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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

VANGUARD MEDICAL MANAGEMENT BILLING, INC., a California corporation; ONE-STOP MULTI-SPECIALTY MEDICAL GROUP, INC., a California corporation; ONE-STOP MULTI-SPECIALTY MEDICAL GROUP & THERAPY, INC., a California corporation; NOR CAL PAIN MANAGEMENT MEDICAL GROUP, INC., a California corporation; EDUARDO ANGUIZOLA, M.D., an individual, and DAVID GOODRICH, in his capacity as Chapter 11 Trustee,

Plaintiffs,

vs.

CHRISTINE BAKER, in her official capacity as Director of the California Department of Industrial Relations; GEORGE PARISOTTO, in his official capacity as Acting Administrative Director of the California Division of Workers Compensation; and DOES 1 through 10, inclusive.

Defendants.

Case No. 5:17-cv-00965-GW-DTB

PLAINTIFFS' CLOSING BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Hearing Information:
Date: October 19, 2017
Time: 8:30 a.m.
Place: United States Courthouse, 350 West 1st Street, Los Angeles, CA 90012, Courtroom D, 9th Floor

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I. INTRODUCTION AND PRELIMINARY STATEMENT

In this final brief on the pending Motion, Plaintiffs begin with what brings the parties and the Court to the current state of the pleadings: a facial constitutional attack on a statute, which cannot be cured by a hastily passed amendment. The statute, on its face, violates both the Due Process Clause and the Sixth Amendment because it provides no hearing to a lien claimant who is unequivocally entitled to due process. Even a unluckily named lien claimant like Doctor Rudolph has no remedy because the State provided no statutes, and no regulations to fill the constitutional due process void. The facial challenge was met by the State with an improper, argumentative declaration by Judge Levy, delaying these proceedings. Plaintiffs then obtained uncontested counter-declarations to rebut the mostly unsupported contentions made by Judge Levy. Recognizing the deficiencies in their evidence, the State appears to have corralled the Legislature into intervening by rushing through "amended" legislation in the hopes of making an end run around this litigation, accompanied with a signing message directed to this Court. Plaintiffs take this final opportunity to address both the constitutional issues analyzed in the Court's tentative rulings and the Court's directives to counsel at the most recent hearing. Labor Code Section 4615 ("Section 4615") is constitutionally infirm and must be stricken in its entirety both for the reasons set forth in their previous briefs and for the reasons set forth below.

First, the California Legislature's recent amendment to Section 4615 does not repair the law's constitutional defects. Indeed, the amendment merely serves to highlight those defects while doing nothing to ameliorate the Due Process and Sixth Amendment quagmire created by the law. Its language establishes no right to a hearing, which is required under both the Due Process Clause and the Supreme Court's interpretation of the Sixth Amendment.

Second, both the text of Section 4615 and the evidence submitted by Plaintiffs demonstrates that lien claimants affected by Section 4615 will suffer

irreparable harm, both as that term is understood in a constitutional sense and as it has been interpreted by numerous courts in this Circuit. The State admits that indicted providers have no right to a hearing, despite the 100 years of precedent in California establishing that lien claimants are entitled to due process. Accordingly, preliminary injunctive relief is warranted.

Third, an order striking down the entirety of Section 4615 is supported by both the Fourteenth Amendment (due process) and the Sixth Amendment pursuant to the Supreme Court's decision in United States v. Monsanto, 491 U.S. 600, 109 S.Ct. 2657, 105 L.Ed.2d 512 (1989), and its progeny throughout the land, including the Ninth Circuit.

Fourth, the Court's reading of Angelotti Chiropractic, Inc. et al. v. Baker, et al., 791 F.3d 1071 (9th Cir. 2015), as set forth in the Court's prior tentative rulings and its statements in the courtroom, is overly broad in that it conflates the Angelotti court's property-rights analysis in the context of a Takings Clause claim with the appropriate scope of protection of varying species of property and liberty interests under the Due Process Clause and the Sixth Amendment.

Fifth, Plaintiffs' interest in their liens is protectible against Section 4615's "automatic" invasion because for the purposes of both the Due Process Clause and the Sixth Amendment, those liens are a species of property and entitled to due process protections.

