and/or ACMC may proceed to perform the
26 alterations of SLH that are necessary to convert the current acute inpatient beds to acute
27 rehabilitation beds and to operate an urgent care center.

28 ///



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Wherefore, Sutter seeks judgment as set forth below.

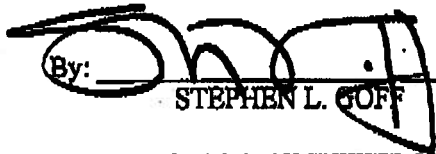
PRAYER

WHEREFORE, Sutter seeks judgment as follows:

- 1. For specific performance of the option contained in the Lease;
- 2. For damages according to proof;
- 3. For a declaration of the rights and duties of Sutter and Defendants with regard to the matters described hereinabove;
- 4. For imposition of a constructive trust on SLH, as alleged hereinabove;
- 5. For pre-judgment interest;
- 6. For attorneys fees;
- 7. For costs of suit herein;
- 8. For such other relief as requested herein; and
- 9. For such other and further relief as the Court may deem just and proper.

DATED: October 27, 2009

McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law

By:  _____
STEPHEN L. GOFF

Attorneys for Plaintiff SUTTER HEALTH

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stephen L. Goff (SBN 114497) Marcia L. Augsburger (SBN 145688) McDonough Holland and Allen PC 500 Capitol Mall, 18 th Floor Sacramento, CA 95814 TELEPHONE NO: 916.444.3900 FAX NO: 916.444.8989		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY OCT 27 2009 CLERK OF THE SUPERIOR COURT By Debra L. Lee, Deputy
ATTORNEY FOR (Name): Plaintiff, Sutter Health		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1226 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Alameda County Courthouse		
CASE NAME: Sutter Health v. Eden Township Healthcare District, and Does 1 through 20, inclusive		
<input checked="" type="checkbox"/> CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 09 - 481573 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other P/PC/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Assault (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PC/DWD (23)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (26) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Non-P/PC/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PC/DWD tort (36)	<input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (35) <input checked="" type="checkbox"/> Other real property (25)	<input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
	<input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (06) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 4

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 27, 2009

Stephen L. Goff

(TYPE OR PRINT NAME) _____

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)



NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

1 **McDONOUGH HOLLAND & ALLEN PC**
 Attorneys at Law
 2 **STEPHEN L. GOFF (SBN 114497)**
MARCIA L. AUGSBURGER (SBN 145686)
 3 500 Capitol Mall, 18th Floor
 Sacramento, California 95814
 4 Telephone: 916.444.3900
 Facsimile: 916.444.8989

ENDORSED
FILED
ALAMEDA COUNTY

OCT 27 2009

CLERK OF SUPERIOR COURT
 By Dorothy L. Lee, Deputy

5
 6 Attorneys for Plaintiff Sutter Health

7
 8
 9 **SUPERIOR COURT OF CALIFORNIA,**

10 **COUNTY OF ALAMEDA**

11 **SUTTER HEALTH, a California Nonprofit**
 12 **Public Benefit Corporation**

Case No. **RG 09 - 481573**

13 **Plaintiff,**

APPLICATION TO STAY ACTION
PENDING ARBITRATION PURSUANT TO
CCP § 1298.5

14 **v.**

BY FAX

15 **EDEN TOWNSHIP HEALTHCARE**
 16 **DISTRICT, a California Local Healthcare**
 17 **District, and DOBS 1 through 20, inclusive,**

18 **Defendants.**

19 1. Sutter Health, a California Nonprofit Public Benefit Corporation, hereby petitions the
 20 court to stay the above-captioned action pending the arbitration of the dispute alleged in the
 21 Complaint for Specific Performance of Written Agreement to Convey Real Property and Damages
 22 for Delay (Breach of Contract), Constructive Trust, and Declaratory Relief ("Complaint") herein,
 23 pursuant to Code of Civil Procedure section 1298.5. Section 1298.5 provides:

24 Any party to an action who proceeds to record a notice of pending
 25 action pursuant to Section 409 [now 405.20 et seq.] shall not thereby
 26 waive any right of arbitration which that person may have pursuant to
 27 a written agreement to arbitrate, nor any right to petition the court to
 28 compel arbitration pursuant to Section 1281.2, if, in filing an action to
 record that notice, the party at the same time presents to the court an
 application that the action be stayed pending the arbitration of any



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

dispute which is claimed to be arbitrable and which is relevant to the action.

2. When the Complaint herein is filed, Plaintiff will proceed to record a Notice of Pending Action pursuant to Code of Civil Procedure section 405.20. By doing so, Sutter Health does not intend to waive its right to arbitrate.

3. As alleged in paragraph 7 of the Complaint, the option to purchase agreement at issue in this lawsuit is contained within a lease between the parties. As alleged in paragraph 23 of the Complaint, the lease also contains an arbitration provision requiring that disputes be arbitrated.

4. Sutter Health has filed an arbitration demand with American Arbitration Association to commence arbitration of the disputes alleged in the Complaint.

5. Accordingly, pursuant to Code of Civil Procedure section 1298.5 Sutter Health respectfully requests that the Court stay this action pending arbitration, in order to establish that Sutter Health has not waived any right of arbitration that it has pursuant to the parties' written agreement to arbitrate.

DATED: October 27, 2009

Respectfully submitted.

McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law

By: 
STEPHEN L. GOFF

Attorneys for Plaintiff SUTTER HEALTH