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

DAVID GOODRICH, in his
capacity as Chapter 11 Trustee;
VANGUARD MEDICAL
MANAGEMENT BILLING, INC.,
a California corporation; and
EDUARDO ANGUIZOLA, M.D.,
an individual,

Plaintiffs,

vs.

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

Defendants.

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

**MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF DAVID
GOODRICH, VICTOR
KORECHOFF, AND DANIA
MCCLANAHAN IN SUPPORT
THEREOF; APPENDIX OF
EXHIBITS (filed separately)**

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I. INTRODUCTION AND PRELIMINARY STATEMENT

The purpose of California’s workers compensation system is to benefit injured workers. The Workers’ Compensation Appeals Board (WCAB) adjudicates workers’ eligibility and benefits. A Provider (i.e., one who provides medical, surgical, chiropractic, acupuncture and hospital treatment) who treats a worker whose claim is disputed files a lien with the WCAB to require the insurer to pay. This 100-year old system is the only avenue of compensation for medical professionals and ancillary providers who help injured workers.

California Labor Code Section 4615 (“Section 4615”), enacted by the California Legislature through Senate Bill 1160 (“SB1160”), retroactively interferes with insurance companies’ obligation to pay medical providers who treat California’s workers. Under Section 4615, if a Provider is criminally charged with *any* type of medical insurance fraud, that Provider cannot enforce liens for treatment rendered to injured workers, even if the criminal charges are *wholly unrelated* to the liens at issue, even if the medical treatment was pre-authorized, and even if the criminal charges lack merit or are the result of prosecutorial overreach or misconduct.¹ There is no hearing, no discretion, and no due process.

According to California Department of Industrial Relations (DIR) Director Christine Baker, the purpose of imposing this “freeze” on providers’ liens was to impose substantial, ongoing, and intentional financial duress on the Provider Plaintiffs such that their ability to retain defense counsel will be directly impinged:

Since 2014, this is the role of 1244 and 1160, again another targeting of the skew, approximately there have been 100 indictments of California worker’s comp providers, ... **When we had our fraud meetings across various groups, the DAs were the ones who said we are in the courts trying to convict the doctors... Can you do something about it? ... Their defense**

¹ Counsel has filed a claim with the Department of Justice concerning overreach and prosecutorial misconduct related to these types of cases. See Appendix of Exhibits (“AOE”) Ex. 27, pp. 283-285.

was getting paid for by the liens... And we have stayed all those liens.²

1 In other words, the *very purpose* of SB1160 was to interfere with the medical
2 providers' Sixth Amendment rights. The law encourages prosecutors simply to
3 charge medical providers with fraud—regardless of the evidence—knowing that
4 merely to charge is to remove the ability to defend. For instance, Dr. Anguizola
5 has been charged, the charges dismissed, then re-charged – yet he and all his
6 medical entities and any related to him or them are stymied from receipt of past
7 earned income because of Section 4615 and he cannot now afford to defend the
8 charges as a direct result.

9 Section 4615 is also unconstitutional in other ways. First, the law obliterates
10 the vested contractual rights of both the medical providers who are legally entitled
11 to payment *and* the purchasers of receivables, all in violation of the Contract
12 Clause. Second, the law interferes with the administration of federal bankruptcy
13 cases in violation of the Supremacy Clause. Third, the law violates the Due Process
14 Clause on the grounds of its far-reaching retroactivity, its overbreadth and its lack
15 of connection to any legitimate public purpose and overbreadth in its reach.

16 Because Section 4615 violates the Contract Clause,³ the Sixth Amendment,
17 and the due process guarantees of the Fifth Amendment, along with their
18 California analogs, the law cannot stand. Moreover, Plaintiffs have been
19 irreparably injured, the balance of hardships weighs greatly in their favor, and the
20 public interest warrants injunctive relief. Accordingly, Plaintiffs are entitled to a
21 preliminary injunction barring the law's enforcement.

25 ² Public comments made by Defendant Christina Baker (“Director Baker”) at
26 California Worker’s Compensation Institute 43rd Annual Meeting of Members on
March 23, 2017, AOE, Ex. 6, at pp. 115-116.

27 ³ Section 4615 is also an unconstitutional taking. See, e.g., Horne v.
28 Department of Agriculture, 135 S.Ct. 2419 (2015).

1 **II. STATEMENT OF FACTS**

2 On February 18, 2016, California State Senator Tony Mendoza introduced
3 SB1160. The bill was sold as a framework for increasing administrative penalties
4 imposed on employers who refuse to submit injury and medical data to the
5 Workers' Compensation Information System. SB1160 originally contained no
6 provisions affecting medical providers' liens, and the issue of "freezing" the liens
7 of criminally charged medical providers was never mentioned in any of the
8 Legislature's numerous hearings on the bill. The principal sponsor publicly stated
9 that last-minute amendments imposing the lien freeze "were negotiated to get
10 employers and carriers to agree to relax the rules on utilization review." (AOE, Ex.
11 21 at pp. 236.)

12 Nine days before the legislative session closed, "Section 7" (which would
13 become Section 4615) was added, changing the meaning, tenor and thrust of
14 SB1160 to stay the collection of all liens for treatment previously rendered by
15 medical providers who have been criminally charged with medical or insurance
16 fraud regardless of whether there is any relationship between the criminal
17 allegation and the lien. (AOE, Ex. 4 p. 91.) With no discussion of Section 4615,
18 and focusing only on the initial purposes of the bill, the California State Assembly
19 passed the bill on August 30, 2016; the Senate passed it on August 31, 2016. On
20 September 30, 2016, Governor Brown signed, and the law became effective on
21 January 1, 2017. (AOE, Ex. 1, pp. 3-4, 36.) As required, the DIR compiled a list of
22 criminally charged providers and posted it on its website. (AOE, Ex. 14, pp. 175.)

23 Section 4615, which was Section 7 of SB1160, reads as follows:

24 (a) **Any** lien filed by or on behalf of a physician or provider of medical
25 treatment services under Section 4600 or medical-legal services under
26 Section 4621, and any accrual of interest related to the lien, **shall be**
27 **automatically stayed upon the filing of criminal charges** against that
28 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. The stay shall be in effect from
the time of the filing of the charges until the **disposition** of the criminal

1 proceedings. The administrative director may promulgate rules for the
2 implementation of this section.

