

1 XAVIER BECERRA
 Attorney General of California
 2 MARK R. BECKINGTON
 Supervising Deputy Attorney General
 3 GABRIELLE D. BOUTIN
 Deputy Attorney General
 4 AMIE L. MEDLEY
 Deputy Attorney General
 5 State Bar No. 266586
 300 South Spring Street, Suite 1702
 6 Los Angeles, CA 90013
 Telephone: (213) 576-7476
 7 Fax: (213) 897-5775
 E-mail: Amie.Medley@doj.ca.gov
 8 *Attorneys for Defendants Christine Baker and
 George Parisotto, in their official capacities*
 9

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12 CENTRAL CIVIL WEST
 13

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

22 v.

23 CHRISTINE BAKER, in her official
 capacity as Director of the California
 24 Department of Industrial Relations;
 GEORGE PARISOTTO, in his official
 25 capacity as the Acting Administrative
 Director of the California Division of
 26 Workers Compensation; and DOES 1
 through 10, inclusive,
 27

28 Defendants.

5:17-cv-00965

**DEFENDANTS' SUPPLEMENTAL
 BRIEF IN OPPOSITION TO
 MOTION FOR PRELIMINARY
 INJUNCTION (REGARDING DUE
 PROCESS CLAIMS)**

Date: August 24, 2017
 Time: 8:30 a.m.
 Courtroom: 9D
 Judge: Hon. George H. Wu
 Trial Date: n/a
 Action Filed: May 27, 2017

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INTRODUCTION

At the hearing on Plaintiffs’ motion for preliminary injunction, the Court ordered further briefing regarding Plaintiffs’ procedural and substantive due process challenges to California Labor Code section 4615 (“Section 4615”). With regard to the procedural due process claim, the Court requested further detail about the process available for criminally-charged medical providers with workers’ compensation liens to challenge Section 4615’s application to those liens. Such procedures are indeed available under the existing workers’ compensation system and are more than adequate to satisfy any due process concerns. The Court also posed several specific questions to Defendants regarding these processes, which are addressed in the last section of the brief. As to Plaintiffs’ substantive due process claim, which is based on their right of access to the courts, Section 4516 does not interfere with that right and, in any event, it cannot, in this context, support a substantive due process claim.

A preliminary injunction is not warranted under either of Plaintiffs’ due process claims. Plaintiffs’ claims challenge Section 4615 on its face only—not as applied to the specific Plaintiffs in this case or any other lien claimants. Plaintiffs have not met the heavy burden of demonstrating that Section 4615 is invalid on its face for lack of due process. And aside from their failure to establish a likelihood of success on the merits, Plaintiffs have failed to establish any irreparable harm. Plaintiffs’ motion for preliminary injunction should be denied.

BACKGROUND REGARDING SECTION 4615

Section 4615 provides that any workers’ compensation liens filed “by or on behalf of a physician or provider of medical treatment services . . . 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.” Cal. Lab. Code § 4615(a). The impact of this statute, by its plain terms,

1 is that a lien falling within its provisions (i.e., filed “by or on behalf of” a physician
2 or other provider who has been charged with a criminal offense as described) is
3 stayed and may not be adjudicated on its merits by a workers compensation judge,
4 either favorably or unfavorably, pending disposition of the criminal charges.

5 In the Declaration of Paige Levy, Chief Judge of the California Division of
6 Workers’ Compensation (“Levy Decl.,” filed herewith), Defendants offer additional
7 background information concerning the manner in which Section 4615 has been
8 implemented since it went into effect in January 2017. Although Section 4615
9 provides that the stay is “automatic,” Chief Judge Levy explains that the Division
10 of Workers’ Compensation (“DWC”) has undertaken a process of identifying and
11 flagging liens that appear to have been “filed by or on behalf of” criminally-charged
12 providers. This is done by making an entry in the Electronic Adjudication
13 Management System (“EAMS”), the statewide electronic filing and case
14 management system used by DWC, workers’ compensation administrative law
15 judges (“WCALJs”) and the Workers’ Compensation Appeals Board (“WCAB”).
16 Levy Decl. at ¶ 8. As Chief Judge Levy further explains, there may have been
17 some initial confusion among WCALJs concerning the effect of Section 4615, the
18 import of an “automatic” stay, and the significance of the notations entered in the
19 EAMS system. Levy Decl. at ¶ 9. Since at least March 2017, however, Judge Levy
20 has overseen training for the WCALJs on issues related to Section 4615. *Id.* This
21 training has included instruction that the “stay” notation in EAMS does not impose
22 the stay or reflect that any determination has been made that a stay actually applies.
23 Rather, it is simply intended to alert the parties and the WCALJs presiding in such
24 cases that Section 4615 may apply. Chief Judge Levy has further instructed the
25 WCALJs that that any issues or disputes concerning the applicability of the Section
26 4615 stay to a particular lien in an individual case should be heard by WCALJs,
27 under usual procedures, and adjudicated based on the language of Section 4615 and
28 the facts and circumstances of each case. *Id.*

1 WCALJs have the authority, when ruling on Petitions, in lien conferences, in
2 lien trials, and at any other type of appearance, to consider and to determine
3 whether a Section 4615 stay applies to a particular lien. *See* Cal. Code Regs. tit. 8,
4 § 10348 (“[T]he [WCALJ] shall have full power, jurisdiction and authority to hear
5 and determine all issues of fact and law presented and to issue any interim,
6 interlocutory and final orders, findings, decisions and awards as may be necessary
7 to the full adjudication of the case.”) Attached to Chief Judge Levy’s Declaration
8 are multiple orders and decisions issued by the WCAB and by WCALJs in
9 individual workers’ compensation cases which demonstrate that lien claimants may
10 raise—and indeed have raised—issues concerning the applicability of a Section
11 4615 lien, and that WCALJs have adjudicated those issues in the cases before them.
12 *See* Levy Decl., Exhs A-N. The WCAB Commissioners, who function as the first
13 line appellate court for workers’ compensation cases, have issued at least three
14 decisions addressing the impact of Section 4615. In each of those cases, the
15 Commissioners have confirmed that WCALJs not only have the ability, but the
16 *responsibility*, to consider lien claimants’ challenges to the application of the stay to
17 their specific liens, including the consideration of evidence regarding whether the
18 liens were filed “by or on behalf of” a criminally charged medical provider. *See*
19 Levy Decl., Exhs A-C; *Enciso v. Toys “R” Us*, 2017 WL 2634176 (WCAB June 7,
20 2017); *McNeill v. Marina Shipyard*, 2017 WL 2179128 (WCAB May 5, 2017);
21 *Aguirre v. Cty. of Los Angeles*, 2017 WL 1449528 (WCAB Apr. 13, 2017). The
22 WCAB decisions have also held that the list of charged providers and stayed liens
23 generated by the DWC is for informational purposes only and does not substitute
24 for an adjudication of the issue in any particular case. *See* Levy Decl., ¶ 10(a), Exh.
25 A; *Enciso*, 2017 WL 2634176.

