Malcolm S. McNeil (SBN 109601)
ARENT FOX LLP
555 W. 5th St., 48th Floor
Los Angeles, CA 90013
Telephone: (213) 443-7656
Facsimile: (213) 629-7401

Attorneys for Vanguard Medical Management Billing, Inc.

[ADDITIONAL COUNSEL ON NEXT PAGE]

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' SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Hearing Information:
Date: September 28, 2017
Time: 8:30 a.m.
Place: United States Courthouse, 350 West 1st Street, Los Angeles, CA 90012, Courtroom D, 9th Floor

M. Cris Armenta (SBN 177403)
Credence Sol (SBN 219784)
THE ARMENTA LAW FIRM APC
1230 Rosecrans Ave., Suite 300
Manhattan Beach, CA 90266
Telephone: (310) 826-2826 x108
Facsimile: (310) 695-2560
Attorneys for 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.

Victor A. Sahn (CA Bar No. 97299)
Mark S. Horoupian (CA Bar No. 175373)
Jason D. Balitzer (CA Bar No. 244537)
SULMEYER KUPETZ APC
333 S. Hope St., 35th Floor
Los Angeles, California 90071-1406
Telephone: (213) 626-2311
Facsimile: (213) 629-4520

Attorneys for David M. Goodrich, Chapter 11 Trustee

I. INTRODUCTION AND PRELIMINARY STATEMENT

This Court indicated in its earliest tentative ruling ("TR") that it was inclined to grant a preliminary injunction on procedural due process grounds unless the State could demonstrate that Labor Code Section 4615 provides a charged lien holder with an opportunity to be heard to challenge the application of the statute to his or her liens. TR at 2. When the State failed to satisfactorily explain its own statute and regulations, the Court ordered a second round of briefing. TR at 2. The Court expressly declined Plaintiffs' offer to submit evidence of what is occurring "on the ground" to further illuminate the due process issues.

Now, faced with the State-submitted declaration of Paige S. Levy, the Chief Judge of the California Division of Workers' Compensation, the Court gave the Plaintiffs a fair chance to reveal what is occurring in the California workers' compensation courts and to address the seriously misleading declaration of Judge Levy. Judge Levy offers only anecdotal references to a handful of cases to support the State's claim that workers' compensation judges are providing due process to claimants affected by Section 4615. Judge Levy's declaration is wholly refuted by the detailed declarations submitted concurrently with this brief and is contravened by the DIR and WCAB's own publications, guidelines, procedures, manuals, recent public admissions, website, and press releases. As the Request for Judicial Notice, the Declarations and the attendant Exhibits show, Judge Levy is flat wrong. There is no due process afforded. Indeed, Section 4615's lack of due process is so egregious that it is astonishing and offends the traditional notion of fair play guaranteed by the Fourteenth Amendment. Matthews v. Eldridge, 424 U.S. 319, 333 (1976) ("Parties whose rights are affected are entitled to be heard.")

First, in the DIR website, the State tells the world that "*the automatic stay prevents those liens from being litigated* or paid while the prosecution is pending," contradicting the State's late contention that due process could be afforded through existing regulations. Second, the regulations providing procedures like Petitions

for Reconsideration and Petitions for Removal are inapplicable because they arise only *after* a Court has issued an order. However, Section 4615 stays are imposed not by judicial orders but by clerical actions performed in a backroom and distributed to WCAB judges, typically by "flagging" the liens on the EAMS system, resulting in their dismissal by operation of law, a situation in which the workers' compensation court does not hear the matter at all. Even Judge Levy characterizes the "flags" as a "clerical" matter—and there is no regulation that permits the challenge of a "clerical" matter. Third, even non-charged lien claimants have had thousands of liens stayed in the system with no redress; notably, lien claimants do not even receive notice that they are subject to a stay. Fourth, WCAB judges *have* taken the position that the automatic stay divests them of jurisdiction, and their collective responses to that lack of jurisdiction have involved taking matters off-calendar, barring litigants from the courtroom and even striking litigants' names from sign-in sheets, warning them not to return to court. Fifth, the statute provides no redress for a misidentified claimant or DIR overreach in staying the liens of non-indicted, non-charged medical providers and groups. Sixth, the RAND Corporation's report (commissioned and published by the DIR with Judge Levy's input) admits that there is *no opportunity for review* of the automatic stay. Seventh, in a stunning admission, Defendant Baker *just last week* spoke at a conference in which she admitted that the stayed liens *are not going* forward, bragging at the reach of Labor Code Section 4615, essentially thumbing her nose at this Court, and perhaps in the belief that her public statements would not make their way into the courtroom.

The Court asked for evidence of how Section 4615 is being applied, as a procedural measure, "on the ground." (TR at 3.) Plaintiffs submit declarations and documentary evidence focused exclusively on the narrow issue of "[w]hether lien holders affected by Section 4615 are currently denied access to the procedures afforded by pre-existing regulations," limited to the scope of the regulations and

statutes referenced by Judge Levy but including (as authorized by this Court) administrative decisions similar to those that she submitted. (TR at 6.)