3 (b) The administrative director shall promptly post on the division’s Internet
4 Web site the names of any physician or provider of medical treatment
5 services whose liens were stayed pursuant to this action.

6 (Emphasis added, AOE Ex. A, p. 36.) The law does not indicate the source of the
7 DIR’s list of charged providers, supporting the inference that such information
8 would likely be obtained from either prosecutors or insurance defense counsel.
9 Moreover, the law provides no mechanism to challenge the staying of a lien, even
10 if a Provider is mistakenly included on the DIR list.

11 Section 4615 took effect on January 1, 2017. That day, the law barred
12 Plaintiffs—Providers, lien purchasers, and a Bankruptcy Trustee—from enforcing
13 insurers’ contractual obligations to pay for previously approved treatments, even
14 when it was undisputed that such treatments were unrelated to any alleged
15 misconduct. Within three weeks of the law’s enactment, the DIR boasted that it
16 had stayed more than 200,000 liens with a total value of more than \$1 billion. (DIR
17 News Release, Jan 18, 2007, AOE, Ex.27, pp. 290-291). The DIR did not indicate
18 which—if any—of those liens involved treatment connected to any wrongdoing.

19 **A. SB1160’s Original Purpose As a Data-Collection Law Was Changed at
20 the Last Minute to Accommodate Insurers**

21 During the spring and most of the summer of 2016, the bill wended its way
22 through various committee hearings, none of which addressed issues related to
23 liens or criminally charged Providers. For example, in a June 22, 2016, hearing,
24 Senator Mendoza characterized the bill as “an important reform measure that will
25 improve the intercollection of medical treatment delivery for California’s injured
26 workers.” (Request for Judicial Notice (“RJN”) ¶ 1.) Neither Mendoza nor any of
27 the other proponents of SB1160 mentioned the possibility of a lien-freeze
28 provision in the public hearings on the bill. (RJN ¶ 2.) It was not until August 18,
2016, several months into the process and less than nine days before the close of
the California Legislative Session, that the record indicates any consideration of

1 issues related to retroactively freezing charged Providers' liens. (RJN ¶ 3.) The
2 provision that would become Section 4615 was inserted immediately before the
3 final votes. (RJN ¶ 4.)

4 During an Assembly Committee hearing on August 25, 2016, it became
5 apparent that the purpose of Section 4615 was to mollify insurance companies,
6 which complained that "they are forced by workers' compensation judgments to
7 settle by paying substantial funds on liens that are believed to be inappropriate."
8 (AOE, Ex. 13, p. 174.) In other words, the insurance companies intervened in
9 SB1160 because they wanted to bypass the WCAB judges.

10 A vague reference to combating fraud was made when the Assembly voted
11 on the bill on August 30, 2016. (RJN ¶ 4.) Combating fraud was also included in
12 the legislative recitals. (AOE Ex. 18.) However, Section 4615 was not even
13 mentioned during that day's Senate Committee hearing. (RJN ¶ 5.) What's more,
14 the Senate passed the bill after being informed that Section 4615 was unlikely to
15 survive a court challenge. (August 31, 2016 Senate Floor Analysis.) The sudden
16 addition of Section 4615 indicates out-of-session influence. Christy Bouma, the
17 bill's main sponsor, indicated that the late addition of the freeze was "negotiated to
18 get employers and carriers to agree to relax the rules on utilization review." (AOE
19 Ex. 21, p. 236.) Media reports confirm that the true purpose of the provision was
20 to act as a last-minute "horse trade" at the behest of insurers, in exchange for their
21 non-opposition to other parts of the bill. (Id. Ex. 21, p. 236.)

22 **B. Each of the Plaintiffs Are Directly Affected by the Enactment and**
23 **Enforcement of Section 4615**

24 **1. Section 4615 Has Deprived Dr. Anguizola of the Right to**
25 **Counsel.**

26 Dr. Anguizola is 66 years old and has been treating injured workers in the
27 area of pain management for decades. He is highly respected in both the medical
28 community and the Latino community. Dr. Anguizola's patients are frequently low

1 to middle income Spanish speaking workers. Dr. Anguizola was indicted on June
2 14, 2014 on a single count of insurance fraud. (AOE, Ex. 24.) After the DA
3 amended the charges to expand the charges to a staggering 149 felony counts, the
4 California Court of Appeal ordered the charges set aside because the overcharged
5 defendants were entitled to a finding of probable cause as to each count. (AOE Ex.
6 24.) All of the charges were dismissed on June 28, 2016. (Id.) Unmoved by the
7 appellate's court's counsel to avoid meritless overcharging, the Orange County DA
8 filed 77 new counts against Dr. Anguizola (and many others). (AOE, Ex. 25.) Dr.
9 Anguizola has not pled guilty to any charges, has not had a preliminary hearing,
10 and does not have a trial date. (Id.)

11 Because of the mere fact that charges have been made, all lien debt owed to
12 Dr. Anguizola and his medical practices by the insurance carriers has been frozen.
13 As a direct result of the lien freeze, Dr. Anguizola's financial situation is dire, and
14 he cannot afford a defense attorney. It is estimated that Dr. Anguizola's trial will
15 cost at least \$250,000, plus expert witness fees. Because of the freeze, Dr.
16 Anguizola and his medical practices no longer see workers compensation patients,
17 and all of Dr. Anguizola's patients have lost their primary treating physician.

18 **2. Section 4615 Has Deprived OSM, OST and Nor Cal of All of**
19 **Their Income.**

20 Plaintiffs One Stop Multi-Specialty Medical Group, Inc. ("OSM"), One Stop
21 Multi-Specialty Medical Group & Therapy Group, Inc. ("OST"), and Nor Cal Pain
22 Management Medical Group, Inc. ("Nor Cal") are Providers that operate as billing
23 entities for Dr. Anguizola and other, uncharged doctors. OSM, OST and Nor Cal
24 have issued workers' compensation liens related to treatment rendered by Dr.
25 Anguizola and those other doctors. All of their liens, including liens for treatment
26 by doctors other than Dr. Anguizola, who have not been charged with any species
27 of fraud or wrongdoing, have been frozen as a result of the implementation of
28 Labor Code Section 4615, resulting in the complete deprivation of their income.

