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KEVIN STOCK
COUNTY CLERK
NO: 13-2-12653-8

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF PIERCE**

9 CHRISTINA MIESMER,

10 Plaintiff,

11 vs.

12 HUNTER DONALDSON, LLC, a California
13 limited liability company; MULTICARE
14 HEALTH SYSTEM, a Washington nonprofit
15 corporation; REBECCA A. ROHLKE,
16 individually, on behalf of the marital
17 community and as agent of Hunter
18 Donaldson; JOHN DOE ROHLKE, on behalf
19 of the marital community; RALPH
20 WADSWORTH, individually, on behalf of
21 the marital community, and as agent of
22 Hunter Donaldson, and; JANE DOE
23 WADSWORTH, on behalf of the marital
24 community.

25 Defendants.

NO. 13-2-12653-8

**PLAINTIFF'S MOTION FOR A
TEMPORARY RESTRAINING, A
PRELIMINARY INJUNCTION AND A
SHOW CAUSE ORDER AGAINST
HUNTER DONALDSON AND
MULTICARE**

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I. RELIEF REQUESTED

Plaintiff Christina Miesmer asks this Court for a temporary restraining order under CR 65(b) followed by a preliminary injunction once notice is served on all parties pursuant to CR 65(a), enjoining Defendants MultiCare Health System ("MultiCare") and Hunter Donaldson,

PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER 1 of 12



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1 LLC (“Hunter Donaldson”) from collecting or enforcing liens on behalf of Defendant
2 MultiCare which violate Washington law.

3 Defendant MultiCare authorized Defendant Hunter Donaldson, a California firm
4 which markets itself as specializing in the collection of third-party liability claims, to act as its
5 agent and signatory for the purpose of filing medical liens in Pierce County, Washington.
6 Defendants MultiCare, Hunter Donaldson, Ralph Wadsworth, Rebecca A. Rohlke, and
7 MultiCare agreed and acted in concert to fraudulently register Rebecca A. Rohlke as a
8 Washington State notary allegedly living in Pierce County when she was, according to real
9 estate records, actually a resident of California and not properly qualified under RCW
10 42.44.020 to be a Washington State notary.
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12 Defendants MultiCare, Hunter Donaldson, Rebecca A. Rohlke, and Ralph Wadsworth
13 falsified and then recorded with the Pierce County Auditor thousands of medical liens,
14 including those against Plaintiff Christina Miesmer’s right of recovery, on behalf of
15 Defendants MultiCare by improperly signing and knowingly using a notary not properly
16 authorized under Washington law. By knowingly offering these false documents to the Pierce
17 County Auditor’s Office for filing in the public record, Defendants MultiCare, Hunter
18 Donaldson, Rebecca A. Rohlke, and Ralph Wadsworth are committing class C felony
19 criminal violations under RCW 40.16.030, punishable by fines and/or incarceration. In
20 addition, Defendants’ deceptive and unlawful medical lien practice has caused significant
21 financial harm to Plaintiff by obstructing and delaying settlement of her claims against the
22 tortfeasor in her case and his insurer. If left unchecked, Defendants’ actions will continue to
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1 mislead, deceive and harm Plaintiff Miesmer as well as a substantial portion of the public
2 currently facing similarly invalid medical services liens filed by the defendants.

3 As stated in the Complaint for Damages, a separate lawsuit seeking class action status
4 has been filed related to the medical services liens, under RCW 60.44 et seq., at issue in this
5 lawsuit. It was originally filed in Washington state superior court and a motion for injunctive
6 relief was filed seeking a temporary restraining order and/or injunction to stop Defendants
7 from continuing their unlawful conduct with respect to the filing and enforcement of legally
8 invalid medical services liens. However, Defendants removed the proposed class action case
9 to federal court. A motion to remand the case back to state court has been filed and is
10 presently in front of the court for consideration. Despite the existence of the class suit,
11 Defendants have continued to pursue their invalid liens and even increased their efforts to
12 unlawfully leverage money from auto collision victims. In this case, Plaintiff Christina
13 Miesmer reached settlement with an insurance company for a sum of money she received as a
14 result of traumatic injuries suffered in a motor vehicle collision and receipt of the settlement
15 money has been tied up by MultiCare and Hunter Donaldson's illegal lien and by Defendants'
16 demand for a lien amount in excess of the 25% of the total recovery, in violation of RCW
17 60.44.010.