26 As this Court noted in its Tentative Ruling, even before Section 4615 went
27 into effect, lien claims were not addressed until the underlying workers’
28 compensation claim had been resolved, or the injured employee had chosen not to

1 proceed with the case. Under long-standing statutory and regulatory provisions,
2 lien claimants are not parties to a workers' compensation case until "either (A) the
3 underlying case of the injured employee or the dependent(s) of a deceased
4 employee has been resolved or (B) the injured employee or the dependent(s) of a
5 deceased employee choose(s) not to proceed with his, her, or their case." Cal. Code
6 Regs. tit. 8, § 10301(dd); *see* Cal. Lab. Code § 4903.6(c) ("A declaration of
7 readiness to proceed shall not be filed for a lien . . . until the underlying case has
8 been resolved or where the applicant chooses not to proceed with his or her case.").
9 This means that liens are *always* effectively "stayed" during the pendency of the
10 underlying workers' compensation claim, which can, in some cases, last for years,
11 depending on the complexity of the claim. Thus, in many cases a Section 4615 stay
12 might have no practical impact (e.g., if the criminal proceedings against the
13 provider are over before the underlying workers' compensation case is resolved).¹

14 Regardless of whether the underlying claim has been resolved, however, there
15 are various procedures available under existing law for a lien claimant to raise the
16 issue as to whether a Section 4615 stay applies to a particular lien. As explained in
17 the Declaration of Chief Judge Levy, parties within workers' compensation cases
18 may file a "Declaration of Readiness to Proceed" ("DOR") requesting an
19 appearance before a judge and/or may file a "Petition" (the equivalent of a motion)
20 requesting adjudication of an issue. Levy Decl. at ¶ 14. Nothing bars lien
21 claimants who are not yet parties from filing a Petition. Cal. Code Regs. tit. 8,
22 § 10450(i). Thus, under generally applicable procedures in workers' compensation

23 ¹ This is at least one probable reason for why the statute was drafted to refer
24 to the stay as "automatic." Given the vast number of liens on file within the
25 workers' compensation system, many if not most of which are not yet at issue in the
26 cases in which they are filed, it would not have made sense from an administrative
27 standpoint to require an affirmative order by a judge imposing a stay with respect to
28 every lien that may fall within the provisions of Section 4615. Rather, the stay is
"automatic" if the provisions of the statute apply, although as addressed at length in
the Levy Declaration, any party to a workers' compensation case, including a lien
claimant, may request an adjudication on the issue of whether Section 4615 applies
to a particular lien.

1 cases, a lien claimant could file a Petition requesting an adjudication of an issue
2 concerning Section 4615 and the application of the automatic stay. If the
3 underlying claim has been resolved, such that the liens in the case are actually at
4 issue, a lien claimant may file a DOR and request a lien conference. Cal. Lab.
5 Code § 4903.6(c); Cal. Code Regs. tit. 8, § 10770.1(a)(1). If the lien (and/or the
6 applicability of a Section 4615 stay) cannot be resolved at a lien conference, the
7 WCALJ may order a lien trial. *Id.* at § 10770.1(g).

8 In *Enciso*, a WCAB panel reviewed a Minute Order issued by a WCALJ
9 finding that a lien claimant's lien was stayed under Section 4615. *Enciso*, 2017 WL
10 2634176. The WCAB found that the WCALJ erred in finding that "the section
11 4615 stay applied to this matter based only upon a spreadsheet, without considering
12 and admitting evidence of the nature of Dr. Johnson's relationship to the lien
13 claimant, or whether Dr. Johnson was actually currently under indictment for a
14 qualifying offense." *Id.* at *2. "Instead, the [WCALJ] should have allowed the
15 parties to introduce evidence at the lien trial as to (1) whether Dr. Johnson was
16 under indictment for a qualifying offense, and (2) whether the lien was filed 'by or
17 on behalf of' Dr. Johnson." *Id.*

18 The WCAB reached the same conclusion in an earlier decision, stating that the
19 WCALJ's decision in a lien trial did not provide "the record necessary to determine
20 whether the automatic stay of section 4615 applies to this lien or to any other liens
21 filed by [claimants]." *See Levy Decl., Exh. C; Aguirre*, 2017 WL 1449528. The
22 WCAB held that in determining whether the stay applies, the WCALJ's decision
23 "must be based on admitted evidence in the record" and "supported by substantial
24 evidence." *Id.* The WCAB returned the matter to the WCALJ for further hearing.

25 The Declaration of Chief Judge Levy, along with the attached decisions of the
26 WCAB and of WCALJs in various cases, provide ample evidence both that there
27 are existing procedures and processes in workers' compensation cases that may be
28 used to raise disputes concerning the applicability of a Section 4615 stay in a

1 particular case, and that lien claimants have successfully invoked these processes
2 and procedures in a number of cases challenging the applicability of Section 4615.
3 The decisions of the WCAB in particular, as the first line appellate court for
4 workers' compensation cases, demonstrate that a party challenging the applicability
5 of a Section 4615 stay has a wide judicial avenue to raise legal and factual issues
6 before the trial level judge and to appeal any adverse decision. The decisions of the
7 WCAB plainly demonstrate that lien claimants contesting applicability of Section
8 4615 to their liens have ample opportunity to be fairly heard in both front-line trial
9 courts and in the WCAB.

10 **ARGUMENT**

11 **I. LABOR CODE SECTION 4615 DOES NOT VIOLATE THE PROCEDURAL**
12 **DUE PROCESS RIGHTS OF LIEN CLAIMANTS**

13 Plaintiffs cannot demonstrate a likelihood of success on their procedural due
14 process claim for at least two reasons. First, as this Court recognized in its
15 Tentative Ruling, Plaintiffs must demonstrate that lien claimants have an
16 underlying property or liberty interest that rises to a level requiring federal due
17 process protection. Here, Plaintiffs cannot make that showing. Even if lien claims
18 filed within the California workers' compensation system create a protected
19 property right, which Defendants dispute for the reasons addressed below, that right
20 extends no further and is no broader than as created by the applicable statutory
21 provisions themselves. The Legislature may change the statutory provisions that
22 apply to lien claims at any time, thereby modifying the nature of the underlying
23 property right, without running afoul of due process. Second, even assuming an
24 underlying protected property right, application of the *Mathews v. Eldridge* due
25 process balancing test to the matters at issue here plainly demonstrates that there is
26 no due process violation.