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3. Section 4615 Has Indefinitely Stayed Liens Purchased and Managed by Vanguard.

In 2013, Plaintiff Vanguard Medical Management Billing, Inc. manages the collections of purchased receivables, consisting of liens, for medical services provided by two Southern California physicians who have been the subject of criminal charges. One of the doctors has been charged with mail fraud arising out of three invoices totaling less than \$5,000, and the other has been charged with improperly prescribing non-narcotic creams. Now that SB1160 has passed, the liens that Vanguard purchased have been stayed indefinitely notwithstanding the fact that Vanguard has done nothing wrong, and that the liens being pursued by Vanguard are unrelated to the criminal charges pending against those two providers

4. Section 4615 Has Interfered with the Allied Trustee’s Ability to Manage a Bankrupt Estate.

On December 5, 2016, Judge Houle appointed David Goodrich (the "Allied Trustee") as the Chapter 11 Trustee in In Re Allied Medical Management, Inc., Case No. 6:16-BK-14273-MH (Bkctcy. C.D. Cal.), a Chapter 11 bankruptcy case involving a debtor that alleges a contractual right to collect on workers’ compensation liens arising out of professional services rendered by OSM, OST and Nor Cal (collectively, “One-Stop”), along with other providers not related to One-Stop. The Allied Trustee’s responsibilities include operating Allied Injury Management, Inc.'s ("Allied") business for the benefit of the creditors of that company. Upon the filing of a bankruptcy case, an estate is created (here, the "Allied Estate"), which includes all legal or equitable interests of the debtor. 11 U.S.C. §541. The primary asset of the Allied Estate is the right of the debtor (and now the Allied Trustee) to collect on Allied’s workers' compensation liens and to receive the contractual compensation arising out of such collections. Judge Houle approved the Allied Trustee's engagement of Medi-Tech Specialty Service, Inc.

1 ("Medi-Tech") to collect on the receivables. Because Dr. Anguizola has been
2 charged with prescribing non-narcotic pain relieving creams as part of a fraudulent
3 scheme, the Allied Trustee cannot now collect on *any* of the One-Stop receivables,
4 even those with no relationship to the charges. Prior to the passage of SB1160, the
5 Allied Estate was collecting approximately \$100,000 per month. Now, when the
6 Allied Trustee's agent goes to the WCAB to enforce liens, the WCAB outright
7 rejects the claim, citing Section 4615. Collections have dropped to less than
8 \$30,000/month, putting the orderly administration of the Allied bankruptcy into
9 complete chaos and in jeopardy of failing. Allied's accounts with Dr. Anguizola's
10 entities constitute the largest account in the Allied Estate. Being deprived of the
11 revenue from those accounts, the Allied Trustee has been deprived of the ability to
12 pay for such necessary items as utilities, payroll, insurance, and even the fees due
13 to the Office of the United States Trustee, a division of the United States
14 Department of Justice.

15 **III. LEGAL STANDARD**

16 To obtain a preliminary injunction, a plaintiff "must establish that s/he is
17 likely to succeed on the merits, that s/he is likely to suffer irreparable harm in the
18 absence of preliminary relief, that the balance of equities tips in his/her favor, and
19 that an injunction is in the public interest. Winter v. NRDC, 555 U.S. 7, 20 (2008).
20 A preliminary injunction is proper if there is a likelihood of irreparable injury to
21 plaintiff, there are serious questions going to the merits, the balance of hardships
22 tips sharply in favor of the plaintiff, and the injunction is in the public interest.
23 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). In
24 cases in which the damage is economic in nature and the Eleventh Amendment
25 bars an award of damages from state coffers, irreparable harm is established and a
26 preliminary injunction is appropriate. California Hospital Ass'n. v. Maxwell-Jolly,
27 776 F.Supp.2d 1129, 1140 (E.D. Cal. 2011).

1 As set forth in Sections IV-VII, Plaintiffs have satisfied the preliminary
2 injunction standard based on the violation of the Sixth Amendment, the Contract
3 Clause, the Takings Clause, and the Due Process Clause. They are also entitled to a
4 preliminary injunction based on Section 4615's violation of the Supremacy Clause.

5 **IV. SECTION 4615 VIOLATES THE PROVIDER PLAINTIFFS' SIXTH**
6 **AMENDMENT RIGHT TO COUNSEL**

7 **A. A Blanket Freeze on "Untainted" Assets Needed to Pay Criminal**
8 **Defense Counsel Violates the Sixth Amendment.**

9 The Sixth Amendment right to counsel is fundamental, protecting not only
10 indigent defendants' right to a public defender but also non-indigent defendants'
11 right to the counsel of their choice. This case raises the question of whether the
12 Sixth Amendment is offended when the State takes a criminal defendant's funds
13 that are unrelated to his alleged wrongdoing—i.e., "untainted funds"—rendering
14 him unable to retain counsel. The answer to this question is yes. Indeed, that was
15 the primary purpose of Section 4615's ban on paying indicted providers' workers'
16 compensation liens *entirely unconnected* to the provider's alleged wrongdoing. For
17 example, if a provider has been indicted for practices related to pain prescriptions,
18 Section 4615 freezes all payments for services rendered to non-pain patients.

19 The Supreme Court has recently—and resoundingly—rejected laws that
20 effectively take untainted property on the ground that by creating artificially
21 indigent defendants, they contravene the fundamental right to counsel. In a case
22 that is squarely on point, the Supreme Court has held that "the pretrial restraint of
23 legitimate, untainted assets needed to retain counsel of choice violates the Sixth
24 Amendment." Luis v. United States, ___ U.S. ___, 136 S.Ct. 1083 (2016). In Luis,
25 the government sought to convert a temporary restraining order into a preliminary
26 injunction to restrain the assets of a criminal defendant who was charged with,
27 *inter alia*, conspiracy to commit health care fraud. The trial court froze the
28 defendant's assets—which were not derived from her criminal activities. It was

1 undisputed that the frozen assets were “untainted,” that is, unconnected to the
2 defendant’s alleged crimes. The defendant challenged the injunction on the ground
3 that freezing her untainted assets prevented her from retaining her counsel of
4 choice, in violation of the Sixth Amendment, and the Supreme Court agreed.