Sixth, because this lawsuit presents a facial challenge to Section 4615, the Court may not uphold the statute in only some of its applications: a facial challenge requires the offending statute or portion thereto either to be stricken down or not. The evidence submitted in support of Plaintiffs' facial challenge to Section 4615 established an incontrovertible record of the State's disregard for the due-process rights of lien claimants affected by the law. However, that evidence does not convert this lawsuit into an as-applied challenge.

Seventh, Plaintiffs close the loop on the arguments presented by both sides

in this proceeding by providing a summary of the facts and the law showing that they have surpassed the standard for the issuance of a preliminary injunction. Plaintiffs are likely to proceed on the merits, they are likely to suffer irreparable harm, the balance of equities tips in their favor, and an injunction is in the public interest. For this and all the reasons set forth throughout this brief, Plaintiffs respectfully request that this Court strike down Section 4615 in its entirety.

II. AB 1422, THE STATE'S HASTILY ENACTED AMENDMENT TO SECTION 4615 HAS NO IMPACT ON THIS MOTION AND DOES NOT CURE THE LAW'S CONSTITUTIONAL DEFECTS

The California Legislature recently passed Assembly Bill 1422 ("AB1422"), which has been signed by Governor Brown. AB1422 contains a new subsection to be added to Section 4615 that appears to be an attempt to convince this Court that it has cured the due process problems inherent in the original version of the law. That new subsection reads as follows:

> (e) The automatic stay required by this section shall not preclude the appeals board from inquiring into and determining within a workers' compensation proceeding whether a lien is stayed pursuant to subdivision (a) or whether a lien claimant is controlled by a physician, practitioner, or provider.

Notably, subsection (e) does not provide any stayed lien claimant with the right to a hearing. It merely states that the stay "shall not preclude the appeals board" from "inquiring into and determining" whether a lien is stayed. Id. The statute appears to give the appeals board (not workers' compensation judges) the limited ability to consider the narrow issue of whether the lien falls within the scope of Section 4615 and therefore, whether the appeals board is required to treat it as automatically stayed. However, the purportedly curative language falls far short of what is needed in two significant respects.

First, the subsection says merely that the automatic stay "shall not preclude" the appeals board from considering whether Section 4615 applies to a lien that

comes before it. Notably, it does not *require* the appeals board to allow a lien claimant to be heard on this issue, or even to consider any protest raised by a lien claimant—it merely gives the appeals board permission to consider such a grievance. In other words, an appeals board confronted with a claimant like Dr. Michael Rudolph, whose declaration described his inability to enforce his liens for professional services because he has the misfortune to have the same name as an indicted provider, has *no obligation whatsoever* to listen to that claimant's explanation of why Section 4615 does not, on its face, apply to his (or her or its) liens. In other words, new subsection (e) gives lien claimants *no right at all to a hearing*, even when it is abundantly clear that a lien claimant should not have been on the published list, the secret list, the double-secret list, or any other list that might be available to the appeals board. Although the appeals board can *choose* to hear what the lien claimant has to say, there is no direction that the appeals board *must* make an inquiry and determine whether the law applies. This does not suffice to protect lien claimants' due process rights. It is axiomatic that judicial (or in this case, appeals board) discretion is no substitute for due process. In Wimberly v. Rogers, 557 F.2d 671 (9th Cir. 1977), a case involving the district court's indefinite stay of a civil case while the plaintiff was incarcerated, the Ninth Circuit held that the stay (and it is important to remember that here, too, the Court is asked to determine the constitutionality of an indefinite stay) amounted to a denial of due process. Most significantly, the Ninth Circuit reminded us that ***due process must be provided as a matter of law, not of discretion***. The State's attempt to inject a limited amount of discretion into the appellate stage of the workers' compensation system's lien-adjudication process at this late juncture, without ***any*** reference to whether lien claimants have an unqualified right to be heard on whether the law applies, what the procedures are for a lien claimant to invoke the appeals board's discretion to consider whether the law applies, or what standards the appeals board should use in the exercise of its discretion to consider whether the law applies does

not cure the severe constitutional problems presented by Section 4615. The new subsection's "protection" of lien claimants who are the victims of mistaken identity or who otherwise were not the original targets of Section 4615 is illusory at best.

