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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 DIRK KANCILIA, D.C., an individual,

16 *Plaintiff,*

17 v.

18 EDMUND G. BROWN, JR., in his official
19 capacity as Governor of California;
20 KAMALA D. HARRIS, in her official
21 capacity as Attorney General of California;
22 CHRISTINE BAKER, in her official
23 capacity as Director of the California
24 Department of Industrial Relations; RONNIE
25 CAPLANE, in her official capacity as Chair
26 of the Workers' Compensation Appeals
27 Board; and DESTIE OVERPECK, in her
28 official capacity as Acting Administrative
Director of the California Division of
Workers Compensation,

Defendants.

CASE NO. '13CV2737 H WVG

CLASS ACTION

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE AND OTHER RELIEF**

JURY TRIAL DEMANDED

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Overview

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2 1. By this Complaint, Plaintiff challenges as unconstitutional Senate Bill 863, Stats.
3 2012 (“SB 863”). SB 863 is codified at section 4903.06 of the California Labor Code, and
4 implemented on an emergency basis by section 10208 of Title 8 of the California Code of
5 Regulations. These laws are collectively referred to herein as SB 863. SB 863 creates a multi-
6 million dollar windfall for big workers’ compensation insurance companies by canceling
7 millions of unpaid medical bills of injured California workers on January 1, 2014 absent this
8 Court’s intervention. Put simply, SB 863’s implementation will deny California workers of the
9 right to have their medical bills paid by employers and their workers’ compensation carriers.

10 2. SB 863 deploys two tools that are at issue in this lawsuit to attack injured workers
11 and their doctors. First, SB 863 cancels the obligation of workers’ compensation insurers to pay
12 the cost of medical services provided to workers’ compensation applicants. Second, SB 863
13 cancels contracts to assign medical accounts receivable. Each of these provisions is
14 unconstitutional for the reasons explained in this Complaint.

15 3. By this Complaint, Plaintiff seeks a order from this Court that:

16 (a) SB 863 violates the Fifth Amendment’s takings clause¹ and is unconstitutional
17 because it cancels medical provider entitlement to payment for medical treatment expense lien
18 claims filed before January 1, 2013, without just compensation unless the provider pays a \$100
19 “lien activation fee” before January 1, 2014.

20 (b) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is
21 unconstitutional because it cancels medical provider entitlement to payment for medical
22 treatment expense lien claims filed before January 1, 2013, unless the provider pays a \$100 “lien
23 activation fee” before January 1, 2014.

24 (c) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is
25 unconstitutional because it deprives medical provider entitlement to a hearing on the matter of

26
27 ¹ The Fifth Amendment is made applicable to the states through the 14th Amendment and the
28 application of the incorporation doctrine. *See Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897)

1 payment for medical treatment expense lien claims filed before January 1, 2013 unless the
2 provider pays a \$100 “lien activation fee” before January 1, 2014.

3 (d) SB 863 violates the Fifth Amendment’s takings clause because it cancels
4 entitlement to payment of medical treatment expense lien claims filed after January 1, 2013,
5 unless the medical provider pays a \$150 “lien filing fee”, which includes medical expenses
6 incurred before January 1, 2013 but for which liens have not yet been filed.

7 (e) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is
8 unconstitutional because it cancels medical provider entitlement to payment for medical
9 treatment expense lien claims filed after January 1, 2013, unless the provider pays a \$150 “lien
10 activation fee”.

11 (f) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is
12 unconstitutional because it deprives medical provider entitlement to a hearing on the matter of
13 payment for medical treatment expense lien claims filed on or after January 1, 2013 unless the
14 provider pays a \$150 lien filing fee, which includes medical expenses incurred before January 1,
15 2013 but for which liens have not yet been filed.

16 (g) SB 863 violates the Fourteenth Amendment’s equal protection clause because it
17 requires “lien activation fees” and “lien filings fees” only from individual and group medical
18 providers but exempts insurance companies (such as health care service plans, disability
19 insurance companies, and health insurance companies).

20 (h) SB 863 violates the Fifth Amendment’s takings clause because it cancels
21 entitlement to payment of medical treatment expense lien claims that have been assigned.

22 (i) SB 863 violates the Fifth Amendment’s takings clause because it deprives the
23 holder or purchaser of a medical account receivable the right of free assignability and hereby
24 diminishes or eliminates the value of that account without just compensation.

25 (j) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses
26 because it cancels entitlement to payment of medical treatment expense lien claims that have
27 been assigned.

28 (k) Lien activation fees must be disgorged and repaid.

1 (l) Lien filing fees must be disgorged and repaid.

2 (m) Any liens that have been dismissed or cancelled because of failure to pay the lien
3 activation or lien filings fees must be reinstated.

4 4. SB 863, by deliberate design of big insurance companies, is intended to upend the
5 bargain that gave birth to California’s workers’ compensation system. By giving up their right
6 to sue in civil court and by limiting their recovery to scheduled compensation, California
7 workers gained the certainties of access to healthcare and swift compensation from employers.
8 SB 863 terminates the workers’ benefit of that bargain and deliberately hurts their doctors.