18 Because Plaintiff's family needs the money to which she is legally entitled but cannot
19 obtain it unless and until the lien is declared invalid, Plaintiff has filed this action separately
20 for now. Assuming the proposed class action is returned to state court, Plaintiff Miesmer's
21 case should then be consolidated with the class action.
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1 **II. STATEMENT OF FACTS**

2 **a. Plaintiff Christina Miesmer**

3 Plaintiff Christina Miesmer received healthcare services from MultiCare for traumatic
4 injuries caused by a third party tortfeasor’s motor vehicle collision on December 3, 2011.
5 Complaint at 5.1. Defendant MultiCare conspired with and authorized Defendant Hunter
6 Donaldson to act as its agent for the purpose of filing a notice of medical lien pursuant to
7 RCW 60.44.010. *Id.* at 5.9-5.12. Additionally, in each case, MultiCare and Hunter
8 Donaldson did, in fact, file liens for medical services under RCW 60.44.010. Exhibits 1 and 2
9 to the Declaration of Darrell L. Cochran in Support of Plaintiffs’ Motion (hereinafter
10 “Cochran Decl.”).

11
12 Further, under RCW 60.44.010, all medical service liens against Christina Miesmer’s
13 right of recovery cannot exceed twenty-five (25) percent of Plaintiff Miesmer’s settlement
14 amount. Yet, in addition to being fraudulently obtained and invalid on their face, MultiCare’s
15 liens asserted against Plaintiff Miesmer amount to more than 40% of Miesmer’s total
16 settlement amount.
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18 **b. Hunter Donaldson’s Invalid Medical Services Liens**

19 The instruments filed by Hunter Donaldson against the property interests of Plaintiff
20 Miesmer were signed by Hunter Donaldson’s managing partner Ralph Wadsworth as
21 claimant’s “agent,” and notarized by Hunter Donaldson employee Rebecca A. Rohlke, as a
22 Notary Public in and for the State of Washington, with a sworn statement (“ss.”) allegedly
23 made in Pierce County, Washington. *Id.* However, Hunter Donaldson’s notary, Rohlke, is
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1 not and never was, during all material times, a resident of Washington, Oregon, or Idaho as
2 required under RCW 42.44.020.

3 Rather, Rebecca A. Rohlke is and was, at all material times, a resident of California
4 purposefully using a fraudulently obtained Washington State notary commission to record
5 medical liens for Hunter Donaldson on behalf of MultiCare and Mt. Rainier. Exhibit 3 to
6 Cochran Decl. Additionally, notary Rohlke was, at all times material, believed to be
7 physically present in California when she included the sworn statement (“ss.”) in the Notice
8 of Claim for a medical services lien that notarization occurred in Pierce County, Washington.
9 Exhibits 1 & 2 to Cochran Decl.
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11 Furthermore, Hunter Donaldson is not a public or private operator of hospital and/or
12 ambulance services, nor is it a licensed nurse, practitioner, physician, or surgeon who renders
13 service or transportation and care for a patient with a traumatic injury as a result of a tort.
14 RCW 60.44.010. Therefore it is not a recognized claimant under Washington’s medical lien
15 statute, RCW 60.44.010. As a result, Hunter Donaldson’s managing partner Ralph
16 Wadsworth’s signature is insufficient to act as the signature of MultiCare and Mt. Rainier.
17 Exhibits 1 & 2 to Cochran Decl. Moreover, the notary attestation regarding the signature of
18 Ralph Wadsworth is insufficient to establish that he was authorized to sign the liens on behalf
19 of Hunter Donaldson. *Id.*
20

21 **a. MultiCare’s Actions in Concert with Hunter Donaldson**
22

23 In January 2010, Defendant MultiCare’s Vice President in charge of Revenue Cycle at
24 the time, Jason Adams, acted in concert with others at MultiCare, including fellow employees
25 Koleen Kelley (Executive Assistant to Vice President of Revenue Cycle) and Susan George
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1 (Contract Specialist at MultiCare), and with Defendants Rohlke and Hunter Donaldson, to
2 provide false residency information for and falsely endorse Rohlke as a Washington State
3 resident when she was in fact a California resident, at all material times living in La Habra,
4 California and Fullerton, California. Exhibit 4 to Cochran Decl. Rohlke, a Hunter Donaldson
5 employee as well as its notary, is not authorized under RCW 42.44.020 to administer oaths in
6 this state because she is not a resident of Washington, Oregon, or Idaho—rather, she is, and
7 always has been at all material times, a resident of California. Exhibit 3 to Cochran Decl.
8 Rohlke, Wadsworth, Hunter Donaldson and MultiCare then used Rohlke’s falsely obtained
9 notary on medical services liens for Defendants MultiCare and Mt. Rainier. Exhibits 1 & 2 to
10 Cochran Decl. Because Rohlke’s notary was invalid, the liens are also unenforceable because
11 they were not properly subscribed by the claimant or verified before a person authorized to
12 administer oaths as required by RCW 60.44.020.
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15 **b. Hunter Donaldson Continues to Collect on Invalid Medical Services Liens**

