

1 STEPHEN P. PEPE (S.B. #43615)  
BRENT J. NORTH (S.B. #186249)  
2 RENEE M. SPIGARELLI (S.B. # 218036)  
O'MELVENY & MYERS LLP  
3 610 Newport Center Drive, 17th Floor  
Newport Beach, California 92660  
4 Telephone: (949) 760-9600  
Facsimile: (949) 823-6994

5  
6 MARK E. REAGAN (S.B. #143438)  
MARK A. JOHNSON (S.B. #191610)  
HOOPER, LUNDY & BOOKMAN, INC.  
7 180 Montgomery Street, Suite 650  
San Francisco, CA 94104  
8 Telephone: (415) 875-8500  
Facsimile: (415) 875-8519

9  
10 Attorneys for The Chamber of Commerce of the  
United States, California Chamber of Commerce,  
Employers Group, California Healthcare  
11 Association, California Manufacturers and  
Technology Association, California Association of  
12 Health Facilities, California Association of Homes  
& Services for the Aging, Bettec Corporation,  
13 Marksherm Corporation, Zilaco, Inc., Zilaco, Del  
Rio Healthcare Inc., Beverly Health &  
14 Rehabilitation Services, Inc. dba Beverly Manor --  
Costa Mesa, Internext Group.

15  
16 STEPHEN A. BOKAT  
National Litigation Center of the U.S. Chamber of  
Commerce  
17 1615 H. Street, N.W.  
Washington, DC 20062  
18 Telephone: (202) 463-5337  
Facsimile: (202) 463-5346  
19 Of Counsel for The Chamber of Commerce of The  
United States

20  
21 **UNITED STATES DISTRICT COURT**  
22 **CENTRAL DISTRICT OF CALIFORNIA**

23  
24 The Chamber of Commerce of the  
United States, California Chamber of  
25 Commerce, Employers Group,  
California Healthcare Association,  
26 California Manufacturers and  
Technology Association, California  
27 Association of Health Facilities,  
California Association of Homes &  
28 Services for the Aging, Bettec

Case No.

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

**[28 U.S.C. §§ 2201-2202]**

**[F.R.C.P. 65]**

1 Corporation, Marksherm Corporation,  
2 Zilaco, Inc., Zilaco, Del Rio Healthcare  
3 Inc., Beverly Health & Rehabilitation  
4 Services, Inc. dba Beverly Manor --  
5 Costa Mesa, Internext Group

6 Plaintiffs,

7 v.

8 Bill Lockyer in his capacity as  
9 Attorney General of the State of  
10 California, The Department of Health  
11 Services, Frank G. Vanacore as the  
12 Chief of the Audit Review and  
13 Analysis Section of the California  
14 Department of Health Services, and  
15 Diana M. Bontá, R.N., Dr., P.H. as  
16 the Director of the California  
17 Department of Health Services and  
18 DOES 1 through 10

19 Defendants.

20 Plaintiffs CHAMBER OF COMMERCE OF THE UNITED STATES  
21 (“US Chamber”), CALIFORNIA CHAMBER OF COMMERCE (“California  
22 Chamber”), EMPLOYERS GROUP, CALIFORNIA HEALTHCARE  
23 ASSOCIATION (“CHA”), CALIFORNIA MANUFACTURERS AND  
24 TECHNOLOGY ASSOCIATION (“CMTA”), CALIFORNIA ASSOCIATION OF  
25 HEALTH FACILITIES (“CAHF”), CALIFORNIA ASSOCIATION OF HOMES  
26 & SERVICES FOR THE AGING (“CAHSA”), BETTEC CORPORATION  
27 (“Bettec”), MARKSHERM CORPORATION (“Marksherm”), ZILACO, INC.,  
28 ZILACO, DEL RIO HEALTH CARE, INC. (“Del Rio”), BEVERLY HEALTH &  
REHABILITATION SERVICES, INC. dba BEVERLY MANOR – COSTA MESA  
 (“Beverly Manor”), and THE INTERNEXT GROUP (“Internext”), (collectively,  
 “Plaintiffs”), by and through their counsel, for their complaint against defendants,  
 BILL LOCKYER, Attorney General of the State of California (“Attorney General”)  
 the Department of Health Services, Frank G. Vanacore as the Chief of the Audit  
 Review and Analysis Section of the California Department of Health Services, and