9 ***The California Workers’ Compensation System & Healthcare Liens***

10 5. The initial treatment of workers who are hurt on the job is generally provided by
11 an employer-selected doctor. Employers use traditional fee for service doctors, doctors in health
12 care organizations, and doctors in medical provider networks.

13 6. An injured worker has the right to collect medical costs for treatment of his injury
14 from workers’ compensation insurers who otherwise have failed or refused to pay those costs.
15 Derivative of that right, is the right of healthcare providers to file liens for payment of their
16 services against any award made in favor of the injured worker. Those liens are an expression of
17 the medical provider’s right to payment.

18 ***California’s Workers’ Compensation Lien Crisis***

19 7. Workers’ compensation insurance companies have routinely delayed resolution of
20 medical service liens or have ignored or underpaid them. This abuse has resulted in a huge
21 volume of unresolved claims and has congested the workers’ compensation system.

22 8. The California Commission on Health and Safety and Workers Compensation
23 investigated complaints about the workers’ compensation lien system and published a report and
24 recommendations on January 5, 2011 (the “Lien Report”). The Commission concluded that
25 liens, especially medical-services liens, were “choking” the workers compensation system by
26 consuming a disproportionately large percentage of the workers’ compensation court’s docket,
27 delaying final resolution of workers’ compensation cases, and enabling both providers and
28 insurers to abuse the system through the providers’ filing of indefensible liens ***and the insurers’***

1 **unjustifiable denial of claims**—all of which add unnecessarily to the costs and burdens of the
2 workers’ compensation system.

3 9. The Commission observed that the volume of liens declined dramatically in 2005
4 when a \$100 lien filing fee was imposed. When that fee was repealed in 2006, the volume of
5 lien filings rose dramatically. The impact of the \$100 lien filing fee in 2005 demonstrates the
6 vulnerability of independent providers of low dollar value services to an increase of just \$100 in
7 costs per lien.

8 10. The Commission recommended that the Legislature impose a lien filing fee to
9 reduce the volume of lien filings. ***But the Commission also cautioned that, before imposing a***
10 ***fee, further review was required to assure that the manner in which any such fee would be***
11 ***imposed does not unduly discourage the filing of meritorious liens.***

12 11. In this case, the negative economic impact of SB 863’s activation fee requirement
13 on medical providers is dire. The evidence of that economic impact is laid bare by a report of
14 the Workers’ Compensation Insurance Research Bureau (hereinafter, “WCIRB”). The WCIRB
15 represents that it “is a California unincorporated, private, nonprofit association comprised of all
16 companies licensed to transact workers’ compensation insurance in California, and has over 400
17 member companies.” Its self-described role is “[t]o accurately measure the cost of providing
18 workers’ compensation benefits, . . . including collection of premium and loss data on every
19 workers’ compensation insurance policy, examination of policy documents, inspections of
20 insured businesses, and test audits of insurer payroll audits and claims classification.” “The
21 WCIRB employs approximately 200 people and maintains . . . offices . . . in San Francisco[] and
22 . . . Cerritos.”

23 12. In its most recent Fourth Quarter 2013 Diagnostics, the WCIRB observes that SB
24 863’s lien provisions are expected to cut \$480 million in insurer costs. The WCIRB actuaries
25 have projected that nearly half of all workers’ compensation liens, some 260,000, will be
26 eliminated by the activation fee and limitations provisions of SB863. And WCIRB notes that
27 the largest impact will be with relatively smaller liens such as those presented by the Plaintiff in
28 this case.

1 13. These conclusions appear to be based, in part, on a study by the Medical Analytics
2 Working Group within the WCIRB. As a report of that Group's efforts details:

3 The Working Group noted that SB 863 instituted lien activation fees and new
4 lien filing fees effective January 1, 2013. Staff presented preliminary findings
5 comparing results from its 2012 and 2013 lien surveys. This study showed an
6 overall drop in claims with liens from 60% in 2012 to 18% in 2013. The number
7 of liens per lien claim and the proportion from medical providers did not change
8 significantly in 2013. The amount paid for resolved liens in 2013 decreased by
9 11%, representing a drop in percentage paid relative to amounts demanded from
10 32% to 21%. This initial result may change somewhat as the WCIRB gradually
11 obtains more data from 2013 liens.

12 In short, SB 863 has wiped out and deterred the pursuit of liens associated with medical
13 expenses incurred on behalf of workers' compensation applicants. This equates to a wholesale
14 deprivation of the right of workers' compensation applicants and their medical providers' right
15 to reimbursement for their medical expenses and, at a minimum, their right to be heard on the
16 matter. It is important to note the impact of SB 863's implementation. Insurance companies, by
17 their own account, are paying 11% *less* on meritorious lien claims. SB 863 plainly even targets
18 meritorious liens—forcing doctors to take settle their claims for less.

