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21 **UNITED STATES DISTRICT COURT**
22 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

23 ANGELOTTI CHIROPRACTIC, INC.,

24 MOONEY & SHAMSOD
25 CHIROPRACTIC, INC.,

26 CHRISTINA-ARANA & ASSOCIATES,
27 INC.,

28 JOYCE ALTMAN INTERPRETERS, INC.,

SCANDOC IMAGING, INC., and

BUENA VISTA MEDICAL SERVICES,
INC.,

Plaintiffs,

FILED
2013 JUL 29 PM 3:45
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

CASE NO. SACV13-1139-GW/JEM

Complaint for Declaratory,
Injunctive, and Other Relief

1 v.

2 EDMUND G. BROWN, JR., *in his official*
3 *capacity as Governor of California,*

4 KAMALA D. HARRIS, *in her official*
5 *capacity as Attorney General of California,*

6 CHRISTINE BAKER, *in her official*
7 *capacity as Director of the California*
8 *Department of Industrial Relations,*

9 RONNIE CAPLANE, *in her official*
10 *capacity as Chair of the Workers'*
11 *Compensation Appeals Board, and*

12 DESTIE OVERPECK, *in her official*
13 *capacity as Acting Administrative Director*
14 *of the California Division of Workers'*
15 *Compensation,*

16 Defendants.

17 **I. INTRODUCTION**

18 1. This is an action for declaratory, injunctive, and other relief against
19 officers of the State of California who administer the State's Workers'
20 Compensation system. The action challenges the constitutionality of certain
21 provisions of a California law known as Senate Bill 863, Chapter 363, Stats. 2012
22 ("SB863").

23 2. The challenged provisions of SB863 retroactively impose a \$100
24 "activation" fee on workers' compensation liens filed prior to January 1, 2013. Cal.
25 Labor Code § 4903.06.¹ Under the challenged provisions of SB863, if the \$100

26 ¹ SB 863 also imposes a \$150 "filing" fee on workers' compensation liens filed after
27 January 1, 2013. *See* Cal. Labor Code §§ 4903.05(c). This action does not challenge
28 the validity of the filing fee for new liens but is instead limited to the constitutionality
of the retroactive "activation" fee imposed on previously perfected liens.

1 “activation” fee is not paid by the time of a lien conference, the lien “shall be
2 dismissed with prejudice.” Cal. Labor Code § 4903.06(a)(4). In addition, all liens
3 filed prior to January 1, 2013 are “dismissed by operation of law” if the \$100
4 “activation” fee is not paid by January 1, 2014. Cal. Labor Code §§ 4903.06(a)(5).

5 3. Plaintiffs are providers of medical services and ancillary goods and
6 services to workers’ compensation claimants. Plaintiffs provided costly and
7 valuable services and goods to workers without immediate payment in reliance on
8 their right to obtain compensation through liens on the patients’ workers’
9 compensation claims.

10 4. Plaintiffs filed valid workers’ compensation liens prior to December
11 31, 2012. Those liens constitute vested property rights. Unless the new
12 “activation” fee imposed by SB863 is paid on each of these liens by December 31,
13 2013, the liens will be forfeited. Even to the extent plaintiffs are able to pay the
14 “activation” fee on their larger liens, the challenged provisions of SB863
15 substantially reduce the economic value of those liens and interfere with the
16 plaintiffs’ reasonable investment-backed expectations when they provided services
17 to workers’ compensation claimants without immediate payment in reliance on
18 their right to obtain compensation through the lien system.

19 5. SB863’s lien activation fee is not a general revenue measure. Indeed,
20 insurance companies, health maintenance organizations (“HMOs”), labor union
21 benefit plans and a host of other large holders of workers’ compensation liens are
22 arbitrarily exempted from the fee. Cal. Labor Code § 4903.06(b). Rather, the
23 challenged provision of SB863 specifically targets independent providers of
24 services to workers’ compensation claimants and was adopted with the purpose of
25 destroying their liens.