27 ///

28 ///

1 **A. Any Protectable Right of Lien Claimants Is Limited and**
 2 **Defined by Statute**

3 As this Court recognized in its Tentative Ruling, “[t]he first inquiry in every
 4 due process challenge is whether the plaintiff has been deprived of a protected
 5 interest in ‘property’ or ‘liberty’ Only after finding the deprivation of a
 6 protected interest do we look to see if the State’s procedures comport with due
 7 process.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). “To have a
 8 property interest in a benefit, a person clearly must have more than an abstract need
 9 or desire and more than a unilateral expectation of it. He must, instead, have a
 10 legitimate claim of entitlement to it.” *Town of Castle Rock, Colorado v. Gonzalez*,
 11 545 U.S. 748, 756 (2005) (internal quotations omitted). Protected interests do not
 12 derive from the due process clause itself; they are created and their dimensions are
 13 defined by an independent source, such as state law. *Id.*

14 Defendants recognize that in its Tentative Ruling, this Court indicated an
 15 intent to find that lien claimants in California workers’ compensation cases have a
 16 protectable interest in their liens. Tentative Ruling, p. 24. Defendants request that
 17 the Court consider the issue further in light of the following. Even if lien claimants
 18 have some manner of underlying property interest in their lien claims, it is
 19 important to define the nature and limits of that interest, i.e., what that interest *is*
 20 and what it *is not*. Certainly, lien claimants do *not* have a guaranteed right to
 21 payment on their liens. Liens within the workers’ compensation system are
 22 contingent and uncertain *claims* for payment. Payment on a lien is contingent on
 23 multiple factors, and may be ultimately be denied on any number of substantive or
 24 procedural grounds.²

25 ² The possible grounds for denial include that the underlying injury either did
 26 not occur or was not work related, the medical treatment was not authorized, the
 27 treatment was provided for condition not related to the work injury, the fees were
 28 unreasonable, the filing fee was not paid, the lien was not filed within the
 limitations period, or the lien was not supported by a proper declaration and
 supporting documentation. See Cal. Lab. Code §§ 3600, 4903, 4903.05, 4903.5,
 (continued...)

1 Because a lien claim is contingent, there is no underlying property right to
2 payment until the contingencies have been met. In *American Manufacturers*, the
3 United States Supreme Court rejected a due process challenge to a workers’
4 compensation medical treatment utilization review process. The Court held that no
5 underlying entitlement to specific medical treatment existed (i.e., a protected
6 property interest) until such treatment had been found to be reasonable and
7 necessary through the required utilization review process. *Am. Mfrs.*, 526 U.S. at
8 60-61 (“[F]or an employee’s property interest in the payment of medical benefits to
9 attach under state law, the employee must clear two hurdles: First, he must prove
10 that an employer is liable for a work-related injury, and second, he must establish
11 that the particular medical treatment at issue is reasonable and necessary.”).
12 Because there was no underlying property right *until* the utilization review process
13 had completed, the Court held that there could be no due process challenge to the
14 utilization review process itself. *Id.* at 61 (“Consequently, they do not have a
15 property interest—under the logic of their own argument—in having their providers
16 paid for treatment that has yet to be found reasonable and necessary.”). The same
17 logic applies to lien claims. Because there is no underlying right to payment on the
18 lien until all conditions precedent have been met, there can be no valid due process
19 challenge to the procedures themselves.

20 California courts have repeatedly instructed that benefits within the workers’
21 compensation system are *wholly statutory* and do not vest until reduced to final
22 judgment. *Rio Linda Union School Dist. v. Workers’ Comp. Appeals Bd.*, 131 Cal.
23 App. 4th 517, 527-528 (2005) (workers’ compensation system is completely
24 statutory); *Dubois v. Workers’ Comp. Appeals Bd.*, 5 Cal. 4th 382, 388 (1993) (the
25 right to workers’ compensation is “wholly statutory”); *Graczyk v. Workers’ Comp.*
26 *Appeals Bd.*, 184 Cal. App. 3d 997, 1002 (1986) (same.) Further, because rights

27

28 (...continued)
4903.6, 4903.8.

1 within the workers' compensation system from which any property interest may
2 derive are wholly statutory, including any right to file and to recover on a lien claim,
3 the Legislature may act to *change* those rights at any time. *Angelotti Chiropractic,*
4 *Inc. v. Baker*, 791 F.3d 1075, 1082 (rights created by statute within the workers'
5 compensation system may be repealed and extinguished at any time before vested
6 by final judgment); *Rio Linda*, 131 Cal. App. 4th at 527-28 (given "the complete
7 statutory nature of the workers' compensation system," the Legislature has the right
8 to change the criteria for benefits at any time); *Facundo-Guerrero v. Workers'*
9 *Comp. Appeals Bd.*, 163 Cal. App. 4th 640, 651-652 (2008). Thus, even if lien
10 claimants have a property interest that warrants federal due process protection, the
11 nature of that interest is necessarily both created and circumscribed by the
12 applicable statutory provisions. At most the protected property interest of lien
13 claimants is to have their lien adjudicated *in the manner specified by the Legislature*,
14 and to receive payment *if* they demonstrate entitlement under all applicable
15 requirements. In this case, the Legislature has in the past statutorily created a right
16 for medical providers to file a lien claim under specified circumstances; it has in the
17 past statutorily set forth the procedures for adjudication of lien claims; and it has
18 now statutorily *changed* those procedures to provide that certain lien claims are
19 automatically stayed for a period of time if the provider is charged with specified
20 crimes. "The Legislature clearly has the constitutional authority to make that
21 determination." *Facundo-Guerrero*, 163 Cal. App. 4th at 651. No deprivation can
22 result from such a stay because there is no underlying right to an adjudication ahead
23 of the timeline the Legislature provided.

