No. S220887
(Court of Appeal No. C072591)
(Sacramento County Super. Ct. No. JCCP 4698)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUTTER HEALTH, SUTTER MEDICAL FOUNDATION and SUTTER CONNECT, LLC dba SUTTER PHYSICIAN SERVICES,

Petitioners,

vs.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent,

DOROTHY ATKINS, DARREL BOYLES, BARBARA BROWN, ROULA FODDA, JAVIER R. GARCIA, SOPHIA GARCIA, MICHAEL LA HONTA, MARGARET MCANENY, KATHERYN O'CONNELL, KAREN PARDIECK, MICHELLE ROSSI, SHERRI A. WHITE, DEBORAH SATO WONG, DEBRA ZEFF,
Real Parties in Interest.

After a Decision By the Court of Appeal,
Third Appellate District

PETITIONERS' ANSWER TO PETITION FOR REVIEW

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INTRODUCTION: WHY REVIEW SHOULD BE DENIED.

The Court of Appeal in *Sutter Health v. Superior Court of Sacramento County* (*Atkins*) (2014) 227 Cal.App.4th 1546 ("*Sutter*" or the "Opinion") held that an individual does not state a Confidentiality of Medical Information Act ("CMIA") cause of action premised on Civil Code sections 56.101 and 56.36(b)[1] unless his or her medical information has been viewed by an unauthorized person. "No breach of confidentiality takes place until an unauthorized person views the medical information." (Opinion, p. 1557.)

Sutter creates no split of authority. *Regents of the University of California v. Superior Court* (2013) 220 Cal.App.4th 549 ("*Regents*") came to the same conclusion: because plaintiff in *Regents* could not "allege her medical records were in fact viewed by an unauthorized individual," she failed to state a claim that "the confidential nature of the plaintiff's medical information was breached." (*Id.* at 570.)

The Court in *Sutter* expressly stated its Opinion does not conflict with *Regents*, but rather "agrees with" its "conclusion." (Opinion, p. 1555.) The pleading failure was identical in both cases: no actual breach of confidentiality was or could be alleged. (Opinion, pp. 1550, 1553, 1559; *Regents*, 220 Cal.App.4th at 554, 570.)

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[1] Hereafter, sections 56.101 and 56.36(b).

Real Parties incorrectly rely on Department of Public Health ("DPH") administrative determinations and assert the DPH needs guidance. (Real Parties' Petition for Review, filed Aug. 29, 2014 ("Petition"), pp. 3, 16-20.) But these determinations do *not* involve an interpretation of CMIA private rights of action and are not relevant. The DPH administrative actions cited are *not* based on sections 56.101 and 56.36(b), and instead rest on Health & Safety ("H&S") Code section 1280.15. The DPH administrative actions are not part of the appellate record and were not presented to the Court of Appeal. Nor is the DPH a party to the *Sutter* case, and nothing in the Opinion affects any agency enforcement powers. The DPH enforcement determinations do not provide a basis for review.

In enacting integrated medical information confidentiality legislation, the Legislature authorized the government, among other public enforcement powers, to prevent breaches through mandating preventative measures, while private CMIA damage actions require a plaintiff's confidentiality to have been actually breached. The Opinion at pp. 1557-1159 preserves this balance by holding that private actions under sections 56.101 and 56.36(b) require actual breach of confidentiality, and the Opinion does not affect government powers of inspection, audit, mandating preventative measures, administrative fines, equitable relief or civil penalties. (H&S Code §§ 1278, 1279, 1280(b)-(f), 1280.15, 130200-130205; Civ. Code § 56.36(c), (f).)

The Court in *Sutter* applied context and ordinary meaning in ruling that preserving confidentiality of medical information — not preserving possession — is the basic public policy of CMIA. (Opinion, p. 1557.) CMIA expressly permits a "change of possession as long as confidentiality is preserved," (Opinion, pp. 1556; Civil Code § 56.101), and Real Parties' proffered interpretation (Petition, p. 29) that mere change of possession transgresses CMIA would improperly nullify the statute's wording. (Code Civ. Proc. § 1858.)

Because Real Parties "have not alleged an actual breach of confidentiality," the Court of Appeal correctly held that Sutter's demurrer should be sustained and that leave to amend was not available since Real Parties never demonstrated a "reasonable possibility they can amend the complaint to allege an actual breach of confidentiality." (Opinion, p. 1559.)