26 6. In many cases, the value of the services that have been provided by
27 plaintiffs to individual workers is relatively small in relation to the new
28 “activation” fee imposed by SB863. As a consequence, it is not economically

1 rational or feasible for plaintiffs to pay the activation fee on all their liens. The
2 challenged provision of SB863 will therefore have the effect of taking valuable
3 property from the plaintiffs. In the aggregate, the impact on the plaintiffs will be
4 enormous. In some cases, it will effectively wipe out their accounts receivable and
5 challenge their very ability to continue as going concerns.

6 7. These provisions of SB863 are unconstitutional under the Takings,
7 Due Process and Equal Protection Clauses of the United States Constitution.
8 Accordingly, this action seeks a preliminary and permanent injunction preventing
9 Defendants from enforcing these provisions of SB863.

10 8. Plaintiffs will suffer irreparable injury if the enforcement of the
11 challenged provisions of SB863 is not enjoined before December 31, 2013.
12 Claimants cannot afford to pay the "activation" fee on all of their liens, yet their
13 liens will be dismissed if they are set for a lien conference and the fee has not been
14 paid. Cal. Labor Code § 4903.06(a)(4). Moreover, all liens filed before December
15 31, 2012 will be "dismissed by operation of law" if the \$100 activation fee is not
16 paid prior to December 31, 2013. Cal. Labor Code § 4903.06(a)(5).

17 **II. THE PARTIES**

18 **A. The Plaintiffs**

19 9. Plaintiff Angelotti Chiropractic, Inc., d/b/a Taft Chiropractic,
20 ("Angelotti") is a provider of chiropractic services that has treated injured workers
21 without immediate payment in reliance on its right to recover compensation
22 through workers' compensation liens. Angelotti holds existing workers'
23 compensation liens filed prior to December 31, 2012. Angelotti is a California
24 corporation with its principal place of business at 20315 Ventura Blvd., Suite A,
25 Woodland Hills, CA 91364.

26 10. Plaintiff Mooney & Shamsbod Chiropractic, Inc. ("Mooney &
27 Shamsbod") is a provider of chiropractic services that has treated injured workers
28 without immediate payment in reliance on its right to recover compensation

1 through workers' compensation liens. Mooney & Shamsbod holds existing
2 workers' compensation liens that were filed prior to December 31, 2012. Mooney
3 & Shamsbod is a California corporation with its principal place of business at 1037
4 East Palmdale Blvd., Suite 201, Palmdale, CA 93550.

5 11. Plaintiff Christiana Arana & Associates, Inc. ("Christina Arana") is a
6 provider of interpreting services that has provided services to injured workers
7 without immediate payment in reliance on its right to recover compensation
8 through workers' compensation liens. Christiana Arana holds approximately 4,500
9 existing workers' compensation liens filed prior to December 31, 2012. Christiana
10 Arana is a California corporation with its principal place of business at 11420
11 Ventura Blvd, Studio City, CA 91604.

12 12. Plaintiff Joyce Altman Interpreters, Inc. ("Joyce Altman") is a
13 provider of interpreting services that has provided services to injured workers
14 without immediate payment in reliance on its right to recover compensation
15 through workers' compensation liens. Joyce Altman holds approximately 4,745
16 existing workers' compensation liens filed prior to December 31, 2012. Virtually
17 all of Joyce Altman's liens are for less than \$1,000, and nearly 50 percent of them
18 are for less than \$500. Joyce Altman is a California corporation with its principal
19 place of business at 14891 Yorba Street, Tustin, CA 92780.

20 13. Plaintiff Scandoc Imaging, Inc. ("Scandoc") is a provider of subpoena
21 and copying services that has provided services to injured workers without
22 immediate payment in reliance on its right to recover compensation through
23 workers' compensation liens. Scandoc holds approximately 2,300 existing
24 workers' compensation liens filed prior to December 31, 2012. Scandoc's liens
25 range in value from \$100 to \$8,600. Sixty-two percent of Scandoc's liens are for
26 less than \$900 and 38 percent of them are for less than \$500. Scandoc is a
27 California corporation with its principal place of business at 1535 Scenic Ave.,
28 Suite 150, Costa Mesa, CA 92626.

