

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **JOSE GUILLERMINA RODRIGUEZ,**

5 *Applicant,*

6 **vs.**

7 **GARDEN PLATING CO., INTERCARE**  
8 **HOLDINGS INSURANCE SERVICES,**

9 *Defendants.*

**Case Nos. ADJ8588344 (MF)**  
**and Consolidated Cases**

**OPINION AND ORDER**  
**CONSOLIDATING CASES ON**  
**MOTION OF THE APPEALS BOARD**  
**AND DISMISSING PETITIONS FOR**  
**RECONSIDERATION**  
**(En Banc)**

10  
11 On or about September 14, 2017, numerous lien claimants by and through their sole representative  
12 Maximum Medical filed over 1,200 Petitions for Reconsideration<sup>1</sup>, challenging an administrative action  
13 which prevented them from filing in their cases because they had allegedly failed to timely file required  
14 declarations. Thereafter, to secure uniformity of decision in the future, the Chair of the Appeals Board,  
15 upon unanimous vote of its members, assigned these cases to the Appeals Board as a whole for an en banc  
16 decision. (Lab. Code, § 115.)<sup>2</sup>

17 Based upon our review of the relevant statutes and case law, we hold that:

18 (1) The issue of the administrative action by DWC has now been rendered moot and  
19 the Petitions for Reconsideration must be dismissed.

20 (2) The cases at issue are defined herein as: *“The Cases Involving a Labor Code*  
21 *section 4903.05(c) Declaration filed after 5:00 p.m. on Friday, June 30, 2017 through*

22  
23  
24 <sup>1</sup> At the present time, we are aware of 1,234 petitions, but are unable to determine if additional petitions have been  
filed but left out of this count due to administrative constraints in the Electronic Adjudication Management System (EAMS).

25 <sup>2</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code  
26 Regs., tit. 8, § 10341; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 313, fn. 5 [70  
27 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418 [67 Cal.Comp.Cases 236]; see also  
Gov. Code, § 11425.60(b).) In addition to being adopted as a precedent decision in accordance with Labor Code section 115  
and Appeals Board Rule 10341, this en banc decision is also being adopted as a precedent decision in accordance with  
Government Code section 11425.60(b).

1 5:00 p.m. on Monday, July 3, 2017 where a Petition for Reconsideration was filed on the  
2 issue of timeliness of the filing” and are designated as *The Lien Cases*.

3 (3) Pursuant to WCAB Rule 10589 (Cal. Code Regs., tit. 8, § 10589), *The Lien Cases*  
4 are consolidated on motion of the Appeals Board for the limited purpose of making the  
5 orders herein, including designating *Rodriguez v. Garden Plating Co.* (ADJ8588344) as  
6 the master case and designating service of this decision to lien claimants’ representative,  
7 Maximum Medical.

8 (4) We suspend the application of WCAB Rule 10859 (Cal. Code Regs., tit. 8,  
9 § 10859) to *The Lien Cases* from the date of first filing of a Petition for Reconsideration  
10 on September 14, 2017 through the date of this decision.

11 (5) This en banc decision shall apply to any case in which a Labor Code section  
12 4903.05(c) Declaration was filed by a lien claimant after the close of business  
13 at 5:00 p.m. on Friday, June 30, 2017 through the close of business at 5:00  
14 p.m. on Monday, July 3, 2017, whether or not the case number is identified in  
15 this decision.

16 In light of these holdings, the Petitions for Reconsideration will be dismissed and Maximum  
17 Medical will be designated to serve this decision upon all defendants’ attorneys or legal representatives  
18 and the lien claimants who sought relief by way of these Petitions for Reconsideration.

19 **BACKGROUND**

20 As of January 1, 2017, Labor Code section 4903.05(c)<sup>3</sup> states that:

21 (1) For liens filed on or after January 1, 2017, any lien claim for expenses  
22 under subdivision (b) of Section 4903 that is subject to a filing fee under  
23 this section shall be accompanied at the time of filing by a declaration  
24 stating, under penalty of perjury, that the dispute is not subject to an  
independent bill review and independent medical review under Sections  
4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the  
following:

25 (A) Is the employee’s treating physician providing care through a  
26 medical provider network.

27 <sup>3</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

1 (B) Is the agreed medical evaluator or qualified medical evaluator.

2 (C) Has provided treatment authorized by the employer or claims  
3 administrator under Section 4610.

4 (D) Has made a diligent search and determined that the employer  
5 does not have a medical provider network in place.

