



CALIFORNIA GRAPE & TREE FRUIT LEAGUE



CALIFORNIA HOSPITAL ASSOCIATION



FLASHER BARRICADE ASSN.



CFCA

California Fence Contractors Association



CIVIL JUSTICE ASSOCIATION OF CALIFORNIA



The Chamber OF THE SANTA BARBARA REGION



GREATER BAKERSFIELD CHAMBER OF COMMERCE



A coalition of the: Transverse Valley, Mariposa, Lake Edwina Valley, Willmar & Mendocino Chambers of Commerce.



San Jose Silicon Valley CHAMBER The Region's Voice of Business Since 1886



Oxnard Chamber of Commerce



redondo BEACH Chamber of Commerce & Visitors Bureau



WESTERN AGRICULTURAL PROCESSORS ASSOCIATION



California Business Properties Association



CALIFORNIA FARM BUREAU FEDERATION



Associated General Contractors (AGC)



CALIFORNIA RESTAURANT ASSOCIATION PREPARE TO BE INSPIRED.

UPDATED

AB 1897 (HERNANDEZ) - JOB KILLER



September 3, 2014

The Honorable Edmund G. Brown, Jr.  
 Governor, State of California  
 State Capitol  
 Sacramento, CA 95814

**SUBJECT: AB 1897 (HERNANDEZ) LABOR CONTRACTING: CLIENT LIABILITY REQUEST FOR VETO**

Dear Governor Brown:

The California Chamber of Commerce and the organizations listed below respectfully request your **VETO** of **AB 1897 (Hernandez)**, as amended August 22, 2014, which has been identified as a **JOB KILLER**. This bill forces one company to essentially insure the wage and hour obligations and workers' compensation coverage, of a separate employer's employees, which will discourage the use of contractors and their employees.

**AB 1897 Holds an Innocent Business Liable for the Employment Obligations of Another Employer:**

The most recent amendments to **AB 1897** exempted small businesses, motor carriers of property, motor club services, cable operators, satellite cable providers, telephone corporations, motion picture payroll services, hiring halls, and non-profit community organizations from the onerous provisions of the bill. **However**, the majority of employers in California will still be unfairly held liable for the wage and hour violations of another employer that they could neither control nor prevent. Specifically, **AB 1897** mandates that any "client employer," defined as any entity that obtains or is provided workers for labor from a "labor contractor," defined as an individual or entity that supplies labor to a client employer, shall be liable for the (1) payment of wages of the contractor's employees; (2) the contractor's worker's compensation coverage; and (3) occupational health and safety requirements. This liability under **AB 1897** is extended to an innocent third party that did not contribute to the violations, control the working conditions of the employee, control the manner of payment, dictate the employees' schedules, or even control the work environment of those employees.

Currently, a third party may be liable for the labor obligations of another employer under two legal theories: (1) joint employer liability or (2) independent contractor misclassification. The key factor for both of these analyses is that the third party exerted such **control** over the working conditions of the contractor's employees that essentially the third party acted as the real employer. See *Bradley v. California Dept. of Corrections and Rehabilitation*, 158 Cal.App.4th 1612 (2008) (state agency exerted sufficient control over individual to be considered employer for purposes of FEHA); *Martinez v. Combs* 49 Cal.4th 35 (2010) (stating that for joint employer liability, employee must prove the third party exerted control over the working conditions of the employee); *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989) ("the principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired"); *Cristler v. Express Messenger Systems, Inc.*, 171 Cal.App.4th 72 (2009) (same); *Lara v. Workers' Compensation Appeals Bd.*, 182 Cal.App.4th 393 (2010) (same). The burden to establish either theory is on the employee who is seeking to hold the third-party liable for any alleged employment violations.

**AB 1897** completely ignores this long-standing common law analysis and imposes liability despite the lack of any control exerted by the third-party. For example, under **AB 1897**, a winery could be held joint and severally liable for the wage and hour violations of a bottling service company performing work on the winery's premises. Similarly, a farmer could be held liable for the violations of a pesticide company providing pesticide services on agricultural land. This liability would apply even though the business neither knew nor had the opportunity to prevent any violations from actually occurring. Such an expansion of liability to innocent parties is simply unreasonable and unprecedented.

#### **AB 1897 Will Create Significant Litigation:**

As a part of the Labor Code, any violation of **AB 1897** will trigger a potential representative action under the Labor Code Private Attorney General Act (PAGA), Labor Code Section 2699, *et seq.*, thereby expanding the threat of onerous litigation against any third party that utilizes contractors as a part of its usual course of business. To the extent a third party is held liable under PAGA for the employment obligations of another, there will unquestionably be a second lawsuit for indemnity between the third party and actual employer.