1 Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of  
2 Health Services and DOES 1 through 10 (collectively, “Defendants”), upon  
3 knowledge and belief allege:  
4

5 **I.**  
**JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over the subject matter of this suit  
7 pursuant to 28 U.S.C. Section 1331 as Plaintiffs’ claims arise under:

8 a. the due process and equal protection provisions of the  
9 Fourteenth Amendment to the United States Constitution – which  
10 incorporates the free speech provisions of the First Amendment.

11 b. Article VI of the United States Constitution which  
12 designates the Constitution and Laws of the United States as the  
13 supreme Law of the Land; and

14 c. the laws of the United States, namely, the National Labor  
15 Relations Act, 29 U.S.C. Section 141 *et seq*, the Labor Management  
16 Reporting and Disclosure Act, 29 U.S.C. Section 401 *et seq*, and the  
17 Medicare Act 42 U.S.C. Section 1395 *et seq*.

18 2. This Court has supplemental jurisdiction over this subject matter  
19 pursuant to 28 U.S.C. Section 1367(a) as Plaintiffs’ claims, arising under the  
20 California Constitution, are so closely related to the federal question claims that  
21 they form part of the same case or controversy under Article III of the United States  
22 Constitution.

23 3. Venue is proper in this Court pursuant to 28 U.S.C. Section  
24 1391(b) as this Court is sited in the Federal judicial district where a substantial part  
25 of the events giving rise to Plaintiffs’ claims have occurred, are now occurring, and  
26 will occur in the future if not curtailed through actions of this Court. Numerous  
27 employer members of Plaintiffs US Chamber, California Chamber, Employers  
28

1 Group, CHA, CMTA, CAHF, and CAHSA are situated in this district and are and  
2 will continue to be adversely affected by the irreparable harms sought to be  
3 remedied and prevented by this Court’s action upon this Complaint. In addition,  
4 Plaintiffs CAHF, Bettec, Zilaco, Inc., Zilaco, Marksherm, Del Rio and Internext are  
5 situated in Los Angeles County and are and will continue to be affected by the  
6 harms sought to be remedied by this Complaint. Beverly Manor is located in  
7 Orange County and is and will continue to be adversely affected by the harms  
8 sought to be remedied by this Complaint.

9  
10 **II.**  
**NATURE OF ACTION**

11 4. This action seeks declaratory relief pursuant to the Declaratory  
12 Relief Act, 28 U.S.C. Sections 2201-2202, that California Assembly Bill 1889,  
13 contained in California Government Code Sections 16645 through 16649 (“AB  
14 1889”), is unconstitutional under the Federal and California Constitutions, is  
15 preempted under the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*  
16 (“NLRA”), the Labor Management Reporting and Disclosure Act, 29 U.S.C.  
17 Section 401 *et seq.* (“LMRDA”), and is preempted by and violates the provisions of  
18 the California State Medicaid Plan established pursuant to the requirements of the  
19 Medicare Act, 42 U.S.C. Section 1395 *et seq.* (“Medicare Act”). It also seeks  
20 preliminary and permanent injunctive relief enjoining the enforcement of AB 1889  
21 and other related actions undertaken by defendants pursuant to its provisions. (A  
22 copy of AB 1889 is attached hereto as Exhibit A.)

23  
24 **III.**  
**PARTIES**

25 5. Plaintiff US Chamber is the world’s largest business federation,  
26 representing an underlying membership of more than three million businesses and  
27 organizations of every size and in every industry sector and region of the country.  
28

1 It has nearly 11,000 members in the state of California. A principle function of the  
2 US Chamber is to represent the interests of its members on issues of vital concern  
3 to the business community before the Congress, the Executive Branch and the  
4 courts.