6 (E) Has documentation that medical treatment has been neglected  
7 or unreasonably refused to the employee as provided by Section 4600.

8 (F) Can show that the expense was incurred for an emergency  
9 medical condition, as defined by subdivision (b) of Section 1317.1 of the  
10 Health and Safety Code.

11 (G) Is a certified interpreter rendering services during a medical-  
12 legal examination, a copy service providing medical-legal services, or has  
13 an expense allowed as a lien under rules adopted by the administrative  
14 director.

15 (2) Lien claimants shall have until July 1, 2017, to file a declaration  
16 pursuant to paragraph (1) for any lien claim filed before January 1, 2017,  
17 for expenses pursuant to subdivision (b) of Section 4903 that is subject to a  
18 filing fee under this section.

19 (3) The failure to file a signed declaration under this subdivision shall  
20 result in the dismissal of the lien with prejudice by operation of law. Filing  
21 of a false declaration shall be grounds for dismissal with prejudice after  
22 notice.

23 On August 14, 2017, DWC issued a Newline stating in pertinent part that:

24 The Division of Workers' Compensation (DWC) tomorrow will dismiss  
25 more than 292,000 unresolved liens by operation of law. The liens belong  
26 to claimants who did not properly file the required Supplemental Lien  
27 form and 4903.05(c) Declaration form.

On October 3, 2017, DWC issued a Newline stating in pertinent part that:

[DWC] will this week lift the notation in its Electronic Adjudication  
Management System (EAMS) that indicates all liens with Labor Code  
section 4903.05(c) declarations filed on July 2 and July 3 were dismissed.

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A total of 2,794 liens with declarations filed on July 2 and 3 were  
administratively designated as dismissed for failure to comply with the  
July 1 filing deadline. Because July 1 fell on a weekend, workers'  
compensation administrative law judges will adjudicate the timeliness of  
lien declarations filed on July 2 and July 3 on a case-by-case basis.  
DWC's reversal of the dismissal notation is not a decision or order on the  
timeliness of the declarations, and shall not be construed as such.

1 **DISCUSSION**

2 Here, lien claimants filed more than 1,200 nearly identical Petitions for Reconsideration, all  
3 seeking relief from DWC’s action on the basis that their declarations had been timely filed during the  
4 period from the close of business on Friday, June 30, 2017 through the close of business on Monday,  
5 July 3, 2017. Specifically, they contend that since July 1, 2017 fell on a Saturday, the required  
6 declarations were timely filed because the declarations were filed no later than the close of business on  
7 Monday, July 3, 2017 so that the notation placed in EAMS by DWC was improper.

8 As explained above, DWC has now removed the notation as to dismissal. Accordingly, lien  
9 claimants are not aggrieved (Lab. Code, §§ 5900, 5903) and their Petitions for Reconsideration are moot.  
10 Thus, the Petitions must be dismissed. As set forth above in the Newline and as discussed below, the  
11 issue of timeliness must be adjudicated in each case in the first instance at the trial level. Accordingly,  
12 we make no opinion on the merits of the issue of whether the declarations were timely filed.

13 Here, the Petitions for Reconsideration sought relief after an administrative action by DWC and  
14 not relief from a decision by a WCJ.<sup>4</sup> As relevant herein, WCAB Rule 10859<sup>5</sup> requires that beginning 15  
15 days after a petition for reconsideration is filed and continuing until a decision is rendered by the Appeals  
16 Board, a WCJ may not issue any order, decision or award. However, procedural rules serve the  
17 convenience of the Appeals Board and the parties, and they do not deprive the Appeals Board of the  
18 power to disregard them where the purpose of justice requires it, particularly where there is no substantial  
19 prejudice to the other parties. (*Martino v. Workers’ Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 490  
20

21 <sup>4</sup> Although WCAB Rule 10860 requires “the workers' compensation judge from whose decisions or actions relief is  
22 sought,” to prepare a Report when a petition for reconsideration is filed, here since there was no action by a WCJ, WCAB  
23 Rule 10860 does not apply and there was no requirement that individual WCJs file Reports.

24 <sup>5</sup> WCAB Rule 10859 states in pertinent part that:

25 After a petition for reconsideration has been timely filed, a workers' compensation judge  
26 may, within the period of fifteen (15) days following the date of filing of that petition for  
27 reconsideration, amend or modify the order, decision or award or rescind the order,  
decision or award and conduct further proceedings. . . .After this period of fifteen (15)  
days has elapsed, a workers’ compensation judge shall not make any order in the case nor  
correct any error until the Appeals Board has denied or dismissed the petition for  
reconsideration or issued a decision after reconsideration.