The judicial branch has suffered severe budget cuts over the last three years, with multiple courthouses shut down and drastic staff reductions made, thereby significantly delaying the time it takes for civil disputes to be resolved. Forcing an innocent third party to pursue litigation that may take years in order to recover monies paid out for the violations of another is simply unfair.

#### **Adequate Protections Already Exist for Documented Problems With Contracting:**

For those industries in which there has been documented evidence of unlawful contracting practices and abuse of contracted labor, the Legislature has already enacted laws to address and prevent such abuses. Specifically, for several industries, including farm labor, garment, construction, security guards, janitorial, and, most recently, warehouse workers, Labor Code Section 2810 holds the entity that contracts for workers in those industries liable if the contract for such labor does not include the following: (1) a description of the total hours to be worked, the total wages to be paid, and the dates of payment; (2) the worker's compensation policy and insurance carrier information; (3) the employer tax identification number; (4) the address of where the work will be performed; and, (5) the name, address, and telephone number of the person or entity through whom the labor or services are to be provided. **AB 1897** expands liability to all industries and all individuals who contract for labor, despite the lack of any evidence that there is a need beyond the industries already regulated.

Moreover, Labor Code Section 2810.5, which took effect in 2013, requires all employers, including temporary staffing agencies, to provide at the time of hire a notification to the employee of the following information: (1) the name and address of the employer and, if a temporary staffing agency, the location of where the employee will be performing work; (2) the telephone number of the employer; (3) the name

and address of the worker's compensation carrier; (4) the employee's rate of pay; and, (5) the regular pay date. This notification specifically addresses and combats the claim made by proponents that temporary staffing employees are not provided with such important information. Accordingly, such a drastic measure as **AB 1897** is unnecessary given current protections in the law.

For these reasons, we request your **VETO** of **AB 1897** when it comes before you for consideration.

Sincerely,

California Chamber of Commerce  
Agricultural Council of California  
Associated Builders and Contractors of California  
Associated General Contractors  
Building Owners and Managers Association of California  
California Ambulance Association  
California Apartment Association  
California Asian Chamber of Commerce  
California Association of Winegrape Growers  
California Business Properties Association  
California Chapter of American Fence Association  
California Citrus Mutual  
California Coalition on Workers' Compensation  
California Cotton Growers Association  
California Cotton Ginners Association  
California Employment Law Council  
California Farm Bureau Federation  
California Fence Contractors' Association  
California Grape and Tree Fruit League  
California Grocers Association  
California Hospital Association  
California Hotel and Lodging Association  
California Land Title Association  
California Landscape Contractors Association  
California League of Food Processors  
California Manufacturers and Technology Association  
California Newspaper Publishers Association  
California Pool and Spa Association  
California Restaurant Association  
California Retailers Association  
California Trucking Association  
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties  
Civil Justice Association of California  
Custom Logistics & Delivery Association  
Desert Hot Springs Chamber of Commerce & Visitors Center  
El Dorado County Chamber of Commerce  
Family Business Association  
Family Winemakers of California  
Flasher Barricade Association  
Fullerton Chamber of Commerce  
Greater Bakersfield Chamber of Commerce  
International Council of Shopping Centers  
International Franchise Association  
International Warehouse Logistics Association  
Irwindale Chamber of Commerce  
Marin Builders Association  
NAIOP of California, the Commercial Real Estate Development Association

National Federation of Independent Business  
Oxnard Chamber of Commerce  
Personal Insurance Federation of California  
Redondo Beach Chamber of Commerce  
San Diego East County Chamber of Commerce  
San Gabriel Valley Legislative Coalition of Chambers  
San Jose Silicon Valley Chamber of Commerce  
Santa Clara Chamber of Commerce and Convention-Visitors Bureau  
Simi Valley Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Southwest California Legislative Council  
TechAmerica  
TechNet  
The Chamber of Commerce of the Santa Barbara Region  
The United Chambers of Commerce of the San Fernando Valley  
Torrance Area Chamber of Commerce  
Ventura Chamber of Commerce  
Visalia Chamber of Commerce  
Western Agricultural Processors Association  
Western Growers Association  
Wine Institute

cc: The Honorable Roger Hernandez  
Camille Wagner, Office of the Governor  
David Lanier, Office of the Governor