24 In *Erickson v. U.S. ex rel. Department of Health and Human Services*, the
25 Ninth Circuit considered a challenge to a statute requiring that physicians convicted
26 of Medicare fraud be excluded from the system for fifteen years and that their
27 exclusion be publicized. 67 F.3d 858, 860 (9th Cir. 1995). The Court determined
28 that the physicians had no property interest in continued participation in the

1 Medicare system. The Court relied on opinions from the Fourth and Tenth Circuit
2 Courts of Appeal for the proposition that because the physicians were not the
3 intended beneficiaries of the Medicare program, their interest in continuing to
4 participate in the program was not a protectable property interest. *Id.* Likewise,
5 here, the intended beneficiaries of the workers' compensation system are the
6 injured workers, not the medical providers; thus no property interest is implicated.
7 In *Erickson*, the Court did, however, find that the physicians had a liberty interest.
8 That interest stemmed from the impairment of their reputations due to their
9 convictions being publicized, even though they disputed that their convictions were
10 of the type contemplated by the statute. None of the Plaintiffs in this case have
11 alleged that they have been incorrectly included on the list posted on the website or
12 that they were charged with a crime other than those listed in Section 4615. In fact,
13 Chief Judge Levy states in her declaration that she is unaware of any instances of a
14 medical provider asserting that he or she was mistakenly included on the list. Levy
15 Decl., ¶ 17. Thus, the reputational liberty interest at issue in *Erickson* is not present
16 here.

17 **B. Even Assuming a Protected Property Interest, the Mathews**
18 **Balancing Test Demonstrates There Is No Due Process Violation**

19 Even if the Court finds that Plaintiffs have some form of a federally-protected
20 interest at issue in relation to Labor Code section 4615, they cannot show a
21 likelihood of success because the workers' compensation system provides more
22 than adequate procedural protections. *Pinnacle Armor, Inc. v. United States*, 648
23 F.3d 708, 717 (9th Cir. 2011) (the opportunity to be heard need only be appropriate
24 to the nature of the case.) Courts apply a three-part test, known as the "Mathews"
25 balancing test, for determining what level of process is due in the circumstances of
26 a particular case, examining "[f]irst, the private interest that will be affected by the
27 official action; second, the risk of an erroneous deprivation of such interest through
28 the procedures used, and the probable value, if any, of additional or substitute

1 procedural safeguards; and finally, the Government’s interest, including the
2 function involved and the fiscal and administrative burdens that the additional or
3 substitute procedural requirement would entail.” *Wilkinson v. Austin*, 545 U.S. 209,
4 224-25 (2005) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). An
5 examination of these factors plainly establishes that Section 4615 does not violate
6 due process.

7 **1. The Private Interest Affected by Section 4615 is Limited**
8 **and Any Impairment is Slight**

9 “The more important the interest and the greater the effect of its impairment
10 [by the challenged statute or government action], the greater the procedural
11 safeguards the state must provide to satisfy due process.” *Cassim v. Bowen*, 824
12 F.2d 791, 797 (9th Cir. 1987). Conversely, the less important the interest and the
13 slighter its impairment, the less procedure is required to satisfy due process. Here,
14 to the extent lien claimants have any *federally protected* “private interest” in their
15 liens, that interest is limited and circumscribed by statute. Although lien claimants
16 certainly desire to receive payment on their liens, there is no vested right to
17 payment on a lien for all the reasons addressed above and in Defendants’ initial
18 Opposition. A lien is not certain income, as were the disability benefits in *Mathews*,
19 424 U.S. at 340-42, or the continued employment in *Cleveland Board of Education*
20 *v. Loudermill*, 470 U.S. 532, 543 (1985). At most, the private interest at stake here
21 is that of lien claimants in having their liens adjudicated according to applicable
22 statutory and regulatory procedures. Moreover, a provider’s interest in a lien is
23 entitled to less weight as soon as that provider is charged with one of the specified
24 crimes. It is also important to note that providers are not required to treat workers’
25 compensation applicants or to provide services on a lien basis. They do so of their
26 own choosing, and with full knowledge that their lien will be contingent and
27 uncertain. *See, e.g., Angelotti*, 791 F.3d at 1083 (“plaintiffs here were never under
28 any compulsion to provide services”); *Chorn v. Workers’ Compensation Appeals*

1 *Bd.*, 245 Cal. App. 4th 1370, 1389 (“[I]ndependent medical providers like Chorn
2 are not required to treat workers’ compensation applicants. These considerations
3 render the risk of erroneous deprivation of such interest less pressing than it would
4 otherwise be.”).

5 In its Tentative Ruling, this Court characterized the lien claimants’ interest as
6 “the right to have those liens administered by the [WCAB].” Tentative Ruling,
7 p. 25. It is important to note that while Section 4615 stays certain liens
8 temporarily, it does not prevent the administration and ultimate adjudication of
9 those liens by WCALJs and the WCAB. As explained above, even before Section
10 4615 was enacted, lien claimants were required to wait until the resolution of the
11 underlying workers’ compensation claim before becoming an official “party” to the
12 proceeding. Cal. Code Regs. tit. 8, § 10301(dd). The stay provision of Section
13 4615 has no practical effect during this built-in waiting period. Section 4615 also
14 poses no obstacle to a lien claimant challenging the application of the stay to a
15 particular lien in a particular case, either via a lien conference following resolution
16 of the case in chief, or by way of a Petition filed at any time. See Levy Decl., ¶¶ 9-
17 16; Exhs. A–N; Cal. Code Regs. tit. 8, § 10770.1(a)(1). The workers’
18 compensation procedures also allow an opportunity to seek reconsideration of the
19 WCALJ’s determination by the WCAB. Cal. Lab. Code § 5900. Ultimately, if a
20 lien claimant is not satisfied with the decision of the WCALJ and the WCAB, that
21 claimant may seek a writ of review in an appellate court. See *Greener v. Workers’*
22 *Comp. Appeals Bd.*, 6 Cal. 4th 1028, 1038, n.8 (1993); Cal. Lab. Code § 5950.

23 Plaintiffs repeatedly characterize the stay as “indefinite.” It is not indefinite;
24 the statute provides for a stay only during the pendency of specified criminal
25 charges. When those charges are either dismissed or resolved by verdict or plea,
26 the stay no longer applies. Cal. Lab. Code § 4615(a). Thus, a lien claimant’s right
27 to seek payment is not extinguished or terminated by the stay. It is simply delayed.
28 “[T]he possible length of wrongful deprivation . . . is an important factor in

1 assessing the impact of official action on the private interests.” *Vasquez v.*
2 *Rackauckas*, 734 F.3d 1025, 1045 (9th Cir. 2013). An analysis of the process due
3 must take account of “the length and finality of the deprivation.” *Gilbert v. Homar*,
4 520 U.S. 924, 932 (1997). Here, regardless of how the private interest is
5 characterized, the deprivation is neither final nor permanent. It has only to do with
6 timing. In some cases, the criminal proceedings may be concluded before the
7 underlying workers’ compensation proceeding, in which case the stay will have no
8 effect at all. For lien claimants who are able to show that the stay has been
9 incorrectly applied to their particular liens (i.e., those liens were not filed by or on
10 behalf of a criminally charged provider), the stay will only remain in effect until its
11 application is adjudicated by the WCALJ. For criminally charged providers that are
12 ultimately convicted, the liens will be fully adjudicated in a special consolidated
13 lien proceeding. Cal. Lab. Code § 139.21. If the lien claimant is not convicted, the
14 stay will no longer apply and the liens will be handled in the same way as all other
15 workers’ compensation liens.