19 14. The additional direct and severe economic impact of SB863's lien provision is its
20 mandate that longstanding claims now pay an activation fee that is impossible for most
21 providers to finance. Using the WCIRB's numbers, if there are 520,000 lien claims in the
22 workers' compensation system, the minimum activation fee alone imposes a \$52 million burden
23 on medical providers who have advanced the cost of medical treatment of California's injured
24 workers.

25 ***SB 863 "Solves" Lien Crisis By Sacrificing Providers Of Low-Dollar-Value Services***

26 15. SB 863 purports to solve the "lien crisis" by imposing (1) a flat \$100 activation
27 fee on those who have filed liens as of the January 1, 2013 effective date and (2) a flat \$150 fee
28 on those filing liens after January 1, 2013. As stated in the Lien Report, the imposition of fees in
this range will significantly deter independent providers from filing (or activating existing) liens
because the volume of liens is "sensitive" to procedural changes that impose costs on those
pursuing liens, such as the prior \$100 filing fee. The manner in which the lien filing and
activation fees are imposed under SB 863, however, discourages the filing or pursuit of

1 meritorious low-dollar-value liens by rendering them valueless, thereby violating the
2 Constitutional rights of independent service providers.

3 16. SB 863 imposes a \$150 “filing” fee on liens filed after January 1, 2013. The lien
4 filing fee is codified under Cal. Labor Code § 4903.05. A lien submitted for filing after January
5 1, 2013, is invalid unless the lien filing fee is paid in the manner required. The imposition of a
6 lien filing fee on claims that arose before January 1, 2013, but where liens were not yet filed, is
7 uniquely unjust.

8 17. SB 863 also imposes a \$100 “activation” fee on workers’ compensation liens filed
9 before January 1, 2013. The lien activation fee is codified under Cal. Labor Code § 4903.06 and
10 provides that, for all cases filed before January 1, 2013, the lien activation fee must be paid no
11 later than the earlier of the time of the lien conference or January 1, 2014. Any lien not paid by
12 the time of the lien conference shall be dismissed with prejudice. If the lien conference takes
13 place after January 1, 2014, the lien activation fee must nevertheless be paid no later than
14 January 1, 2014. All liens filed before January 1, 2013, for which a lien activation fee has not be
15 paid by January 1, 2014, shall be deemed dismissed by operation of law.

16 18. The \$100 and \$150 filing and activation fees will make it economically infeasible
17 for independent medical service providers to (1) offer low-dollar-value services to injured
18 workers or (2) pursue recovery for low-dollar-value services rendered before SB 863 became
19 law.

20 19. While the lien filing and activation fees will make it infeasible for independent
21 providers to file or pursue liens for low-dollar-value services, the lien filing and activation fees
22 will *not* have a similar impact on service providers who are part of an insurer’s preferred group
23 of providers or are affiliates of the insurers themselves. These entities do not typically rely on
24 liens to obtain compensation for their services—they rely on their contractual rights as preferred
25 providers or affiliates of the carrier.

26 20. Nor will the lien fees adversely impact larger providers who typically offer (1)
27 higher-profit-margin services and (2) multiple services on a per worker basis—for which a
28 single lien may cover multiple services, raising the dollar value of the lien. The \$100/\$150 fee

1 does not therefore inhibit the filing of such liens because it is too small in amount to eliminate or
2 significantly reduce the provider's profit margin.

3 21. Finally, the lien filing and activation fees do not impact insurance companies,
4 HMOs, labor union benefit plans, and other large holders of workers' compensation liens
5 because SB 863 specifically exempts any lien filed by "a health care service plan licensed
6 pursuant to Section 1349 of the Health and Safety Code, a group disability insurer under a
7 policy issued in this state pursuant to the provisions of Section 10270.5 of the Insurance Code, a
8 self-insured employee welfare benefit plan, as defined in Section 10121 of the Insurance Code,
9 that is issued in this state, a Taft-Hartley health and welfare fund, or a publicly funded program
10 providing medical benefits on a nonindustrial basis."

11 22. Of course, the injured worker's ability to recover compensation for medical
12 expenses he incurs is impaired and eliminated based upon the retroactive and prospective
13 imposition of these fees on third parties. The scheme established by SB 863 is the functional
14 equivalent of precluding personal injury plaintiffs from asserting claims for special damages if
15 the medical providers whose bills form the basis for those damages claims fail to pay a fee to the
16 civil court.

17 23. The solution fashioned by the insurance companies in SB 863 is to simply wipe
18 the slate clean and cancel hundreds of thousands of medical services liens. Compounding the
19 impact of this wholesale cancellation of rights to payment, SB 863 also prospectively imposes a
20 lien filing fee as a bar to obtain payment. The net effect of SB 863 is to deprive workers'
21 compensation claimants of the benefit of compensation for their medical care and to cancel the
22 right of doctors to be paid.