5           6. More than one of the US Chamber's member employers receive  
6 grants of state funds, have contracts with the State of California under which they  
7 receive payments from the State in excess of \$50,000 and receive state funds in  
8 excess of \$10,000 in a calendar year on account of their participation in state  
9 programs. Some of these employers provide services to the state in excess of  
10 \$50,000. Some of these employers have employees who perform services on  
11 service contracts for the state and seek reimbursement from the state. Some of  
12 these employers are currently experiencing organizing activities of labor  
13 organizations, and expect to continue to experience such labor organizing activities  
14 because a union representation election is scheduled in the future. Some of these  
15 employers have their supervisors and other management personnel inform  
16 employees who perform work on state contracts of the potential drawbacks of  
17 membership in a labor organization and the benefits of maintaining a direct  
18 relationship with management. Some of these employers pay legal counsel with  
19 respect to the organizing activity to advise them of their legal rights and  
20 responsibilities under the National Labor Relations Act and to assist them with  
21 union organizing drives and election campaigns in an effort to inform employees of  
22 the potential drawbacks of membership in a labor organization and the benefits of  
23 maintaining a direct relationship with management. Some of these employers pay  
24 and retain consultants to assist them with organizing and election campaigns in an  
25 effort to inform employees of the potential drawbacks of membership in a labor  
26 organization and the benefits of maintaining a direct relationship with management.  
27 Some of these employers pay their supervisory and management employees to  
28

1 assist in communicating to employees the potential drawbacks of membership in a  
2 labor organization and the benefits of maintaining a direct relationship with  
3 management. Some of these employers incur expenses related to the creation and  
4 distribution of print and other materials for the purpose of communicating to  
5 employees the potential drawbacks of membership in a labor organization and the  
6 benefits of maintaining a direct relationship with management. Some of these  
7 employers lease property from the State of California to hold meetings with  
8 employees and supervisors for the purpose of informing employees of the potential  
9 drawbacks of membership in a labor organization and the benefits of maintaining a  
10 direct relationship with management. These properties are not equally available to  
11 the general public to hold meetings free of charge. The certification and reporting  
12 requirements of AB 1889 will cost these employers significant sums of money and  
13 resources. In order to attempt to comply with the requirements of AB 1889, these  
14 employers must expend significant sums of money and resources. Materials,  
15 products and services of these employers affect interstate commerce and cross state  
16 lines.

17           7. Plaintiff California Chamber is an association of 13,000  
18 employers who employ three million California employees. One of the purposes of  
19 the California Chamber is to inform employees and assist member employers'  
20 efforts to inform employees about labor unions. Specifically, one of the purposes  
21 of the California Chamber is to inform its member employers regarding how to  
22 lawfully advise their employees of the disadvantages of unionizing. The California  
23 Chamber further exists to ease legislative and administrative burdens of California  
24 employers. Protecting member employers' free speech rights, National Labor  
25 Relations Act rights, equal protection rights and right to counsel is directly germane  
26 to the purpose of the California Chamber.

1                   8.       More than one of California Chamber’s member employers  
2 receive grants of state funds, have contracts with the State of California under  
3 which they receive payments from the State in excess of \$50,000 and receive state  
4 funds in excess of \$10,000 in a calendar year on account of their participation in  
5 state programs. Some of these employers provide services to the state in excess of  
6 \$50,000. Some of these employers have employees who perform services on  
7 service contracts for the state and seek reimbursement from the state. Some of  
8 these employers are currently experiencing organizing activities of labor  
9 organizations, and expect to continue to experience such labor organizing activities  
10 because a union representation election is scheduled in the future. Some of these  
11 employers have their supervisors and other management personnel inform  
12 employees who perform work on state contracts of the potential drawbacks of  
13 membership in a labor organization and the benefits of maintaining a direct  
14 relationship with management. Some of these employers pay legal counsel with  
15 respect to the organizing activity to advise them of their legal rights and  
16 responsibilities under the National Labor Relations Act and to assist them with  
17 union organizing drives and election campaigns in an effort to inform employees of  
18 the potential drawbacks of membership in a labor organization and the benefits of  
19 maintaining a direct relationship with management. Some of these employers pay  
20 and retain consultants to assist them with organizing and election campaigns in an  
21 effort to inform employees of the potential drawbacks of membership in a labor  
22 organization and the benefits of maintaining a direct relationship with management.  
23 Some of these employers pay their supervisory and management employees to  
24 assist in communicating to employees the potential drawbacks of membership in a  
25 labor organization and the benefits of maintaining a direct relationship with  
26 management. Some of these employers incur expenses related to the creation and  
27 distribution of print and other materials for the purpose of communicating to  
28

