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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CENTRAL CIVIL WEST

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,

v.

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

Defendants.

5:17-cv-00965

SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: October 19, 2017
Time: 8:30 a.m.
Courtroom: 9D
Judge: Hon. George H. Wu

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INTRODUCTION

AB 1422, recently passed by the Legislature and signed by the Governor, amends California Labor Code section 4615 ("Section 4615"), among several other provisions, and confirms that lien claimants may raise any disputes concerning the applicability of the automatic stay to specific liens using existing workers' compensation procedures. It also confirms that the Legislature never intended to strip the Workers' Compensation Appeal Board ("WCAB") or workers' compensation administrative law judges ("WCALJs") of jurisdiction to determine whether a lien falls into the category of liens subject to the stay. AB 1422 thus verifies Defendants' interpretation of the statute and the showing that has been made on this motion in support of that interpretation. The amendment to the statute should resolve any lingering concern as to whether lien claimants have access to process and procedures in order to dispute whether the provisions of Section 4615 apply to their liens.

After several rounds of briefing and the submission of evidence, Plaintiffs still have not established that they are entitled to a preliminary injunction, nor can they do so. They have not established a likelihood of success on the merits, and they have not shown any irreparable harm that will result absent a preliminary injunction. In fact, in light of AB 1422, the public interest weighs even more heavily against the issuance of an injunction invalidating the statute. The issuance of an injunction now, when AB 1422 will go into effect on January 1, 2018, would result in a roughly three-month window in which no liens would be stayed and criminally-charged medical providers would race to the workers' compensation courts in a mad dash effort to demand and collect payment on their liens before AB 1422 goes into effect.

Significantly, Plaintiffs most recent brief makes clear that they are asking this Court to void Section 4615 *in its entirety*, an outcome that would enable criminally-charged lien claimants to continue collecting on their liens unabated while criminal

charges against them are pending. In their brief, Plaintiffs no longer focus on whether isolated mistakes have been made within the workers' compensation Electronic Adjudication Management System (EAMS) in the flagging of liens as "stayed" or whether some WCALJs have made mistakes in hearing disputes as to whether the stay applies to particular liens. What Plaintiffs are requesting is not an injunction addressing how disputes concerning the applicability of Section 4615 to particular liens may be raised in workers' compensation courts, something that is clearly addressed by existing procedures. Rather, their demand is for the Court to declare the statute unconstitutional and unenforceable in its entirety. For all the reasons addressed in the briefing, that demand has no merit. Plaintiffs motion for preliminary injunction should be denied.

ARGUMENT

I. THE EFFECT OF AB 1422 ON THE CURRENT LITIGATION

AB 1422, which was enrolled on September 15, 2017 and signed by Governor Brown on September 26, 2017, adds, among other provisions, the following new subdivision (e) to Section 4615:

> 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.

A.B. 1422, 2017-2018 Reg. Sess. (Cal. 2017). The effect of this new language on Plaintiffs' preliminary injunction motion is substantial. It specifically addresses the procedural due process issues about which the Court has expressed concerns by confirming that nothing in Section 4615 precludes the appeals board from determining whether the automatic stay applies to a specific lien (i.e., whether that lien falls within the category of liens subject to the automatic stay).

This Court has previously determined that "the statutory language [of Section 4615] is ambiguous." Aug. 31, 2017 Tentative Ruling at 5. Where "a statute is ambiguous . . . a subsequent expression of the Legislature as to the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act." *Cal. Emp't Stabilization Comm'n v. Payne*, 31 Cal. 2d 210, 213–14 (1947); *see also Guillen v. Schwarzenegger*, 147 Cal. App. 4th 929, 945 (2007) ("Although subsequent declarations of the Legislature are not binding authority, they are appropriate for the court to consider as evidence of the original legislative intent for a measure.").[1] Clarifying legislation passed soon after the initial statutory provision was enacted is entitled to greater weight than usual. "An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute . . . ." *Carter v. Cal. Dep't of Veterans Affairs*, 38 Cal. 4th 914, 923 (2006).