16 In April 2013, a Class Action Complaint for Damages based on the Defendants’
17 unlawful medical liens practice was filed in Pierce County Superior Court. See Cochran
18 Decl. at ¶3. At the time, Defendant Multicare issued a statement by way of the local
19 newspaper, the News Tribune, indicating,
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21 MultiCare Health System takes these allegations very seriously.
22 We have commenced an investigation into the specific
23 allegations that are listed in this complaint. Until we know all of
24 the facts and have fully investigated the concerns raised,
25 MultiCare has temporarily suspended the enforcement of all
26 medical liens issued on its behalf by Hunter Donaldson. We
will meet with representatives from Hunter Donaldson as soon
as possible.

1 Exhibit 5 to Cochran Decl.

2 Despite MultiCare's statement to the press, Defendant Hunter Donaldson also
3 continues to call seeking to collect the full amount of its invalid and unlawful liens placed on
4 Christina Miesmer's right of recovery. Defendant Hunter Donaldson also continues to
5 telephone local attorneys representing injured Washington State victims insisting upon
6 payment pursuant to Hunter Donaldson's fraudulent liens. Declaration of Tom Budinich;
7 Declaration of Virginia DeCosta; Declaration of Charles BroCato.
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9 Finally, at last count, according to a check done via the Pierce County Auditor's
10 website, MultiCare has filed 5436 liens with the Pierce County Auditor's Office since
11 Rebecca Rohlke signed her declaration on January 26, 2010, to become a Washington State
12 Notary. Cochran Decl. at ¶4.
13

14 III. ISSUES PRESENTED

- 15 **1. Should Defendants MultiCare and Hunter Donaldson be Enjoined from**
16 **Collecting or Enforcing Liens on Behalf of Defendant MultiCare Because the**
17 **Liens Violate Washington Law?**
- 18 **2. Should Defendants Be Required to Show Cause Why an Injunction on Behalf of**
19 **All Others Similarly Situated to Plaintiffs with Medical Liens Filed by Defendants**
20 **MultiCare and Hunter Donaldson Should Not Be Entered?**

21 IV. EVIDENCE RELIED ON

22 The Declaration of Darrell L. Cochran and accompanying exhibits; the Declaration of
23 Tom Budinich; the Declaration of Virginia DeCosta; the Declaration of Charles Brocato; and
24 the Complaint for Damages already on file.
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V. AUTHORITY

A. Legal Standard for Granting Preliminary Injunctive Relief.

When determining if preliminary injunctive relief is appropriate, the court analyzes whether (1) the moving party has a clear legal or equitable right, (2) the moving party has a well-grounded fear of immediate invasion of that right by the one against whom the injunction is sought, and (3) the acts complained of are either resulting in or will result in actual and substantial injury to the moving party. *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998); *see also Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209 (2000), 995 P.2d 63 (2000). When deciding if a party has a clear legal or equitable right, the court examines the likelihood that the moving party will prevail on the merits. *Rabon*, 135 Wn.2d at 285 (citing *Washington Fed'n of State Employees Council 28 v. State*, 99 Wn.2d 878, 888, 665 P.2d 1337 (1983)). While the trial court must reach the merits of purely legal issues for purposes of deciding whether to grant or deny the preliminary injunction, it may not adjudicate the ultimate merits of the case. *Rabon*, 135 Wn.2d at 285.

A temporary restraining order is intended to preserve the status quo until the court can hear an application for a preliminary injunction. *State ex rel Pay Less Drug Stores v. Sutton*, 2 Wn.2d 523, 530, 98 P.2d 680 (1940). A TRO is effective for 14 days subject to extension for good cause shown. CR 65(b). The preliminary injunction is an extension of the TRO. CR 65(a).