Second, the Legislative Digest contained in the bill itself confirms that notwithstanding the State's protests to the contrary, Section 4615 *as it currently exists* does not permit *any* hearing on stayed liens:

> Existing law governing workers' compensation requires a lien filed by or on behalf of a physician or provider of medical treatment services or medical-legal services, and any accrual of interest related to the lien, to be ***automatically stayed*** upon the filing of criminal charges against that physician or provider for an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs. Existing law makes the stay effective from the time of the filing of the charges until the disposition of the criminal proceedings.

(Emphasis added.) The Legislature now confirms that there is no right—and there has never been a right—to a hearing: the stay is "automatic." This legislative statement blatantly contradicts the position that the State has taken in this Court, twisting and contorting the law to try to fit *some* types of challenges to the application of Section 4615 into its existing procedures. In effect, it acts as a legislative admission that Section 4615 is unconstitutional. See, e.g., In re South Bay Expressway, L.P., 455 B.R. 732 (Bankr. S.D. Cal. 2011) (facial unconstitutionality occurs when a statute completely conflicts with the constitution and its scope cannot be limited except by rewriting the statute). The truth is that following the amendment of Section 4615, there still is no mechanism *as of right* that lien claimants can invoke to challenge the application of the law, and there still is no due process.

Third, AB1422 merely amends Section 4615 by adding subsection (e). If Section 4615 is stricken down for constitutional reasons, the impending amendment will be moot. Significantly, AB1422 is not an emergency measure: it

was passed during the Legislature's regular session. Furthermore, as the Court has observed numerous times, the Department of Industrial Relations (DIR) was given a legislative mandate to create regulations to implement Section 4615. However, in the more than one year since the law was passed, the DIR has failed to undertake that task notwithstanding the fact that if it had done so, it quite possibly could have cured the due process problems created by the statute. See, e.g., White v. Roughton, 530 F.2d 750, 754 (7th Cir. 1976) (failure to promulgate regulations and placing unfettered discretion in agency director to deny welfare benefits a violation of due process because claimants received no notice or right to be heard).

III. PLAINTIFFS HAVE AMPLY SHOWN BOTH A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS AND THE CERTAINTY OF IRREPARABLE HARM

As set forth in the briefs, the declarations submitted by the parties, and the hearings that have been convened, Plaintiffs have shown a strong likelihood that they will prevail on the merits on some or all of the constitutional claims stated in their Complaint. Moreover, Plaintiffs have shown the certainty of irreparable harm: Plaintiff Goodrich has shown the impending failure of a bankruptcy; non-party declarants have testified that lien claimants (a category that includes all the Plaintiffs except for Mr. Goodrich) often have no notice of the application of Section 4615 and have no right to be heard on the matter, as clearly intended and provided in the plain text of Section 4615; Plaintiff Anguizola and his (plaintiff) practices have been driven out of the business of treating California's injured workers; and all the Plaintiffs have been deprived of their constitutional right to due process.

These injuries are more than adequate to support a finding of irreparable harm. First, with respect to Plaintiff Anguizola and all other lien claimants who have been personally charged with a crime, a temporary stay that disrupts their lien income without a showing of probable cause to connect the liens with the accused

wrongdoing is construed as a "permanent" deprivation of their Sixth Amendment right to an attorney and their due-process right under Monsanto. See, e.g., U.S. v. Noriega, 746 F.Supp. 1541 (S.D. Fla. 1990) (cited in Opening Br. at 13-14). Significantly, the State has never addressed the fact that this deprivation of the right to counsel is *not* a mere "bug" in the law—it is, as Defendant Christine Baker has proudly and publicly proclaimed, a feature and its very purpose.