AB 1422 illuminates the original intent of Section 4615. It clarifies that in enacting Section 4615, the Legislature intended for workers' compensation judges and the WCAB to maintain jurisdiction to determine within the pre-existing workers' compensation procedures whether the Section 4615 stay applies to a particular lien. Because AB 1422 was passed within a year of Section 4615, it carries great weight in the analysis of the Legislature's intent in enacting Section 4615. Even though AB 1422 will not go into effect until January 1, 2018, it offers clarification to the WCAB and WCALJs charged with administering Section 4615, and there is no reason to think that they will ignore or act contrary to the amendment. In fact, the amendment confirms instructions received from Chief

[1] Federal courts look to state law in considering questions of statutory interpretation of state laws. *Goldman v. Salisbury*, 70 F.3d 1028, 1029 (9th Cir. 1995) ("[W]e are 'bound by California rules of construction in our independent interpretation of the California statutes at issue.'" (quoting *Anderson v. Anderson*, 824 F.2d 754, 756 (9th Cir. 1987)).

Judge Levy (see Dkt. 42-1 at ¶ 9) and eliminates any doubt as to whether WCALJs have jurisdiction to consider the applicability of the stay.

The Governor's signing statement regarding AB 1422 is also instructive on the meaning and intention of the statute. While not binding on this Court, "[a] Governor's written memoranda issued upon signature of a bill is admissible on the issue of the Legislature's intent." *In re Carr*, 65 Cal. App. 4th 1525, 1535 (1998); *see also People v. Ledesma*, 16 Cal. 4th 90, 100 (1997) (considering Governor's signing statement in interpreting amendment to statute). Governor Brown's signing message for AB 1422 states that the bill "confirms that the Workers' Compensation Appeals Board retains jurisdiction to resolve disputes about the applicability of the automatic stay provision to specific liens" and that the bill "is declaratory of existing law which provides for the resolution of these disputes through the Board's current practices and procedures." Dkt. 56-1 at 15.

Plaintiffs argue that because AB 1422 refers only to "the appeals board," jurisdiction to determine whether the stay applies to a specific lien lies only with the WCAB and not the WCALJs. Dkt. 58 at 3. However, numerous sections within Division 4 of the Labor Code refer generically to the "appeals board" as meaning the entire workers' compensation adjudication system, including both the WCALJs and the Commissioners of the WCAB. For example, Labor Code section 5300 lists the types of proceedings that "shall be instituted before the appeals board and not elsewhere, except as otherwise provided in Division 4," then proceeds to list exactly the types of matters WCALJs handle in workers' compensation proceedings on a daily basis. This section plainly does not mean that workers' compensation cases must be filed in the WCAB office in San Francisco; all cases are filed in the WCAB district offices and heard in the first instance by WCALJs. *See, e.g.*, Cal. Lab. Code §§ 4903, 4903.05, 4903.1, 5301-5304 (all referring to "appeals board" in a context that clearly refers to the trial level WCAB district offices and WCALJs). Department of Workers' Compensation regulations confirm

this meaning, stating that "[i]n any case that has been regularly assigned to a workers' compensation judge, the judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case." Cal. Code Regs., tit. 8, § 10348. The same section goes on to say that "[o]rders, findings, decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted." *Id.*; *see also* Cal. Lab. Code §§ 5309, 5310 (the appeals board appoints workers' compensation judges to hear and determine issues). These statutes and regulations, taken together, demonstrate that AB 1422's reference to "the appeals board" refers to the entirety of the workers' compensation adjudication system, including the WCALJs at the initial filing and trial level, and the WCAB for matters taken up by petition for reconsideration or removal.

The new subdivision added via AB 1422 states that the Section 4615 stay "shall not preclude" the appeals board from determining whether the stay applies to a lien. Plaintiffs argue that this language leaves to the discretion of the WCALJs whether to consider the applicability of the stay because it does not explicitly require them to do so. On the contrary, "shall not preclude" simply means that the stay does not change the existing regulations and procedures that give the WCAB and WCALJs the authority to decide any issue necessary to the adjudication of a lien. Cal. Code Regs., tit. 8, § 10348 ("the judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented . . ."). AB 1422 clarifies that nothing in Section 4615 was intended to alter or remove that authority, which allows the WCALJs and WCAB to decide any and all issues using the regular workers' compensation procedures.