1 employees the potential drawbacks of membership in a labor organization and the  
2 benefits of maintaining a direct relationship with management. Some of these  
3 employers lease property from the State of California to hold meetings with  
4 employees and supervisors for the purpose of informing employees of the potential  
5 drawbacks of membership in a labor organization and the benefits of maintaining a  
6 direct relationship with management. These properties are not equally available to  
7 the general public to hold meetings free of charge. The certification and reporting  
8 requirements of AB 1889 will cost these employers significant sums of money and  
9 resources. In order to attempt to comply with the requirements of AB 1889, these  
10 employers must expend significant sums of money and resources. Materials,  
11 products and services of these employers affect interstate commerce and cross state  
12 lines.

13           9. The Employers Group is an association of employers whose  
14 members include 4700 employers in California who employ over one million  
15 California employees. One of the purposes of the Employers Group is to assist  
16 member employers' efforts to inform employees about labor unions. Specifically,  
17 one of the purposes of the Employers Group is to advise its member employers  
18 regarding how to lawfully discuss with their employees the key considerations of  
19 unionizing. The Employers Group further exists to help ease legislative and  
20 administrative burdens of California employers. Protecting member employers'  
21 First Amendment free speech rights, National Labor Relations Act rights, equal  
22 protection rights and right to counsel is directly germane to the purpose of the  
23 Employers Group.

24           10. More than one of the Employers Group's member employers  
25 receive grants of state funds, have contracts with the State of California under  
26 which they receive payments from the State in excess of \$50,000 and receive state  
27 funds in excess of \$10,000 in a calendar year on account of their participation in  
28



1 state programs. Some of these employers provide services to the state in excess of  
2 \$50,000. Some of these employers have employees who perform services on  
3 service contracts for the state and seek reimbursement from the state. Some of  
4 these employers are currently experiencing organizing activities of labor  
5 organizations, and expect to continue to experience such labor organizing activities  
6 because a union representation election is scheduled in the future. Some of these  
7 employers have their supervisors and other management personnel inform  
8 employees who perform work on state contracts of the potential drawbacks of  
9 membership in a labor organization and the benefits of maintaining a direct  
10 relationship with management. Some of these employers pay legal counsel with  
11 respect to the organizing activity to advise them of their legal rights and  
12 responsibilities under the National Labor Relations Act and to assist them with  
13 union organizing drives and election campaigns in an effort to inform employees of  
14 the potential drawbacks of membership in a labor organization and the benefits of  
15 maintaining a direct relationship with management. Some of these employers pay  
16 and retain consultants to assist them with organizing and election campaigns in an  
17 effort to inform employees of the potential drawbacks of membership in a labor  
18 organization and the benefits of maintaining a direct relationship with management.  
19 Some of these employers pay their supervisory and management employees to  
20 assist in communicating to employees the potential drawbacks of membership in a  
21 labor organization and the benefits of maintaining a direct relationship with  
22 management. Some of these employers incur expenses related to the creation and  
23 distribution of print and other materials for the purpose of communicating to  
24 employees the potential drawbacks of membership in a labor organization and the  
25 benefits of maintaining a direct relationship with management. Some of these  
26 employers lease property from the State of California to hold meetings with  
27 employees and supervisors for the purpose of informing employees of the potential  
28

1 drawbacks of membership in a labor organization and the benefits of maintaining a  
2 direct relationship with management. These properties are not equally available to  
3 the general public to hold meetings free of charge. The certification and reporting  
4 requirements of AB 1889 will cost these employers significant sums of money and  
5 resources. In order to attempt to comply with the requirements of AB 1889, these  
6 employers must expend significant sums of money and resources. Materials,  
7 products and services of these employers affect interstate commerce and cross state  
8 lines.