No decisional split is presented between *Sutter* and *Regents*. Private remedies under CMIA are unaffected when medical information confidentiality is actually breached, and government enforcement remains unchanged. No important legal questions are presented for review.

REVIEW IS NOT NEEDED FOR UNIFORMITY OF DECISION.

The *Sutter* Opinion was issued after extensive briefing following a writ issued January 17, 2013, including supplemental briefing after the *Regents* decision.[2] The *Sutter* Court expressly assumed *Regents* was correct in its decision and reached the same conclusion with respect to the pleading requirements of a private CMIA action. (Opinion, pp. 1554-1555 and 1558-1559; *Regents*, 220 Cal.App.4th at 570-571.) Rather than the claimed "diametrically opposed rulings" (Petition, p. 2), the Court in *Sutter* reached the same conclusion as *Regents* by a "different analytical route." (Opinion, p. 1557.)[3]

Review in this Court is appropriate when "necessary to secure uniformity of *decision*," not uniformity of *analysis*. (Cal. Rules of Court, rule 8.500(b)(1), emphasis supplied.) There is and was no question about the uniformity of decision in the two cases. Their respective conclusions are clear, straightforward, and not subject in any way to disagreement: a

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[2] Sutter filed its Petition for Writ of Mandate in November 2012; Real Parties filed their Preliminary Opposition in December 2012, and their Answer to Petition for Writ of Mandate in March 2013. Sutter filed its Reply to Written Return in April 2013. Several *amici* briefs in support of the parties were filed, including *Amicus Curiae* Brief of the Regents of the University of California, and, after the Court requested supplemental briefing regarding the *Regents* decision, Sutter and Real Parties filed Supplemental Briefs about the effect of that case.

[3] Real Parties include a lengthy quote about the Opinion's different analysis (Petition, pp. 15-16), but fail to include from the same page of the Opinion (p. 1557) the *Sutter* Court's assumption that "*Regents* is correct in this regard."

private individual must factually plead that his or her confidentiality of medical information was actually breached. (Opinion, p. 1557: Accord, *Regents,* 220 Cal.App.4th at 570, "which arrives at the same conclusion by a different analytical route.")

The reason for the different analytical route is also straightforward and does not call for this Court's review. Sufficiency of pleading a violation of section 56.101, alone, was not before the Court of Appeal in *Regents* because that part of the trial court's ruling was not challenged in the Writ Petition (*Regents,* 220 Cal.App.4th at 560), which instead rested on a Code of Civil Procedure section 166.1 Order framing the issue for review as to whether section 56.36(b) was wholly incorporated into section 56.101. (*Id*. at 556-557.)

The Petition is flatly wrong in asserting the two courts "disagreed on whether a statutory violation had taken place." (Petition, p. 16.) The Court in *Regents* never ruled that the complaint in that case sufficiently stated a statutory violation of section 56.101. Instead, the *Regents* Court concluded that all of section 56.36(b) is incorporated in a section 56.101 claim (*Regents,* 220 Cal.App.4th at 561-564), and ruled: "What is required is pleading, and ultimately proving, that the confidential nature of the plaintiff's medical information was breached as a result of the health care provider's negligence." (*Id*. at 570.) *Regents* simply found the same pleading requirement in section 56.36(b) when read together with

section 56.101 that the *Sutter* Court found in section 56.101 itself. (Opinion, pp. 1556-1558.)

Contrary to Real Parties' repeated assertion that there was "disagreement," with "far-reaching implications" and "serious implications" (Petition, p. 2), the decisions in both cases were unequivocal and consistent. There is no conflict. Both decisions hold: (i) CMIA section 56.101 protects against breached confidentiality and, consistent with its express authorization of disposal, is not triggered by change of possession of medical information alone. (Opinion, pp. 1556-1557; *Regents*, 220 Cal.App.4th at 570 and fn. 14); and (ii) a private CMIA action requires pleading that the individual's medical information confidentiality has actually been breached. (Opinion, pp. 1556-1559; *Regents*, 220 Cal.App.4th at 570-571.)

These holdings are fully consistent with the CMIA private party decisions of this Court. In 2011, the Court construed CMIA, and ruled that "in order to violate [CMIA], a provider of healthcare must make an unauthorized, unexcused disclosure of privileged medical information." (*Brown v. Mortenson* (2011) 51 Cal.4th 1052, 1070-1071, quoting *Heller v. NorCal Mutual Ins. Co.* (1994) 8 Cal.4th 30, 38.)