> When we had our fraud meetings across various groups, the DAs were the ones who said we are in the courts trying to convict the doctors… Can you do something about it? … Their defense was getting paid for by the liens… And we have stayed all those liens.[1]

"Even a dog distinguishes between being stumbled over and being kicked,"[2] and here, the State's intent was to kick the lien claimants while the indicted providers were down. Second, where, as here, a party is threatened with being driven out of business, irreparable harm has been established to support the issuance of a preliminary injunction. HiQ Labs, Inc. v. LinkedIn Corporation, ___ F.Supp.3d ___ (N.D. Cal. August 14, 2017). Third, and similarly, the loss of trade, reputation, and good will *is* an irreparable injury justifying the issuance of a preliminary injunction. Brooklyn Brewery Corp. v. Black Ops Brewing, Inc., 156 F.Supp.3d 1173 (E.D. Cal. 2016). Fourth, where a plaintiff incurs financial losses that may be unrecoverable because of California's Eleventh Amendment sovereign immunity, those losses constitute an "irreparable injury." A Woman's Friend Pregnancy Resource Clinic v. Harris, 153 F.Supp.3d 1168 (E.D. Cal. 2015). Fifth, interference with a federal right can be construed as the irreparable harm required for a preliminary injunction. Tohono O'odham Nation v. Ducey, 130 F.Supp.3d 1301 (D. Az. 2015). Sixth, and perhaps most importantly, because a deprivation of constitutional rights always constitutes irreparable harm, such harm is presumed,

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[1] Public comments made by Director Baker. Appendix of Exhibits In Support of Motion for Preliminary Injunction ("AOE"), Ex. 7.

[2] Oliver Wendell Holmes, Jr., *The Common Law*, at 3 (1881).

for purposes of a motion for a preliminary injunction, if the plaintiffs are likely to succeed on the merits. Fyock v. City of Sunnyvale, 25 F.Supp.3d 1267 (N.D. Cal. 2014).

IV. THE DUE PROCESS CLAUSE PROHIBITS THE STATE FROM DENYING THE PLAINTIFFS A RIGHT TO A HEARING, EVEN IF THEY HAVE BEEN INDICTED OR CHARGED WITH A CRIME

The State admits and the Court acknowledges that the liens of a medical provider who has been charged with or indicted of a medical fraud claim are "automatically stayed." All the parties are clear that there is no hearing. Plaintiffs submit that the State's enactment of a statute that denies indicted and/or charged providers any right to a hearing violates both the Due Process Clause and the Sixth Amendment. The Court's initial disagreement with the notion that Section 4615 interferes with indicted providers' ability to exercise their constitutional right to counsel appears to stem from the notion that the liens are a creature of statute, and therefore, they do not implicate a property interest that is strong enough to warrant the extension of the basic hearing rights that attend the right to counsel.

Plaintiffs respectfully submit that this Court's initial intention to reject the Sixth Amendment claim, as set forth in the first Tentative Ruling, was mistaken, and that its error potentially stems from Plaintiffs' lack of adequate space in the first round of briefing to provide an appropriately fulsome explanation of the intersection of the Due Process Clause and the Sixth Amendment. Accordingly, and begging this Court's indulgence in light of the fact that all the interested parties are aware that the Court's ruling is likely to be appealed regardless of who prevails, Plaintiffs now take the opportunity to expand upon their previous argument in this regard.

When an individual is indicted or charged, as the Supreme Court teaches us in Luis v. United States, 578 U.S. ___, 136 S.Ct. 1083, 1095, 194 L.Ed.2d 256 (2016), he or she is entitled to a hearing to determine the relationship between the assets sought to be seized or forfeited in the criminal context. More specifically, to

satisfy constitutional requirements, it is necessary to obtain a judicial determination that there is probable cause to believe that assets that have been seized or frozen are related to the criminal charges. See id. (citing Kaley v. United States, ___ U.S. ___, 134 S. Ct. 1090, 1095, and n. 3, 188 L.Ed.2d 46 (2014) ("Since Monsanto, the lower courts have generally provided a hearing.... [to determine] whether probable cause exists to believe that the assets in dispute are traceable ... to the crime charged in the indictment."). This Court noted this in its discussion in its original Tentative Ruling (Docket 40 at 11), when it stated that "Nothing in Luis suggests its holding should be strictly limited to liquid assets in a bank account… In a nutshell, the Sixth Amendment protects unjustified government interference with the right to defend oneself using whatever assets one has or might reasonably and lawfully obtain." In Luis, the Supreme Court made it clear that even as to allegedly tainted assets, a criminal defendant is entitled to a hearing. Here, the State says "no," indicted providers have no right to a hearing and no right to have a distinction made between tainted and untainted assets.