9  
10 11. The CHA is an association of healthcare employers whose  
11 members include approximately 432 employers in California who employ  
12 approximately 380,000 California employees. One of the purposes of the CHA is  
13 to inform employees and assist member employers' efforts to inform employees  
14 about labor unions. Specifically, one of the purposes of the CHA is to inform its  
15 member employers regarding how to lawfully advise their employees of the  
16 advantages and disadvantages of unionizing. The CHA further exists to ease  
17 legislative and administrative burdens of California healthcare employers.  
18 Protecting member employers' free speech rights, National Labor Relations Act  
19 rights, equal protection rights and right to counsel is directly germane to the  
20 purpose of the CHA.

21 12. More than one of CHA's member employers receive grants of  
22 state funds, have contracts with the State of California under which they receive  
23 payments from the State in excess of \$50,000 and receive state funds in excess of  
24 \$10,000 in a calendar year on account of their participation in state programs.  
25 Some of these employers provide services to the state in excess of \$50,000. Some  
26 of these employers have employees who perform services on service contracts for  
27 the state and seek reimbursement from the state. Some of these employers are  
28 currently experiencing organizing activities of labor organizations, and expect to

1 continue to experience such labor organizing activities because a union  
2 representation election is scheduled in the future. Some of these employers have  
3 their supervisors and other management personnel inform employees who perform  
4 work on state contracts of the potential drawbacks of membership in a labor  
5 organization and the benefits of maintaining a direct relationship with management.  
6 Some of these employers pay legal counsel with respect to the organizing activity to  
7 advise them of their legal rights and responsibilities under the National Labor  
8 Relations Act and to assist them with union organizing drives and election  
9 campaigns in an effort to inform employees of the potential drawbacks of  
10 membership in a labor organization and the benefits of maintaining a direct  
11 relationship with management. Some of these employers pay and retain consultants  
12 to assist them with organizing and election campaigns in an effort to inform  
13 employees of the potential drawbacks of membership in a labor organization and  
14 the benefits of maintaining a direct relationship with management. Some of these  
15 employers pay their supervisory and management employees to assist in  
16 communicating to employees the potential drawbacks of membership in a labor  
17 organization and the benefits of maintaining a direct relationship with management.  
18 Some of these employers incur expenses related to the creation and distribution of  
19 print and other materials for the purpose of communicating to employees the  
20 potential drawbacks of membership in a labor organization and the benefits of  
21 maintaining a direct relationship with management. Some of these employers lease  
22 property from the State of California to hold meetings with employees and  
23 supervisors for the purpose of informing employees of the potential drawbacks of  
24 membership in a labor organization and the benefits of maintaining a direct  
25 relationship with management. These properties are not equally available to the  
26 general public to hold meetings free of charge. Some of these employers are state  
27 government hospitals and public employers which receive state funds. The  
28

1 certification and reporting requirements of AB 1889 will cost these employers  
2 significant sums of money and resources. In order to attempt to comply with the  
3 requirements of AB 1889, these employers must expend significant sums of money  
4 and resources. Materials, products and services of these employers affect interstate  
5 commerce and cross state lines.

6           13. The CMTA is an association of employers whose members  
7 include approximately 800 employers in California who employ upwards of one  
8 million California employees. The CMTA exists to ease legislative and  
9 administrative burdens of California employers. One of the purposes of the CMTA  
10 is to assist member employers' efforts to inform employees about labor unions.  
11 Specifically, one of the purposes of the CMTA is to inform its member employers  
12 regarding how to advise their employees of the disadvantages of unionizing.  
13 Protecting member employers' First Amendment free speech rights, National Labor  
14 Relations Act rights, equal protection rights and right to counsel is directly germane  
15 to the purpose of the CMTA.