5 The same rule should apply here. Section 4615 covers all of an indicted
6 provider’s liens and does not distinguish between liens that may be said to be
7 “connected” to the charged offense and liens that are not. The freeze even affects
8 contractual obligations and treatment from years before the introduction of
9 SB1160. The Supreme Court notes that this is a very important distinction, “not a
10 technicality. It is the difference between what is yours and what is mine.” Luis,
11 ___ U.S. at ___, 36 S.Ct. at 1091. Here, the payment entitlements represented by
12 the liens unconnected to any charged activity indisputably belong to Plaintiffs.
13 They have a fundamental right to use funds collected from the liens to retain
14 criminal defense counsel. Because Section 4615 represents a money grab for assets
15 that are unconnected to any charged activity and intentionally cuts off untainted
16 funds that providers need to retain lawyers, it contravenes the Sixth Amendment.

17 The Second Circuit has provided guidance in Sixth Amendment cases
18 involving the “temporary” seizure of assets that the defendant seeks to use for his
19 defense. In US v. Cosme, 796 F.3d 226 (2d Cir. 2015), a pretrial restraining order
20 was issued that allowed the government to hold the defendant’s property until the
21 end of criminal wire-fraud proceedings. The Second Circuit vacated and remanded,
22 ordering the trial court to make a determining of whether there was probable cause
23 to support the forfeitability of the defendant’s restrained property. The process
24 works as follows: (1) the defendant must make a threshold showing of insufficient
25 assets to fund his counsel of choice; and (2) the court will then convene an
26 adversarial hearing to test whether the seized assets may be forfeited. In other
27 words, the government may not simply seize so many of the defendant’s assets
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1 (here, liens that represent receivables, which are an asset) that he cannot retain
2 defense counsel without affording the defendant a procedure through which he can
3 demonstrate that the property should not be forfeited. In Cosme, as in this case, the
4 initial order seizing the assets was framed as “temporary.” See also US v.
5 Bonventre, 720 F.3d 126 (2d Cir. 2013) (Sixth Amendment entitles a “presumably
6 innocent criminal defendant” to an adversarial hearing to address whether there is
7 probable cause to believe that the defendant committed the crimes providing a
8 basis for forfeiture and whether there is probable cause to believe that assets are
9 properly forfeitable; a defendant may also have the right to such a hearing in a civil
10 forfeiture action that affects the defendant’s right to counsel in a parallel criminal
11 case); US v. Stein, 541 F.3d 130 (“Although there is no Sixth Amendment right for
12 a defendant to obtain counsel using tainted funds, [a defendant] still possesses a
13 qualified Sixth Amendment right to use *wholly legitimate funds* to hire the attorney
14 of his choice”).

15 Similarly, the Seventh Circuit has held that in some circumstances, a
16 defendant can show that a pretrial forfeiture violates his Sixth Amendment rights
17 even if he retains other assets with which to pay attorney fees, at least in situations
18 in which there is a possibility that the government would seek forfeiture of those
19 other assets after his conviction: “[c]ounsel inevitably will be reluctant or
20 unwilling to accept private employment knowing that they may not be able to
21 collect or retain agreed-upon fees.” US v. Moya-Gomez, 860 F.2d 706 (7th Cir.
22 1988). District courts around the country have arrived at the same conclusion. See,
23 e.g., US v. Stein, 435 F.Supp.2d 330 (S.D.N.Y. 2006) (government’s actions to
24 deny the Sixth Amendment right to counsel are subject to strict scrutiny); U.S .v.
25 Noriega, 746 F.Supp. 1541 (S.D. Fla. 1990) (government cannot deprive the
26 defendant of the only assets available for attorney fees without showing that the
27 assets were connected to illegal activity and without affording an opportunity to
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1 contest the seizure).

2 **B. Plaintiffs Are Entitled to a Preliminary Injunction.**

3 In light of the clear violation of the Sixth Amendment set forth above,
4 Plaintiffs are entitled to a preliminary injunction. First, Plaintiffs are likely to
5 succeed on the merits, as set forth above. Second, there is a likelihood of
6 irreparable injury to Plaintiffs, who face the complete deprivation of their right to
7 counsel of their choice, paid out of untainted assets. As the Southern District of
8 Florida noted in the Noriega case, “In most cases, the freeze imposed on a
9 defendant’s assets may be regarded as temporary since the defendant’s use of the
10 assets is merely postponed pending the outcome of the trial. *With regard to*
11 *attorneys’ fees, however, the freeze constitutes a permanent deprivation since*
12 *“[t]he defendant needs the attorney now if the attorney is to do him any good.”*
13 For this reason, the balance of hardships tips sharply in favor of Plaintiffs. Fourth,
14 the injunction is in the public interest, which favors respect for the constitutional
15 right to counsel.

16 **V. SECTION 4615 VIOLATES THE CONTRACT CLAUSE**

17 **A. Overview of the Contract Clause**

18 The Contract Clause prohibits states from passing any “Law impairing the
19 Obligation of Contracts.” U.S. Constitution, Art. I, Sec. 10, cl. 1. The Contract
20 Clause prohibits states from retroactively impairing contract rights.

21 Section 4615 clearly impairs medical providers’ contract rights on a
22 retroactive basis, thus violating the Contract Clause. Specifically, by barring
23 payments for services that insurers approved *before* the law was passed, and by
24 barring payments for services that insurers approved *before any fraud is alleged to*
25 *have occurred*, the government is retroactively and improperly impairing the
26 doctors’ contract rights pursuant to which they provided professional services in
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1 return for a fee.⁴ Now that the doctors have provided a service in reliance on their
2 contractual right to payment, the California Legislature has suddenly interfered,
3 leaving doctors uncompensated and virtually incapable of being compensated.
4 Moreover, it ignores the fact that the appropriate place for insurance companies to
5 challenge liens is the workers' compensation process on a case-by-case basis using
6 currently available procedures. Although this procedure may seem cumbersome to
7 the carriers, the carriers' convenience is not at issue in this case. Obviously, this
8 situation has deleterious effects on the doctors, who face being unpaid for years of
9 professional services wholly unconnected to any alleged wrongdoing. Patients,
10 too, will suffer: if the doctors of their choice are financially foreclosed from
11 continuing to provide services to injured workers, such patients will have a reduced
12 ability to be treated by the physician of their choice. Eventually, if enough
13 physicians are driven from this sector of the profession, injured workers may not
14 be able to obtain treatment at all. It is difficult to imagine a situation that more
15 blatantly contravenes the clear requirements of the Contract Clause.