Here, it is significant that Luis is *not*, as the State would have it, merely a Sixth Amendment case. It is also a due process case. In the Luis Court's own words, the freezing of funds that a defendant may need to pay criminal counsel implicates "a Sixth Amendment right to assistance of counsel ***that is a fundamental constituent of due process of law***." Luis, 136 S.Ct. at 1093, citing Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158 (1932).

The Luis Court's discussion of United States v. Monsanto, 491 U.S. 600, 109 S.Ct. 2657, 105 L.Ed.2d 512 (1989), reconfirms the due-process issues lurking in the Sixth Amendment conundrum presented by laws like Section 4615 that purport to stay or freeze an individual's assets without the opportunity for that individual to be heard on the matter of whether the assets can fairly be connected to the alleged wrongdoing. In Monsanto, the Supreme Court held that an order to

seize a criminal defendant's assets could constitutionally be continued pre-trial[3] only "based on a finding of probable cause to believe that the assets are forfeitable." Monsanto, 491 U.S. at 615.[4] Indeed, it is now widely recognized that due process requires some type of hearing in such situations. See, e.g., U.S. v. Bonventre, 720 F.3d 126 (2d Cir. 2016) (constitutional rights to due process and counsel of choice entitle a presumably innocent criminal defendant to a Monsanto hearing to address issues regarding forfeiture of assets); United States v. Melrose East Subdivision, 357 F.3d 492, 499-500 (5th Cir. 2004) (due process can require hearing on forfeitability of assets); United States v. Watts, 786 F.3d 152, 171 (2d Cir. 2015). Most significantly, *the Ninth Circuit has held that the Fifth Amendment's due-process guarantee requires a hearing on an ex parte pre-trial order restraining assets*. United States v. Roth, 912 F.2d 1131, 1132-1133 (9th Cir. 1990). Because Section 4615 does not require a probable-cause finding or provide any procedure to challenge whether probable cause exists, it violates due process.

The fact that the liens are creatures of the state-created workers'

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[3] Although the Monsanto Court distinguishes between an initial pretrial freeze, for which a hearing in advance is not required, and the continuation of that freeze, for which a hearing *is* required, that distinction is not germane to the due-process issues raised by Section 4615. In effect, the "initial" stay order in a Section 4615 case occurs not in a courtroom, but when the DIR publishes "the list" (or circulates it, in the case of the "secret" list(s)). The moment that the workers' compensation judge refuses, pursuant to Section 4615's "automatic" and unchallengable stay of a charged provider's liens, to hear the lien claimant's challenge to the stay, then, is conceptually similar to the "continuation" of a forfeiture order that the Monsanto Court held requires a due-process hearing and a finding of probable cause.

[4] Although the Monsanto Court stopped short of considering whether due process required an actual hearing (as opposed to a mere finding) on the issue of whether probable cause to freeze assets exists, see 491 U.S. at 615 n.10, in practice, the lower courts have generally provided such a hearing and have "uniformly allowed" defendants to litigate the issue of whether probable cause exists to find that the assets are traceable or related to the crime charged in the indictment. Kaley v. United States, __ U.S. __, 134 S.Ct. 1090, 1095, 188 L.Ed.2d 46 (2014). As a practical matter, Section 4615's failure to provide for any such hearing compounds its failure to provide any other mechanism to determine whether probable cause exists for the continuation of the law's automatic stay.

compensation system does mean that they may be taken away, frozen or held up without due process. "The property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money." Newman v. Sathyavaglswaran, 287 F.3d 786, 790 (9th Cir. 2002). Although forcing a lien claimant to pay a filing fee to keep the lien active does not rise to a taking for purpose of the Takings Clause, keeping a lien claimant from even pursuing its liens does violate the Due Process Clause. See Angelotti, 791 F.3d at 1083. Furthermore, it is important to recall that even in the lien activation fee scenario, the Ninth Circuit performed a due process analysis, ultimately concluding that the State had advanced a rational legislative purpose. Id. In contrast, in this case, the State has *not advanced any rational legislative purpose* for staying the admittedly untainted liens of presumptively innocent providers.[5]