23 24. SB 863 also voids existing lien assignments and bans them in the future. It
24 prevents doctors from obtaining financing to pay the hefty activation and filing fees by
25 borrowing against the liens through assignment of the receivables. It likewise cancels factoring
26 and financing contracts which many providers use to finance their practices and manage cash
27 flow because such arrangements generally entail an assignment of the receivable now banned
28 under SB 863. SB 863 effects a taking from both injured California workers and their medical

1 providers for public use without just compensation in violation of their rights under the Fifth
2 Amendment and constitutes a denial of equal protection and due process under the 14th
3 Amendment.

4 ***SB 863 Takes Property For Public Use Without Just Compensation***

5 25. Workers' compensation applicants, injured workers and, vicariously, medical
6 providers, have vested property rights in claims for the payment of medical expenses that were
7 provided *before* SB 863 was signed into law on September 18, 2012. These medical expense
8 claims constitute valuable medical or ancillary services or provided valuable ancillary goods to
9 injured workers based on the reasonable expectation that California law at the time of
10 performance required that payment for those services or goods would be made under the law by
11 California employers or their workers' compensation insurers. These services or goods were
12 both given by medical providers and accepted by injured workers on the basis that California
13 law imposed the duty to pay on employers and their workers' compensation insurers. But for
14 the promise contained in California law that the right to petition for payment would be
15 protected, the medical providers would not have rendered their services.

16 26. The retroactive application of the SB 863 lien filing and activation fees to liens
17 securing services performed or goods provided before SB 863 became law results in a taking of
18 property rights for public use without just compensation from both injured California workers
19 and their medical providers. The primary right to compensation belongs to the injured workers
20 who are now denied entitlement to compensation because of a retroactively and prospectively
21 applied fee to permit adjudication of their medical expenses. Moreover, medical providers
22 performed valuable services based on the reasonable expectation that their right to compensation
23 would be secured through the workers' compensation lien system that was in effect at the time
24 such services were provided.

25 27. The \$150 and \$100 lien filing and activation fees, however, make it infeasible for
26 providers to file or pursue low-dollar-value liens because their profit margins are eliminated by
27 the fees, which make it impossible for them to recover compensation for their services.
28 Additionally, the cash outlay requirement is so great and illogical, that medical providers simply

1 cannot meet the obligation.

2 28. Beyond the amount of money that SB 863 requires to be paid, timing is another
3 factor that works a taking. SB 863's mandate that activation fees be paid now has no
4 relationship to when medical providers can ultimately hope to get paid on the activated claims.
5 By way of illustration, a medical provider who, in addition to having already borne the cost of
6 the services provided, pays the \$100 lien activation fee on or before January 1, 2014, can expect
7 to wait indefinitely for a hearing and payment on his claim—if he is paid at all.

8 29. Even if a lien filing fee or a lien activation fee is held by this Court to be
9 appropriate, there is no logic in making that fee payable no later than January 1, 2014, with no
10 connection to when the claim will actually be ordered paid by the WCAB. Other than burdening
11 medical providers, there is no reason why the timing of the payment of the fee cannot be timed
12 with a determination of that claim before the WCAB. SB 863 is designed by insurers to ensure
13 that medical providers fail financially.

14 30. In addition, workers' compensation claimants are deprived of their right to receive
15 compensation for medical care obtained by them as a result of their vocational injuries. This
16 renders the lien filing fee unconstitutional under the takings clause of the Fifth Amendment for
17 applicants and providers who filed liens after December 31, 2012 based on services performed
18 before SB 863 became law on September 18, 2012. The \$100 lien activation fee violates the
19 takings clause for providers who provided services before September 18, 2012 and filed liens
20 before January 1, 2013.²

21 31. Compounding the constitutional defects of the lien filing and activation fees, is
22 SB 863's prohibition against the free assignability of current and accrued medical accounts
23 receivable. The popularity of workers' compensation accounts receivable factoring and

24 ²SB 863 also requires the filing of liens no more than three years after the underlying services
25 were performed. Cal. Labor Code § 4903.5(a). While this limitations period would constitute a
26 taking *if* applied retroactively to liens based on services performed before SB 863 became law,
27 California courts construe statutes to avoid constitutional doubt whenever possible. *Le Francois*
28 *v. Goel*, 35 Cal.4th 1094, 1105 (2005). Thus, the SB 863 limitations provision must be construed
as applicable only to liens based on services performed *after* SB 863 became law on September
18, 2012.

1 financing has soared in recent years, as health care providers utilize factoring agreements to
2 accelerate and manage cash flow. In a typical healthcare factoring arrangement, for example,
3 the factor pays the healthcare provider a discounted price in exchange for assignment of the
4 accounts receivable associated with particular claims. The factor profits when it collects
5 payment from a third-party payor.

6 32. In passing SB 863, the California Legislature effectively banned assignment of
7 workers' compensation accounts receivable. If the original person or entity entitled to payment
8 for services rendered remains in business, the law requires that the order or award for payment
9 of a lien must be payable to that person or entity and prohibits making it payable to any third
10 party. This disrupts existing contractual relationships and financing arrangements. It takes the
11 financial benefit of those existing relationships without just compensation.