16 Thus, the private interest at issue in this case is limited, and the impairment of
17 that interest by Section 4516 is slight. As such, the due process required is less than
18 it would be for more robust interests greatly impaired by government action.

19 **2. The Risk of Erroneous Deprivation Through the** 20 **Application of Section 4615 is Low**

21 The second factor in the *Mathews* test is whether there is a risk of an
22 erroneous deprivation of the interest at stake through the procedures used, and the
23 probable value, if any, of additional or substitute procedural safeguards. *Mathews*,
24 424 U.S. at 335. The Due Process Clause does not require “that the procedures
25 used to guard against an erroneous deprivation of a protectable ‘property’ or
26 ‘liberty’ interest be so comprehensive as to preclude any possibility of error.”
27 *Mackey v. Montrym*, 443 U.S. 1, 13 (1979); *see also Yagman v. Garcetti*, 852 F.3d
28 859, 866 (9th Cir. 2017) (“The Due Process Clause does not require ‘that all

1 governmental decisionmaking comply with standards that assure perfect, error-free
2 determinations.”). “[W]hen prompt post deprivation review is available for
3 correction of administrative error, we have generally required no more than that the
4 predeprivation procedures used be designed to provide a reasonably reliable basis
5 for concluding that the facts justifying the official action are as a responsible
6 governmental official warrants them to be.” *Mackey*, 443 U.S. at 1 (citing *Barry v.*
7 *Barchi*, 443 U.S. 55, 64-65 (1979)).

8 Although, as described above, the DWC maintains a list of charged medical
9 providers and flags potentially affected liens in the EAMS, WCALJs are
10 responsible for ensuring that a lien is, in fact, filed by or on behalf of a charged
11 medical provider. Levy Decl., ¶¶ 9-10. Thus, Section 4615 poses a limited risk of
12 erroneous deprivations of lien claimants’ interests. Although Plaintiffs have
13 provided an example of a WCALJ who declined to consider whether the application
14 of the stay to a lien was appropriate (Declaration of Mario Rodriguez, Dkt. 34 at 3),
15 it is but one example, and the lien claimants could have appealed the order through
16 the usual procedures. The WCAB has instructed WCALJs to adjudicate issues
17 concerning the applicability of Section 4615. See Levy Decl., Exhs. A-C; *Enciso*,
18 2017 WL 2634176.

19 Furthermore, any erroneous deprivations that result from the application of the
20 stay to liens that were not filed by or on behalf of a criminally charged medical
21 provider will be temporary and will have little effect on lien claimants’ ultimate
22 right to payment. As for those claimants whose liens are properly stayed under
23 section 4615, the filing of charges against a medical provider for the specified
24 crimes is sufficient to support the precaution of applying the stay so as maintain the
25 status quo until the charges are resolved.

26 With regard to the “probable value, if any, of additional or substitute
27 procedural safeguards,” *Mathews*, 424 U.S. at 335, Plaintiffs have not proposed any
28 additional or substitute safeguards. They have simply called for the invalidation of

1 the entire statute, as they must since they challenge the statute only on its face and
2 not as applied. Plaintiffs argue that the process afforded is inadequate because
3 there is no “right to an individualized determination that Plaintiffs’ liens are
4 tainted.” Motion for Preliminary Injunction, Dkt. 13 at 24. It is true that the
5 Section 4516 stay applies to *all* liens filed “by or on behalf of” a provider charged
6 with one of the specified crimes and is not limited in its application to only those
7 liens that may arise from the charged crimes. But sorting out which of a criminally-
8 charged medical provider’s liens are related to or arise out of the alleged criminal
9 conduct before the stay is applied, or even shortly thereafter but before the criminal
10 charges are resolved, would pose an unrealistic burden on the system. Under the
11 statutory scheme that determination is made *after* a criminal conviction. *See* Cal.
12 Lab. Code § 139.21(e).

13 As noted in Defendants’ opposition brief, 17 percent of all liens filed in the
14 workers’ compensation system, for a total of 97,079 liens, between 2011 and 2015,
15 were believed to be filed by or on behalf of providers who had been indicted or
16 convicted of medical insurance or workers’ compensation fraud. Opposition Brief,
17 Dkt. 27 at 5; Request for Judicial Notice, Dkt. 28-1 at DIR0150. Given the number
18 of liens in the system, and the burden of determining which of those arise from or
19 relate to criminal conduct, it would make no sense to require a judicial
20 determination on that issue with respect to every lien filed by a criminally-charged
21 provider *prior* to a criminal conviction. The charges might ultimately be dropped,
22 or the defendant might be acquitted, in which case the tremendous burden of
23 making these determinations would have been unnecessary. Alternatively, as is
24 often the case, the charges might be resolved by way of a guilty plea agreement that
25 requires the defendant/provider to dismiss all lien claims; again the burden of
26 adjudicating whether the liens were related to criminal conduct would have been
27 unnecessary in that circumstance.

28

1 If the liens of criminally-charged providers were *not* stayed during the
2 pendency of criminal charges, however, it is not only likely but virtually certain that
3 providers who have engaged in criminal conduct would demand and collect
4 payment on liens that arise from that criminal conduct, and those funds would
5 almost certainly never be recovered. To prevent this possibility, the Legislature
6 made the reasoned and reasonable decision to impose an automatic, temporary, stay
7 on liens of charged providers. If those providers are ultimately convicted, then a
8 full adjudicatory process would occur to determine which liens arise from the
9 criminal conduct and which do not. Cal. Lab. Code § 139.21(e). As the Supreme
10 Court has stated, “where it would be impractical to provide pre-deprivation process,
11 post-deprivation process satisfies the requirements of the Due Process Clause.”
12 *Gilbert*, 520 U.S. at 930.