The State's most recent brief argues that the statute satisfies due process because lien claimants are allowed to challenge a stay through existing procedures, but only on the basis that the lien does not "fall within the parameters of Section 4615" (i.e., on the basis that the liens are caught up in a mistaken-identity case or a charges-dismissed case). This information would be quite helpful if it were actually true (which it is not) that existing procedures would allow a victim of mistaken identity (for example, somebody in the situation of Dr. Rudolph, the declarant who testified that his liens have been stayed because somebody with the same name as him has been indicted) to ask a judge to lift the stay. However, the availability of such a procedure would not be sufficient to save Section 4615 from its facial unconstitutionality: under Monsanto, ***due process requires that the***

[5] At the hearing on August 24, 2017, the Court mused that the State might advance the theory that if a provider was charged with a crime related to some liens, then perhaps it followed that the charged provider's other liens were suspect. However, the State has never advanced that argument. In the absence of a showing of any rationally related legislative purpose to the staying of admittedly untainted liens, the statute must fail on procedural due process grounds even under the most lenient standard of review.

statute permit providers to argue that their liens are untainted or, in the parlance of the statutory scheme (for example, California Labor Code Section 139.21), that they will be able to prove that the liens are unconnected to any misconduct. In other words, the State has forthrightly conceded that the due-process rights protected by Monsanto are violated by the statute. In summary, contrary to the State's suggestion and as demonstrated by the declarations submitted by Plaintiffs in the last round of briefing, there is no notice and an opportunity to be heard on the propriety of automatically staying liens that fall outside the parameters of Section 4615 but are on the list anyway, thus violating due process. Additionally, there is no notice and opportunity to be heard on the issue of liens for which there is no probable cause to believe that the fees/liens will ultimately be forfeitable, thus violating due process (as explained in Monsanto).

Since Monsanto, the courts have been required to provide a hearing to determine whether assets taken, frozen, seized, or held pursuant to a criminal charge are traceable to the crime. The State boasts that its statute prevents ***any*** consideration of whether the stayed liens are traceable to any wrongdoing. Once charges are filed, all liens are stayed, regardless of whether they have any relationship whatsoever with the crime charged. Luis, Monsanto, and the Supreme Court have all made it clear that this cannot be constitutional. Even indicted, stayed defendants are entitled to a hearing. Plaintiffs believe that notwithstanding the fact that the Court may not have had the opportunity to consider detailed evidence about the direct effect of the stay on Dr. Anguizola's individual ability to retain counsel pursuant to his rights under the Sixth Amendment, the lack of a hearing itself in any court after the State automatically stayed admittedly untainted liens makes the statute unconstitutional on its face on due-process grounds, particularly as the Due Process Clause intersects with the Sixth Amendment. The law must be stricken down.

V. AN OVERLY BROAD READING OF THE NINTH CIRCUIT'S DECISION IN ANGELOTTI IS NOT WARRANTED AND SHOULD BE LIMITED TO ITS FACTS

In Angelotti, the Ninth Circuit disagreed with this Court and held that a lien claimant's interest is not a property interest sufficient for a Takings Clause claim. 791 F.3d at 1081. Notably, however, the Ninth Circuit did not end its analysis with the Takings Clause issue. Instead—and this is the only part of the Angelotti case that is really relevant to the case at bar—the Ninth Circuit also performed procedural and substantive due process analyses. Although it ultimately found, based on facts in that case that are not present here, that the lien-activation fee at issue there did not violate due process because the fee was rationally related to a legitimate governmental interest, it did *not* hold that the interest represented by providers' liens did not justify due-process protection in every case. Here, the factual scenario created by Section 4615 is nothing like the factual scenario created by the fee that was challenged in Angelotti. Under Section 4615 (and on this, the Plaintiffs and the State are in agreement), there is no fee that can be paid to access the Courts or to obtain a hearing in which an indicted/charged provider can argue that there is no probable cause to find a nexus between a stayed lien and any alleged misconduct. There simply is no right to such a hearing under any circumstances.