12 33. The ban on assignments is pernicious in at least two respects and it is arbitrary
13 and punitive. First, it deliberately deprives medical providers of an asset that they could use as
14 security to finance the lien filing and activation fees with which they are now burdened. Beyond
15 the fees, access to credit through the use of medical accounts receivable as security is a routine
16 method which medical providers use to manage cash flow and finance their practices. Second, it
17 takes away substantial value in the accounts receivable without just compensation. It is the
18 functional equivalent of the government declaring deeds of trust illegal—with the result that
19 homeowners would be effectively bared from borrowing on the value of their homes.

20 34. The burden on medical providers with liens that have not yet been filed is itself
21 exceptionally high. By operation of law, liens were not filed until the case in chief was resolved.
22 Labor Code section 4903.6(b) provided that medical treatment and medical-legal lien claimants
23 under section 4903(b) were prohibited from filing a Declaration of Readiness (indicating a
24 request to have the lien claim determined) “until the underlying case has been resolved or where
25 the applicant chooses not to proceed with his or her case.” Cal. Labor Code § 4903.6(b) (West
26 2013); *see also* 8 Cal. Code Regs. §§ 10250, 10301(x)(3) (West 2013). In short, medical
27 providers who were prevented by law from filing their liens before the implementation of the
28 lien fees are now compelled to immediately pay huge sums in fees or lose their claims forever.

1 Providers now face having to pay a \$150 fee rather than a \$100 fee that otherwise would have
2 been imposed if they had been able to file their liens before January 1, 2013.

3 35. Medical providers, like Plaintiff Dirk Kancilia, D.C., were induced to advance the
4 cost of medical care to injured workers by a system that promised them reimbursement as a part
5 of the injured workers' compensation claim. After making significant investment in facilities,
6 time, and services, doctors are now told that SB 863 will cancel their claims unless they pay a
7 ransom. SB 863 prevents them from even having a hearing on their claims absent payment of a
8 fee that applies only to them—the only filing fee charged in the entire workers' compensation
9 system. SB 863 imposes this burden now, all at once, without regard to when those claims will
10 be processed, if they ever are. Finally, SB 863 deprives doctors of the ability to enter into
11 financing arrangements which to finance their practices and manage cash flow because such
12 arrangements generally entail an assignment of the receivable now banned under SB 863.

13 ***SB 863 Violates Equal Protection Rights***

14 36. The California Division of Workers' Compensation, which oversees the workers'
15 compensation system, claims that "SB 863 was the result of months of negotiations between
16 representatives of labor unions and employers." Notably absent from those negotiations were
17 the beneficiaries of that system—injured California workers pursuing workers' compensation
18 claims as applicants who will now face a shortage of medical providers willing to treat them
19 despite employer denials of their claims and the medical providers themselves. California
20 medical providers will have the cost of these expenses placed squarely on their shoulders. By
21 contrast (and consistent with the obvious intent of the law to benefit large insurance concerns),
22 under SB 863 insurance companies are exempt from paying the filing and activation fees
23 imposed on individual and group medical providers. That exemption has no legitimate basis and
24 is merely intended to further benefit insurance companies and to deliberately disadvantage
25 workers and their medical providers.

26 37. The lien filing and activation fees imposed under SB 863 were intended to
27 substantially reduce the number of liens being processed through the workers' compensation
28 system. But SB 863 is designed to achieve that reduced volume by making it unprofitable for a

1 select group of providers to do business, thereby lowering the volume of workers' compensation
2 liens by driving this targeted group from the market. The filing fees effectively target
3 independent providers who performing low-dollar-value services. The flat \$150 and \$100 lien
4 filing and activation fees disproportionately burden this group of providers by eliminating or
5 substantially lowering their profit margins, making it economically infeasible for them to pursue
6 existing liens or to file new liens in the future, resulting in the loss of property and driving them
7 from the market for such low-dollar-value services.

8 38. The SB 863 fees, however, provide a business advantage to (1) competing insurer
9 network providers; (2) statutorily exempted providers; and (3) providers who are able to bundle
10 multiple services into a single lien (on a per injured worker basis) or otherwise offset the fee-
11 induced losses by providing other higher-dollar-value services covered by the same lien. These
12 competing providers benefit from the reduction in competition when independent providers of
13 low-dollar-value services are driven from the market.

14 39. SB 863 violates the Equal Protection Clause because there is no rational basis for
15 the Legislature's decision to impose fees designed to prevent worker access to independent
16 medical providers. The supposed legislative purpose of reducing the volume of lien filings could
17 have been achieved without imposing a disproportionate burden on independent providers by
18 making the lien activation and filings proportionate to the dollar value of the underlying services
19 provided. Imposing fees in proportion to the dollar value of the underlying services would not
20 only reduce the volume of liens, but it could be designed to discourage the filing of
21 unmeritorious liens but not meritorious claims. This type of proportionality would equalize the
22 relative economic burdens on competing providers. The Legislature's decision to impose lien
23 fees that disproportionately impact independent providers is therefore arbitrary, capricious and
24 not rationally related to any legitimate governmental interest.