Plaintiffs argue that AB 1422 is unhelpful to Defendants because it confirms that the Section 4615 stay is, in fact, automatic. Dkt. 58 at 5. Once again Plaintiffs

conflate the question of whether the stay applies to a specific lien with the question of whether lien claimants charged with workers' compensation or other medical fraud can argue that all or some of their liens should escape the automatic stay because they are "untainted" or unrelated to the charged activity. Whether the stay is automatic has never been a question in this litigation. Defendants have repeatedly stated their position, derived from the plain language of the statute, that the stay is automatic for those liens that fall within the category establish by Section 4615—those liens filed "by or on behalf of a physician or provider of medical treatment" who have been charged with "an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs." Cal. Lab. Code § 4615(a). Determining whether a lien was actually filed "by or on behalf of" a medical provider who has been charged with one of the types of fraud listed in the statute is a separate question, and, as AB 1422 confirms, one which the WCALJs and WCAB can resolve.

II. PLAINTIFFS HAVE NOT MEET THEIR BURDEN IN ESTABLISHING THAT PRELIMINARY INJUNCTIVE RELIEF IS MERITED

Throughout the briefing on their preliminary injunction motion, Plaintiffs have departed from the elements they need to establish in order to show that they are entitled to a preliminary injunction, in the apparent hope that the parade of horribles they continually recite will be sufficient to convince this Court to strike down Section 4615 as facially invalid. But the evidence presented does not establish irreparable harm or a likelihood of success on the merits. Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). In order to succeed on a motion for preliminary injunction, Plaintiffs must show: (1) that they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief;

(3) that the balance of equities tips in their favor; and (4) that an injunction would be in the public interest. *Id.* at 20. Plaintiffs have not met a single one of these elements, despite having several rounds of briefing in which to do so.

A. Plaintiffs Have Not Met Their Burden in Establishing the Facial Invalidity of the Statute

Plaintiffs reiterate in their supplemental brief that their claims present a facial challenge to Section 4615, not an as-applied challenge. They further argue that because the challenge is a facial challenge, this Court cannot offer any form of relief aside from the complete invalidation of Section 4615 in its entirety. Plaintiffs' insistence on the invalidation of the entire statute is not addressed to their *own* particular due process concerns, but rather seeks to allow all lien claimants to continue to collect on all lien claims, an outcome that would enable criminally-charged providers, as noted above, to continue to demand and to collect payment on all liens notwithstanding the pending criminal charges. That demand is at odds with the well-established principle that courts "neither want nor need to provide relief to nonparties when a narrower remedy will fully protect *the litigants*." *U.S. v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 478 (1995) (emphasis added).

Plaintiffs have not met the stringent burden required to establish that a statute is unconstitutional on its face. They have not demonstrated that "the law is unconstitutional in all of its applications." *Los Angeles v. Patel*, 135 S. Ct. 2443, 2451 (quoting *Washington State Grange v. Washington State Repub. Party*, 552 U.S. 442, 449 (2008)). Plaintiffs also have not demonstrated that Section 4615 is unconstitutional as applied *to them*, and even if they could establish that Section 4615 is being unconstitutionally applied to parties not before this court, that would be insufficient to support the invalidation of the statute. *Parker v. Levy*, 417 U.S. 733, 756 (1974). Plaintiffs' request for a preliminary injunction invalidating the statute on its face should be denied.