1 [67 Cal.Comp.Cases 1273]; *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200-201  
2 [50 Cal.Comp.Cases 160]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 590, 595  
3 [40 Cal.Comp.Cases784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal.App.2d 204 [33  
4 Cal.Comp.Cases 345].) Consequently, because the only issue raised in the Petitions for Reconsideration  
5 in *The Lien Cases* involves an administrative act by DWC, and not an action by the Workers'  
6 Compensation Appeals Board, the application of WCAB Rule 10859 is suspended as of September 14,  
7 2017, and continuing through the date of this decision. Thus, the District Offices have been free to  
8 proceed on the underlying cases throughout this period, and no order, decision or award by a WCJ has  
9 been rendered void.

10 Under WCAB Rule 10589, the Appeals Board has the discretion to consolidate two or more cases  
11 on its own motion after taking into consideration the enumerated factors and to designate one case as the  
12 master file. As applicable here, the relevant factors include: "whether there are common issues of fact or  
13 law . . . and the efficient utilization of judicial resources." (Cal. Code Regs., tit. 8, § 10589(a).) Given  
14 that the Petitions for Reconsideration are nearly identical and given the limited resources of the Appeals  
15 Board, consolidation of the cases for the narrow purpose of addressing the Petitions for Reconsideration  
16 is appropriate.

17 WCAB Rule 10500(a) allows the Appeals Board to "designate a party or lien claimant, or their  
18 attorney or agent of record, to make service of . . . any interim or procedural orders. . . ." The party  
19 designated to serve shall retain copies of the proofs of service, but shall only file a proof of service as  
20 ordered by the Appeals Board. (Cal. Code Regs., tit. 8, § 10500(a).) Here, given the volume of Petitions  
21 for Reconsideration, it would be burdensome for the Appeals Board to serve all parties. Thus, we will  
22 designate Maximum Medical to serve the decision on the attorneys or legal representative of the  
23 defendants in these cases and on the lien claimants who filed Petitions.

24 Accordingly, we will consolidate the cases for the limited purpose of dismissing the Petitions for  
25 Reconsideration and designating Maximum Medical to serve this decision.

26 Although we are aware of at least 1,234 Petitions for Reconsideration, it is not possible  
27 administratively to verify that all Petitions have been included in our orders herein. Therefore, this

1 en banc decision shall apply to any case in which a Labor Code section 4903.05(c) Declaration was filed  
2 by a lien claimant after the close of business at 5:00 p.m. on Friday, June 30, 2017 through the close of  
3 business at 5:00 p.m. on Monday, July 3, 2017, whether or not the case number is identified in this  
4 decision.

5 All parties to a workers' compensation proceeding retain the fundamental right to due process and  
6 a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp.*  
7 *Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one  
8 of ‘the rudiments of fair play’ assured to every litigant . . . .” (*Id.* at 158.) A fair hearing includes but is  
9 not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to  
10 offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284,  
11 1295 [66 Cal. Comp. Cases 584]; *Rucker, supra*, at 157-158; *Katzin v. Workers' Comp. Appeals Bd.*  
12 (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Moreover, there is a strong public policy  
13 favoring disposition of cases on their merits. (*Litzman v. Workmen's Comp. Appeals Bd.* (1968) 266  
14 Cal.App.2d 203, 205 [33 Cal.Comp.Cases 584]; see *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)  
15 Due process requires that a party be provided with reasonable notice and an opportunity to be heard.  
16 (*Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711-712 [57 Cal.Comp.Cases 230].)

17 We acknowledge that the issue of whether a lien claimant timely filed its declarations may be  
18 raised by a party and proceed to a hearing, but we emphasize that in the absence of an adjudication that a  
19 declaration was untimely, a lien claimant is not barred from proceeding on its lien. Additionally, as is  
20 noted above, whether declarations filed after the close of business at 5:00 p.m. on Friday, June 30, 2017  
21 through the close of business at 5:00 p.m. on Monday July 3, 2017 were timely filed is not presently at  
22 issue, and we make no determination as to the timeliness of filing of such declarations. Once such a  
23 determination has been made, any aggrieved person may seek review of such determination. (Lab. Code,  
24 §§ 5900, 5903.)

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1           **IT IS ORDERED** that “*The Cases Involving a Labor Code section 4903.05(c) Declaration filed*  
2 *after 5:00 p.m. on Friday, June 30, 2017 through 5:00 p.m. on Monday, July 3, 2017 where a Petition for*  
3 *Reconsideration was filed on the issue of timeliness of the filing*” are **DESIGNATED** as *The Lien Cases*  
4 and are **CONSOLIDATED** on motion of the Appeals Board for the limited purpose of making the  
5 following orders.