1 14. Plaintiff Buena Vista Medical Services, Inc. (“Buena Vista”) is a
2 pharmacy that has provided medications to injured workers without immediate
3 payment in reliance on its right to recover compensation through workers’
4 compensation liens. Buena Vista holds approximately 20,888 workers’
5 compensation liens filed prior to December 31, 2012. Buena Vista is a California
6 corporation with its principal place of business at 2369 Calabasas Rd. #800,
7 Calabasas, CA 91302.

8 **B. The Defendants**

9 15. Defendant Edmund G. Brown Jr. is the Governor of the State of
10 California. In his official capacity, he has ultimate responsibility for execution of
11 the laws of the State of California. The Governor maintains an office in Los
12 Angeles.

13 16. Defendant Kamala D. Harris is the Attorney General of the State of
14 California. In her official capacity, she is the chief legal officer of the State of
15 California. The Attorney General maintains an office in Los Angeles.

16 17. Defendant Christine Baker is the Director of the California
17 Department of Industrial Relations. In her official capacity, she oversees much of
18 California’s labor policy, including California’s Workers’ Compensation System.
19 The Department of Industrial Relations maintains one or more offices in Los
20 Angeles.

21 18. Defendant Ronnie Caplane is the Chair of the Workers’
22 Compensation Appeals Board (“WCAB”). In her official capacity, she leads the
23 WCAB, which can reconsider the decisions of a workers’ compensation judge and
24 can also hear workers’ compensation cases in the first instance. The WCAB has
25 and will continue to dismiss liens that are set for a lien conference if the lien
26 “activation” fee has not been paid. The WCAB maintains one or more offices in
27 Los Angeles.

28

1 19. Defendant Destie Overpeck is the Acting Administrative Director of
2 the California Division of Workers' Compensation within the California
3 Department of Industrial Relations. In her official capacity, she is statutorily
4 charged with collecting and implementing the lien filing fee and lien activation fee.
5 Defendant is also charged with promulgating rules and regulations governing the
6 collection of the fees. Cal. Labor Code § 4903.05(c)(4)-(5), 4903.06(3). The
7 Division of Workers' Compensation maintains one or more offices in Los Angeles.

8 **III. JURISDICTION AND VENUE**

9 20. This complaint seeks declaratory and injunctive relief against state
10 officers for violations of rights secured by the Fifth and Fourteenth Amendments to
11 the United States Constitution. This Court has subject matter jurisdiction pursuant
12 to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

13 21. This Court has personal jurisdiction over each of the Defendants. The
14 Defendants are all public officials of the State of California or its political
15 subdivisions. Each of the Defendants performs official duties within the State of
16 California and, therefore, maintains continuous and systematic contacts with the
17 State of California such that the exercise of jurisdiction does not offend traditional
18 notions of fair play and substantial justice. Further, the exercise of jurisdiction
19 here comports with Cal. Civ. Proc. Code § 410.10 as well as the Constitutional
20 requirement of Due Process.

21 22. Venue is appropriate in this judicial district pursuant to 28 U.S.C.
22 § 1391(b)(1) because one or more of the Defendants performs their official duties
23 in this District, and therefore resides in this District. Furthermore, a substantial
24 part of the events or omissions giving rise to Plaintiffs' claims have occurred and
25 will continue to occur in this District. 28 U.S.C. § 1391(b)(2).

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1 **IV. FACTS**

2 **A. Background**

3 23. Under the workers' compensation system, employers generally have a
4 duty to make medical care available to workers who are injured on the job. They
5 generally may do so by providing the injured worker access to a health care
6 provider that is within the employer's chosen Medical Provider Network (MPN).

7 24. Where an employer fails to make medical treatment available to a
8 worker, refuses to acknowledge that the employee's injury was the result of a work
9 injury, or does not offer the specific treatment needed by the worker, the injured
10 worker is often forced to seek care from outside medical providers.