B. Plaintiffs Have Not Established Any Due Process Violation

Along with their briefs, Plaintiffs have submitted declarations and exhibits consisting of no more than conclusory allegations from a variety of declarants—most of whom are not parties to this litigation—that there is no process available to challenge the applicability of the Section 4615 stay to particular liens. *See* Dkt. 55 at 4, n.6. Missing from Plaintiffs' submissions is any evidence establishing that the Plaintiffs or other lien claimants attempted to follow the procedures set out in the existing regulations and described in Judge Levy's declaration, such as filing a petition or declaration of readiness, and had those efforts rejected or rebuffed. Dkt. 42-1 at ¶¶ 14-15. Thus, Plaintiffs are not entitled to any relief, much less the invalidation of Section 4615.

Plaintiffs argue that if, as this Court held in its July 13, 2017 Tentative Ruling, lien claimants have an underlying protectable interest in their liens, then each charged medical provider is entitled to a hearing about whether the lien arises from criminal activity before the lien may be stayed. Dkt. 58 at 14. This assertion is incorrect. The nature of the underlying protected right is critical to the determination of what process is required (i.e., what process is "due") in order to satisfy the due process clause. "[O]nce it is determined that the Due Process Clause applies, 'the question remains what process is due.'" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). The Due Process Clause requires only "notice and opportunity for hearing *appropriate to the nature of the case*." *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 717 (9th Cir. 2011).

It is crucial to recall, as this lengthy briefing and argument process comes to a close, that there is a specific analytical framework that must be applied when a due process challenge is alleged. Throughout the briefing, Plaintiffs have avoided confronting that analysis, relying instead on generalities, inflated rhetoric, and broad allegations. Assuming an underlying protected interest, courts apply the

Mathews v. Eldridge balancing test to determine whether a due process violation has been shown. Under this test, courts are to examine: "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Wilkinson v. Austin*, 545 U.S. 209, 224-25 (2005) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). One final analysis here of these three factors demonstrates that Plaintiffs have failed to establish a due process violation.

First, as explained at length in Defendants' previous supplemental brief, filed August 8, 2017, a lien is not certain income, and lien claimants' underlying interest in their liens, to the extent they have such an interest, is necessarily limited and circumscribed by statute. Dkt. 42 at 11-13. The impairment of that interest, if any, resulting from Section 4615 is slight because the stay applies only temporarily and all liens will be adjudicated in due course following the disposition of the criminal charges. Cal. Lab. Code § 139.21.

Second, though the risk of erroneous deprivation of an interest is a factor in determining what process is required, the Due Process Clause does not require that the procedures used to guard against an erroneous deprivation . . . be so comprehensive as to preclude any possibility of error." *Mackey v. Montrym*, 443 U.S. 1, 13 (1979). The record before this Court, including the Levy Declaration and exhibits, demonstrate both that the risk of errors in the current system under Section 4615 is low, and that, in the event errors do occur, there are procedures available for litigants to raise the issues within the workers' compensation system, and to have those errors corrected. The existence of this "process" to protect against any potential errors has now been confirmed by the provisions of AB 1422 and the Governor's Signing Message. Plaintiffs have made no showing whatsoever

of the "probable value" of any additional procedures. That is because Plaintiffs do not seek additional procedures; they simply want the statute declared unenforceable in its entirety, which would permit criminally-charged providers to continue to collect on their liens without hindrance.[2]

Third, the government's interest in the adoption and implementation of Section 4615 is compelling. That interest is in preventing crime and fraud in the workers' compensation system, for the benefit of injured workers, employers and insurers; in preventing payments on liens arising from fraudulent activity, either while charges are pending or following conviction, so as not to incentivize such conduct; and in not overburdening the system with the handling of potentially fraudulent liens while criminal charges are pending. Liens arising from criminal activity within the workers' compensation system create tremendous fiscal and administrative burdens. In order to ensure that monies are not demanded and paid out on such liens while criminal charges are pending, the Legislature made the sound fiscal and policy decision to *stay* those liens *temporarily* until the criminal charges are resolved, after which the liens are then adjudicated. To impose the