VI. UNCOLLECTED LIENS ARE A SPECIES OF PROPERTY PROTECTED UNDER THE DUE PROCESS CLAUSE AND THE SIXTH AMENDMENT

In the Court's first Tentative Ruling, it provided a thorough explanation of the substantial body of California law holding that lien claimants are (and have always been) entitled to due process in connection with their liens:

> Consistent with this regulatory framework, California courts have long recognized lien holders have due process rights. See Kaiser Co. v. Industrial Acc. Com., 109 Cal.App.2d 54, 57-58 (1952) ("Even if regarded as a purely administrative agency, however, in exercising adjudicatory functions the commission is bound by the due process

> clause of the Fourteenth Amendment to the United States Constitution to give the parties before it a fair and open hearing. The right to such a hearing is one of 'the rudiments of fair play' (citation) assured to every litigant by the Fourteenth Amendment as a minimal requirement."); Boehm & Associates v. Workers' Comp. Appeals Bd., 108 Cal.App.4th 137, 150 (2003) ("Lien claimants are entitled to due process in workers' compensation proceedings."); Charles V. Vacanti, M.D., Inc. v. State Comp. Ins. Fund, 24th Cal.4th 800, 811 (2001) (same); Chorn v. Workers' Compensation Appeals Board, 245 Cal.App.4th 1370, 1387-88 (2016) (noting that right to workers' compensation is statutory, and lien claimants' right to payment, "trigger[s] a right to procedural due process under the state Constitution"); see also Reply at 5:17-8:17 (discussing state cases recognizing lien claimants have due process rights). As stated above, it is federal constitutional law, and not state law that determines whether the Constitution affords lien holders any protection and, as such, this Court is not required to agree with the California Supreme Court on this point. See Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 9 (1978). However, no federal court has disagreed with the state precedent on this issue and Defendants fail to provide a single case that remotely suggests that lien holders in California's workers' compensation system have no federal due process rights.

(Docket 40, Tentative Ruling at 23.) To the extent that this Court may now be entertaining the possibility of entering a partial injunction that would result in the indicted providers not being afforded the right to a hearing, such a decision would deviate from the well-reasoned thoughts set out in its original Tentative Ruling. If the Court's original conclusion is correct, and lien claimants have due process rights, how can the State simply "automatically stay" the liens of *all* the indicted/charged providers without any hearing whatsoever? If the lien claimants are unequivocally afforded notice and an opportunity to be heard, then how is it possible that Section 4615 can pass constitutional muster when the State and the Court agree that the statute leaves no room for hearings for indicted providers? In light of the fact that *all* lien claimants are entitled to due process, Plaintiffs submit that carving out indicted providers' liens and divesting those providers of any due process—which the parties agree is what Section 4615 does—renders the law unconstitutional. This is true whether this Court ultimately decides to characterize

the nature of Plaintiffs' property interest in their liens as vested or unvested. See, e.g., Ostlund v. Bobb, 825 F.2d 1371, 1373 (9th Cir. 1987) (in case involving plaintiff's claim for disability retirement benefit that would only become vested if he were found to be disabled, plaintiff nevertheless had an "unquestionabl[e] … property interest" and therefore the *right* to a hearing to determine his entitlement to the benefit).