16 **B. The Contract Clause Prohibits the State from Interfering**
17 **with Existing Contracts**

18 The U.S. Constitution guarantees that states cannot impair the rights or
19 obligations of a contract. Southern California Gas Co. v. City of Santa Ana, 336
20 F.3d 885, 886-887 (9th Cir. 2003). Any law that decreases the efficiency of the
21 legal enforcement of a contract is said to "impair" the obligations of a contract,
22 including, as here, any authorization to postpone payment. Louisiana v. City of

23 _____
24 ⁴ See, e.g., Eagle SPE NV I, Inc. v. Kiley Ranch Communities, 5 F.Supp.3d
25 1238 (D. Nev. 2014) (retroactive application of a statute limiting assignees'
26 remedies limited to assignments that occurred after the statute's enactment); Nieves
27 v. Hess Oil Virgin Islands Corp., C.A.3 (Virgin Islands) 1987, 819 F.2d 1237, cert.
28 den. 108 S.Ct. 452, 484 U.S. 963, 98 L.Ed.2d 392 (impairment of borrowing
employer's contractual expectations of avoiding tort claims by paying workers'
compensation benefits through retroactive application of workers' compensation
reform could not be justified; retroactive provision violated Contract Clause).

1 New Orleans, 102 U.S. 203, 207 (1880).

2 The leading case on the application of the Contract Clause in health care is
3 California Hospital Ass’n. v. Maxwell-Jolly, 776 F.Supp.2d 1129 (E.D. Cal. 2011).

4 In that case, the Eastern District of California granted relief to a hospital
5 association that sought a preliminary injunction barring the implementation
6 California legislation freezing the rates at which California reimbursed hospitals
7 that provide inpatient MediCal services. The association’s challenge was brought
8 pursuant to the Contract Clauses of both the federal and the California
9 constitutions.⁵

10 The basis for the Association’s challenge in Maxwell-Jolly was very similar
11 to the situation presented in this case. The Maxwell-Jolly plaintiffs argued that the
12 rate freeze substantially impaired their contracts (in their case, with the State of
13 California) “because it retroactively imposes a limit on the payment hospitals can
14 receive for services rendered before the statute was created.” 776 F.Supp.2d at
15 1141. The court issued an injunction.⁶

16 Here, Section 4615 retroactively imposes not merely a limit, but a *de facto*
17 *ban* on the payment doctors can receive for services rendered not only before the
18 statute was created but also, in some cases, for services rendered before they are
19 alleged to have committed a criminal offense. Moreover, the law bans medical
20 providers from receiving payment for services rendered that were unrelated to the
21 pending charges. In other words, in this case the retrospective impairment of the
22 medical providers’ contracts is even *more* severe and wide-ranging than the

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24 ⁵ Section 4615 also violates California’s Contract Clause, which is adjudicated
25 under the same standard as the federal Contract Clause. See Campanelli v. Allstate
26 Life Ins., 322 F.3d 1086, 1097 (9th Cir. 2003); Retired Employees Ass’n. of Orange
27 County, Inc. v. County of Orange, 610 F.3d 1099, 1102 (2010).

28 ⁶ Although the State sought relief from the order granting preliminary
injunction before the Ninth Circuit, the interlocutory appeal was dismissed as moot
because the Legislature redrafted the legislation to comport with constitutional
requirements.

1 impairment that justified injunctive relief in Maxwell-Jolly.

2 The standard for determining whether a state law violates the Contract
3 Clause is as follows: (1) whether the law “operates as a substantial impairment to
4 the specific terms” of existing contracts; and (2) if Plaintiffs demonstrate
5 substantial impairment, whether Defendants “can show that the State’s police
6 power permits the impairment because it is ‘reasonable and necessary to serve an
7 important public purpose.’” 776 F.Supp.2d at 1141, citing State of Nevada
8 Employees Ass’n. v. Keating, 903 F.2d 1223, 1226 (9th Cir. 1990). See also
9 Associated Builders & Contractors, Golden Gate Chapter Inc. v. Baca, 769 F.Supp.
10 1537, 1549 (N.D. Cal. 1991) (court asks whether the state law has “in fact”
11 substantially impaired a contractual relationship, and the level of impairment
12 increases the level of scrutiny to which the legislation will be subjected).⁷
13 Maxwell-Jolly goes on to note that “The Contract Clause is not an absolute bar to
14 state regulation that impairs contractual relationships; instead, its prohibition must
15 be accommodated to the inherent police power of the State to safeguard the vital
16 interests of its people.” 776 F.Supp.2d at 1141, citing Energy Reserves Grp., Inc.
17 v. Kan. Power & Light Co., 459 U.S. 400, 410 (1983). The vital interests at issue
18 in this case require this Court to weigh the substantial impairment of the providers’
19 contracts against the negligible benefit of Section 4615.

20 Here, both standards are unmet. As set forth above, the threshold inquiry in
21 Contract Clause cases—i.e., “whether the state law has, in fact, operated as a
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23 ⁷ Some courts have characterized the Contract Clause analysis as a three-step
24 inquiry: (1) whether the state law has substantially impaired a contractual
25 relationship; (2) whether the state has a significant and legitimate public purpose
26 such as remedying a broad social or economic problem; and (3) if such a legitimate
27 purpose is established, whether the adjustment of the rights and responsibilities of
28 the contracting parties is reasonable and appropriate to the law’s purpose. Mussetter
Distributing, Inc. v. DBI Beverage, Inc., 685 F.Supp.2d 1028, 1031-1032 (N.D. Cal.
2010). Section 4615 fails regardless of whether this Court uses a two- or a three-
prong test.