11 25. The worker may also obtain ancillary goods or services that are
12 needed by the injured worker in connection with medical treatment or to determine
13 if the injury was work-related. Such ancillary goods and services can include
14 medicines, medical supplies, diagnostic services, the assistance of an interpreter,
15 and copying of medical and employment records.

16 26. When an employer fails to satisfy the requirements of the Labor Code
17 relating to provision of medical services or otherwise fails to provide all medical
18 treatment "reasonably required to cure or relieve the injured worker from the
19 effects of his or her injury," the employee is entitled to seek medical services on
20 his or her own behalf. The employer is liable for reasonable expenses incurred by
21 or on behalf of the employee for these self-procured services. Cal. Labor Code
22 § 4600(a).

23 27. When an injured employee self-procures medical services, and
24 assuming that the employee follows the requirements of Cal. Labor Code § 4600 *et*
25 *seq.* in procuring such services, the medical service provider may file a lien with
26 the Workers' Compensation Appeals Board securing payment of the reasonable
27 expenses incurred by the provider on behalf of the injured employee. Cal. Labor
28 Code § 4903(b).

1 28. Medical and ancillary service providers take a significant risk when
2 they provide treatment and services for injured workers outside of the employer's
3 specified MPN. They may not get paid at all until either the employer admits
4 liability or they establish the employer's liability through adjudication.

5 29. The rights of a provider of medical and ancillary services that holds a
6 lien are also derivative of the rights of the injured worker. The lien is a claim
7 against a possible workers' compensation recovery and without such recovery, the
8 lienholder recovers nothing.

9 **B. Senate Bill 863**

10 30. In the fall of 2012, the California Legislature enacted Senate Bill 863
11 ("SB863"). SB863 dramatically reformed California's workers' compensation
12 system in a number of ways.

13 31. Among other things, SB863 imposed substantial new fees specifically
14 intended to destroy certain existing workers' compensation liens and deter the
15 filing of certain future liens.

16 32. The law requires certain lien claimants who perfected liens prior to
17 January 1, 2013 to pay a "lien activation fee" of \$100 per lien. Cal. Labor Code
18 § 4903.06(a)(1).²

19 33. If the lienholder does not pay this fee by the time of a "lien
20 conference" the lien "shall be dismissed with prejudice." Cal. Labor Code
21 § 4903.06(a)(4).

22 34. Additionally, if the lienholder does not pay this fee by January 1,
23 2014, the lien is "dismissed by operation of law." Cal. Labor Code
24 § 4903.06(a)(5).

25
26 _____
27 ² Claimants filing liens after January 1, 2013 must pay a "filing fee" of \$150 per lien.
28 Failure to pay the filing fee renders a lien invalid. Cal. Labor Code § 4903.05(c).

1 35. The lien activation fee imposed by SB863 does not apply to all lien
2 holders. Specifically exempted from the activation fee are:

- 3 • “a health care service plan licensed pursuant to Section 1349 of the
4 Health and Safety Code,”
- 5 • “a group disability insurer under a policy issued in this state pursuant to
6 the provisions of Section 10270.5 of the Insurance Code,”
- 7 • “a self-insured employee welfare benefit plan, as defined in Section
8 10121 of the Insurance Code, that is issued in this state,”
- 9 • “a Taft-Hartley health and welfare fund,” and
- 10 • “a publicly funded program providing medical benefits on a nonindustrial
11 basis.”

12 Cal. Labor Code § 4903.06(b).

13 36. By exempting insurance companies, HMOs, and benefits plans
14 sponsored by employers, unions and the public, the challenged provisions of
15 SB863 specifically target independent providers of medical and ancillary services
16 to workers’ compensation claimants. This targeting of independent providers of
17 services to workers’ compensation claimants is arbitrary, irrational and capricious.

18 37. The purpose and intent of the challenged provisions of SB863 is to
19 destroy the liens of these independent lienholders. The bill was passed in response
20 to a 2011 report by the California Commission on Health and Safety and Workers’
21 Compensation. That report explicitly advocated instituting a filing fee in order to
22 reduce the number of liens and quantified the effect such fees have on deterring the
23 filing of new liens.