As stated in the Opinion, "Although *Brown* was a disclosure [section 56.10] case, not a release [sections 56.101 and 56.36(b)] case, the Supreme Court's recognition of the intended protection is still helpful."

"The Confidentiality Act ([ ] § 56, *et seq*.) 'is intended to protect the confidentiality of individually identifiable medical information obtained from a patient by a health care provider....' [Citations.]" (Opinion, pp. 1556-1557, quoting *Brown*, 51 Cal.4th at 1070.)

While Real Parties claim that the Opinion "cannot be squared with precedents of this Court and other District Courts" (Petition, p. 24), every published CMIA appellate decision, including *Brown*, finding a potential violation of CMIA concerned individual medical information that was or would actually be communicated to (viewed or heard by) an unauthorized person.[4]

Rather than an "extraordinarily strained reading" that "guts the Statute" (Petition, p. 30), the Opinion is premised on standard rules of statutory construction. (Opinion, pp. 1556-1559.) It is consistent with the Act's title, "Confidentiality of Medical Information Act," and gives

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[4] *Brown*, 51 Cal.4th at 1058-1059, 1071-1072; *Loder v. City of Glendale* (1997) 14 Cal.4th 846, 859-861; *Heller*, 8 Cal.4th at 36, 38-39; Cal. *Consumer Health Care Council v. Kaiser Found. Health Plan, Inc.* (2006) 142 Cal.App.4th 21, 26, 28-30; *Colleen M. v. Fertility & Surgical Associates of Thousand Oaks* (2005) 132 Cal.App.4th 1466. 1470, 1477-1479; *Francies v. Kapla* (2005) 127 Cal.App.4th 1381, 1384-1385; *Shaddox v. Bertani* (2003) 110 Cal.App.4th 1406, 1410, 1414; *Garrett v. Young* (2003) 109 Cal.App.4th 1393, 1398-1398, 1408-1410; *Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1329-1300; *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 415, 422, 431-436; and *Inabnit v. Berkson* (1988) 199 Cal.App.3d 1230, 1232, 1238-1239.

meaning to CMIA's express provisions authorizing disposal or abandonment — a transfer of possession — as long as confidentiality is preserved. (Opinion, p. 1557 ["The legislation at issue is the "Confidentiality of Medical Information Act," not the "Possession of Medical Information Act."]; Opinion, p. 1556 ["This sentence [the first sentence of Civil Code section 56.101] allows for change of possession as long as confidentiality is preserved."].) The Opinion gives effect to the statute as a whole and to every word and clause. (*Weber v. Santa Barbara County* (1940) 15 Cal.2d 82, 86; Code Civ. Proc. § 1858.)

Real Parties, instead, speculate about future events (Petition, pp. 32, 35), which is insufficient to plead a CMIA cause of action or to create an issue for review. (Opinion, pp. 1558-1559; *Regents*, 220 Cal.App.4th at 570-571, fn. 15; *see also Folgelstrom v. Lamps Plus, Inc.* (2011) 195 Cal.App.4th 986, 993 [speculation ignored in ruling on a demurrer]; *Moore v. Conliffe* (1994) 7 Cal.4th 634, 638 [conclusions of law or fact not credited in ruling on a demurrer]; *Rubin v. Green* (1993) 4 Cal.4th 1187, 1200, fn. 6 [questions not presented on the current appellate record are not reached.])

REVIEW IS NOT REQUIRED TO PROVIDE GUIDANCE TO DPH.

The Petition states at pp. 2-3, 16-21 that review is necessary to give the DPH guidance in its enforcement powers. This assertion is procedurally infirm as well as substantively incorrect. The argument was not presented to the Court of Appeal. (Cal. Rules of Court, rule 8.500(c)(1).) In addition, the DPH documents are not authenticated or part of the appellate record, while the Petition incorrectly presumes this Court should treat hearsay statements in administrative decisions as true. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, fn. 7 [court cannot take judicial notice of the truth of hearsay statements]; *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal.App.4th 1693, 1700 [no judicial notice of unauthenticated documents].) Sutter objects to consideration of the administrative documents that are extraneous to the record below.