1 substantial impairment of a contractual relationship” (Campanelli v. Allstate Life
2 Ins. Co., 332 F.3d 1086, 1098 (2003))—is more than met. “The severity of the
3 impairment measures the height of the hurdle the state legislation must clear.”
4 Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245 (1978) (Contract Clause
5 limits state power to abridge existing contractual relationships, even in the exercise
6 of its legitimate police power; striking down law that “retroactively modified
7 compensation” that employer had previously agreed to pay). “The more severe the
8 impairment, the more searching the examination of the legislation must be.”
9 Campanelli, 332 F.3d at 1098. Here, even a rudimentary examination reveals that
10 the severity of Section 4615’s impairment of contracts is indefensible. The law
11 flatly prohibits the affected providers from obtaining *any* of the benefit of their
12 bargain regardless of the relationship of the obligation to the underlying
13 allegations, for care that took place long before the passage of Section 4615, even
14 for care that is entirely unrelated to any alleged wrongdoing. Moreover, the law
15 neither integrates its remedies with those already available in the workers’
16 compensation system nor explains why existing remedies require yet another,
17 draconian layer of remedies.

18 Plaintiffs anticipate that Defendants will argue that Plaintiffs’ claim fails the
19 second prong of the Contract Clause analysis on the grounds that the State’s
20 inherent police power to safeguard its people’s interest outweighs the its obligation
21 not to impair contractual relationships. 776 F.Supp.2d at 1141. Plaintiffs note the
22 following facts for the Court’s consideration in this regard: 1), Section 4615
23 forbids indicted providers for being paid for services that they rendered prior to
24 being indicted, 2) Section 4615 forbids indicted providers from being paid for
25 services that they rendered prior to allegedly committing any of the criminal acts
26 charged, 3) Section 4615 forbids indicted providers from being paid for services
27 unrelated to any criminal wrongdoing—in other words, it combines “tainted” and
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1 “untainted” liens, intentionally creating severe financial duress on those providers,
2 4) Section 4615, as set forth below, punishes *innocent* providers in a manner that is
3 arguably the most severe by allowing the statute of limitations to run on those
4 providers’ liens and providing no method by which providers who have been
5 exonerated through dismissal or acquittal can reclaim their right to collect on liens
6 that have gone stale while they waited for justice from the criminal courts.
7 Furthermore, it punishes charged defendants who are charged by not yet convicted
8 of a crime by depriving them of necessary financial support for legal assistance, for
9 payment of necessary life expenses, and payment for extraordinary life expenses
10 such as child support, and 5) Section 4615 improperly bars ancillary providers
11 being compensated for their work, a matter that is clearly beyond the scope of the
12 statute.

13 Plaintiffs submit that these draconian outcomes go far beyond any
14 reasonable measures to safeguard the public’s interest against fraudulent activities.
15 The overbroad and sweeping language of Section 4615 goes well beyond anything
16 reasonable and necessary and therefore, this Court should protect Plaintiffs’ rights
17 under the Contract Clause and enjoin enforcement. Cf. University of Hawai’i
18 Professional Assembly v. Cayetano, 183 F.3d 1096 (9th Cir. 1999) (a contractual
19 impairment may not be considered necessary, for Contract Clause purposes, if
20 there is a more moderate course of action—for example, the remedies that already
21 exist in the workers’ compensation process—that would serve defendants’
22 purposes equally well, because Contract Clause limits the ability of a State, or a
23 subdivision of a State, to abridge contractual obligations without other alternatives
24 first).

25 **C. Plaintiffs Are Entitled to a Preliminary Injunction.**

26 In light of the clear and facial violation of the Contract Clause set forth
27 above, Plaintiffs are entitled to a preliminary injunction. First, for the reasons set
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1 forth above, Plaintiffs are likely to succeed on the merits of their claim that Section
2 4615 violates the Contract Clause. Second, there is a likelihood of irreparable
3 injury to the Plaintiffs, who will permanently lose the right to enforce any contracts
4 for which the statute of limitations expires during the pendency of the criminal
5 proceedings against them (or, in the case of company or ancillary providers, the
6 criminal proceedings against the doctor associated with their liens). Third, the
7 balance of hardships tips sharply in favor of Plaintiffs, who stand to go unpaid for
8 years of work unrelated to any criminal wrongdoing. Fourth, the injunction is in
9 the public interest in that it protects the medical profession's ability to be paid for
10 care already given, preserving the viability of medical practices and associated
11 services that treat California's injured workers. Section 4615 dragoons medical
12 providers into giving their labor away after the fact. The ultimate result will be to
13 drive a large number of providers out of business. This leaves California's injured
14 workers in a terrible position: injured on the job, without coverage, and without
15 any choice of a treating physician, a result that is not only wrong but against
16 California's public policy of protecting this vulnerable segment of the population.

17 **VI. SECTION 4615 INTERFERES WITH THE U.S. BANKRUPTCY**
18 **CODE AND VIOLATES THE SUPREMACY CLAUSE**

19 The Supremacy Clause operates to cause federal bankruptcy laws to trump
20 state laws that are inconsistent with Congress's exercise of its exclusive power to
21 enact uniform bankruptcy laws. U.S. Const., art. VI, cl. 2; Int'l Bhd. of Elec.
22 Workers, Local 2376 v. City of Vallejo (In re City of Vallejo), 432 B.R. 262, 268-
23 70 (E.D.Cal.2010), aff'd. 403 B.R. 72, 76-77 (Bankr. E.D. Cal. 2009); Stockton II,
24 478 B.R. at 16. By enacting Section 4615, the California Legislature has directly
25 impaired contracts being enforced by the Plaintiff Trustee.

26 In light of this obvious Supremacy Clause violation set forth above,
27 Plaintiffs, and as to this claim, Plaintiff David Goodrich is entitled to a preliminary
28 injunction. First, Plaintiffs are likely to succeed on the merits in their argument

1 that the powers enjoyed by the Allied Trustee under the U.S. Bankruptcy Code
2 have been improperly and unconstitutionally usurped by the state government.
3 Second, there is a likelihood of irreparable injury to the Plaintiffs, especially the
4 Allied Trustee, whose efforts to administer the Allied Estate have been disrupted
5 (perhaps permanently) by Section 4615. The Trustee provides the Court in his
6 declaration with the detail of the devastating effect on the bankruptcy, the
7 interference with his duties, and the fact that the bankruptcy is now in jeopardy of
8 immediately failing, as a direct result of the lien freeze. Third, the balance of
9 hardships sharply tips in favor of Plaintiffs, particularly the Allied Trustee, whose
10 task has been impeded by the state government's abrupt interruption of the bulk of
11 the Allied Estate's income. Fourth, the injunction serves the public interest of
12 promoting the smooth and efficient administration of bankruptcy matters and
13 preventing undue delays in concluding such matters.

