

October 5, 2011

The Honorable Jerry Brown
Governor, State of California
State Capitol
Sacramento, CA 95814

**SUBJECT: AB 559 (SWANSON) – CIVIL ACTIONS: COSTS
VETO REQUEST**

Dear Governor Brown:

We respectfully request your **VETO** of **AB 559 (Swanson)** because it unnecessarily eliminates all incentive for plaintiffs to bring a Fair Employment and Housing claim as a limited civil case where appropriate. **AB 559 (Swanson)** undermines judicial discretion, eliminates the incentive to use an effective expedited form of dispute resolution, and force taxpayers to foot the bill for exorbitant legal fees when public entities are involved.

AB 559 attempts to overrule *Chavez v. City of Los Angeles*, 47 Cal.4th 970, and make it easier for plaintiff's lawyers to receive attorney's fees in employment cases. However, even after the *Chavez* decision, trial court judges do not have unlimited discretion to deny attorney's fees in Fair Employment and Housing Act (FEHA) cases. Rather, they can only deny these awards if, "the trial court is firmly persuaded that the plaintiff's attorney had **no reasonable basis** to anticipate a FEHA damages award in excess of the amount recoverable in a limited liability case, and also that the **action could have been fairly and effectively litigated** as a limited civil case..." (emphasis added). As such, the California Supreme Court has left ample protections in place for the victims of workplace civil rights violations, and for plaintiff's attorneys who often take these cases on under a contingency fee arrangement to ensure low-income workers have access to justice.

There is no evidence, aside from speculation by the appellate court, that the denial of the attorneys fees in the *Chavez* case has discouraged any attorney from representing a plaintiff in a FEHA case on a contingency fee basis, yet **AB 559** proposes to eliminate all incentive for plaintiffs to bring these cases expeditiously through a limited civil proceeding when appropriate. As a threshold issue, the CalChamber opposes legislative attempts to carve out an entire category of claims from any statute, particularly when there is no showing that such a bold step is necessary to protect the rights of individuals. Doing so creates uncertainty for parties who rely on the laws being applied equally and fairly to all cases. In particular, this approach creates a real problem for employers struggling to make the best of the state's already poor legal climate by managing risks and potential litigation costs up front, before any dispute arises. **AB 559** would expose the employers to unanticipated costs after the fact, merely because a plaintiff happens to allege a FEHA claim.

Finally, the facts surrounding the denial of attorneys fees in *Chavez* case show that the trial court properly use its discretion to deny an exorbitant fee request, saving the taxpayers of Los Angeles over \$870,000, while showing adequate deference to the important policy reasons for awarding attorneys fees in FEHA cases. Under the circumstances, there is no justification for undermining judicial discretion in an entire class of cases.

For these reasons and more, we respectfully request your **VETO** of **AB 559 (Swanson)**.

Sincerely,



Rick Wells
President and CEO
San Rafael Chamber of Commerce

p:\advocacy\2011\ab 559 oppose - 10.6.11.doc