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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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

Defendants.

Case No. **17-cv-00965-GW-DTB**

PLAINTIFFS' CROSS-RESPONSE RE ADDITIONAL EVIDENCE AND FINAL HEARING ON PRELIMINARY INJUNCTION

Hearing Information:
Date: August 31, 2017
Time: 8:30 a.m.
Place: United States Courthouse, 350 West 1st Street, Los Angeles, CA 90012, Courtroom D, 9th Floor

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PLAINTIFFS' CROSS-RESPONSE RE ADDITIONAL EVIDENCE AND FINAL HEARING ON PRELIMINARY INJUNCTION

Plaintiffs provide an overview of the status of this mater to inform the Court's ruling on the protocol for accepting additional evidence at this point in the proceedings:

Plaintiffs' constitutional challenge to Labor Code 4615 is predicated on a *facial* challenge to the statute. The Court acknowledged as much in its Tentative Ruling and at oral argument on the Motion for Preliminary Injunction ("PI Motion"), in which the Court: (1) observed that Plaintiffs' constitutional challenge is a facial one; (2) noted that the State failed to show that it provided *any* procedural due process rights to those aggrieved by the statute and was not prepared to even address what was clearly "the issue"; (3) expressed concern that the State failed to promulgate any regulations (despite specific Legislative authorization to do so within Labor Code 4915) affording aggrieved parties any due process rights; and (4) commented that the key defendant, Christine Baker ("Defendant Baker") made troubling remarks confirming that the *very purpose* of the statute was to deny indicted medical providers their lien income so that they could not exercise their constitutional rights to retain defense counsel. After preliminarily concluding that Labor Code 4615 violated the constitutional guarantees to Due Process, the Court nevertheless gave the State one final opportunity to satisfy the Court's principal concern: that neither Labor Code 4615 nor any regulations attendant thereto provide aggrieved parties any due process rights. Instead, the State sought to demonstrate that notwithstanding the absence of any due process right that a handful of WCAB Judges were attempting to apply the statute in a constitutional manner. Thus, the "declaration" of Judge Paige Levy.[1]

[1] On its face, it is obvious that the material aspects of the Declaration are based on hearsay and that Judge Levy lacks personal knowledge because she is, in effect,

The State knows that the statute is unconstitutional on its face and that the statute provides no mechanism for due process to those affected by the statute. In the ten months since Governor Brown signed the bill, Defendant Baker made not a scintillum of an effort to propose any regulations that ameliorated the catastrophic effects and lack of due process inherent on Labor Code 4615's face. Because of the clear lack of due process – *on its face* – the State had no choice but to throw a "Hail Mary." Behold the declaration of Paige Levy. Ignoring the Court's clear directive not to submit anecdotal evidence because such evidence would not be entertained as wholly irrelevant to a *facial* challenge, the State has injected the improper and mostly inaccurate declaration of Paige Levy. Because she is a judge, her statements would naturally be accorded some weight even though they are materially inaccurate and it is clear that she lacks personal knowledge of the matters contained in her declaration, which has become the subject of controversy throughout the entire Workers' Compensation industry in California.

Faced with the declaration of a judge, to which one would normally afford some weight in credibility, the Court now has considered taking of anecdotal evidence to show how the *application* of Labor Code 4615 is or is not constitutional and devoid of due process protections. Plaintiffs submit, again, that Paige Levy's declaration ought to be stricken as irrelevant to a facial challenge, improper, and as lacking in any personal knowledge. [2]

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merely an administrator, not an active judge.

[2] As an example: Suppose a municipality passed an ordinance mandating the search and seizure of all homes that were painted blue, without any basis for probable cause --- a declaration from the Chief of Police that it had trained and instructed its officers *not* to search and seize blue houses without a finding of probable cause, coupled with a few anecdotal instances where the police did *not* violate a blue-house homeowner's constitutional rights would *not* convert an unconstitutional ordinance into a constitutional one. Indeed, the declaration of the Chief of Police should likely be stricken as irrelevant to the issue of a facial

Similarly, the declaration of Paige Levy adds nothing to the constitutional analysis, based on a facial challenge, to Labor Code 4615. On its face and in practice, the statute nor its regulations contain *no procedure* for a party affected by the statute to "in any way, shape or form" argue that: (1) they were not indicted; (2) they were misidentified by the DIR on its website; (3) they were misidentified in the "secret list" that Paige Levy distributed to her subordinate judges, a list created by persons of unknown credentials and using unknown criteria; (4) that the liens sought be advanced having *no relation whatsoever and in many cases even predate* the criminal charges in question. If evidence is permitted, it will become crystal clear to the Court that if an indicted medical provider, an entity somehow affiliated with an indicted medical provider, or other person appears on the DIR list, the judges' "secret list" or was input into the State's EAMS system, the inquiry at the WCAB begins and ends there. Frankly, the very idea that a person who is simply charged with a crime can be input into a database (often incorrectly and without basis) and therefore be deprived of *anything* (whether it be income, a lien, access to the Courts or a right to argue) is offensive to the Constitution and reminiscent of ethnically or racially-based target lists without an inquiry into the veracity of the charges or associations.