14 15 **VII. SECTION 4615 VIOLATES DUE PROCESS**

16 **A. Because the law is severely retroactive, it violates substantive due-** 17 **process guarantees.**

18 The Due Process Clause of the Fourteenth Amendment provides that “[n]o
19 State shall . . . deprive any person of life, liberty or property, without due process
20 of law.” U.S. Const. amend. XIV, § 1. Section 4615 cannot survive a substantive
21 due process challenge because it is, on its face, “arbitrary and irrational.” Eastern
22 Enterprises v. Apfel, 524 U.S. 498 (1998); see also Stormans, Inc. v. Wiesman,
23 794 F.3d 1064 (9th Cir. 2015) (laws that do not infringe a fundamental right must
24 be rationally related to a legitimate governmental interest). The first due-process
25 issue to consider is whether Section 4615 violates substantive due process in light
26 of its severely retroactive impact on Plaintiffs’ vested interest in the professional
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1 service fees represented by their liens.⁸ See, e.g., id.

2 The Supreme Court’s decision in Eastern Enterprises is particularly
3 instructive. In Eastern Enterprises, a former coal operator challenged the
4 constitutionality of the Coal Industry Retiree Health Benefit Act (Coal Act). The
5 Supreme Court held that the Act was unconstitutional by retroactively requiring the
6 former operator to fund health benefits for retired miners who had worked for the
7 operator.

8 A statute that is clearly intended to operate retroactively will be upheld if
9 retroactivity is justified by a rational legislative purpose. Angelotti Chiropractic,
10 Inc. et al v. Baker, et al., 791 F.3d 1075, 1084 (9th Cir. 2015) (citations omitted).
11 Here, Section 4615 is clearly intended to apply retroactively. Therefore, the
12 inquiry for this Court is whether the stay of the all liens for all medical providers is
13 justified by a rational legislative purpose. The Defendants must advance a rational
14 justification for the retroactive application of Section 4615 in order to satisfy
15 substantive Due Process. See Halverson v. Skagit Cty., 42 F.3d 1257, 1260 (9th
16 Cir. 1994), *as amended on denial of reh’g* (1995).

17 “Retroactivity is generally disfavored in the law.” Eastern Enterprises
18 (citing Bowen v. Georgetown Univ. Hospital, 488 U.S. 204, 208, 109 S.Ct. 468,
19 469-470, 102 L.Ed.2d 493 (1988) and observing that retroactivity is inherently
20 suspect based on historical jurisprudence, the Ex Post Facto and the Takings
21 Clauses). The Supreme Court further affirmed that “Retroactive legislation...
22 presents problems of unfairness that are more serious than those posed by
23 prospective legislation, because it can deprive citizens of legitimate expectations

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25 ⁸ Plaintiff also note that the court in US v. Stein, 435 F.Supp.2d 330 (S.D.N.Y.
26 2006), held that a criminal defendant has a substantive due process right to obtain
27 and use, in order to prepare his or her defense, resources lawfully available to him or
28 her.

1 and upset settled transactions.” (524 U.S. at 501 (quoting General Motors Corp. v.
2 Romein, 503 U.S. 181, 191 (1992).)

3 As with the Coal Act disapproved in Eastern Enterprises, Section 4615
4 applies retroactively, divesting the Plaintiffs of their lien rights, which they
5 believed they held long before the enactment of SB1160. The extent of the
6 retroactive liability shifting between medical providers and insurance companies is
7 particularly far reaching given the DIR’s estimate that the law affects more than \$1
8 billion worth of liens in California. Many of the liens are for services rendered by
9 the medical providers, with the expectation of payment, more than ten years ago.
10 The lack of differentiation in the timing of the creation of the liens both represents
11 and causes Section 4615’s fatal flaw. Simply put, there is no rational relationship
12 between the statute and the disqualification of earlier-filed liens. The distance into
13 the past that Section 4615 reaches is particularly unsettling, and just as in Eastern
14 Enterprises, raises substantial questions of fairness. See Connolly, supra, at 229,
15 106 S.Ct. at 1028 (Connor, J., concurring) (questioning constitutionality of
16 imposing liability on “employers for unfunded benefits that accrued in the past
17 under a pension plan whether or not the employers had agreed to ensure that
18 benefits would be fully funded”); see also Landgraf, 511 U.S. at 265, 114 S.Ct. at
19 1497 (“Elementary considerations of fairness dictate that individuals should have
20 an opportunity to know what the law is and to conform their conduct accordingly;
21 settled expectations should not be lightly disrupted”).

22 Examining the long and remote retroactive reach of Section 4615,
23 Defendants cannot advance a legitimate reason, let alone a rational one for its
24 retroactive application. Although the California Legislature blandly recited that
25 there is fraud afoot within the Workers’ Compensation system, just as in Eastern
26 Enterprises, “the solution it crafted improperly places a severe, disproportionate
27 and extremely retroactive burden” on the Plaintiffs.

1 **B. Because the law automatically freezes assets with no opportunity**
2 **for notice or an opportunity to be heard, it violates procedural**
3 **due-process guarantees.**

4 A procedural due-process claim has two distinct elements: (1) a deprivation
5 of a constitutionally protected liberty or property interest, and (2) a denial of
6 adequate procedural protections. Brewster v. Bd. of Educ. of Lynwood Unified
7 Sch. Dist., 149 F.3d 971, 982 (9th Cir. 1998). Section 4615 satisfies both of these
8 elements. It additionally offends California’s procedural due process claim, which
9 is triggered by rights conferred by statutes such as the workers’ compensation law.
10 See Chorn v. Workers’ Compensation Appeals Board, 245 Cal.App.4th 1370, 1387-
11 88 (2016) (noting that right to workers’ compensation is statutory, and lien
12 claimants’ right to payment, “trigger[s] a right to procedural due process under the
13 state Constitution”). First, as set forth above, *passim*, Section 4615 deprives
14 Plaintiffs of their Sixth Amendment liberty interest and their Contract Clause
15 property interest.⁹ Second, by its terms Section 4615 provide no adequate
16 procedural protection to Plaintiffs because there is no right to a hearing and no
17 right to an individualized determination that Plaintiffs’ liens are tainted and
18 forfeitable. The application of the law at the WCAB level is to simply *stay* the
19 liens. *There is no method or mechanism* to have them heard or differentiated at that
20 level. Accordingly, Plaintiffs have no remedy at all.