VII. THE COURT CANNOT PARTIALLY STRIKE DOWN LABOR CODE 4615 BECAUSE THIS CASE IS A FACIAL CHALLENGE TO THE STATUTE

As their penultimate argument in support of this Motion, Plaintiffs submit that even under the strictest reading of the facial challenge standard—i.e., that there are no circumstances in which the law is valid—Section 4615 should be stricken down in its entirety. Although the Court's interest in better understanding the implementation of the law "in the field" is understandable in light of Judge Levy's unsolicited Declaration, the submission of Judge Levy's argument does not change the fact that Plaintiffs have mounted a facial challenge. Plaintiffs submit that even if Section 4615 is "properly" applied by the DIR and the state workers' compensation judges, it is unconstitutional *in toto* because on its face, the law denies a hearing to people who are presumptively innocent simply because they have been charged (and worse yet, it denies a hearing to uncharged entities and individuals merely for being *associated* with a charged provider). Where a statute's illegality "is clear and unmistakable, the duty of the court is plain, and should be fearlessly performed." Van Harlingen v. Doyle, 134 Cal. 53, 56 (1901). Here, Plaintiffs have not attacked the application of Section 4615 to a specific set of facts: Section 4615 is unconstitutional in its entirety and should be struck down in its entirety. Cf. JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC, 200 F.Supp.3d 1141 (D. Nev. 2016) (unlike an as-applied constitutional challenge, which attacks the application of a statute to a specific set of facts, a facial

challenge is a challenge to the constitutionality of an entire legislative enactment or provision).

VIII. THE APPLICABLE STANDARDS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION WARRANT THE RELIEF REQUESTED BY THE PLAINTIFFS

Plaintiffs have shown both that they are "likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest. Winter v. Natural Res. Def. Counsel, Inc., 555 U.S. 7, 20 (2008). An injunction should also issue under the Ninth Circuit's "sliding scale" approach because there are "serious questions going to the merits and a hardship balance that tips sharply towards the plaintiff." See Ass'n des Eleveurs de Canards et d'Oies de Quebec v. Harris, 729 F.3d 937, 944 (9th Cir. 2011).

When it comes to "harm" element of the inquiry, the Court has before it the following evidence:

(1) David Goodrich, the bankruptcy trustee with custody over liens associated with the charged Dr. Anguizola, testifies that his administration of the bankruptcy is jeopardized. (Docket 13.1, Goodrich Decl. ¶ 4.) This has resulted in the Trustee's inability to make the most basic payments, such as utilities, payroll, insurance and the fees due to the U.S. Trustee. (Id. ¶ 5.) The direct result of Section 4615's automatic of the stay of the liens that were supposed to be administered by Mr. Goodrich is that the bankruptcy has been subjected to several motions to dismiss the bankruptcy. (Docket 53, Goodrich Decl. ¶ 6.) "The threat of being driven out of business is sufficient to establish irreparable harm." Am. Passage Media Corp. v. Cass Commc'ns, Inc., 750 F.2d 1470, 1474 (9th Cir. 1985); see also Doran v. Salem Inn, Inc., 422 U.S. 922, 932 (1975) (holding that "a substantial loss of business and perhaps even bankruptcy" constitutes irreparable harm sufficient to warrant interim relief). Similarly, "[e]vidence of threatened loss of prospective customers or

goodwill certainly supports a finding of the possibility of irreparable harm." Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 841 (9th Cir. 2001). This alone is sufficient to support the injunction. See, e.g., HiQ Labs, Inc. v. LinkedIn Corporation, ___ F.Supp.3d ___ (N.D. Cal. August 14, 2017). The Court has before it sufficient evidence from Mr. Goodrich alone to support the issuance of the injunction requested.

(2) Dania McClanahan, the declarant who works for Dr. Anguizola, declares that because of the lien freeze, Dr. Anguizola's practice has stopped seeing workers' compensation patients, is experiencing severe financial distress, has dismissed employees, struggles to make payroll, and is turning away injured California workers in need of treatment. (Docket 13-1, McClanahan Decl. ¶ 7.) The plight of Dr. Anguizola's patients, who are losing their chosen doctors because of the severe financial distress caused by Section 4615, is the sad effect of this law statewide. Strikingly, the State has offered no cure or remedy for the harm suffered by injured patients as a result of its legislation. The lofty ideal of fraud prevention has no rational relationship to the law and indeed, the balance of harms tips decidedly in favor of the injunction. This is especially so when the public interest—the right of presumptively innocent doctors to practice their trade or profession and the right of patients to keep their long-standing, competent doctors—is directly impacted. Notably, the State has not offered any response to the real problem it has caused by this untenable law: driving doctors out and leaving fewer and fewer practitioners to treat California's injured workers in an already shrinking field.

IX. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court GRANT their request for a preliminary injunction.

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