24 38. This sensitivity in the payment of lien filing fees is partially due to the
25 fact that many liens are for only small amounts, often between one hundred and a
26 few hundred dollars. For these smaller liens, the \$100 “activation” fee is cost
27 prohibitive.

28

1 39. This problem is compounded by the uncertainty of receiving any
2 recovery on a lien. A medical care provider's lien claim is derivative of the
3 workers' claim to workers' compensation benefits. If the workers' underlying
4 claim is denied, for example on the ground that the injury was not work related, the
5 medical care provider has no right to recover on the lien even though the medical
6 services were provided. The providers of ancillary services such as translation can
7 be doubly at risk, dependent both on the workers' success in establishing that the
8 injury was work related and on a determination that the medical treatment provided
9 was necessary and appropriate. These issues are typically beyond the knowledge
10 or control of ancillary service providers. Thus, even for larger liens, the \$100 lien
11 "activation" fee can be cost prohibitive as a practical matter.

12 40. The Workers' Compensation Appeals Board and Workers'
13 Compensation Administrative Law Judges have strictly enforced the challenged
14 provisions of SB863, dismissing lien claims with prejudice even in cases where the
15 lien conference was improperly scheduled. In doing so, they have noted that the
16 lien "activation" fee imposed by SB863 was "designed to specifically deal with the
17 perceived lien crisis." See Exhibit A, *Garibay v. Federated Logistics*, No.
18 3854111, Order Denying Petition for Reconsideration (Workers' Comp. Appeals
19 Bd. June 27, 2013) and related Report and Recommendation of Workers'
20 Compensation Administrative Law Judge on Petition for Reconsideration (June 17,
21 2013).

22 41. Moreover, because the Worker's Compensation Appeals Board has
23 recently held that a lienholder cannot recover by filing a claim as a petition for
24 costs rather than as a lien, many lienholders will be left with no effective remedy
25 whatsoever to vindicate their property interest. *Martinez v. Terrazas*, No.
26 ADJ7613459 (Workers' Comp. Appeals Bd. May 7, 2013) (en banc).

27 42. The \$100 amount of the lien "activation" fee for liens filed prior to
28 December 31, 2012 is arbitrary and capricious.

1 43. The lien “activation” fee retroactively imposed on existing liens by
2 SB863 is entirely new. No such fee has ever been required in the past.

3 **C. The Impact of SB863 on Plaintiffs**

4 44. Plaintiffs hold large numbers of workers’ compensation liens filed
5 prior to December 31, 2012. Virtually all of these liens are for medical services
6 and ancillary goods and services provided to injured workers before the enactment
7 of SB863, without any notice of the possibility that they might later be subjected to
8 SB863’s novel, retroactive “activation” fee.

9 45. Many of the liens held by Plaintiffs are for relatively small amounts in
10 relation to the \$100 “activation” fee. As a result, large numbers of liens held by
11 Plaintiffs will effectively be taken in their entirety as a result of SB863.

12 46. Because Plaintiffs hold tens of thousands of liens subject to SB863’s
13 \$100 lien “activation” fee, the aggregate cost of the lien activation fees will be
14 enormous. For example, Plaintiffs Christiana Arana and Joyce Altman each hold
15 over 4,500 liens subject to the “activation” fee. The aggregate cost to preserve
16 their liens will thus exceed \$450,000 each. Plaintiff Buena Vista holds over
17 20,000 liens, and its aggregate cost to preserve its liens will be more than \$2
18 million. Plaintiffs presently lack the ability to pay the lien “activation” fee on all
19 of the liens they hold that are subject to the fee.

20 47. As a result of these new lien “activation” fees, Plaintiffs are put in a
21 Catch-22. They must either pay enormous sums that were not previously
22 anticipated, or effectively suffer a forfeiture of virtually their entire accounts
23 receivable.