6           **IT IS FURTHER ORDERED** that WCAB Rule 10859 (Cal. Code Regs., tit. 8 § 10859) is  
7 **SUSPENDED** in *The Lien Cases* commencing on the date of the first filed Petition for Reconsideration  
8 of September 14, 2017, and continuing through the date of this decision.

9           **IT IS FURTHER ORDERED** that the case of *Rodriguez v. Garden Plating Co.* (ADJ8588344)  
10 is **DESIGNATED** as the master file and this decision will only be filed by the Appeals Board in the  
11 EAMS in FileNet in that case. Any further filing in EAMS of this decision by any person is not required  
12 but is allowed.

13           Individual Case Numbers include but are not limited to:

14 ADJ10000746; ADJ10001218; ADJ10002041; ADJ10002370; ADJ10005784; ADJ10005924;  
ADJ10010914; ADJ10012311; ADJ10012317; ADJ10013960; ADJ10015394; ADJ10016593;  
15 ADJ10018766; ADJ10018805; ADJ10019035; ADJ10020213; ADJ10020352; ADJ10024275;  
ADJ10028423; ADJ10028455; ADJ10030146; ADJ10039359; ADJ10039627; ADJ10040681;  
16 ADJ10040778; ADJ10040955; ADJ10041124; ADJ10041886; ADJ10042034; ADJ10042104;  
ADJ10042553; ADJ10042556; ADJ10042858; ADJ10042876; ADJ10042969; ADJ10043976;  
17 ADJ10043978; ADJ10044022; ADJ10044104; ADJ10044133; ADJ10044225; ADJ10044493;  
ADJ10044614; ADJ10044700; ADJ10044701; ADJ10044897; ADJ10044898; ADJ10045662;  
18 ADJ10045693; ADJ10045859; ADJ10046129; ADJ10046164; ADJ10046500; ADJ10046593;  
ADJ10047276; ADJ10047592; ADJ10047693; ADJ10047700; ADJ10048214; ADJ10053270;  
19 ADJ10055652; ADJ10058060; ADJ10059623; ADJ10062276; ADJ10063024; ADJ10063104;  
ADJ10063170; ADJ10066404; ADJ10067849; ADJ10075247; ADJ10075923; ADJ10076752;  
20 ADJ10077442; ADJ10082213; ADJ10082892; ADJ10091281; ADJ10094492; ADJ10095430;  
ADJ10096125; ADJ10096938; ADJ10099321; ADJ10099444; ADJ10102444; ADJ10107833;  
21 ADJ10109108; ADJ10111957; ADJ10112225; ADJ10115130; ADJ10115825; ADJ10118876;  
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22 ADJ10130858; ADJ10132127; ADJ10138290; ADJ10138868; ADJ10147700; ADJ10159609;  
ADJ10160474; ADJ10162940; ADJ10168290; ADJ10170610; ADJ10175818; ADJ10179910;  
23 ADJ10180745; ADJ10186760; ADJ10187708; ADJ10197697; ADJ10200717; ADJ10202113;  
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25 ADJ1048149; ADJ10491911; ADJ10523411; ADJ115875; ADJ1177506; ADJ1186629; ADJ1201829;  
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26  
27