[2] The record before this Court concerning Dr. Michael Allan Rudolph provides just one example on this issue. Dr. Rudolph states in the declaration he filed on behalf of Plaintiffs that he has not personally been charged with any of the types of fraud listed in the statute, but because he shares a first and last name with a physician who has been charged, certain of his liens were erroneously flagged as stayed in the EAMS system. Dkt. 53 at 33, ¶ 5; 34, ¶ 7. Dr. Rudolph does not assert in his declaration, however, that he made any effort to alert DWC to the problem in order to have it corrected or that he attempted to use any of the available procedures to raise the issue with a WCALJ. Instead, he asserts only that "I have learned . . . that there does not appear to be any system or procedure to address the fact that I am the victim of mistaken identity . . . ." Dkt. 53 at 34, ¶ 9. Moreover, and curiously, the list of liens Dr. Rudolph attached in support of his declaration (Exhibit 25, Dkt. 53-27) were all several years old, dating from 2009 to 2012, with no recent activity showing for the vast majority of those cases. More curiously, and significantly, the Declaration of Paige Levy that had previously been filed included as an exhibit a Pre-Trial Conference Statement in a case called *Blanca Torres v. Ability Pathways*, WCAB Case No. ADJ 9703451. Dkt. 42-1, at 83-90. That document shows that a lien trial had been set for August 30, 2017 to determine, among other issues, whether the lien of Dr. Michael Allan Rudolph was subject to a Section 4615 stay. Dkt. 42-1, at 85, 88. Thus, the evidence shows that Dr. Rudolph has, in fact, been able to avail himself of the available processes to challenge the applicability of the stay to a lien filed on his behalf by Rudolph Multi Specialty. Dkt. 42-1 at 83-90.

"additional or substitute procedural requirement" apparently demanded by Plaintiffs —that the litigants and WCALJs determine whether specific liens arise from or relate to criminal activity *before they are stayed and before the criminal charges are even resolved*—would create substantial additional fiscal and administrative burdens for all parties and for the system, and would cause substantial harm to injured workers and the public by continuing to incentivize criminal activity.

Clearly, when the *Mathews* due process balancing test is applied, Plaintiffs have not, and cannot, establish any due process violation. AB 1422 clarifies that the existing workers' compensation procedures set out in the statute and regulations, and described in Judge Levy's declaration, are available to lien claimants who believe their liens have been erroneously stayed under Section 4615. Plaintiffs' preliminary injunction motion should be denied.

C. Plaintiff Anguizola Has Not Established a Sixth Amendment Violation

Though Plaintiffs try to resurrect their Sixth Amendment claim in their supplemental brief, they offer no explanation regarding how AB 1422 affects that claim in any way. Instead they reiterate the same arguments this Court has already rejected, based on their belief that the Court "was mistaken" and that Plaintiffs had insufficient space in their opening brief to thoroughly address the issue.

As this Court has previously stated, "a lien filed within the state's already complicated regulatory framework is simply not the equivalent to money held, free and clear in a personal bank account." July 13, 2017 Tentative Ruling at 13. Thus, the distinction between tainted and untainted assets established in *Luis v. United States*, 136 S. Ct. 1083 (2016) is not determinative in this context. Even if *Luis* were applicable here, the Court further acknowledged that Plaintiffs' evidence is insufficient to establish that Dr. Anguizola, the only Plaintiff who asserts a Sixth Amendment claim, "has no personal assets with which to mount his defense," that he would "immediately gain access to funds" were Section 4615 enjoined, or that

the alleged effects on Dr. Anguizola "are in any way typical of the providers that Statute effects generally." Plaintiffs have offered no reason why the Court should revisit these determinations.

Plaintiffs repeatedly reference comments made by Director Christine Baker in support of the Sixth Amendment claim. But not only do Ms. Baker's comments not evidence a Sixth Amendment violation, as shown in previous filings, they have no relevance to that claim. The comments of an agency director charged with administering a statute in no way reflect the Legislature's intent in enacting a bill. If a "legislator's personal understanding of a bill does not indicate the Legislature's collective intent in enacting that bill," there is no logical reason why an agency director's understanding would have any weight at all. *See Carter*, 38 Cal. 4th at 929. Furthermore, the California Supreme Court has stated that it will not "in holding up the Legislature's actions to the light of the Constitution . . . inquire into underlying motives; our review is confined to determining whether an action itself is at odds with constitutional imperatives." *Howard Jarvis Taxpayer Assn. v. Padilla*, 62 Cal. 4th 486, 521 (2016).