24 48. Plaintiffs will suffer irreparable harm if the lien “activation”
25 provisions of SB863 are not preliminarily and permanently enjoined. Pursuant to
26 the challenged provisions of SB863, any liens for which these “activation” fees are
27 not paid in their entirety by December 31, 2013 are “dismissed by operation of
28 law.” In the interim, if an “activation” fee has not been paid when a lien is set for a

1 lien conference, the lien is also to be dismissed. With their liens dismissed,
2 workers' compensation claimants and other lienholder will be paid and Plaintiffs
3 will lose any effective way to obtain compensation for the services and good they
4 provided.

5 **COUNT I**
6 **VIOLATION OF UNITED STATES CONSTITUTION,**
7 **AMENDMENT V, TAKINGS CLAUSE**

8 49. Paragraphs 1 through 48 are hereby incorporated as though fully set
9 forth herein.

10 50. Workers' compensation liens filed prior to December 31, 2012 are
11 vested property rights.

12 51. The medical services and ancillary goods and services provided by
13 Plaintiffs to the State's injured workers also constitute valuable private property.

14 52. The retroactive application of SB863's lien "activation" fee results in
15 a taking of these property rights for public use without just compensation.

16 53. Plaintiffs provided valuable medical and ancillary services to injured
17 workers without immediate payment in reliance on a reasonable, legally-backed
18 expectation that they would be able to recover compensation through a lien on the
19 patients' workers' compensation claims. The retroactive application of SB863's
20 lien "activation" fee interferes with these reasonable investment-backed
21 expectations. The statute destroys previously perfected liens unless the activation
22 fee is paid and substantially impairs the value of all liens.

23 54. Because the lien "activation" fee is entirely new, plaintiffs could not
24 have reasonably anticipated that their liens would be subject to these fees and the
25 resulting destruction or impairment of their value.

26 55. SB863 provides no discretion to allow the government to excuse the
27 "activation" fee or to provide compensation to those whose property interests in
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1 their liens are destroyed or diminished. SB863 also does not provide for a smaller
2 activation fee to be imposed on smaller liens.

3 56. Consequently, enforcement of the lien "activation" fee constitutes a
4 taking of private property for public use without just compensation in violation of
5 Plaintiffs' rights under the Takings Clause of the Fifth Amendment and the Due
6 Process Clause of the Fourteenth Amendment to the United States Constitution.

7 **COUNT II**
8 **VIOLATION OF UNITED STATES CONSTITUTION,**
9 **AMENDMENT XIV, DUE PROCESS CLAUSE**

10 57. Paragraphs 1 through 56 are hereby incorporated as though fully set
11 forth herein.

12 58. Workers' compensation liens filed prior to December 31, 2012 are
13 vested property rights.

14 59. The medical services and ancillary goods and services provided by
15 Plaintiffs to the State's injured workers in reliance on their right to obtain
16 compensation through workers' compensation liens also constitute valuable private
17 property.

18 60. The retroactive application of the lien "activation" fee to liens filed
19 prior to December 31, 2012 effectively eliminates Plaintiffs' right to seek
20 administrative and judicial vindication of the property rights secured by Plaintiffs'
21 liens and compensation for the medical services and ancillary services provided to
22 the State's residents in reliance on the lien system.

23 61. The expense of the lien "activation" fee in relation to the value of
24 Plaintiffs' claims imposes an unreasonable burden on Plaintiffs' exercise of their
25 right to be heard in support of their claims. It also renders Plaintiffs' claims
26 essentially valueless in light of the absence of any alternative remedy for
27 vindicating their claims.

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1 62. SB863's lien "activation" fee is arbitrary, capricious, and not
2 rationally related to any legitimate governmental interest. There is no rational,
3 non-capricious basis to target independent providers of medical and ancillary
4 services and to exempt insurance companies, HMOs, and benefits plans sponsored
5 by employers, unions and the public.

6 63. SB863 therefore violates Plaintiffs' right to Due Process under the
7 Fifth and Fourteenth Amendments to the United States Constitution.

8 **COUNT III**
9 **VIOLATION OF UNITED STATES CONSTITUTION,**
10 **AMENDMENT XIV, EQUAL PROTECTION CLAUSE**

11 64. Paragraphs 1 through 63 are hereby incorporated as though fully set
12 forth herein.