1 ADJ1593764; ADJ1638375; ADJ1658720; ADJ1703357; ADJ1736220; ADJ1742290; ADJ1755773;  
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2 ADJ1857113; ADJ1885452; ADJ1970035; ADJ1979560; ADJ1989682; ADJ2056796; ADJ2060169;  
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3 ADJ2243156; ADJ233453; ADJ2351292; ADJ2443610; ADJ2506164; ADJ2517425; ADJ2562101;  
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4 ADJ28584410; ADJ2923899; ADJ2956596; ADJ2979462; ADJ2999959; ADJ3033184; ADJ3093591;  
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5 ADJ3521396; ADJ3546126; ADJ3551182; ADJ3633398; ADJ3684833; ADJ3703651; ADJ3767193;  
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6 ADJ4302606; ADJ4346785; ADJ440389; ADJ4418066; ADJ442683; ADJ4438941; ADJ4461979;  
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7 ADJ4665394; ADJ531721; ADJ546312; ADJ560628; ADJ563455; ADJ565946; ADJ580835;  
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11 ADJ7371174; ADJ7407167; ADJ7421638; ADJ7427772; ADJ7433568; ADJ7443074; ADJ7454082;  
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15 ADJ7937417; ADJ7948442; ADJ7952188; ADJ7957521; ADJ7962650; ADJ7969184; ADJ7975753;  
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16 ADJ8055503; ADJ8058351; ADJ8104493; ADJ8112936; ADJ8113235; ADJ8124668; ADJ8124896;  
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17 ADJ8177848; ADJ8182091; ADJ8184216; ADJ8198006; ADJ8200437; ADJ8207924; ADJ8214537;  
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18 ADJ8246235; ADJ8246425; ADJ8249981; ADJ8250386; ADJ8256830; ADJ8260506; ADJ8279674;  
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19 ADJ8299170; ADJ8302639; ADJ8308224; ADJ8308550; ADJ8312178; ADJ8314551; ADJ8314617;  
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20 ADJ8340306; ADJ8342586; ADJ8348644; ADJ8365225; ADJ8373461; ADJ8374729; ADJ8375303;  
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21 ADJ8401163; ADJ8409245; ADJ8410392; ADJ8413512; ADJ8415944; ADJ8416100; ADJ8424667;  
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22 ADJ8450415; ADJ8451234; ADJ8451278; ADJ8451862; ADJ8454227; ADJ8454511; ADJ8458954;  
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23 ADJ8482050; ADJ8483580; ADJ8487819; ADJ8491034; ADJ8492612; ADJ8493716; ADJ8496009;  
ADJ8497441; ADJ8497845; ADJ8499664; ADJ8499891; ADJ8507052; ADJ8511339; ADJ8511474;  
24 ADJ8511864; ADJ8513801; ADJ8515996; ADJ8517672; ADJ8519883; ADJ8527384; ADJ8529928;



1 ADJ8530525; ADJ8533235; ADJ8534624; ADJ8538963; ADJ8539864; ADJ8540515; ADJ8544680;  
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2 ADJ8561871; ADJ8567427; ADJ8567766; ADJ8567889; ADJ8567910; ADJ8570850; ADJ8572254;  
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3 ADJ8584192; ADJ8584348; ADJ8585691; ADJ8585869; ADJ8586974; ADJ8587920; ADJ8588344;  
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4 ADJ8605371; ADJ8606210; ADJ8609159; ADJ8609351; ADJ8609445; ADJ8609512; ADJ8610968;  
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5 ADJ8628900; ADJ8630998; ADJ8633467; ADJ8638195; ADJ8640680; ADJ8640945; ADJ8643400;  
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6 ADJ8657424; ADJ8657678; ADJ8659082; ADJ8663942; ADJ8664586; ADJ8668694; ADJ8673695;  
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15 ADJ9998970; ADJ9999027; ADJ9999650

16  
17 **IT IS FURTHER ORDERED** that the Petitions for Reconsideration in *The Lien Cases* are  
18 **DISMISSED**.

19 **IT IS FURTHER ORDERED** that lien claimants' representative MAXIMUM MEDICAL is  
20 **DESIGNATED** to serve this decision forthwith. Service shall be on each defendant's attorneys or legal  
21 representatives in *The Lien Cases* and on all lien claimants who have sought reconsideration in *The Lien*  
22 *Cases*. The proof of service is only required to be filed in EAMS in the case of *Rodriguez v. Garden*  
23 *Plating Co.* (ADJ8588344), but MAXIMUM MEDICAL shall retain copies of all proofs of service.  
24 Service by MAXIMUM MEDICAL is not required on any other parties.

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1 IT IS FURTHER ORDERED that the Order of Consolidation by the Appeals Board is  
2 REVOKED and *The Lien Cases* are RETURNED to the trial level.

3 WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

4 /s/Katherine A. Zalewski  
5 KATHERINE A. ZALEWSKI, Chair

6  
7 /s/ Frank M. Brass  
8 FRANK M. BRASS, Commissioner

9  
10 /s/ Deidra E. Lowe  
11 DEIDRA E. LOWE, Commissioner

12  
13 /s/ Marguerite Sweeney  
14 MARGUERITE SWEENEY, Commissioner

15  
16 /s/ José H. Razo  
17 JOSÉ H. RAZO, Commissioner

18  
19  
20 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

21 10/26/2017

22 SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR  
23 ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

24 MAXIMUM MEDICAL  
25 ADMINISTRATIVE DIRECTOR, DIVISION OF WORKERS' COMPENSATION

26  
27 AS/jp/abs