16           14. More than one of the CMTA's member employers receive  
17 grants of state funds, have contracts with the State of California under which they  
18 receive payments from the State in excess of \$50,000 and receive state funds in  
19 excess of \$10,000 in a calendar year on account of their participation in state  
20 programs. Some of these employers provide services to the state in excess of  
21 \$50,000. Some of these employers have employees who perform services on  
22 service contracts for the state and seek reimbursement from the state. Some of  
23 these employers are currently experiencing organizing activities of labor  
24 organizations, and expect to continue to experience such labor organizing activities  
25 because a union representation election is scheduled in the future. Some of these  
26 employers have their supervisors and other management personnel inform  
27 employees who perform work on state contracts of the potential drawbacks of  
28

1 membership in a labor organization and the benefits of maintaining a direct  
2 relationship with management. Some of these employers pay legal counsel with  
3 respect to the organizing activity to advise them of their legal rights and  
4 responsibilities under the National Labor Relations Act and to assist them with  
5 union organizing drives and election campaigns in an effort to inform employees of  
6 the potential drawbacks of membership in a labor organization and the benefits of  
7 maintaining a direct relationship with management. Some of these employers pay  
8 and retain consultants to assist them with organizing and election campaigns in an  
9 effort to inform employees of the potential drawbacks of membership in a labor  
10 organization and the benefits of maintaining a direct relationship with management.  
11 Some of these employers pay their supervisory and management employees to  
12 assist in communicating to employees the potential drawbacks of membership in a  
13 labor organization and the benefits of maintaining a direct relationship with  
14 management. Some of these employers incur expenses related to the creation and  
15 distribution of print and other materials for the purpose of communicating to  
16 employees the potential drawbacks of membership in a labor organization and the  
17 benefits of maintaining a direct relationship with management. Some of these  
18 employers lease property from the State of California to hold meetings with  
19 employees and supervisors for the purpose of informing employees of the potential  
20 drawbacks of membership in a labor organization and the benefits of maintaining a  
21 direct relationship with management. These properties are not equally available to  
22 the general public to hold meetings free of charge. The certification and reporting  
23 requirements of AB 1889 will cost these employers significant sums of money and  
24 resources. In order to attempt to comply with the requirements of AB 1889, these  
25 employers must expend significant sums of money and resources. Materials,  
26 products and services of these employers affect interstate commerce and cross state  
27 lines.  
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1                   15.     The CAHF is an association representing approximately 1,600  
2 licensed skilled nursing facilities (“SNFs”), intermediate care facilities (“ICFs”)  
3 and intermediate care for the developmentally disabled facilities (“ICF-DDs”) in the  
4 State of California (collectively, “long term care facilities”). While the CAHF  
5 represents member organizations that are organized as both “for profit” and “not for  
6 profit” entities, the majority of its membership operates long term care facilities  
7 organized as “for profit” entities. The CAHF members employ approximately  
8 72,000 employees. The CAHF exists to advocate on behalf of its member long  
9 term care facilities before all relevant governmental bodies, including the executive,  
10 legislative and judicial branches of the state and federal governments in order to  
11 ensure that the interests of such facilities are advanced and not impaired in all  
12 material respects. One of the fundamental purposes of the CAHF is to protect the  
13 interests of its member facilities in their role as participants in the Medicaid  
14 program (known as Medi-Cal in California), including ensuring that governmental  
15 action involving the Medi-Cal program is consistent with the California State  
16 Medicaid Plan (“State Plan”) and federal Medicaid laws and regulations. Such  
17 governmental action includes the application of federal and state requirements  
18 involving the establishment of facility reimbursement under Medi-Cal (such as cost  
19 reporting, rate setting and auditing) as well as the quality of care to be provided by  
20 facilities in order to participate in the Medi-Cal program. Another fundamental  
21 purpose of the CAHF is to protect members in their roles as employers, including  
22 ensuring that the public policy defining the relations between member facilities and  
23 their employees remains consistent with the rights and privileges secured by the  
24 United States and California Constitutions, the National Labor Relations Act and  
25 other federal and state labor laws and are not compromised or violated in any  
26 manner. The specific issues raised in this Complaint and the interests underlying  
27  
28

1 the issues are entirely consistent with the CAHF's mission and purpose as well as  
2 the services provided to its members.