13 65. Workers' compensation liens filed prior to December 31, 2012 are
14 vested property rights.

15 66. The medical services and ancillary goods and services provided by
16 Plaintiffs to the State's injured workers in reliance on their right to obtain
17 compensation through workers' compensation liens also constitute valuable private
18 property.

19 67. SB863's one-size-fits-all \$100 lien activation fee is not rationally
20 related to the value of the underlying claims. As a result, the fee has a
21 disproportionate impact on providers of medical services and ancillary goods and
22 services who hold liens of small individual values. This discrimination against
23 holders of smaller liens is arbitrary, capricious and not rationally related to any
24 legitimate government interest.

25 68. SB863 expressly exempts from the lien "activation" fee most
26 insurance companies, HMOs, and benefits plans provided by employers, unions
27 and the public. Cal. Labor Code § 4903.06(b). The burdens of the "activation" fee
28 thus fall almost exclusively on independent providers of medical care and ancillary

1 goods and services to workers' compensation claimants. This discrimination
2 against independent lienholders is arbitrary, capricious and not rationally related to
3 any legitimate governmental interest.

4 69. SB863 therefore violates Plaintiffs' right to Equal Protection under
5 the Fourteenth Amendment to the United States Constitution.

6 **COUNT IV**

7 **VIOLATION OF 42 U.S.C. § 1983**

8 70. Paragraphs 1 through 69 are hereby incorporated as though fully set
9 forth herein.

10 71. Insofar as they are enforcing the lien "activation" fee imposed by Cal.
11 Labor Code § 4903.06(a), Defendants, acting under color of state law, are
12 depriving and will continue to Plaintiffs of their rights under the Fifth and
13 Fourteenth Amendments of the United States Constitution in violation of 42 U.S.C.
14 § 1983.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs respectfully request:

17 A. A declaratory judgment, pursuant to 28 U.S.C. § 2201, that the lien
18 "activation" fee imposed by Cal. Labor Code § 4903.06 violates the Takings
19 Clause of the Fifth Amendment, the Due Process Clause of the Fourteenth
20 Amendment, the Equal Protection Clause of the Fourteenth Amendment, and 42
21 U.S.C. § 1983;

22 B. A preliminary and permanent injunction to preclude Defendants from
23 collecting the lien "activation" fee and to preclude Defendants from dismissing or
24 declaring invalid any lien for failure to pay such fees;

25 ///
26 ///
27 ///
28 ///

1 C. An award of costs, including reasonable attorneys' and expert fees
2 under 42 U.S.C. § 1988; and

3 D. Any further relief to which Plaintiffs may be justly entitled.

4 Dated: July 29, 2013

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EXHIBIT A

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ALICIA GARIBAY,**

5 *Applicant,*

6 **vs.**

7 **FEDERATED LOGISTICS, doing business as**
8 **MACY'S, permissibly self-insured,**

9 *Defendants.*

Case No. ADJ3854111 (MON 0353849)
(Long Beach District Office)

**ORDER DENYING
PETITION FOR
RECONSIDERATION**

10
11 We have considered the allegations of the Petition for Reconsideration and the contents of the
12 report of the workers' compensation administrative law judge with respect thereto. Based on our
13 review of the record, and for the reasons stated in said report which we adopt and incorporate, we will
14 deny reconsideration.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that said Petition for Reconsideration be, and it hereby is, **DENIED**.