25 40. The lien filing fee is unconstitutional regardless of whether it is applied to the
26 filing of liens that are based on services performed before or after SB 863 became law because
27 imposition of the fee violates the Equal Protection Clause of the Constitution due to the
28 disparate impact on workers who seek the treatment of independent providers of low-dollar-

1 value services. The unconstitutionally disproportionate impact of SB 863 renders it
2 unconstitutional even to where the independent service providers’ statutory rights under the
3 workers’ compensation law did not vest before SB 863 became law.

4 41. SB 863 is likewise violative of Equal Protection because it disadvantages carriers
5 who paid claims timely and fairly. SB 863 favors large, corrupt insurance concerns at the
6 expense of smaller carriers who have historically paid medical expenses in a timely and fair
7 manner. SB 863 irrationally rewards insurance companies who have a history of delay and
8 unreasonable denial of claims to the detriment of honest insurers. The worst violators of the
9 right to compensation in the workers’ compensation system get the biggest rewards with the
10 wholesale cancellation of millions of dollars in debt owed by them. SB 863 also encourages this
11 illegal conduct prospectively. With the imposition of the burden of prospective filings fees,
12 medical providers are more willing to not pursue low value claims that do not financially justify
13 the fee or make significant compromises on higher cost claims just to make ends meet.

14 ***SB 863 Violates Due Process Rights***

15 42. SB 863 retroactively eliminated the ability of independent providers performing
16 low-dollar-value services to obtain judicial and administrative enforcement of their vested
17 property right to secure reasonable compensation for their services through the workers’
18 compensation lien procedure. This property right vested for those providers who performed
19 medical-related services before SB 863 was signed into law. By imposing a \$150 lien filing fee
20 or a \$100 lien activation fee on lien holders who provided services prior to SB 863, the
21 Legislature made it infeasible for these providers to enforce their vested lien rights. This
22 retroactive application of the lien fees thereby imposes an undue burden on their right to seek
23 enforcement of vested rights, rendering their claims for compensation valueless, in violation of
24 the Due Process Clause.

25 **THE PARTIES**

26 43. Plaintiff Dirk Kancilia, D.C., is a chiropractor licensed to and practicing
27 chiropractic in San Diego, California. Dr. Kancilia, individually, has between 300 and 500
28 existing liens for services rendered before January 1, 2013, with an dollar amount of \$500-1,500

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1 per lien. This means that to collect between \$75,000-100,000, Dr. Kancilia will have to pay
2 \$30,000-50,000 in activation fees and wait indefinitely. This is something he simply cannot do
3 from his own personal reserves and, moreover, is unable to finance these sums in light of the
4 current economic and lending environment. This means that, on January 1, 2014, bills for up to
5 \$100,000 of services provided by Dr. Kancilia will be voided for the benefit of big workers’
6 compensation insurance companies and to Dr. Kancilia’s detriment—threatening his ability to
7 continue in practice. Dr. Kancilia also has lien medical accounts receivable that he intends to
8 use to finance his practice and manage his cash flow. Finally, Dr. Kancilia has claims that will
9 be barred by the new statute of limitations and will be voided without a hearing.

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

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

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

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

26 48. Defendant Destie Overpeck is the Acting Administrative Director of the
27 California Division of Workers’ Compensation within the California Department of Industrial
28 Relations. In her official capacity, she is statutorily charged with collecting and implementing

1 the lien filing fee and lien activation fee. Defendant is also charged with promulgating rules and
2 regulations governing the collection of the fees. Cal. Labor Code § 4903.05(c)(4)-(5),
3 4903.06(3). The Division of Workers' Compensation maintains one or more offices in San
4 Diego.

5 **JURISDICTION AND VENUE**

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

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

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

22 **CLASS ALLEGATIONS**

23 52. This action is brought as a Class Action pursuant to Rule 23 of the Federal Rules
24 of Civil Procedure and other applicable law. Individual and Representative Plaintiff Kancilia
25 brings this action on his behalf and on behalf of all persons who are members of the Plaintiff
26 Class as defined below, for the following reasons:

- 27 a. It is impracticable to bring all members of the class before the court.
- 28 b. The questions of law or fact common to the class are substantially similar and

1 predominate over the questions affecting the individual members.

2 c. The claims or defenses of the representative plaintiff are typical of the claims or
3 defenses of the class.

4 d. The representative plaintiff will fairly and adequately protect the interests of the
5 class.