The DPH is not a party to these proceedings, and review is not the proper vehicle for providing advice concerning the DPH's enforcement powers. (*Torres v. Parkhouse Tire Serv., Inc.* (2001) 26 Cal.4th 995, 1006, fn. 6 [declining to address issues not presented by the facts at issue in the proceeding].)[5]

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[5] Nor is any deference due these administrative decisions since they are not formal regulations and do not interpret CMIA sections 56.101 or 56.36(b). (*State of California ex rel. Nee v. Unumprovident Corp.* (2006) 140 Cal.App.4th 442, 451-452.)

Even if DPH decisions are considered, providing guidance to DPH about its H&S Code section 1280.15 enforcement powers is not within the scope of the two identified issues for review framed by the Petition at p. 1: (i) interpretation of section 56.101, and (ii) private party pleading requirements for section 56.36(b)(1) relief premised on a violation of section 56.101. The DPH's enforcement powers under H&S Code section 1280.15 do not involve interpretation of section 56.101 and do not address private action pleading requirements under sections 56.101 and 56.36(b).

Substantively, the Petition ignores that in enacting integrated medical information confidentiality legislation, the Legislature struck a balance of a broad enforcement role for administrative agencies and prosecutors, including the power to mandate preventative measures under several statutes, and a different role for private parties to bring actions at law for damages following an actual CMIA confidentiality breach.

The Legislature's balance is supported by policies of uniformity and enforcement expertise, including not injecting private litigation objectives into complex healthcare system operations. (*Crusader Ins. Co. v. Scottsdale Ins. Co.* (1997) 54 Cal.App.4th 121, 125-126, 134 [no private right of action given governmental enforcement expertise, uniformity, and avoidance of private litigation objectives].)

H&S Code section 1280.15's "shall prevent" statutory language encompasses preventative powers. The DPH has the right to enter (upon showing identification), audit, conduct investigations, issue notices of deficiency that mandate corrections, order corrections if an agreed-upon plan of correction is not implemented, assess administrative fines for not having implemented preventative measures or for having violated the covered entity's existing preventative measures, and to refer violations to the Office of Health Information Integrity. (H&S Code §§ 1278, 1279, 1280(b)-(f), 1280.15.)[6]

In contrast, private CMIA actions are limited to suits for damages when the individual's medical information confidentiality "has" in fact

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[6] To the degree the DPH actions are considered, each DPH determination contains final paragraphs that cite H&S Code section 1280.15 and address needed preventative measures or the need to comply with existing preventative measures. (Available online at: http://www.cdph.ca.gov /certlic/facilities/Documents/SanFranciscoGeneralHospital-BreachAP-January2011.pdf – p. 6 ["failed to ensure"]; http://www.cdph.ca.gov/ certlic/facilities/ Documents/UCSF2-BreachAPMay2014.pdf – pp. 4-5 ["did not take … security precautions"]; http://www.cdph.ca.gov/certlic/ facilities/Documents/SanFranciscoGeneral BreachAPDecember2009.pdf - p. 5 ["failed to follow" existing preventative measures]; and http://www.cdph.ca.gov/certlic/facilities/Documents/ CPMCPacific-Breach APMay2014.pdf - p. 5 [failure to follow existing preventative measures].

been actually breached by disclosure or release.[7] Civil Code sections 56.35 and 56.36(b) set forth private remedies at law for violation of "this part" (CMIA) and are stated in the past tense: section 56.35 requires that medical information "has been used or disclosed," while section 56.36(b) remedies lie against a healthcare provider who "has negligently released" such information.[8] (*See People v. Loeun* (1997) 17 Cal.4th 1, 10-11 [verb tense used by Legislature significant]; *Wells Fargo Bank v. Goldzband* (1997) 53 Cal.App.4th 596, 625 [statutory interpretation should not render Legislature's use of past tense "had" superfluous].)

Sections 56.101 and 56.36(b) also use the word "negligently." Negligence requires factually pleading both causation and a present injury. (Opinion, p. 1558 ["An essential element of negligence is that the tortfeasor's breach caused the injury protected against," citing *Federico v. Superior Court* (*Jenry G.*) (1997) 59 Cal.App.4th 1207, 1201-1211].) Claims of abstract negligence, as well as speculative claims of potential

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[7] *See* diagram Sutter provided the Third District (Sutter Reply to Written Return, April 3, 2013, p. 17) depicting the differences between private party actions for damages and the broader government enforcement role.