21 **C. Angelotti Chiropractic, Inc. v. Baker Does Not Save Section 4615**

22 Director Baker likely will argue that based on the Angelotti Chiropractic
23 case, a takings, due process, and equal protection challenge to California’s workers
24 compensation lien-activation fee, the rights represented by Plaintiffs’ liens are
25 statutory in nature and not vested until they are reduced to final judgment.

26 ⁹ Section 4615 violates the Equal Protection Clause because it singles out the
27 Plaintiffs and only a few others similarly situated for regulation. See Vill. of
28 Willowbrook v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060
 (2000).

1 Therefore, such an argument would go, the State is free to interfere with Plaintiffs’
2 right to collect their fees and has no obligation to afford any measure of due
3 process. See Angelotti Chiropractic, Inc. v. Baker, 791 F.3d 1075 (9th Cir. 1075).

4 If that argument is presented, this Court should reject it. Angelotti involved
5 facts quite different than the facts of this case. In Angelotti, the Ninth Circuit held
6 that the lien fee was not unconstitutional because the medical providers were free
7 to pay the fee and would lose no rights. Here, in contrast, the lien system is the
8 *only* legal means through which Plaintiffs can receive payment for their
9 professional services rendered, and it is improper for the State to retroactively erect
10 what in many cases will amount to a permanent, absolute barrier to payment, with
11 no right even to be heard. Cf. Horne v. Dept. of Agriculture, No. 14-275, 576 U.S.
12 ____ (2015) (in case involving governmental taking of a portion of plaintiffs’ crops,
13 rejecting the argument that voluntary participation in the marketplace waives
14 constitutional objections to governmental interference). That State-created
15 expectation, which was the foundation for Plaintiffs’ provision of years of
16 professional services to California’s injured workers, is sufficient to create the sort
17 of property right that requires due process protection. Moreover, as set forth in the
18 Statement of Facts, many (if not most) of the liens frozen by Section 4615 pertain
19 to treatment that was pre-approved by insurers, thus creating a contractual
20 obligation to pay. Where a statute impairs the obligation of such a contract, it is
21 constitutionally barred from taking effect retroactively. See Gordon H. Ball, Inc. v.
22 State of California ex rel. Dep. Pub. Wks., 26 Cal.App.3d 162, 168 (1972) (“The
23 retroactive operation of a civil statute is by no means unusual, and no
24 constitutional objection exists to such operation save where a vested right, *or the*
25 *obligation of a contract*, is impaired”) (emphasis added), cited in Graczyk v.
26 Workers’ Comp. Appeals Bd., 184 Cal.App.3d 997, 1002 (1986).

27 Plaintiffs additionally note that, as set forth throughout this brief, Section
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1 4615’s stay of Plaintiffs’ liens—especially to the extent that those liens will
2 become time-barred during the pendency of criminal proceedings, thus effecting a
3 severe deprivation of the benefit of Plaintiffs’ work—is much more pernicious than
4 the impact of the fee challenged in Angelotti. In that case, the challenged fee
5 needed merely to be paid to unlock the plaintiffs’ liens. Here, in contrast, although
6 Providers are still required to pay the WCAB fee to maintain their frozen liens,
7 there is literally nothing that Plaintiffs can do, no forum in which they can be
8 heard, no fee that they can pay, to unfreeze untainted liens whose obligations were
9 created before the passage of Section 4615. And in the many cases in which the
10 limitations period will run during the freeze, that retroactive deprivation of
11 payment will become permanent.

12 **D. Plaintiffs Are Entitled to a Preliminary Injunction On the Ground**
13 **that Section 4615 Violates the Due Process Clause.**

14 In light of the clear violation of the Due Process Clause set forth above,
15 Plaintiffs are entitled to a preliminary injunction.

16 First, Plaintiffs are likely to succeed on the merits, as Section 4615 is
17 unconstitutionally retroactive and provides no opportunity to be heard at all.
18 Moreover, it is not rationally related to the government’s purported goals in that it
19 catches in its net millions upon millions of dollars of liens that have not been
20 connected to any wrongful conduct. Indeed, it freezes liens that are unrelated to the
21 charged fraud, which appears to have no other explanation other than to benefit the
22 special interest insurance companies, or as the DIR calls them, “stakeholders.”

23 Second, there is a strong likelihood of irreparable injury to the Plaintiffs.
24 Dr. Anguizola is losing his medical practice, income, employees, and now cannot
25 afford criminal counsel to defend the charges, as a direct of the lien freeze. Dr.
26 Anguizola has no due process right to contest the fact, because the statute on its
27 face provides no hearing, no exception and no ability to show that the frozen liens,
28 income and assets are in fact, “untainted.” Luis v. U.S., supra, § IV.A. Vanguard,

1 likewise has no due process right to claim that the liens are “untainted” and no
2 right to claim that the freeze interferes with its rights under the Contract Clause.

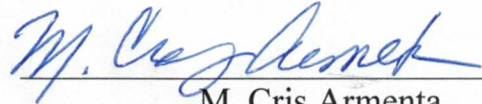
3 Third, the hardships fall heavily on Plaintiffs. Fourth, the injunction is in the
4 public interest, which favors the protection of an individual’s right not to be
5 summarily deprived of his or her earnings, income and assets without the right to a
6 hearing.

7 **VIII. CONCLUSION**

8 Based on the foregoing, Plaintiffs respectfully request that this Court
9 GRANT their request for a preliminary injunction by entering an order that Section
10 4615 is invalid and prohibiting the Defendants from enforcing that unconstitutional
11 statute.

12
13 THE ARMENTA LAW FIRM, A.P.C.

14 Dated: May 18, 2017

15
16 By 
17 M. Cris Armenta
18 Attorneys for Plaintiffs