6 53. Prosecuting separate actions by or against individual class members would create
7 a risk of:

8 (A) inconsistent or varying adjudications with respect to individual class members that
9 would establish incompatible standards of conduct for the party opposing the class; or

10 (B) adjudications with respect to individual class members that, as a practical matter,
11 would be dispositive of the interests of the other members not parties to the individual
12 adjudications or would substantially impair or impede their ability to protect their interests;

13 54. The Defendants have acted or refused to act on grounds that apply generally to the
14 class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting
15 the class as a whole.

16 55. Questions of law or fact common to class members predominate over any
17 questions affecting only individual members, and a class action is superior to other available
18 methods for fairly and efficiently adjudicating the controversy.

19 56. The Class is defined as consisting of providers of medical goods and/or services
20 in the State of California who have and/or continue to provide those goods and/or services to
21 workers' compensation applicants on a lien basis.

22 **COUNT ONE**
23 **VIOLATION OF U.S. CONSTITUTION,**
24 **FIFTH AMENDMENT, TAKINGS CLAUSE**

25 57. Paragraphs 1 through 56 are incorporated as though fully set forth herein.

26 58. The lien filing and activation fees retroactively deprive Plaintiff and workers'
27 compensation applicants of vested property rights to secure compensation for providing medical
28 services and ancillary goods and services before SB 863 was signed into law on September 18,
2012. These property rights vested under the workers' compensation law as it existed at the time

1 the medical and ancillary services were performed and the ancillary good were provided,
2 creating an entitlement on the part of the applicant to compensation for the cost of those
3 services. Plaintiff provided and the applicants accepted medical and ancillary services and goods
4 in reliance upon their rights under the workers' compensation law at the time such services or
5 goods were provided. Plaintiff and applicants thereby earned the right under the State's workers'
6 compensation law to file liens and pursue its lien rights without payment of a later-imposed lien
7 filing or activation fee that would render the existing and future liens worthless, depriving
8 Plaintiff of his reasonable investment backed expectations.

9 59. The lien filing and activation fees take Plaintiff's vested property rights for public
10 use. By design, SB 863's deliberate imposition of unreasonable deadlines to preserve medical
11 expense claims renders it impossible for the medical providers to pay the required fees. As a
12 result, millions of dollars in medical expense obligations will be wiped out and carriers will be
13 relieved of their current obligation to honor those liens.

14 60. Defendants' enforcement of the lien filing and activation fees as required under
15 Section 4903 of the Labor Code, as modified by SB 863, constitutes a taking of private property
16 under the Takings Clause of the Fifth Amendment to the United States Constitution.

17 **COUNT TWO**
18 **VIOLATION OF U.S. CONSTITUTION,**
19 **FOURTEENTH AMENDMENT, EQUAL PROTECTION CLAUSE**

20 61. Paragraphs 1 through 60 are incorporated as though fully set forth herein.

21 62. Under SB 863 and its implementation, the Plaintiff has been and continues to be
22 treated differently from other similarly situated persons. The Plaintiff is a medical service
23 provider who treats injured California workers induced by the right to payment of compensation
24 for their services through the workers' right of compensation. To preserve that right, the
25 Plaintiff is now required by SB 863 to pay a fee that is intentionally designed to frustrate and
26 eliminate the right to compensation.

27 63. By contrast, the lien filing and activation fees do not impact insurance companies,
28 HMOs, labor union benefit plans, and other large holders of workers' compensation liens

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1 because SB 863 specifically exempts any lien filed by “a health care service plan licensed
2 pursuant to Section 1349 of the Health and Safety Code, a group disability insurer under a
3 policy issued in this state pursuant to the provisions of Section 10270.5 of the Insurance Code, a
4 self-insured employee welfare benefit plan, as defined in Section 10121 of the Insurance Code,
5 that is issued in this state, a Taft-Hartley health and welfare fund, or a publicly funded program
6 providing medical benefits on a nonindustrial basis.” This is a direct result of the influence held
7 by these interests over the process by which SB 863 was adopted.

8 64. The difference in treatment between Plaintiff and these other entities was
9 intentional and there is no rational basis for the difference in treatment.

10 65. As a direct and proximate consequence of this misconduct, the Plaintiff has and
11 will continue to suffer an impairment of their constitutional right to equal protection under the
12 law.

13 **COUNT THREE**
14 **VIOLATION OF U.S. CONSTITUTION,**
15 **FOURTEENTH AMENDMENT, DUE PROCESS CLAUSE**

16 66. Paragraphs 1 through 65 are incorporated as though fully set forth herein.

17 67. The Plaintiff and injured California workers have a property interest in their claim
18 for compensation of medical expenses. Without due process of law, SB 863’s implementation
19 deprives the Plaintiff and injured workers of that property interest because it takes away their
20 right to have a their claim heard and to obtain compensation.

21 68. SB 863’s deprivation of the California workers’ right to recovery of compensation
22 for medical expenses and the consequent denial of the derivative right of the Plaintiff to be paid
23 for their services, is irrational and arbitrary; poisoned by the unlawful motive of large workers’
24 compensation insurers’ to cancel their obligation to pay for millions of dollars in medical
25 expenses.