[8] Contrast CMIA private right of action damage remedy statutes for a violation that *has* occurred with government enforcement power over present and future events: H&S Code section 1280.15 ["shall prevent"], H&S Code section 130203 ["shall establish and implement appropriate administrative, technical and physical safeguards"]; and Civil Code section 56.36(c), (f) ["discloses"].

future injury, are legally insufficient to state a negligence claim. (*Noble v. Los Angeles Dodgers, Inc.* (1985) 168 Cal.App.3d 912, 916; *Folgelstrom,* 195 Cal.App.4th at 993.)

Entitlement to nominal damages also requires pleading and proof that an actual invasion of an important right has taken place. (Opinion, pp. 1558-1559; *Walker v. Pacific Indemnity Co.* (1960) 183 Cal.App.2d 513, 517; *People v. Central Pac. R. Co.* (1888) 76 Cal. 29, 41; *see Regents,* 220 Cal.App.4th at 570 ["What is required is pleading, and ultimately proving, that the confidential nature of the plaintiff's medical information was breached as a result of the health care provider's negligence."].)[9]

The interplay of CMIA with H&S Code sections 1280.15 and 130202-130203 should harmonize and maintain the intended distinctions between government enforcement powers and the right of private individuals to sue. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 756; *People v. Gains* (1980) 112 Cal.App.3d 508, 512.)

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[9] Section 56.36(b)'s language that "… it shall not be necessary that the plaintiff suffered or was threatened with actual damages" simply reiterates well-established law that nominal damages are available even absent damages, provided there has been in fact an actual invasion of an important right. (*Davidson v. Devine* (1886) 70 Cal. 519, 520 [trespass without damages]; *Sweet v. Johnson* (1959) 169 Cal.App.2d 630, 632 [contract breach without damages].)

The *Sutter* Opinion faithfully gives effect to all words in the applicable CMIA statutes, maintains the Legislature's intended balance, does not impact government enforcement, and preserves private CMIA remedies when an actual breach of confidentiality has taken place. (Opinion, pp. 1556-1559; *Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal.2d 640, 675-676 [whole system of law harmonized]; Code Civ. Proc. § 1858.)

The H&S Code section 1280.15 determinations relied on by Real Parties do not interpret CMIA section 56.101 or the pleading requirements for private CMIA actions under sections 56.101 and 56.36(b). They are not relevant to the Petition.

THE PETITION IMPROPERLY SEEKS TO CREATE A NEW PRIVATE CAUSE OF ACTION.

Real Parties attempt to create a new, private statutory cause of action untethered to actual failure to preserve medical information confidentiality. (Petition, pp. 21-24.) This extraordinary premise is precluded by controlling law limiting judicial creation of causes of action.

Whether a party has a right to sue under a statute depends on whether the Legislature has manifested an intent to create the private cause of action. (*Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 596, 601 [when neither the language nor the history of a statute indicates an intent to create a new private right to sue, the plaintiff bears a heavy,

perhaps insurmountable, burden of persuasion]; *Schaefer v. Williams* (1993) 15 Cal.App.4th 1243, 1248 [where the Legislature intends to create a private remedy, the court is to assume it will do so directly, in clear, understandable, unmistakable terms].)

Here, Real Parties point to no clear statutory language or legislative history giving rise to a private CMIA cause of action based on a change in "possession" or "control" that does not require an actual failure to preserve medical information confidentiality. Clear evidence of legislative intent is particularly necessary here given: (i) section 56.101's express authorization to dispose of or abandon medical information as long as confidentiality is preserved; and (ii) express authorization that the government may police medical information records procedures, including mandating preventative measures and compliance. (H&S Code §§ 1280.15 and 130202-130203.) The absence of legislative intent dooms Real Parties' theoretical private right of action.

None of the reported CMIA decisions, including *Regents* and *Sutter*, hold that section 56.101 can be fractionalized as Real Parties propose to create a CMIA private right of action for section 56.36(b) damages when there is a change of possession without alleging an actual breach of confidentiality. Glossing over the issue with privacy labels does not disguise or change the absence of the requisite legislative intent.

Real Parties assert that an "invasion" of "peace of mind" (Petition, pp. 23, 24) due to the "mere possession" by a third party automatically means that "Plaintiffs have already suffered some invasion of their protected privacy rights." (Petition, pp. 29-30.) Real Parties urge review on the theory that this "invasion" is a "real harm" (Petition, p. 24) recognized by "well established precedent" (Petition, p. 30), and should be privately actionable under CMIA. There are no appellate cases under CMIA that are precedent for this assertion, and there is no legislative intent to support such a statutory private cause of action.