If the Court opts to hear more evidence, then the Plaintiffs' proposal should stand. The State's positions are addressed in turn:

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challenge. The examination of the constitutionality of the statute would begin and end with the statute, despite how alluring the credentials or stature of the Chief of Police might be. And, if the Court entertained the Chief of Police's declaration, the blue-house owning homeowners would certainly be able to: (1) cross examine the Chief of Police; and (2) discover what extra-judicial statements the Chief of Police made about the matter; and (3) provide evidence from other blue-house owning homeowners of instances where the police department followed the ordinance and trampled over established constitutional rights.

1. The State claims that expedited limited third-party discovery, consisting of subpoenas only, is not based on good cause and would place a burden on defendants. The State ignores the applicable standard. "Expedited discovery [is] appropriate in cases involving preliminary injunctions or challenges to personal jurisdiction." Advisory Committee Notes to the 1993 amendments to Rule 26(d) (discovery before the Rule 26(f) conference "will be appropriate in some cases, such as those involving requests for a preliminary injunction or motions challenging personal jurisdiction.") The preliminary injunction proceeding is clearly the type of matter contemplated by the expedited discovery process. This is clearly a PI Motion, falling directly into the standard. And despite a desire to depose Judge Levy, the urgency of the matter and the States' resistance leave the Plaintiffs with the practical and speedy solution to simply serve limited *third-party* subpoenas, which would provide *no burden whatsoever* to the State. The Plaintiffs and the Court should hear what Paige Levy said about Labor Code Section 4615 *before* she was called to be a witness – she gave a talk about it *on the very day* that this Court first heard the PI Motion. The Plaintiffs request the right to subpoena the videotapes of her talk, the program materials and any materials (e.g., emails, statements and/or other correspondence) that would tend to show that Paige Levy's declaration is as inaccurate and Plaintiffs believe materially untrue as they can show, including statements, correspondence, or emails with or by Paige Levy. Since Paige Levy is the only witness buttressing the State's claim for constitutionality, any statements she made should be available to the Court. Plaintiffs believe that targeted discovery, cross-examination and the fair introduction of Plaintiffs' evidence will prove the falsity or uninformed nature of Paige Levy's declaration. While it might appear unseemly to subpoena materials related to a judge, it was not Plaintiffs' decision to make her a witness: that was the *State's* decision and they should have appreciated the consequences of making her

a witness.

2. The State agrees that the Plaintiffs and should submit their own declarations concerning what the Plaintiffs initially proposed – real evidence of what is actually occurring in the field before the WCAB judges when Labor Code Section 4615 is implicated. Plaintiffs have amassed first-hand witness testimony of those who are actually in the field (as they offered previously) who can provide direct evidence of how Labor Code 4615 has stymied judicial officers from exercising any discretion and how it violates the substantive and procedural rights of aggrieved parties and how it has, both in motive and effect, violated the Sixth Amendment rights and the contract rights of criminally charged defendants.

3. The State disputes that any live testimony or cross-examination is warranted and vehemently resists permitting their now-star and only witness, Paige Levy, to be subjected to cross-examination. At the hearing held on August 23, 2017, the Court considered a procedure observed by many courts, by the regular practice in the Bankruptcy Court and in this district as well, as demonstrated in the Local Rules. The Plaintiffs, faced with Paige Levy's "Hail Mary" declaration, could submit declarations of their own witnesses and the parties would then be limited to cross-examining the opposing parties' declarants. This seems appropriate and is quite ordinary and fair. It is essential that Paige Levy's declaration be tested to the Court's satisfaction in two ways: (1) by cross-examination; and (2) by introduction of evidence of those witnesses who have first-hand knowledge who can directly refute Paige Levy's declaration, so that the

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Court is not improperly allured by her status as a "judge" and permits itself to delve into truth of how the State is administering Labor Code Section 4615.

Dated: August 29, 2017

THE ARMENTA LAW FIRM APC

By: /s/ M. Cris Armenta
Attorneys for Vanguard Medical Management Billing, Inc., One Stop Multi-Specialty Medical Group, Inc., One Stop Multi- Specialty Medical Group & Therapy, Inc., Nor Cal Pain Management Medical Group, Inc., and Eduardo Anguizola, M.D.