13 **3. The Government/Public Interest is Substantial**

14 “In striking the appropriate due process balance the final factor to be
15 assessed is the public interest.” *Mathews*, 424 U.S. at 347. In this case, the public
16 interest at issue is the protection of the workers’ compensation system from
17 fraudulent and criminal activity. Because payments made through the workers’
18 compensation system on liens arising from criminal activity *incentivize* those
19 crimes, the government and the public have a compelling interest in preventing
20 such payments. That interest certainly outweighs the narrow and limited private
21 interest of lien claimants and any temporary impact Section 4615 may have on that
22 interest. *See Erickson v. U.S. ex rel. Dept. of Health and Human Servs.*, 67 F.3d
23 858, 863 (9th Cir. 1995) (“[T]he government has a ‘compelling’ interest in
24 preventing . . . the waste of public resources caused by improper acts by physicians
25 under Medicare.”) (citing *United States v. Consolidated Mines and Smelting Co.*,
26 455 F.2d 432, 453 (9th Cir. 1971)).

27 The Ninth Circuit held in *Sauceda v. Department of Labor & Industries* that
28 “the public’s interest to see that disability benefits are paid only to claimants who

1 are disabled outweighs the need for additional pre-termination procedures.” 917
2 F.2d 1216, 1219 (9th Cir. 1990). “Once a claimant refuses to submit to a medical
3 examination or obstructs vocational evaluation, the public’s interest is threatened if
4 payments are not stopped within a reasonable time because it is expensive and time
5 consuming to recoup benefits erroneously paid.” *Id.* (citing *Mathews*, 424 U.S. at
6 347). Likewise, in the case at hand, the public’s interest in ensuring that funds are
7 not paid out through the workers’ compensation system on liens that arise from
8 criminal conduct outweighs the potential value of any additional procedures. Once
9 funds are paid out during the pendency of criminal charges, it is be very difficult, if
10 not impossible, for employers and insurers to recoup the funds following a later
11 determination that the lien arose from criminal activity.

12 The public and government also have a strong interest in conserving public
13 resources and in not overburdening the workers’ compensation system. As
14 described above, given the sheer volume of liens that may be filed by or on behalf
15 of criminally-charged medical providers, and given the uncertainty during the
16 pendency of criminal charges, it would not make sense to require additional
17 procedures before imposition of a stay to determine, with respect to every lien,
18 whether the lien arises from the alleged criminal conduct. “[T]he Government’s
19 interest, and hence that of the public, in conserving scarce fiscal and administrative
20 resources is a factor that must be weighed.” *Mathews*, 424 U.S. at 348. Here, the
21 impact on government resources in providing additional procedures before the
22 implementation of the stay weighs against requiring additional pre-stay procedures.

23 An analysis of the *Mathews* test demonstrates that Section 4516 does not
24 violate the due process clause. The private interest of the lien claimants is limited
25 and the application of Section 4516 imposes only slight impairment, if any. The
26 risk of erroneous deprivations is low, and is decreasing as the WCAB has had the
27 opportunity to review WCALJ decisions implementing this newly-enacted statute.
28 The public and government interest in the prevention of criminal activity within the

1 workers' compensation system is compelling and far outweighs the lien claimants'
2 private interest in the timing as to when the lien is adjudicated. Thus, existing
3 procedures within the workers' compensation system provide adequate process.

4 **II. PLAINTIFFS' SUBSTANTIVE DUE PROCESS CLAIM BASED ACCESS TO**
5 **THE COURTS MUST FAIL.**

6 Having failed to persuade the Court that substantive due process applies to the
7 instant case based on its allegedly retroactive effect, Plaintiffs now argue that it
8 should apply because Plaintiffs' fundamental right of access to the courts is at stake.
9 This argument is also unpersuasive.

10 **A. Plaintiffs Have Not Shown that Access to Courts Is a**
11 **Fundamental Right in this Context.**

12 "The protections of substantive due process have for the most part been
13 accorded to matters relating to marriage, family, procreation, and the right to bodily
14 integrity." *Albright v. Oliver*, 510 U.S. 266, 271-72 (1994). "As a general matter,
15 the Court has always been reluctant to expand the concept of substantive due
16 process because the guideposts for responsible decisionmaking in this unchartered
17 area are scarce and open-ended." *Id.* (citing *Planned Parenthood v. Casey*, 505 U.S.
18 833, 847-848 (1992)). "The concept of substantive due process . . . forbids the
19 government from depriving a person of life, liberty, or property in such a way that
20 'shocks the conscience' or 'interferes with rights implicit in the concept of ordered
21 liberty.'" *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998) (citing
22 *U.S. v. Salerno*, 481 U.S. 739, 746 (1987)). Moreover, a substantive due process
23 claim requires a "careful description" of the asserted fundamental liberty interest.
24 *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

25 No right or interest at stake in this case even approaches the type of
26 fundamental rights that have been recognized in the past for purposes of substantive
27 due process, i.e., "marriage, family, procreation, and the right to bodily integrity."
28 *Albright*, 510 U.S. at 271-72. Nothing in this case "shocks the conscience" or

1 “interferes with rights implicit in the concept of ordered liberty.” *Nunez*, 147 F.3d
2 at 871. At bottom, all that is at issue in this case is whether lien claimants have a
3 right to have their workers’ compensation liens resolved without any delay,
4 notwithstanding the filing of criminal charges against the provider.

5 Plaintiffs would frame the right differently, as their right of access to the
6 courts rather than their right to immediately enforce and collect on their liens. But,
7 even assuming that right were at issue, the cases on which Plaintiffs rely do not
8 establish that the right of access to courts is a fundamental right for substantive due
9 process purposes, and particularly not in the context of workers’ compensation
10 cases. Plaintiffs have not cited a single case, and Defendants can find none, in
11 which the right of access to courts has formed a basis for a substantive due process
12 claim. Although the right has been recognized for Sixth Amendment purposes, see
13 e.g., *Luis v. United States*, 136 S.Ct. 1083 (2016), it has not been so recognized by
14 the courts for substantive due process purposes. To the contrary, courts have
15 repeatedly emphasized that substantive due process claims are reserved for only the
16 most fundamental of personal rights and liberties. See *Washington v. Glucksberg*,
17 521 U.S. at 720-721.