B. A Temporary Restraining Order and a Preliminary Injunction Are Appropriate Because Defendants Have Clearly Violated the Medical Lien Statute

The complaint and declarations presented herewith demonstrate that, at all times

1 material to these proceedings, the plaintiff has had a clear legal and equitable right to be
2 compensated for traumatic injuries caused by the actions of a third party tortfeasor. This right
3 serves as the basis for the Defendants' application for a lien for medical services rendered
4 under RCW 60.44.010. A medical services lien can only be filed by public and private
5 operators of hospital and ambulance services and every licensed nurse, practitioner, physician,
6 and surgeon who renders service or transportation and care for a patient with a traumatic
7 injury as a result of a tort. RCW 60.44.010. A valid lien attaches to any claim or right of
8 action that the patient has against the tortfeasor responsible for the traumatic injury and/or her
9 insurer for the value of the medical services. RCW 60.44 et seq.
10

11 In order to be a valid medical lien, a health care provider must, under RCW 60.44.020,
12 sign the claim and have it lawfully notarized. Also under RCW 60.44.020, no person shall be
13 entitled to a medical services lien unless such person files and records a notice of claim within
14 twenty days after the date of such injury or receipt of care, or before settlement is
15 accomplished and payment is made to the injured person.
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17 Here, despite obvious deficiencies and falsities detailed above, Defendants MultiCare
18 and Hunter Donaldson have used the invalid and fraudulent liens they created and offered for
19 filing with the Pierce County Auditor's Office to infringe on that right; to wit: by
20 encumbering Plaintiff Miesmer's property right with invalid and unlawful medical liens. For
21 example, on or about June 2013, Plaintiff Christina Miesmer agreed to a settlement from the
22 liable third-party tortfeasor and his insurer. Complaint for Damages at 5.13. Defendants
23 MultiCare and Hunter Donaldson sent copies of their invalid liens and made telephone calls to
24 the insurer insisting that they are entitled to full payment on the invalid liens, in further
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1 violation of RCW 60.40.020. *Id.* As a result of Defendants’ invalid liens and their
2 representations to the liable tortfeasors’ insurer, Plaintiff Miesmer was issued a settlement
3 check from the insurer contingent upon the “payor” of the check including Hunter
4 Donaldson’s name, as well as her own. *Id.* Because both Hunter Donaldson and Christina
5 Miesmer must sign the check to make it redeemable, the Plaintiff is not able to cash or deposit
6 the check or otherwise use the settlement money. *Id.* Instead Plaintiff has been forced to hold
7 the check, and has been deprived of its benefit as a result, pending this Court’s determination
8 regarding the validity of Defendants’ lien and of Defendants’ unlawful actions. *Id.*

10 **C. An Order Requiring Defendants to Show Cause Why a Broader Preliminary**
11 **Injunction Should Not Be Entered**

12 Because injunctions are addressed to the equitable powers of the court, the three
13 criteria “must be examined in light of equity including balancing the relative interests of the
14 parties and, if appropriate, the interests of the public.” *Butler v. Craft Engineering &*
15 *Construction Co.*, 67 Wn. App. 684, 693, 843 P.2d 1071 (1992) (quoting *Tyler Pipe*
16 *Industries, Inc. v. Dept. of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982)).

17 The interests of the public are clearly at issue in this case. Defendants have filed
18 thousands of liens with the Pierce County Auditor’s Office. Cochran Decl. at ¶4. Each
19 falsified lien offered by the Defendants to the Auditor for filing is a criminal act under RCW
20 40.16.030. And despite assurances to the contrary in the newspaper, Hunter Donaldson is
21 continuing its attempts to collect on its invalid liens filed on behalf of MultiCare. An order
22 requiring the defendants to show cause why their lien enforcement practice should not be
23 enjoined is appropriate under these circumstances where Defendants’ acts are either resulting
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1 in or will continue to result in actual injury to the property rights of traumatic injury victims
2 throughout our area.

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4 **VI. CONCLUSION**

5 For the foregoing reasons, Plaintiff Christina Miesmer requests an immediate
6 temporary restraining order under CR 65(b) against Defendants, followed by a preliminary
7 injunction pursuant to CR 65(a) once notice is served on all parties, enjoining Defendants
8 MultiCare and Hunter Donaldson from collecting or enforcing invalid liens it filed on behalf
9 of Defendant MultiCare. Plaintiff also requests the Court issue an order requiring Defendants
10 to show cause why an injunction on behalf of all others similarly situated should not also be
11 entered enjoining Defendants MultiCare and Hunter Donaldson's collection and lien
12 enforcement practice on behalf of MultiCare.
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1 DATED this 5th day of September, 2013.

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3
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