3
4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **MARGUERITE SWEENEY**

8 **I CONCUR,**

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11 **DEIDRA E. LOWE**

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13 
14 **ALFONSO J. MORESI**



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16
17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **JUN 27 2013**

19
20 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
21 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

22 **MEDICAL RECOVERY**
23 **ORTHOGEAR**
24 **PAULA DIONNE**

25 sye
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27

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ3854111

(Long Beach District Office)

ALICIA GARIBAY

-vs.-

FEDERATED LOGISTICS;
MACYS REDONDO BEACH;

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

Mary Anne Thompson

DATE: 06/17/2013

REPORT AND RECOMMENDATION
OF WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE ON
PETITION FOR RECONSIDERATION

I

INTRODUCTION

Lien Claimant, Orthogear, has filed a timely and verified Petition for Reconsideration to the 4-19-2013 Order which dismissed the lien for non-payment of the lien activation fee pursuant to Labor Code §4903.06. Lien Claimant asserts that it was improper for the lien conference to be scheduled and that lien claimant assumed that the lien conference would be taken off calendar and therefore the order dismissing the lien is improper. No Answer has been received.

II

BASIC FACTS

Applicant, born [REDACTED], alleged a CT from 2-28-2006 thru 5-2007, while employed by Macy's, permissibly self-insured, as a merchandise processor.

The underlying case has not been resolved by settlement or trial or dismissal.

On 8-1-2012, another lien claimant filed a Declaration of Readiness (DOR) for a lien conference including verification under Rule 10770.6. Thus, the case was set for a lien conference on 3-14-2013. The Board file appears to reflect notice to Orthogear.

Applicant's attorney filed an objection by letter dated 9-27-2012. He did not serve lien claimants with the objection. Orthogear did not object to the lien conference. Nevertheless, the lien conference was scheduled for 3-14-2013.

At the 3-14-2012 lien conference, many lien claimants appeared. Orthogear did not pay the lien activation fee per review of the EAMS system and therefore, the lien was dismissed on 4-19-2013.

III

ISSUES AND ARGUMENTS

A. BECAUSE THE LIEN CONFERENCE WAS SET BEFORE THE UNDERLYING CASE WAS RESOLVED, SHOULD LIEN CLAIMANT BE EXCUSED FROM FILING THE LIEN ACTIVATION FEE?

As lien claimant so eloquently states, the lien conference was set because of a "bogus" Declaration of Readiness to Proceed (DOR).

Rule 10770.1 (a) provides in relevant part that a lien conference shall be set if a lien claimant who is a party under Rule 10301 (x)(3) files a DOR. Rule 10301 (x) (3) makes a lien claimant a party if the underlying case has been resolved. Here, clearly, the DOR was filed by a lien claimant when the underlying case was not resolved.

So what shall we do when faced with a "bogus" Declaration of Readiness (DOR)?

Labor Code §4903.06 provides that a lien activation fee shall be paid prior to the lien conference. Recently, in *Figuroa v. Employers Comp Ins*, the WCAB en banc held that Labor Code Section 4903.06 states that a lien shall be dismissed for failure to pay the lien activation fee

prior to the lien conference and found that breach of Defendant's duty to serve medical reports did not excuse the requirement of payment of the lien activation fee.

Therefore, because Labor Code §4903.6 was enacted as part of Legislation designed to specifically deal with the perceived lien crisis overwhelming the workers' compensation system and because Labor Code §4903.06 is very clear that the lien activation fee shall be paid, it is the understanding of this WCJ that even though the lien conference was set inappropriately, that the lien should be dismissed for failure to pay lien activation fee.

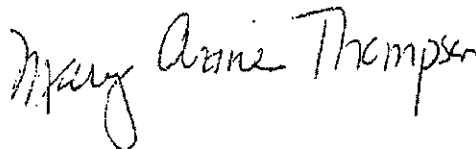
Remember, lien claimant admits to notice of the lien conference, but just assumed that it would go off calendar. This is not some unintentional mistake. Lien Claimant deliberately assumed that it didn't have to pay the lien activation fee and did not have to appear at a lien conference!!!! This shows a complete disregard for the authority of the WCAB and Rules 10770.1(d) and 10562.

IV

CONCLUSION

It is respectfully requested that the Petition for Reconsideration be dismissed. It is further suggested that sanctions may be in order.

DATE: 06/17/2013



Mary Anne Thompson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:
MEDICAL RECOVERY GARDENA, US Mail (Representative for Orthogear)
PAULA DIONNE LOS ANGELES, US Mail

ON: 06/17/2013
BY: Del Reyes