18 *In re Naron*, 334 F.Supp. 1150, 1151 (D. Or. 1971), cited by Plaintiffs, is a 46-
19 year-old district court case from Oregon, in which the Court stated that “[a]ccess to
20 court is a fundamental interest of citizenship” and held a bankruptcy filing fee
21 unconstitutional as applied to indigent filers. But the case stands in direct
22 contradiction to a Supreme Court case decided two years later, which held that
23 “[t]here is no constitutional right to obtain a discharge of one’s debts in
24 bankruptcy” and that “the mere fact that Congress has delegated to the District
25 Court supervision over the proceedings by which a petition for discharge is
26 processed does not convert a statutory benefit into a constitutional right of access to
27 a court.” *United States v. Kras*, 409 U.S. 434, 446 (1973).

28

1 Another case Plaintiffs cite, *Bounds v. Smith*, 430 U.S. 817 (1977) focused on
2 the right of access to courts for prison inmates. As the Supreme Court explained,
3 “habeas corpus and civil rights actions are of ‘fundamental importance . . . in our
4 constitutional scheme’ because they directly protect our most valued rights.” *Id.* at
5 827 (quoting *Johnson v. Avery*, 393 U.S. 483, 485 (1969)). In the present case, the
6 statutorily created workers’ compensation liens are more akin to the statutory
7 benefit in the bankruptcy context than the right of prisoners to access courts via writ
8 of habeas corpus.

9 In *Chambers v. Baltimore*, 207 U.S. 142 (1907), the Supreme Court
10 considered whether an Ohio statute providing a cause of action for wrongful death
11 violated the privileges and immunities clause of the Article 4, § 2 of the U.S.
12 Constitution. The lower courts had held that a Pennsylvania widow could not
13 maintain in action in the Ohio courts for the wrongful death of her husband.
14 Though the opinion includes language about the importance of “[t]he right to sue
15 and defend in the courts,” *id.* at 148, it arose in the context of the Privileges and
16 Immunities Clause, not in the substantive due process context. Furthermore, the
17 Court determined that the widow had not suffered any constitutional violation by
18 her exclusion from the Ohio courts in that case. *Id.* at 151.

19 Despite allowing a claim for violations of right to access to the courts to go
20 forward, *Hart v. Gaioni*, 354 F. Supp. 2d 1127 (C.D. Cal. 2005) offers no support
21 to Plaintiffs’ substantive due process claim. Later opinions in the case clarified that
22 the claim was based on a First Amendment right of association. *Hart v. Gaioni*, No.
23 CV-04-3818, 2006 WL 1314810, *2 (C.D. Cal. May 3, 2006) (“the First
24 Amendment’s guarantee of freedom of speech, association and petition . . .
25 encompasses ‘an individual’s ability to consult with counsel on legal matters.’”). In
26 any event, the case was dismissed on a later motion for judgment on the pleadings
27 because it was not ripe. *Hart v. Gaioni*, No. CV-04-3818, 2005 WL 3115902, *3
28 (C.D. Cal. Nov. 14, 2005).

1 Plaintiff notes that “there is a line of cases holding that the right to access to
2 the courts is derived from the First Amendment right to petition the government for
3 the redress of grievances.” Supplemental Brief, Dkt. 41 at 4. In fact, “[d]ecisions
4 of the Court have grounded the right of access to courts in the Article IV Privileges
5 and Immunities Clause . . . the First Amendment Petition Clause . . . the Fifth
6 Amendment Due Process Clause . . . and the Fourteenth Amendment Equal
7 Protection [and] Due Process Clauses.” *Christopher v. Harbury*, 536 U.S. 402, 415
8 n.12 (2002) (citations omitted). The fact that the right of access to courts has been
9 found, at one time or another, to stem from each of these constitutional provisions
10 is all the more reason this Court should decline to analyze the claim using the lens
11 of substantive due process. “Where a particular Amendment ‘provides an explicit
12 textual source of constitutional protection’ against a particular sort of government
13 behavior, ‘that Amendment, not the more generalized notion of ‘substantive due
14 process,’ must be the guide for analyzing these claims.” *Albright*, 510 U.S. at 273
15 (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)).

16 **B. Section 4615 Does Not Interfere with Lien Claimants’ Access to**
17 **Courts**

18 No matter what constitutional provision Plaintiffs might argue serves as the
19 basis for a right of access to courts in workers’ compensation context, Section 4615
20 does not interfere with that access. As discussed at length above, if a Section 4615
21 stay applies to a particular lien, the stay does not impair the ability of the lien
22 claimant to ultimately obtain an adjudication of the lien. Lien claimants who
23 believe a stay has been incorrectly applied to their liens may bring a challenge to
24 the stay’s application in the workers’ compensation proceeding. Levy Decl., ¶¶ 9-
25 10. WCALJs have the power to consider such challenges (Cal. Lab. Code § 10348),
26 several WCALJs have done so (Levy Decl. ¶ 10, Exhs. D-N), and a WCAB panel
27 has clarified that WCALJs should consider such challenges, including taking
28 evidence as to whether or not the stay was properly applied. Levy Decl. at ¶ 10,

1 Exhs. A-C; *Enciso*, 2017 WL 2634176. After the WCALJ’s decision, lien
2 claimants may then petition the WCAB for reconsideration and, if still not satisfied,
3 to seek judicial review through a writ of review to the Court of Appeal. Cal. Lab.
4 Code §§ 5900, 5950. Though Plaintiffs have provided an example of an occasion
5 where a WCALJ declined to consider a challenge to the stay’s application to a lien,
6 and offered to provide further evidence of such occurrences at the July 13 hearing,
7 those incidents have nothing to do with the facial validity of the statute.

8 Because Plaintiffs have failed to establish a fundamental right at issue for
9 purposes of their substantive due process claim, this Court need only “look to see
10 whether the government *could* have had a legitimate reason for acting as it did.”
11 *Halverson v. Skagit Cty.*, 42 F.3d 1257, 1262 (9th Cir. 1994) (citing *Wedges/Ledges*
12 *of California, Inc. v. City of Phoenix*, 24 F.3d 56, 66 (9th Cir. 1992)). “If it is ‘at
13 least fairly debatable’ that the [government’s] conduct is rationally related to a
14 legitimate governmental interest, there has been no violation of substantive due
15 process.” *Id.* (internal quotations omitted). The stay provision of Section 4615 is
16 clearly rationally related to the legitimate governmental interest of protecting the
17 workers’ compensation system by preventing payment on liens that may arise from
18 criminal conduct while criminal charges are pending. Thus, Plaintiffs’ substantive
19 due process claim must fail.