D. Plaintiffs Have Not Established Irreparable Harm

Plaintiffs include in their supplemental brief a laundry list of six purported irreparable harms that one or more of them allegedly have suffered or will suffer in the absence of a preliminary injunction. Dkt. 58 at 7. None of them is an actual irreparable harm that would support the issuance of a preliminary injunction in this case.

First, Plaintiffs assert the deprivation of Dr. Anguizola's Sixth Amendment right to hire an attorney of his choosing, but this Court has already rejected the Sixth Amendment claim and there is no reason it should do otherwise now.

Second, Plaintiffs claim that they are "threatened with being driven out of business," but providers are not required to treat workers' compensation applicants or provide services on a lien basis. They choose to do so with full knowledge that

the resulting liens will be contingent and uncertain. *Chorn v. Workers' Compensation Appeals Bd.*, 245 Cal. App. 4th 1370, 1389 (2016).

Third, Plaintiffs assert that the loss of reputation and good will is an irreparable injury, but the fact that a medical provider has been charged with a crime is public information even without Section 4615 and the list of charged providers posted on the Department of Industrial Relations website.

Fourth, Plaintiffs state that financial losses unrecoverable due to Eleventh Amendment sovereign immunity constitute an irreparable injury. But the Section 4615 stay results in only a temporary delay in collecting on liens, not a total financial loss. Furthermore, the Eleventh Amendment would not bar a lien claimant from recovering any wrongly denied funds because those funds are paid by the employers and insurers that participate in the workers' compensation system, not the state itself.

Fifth, Plaintiffs argue that interference with a federal right may constitute irreparable harm; and *sixth*, Plaintiffs point to the principle that a deprivation of a constitutional right always constitutes an irreparable harm. But both of these potential harms are contingent on establishing a likelihood of success on the merits, which Plaintiffs have failed to do here. An alleged constitutional infringement will not constitute irreparable harm where "the constitutional claim is too tenuous" to support such a finding. *Goldie's Bookstore v. Sup. Ct.*, 739 F.2d 466, 472 (9th Cir. 1984). The same is true of relying on interference with a federal right to establish a Constitutional claim. In fact, in the case Plaintiffs cite, the district court found that the plaintiff had "not shown that it is likely to prevail on its claim that the State has interfered with its federal rights" and thus "has not shown that it is likely to suffer this type of irreparable harm." *Tohono O'odham Nation v. Ducey*, 130 F. Supp. 3d 1301, 1319 (D. Az. 2015).

In contrast, if this Court were to grant the injunction Plaintiffs demand, the workers' compensation system, including injured workers, would suffer substantial

harm as a result. If the Court were to declare invalid the current version of Section 4615, as Plaintiffs demand, the amended version of the statute would still go into effect as of January 1, 2018.[3] This would leave an approximately three-month window during which criminally-charged providers and entities who have filed liens on their behalf would rush to file petitions and declarations of readiness to proceed in order to have their liens heard and adjudicated, and rush to demand settlements and payments, before the revised statute goes into effect. The burden on the workers' compensation system due to this increase in volume would be tremendous. The increase in traffic would make it difficult for other parties—including injured workers—to have their issues and cases adjudicated. And the money paid out on the liens filed by or on behalf of criminally-charged providers that may later be determined to have resulted from criminal activity is unlikely to ever be recovered.

CONCLUSION

For the reasons stated above and throughout the briefing on Plaintiffs' motion for preliminary injunction, Defendants respectfully request that the Court deny the motion in its entirety.

[3] If Plaintiffs seek to proceed with this action following January 1, 2018, they will likely need to seek leave to amend their complaint, as the current complaint challenges a statute that will no longer exist in the same form as of that date.

Dated: October 10, 2017

Respectfully submitted,

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