3           16. Not only do the vast majority of CAHF's members receive  
4 funds in excess of \$10,000 through the Medi-Cal program in each calendar year (in  
5 the form of reimbursement for services provided to beneficiaries), they are also  
6 heavily dependent on the revenue provided through this program. Numerous  
7 CAHF member facilities (including SNFs, ICFs and ICF-DDs) obtain as much as  
8 75% to 100% of their revenue through the Medi-Cal program. The restrictions on  
9 the use of such funds has had and will continue to have dramatic effects on member  
10 facilities' abilities to exercise their protected Constitutional and statutory rights.  
11 For example, some of these member facilities have experienced, are experiencing  
12 and/or will likely experience organizing activities of labor organizations which  
13 have led to or may lead to an union representation election. Others have  
14 experienced, are experiencing and/or will likely experience activity undertaken by  
15 employees represented by a labor organization to decertify the union which has led  
16 to or may lead to an election. Facilities faced with either of the above situations  
17 regularly pay legal counsel or other professional consultants to advise these  
18 employers of their legal rights under the National Labor Relations Act and to assist  
19 them with union organizing drives and election campaigns in an effort to inform  
20 employees of the potential drawbacks of membership in a labor organization and  
21 benefits of maintaining or regaining a direct relationship with management. Some  
22 of these employers pay their supervisory and management employees to assist in  
23 communicating to employees the potential drawbacks of membership in a labor  
24 organization and the benefits of maintaining or regaining a direct relationship with  
25 management. Some of these employers incur expenses related to the creation and  
26 distribution of print and other materials for the purpose of communicating to  
27 employees the potential drawbacks of membership in a labor organization and the  
28

1 benefits of maintaining a direct relationship with management. In addition, in order  
2 to attempt to comply with the requirements of AB 1889, these employers must  
3 expend significant sums of money and resources. Employers will also expend  
4 significant sums of money and resources in order to attempt to comply with the  
5 certification and reporting requirements of AB 1889. The services provided by  
6 CAHF's members and the products and material utilized by such members affect  
7 interstate commerce.

8           17. The CAHSA is a nonprofit, charitable, California corporation  
9 that represents the interests of approximately 380 long term care, seniors housing  
10 and seniors services members. The CAHSA members operate approximately  
11 10,200 skilled nursing beds in 128 SNF facilities throughout the state, each of  
12 which is licensed and regulated by the DHS. As with the CAHF's members, the  
13 CAHSA's members are similarly dependent on the Medi-Cal program for revenue.  
14 Unlike the CAHF, the CAHSA members must be organized as "not for profit"  
15 organizations that are sponsored by religious, fraternal, government, neighborhood,  
16 minority or ethnic organizations, and each must be governed by a bona fide  
17 volunteer board and be exempt from federal tax. In advocating for its members, the  
18 CAHSA's fundamental purpose and mission is substantially the same as the  
19 purpose and mission of CAHF. Numerous CAHSA member facilities receive a  
20 portion of their revenue through the Medi-Cal program. Some of these member  
21 facilities have experienced, are experiencing and/or will likely experience  
22 organizing activities of labor organizations which have led to or may lead to a  
23 union representation election. The restrictions AB 1889 places on the use of these  
24 facilities funds has had and will continue to have dramatic effects on member  
25 facilities' abilities to exercise their protected Constitutional and statutory rights. In  
26 addition, the impact of the provisions of AB 1889 are substantially the same as for  
27 the employer members of the CAHF.  
28



1                   18. Plaintiffs US Chamber, California Chamber, Employers Group,  
2 CHA, CMTA, CAHF and CAHSA have organizational standing as each has at least  
3 one member employer which has standing in its own right to present the claims  
4 asserted herein. Further, the interests sought to be protected are germane to the  
5 associations’ purposes, and neither the claims asserted nor the relief requested  
6 requires that the members participate individually in the suit.

7                   19. Members of Plaintiffs’ US Chamber, California Chamber,  
8 Employers Group, CHA, CMTA, CAHF, and CAHSA have faced, are currently  
9 facing and/or will likely face union organizing and/or decertification activities. As  
10 a result of AB 1889, these members’ constitutional and statutory rights are  
11 presently being chilled, impaired and impermissibly interfered with. Further,  
12 attempts at compliance with AB 1889 will require significant employer  
13 expenditures.

14                   20. Bettec Corporation is the holder of a valid license issued by the  
15 Department of Health Services (“DHS”) to operate the 99 bed SNF known as  
16 Sunray East Convalescent Hospital in Los Angeles, California (“Sunray”). Sunray  
17 currently participates in the Medi-Cal program and is heavily dependent on its  
18 continued participation in the program. Sunray expects that it will incur  
19 expenditures for services provided by legal counsel and/or professional consultants  
20 to advise it of its legal rights under the National Labor Relations Board involving  
21 union organizing activity. It will also educate and train its supervisors and other  
22 management personnel on such legal rights and the manner of informing employees  
23 of the potential drawbacks of membership in a labor organization and the benefits  
24 of maintaining a direct relationship with management. It expects to pay its  
25 supervisors and other management personnel for these activities. It also expects to  
26 create and distribute print and other materials. Based upon its heavy reliance on the  
27 Medi-Cal program and the prohibitions of AB 1889, it will likely be unable to take  
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1 any of these protected actions. In addition, Sunray will be required to expend  
2 significant financial resources in order to attempt to comply with the provisions of  
3 AB 1889. It will also be required to spend significant monies to attempt to comply  
4 with the certification and reporting requirements of AB 1889.

5           21. Marksherm is the holder of a valid license issued by the DHS to  
6 operate the 69 bed SNF known as Crescent Bay Convalescent Hospital in Santa  
7 Monica, California (“Crescent Bay”). Crescent Bay currently participates in the  
8 Medi-Cal program and is heavily dependent on its continued participation in the  
9 program. Certain employees of Crescent Bay are currently represented by a labor  
10 organization but no collective bargaining agreement has been reached between the  
11 labor organization and the represented employees. Crescent Bay expects to incur  
12 expenditures for services provided by legal counsel as to its rights under the  
13 National Labor Relations Act if no agreement can be reached and how to  
14 communicate to its employees, through supervisors and other management  
15 personnel, or otherwise. Such communication will likely involve supervisors and  
16 other management employees who will need education and training and will need  
17 to be paid for these activities. The creation and distribution of print and other  
18 materials may also be necessary. Based upon its heavy reliance on the Medi-Cal  
19 program and the prohibitions of AB 1889, it will likely be unable to take any of  
20 these protected actions. In addition, Crescent Bay will be required to expend  
21 significant financial resources to attempt to comply with the provisions of AB  
22 1889. It will also be required to spend significant monies to attempt to comply with  
23 the certification and reporting requirements of AB 1889.

24           22. Zilaco, Inc. is the holder of a valid license issued by the DHS to  
25 operate the 46 bed SNF known as CherryLee Lodge Sanitarium in El Monte,  
26 California ("CherryLee"). CherryLee currently participates in the Medi-Cal  
27 program and is heavily dependent on the continued participation in the program. In  
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1 particular, approximately 90% of CherryLee's revenue is received from  
2 reimbursement provided through the Medi-Cal program. Certain employees are  
3 currently represented by a labor organization. However, some of the represented  
4 employees are seeking the decertification of the labor organization and have  
5 circulated a petition amongst themselves. CherryLee requires legal advice as to its  
6 legal rights under the National Labor Relations Act but, because of its heavy  
7 reliance on the Med-Cal program and the prohibitions of AB 1889, cannot obtain  
8 such advice. It likewise needs to communicate with its employees and will need to  
9 utilize supervisors and other management personnel to do so. It may also need to  
10 create and distribute print or other materials for this purpose. As with legal advice,  
11 it may be unable to take any of these protected activities. If CherryLee could take  
12 any of these actions, it would also incur significant expense in attempting to comply  
13 with the provisions of AB 1889 and its certification and reporting requirements.

14           23. