I. Background

On May 17, 2017, Plaintiffs David Goodrich, as Chapter 11 Trustee ("Goodrich"), Vanguard Medical Management Billing, Inc. ("Vanguard"),[1] One Stop Multi-Specialty Medical Group, Inc., a California corporation ("OSM"), One Stop Multi-Specialty Medical Group & Therapy, Inc., a California corporation ("OST"), Nor Cal Pain Management Medical Group, Inc., a California corporation ("Nor Cal"), and Eduardo Anguizola, M.D. ("Anguizola," and together with Goodrich, Vanguard, OSM, OST, and Nor Cal – "Plaintiffs") sued Defendants Christine Baker, in her official capacity as Director of the California Department of Industrial Relations ("Baker") and George Parisotto, in his official capacity as Acting Administrative Director of the California Division of Workers Compensation ("Parisotto," and together with Baker – "Defendants") in this putative civil rights lawsuit. *See generally* Complaint ("Compl."), Docket No. 1. Plaintiffs' facial constitutional challenge to California Labor Code Section 4615 raises claims for injunctive and declaratory relief, pursuant to 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202, respectively.[2] *See id.* ¶ 1.

A. California's Workers' Compensation System and Medical Treatment Liens

The parties have briefed the Court regarding the California workers' compensation system and the role of medical treatment liens therein. *See* Compl. ¶¶ 25-36; Plaintiffs' Motion for Preliminary Injunction ("Mot."), Docket No. 13 at pp. 3-7[3]; Defendants' Opposition to

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[1] On May 22, 2017, Plaintiffs filed a Notice of Errata to clarify a typographical error on part of counsel in relation to Plaintiff Vanguard Medical Billing Management, LLC. *See generally* Notice, Docket No. 16. Plaintiffs noted that Vanguard "should properly be identified as *Plaintiff Vanguard Billing Management LLC* throughout the complaint," and averred that the error "does not affect the jurisdictional basis for the Complaint." *Id.* at 3:5-8 (emphasis added).

[2] Specifically, Plaintiffs describe the action as:

> *[A] facial challenge to the constitutionality of California Labor Code Section 4615* . . . based upon continuing violations of [their] rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, the Contract Clause of the United States Constitution, and the Supremacy Clause of the United States Constitution, along with the corresponding provisions of the California Constitution, Article I, § 15 (Right to Counsel), Article I, § 9 (Contract Clause), Article I, § 7 (Due Process Clause), and Article I, § 19 (Takings Clause).

Compl. ¶ 1 (emphasis added); *see also id.* ¶¶ 22-24.

[3] Plaintiffs also submit an appendix of exhibits and a request for judicial notice. *See* Request for Judicial Notice in Supp. of Mot. for Preliminary Injunction ("Pls.' RJN"), Docket No. 14; Plaintiffs' Appendix of Exhibits ("Pls.'

Plaintiffs' Motion for Preliminary Injunction ("Opp'n"), Docket No. 27 at pp. 1-5.[4] California has created a workers' compensation system to support injured workers, pursuant to an express provision of the California Constitution. Compl. ¶ 25; *see also* Opp'n at 2:10-18 (citation omitted); *see generally* Cal. Const. art. XIV, § 4; *W. Indem. Co. v. Pillsbury*, 151 P. 398, 401 (Cal. 1915) (affirming legislative power to promulgate workers' compensation system pursuant to state police power) (citation omitted).

As delineated in Rassp & Herlick, *California Workers' Compensation Law* § 1.03 (Lexis 2017):

> The California law provides for medical treatment, temporary disability indemnity, permanent disability indemnity, and death benefits . . . as a result of industrial injuries. Workers are assured of receiving these benefits because employers are required to secure the payment of benefits required by the Workers' Compensation laws. An employer may be insured for this program or be self-insured by obtaining from the Director of the California Department of Industrial Relations a certificate for self-insurance [Lab. Code, § 3700] . . . . The workers' compensation program was originally intended to be self-administered by employers or their insurers with a minimum of state government participation in the administration of the system. However, recent amendments to the code and to the rules have increased the state regulation of the workers' compensation system and have made it a very tightly controlled program.

As further stated:

> Under the California plan, employers or their insurance carriers make the initial determination of the validity of a claim. Government enters the picture by requiring certain notices, by encouraging prompt action, by auditing claims handling procedures, and by providing for the resolution of disputed claims. Litigated cases are heard and determined by the Workers' Compensation Appeals Board, which is one of California's regularly constituted courts of law . . . .

Id. at § 1.05.

AOE"), Docket No. 15. The materials submitted were either appropriate for judicial notice, or nonetheless proper to consider in support of a motion for preliminary injunction. *See Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009) (permitting a district court to consider hearsay and other inadmissible evidence in deciding whether to issue a preliminary injunction). Defendants' objections to Plaintiffs' AOE are deemed overruled at this time.

[4] Defendants also submit an appendix of exhibits and a request for judicial notice. See Request for Judicial Notice in Supp. of Mot. for Preliminary Injunction ("Defs.' RJN"), Docket No. 28; Defendants' Appendix of Exhibits ("Defs.' AOE"), Docket No. 15-1. The materials submitted were either appropriate for judicial notice, or nonetheless proper to consider in support of a motion for preliminary injunction. *See Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009) (permitting a district court to consider hearsay and other inadmissible evidence in deciding whether to issue a preliminary injunction). Plaintiffs' objections to Defendants' AOE are deemed overruled at this time.

An informative overview of California's workers' compensation system is set forth in *Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1078-79 (9th Cir. 2015), as follows:

> Employers in California typically provide medical care and other services to employees for work-related injuries. *See generally* Cal. Lab.Code §§ 3600, et seq. An employer or its workers' compensation insurer may choose to provide medical care to workers through the employer's Medical Provider Network ("MPN"), 2 Witkin, *Summ. Cal. Law, Work. Comp.* § 262 (10th ed.2005), its Health Care Organization ("HCO"), Cal. Lab.Code § 4600.3, or neither of these . . . .
>
> In certain cases, an employer or its insurer might decline to provide medical treatment to an injured employee on the grounds that an injury is not work-related or the treatment is not medically necessary. An injured worker may then seek medical treatment on his or her own, and, if the injury is later deemed work-related and the treatment medically necessary, the employer is liable for the "reasonable expense" incurred in providing treatment . . . . Cal. Lab.Code § 4600(a), (f); 2 Witkin, Summ. Cal. Law, Work. Comp. § 264 . . . .
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> A provider of services – whether for medical treatment, ancillary services, or medical-legal services – may not seek payment directly from the injured worker. Id. § 3751(b).[5] Nor may a provider seek payment through the filing of a civil action against the employer or its insurer. *Vacanti v. State Comp. Ins. Fund*, 24 Cal.4th 800, 815, 102 Cal.Rptr.2d 562, 14 P.3d 234 (2001) ("[C]laims seeking compensation for services rendered to an employee in connection with his or her workers' compensation claim fall under the exclusive jurisdiction of the [Workers' Compensation Appeals Board]."). Instead, these providers may seek compensation by filing a lien in the injured employee's workers' compensation case. *See generally* Rassp & Herlick, *Cal. Workers' Comp. Law* ch. 17 (Lexis 2014). The filing of a lien entitles a provider to participate in the workers' compensation proceeding in order to protect its interests. *Id.* § 17:111[5]. After the underlying workers' compensation case is adjudicated, a "lien conference" is held to discuss the liens that have not already been resolved through settlement. *Id.* § 17:113. Any issues not resolved at the lien conference will be set for a "lien trial." *Id.*
>
> Whether a provider of medical or ancillary services obtains payment on its lien depends on the result reached in the underlying case. These providers are entitled to payment of their liens if the injured worker establishes that the injury was work-related and that the medical treatment provided was "reasonably required to cure or relieve the injured worker from the effects of his or her injury." Cal. Lab.Code § 4600; *see also id.* § 4903.

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[5] Cal. Lab. Code § 3751(b) provides that: "If an employee has filed a claim form pursuant to Section 5401, a provider of medical services shall not, with actual knowledge that a claim is pending, collect money directly from the employee for services to cure or relieve the effects of the injury for which the claim form was filed, unless the medical provider has received written notice that liability for the injury has been rejected by the employer and the medical provider has provided a copy of this notice to the employee."

See also Chorn v. Workers' Compensation Appeals Bd., 245 Cal.App.4th 1370, 1376-78 (2016).

B. California Labor Code Section 4615

Enacted in 2016 and effective on January 1, 2017, California Labor Code Section 4615 ("Section 4615," or the "Statute") marks a change in law with respect to the workers' compensation lien system. *See generally* Compl. ¶¶ 5-11, 22-36; *see also* Cal. Stats. 2016, c. 868 (S.B. 1160), § 7. Section 4615 reads as follows:

> (a) Any lien filed by or on behalf of a physician or provider of medical treatment services under Section 4600 or medical-legal services under Section 4621, and any accrual of interest related to the lien, *shall 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.* The stay shall be in effect from the time of the filing of the charges until the disposition of the criminal proceedings. The administrative director may promulgate rules for the implementation of this section.
> (b) *The administrative director shall promptly post on the division's Internet Web site the names of any physician or provider of medical treatment services whose liens were stayed pursuant to this section.*

Cal. Lab. Code § 4615. (emphasis added).

According to Defendants, the Statute "imposes an *automatic stay on workers' compensation liens* filed by or on behalf of medical lien claimants *charged with insurance or workers' compensation fraud.*" Opp'n at 1:3-5 (emphasis added); *but see* Mot. at 4:12-17 (arguing the stay on the "collection of all liens for treatment previously rendered by medical providers" applies "regardless of whether there is any relationship between the criminal allegation and the lien"). Plaintiffs argue that this statute, despite being "sold as a framework for increasing administrative penalties imposed on employers who refuse to submit injury and medical data" to the state workers' compensation system, imposes a "wide-sweeping" lien freeze on medical providers facing criminal charges that "retroactively interferes with insurance companies' obligation to pay medical providers[.]"[6] *See* Compl. ¶¶ 6, 30; Mot. at 3; *see also*

[6] Plaintiffs aver that this "wide-sweeping" provision effectively:

> [C]ut[s] off the rights of the charged medical providers – and uncharged parties associated with those providers – to income or receivables based on liens for

Compl. ¶¶ 12-21 (describing lien freeze in context of parties to action). Defendants respond that the "stay provision" simply "addresses . . . continuing concerns regarding fraud in the lien system," in light of an "extraordinary and increasing number of liens" related to workers' compensation reimbursements.[7] Opp'n at 4:19-20, 5:9; *see generally id.* at 4-6.

Specifically, Plaintiffs describe a series of independent legal conflicts stemming from passage of the Statute's purported lien freeze on criminally-charged medical providers. *See id.* ¶¶ 12-21. Goodrich claims that his "ability to perform his duties as Bankruptcy Trustee in [the case of *In re Allied Med. Mgmt., Inc.*, No. 6:16-BK-14273-MH (Bktcy. C.D. Cal.)] has been impeded" by implementation of the Statute. *Id.* ¶ 12; *accord* Declaration of David Goodrich ("Goodrich Decl."), Docket No. 13-1 at ¶¶ 3-5. Similarly, Vanguard, a purchaser of "receivables related to medical treatment rendered to workers' compensation patients," claims that Section 4615 has stymied lien collection, "most of which represent various insurers' contractual agreements to pay for medical treatment rendered to injured California workers." Compl. ¶ 13; *accord* Declaration of Victor Korechoff ("Korechoff Decl."), Docket No. 13-1 at ¶¶ 3, 5-6 (claiming contractual rights to receivables "are now currently worthless, as a direct result of Section 4615"). Anguizola, a 66-year-old pain management doctor, has been charged with medical fraud and avers that "all lien debt owed to any medical practices" owned by him has been frozen under the Statute. *Id.* ¶ 14; *accord* Declaration of Dania McClanahan ("McClanahan Decl."), Docket No. 13-1 at ¶¶ 3-4, 7. Further, Section 4615's lien freeze has allegedly rendered Anguizola incapable of retaining legal counsel in his defense.[8] *See id.* ¶ 14 ("As a direct result of the lien freeze, [Anguizola's] financial situation is dire, and he cannot afford to mount a defense to the charges and his choice of counsel for a defense."); *accord* McClanahan Decl., at ¶ 7.

> services rendered over a span of many years and for services wholly unrelated to the criminal charges at hand.

Id. ¶ 6.

[7] No party has taken the position that Section 4615 is to be read as limited only to liens tainted by some criminal activity. No party has cited to any regulations promulgated by the administrative director in regards to this issue. Further, certain Plaintiffs have alleged that all of their liens have been frozen, even those which are totally unrelated to any criminal charges against them. *See* Compl. at ¶¶ 13-14.

[8] Plaintiffs claim that after dismissal of a 149-count indictment against Anguizola on June 28, 2016, the Orange County District Attorney filed eighty new counts against Anguizola and other medical providers. *Id.* ¶ 14. Although Anguizola has not plead guilty, has not attended a preliminary hearing, and does not have a trial date in this new matter, "the mere fact that charges have been filed" renders all lien debt owed to Anguizola or owed to medical practices owned by Anguizola "frozen" under Section 4615. *Id.*

OSM, OST, and Nor Cal – "billing entit[ies]" for Anguizola – claim that workers' compensation liens filed in relation to treatment rendered by Anguizola and other doctors, including "doctors who have not been charged with any species of fraud or wrongdoing," have been "frozen as a result of the implementation of [Section 4615]." *Id.* ¶¶ 15-17; *accord* McClanahan Decl., at ¶ 4 ("This is the same with respect to OSM, OST and Nor Cal, the medical practices . . . . [T]hose other providers have not been subjected to any criminal charges nor have those been brought to my attention."). *See generally id.* ¶¶ 23, 35-36. Plaintiffs seek: (1) a declaration that Section 4615, "which stays all liens to medical providers who have been merely charged" but not convicted of crimes, violates the United States and California Constitutions[9]; and (2) a preliminary injunction preventing Defendants from enforcing the Statute. *See id.* ¶ 22.

In addition, the parties make various factual allegations regarding the introduction and eventual passage of Section 4615. *See id.* ¶¶ 25-36; *see also* Mot. at 3-7; Opp'n at 1-5. Specifically, Plaintiffs claim that the relevant provision was introduced as "Section 7" in SB 1160 only "[n]ine days before the [summer 2016] legislative session closed[.]" Compl. ¶ 32. "With no discussion of" this new provision, the California State Assembly passed the bill into law on August 30, 2016; the Senate passed it on August 31, 2016; the Governor signed the bill on September 30, 2016; and the bill became effective on January 1, 2017. *Id.*

C. Plaintiffs' Motion for Preliminary Injunction

Now before the Court is Plaintiffs' Motion for Preliminary Injunction barring enforcement of Section 4615 filed on May 19, 2017.[10] *See* Docket No. 13. Defendants timely filed their Opposition to the Motion along with supporting materials, *see* Docket Nos. 27-29, and Plaintiffs responded with a timely Reply, *see* Docket No. 31-32.

Plaintiffs' motion asks the Court to enjoin enforcement of Section 4615 on five distinct constitutional grounds: (1) the Sixth Amendment Right to Counsel, (2) the Contract Clause, (3) Substantive Due Process, (4) "Procedural" Due Process, and (5) the Supremacy Clause. *See generally* FAC.

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[9] Neither party addresses this Court's power to enforce the California Constitution. To the extent Plaintiffs seek relief under 42 U.S.C. Section 1983 to enforce a state statute, it is improper. *See Baker v. McCollan*, 443 U .S. 137, 146 (1979) (holding that section 1983 does not impose liability for violations of state law).

[10] Of the six named Plaintiffs in the Complaint, only Goodrich, Vanguard, and Anguizola joined in the pending Motion. *See generally* Docket No. 13 at 1.

II. Legal Standard

Since 2008, it has been clear that to obtain a preliminary injunction, plaintiffs must show 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. Council, Inc.*, 555 U.S. 7, 20 (2008). However, "[u]nder [the Ninth Circuit's] 'sliding scale' approach to evaluating the first and third *Winter* elements, a preliminary injunction may be granted when there are 'serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff,' so long as 'the other two elements of the *Winter* test are also met.'" *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011)).[11] A district court may consider hearsay and other inadmissible evidence in deciding whether to issue a preliminary injunction. *See Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009); *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).

III. Analysis

A. Facial Challenge vs. "As Applied" Challenge

Plaintiffs purport to challenge Section 4615 on its face. *See* Compl. ¶ 1. The parties disagree on the proper standard for such challenges. In *City of L.A. v. Patel*, the Supreme Court

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[11] This Court continues to believe that there is an argument to be made that the "sliding scale" standard recognized in *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011), as still viable in this Circuit post-*Winter* is, in fact, no longer the law. In *American Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009), the Ninth Circuit made clear that the Supreme Court's *Winter* decision had announced the applicable standard governing injunctive relief: "To the extent that our cases have suggested a lesser standard [than that announced in *Winter*], they are no longer controlling, or even viable." *American Trucking*, 559 F.3d at 1052. In making that announcement, the *American Trucking* panel cited directly, as an example of "a lesser standard," to a pin-cited page of its earlier decision in *Lands Council v. Martin*, 479 F.3d 636 (9th Cir. 2007), in which it had earlier set forth both the "possibility of irreparable injury" standard that *Winter* specifically addressed *and* the Ninth Circuit's sliding scale approach. *See id.* at 639. It is a commonplace observation that one three-judge panel of the Ninth Circuit – such as the *Alliance for Wild Rockies* panel – may not overrule an earlier three-judge panel in the absence of intervening controlling Supreme Court precedent. *See United States v. Mayer*, 560 F.3d 948, 964 (9th Cir. 2009). Nevertheless, a number of courts within the Ninth Circuit – including subsequent Ninth Circuit decisions involving equal protection claims – have followed *Alliance for Wild Rockies* without questioning its apparent conflict with earlier Circuit authority. *See, e.g., Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012); *Pimentel v. Dreyfus*, 670 F.3d 1096, 110-06 (9th Cir. 2012) ("[A]t an irreducible minimum,' though, 'the moving party must demonstrate a fair chance of success on the merits, or questions serious enough to require litigation.'") (quoting *Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2009), a pre-*American Trucking* decision). That trend, combined with Defendants' failure to argue that the "sliding scale" approach is now extinct, leads this Court to presume the vitality of that approach for the necessary analysis on Plaintiffs' preliminary injunction motion.

described and affirmed the validity of facial challenges as follows:

> A facial challenge is an attack on a statute itself as opposed to a particular application. While such challenges are the most difficult . . . to mount successfully the Court has never held that these claims cannot be brought under any otherwise enforceable provision of the Constitution. Instead, the Court has allowed such challenges to proceed under a diverse array of constitutional provisions.
> (citations and quotations omitted)

135 S. Ct. 2443, 2449 (2015).

To succeed in a facial challenge to a statute "a plaintiff must establish that a 'law is unconstitutional in all of its applications.'" *Id.* at 2451 quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008). Because facial constitutional challenges "often rest on speculation," they are disfavored. *See, e.g., Jackson v. City and County of San Francisco*, 746 F.3d 953, 962 (9th Cir. 2014) (citation omitted). Moreover, plaintiffs must meet a high bar to prevail on a facial challenge, as a facial challenge succeeds only "by 'establish[ing] that no set of circumstances exists under which the Act would be valid, *i.e.*, that *the law is unconstitutional in all of its applications*." *Washington State Grange*, 552 U.S. at 449 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)) (emphasis added); *Morrison v. Peterson*, 809 F.3d 1059, 1064 (9th Cir. 2015) (citation omitted). Thus, the fact that a statute "might operate unconstitutionally *under some circumstances* is not enough to render it invalid against a facial challenge." *Patel*, 135 S. Ct. at 2451. "When assessing whether a statute meets this standard, the Court...[considers] only applications of the statute in which it actually authorizes or prohibits conduct." *Id.*

However, the Court "neither want[s] nor need[s] to provide relief to nonparties when a narrower remedy will fully protect litigants," and follows a "policy of avoiding unnecessary adjudication of constitutional issues[.]" *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 478 (1995) (limiting relief to the parties before the Court in light of plaintiffs' constitutional challenge to validity of statute). Thus, the Court may consider Plaintiffs' facial challenge to Section 4615 only with respect to the parties in the instant action, *i.e.*, as an as-applied challenge, under prevailing precedent. *See, e.g., id.*[12]

[12] Here, to prevail on their facial challenge to Section 4615, Plaintiffs must show that staying all liens associated with an accused, irrespective of the lien's relationship to the fraud alleged, violates the constitution. While the scope and character of liens associated with any given provider will inevitably vary in number and character, Plaintiffs'

B. Constitutional Claims

Plaintiffs challenge Section 4615 on five constitutional grounds: (1) Sixth Amendment Right to Counsel (2) the Contracts Clause (3) Substantive Due Process (4) "Procedural" Due Process and (5) the Supremacy Clause. *See generally* Compl. For the purposes of its Preliminary Injunction analysis the Court discusses each in turn.

1. Sixth Amendment Right to Counsel

a. Likelihood of Success on the Merits

Anguizola argues that Section 4615 violates his Sixth Amendment right to counsel because, as a result of his medical fraud charges, the Statute has frozen all lien debt owed to any of his medical practices, rendering him incapable of retaining counsel in his defense. *Id.* ¶ 14; *accord* McClanahan Decl., at ¶¶ 3-4, 7. In support of these contentions Anguizola submits a declaration from Dania McClanahan, his business officer manager. *Id.* ¶ 1.

Defendants counter that, as a matter of law, Section 4615 does not violate the Sixth Amendment, just because it may negatively affect Anguizola's business. Opp'n at 10:6-20. Defendants further argue that the McClanahan declaration is insufficient to demonstrate that Anguizola is actually unable to retain counsel as a result of Section 4615. *Id.* at 12:3-8.

"[T]he Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire." *Luis v. United States*, 136 S. Ct. 1083, 1089 (2016). This right is fundamental. *Id.*

In *Luis*, the Supreme Court held that pretrial restraint of a criminal defendant's untainted assets infringes on the Sixth Amendment where those assets are needed to retain counsel. *Id.* at 1096. Importantly, *Luis* involved an *as-applied* challenge to a single court order that froze assets that were, as a matter of undisputed fact, (1) unrelated to any criminal activity, and (2) necessary in order for the defendant to retain the counsel of her choosing. *Id.* at 1088. In evaluating the constitutionality of the order the Court recognized that the seizure of the assets itself "does not,

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facial challenge concerns only those accused providers who actually have liens frozen by the Statute. This is because the government action actually permitted by the Statute, the stay of a provider's liens regardless of any connection between that lien and the crime alleged, is the focus of the inquiry. In other words, the fact the statute would have no effect on the constitutional rights of an uncharged provider, or a charged provider with no outstanding liens, will not necessarily save the statute from a facial challenge. *See Patel*, 135 S. Ct. at 2451. Similarly, just because a provider may exist whose only outstanding liens all stem from the actual criminal charges, a facial challenge is not defeated if his or her rights are not affected by the statute. *Id.* Presumably even without the statute, the state may stay or otherwise encumber liens directly at issue in the criminal proceedings through other means. If that is indeed the case, then under *Patel*, the statute's effect on those liens is irrelevant to the Court's analysis of Plaintiffs' facial challenge. *Id.*

deny Luis' right to be represented by a qualified attorney whom she chooses and can afford." *Id.* at 1089. However, the order would still violate the Sixth amendment right to counsel if it "would undermine the value of that right by taking from Luis the ability to use the funds" needed to pay her chosen attorney. *Id.* The Court ultimately struck down the order on Sixth Amendment grounds. *Id.* at 1093.

The thrust of the Court's analysis focused on the so-called, "untainted" nature of the assets subject to the order. *Id.* 1090-91. In reversing the lower court's order, the Court held, in part, that the state's interest in the property – to ensure its punishment of choice through criminal fines – was outweighed by Luis' right to use his untainted assets to the extent he needed them to select counsel of his choosing.[13] *Id.* at 1093.

The Court distinguished the *Luis* case from *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 630 (1989) and *United States v. Monsanto*, 491 U.S. 600, 615 (1989) – in which it had rejected Sixth amendment challenges to criminal forfeiture laws - based on differences in the nature of the assets involved. *See id.* at 1089-90 ("In our view, however, the nature of the assets at issue here differs from the assets at issue in those earlier cases. And that distinction makes a difference.") The Court observed that unlike in the case before them, the Court's prior rulings had dealt only with seizure of property "tainted" with crime. *Id.* at 1090-1091; *see also Caplin & Drysdale*, 491 U.S. at 630; *Monsanto*, 491 U.S. at 615. The Court found this distinction was crucial because both *Caplin & Drysdale* and *Monsanto* placed great significance on the "tainted" nature of the assets in question. *Luis*, 136 S. Ct. at 1091-92; *Caplin & Drysdale*, 491 U.S. at 626-628. The Court noted that in those cases, it had borrowed principles from property law and found that (1) the government gains a property interest in tainted assets at the time those assets are used for criminal purposes, and (2) the criminal defendant's ownership interest in tainted assets was itself imperfect. *Id.* at 1092; *see also Caplin & Drysdale*, 491 U.S. at 619-620.

The *Luis* Court observed that assets tainted with criminal activity are decidedly different from the assets owned, "pure and simple" by Luis. *Luis*, 136 S. Ct. at 1090. In other words, the

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[13]Justice Breyer's majority opinion cited two other rationale. *Id.* at 1093-94. Justice Breyer first discussed 19th century common law and historical practice whereby an accused's chattels were not said to be possessed by the crown until after a conviction was entered. *Id.* Justice Breyer's final rationale was that to allow seizure of untainted assets in the case at bar would provide the government with a wide-reaching tool to use against criminal defendants accused of a wide-range of crimes. *Id.* at 1094-95. Such a development, if it were to occur would render a greater and greater class of criminal defendants indigent and in need of publicly funded counsel. *Id.*

government's interest in untainted assets was substantially less than in assets tainted by criminal activity. The takeaway from *Luis*, and its discussion of the Court's prior precedent, is that (1) the nature of the assets at issue, and the government's interest in those assets are crucial in determining whether a pretrial restraint on property will undermine the Sixth Amendment, (2) the government's interest – acquired through property law at the time of the crime – in tainted assets generally outweighs a criminal defendant's right to use those assets to obtain counsel, and (3) the government's interest in untainted assets does not outweigh a criminal defendant's right to use those funds to the extent they are required in order to pay for an attorney of his or her choosing. *Id.* at 1093. In short, pretrial restraint of tainted assets does not violate the Sixth Amendment; restraint on untainted assets, owned free and clear by a criminal defendant may. *Id.*

Plaintiffs rely heavily on *Luis* and argue that because Section 4615 stays all liens associated with a charged provider, and not just those liens related to criminal activity, it restrains the same type of untainted assets at issue in *Luis*. Mot. 11:18-12:16. Plaintiffs further contend that, like in *Luis*, Anguizola, and other charged providers are unable to afford counsel of their choosing as a result of the lien freeze. Mot. 12:5-17. Thus Plaintiffs argue, the Statute places a pretrial restraint on untainted assets that, under *Luis*, violates Plaintiffs' Sixth Amendment right to counsel. *Id.* Plaintiffs also argue, but not until their Reply, that the Court should consider public comments by Director Baker that they contend show that Section 4615 was enacted in order to interfere with litigants' right to counsel. Reply at 13:8-15:16. As legal support Plaintiffs reference the recent decisions concerning the President's "Travel" bans. *Id.* They also direct the Court to certain public statements by Ms. Baker. *See* Pls.' AOE, at pp. 283-85.

Plaintiffs' legal theory is not without some appeal. Like the court order in *Luis*, Section 4615 freezes assets (in this case liens representing services rendered) "untainted" by fraud until the conclusion of criminal proceedings. Cal. Lab. Code § 4615; Opp'n at 10 (not contesting the statute's application to liens unrelated to criminal charges). Also like *Luis*, staying all of Anguizola's liens could, at least plausibly limit his ability to retain counsel. Additionally, nothing in *Luis* suggests its holding should be strictly limited to liquid assets in a bank account. *See United States v. Stein*, 541 F.3d 130, 157 (2nd Cir. 2008) ("In a nutshell, the Sixth Amendment protects against unjustified governmental interference with the right to defend oneself using whatever assets one has or might reasonably and lawfully obtain."); *see also U.S.*

v. One Residential Property, 733 F.Supp. 1382, 1386 (S.D. Cal. 1990) (applying Supreme Court's criminal forfeiture jurisprudence to civil litigation). Finally, comments from the legislative record indicating that the lien freeze provision contained in Section 4615 was added late in the legislative process at the direct request of district attorneys is troubling, as is the fact the Statute freezes the liens only for the duration of the criminal proceeding. Cal. Lab. Code § 4615.

On the other hand, there are significant factual differences in the nature of the assets seized in *Luis*, owned "plain and simple by the criminal defendant," and the liens at issue here, despite the fact both may be "untainted" by crime. As discussed above, understanding these differences is crucial to determine if the pretrial restraint imposed by Section 4615 violates the Sixth Amendment.

A workers' compensation lien is a statutory creation of the state of California and heavily subject to regulation. *See Angelloti*, 791 F.3d at 1081 ("The right to workers' compensation benefits is 'wholly statutory.'"); *see also id.* at 1078-79 (describing statutory basis for worker's compensation liens and procedures for enforcement); Cal. Lab. Code § 4903(b) (permitting lien for reasonable expenses for medical treatment to injured workers); Cal. Lab. Code § 4600(a), (f). The statutory origin of the liens at issue has several consequences. First, it means the state has a strong interest in the lien and in ensuring the conditions precedent to its enforcement are met. This interest predates and is unrelated to any criminal act a provider commits within the lien system but instead grows out of the state's establishment and maintenance of the workers' compensation system.

Second, *almost by definition* a lien is not owned "plain and simple" by an accused provider. *See* Cal. Lab. Code § 3600 (listing preconditions for collection on a lien). The lien is simply a statutory means by which the state helps ensure workers can access medical care. The provider, the state, and the worker treated, therefore have an interest in the liens frozen by the Statute. *See* Cal. Code Regs. Tit.8, § 10301(dd) (listing the parties capable of initiating a lien conference to resolve pending liens, including worker's, the state, and certain lien holders); Cal. Code Regs. Tit. 8, § 10770.1 (a)(1) (allowing a lien claimant, who is also a "party" to initiate a lien conference). As such, a provider's interest in a given lien is imperfect at best. For these reasons the Court does not agree with Plaintiff's argument that the line drawn in *Luis* between tainted and untainted assets, is determinative here. Indeed, *Luis* makes clear that the nature of

the property, and the state's interest therein is crucial to the Sixth Amendment analysis. *See* Luis, 136 S Ct. at 1090; *see also supra* 10-11 (discussing *Luis'* treatment of prior Supreme Court precedent). In short, 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.

Additionally, *Luis*, and rest of Plaintiffs' cited authority concerns court orders pertaining to single criminal defendants whose assets were seized pursuant to facially constitutional criminal forfeiture statutes. *See* Mot. 11:18-14:1. Nonetheless Plaintiffs ask this Court to strike down an entire piece of legislation because one accused medical provider potentially cannot afford an attorney. The legal coherence of Plaintiffs' Sixth Amendment claim, particularly when it is considered as a facial challenge is fragile at best.

Further, as Defendants point out, *Luis* involved an "as applied" challenge to a single court order freezing assets that, the record established were not connected to criminal activity, and necessary for the defendant to obtain counsel. Opp'n at 11. Here, Plaintiffs bring a facial challenge, and must meet a higher burden than the defendant in *Luis*. *See supra* Section III.A (describing standard or As-Applied challenges). To that end, Plaintiffs submit no evidence tending to show that the economic effects of the Statute on Anguizola, are in any way typical of the providers that Statute effects generally. Presumably, not every effected physician's sole means of attaining counsel is through the enforcement of pending liens.

Additionally, even if the Court were to address the Statute's application to Anguizola, the record is threadbare and amounts to a conclusory statement by his office manager that he is suffering severe financial distress as a result of Section 4615. McClanahan Decl. ¶ 7. There is no evidence Dr. Anguizola has no personal assets with which to mount his defense, or any professional liability insurance. Further, there is no evidence, or explanation as to how, were the Court to stay Section 4615, Anguizola would immediately gain access to funds. As detailed above, a provider is only entitled to collect on liens upon completion of various steps. Cal. Lab. Code § 4600.

To enjoin the Statute, even as it applies to Anguizola, the Court needs more than a sentence of declaration testimony professing the general financial distress of a single doctor. *See e.g.*, *United States v. Lindell*, CR No. 13-00512 DKW, 2016 U.S. Dist. LEXIS 122631, *31 (D. Haw. September 8, 2016) (distinguishing *Luis* from a plaintiff that could not show the assets seized would have enabled him to seek counsel). While the Court would not go so far as to hold

Plaintiffs' Sixth Amendment claim is wholly deficient as a matter of law, Plaintiffs have shown only a speculative likelihood of success on the merits of the challenge, particularly when it is evaluated as a facial challenge to Section 4615.[14]

In sum, the Court would find that Plaintiffs have shown only a minimal likelihood of success on the merits of their Sixth Amendment claim, particularly if it is evaluated as a facial challenge to Section 4615. Anguizola's likelihood of success is higher as the statute applies to him, but not significantly so.

b. Remaining Preliminary Injunction Factors

The Court would find that the actual deprivation of the fundamental right to counsel would constitute irreparable harm. *Goldie's Bookstore v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated General Contractors of California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir.1991). Further, the public interest is served by avoiding constitutional deprivations, "because all citizens have a stake in upholding the Constitution." *Preminger v. Principi*, 422 F.3d 815, 825 (9th Cir. 2005); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights."). However, for the reasons stated above, the Court would conclude that Plaintiffs have not established that the balance of equities clearly weighs in their favor based upon their Sixth Amendment contentions.

c. Conclusion

In light of Plaintiffs' failure to demonstrate a sufficient likelihood of success on the merits as to their Sixth Amendment claim, the Court would deny Plaintiffs' Motion for a Preliminary Injunction to the extent it is asserts Plaintiffs' Sixth Amendment right to counsel as grounds to enjoin Section 4615.

2. Contract Clause

a. Likelihood of Success on the Merits.

i. Overview of Federal and State Contract Clauses

The Contract Clause prohibits states from passing "[l]aw[s] impairing the Obligation of

[14] Plaintiffs' evidence and argument concerning the purposes of Section 4615 do not necessarily improve the likelihood of success on the merits. First, unlike the Equal Protection challenges at issue in the recent swath of constitutional challenges to President Trump's "Travel" Ban, Plaintiffs point to no authority giving legal significance to the potential presence of nefarious intent in a Sixth Amendment challenge. Second, the Court does not necessarily share Plaintiffs' reading of Director Baker's comments which could just have easily related to concerns that charged lien-holders were spending ill-gotten gains on their defense. *See* Pls.' AOE, at pp. 283-85.

Contracts[.]" U.S. Const., art. I, § 10, cl. 1 (West 2017); *see also, e.g.*, *Southern California Gas Co. v. City of Santa Ana*, 336 F.3d 885, 886-87 (9th Cir. 2003). In determining the constitutionality of a statutory provision under the Contract Clause, courts consider "whether the change in state law has 'operated as a *substantial impairment* of a contractual relationship." *Gen. Motors Corp. v. Romien*, 503 U.S. 181, 186 (1992) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)) (emphasis added). That inquiry includes: (1) whether a contract exists as to the specific terms allegedly at issue; (2) whether a change in law impairs an obligation under the contract; and (3) whether the impairment is fairly characterized as substantial. *See id.*; *see also RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1147 (9th Cir. 2004) (quoting *Allied Structural Steel Co.*, 438 U.S. at 244); *San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement Sys.*, 358 F.3d 725, 736-37 (9th Cir. 2009) (citations omitted).

Generally speaking:

> [T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

Allied Structural Steel Co., 438 U.S. at 2722-23. "The severity of the impairment" increases "the level of scrutiny to which the legislation will be subjected," although "[t]otal destruction of contractual expectations is not necessary for a finding of substantial impairment," and "state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment." *See Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983) (citations omitted). Moreover, in ruling on the substantiality of any discernable impairment of contractual obligations imposed by the challenged statute, the court should "consider whether the industry the complaining party has entered has been regulated in the past." *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242 n.13).

If the court determines that a change in state law works to the "substantial impairment of a contractual relationship," *see Gen. Motors Corp.*, 503 U.S. at 186, the court addresses whether "the State's police power permits the impairment because it is 'reasonable and necessary to serve

an important purpose,'" *California Hosp. Ass'n v. Maxwell-Jolly*, 776 F. Supp. 3d 1129, 1141 (E.D. Cal. 2011) (quoting *State of Nevada Emps. Ass'n v. Keating*, 903 F.2d 1223, 1226 (9th Cir. 1990)).

Similarly, the Contract Clause of the California Constitution provides that "law[s] impairing the obligation of contracts may not be passed." Cal. Const. art. 1, § 9 (West 2017). Courts adjudicate California Contract Clause claims under the same standard as the federal Contract Clause.[15] *See, e.g.*, *Campanelli v. Allstate Life Ins.*, 322 F.3d 1086, 1097 (9th Cir. 2003) ("The California Supreme Court uses the federal Contract Clause analysis for determining whether a statute violates the parallel provision of the California Constitution.") (citing *Calfarm Ins. Co. v.* Deukmejian, 771 P.2d 1247, 1262-63 (Cal. 1989) (en banc)); *Retired Emps. Ass'n of Orange County, Inc. v. County of Orange*, 610 F.3d 1099, 1102 (9th Cir. 2010); *De Zewart v. Victorville Water Dist.*, No. CV 12-03087-MWF (SPx), 2012 WL 12887750, at *2 (C.D. Cal. Nov. 26, 2012). For the purpose of this analysis, the Court follows the previously elucidated federal standard.[16]

ii. Analysis[17]

Plaintiffs do not allege that Section 4615 violates the Contract Clause "in all of its applications." *Morrison v. Peterson*, 809 F.3d 1059, 1064 (9th Cir. 2015) (citation omitted). Instead, Plaintiffs allege that "Section 4615 unconstitutionally impairs the obligation of contracts in violation of Plaintiffs' rights," and thus "Plaintiffs are entitled to a . . . preliminary and permanent injuncti[on.]" *See* Compl. ¶¶ 48, 50. Plaintiffs also aver that "[e]ntities or third parties who purchased receivables for good value under valid contracts" now cannot "enforce[e] their contractual rights, violating the Contract Clause of the United States Constitution and the California Constitution." *Id.* ¶ 8.

Plaintiffs reiterate these conclusions in the Motion, arguing that "Section 4615 clearly impairs medical providers' contract rights on a retroactive basis, thus violating the Contracts

[15] The parties appear to agree that the same substantive legal standard governs both Plaintiffs' federal and state Contract Clause claims. *See* Mot. at 16 n.16; Opp'n at 12-15. However neither party addresses whether or not a violation of a state constitution is actionable under Section 1983.

[16] *See supra* Part III(B)(2).

[17] As a preliminary matter, the Court would inquire as to *which* Plaintiffs seek injunctive relief in relation to the Contract Clause claims, as the Motion does not specify which Plaintiffs seek relief under the Contract Clauses of the United States and California Constitutions. As the Complaint specifies that the second claim for relief is brought by "[a]ll Plaintiffs against all Defendants," for the purposes of this analysis the Court takes Plaintiffs at their word. *See* Mot. at 18; Opp'n at 12 n.7.

Clause." Mot. at 14:21-22; *accord* Compl. ¶¶ 47-50. In support of the Motion, Plaintiffs generally argue that:

> [B]y barring payments for services that insurers approved *before* the law was passed, and by barring payments for services that insurers approved *before any fraud is alleged to have occurred*, the government is retroactively and improperly impairing the doctors' contract rights pursuant to which they provided professional services in return for a fee. Now that doctors have provided a service in reliance on their contractual right to payment, the California Legislature has suddenly interfered, leaving doctors uncompensated and virtually incapable of being compensated. . . . Obviously, this situation has deleterious effects on the doctors, who face being unpaid for years of professional services wholly unconnected to any wrongdoing. Patients, too will suffer . . . .

Mot. at 14:22-15:10. Plaintiffs also warn that "if enough physicians are driven from this sector of the profession, injured workers may not be able to obtain treatment at all," concluding that "[i]t is difficult to imagine a situation that more blatantly contravenes the clear requirements of the Contract Clause." *Id.* at 15:12-15.

Despite apparently retaining confidence in the merits of their Contract Clause claims – as evidenced by the conclusory statements previously discussed, *see, e.g.*, Mot. at 4:21-22; Compl. ¶¶ 47-50 – Plaintiffs nevertheless fail to show that Section 4615 impairs contractual relationships in all relevant circumstances, let alone with respect to their own contractual relationships. Plaintiffs fail to demonstrate the likelihood of success on each of the three prongs of the Contract Clause analysis: (1) existence; (2) impairment; and (3) substantiality.[18]

Initially, "Plaintiffs did not provide any contracts for the Court's analysis in connection with the Contracts Clause claim," instead leaving the Court to evaluate only "three declarations, one from [Goodrich], . . . one from the general counsel of Vanguard, and one from the office

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[18] *See generally supra* Part III(B)(2)(a):

> That inquiry includes: (1) whether a contract exists as to the specific terms allegedly at issue; (2) whether a change in law impairs an obligation under the contract; and (3) whether the impairment is fairly characterized as substantial. *See id.*; *see also RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1147 (9th Cir. 2004) (quoting *Allied Structural Steel Co.*, 438 U.S. at 244); *San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement Sys.*, 358 F.3d 725, 736-37 (9th Cir. 2009) (citations omitted).

Id.

manager of the One Stop entities." Opp'n at 8:3-7; *accord* Declarations, Docket No. 13-1. Despite acknowledging their burden to demonstrate that Section 4615 substantially impairs *the specific terms* of *existing contracts*, Plaintiffs fail to cite to any contract or contracts allegedly impaired by Section 4615. *See* Mot. at 17; *accord* Opp'n at 14. *See generally* Mot. at 14-20. Plaintiffs' Declarations in Support of the Motion similarly fail to substantiate the existence of any contract or contracts impaired by Section 4615. Although Plaintiffs cite to a single purported contract, they still fail to provide specification regarding the validity and terms of the deal. *See* Korechoff Decl. ¶ 3 (referencing an alleged contract between Vanguard and "Proove Biosciences, Inc." for the right to purchase receivables in the form of medical treatment liens). Thus, Plaintiffs have failed to even identify the existence of a contract "as to the specific terms allegedly at issue." *See Gen. Motors Corp. v. Romien*, 503 U.S. 181, 186 (1992) (citation omitted). To the extent Plaintiffs do identify any specific terms of existing contracts, they nevertheless fail to demonstrate impairment of contractual obligations – let alone substantial impairment in all relevant circumstances. *See generally* Mot. at 14-20; Opp'n at 13-15.

Furthermore, the industry Plaintiffs have entered into – the medical service industry – "has been regulated in the past," thereby subjecting Plaintiffs to a heightened burden with respect to the substantiality of any discernable impairment to existing contractual obligations. *See Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983); *accord* discussion *supra* Part I (detailing the promulgation of the workers compensation lien system, pursuant to the legislature's police power under the California Constitution). Even if Plaintiffs adequately set forth existing contractual obligations discernibly impaired by enforcement of Section 4615, Plaintiffs do not satisfy the heightened burden of substantial impairment imposed on "regulated" industries such as medical services. For example, Plaintiffs' conclusory statement that "even a rudimentary examination reveals . . . the severity of Section 4615's impairment of contracts" because "[t]he law flatly prohibits the affected providers from obtaining *any* of the benefit of their bargain" presumes that any contracts have been specified. The Court cannot effectively assess the substantiality of discernable impairment to contractual obligations under *Energy Reserves* without specification of the contracts allegedly impaired. Moreover, Plaintiffs' characterization of substantiality as "[a]ny law that decreases the efficiency of the legal enforcement of a contract" is both outdated and overbroad in the immediate context, *see* Mot. at 15-16 (citing *Louisiana v. City of New Orleans*, 102 U.S. 2013, 207 (1880)), and

Plaintiffs' reliance on *Maxwell-Jolly* is misplaced in light of Plaintiffs' failure to set forth the existence of any relevant contracts with specific terms impaired by the change in law, *see California Hospital Ass'n v. Maxwell-Jolly*, 776 F. Supp. 2d 1129, 1140-41 (E.D. Cal. 2011) (granting injunction where plaintiff alleged that statute nullified specific provisions of existing Medi-Cal contracts between hospitals and the government).[19]

Thus, Plaintiffs fail to demonstrate that they are likely to prevail on the merits of their Contract Clause claim with respect to their alleged individual contracts, let alone with respect to "all applications of [Section 4615] in which the statute actually authorizes or prohibits conduct[.]" *See Patel*, 135 S. Ct. at 2451 (citation omitted). Plaintiffs' Motion therefore fails, at least as to the Contract Clause claims.[20]

3. Due Process

a. Likelihood of Success on the Merits

"No person shall be deprived of life, liberty, or property without due process of law." U.S. Const. AMEND. V. The Supreme Court has recognized two types of due process, one substantive and one procedural:

> The Due Process Clause protects individuals against two types of government action. So-called "substantive due process" prevents the government from engaging in conduct that "shocks the conscience," *Rochin v. California*, 342 U.S. 165, 172 (1952), or interferes with rights "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U.S. 319, 325-326 (1937). When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). This requirement has traditionally been referred to as "procedural due process."

U.S. v. Salerno, 481 U.S. 739, 746 (1987). Plaintiffs challenge the statute on both substantive and procedural due process grounds.

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[19] Having determined that Plaintiffs do not satisfy the three-prong Contract Clause analysis, the Court need not discuss whether the Code is "reasonably necessary to serve an important public purpose." *California Hosp. Ass'n v. Maxwell-Jolly*, 776 F. Supp. 3d 1129, 1141 (E.D. Cal. 2011) (quoting *State of Nevada Emps. Ass'n v. Keating*, 903 F. 2d 1223, 1226 (9th Cir. 1990)). The Court is unpersuaded by Plaintiffs' arguments and would conclude that, at this time, they are unlikely to prevail in asserting that "[the State's] obligation not to impair contracts" outweighs "the State's inherent police power to safeguard its people's interest[.]" *See* Mot. at 18 (citation omitted).

[20] Because Plaintiffs fail to show likelihood of success on the merits the Court does not specifically address the other factors.

i. Substantive Due Process and Retroactivity

Plaintiffs argue the Statute violates substantive due process because it is retroactive in nature in that it stays liens that predate its passage. *See* Mot. at 21:15-22:1. Defendants counter that Section 4615 is not retroactive, and, even if it were, its retroactivity is justified by a rational legislative purpose. *See* Opp'n at 18:5-23.

The government violates substantive due process rights when the action shocks the conscience, or is not justified by a rationale, non-punitive justification. *Salerno*, 481 U.S. at 746. To survive rational basis, the government need only show that the challenged statute could conceivably further a state interest. *See Angelotti*, 791 F.3d at 1086 ("On rational basis review, the burden is on plaintiffs to negate every conceivable basis… [for the statute"); *see also Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080-81 (2012) ("Because the classification is presumed constitutional, the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.").

Generally, retroactive legislation raises due process concerns. However, "a statute does not operate retrospectively 'merely because it is applied in a case arising from conduct antedating the statute's enactment, rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment." *Landgraf v. Usi Film Prods.* 511 U.S. 244, 269-70 (1994). Furthermore, even if a statute is retroactive it is still constitutional if it is justified by a rational purpose. *Angelotti*, 791 F.3d at 1084.

Here, the Defendants contend the stay is necessary to ensure the efficient, just, and orderly administration of the worker's compensation scheme. *See* Opp'n at 4:11-6:4 (describing anti-fraud purpose of Section 4615); *see also* 2016 Cal. Stat. ch 868 § 7 (SB 1160).[21] Defendants contend fraud is widespread and that a small number of providers make up the bulk of the liens

[21] Section 16 states as follows:

> Therefore, in order to ensure the efficient, just, and orderly administration of the workers' compensation system, and to accomplish substantial justice in all cases, the Legislature declares that it is necessary to enact legislation to provide that any lien filed by, or for recovery of compensation for services rendered by, any provider of medical treatment or other medical-legal services shall be automatically stayed upon the filing of criminal charges against that provider for an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the federal Medicare or Medi-Cal programs, and that the stay shall remain in effect until the resolution of the criminal proceedings.

Id.

that potentially relate to fraud. *See* Opp'n at 17 n. 2. As a result, staying the enforcement of the thousands of liens already in the system advances the anti-fraud purposes of the statute by preventing collection on potentially fraudulent liens. *See Angelloti*, 791 F.3d at 1084 (upholding lien fee statute's retroactivity based state interest in clearing backlog of liens). Moreover, Plaintiffs bear the burden of proving that there is no conceivable basis for the retroactive nature of Section 4615. They have thus far failed to do so.

Further, it is unclear whether Section 4615 is truly retroactive: it simply stays currently pending liens. *See* Cal. Lab. Code § 4615. The only liens effected by the Statute have yet to be resolved through the system. The Statute has no effect on liens that have already been adjudicated and whose benefits have already vested. *See Angelloti*, 791 F.3d at 1082-83 (holding that liens do not vest until final judgment in the WBAC proceeding). The fact pending liens arise out of treatment previously provided does not render changes to the procedures for lien enforcement necessarily retroactive. *See Landsgraf*, 511 U.S. at 269-70.

Also, even assuming Section 4615 is retroactive the state has justified its retroactivity as a means to prevent fraud. *See* Opp'n at 4:11-6:4 (describing anti-fraud purpose of Section 4615); *see also* 2016 Cal. Stat. ch 868 § 7. Furthermore, Plaintiffs fail to negate every conceivable basis which might support the retroactivity of Section 4615. *See Angelotti*, 791 F.3d at 1086 ("On rational basis review, the burden is on plaintiffs to negate every conceivable basis… [for the statute"); *see also* Armour, 132 S. Ct. at 2080-81.

In sum, Plaintiffs are unlikely to show that Section 4615 is retroactive in nature. However, even assuming Section 4615 is retroactive, Plaintiffs are unlikely to show it is not rationally related to a legitimate state purpose. The Court would therefore not enjoin Section 4615 on substantive due process grounds.[22]

ii. Procedural Due Process

Plaintiffs argue Section 4615 also violates the procedural component of the due process clause because it immediately stays all liens without notice or a hearing. Mot. at 24:1-19. Defendants respond that (1) liens themselves are not interests protected by the Constitution, and (2) even if they are, Section 4615 affords sufficient process because Plaintiffs still have the same rights afforded to them by the workers' compensation scheme generally. Opp'n at 19:24-20:5.

[22] Because Plaintiffs fail to show likelihood of success on the merits the Court does not specifically address the other factors.

As discussed more below, Defendants do not explain how these pre-existing procedures would actually be used to challenge a stay imposed by Section 4615.

The Fourteenth Amendment prohibits states from "depriv [ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. This protection includes a right to fair and adequate process when the government takes something away from an individual. *See Eldridge*, 424 U.S. at 335. However, "the requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Bd. Of Regents v. Roth*, 408 U.S. 546, 569 (1972). Importantly, this protection encompasses some state created interests that attain "constitutional status by virtue of the fact that they have been initially recognized and protected by state law." *Paul v. Davis*, 424 U.S. 692, 710-11 (1976). Such interests are protected even though they "derive not from the Constitution but from 'existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.'" *Gallo v. U.S. Dist. Court*, 349 F.3d 1169, 1178 (9th Cir. 2003) quoting *Roth*, 408 U.S. at 577. Though created by state law, it is "[F]ederal constitutional law [that] determines whether a given interest...is... protected by the Due Process Clause." *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9 (1978) (internal quotation marks omitted).

Thus, "a [procedural] due process claim has two elements: (1) a deprivation of a protectable interest, and (2) denial of adequate procedural protections. *See Goldberg v. Kelly*, 397 U.S. 254 (1970)." *G & G Fire Sprinklers, Inc. v. Bradshaw*, 156 F.3d 893, 901 (9th Cir. 1998) vacated on other grounds by *Bradshaw v. G & G Fire Sprinklers, Inc.*, 526 U.S. 1061 (1999). To determine whether the deprivation at issue is in fact a protectable interest, the court applies federal constitutional law to"[evaluate] what type of interest has been deprived, and (2) whether that interest is protected by the Due Process Clause." *Id.*

iii. *Liens as Protectable Interests*

The liens at issue are creatures of California statute. *See Angelotti*, 791 F.3d at 1078-79 (describing statutory basis for workers' compensation liens and procedures for their enforcement); Cal. Lab. Code § 4903(b) (permitting lien for reasonable expenses for medical treatment provided to injured workers). The filing of a lien is the provider's sole legal mechanism for collecting from the worker for the services rendered. *See* Cal. Lab. Code § 5300

(establishing exclusive jurisdiction of the WCAB.); *Fitzpatrick v. Fidelity & Casualty Co.*, 7 Cal.2d 230, 233 (1936) ("The recovery for an injury sustained by or the death of an employee comes within the provisions of the Workmen's Compensation Act, the Industrial Accident Commission has exclusive jurisdiction and the superior court may not entertain an action for damages against the employer or his insurance carrier"); *Independence Indem. Co. v. Industrial Acci. Com.*, 2 Cal.2d 397, 404-05 (1935) ("[Workers' Compensation statutory scheme] confers upon the Commission jurisdiction over all controversies involving doctors' claims for medical services rendered an injured employee, with the exception of those cases in which an express agreement fixing the amount to be paid for the services has been entered into between the doctor and the employer or insurance.") In other words, subject to an exception not applicable here, providers who have proffered services to an injured worker, backed by a lien, cannot sue the worker, employer, or an insurance company in state court to compel payment for the services provided.

Before the enactment of Section 4615, all lien holders were provided certain notice and hearing rights within the statutory scheme. These included notice of, and the ability to participate in lien conferences and lien trials. *See* CCF, 10770.1(i) ("The Workers' Compensation Appeals Board shall either serve or . . . cause to be served notice on all lien claimants of each hearing scheduled, whether or not the hearing directly involves that lien claimant's lien claim.") Lien holders may also initiate a lien conference, but only after one of two events take place: (1) the case has been resolved, or (2) the injured employee chooses not to proceed with the case. *See* Cal. Code Regs. Tit.8, § 10301(dd) (defining when lien holder becomes a "party"); Cal. Code Regs. Tit. 8, § 10770.1(a)(1) (allowing a lien claimant, who is also a "party" to initiate a lien conference).

Consistent with this regulatory framework, California courts have long recognized lien holders have due process rights. *See Kaiser Co. v. Industrial Acci. 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*, 245 Cal.App.4th at 1387-88 (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*, 436 U.S. at 9. 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. Defendants' citation to *Angelloti* for this premise is inaccurate. In *Angelloti*, the Ninth Circuit held that a lien did not constitute the type of vested property interest that would implicate the Constitution's Takings Clause. *See Angelotti*, 791 F.3d at 1083-84. *Angelloti* did not involve a procedural due process challenge, and, to the extent the Ninth Circuit addressed due process at all, it performed a substantive due process analysis and held the statute at issue was justified by a rational legislative purpose. *Id.* The rest of Defendants' cited authority is similarly inapplicable.[23]

Upon the Court's own review, it could not locate a single Ninth Circuit case precluding due process protection for a medical provider who has filed a lien in the state workers' compensation system. In fact, in *Erickson v. United ex rel. Dep't of Health & Human Ser.*, 67 F.3d 858, 863 (9th Cir. 1995), the Ninth Circuit recognized that doctors have a protectable liberty interest (though not necessarily a property interest) in continued participation in programs such as Medicaid and Medicare. *Erickson* is informative because it suggests that, even if a lien claimant's property interest in the potential windfall from a lien is too contingent to be afforded due process protection, the provider's continued participation in the workers' compensation

[23] Defendants cite *Wilson v. Lynch*, 835 F.3d 1083, 1098 (9th Cir. 2016), for the proposition that only vested interests receive due process protections. Opp'n at 20:6-18. The plaintiff in *Wilson* sought due process for the right to own a firearm and a Registry card at the same time, a right not recognized by any constitution, or statute, state or federal. *Lynch*, 835 F.3d at 1098. Another case relied on by Defendants, *Weaver v. Graham*, 450 U.S. 24, 28-30 (1981) dealt with an ex post facto clause challenge and only referenced the general proposition that "whether a right has vested is important for claims under the Contracts or Due Process Clauses, which solely protect pre-existing entitlements." The only other case cited by Defendants, *Brenizer v. Ray*, 915 F.Supp. 176, 181 (C.D. Cal. 1995), involved plaintiffs claiming a right to provide water service pursuant to government contracts. Unlike those cases, Plaintiffs here used an established statutory mechanism to file liens within the adjudicative setting of California's worker's compensation system.

system likely would be.[24]

Finally, a lien holder participates in a forum that though administrative in character is the state's exclusive venue for adjudicating workers' compensation claims. *See Kaiser*, 109 Cal.App.2d at 57-58 (1952). Absent direct authority compelling it to do otherwise, this Court is unwilling to accept Defendants' position that litigants, such as lien holders are not protected by constitutional due process in proceedings before the WBAC. At the very least, the Court is convinced that Plaintiffs have demonstrated a substantial likelihood that medical lien holders possess a protectable interest in their liens, and the right to have those liens administered by the WBAC.

iv. *Process Due*

Generally due process requires notice and an opportunity to be heard. *Eldridge*, 424 U.S. at 333. This is generally satisfied by an administrative hearing and depending on the circumstances that hearing need not even be a formal one. *Pinnacle, Inc. v. United States*, 648 F.3d 708, 717 (9th Cir. 2011).

Plaintiffs argue that Section 4615 affords *no* process through which to challenge the Statute's application to lien holders. Mot. at 24:13-19. Defendants counter that Plaintiffs are already afforded sufficient process through existing statute and regulation. Opp'n at 21:9-22:2.

The Court notes at the outset that Defendants do not plainly articulate the procedural effects of Section 4615 on existing liens. The term "stay" is not defined in the statute or related regulations, and Defendants do not ever explain just what that term means with regard to a lien claimant.[25] Defendants also claim that lien holders would be permitted to challenge the application of the stay to any lien through a lien conference. *See* Opp'n at 21:20-28. However,

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[24] *Compare Chorn*, 245 Cal.App.4th at 1387-88:

> The right to workers' compensation benefits is wholly statutory . . . , and, because lien claimants' rights to payment arise from the employee's right to compensation . . . , those rights too are statutory. Though such rights do not fully vest until they are reduced to final judgment . . . , they nonetheless are conferred by statute and as such trigger a right to procedural due process under the state Constitution (see Vacanti, supra, 24 Cal.4th at p. 811, 102 Cal.Rptr.2d 562, 14 P.3d 234 [lien claimants become parties in interest to WCAB proceedings and "receive[ ] full due process rights, including an opportunity to be heard"]).

[25] The Court would ask the following questions of Defendants: (1) Does the stay prevent charged lien holders from appearing and participating in lien conferences and lien trials? (2) Does it prevent charged lien holders from enforcing liens that are approved in those settings? (3) Does it affect the notice rights granted by state regulation? Until these questions are sufficiently answered, the Court would tend to agree with Plaintiffs that Section 4615 affords no due process to charged lien holders.

it is unclear how such a challenge would be brought and, as far as the Court is able to discern, lien holders subject to the stay would lack the immediate ability to initiate a lien conference. *See* Cal. Code Regs. Tit. 8, § 10301(dd) (defining when lien holder becomes a "party" to a workers' compensation case); Cal. Code Regs. Tit. 8, § 10770.1(a)(1) (allowing a lien claimant, who is also a "party" to initiate a lien conference). Defendants appear to admit as much in observing that a lien claimant is not considered a party for the purposes of a lien conference until certain preconditions are met, including resolution of, or voluntary dismissal of a given claim. *See* Opp'n at 3.

Further, even if a charged lien holder could plead his or her case at a subsequent lien conference, that conference would likely take place long after that physician's name was posted "promptly" on the state's website. Cal. Lab. Code § 4615(b) ("The administrative director shall promptly post on the division's Internet Web site the names of any physician or provider of medical treatment services whose liens were stayed pursuant to this action.") The Court would ask Defendants how a physician who believes his or her name has been posted on the web, or whose liens have been stayed erroneously is to be heard. While the Statute does permit the director to promulgate rules for the implementation of Section 4615 none appear to have been enacted. This only heightens the Court's suspicion that existing regulations do not directly provide an opportunity to challenge the application of Section 4615 to a given lien holder. Otherwise the legislation would have referenced those applicable regulations, instead of inviting the director to create new ones. If Defendants cannot prove to the Court that the Statute provides a charged lien holder with an opportunity to be heard to challenge Section 4615's application to his or her liens, the Court would be inclined to grant Plaintiffs' preliminary injunction on procedural due process grounds.[26]

b. Other Preliminary Injunction Factors

The Court would find that Plaintiffs would suffer irreparable harm in the form of a deprivation of their due process rights. *Goldie's Bookstore v. Superior Court*, 739 F.2d 466, 472

[26] The Court would order Defendants to provide supplemental briefing to address the Court's concerns raised herein. Specifically, the Court would ask Defendants to show how a charged lien holder can (1) challenge the presence of his or her name on the state's website, and (2) how he or she can challenge the stay on any given lien, or his or her liens generally. This briefing should include both citation to the relevant statutory provisions and regulations, as well as some evidentiary showing that the cited provisions do in fact afford process to lien holders. The Court would then engage in a full *Mathews/Eldridge* analysis to determine whether the process afforded is sufficient. The Court would note that it has serious concerns that the Statute as written affords no due process for lien holders whose liens are stayed pursuant to Section 4615.

(9th Cir. 1984); *Associated General Contractors of California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir.1991). Further, the public interest is served by avoiding constitutional deprivations, "because all citizens have a stake in upholding the Constitution." Preminger v. Principi, 422 F.3d 815, 825 (9th Cir. 2005); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)("[I]t is always in the public interest to prevent the violation of a party's constitutional rights.").

c. Conclusion

Plaintiffs have raised significant questions regarding Section 4615's ability to survive a procedural due process challenge. As noted above, the Court would give Defendants the chance to show what process Section 4615 actually provides to lien holders. If Defendants cannot show that the Statute and corresponding regulations provide due process to those lien holders, the Court would likely grant Plaintiffs' Motion and enjoin enforcement of Section 4615 until sufficient procedures are implemented.

4. Whether SB violates the Supremacy Clause

Pursuant to the Supremacy Clause, federal laws are the supreme law of the land, notwithstanding state laws to the contrary. U.S. Const. art. VI, cl. 2. Accordingly, it is axiomatic that state law that conflicts with federal law is without effect. Plaintiff contends that the statute violates the Supremacy clause because it conflicts with federal bankruptcy law. Mot. at 20.

Article I, section 8 of the Constitution empowers Congress "to establish uniform laws on the subject of bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. However, Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Butner v. United States*, 440 U.S. 48, 55 (1979); *see also Barnhill v. Johnson*, 503 U.S. 393, 398 (applying state law to define the nature and extent of property interests in a bankrupt estate in the absence of federal authority to the contrary). This is because "property interests are created and defined by state law." *Id.* Similarly, Congress explicitly directs bankruptcy "[trustees] to 'manage and operate the property in his possession according to the requirements of the valid laws of the state.'" *See Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 504 (1986) citing 28 U.S.C. § 959(b).

Plaintiffs provide no authority for the proposition that changes to California's Workers' Compensation laws violate the Supremacy Clause if they alter the value or enforceability of liens

under the possession of a bankruptcy trustee. Instead they cite to inapposite bankruptcy court decisions invalidating certain state contract rules pertaining to public union contracts. Mot. at 20. That is wholly different from Section 4615's potential effect on an estate that happens to contain liens subject to a stay. As Defendants rightly point out, were Plaintiffs correct, any state law or regulation potentially affecting property in a bankruptcy estate would violate the supremacy clause. The law says just the opposite. *See Butner v. United States*, 440 U.S. 48, 55 (1979).

In light of the above, Plaintiffs fail to establish any likelihood of success on the merits of their Supremacy Clause claim. As a result the Court would deny the motion as to that claim and need not address the other factors.

IV. Conclusion

The Court would DENY the motion for preliminary injunction on all grounds with the exception of Plaintiffs' procedural due process claim. The Court would order Defendants to provide additional briefing and evidence of the procedural rights afforded lien claimants affected by Section 4615.