Real Parties' theory is also contrary to existing privacy law. Invasion of privacy for remedies at law requires a plaintiff to plead an actual, serious intrusion into protected personal information or activities of an individual — not an asserted "invasion" of "peace of mind" based on speculation concerning the risk of future events. (Opinion, pp. 1557-1558.) Actual intrusion by disclosure of a legally protected interest is essential. (*Urbaniak v. Newton* (1991) 226 Cal.App.3d 1128, 1138, fn. 4 ["[S]ome kind of overt disclosure is inherent in the concept of invasion of privacy."]; *Folgelstrom*, 195 Cal.App.4th at 989, 993 [speculation about future identity theft risk not credited in demurrer ruling on invasion of privacy].)

A theoretical "discomfort" based on the speculative, potential risk that confidentiality will not be preserved in the future does not give rise to a private CMIA cause of action at law. (Opinion, p. 1557.) This holding

comports with "well-settled law" as stated in *Lugosi v. Universal Pictures* (1979) 25 Cal.3d 813, 821-822: "Plaintiff must plead and prove that his privacy *has been invaded*," quoting *Hendrickson v. California Newspapers, Inc.* (1975) 48 Cal.App.3d 59, 62 (emphasis added).

None of the cases cited by Real Parties (Petition, pp. 4, 21-23) hold that a theoretical "fear or discomfort" or disturbing "peace of mind," without actual intrusion of a legally protected interest, states a cause of action at law: *Pettus,* 49 Cal.App.4th at 414 [actual disclosure of medical information to employer]; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 12 [student athletes required by the NCAA to provide urine for testing]; *White v. Davis* (1975) 13 Cal.3d 757, 760-762 [classroom discussions covertly recorded and maintained in police department "dossiers"]; *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal.App.3d 669, 674 [present demand for disclosure to state agency]; *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 174-175 [plaintiff actually suffered the discriminatory conduct]; *People v. Hess* (1951) 107 Cal.App.2d 407,417, 421-422 [defendants corruptly performed an official act of "injury" to the state]; *Duarte v. Zachariah* (1994) 22 Cal.App.4th 1652, 1660 [drug over prescribed resulting in present damages was actionable]; and *City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259, 263 [presently existing, overly broad requirement for public

disclosure of financial information proper subject of declaratory relief action].

None of these cases support a statutory private right of action under CMIA without an actual failure to preserve confidentiality. Real Parties' parade of horribles, hypotheticals, and theoretical situations (Petition, pp. 25-27, 32-34, 35-36) are insufficient and speculative conjecture. They do not substitute for the required legislative intent need to create a new private cause of action.

CONCLUSION

For the above reasons, the Petition should be denied.

Dated: September 29, 2014

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CERTIFICATE OF WORD COUNT

(California Rules of Court, rule 8.204(c))

The text of this Answer consists of 3,773 words, not including the tables of contents and authorities or this certificate as counted by Microsoft Word, the computer program used to prepare this Answer.

Dated: September 29, 2014

BARTKO ZANKEL BUNZEL & MILLER
A Professional Corporation

By _____
Robert H. Bunzel
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SUTTER HEALTH, SUTTER MEDICAL FOUNDATION and SUTTER CONNECT, LLC dba SUTTER PHYSICIAN SERVICES

PROOF OF SERVICE

I, Barbara J. Sage, the undersigned, hereby certify and declare:

I am over the age of 18 years and am not a party to the within cause. I am employed in the office of a member of the bar of this Court, at whose direction this service was made. My business address is Bartko, Zankel, Bunzel & Miller, One Embarcadero Center, Suite 800, San Francisco, California 94111.

On September 29, 2014, I served the true copy of the attached document titled exactly:

- **PETITIONERS' ANSWER TO PETITION FOR REVIEW**

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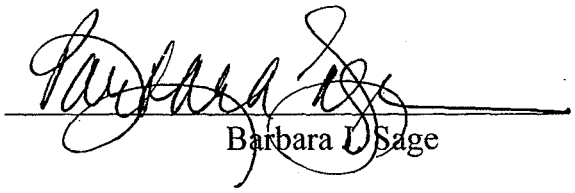
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 29, 2014 at San Francisco, California.



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