20 **III. PLAINTIFFS HAVE NOT ESTABLISHED THAT THEY WILL SUFFER**
21 **IRREPARABLE HARM**

22 In its tentative ruling, this Court noted that it “would find that Plaintiffs would
23 suffer irreparable harm in the form of a deprivation of their due process rights.”
24 Tentative Ruling, p. 26 (citing *Goldie’s Bookstore v. Sup. Ct.*, 739 F.2d 466, 472
25 (9th Cir. 1984); *Associated Gen. Contractors v. Coal. for Econ. Equity*, 950 F.2d
26 1401, 1412 (9th Cir. 1991)). Defendants request that the Court consider the issue
27 further. For all the reasons addressed above, there is no due process violation on
28 the face of Section 4615, or in its application. A such, Plaintiffs cannot rely solely

1 on an alleged due process violation to demonstrate irreparable harm. In the
2 *Goldie's Bookstore* case, for example, the court noted that “[a]n alleged
3 constitutional infringement will often alone constitute irreparable harm,” but it did
4 not consider the issue in detail because “the constitutional claim [was] too tenuous
5 to support our affirmance on that basis.” *Goldie's Bookstore*, 739 F.2d at 472. And
6 in *Associated General Contractors*, the Court stated that it “need not determine
7 whether [plaintiff’s] allegations would be entitled to such a presumption of harm”
8 because “the organization has not demonstrated a sufficient likelihood of success on
9 the merits . . . to warrant the grant of a preliminary injunction.” 950 F.2d at 1412.
10 Thus while it is theoretically possible that some types of due process violations
11 might in themselves demonstrate irreparable harm, courts have nevertheless
12 required a strong showing in support of any such claim for purposes of a motion for
13 preliminary injunction. Here, as in the *Goldie's Bookstore* case, Plaintiffs’ due
14 process claim is too tenuous and their chance of succeeding on the merits too low to
15 support a finding of irreparable harm based on the alleged constitutional violation
16 alone. Because no violation of Plaintiffs’ procedural or substantive due process
17 rights has occurred as a result of the implementation of Section 4615, any such
18 alleged constitutional violation cannot support a claim of irreparable harm for
19 purposes of preliminary injunction.

20 The only other injury Plaintiffs have asserted is the temporary loss in income
21 from liens that could have been enforced but for the stay. However, monetary harm
22 is rarely irreparable. *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football*
23 *League*, 634 F.2d 1197, 1202 (9th Cir. 1980); *Goldie's Bookstore*, 739 F.2d at 471
24 (“[M]ere financial injury . . . will not constitute irreparable harm”) Because
25 the only harm Plaintiffs’ allege aside from the alleged due process violation itself is
26 monetary, they have not established irreparable harm in this case.

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QUESTIONS POSED BY THE COURT

The Court directed three specific questions to Defendants in its Tentative Ruling: “(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?” Tentative Ruling, p. 25 n. 25. Defendants answer these questions as follows. *See Levy Decl.*, ¶18.

1. Section 4615 does not prevent charged providers and lien claimants from appearing and participating in lien conferences and lien trials, or in any other type of proceeding in the case, but it does prevent the WCALJ from adjudicating a lien that is determined to be stayed under the provisions of the statute. *Levy Decl.*, ¶18; *Enciso*, 2017 WL 2634176. WCALJs may adjudicate issues concerning the applicability of Section 4615 to a particular lien, lien claimant, provider, etc., i.e., determine whether the statute applies. If a lien is determined to be stayed under the provisions of the statute, no further adjudication as to the merits of the lien would be proper and the lien would remain stayed pending the disposition of the criminal charges. This means a judge should not order payment on the lien, approve a settlement on the lien, or order dismissal of the lien. If it is determined that the stay does *not* apply, the statute has no impact and the adjudication of any lien at issue would proceed according to usual procedures. *Levy Decl.*, ¶ 18.

2. Whether the statute prevents criminally-charged providers from enforcing orders for payment *previously-entered* on liens that might arguably have been subject to a stay after Section 4615 went into effect is an issue that would be adjudicated on a case-by-case basis by the WCALJs in individual cases, with all rights of appeal to the WCAB and to the Courts of Appeal. In general, however, once an order for payment has been issued on a lien claim, either pursuant to a stipulation or settlement of the parties, or following a lien trial, that lien is deemed complete. It is no longer a lien, and in place of the lien is an order for payment. If

1 a party refused to comply with an order for payment, the beneficiary of the order
2 would have the right to file a Petition for enforcement of the order, or for other
3 relief from the judge. Usual adjudication procedures and rights of appeal would
4 apply. Levy Decl., ¶ 18; Cal. Lab. Code §§ 5900, 5950; Cal. Code Regs. tit. 8,
5 §§ 10348, 10450, 10541.

6 3. Section 4615 does not affect notice requirements for lien claimants. A
7 lien claimant is added to the Official Address Record for a case upon the filing of a
8 lien. Cal. Code Regs. Tit. 8, § 10450(i). The regulations require that the lien
9 claimants be served notice of “each hearing scheduled, whether or not the hearing
10 directly involves that lien claimant’s lien claim.” Cal. Code Regs. tit. 8, § 10770(i).
11 Section 4615 does not change this notice requirement, and lien claimants continue
12 to receive notice even if their liens are stayed. Levy Decl., ¶18.

13 The Court also asked Defendants to address how a charged lien holder can (1)
14 challenge the presence of his or her name on the state’s website, and (2) how he or
15 she can challenge the stay on any given lien, or his or her liens generally.
16 Tentative Ruling, p. 26 n. 26. These issues are addressed at length above and are
17 answered specifically in the Declaration of Chief Judge Levy, at paragraphs 14-17.

18 CONCLUSION

19 For the foregoing reasons, as well as those stated in their opposition brief,
20 Defendants ask this Court to deny Plaintiffs’ motion for preliminary injunction.

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1 Dated: August 8, 2017

Respectfully submitted,

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XAVIER BECERRA
Attorney General of California

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MARK R. BECKINGTON
Supervising Deputy Attorney General

4

GABRIELLE D. BOUTIN
Deputy Attorney General

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7

AMIE L. MEDLEY
Deputy Attorney General
*Attorneys for Defendants Christine
Baker and George Parisotto, in their
official capacities*

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CERTIFICATE OF SERVICE

Case Name: **Vanguard Medical
Management, et al. v. Christine
Baker, et al.**

No. **5:17-cv-00965**

I hereby certify that on August 8, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION (REGARDING DUE PROCESS CLAIMS)**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 8, 2017, at Los Angeles, California.

Beth Capulong
Declarant

/s/ Beth Capulong
Signature