These declarations and documentary evidence demonstrate beyond all doubt that lien claimants in a variety of situations—including even lien claimants who *should not be affected by Section 4615 at all* but who have been erroneously included on the DIR's now-secret "stay lists"—have received no notice, are afforded no hearing, and have no procedural escape from the Kafkaesque nightmare created by Section 4615. The declarants include:

- A Bankruptcy Trustee facing the failure of a bankruptcy because he cannot collect on liens related to providers who are the *colleagues* of a charged providers and in one case, an uncharged provider (also a declarant in this matter) who has the misfortune of having the same name as a charged provider.
- An experienced lawyer in the field of workers' compensation law with intimate familiarity with Labor Code Section 4615, workers' compensation rules, regulations, practice and procedure. His comparison of Judge Levy's declaration with the supposed procedural safeguards cited by the judge reveals that none of those "safeguards" provide affected lien claimants with the ability to be heard—and some of the procedures cited by the judge would even subject lien claimants to the risk of sanctions if they were to attempt to use them.
- A long-time hearing representative who has been barred from signing in to lien hearings and who has personally witnessed workers' compensation judges refusing to allow lien claimants to sign in and then deeming those claimants' liens "voluntarily dismissed"—because of their failure to sign in.
- An attorney running a medical collections agency, collecting on liens on behalf of those who have neither been charged nor indicted but whose liens have been automatically stayed. This attorney has found that there is no procedure to challenge such stays because they are issued by clerical staff, depriving lien claimants of a judicial order that can be challenged through customary procedures.

- The managing director of a company that employs hearing representatives throughout California. One of his clients, Firstline Health, has had all its liens stayed because it is associated with a provider *whose charges have been dismissed*. Attempts to correspond with the DIR to address the propriety of the stay were ignored. Because the stay is clerically imposed, there is no judicial order that can be challenged.

- A medical billing company's co-COO with a client whose liens are stayed even though it has no proven connection with any charged or indicted provider. This company's representatives have been barred from even entering the courtroom, and have no access to the courts to explain why the stay is improper.

The State has had numerous opportunities to show how Labor Code Section 4615 comports with the fundamentals of procedural due process: notice and an opportunity to be heard. In previous rounds of briefing, Plaintiffs have demonstrated that as a facial matter, Labor Code Section 4615's automatic stay of any and all liens filed by a charged or indicted provider violates procedural due process.[1] Defendants have argued, through Judge Levy's declaration, that such lien claimants can utilize the Declaration of Readiness process to raise "any kind of issue" related to their liens, that they can file a Section 10450 petition to raise "any kind of issue" related to their liens, that they can file a petition for reconsideration of the stay, and that they can file a petition for removal. The overwhelming weight of the evidence shows that in reality, no procedures are available to "save" Section 4615's fatal omission of any notice or hearing rights for affected claimants.

II. AN AUTOMATIC STAY WITHOUT ANY ATTENDANT PROCESS IS A DUE PROCESS VIOLATION UNDER NINTH CIRCUIT LAW

The State has suggested that because Labor Code 4615 is simply a "stay," there is no constitutional violation. Plaintiffs submit that as a practical matter, the

[1] Plaintiffs assert that Section 4615 also violates substantive due process.

"stay" will often result in the dismissal of the claim, and that an indefinite stay does deny due process. The Ninth Circuit's decision in Wimberly v. Rogers, 557 F.2d 671 (9th Cir. 1997), directly addresses the point the Plaintiffs have consistently raised – that barring lien claimants from the courts denies due process. The Ninth Circuit held that a "mere" stay of a prisoner's civil cause of action until his release from custody was a denial of due process ("The rule of this circuit is that: 'This [i.e., due process] is governed by law and not by discretion'") and that the "indefinite stay of all proceedings is tantamount to a denial of due process." Id. (citing Peterson v. Nadler, 452 F.2d 754 (9th Cir. 1971)),

As demonstrated in the declarations, the stay cannot be challenged. Judge Levy claims that due process could be provided by the hearing-setting process, petitions for reconsideration or removal, or a letter to the DIR, but in reality, those procedures do not equip the workers' compensation courts to review an automatic stay.[2] Judges are sending lien claimants away, taking cases off-calendar and in some cases, even disallowing lien claimants from signing in and ordering them not to return. A stronger case for the denial of due process is difficult to imagine.

[2] The DIR was authorized by Section 4615 to promulgate regulations but has failed to do so. The DIR has acknowledged that stayed liens *cannot be litigated*, and the RAND Report concludes that there *is no review!* (See RJN, Exhibits 1-4)

III. CONCLUSION

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

Dated: September 12, 2017

ARENT FOX
MALCOLM S. MCNEILL

THE ARMENTA LAW FIRM, A.P.C.
M. CRIS ARMENTA
CREDENCE SOL

By */s/ M. Cris Armenta*
M. Cris Armenta
Attorneys for Plaintiffs