26 69. SB 863 deprives the Plaintiff and California workers of their substantive due
27 process rights and adversely affects their fundamental right to compensation as a product of fair
28 and impartial hearings. Its provisions concerning lien filing and activation fees and the denial of
the right of assignment are not narrowly tailored to serve a compelling governmental interest.

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1 Instead, the law is deliberately designed to take away property and procedural rights for the
2 benefit of insurance companies.

3 **COUNT FOUR**
4 **VIOLATION OF 42 U.S.C. § 1983**

5 70. Paragraphs 1 through 69 are incorporated as though fully set forth herein.

6 71. Insofar as they are enforcing the lien filing and activation fees imposed under
7 Sections 4903.05 and 4903.06 of the California Labor Code, Defendants, acting under color of
8 state law, are depriving Plaintiff of his rights under the Fifth and Fourteenth Amendments of the
9 U.S. Constitution in violation of 42 U.S.C. § 1983.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully prays for judgment as follows:

12 1. A declaratory judgment, pursuant to 28 U.S.C. § 2201, that:

13 (a) SB 863 violates the Fifth Amendment’s takings clause and is unconstitutional
14 because it cancels medical provider entitlement to payment for medical treatment expense lien
15 claims filed before January 1, 2013, without just compensation unless the provider pays a \$100
16 “lien activation fee” before January 1, 2014.

17 (b) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is
18 unconstitutional because it cancels medical provider entitlement to payment for medical
19 treatment expense lien claims filed before January 1, 2013, unless the provider pays a \$100 “lien
20 activation fee” before January 1, 2014.

21 (c) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is
22 unconstitutional because it deprives medical provider entitlement to a hearing on the matter of
23 payment for medical treatment expense lien claims filed before January 1, 2013 unless the
24 provider pays a \$100 “lien activation fee” before January 1, 2014.

25 (d) SB 863 violates the Fifth Amendment’s takings clause because it cancels
26 entitlement to payment of medical treatment expense lien claims filed after January 1, 2013,
27 unless the medical provider pays a \$150 “lien filing fee”, which includes medical expenses
28 incurred before January 1, 2013 but for which liens have not yet been filed.

(e) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is

1 unconstitutional because it cancels medical provider entitlement to payment for medical
2 treatment expense lien claims filed after January 1, 2013, unless the provider pays a \$150 “lien
3 activation fee”.

4 (f) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses and is
5 unconstitutional because it deprives medical provider entitlement to a hearing on the matter of
6 payment for medical treatment expense lien claims filed on or after January 1, 2013 unless the
7 provider pays a \$150 lien filing fee, which includes medical expenses incurred before January 1,
8 2013 but for which liens have not yet been filed.

9 (g) SB 863 violates the Fourteenth Amendment’s equal protection clause because it
10 requires “lien activation fees” and “lien filings fees” only from individual and group medical
11 providers but exempts insurance companies (such as health care service plans, disability
12 insurance companies, and health insurance companies).

13 (h) SB 863 violates the Fifth Amendment’s takings clause because it cancels
14 entitlement to payment of medical treatment expense lien claims that have been assigned.

15 (i) SB 863 violates the Fifth Amendment’s takings clause because it deprives the
16 holder or purchaser of a medical account receivable the right of free assignability and hereby
17 diminishes or eliminates the value of that account without just compensation.

18 (j) SB 863 violates the Fifth and Fourteenth Amendments’ due process clauses
19 because it cancels entitlement to payment of medical treatment expense lien claims that have
20 been assigned.

21 2. A preliminary and permanent injunction to preclude Defendants from collecting
22 the lien filing and activation fees and to preclude them from refusing to file, dismissing or
23 declaring invalid any lien for failure to pay such fees.

24 3. Disgorgement and repayment of lien activation fees.

25 4. Disgorgement and repayment of lien filing fees.

26 5. Reinstatement of any liens that have been dismissed or cancelled because of
27 failure to pay the lien activation or lien filings fees.

28 6. Compensation for for actual damages incurred as a foreseeable consequence of

the Defendants' illegal conduct.

7. An award including reasonable attorneys' and expert fees under 42 U.S.C. § 1988.

8. Any further relief to which Plaintiff may justly be entitled.

LAW OFFICES OF MATTHEW D. RIFAT, LLP

DATED: November 14, 2013

/s/Matthew D. Rifat

BY:

Matthew D. Rifat
Counsel for Plaintiff &
Putative Class Representative

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dirk Kancilla, D.C., an individual

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Matthew D. Rifat, Esq.; Law Offices of Matthew D. Rifat, LLP 3703 Camino Del Rio South, Suite 200, San Diego, CA 92108 (619) 282-0185

DEFENDANTS

EDMUND G. BROWN, JR., et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'13CV2737 H WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28:1331 - Federal Question
Brief description of cause: Declaratory Relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/14/13 SIGNATURE OF ATTORNEY OF RECORD s/ D. Sutton, Deputy Clerk

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE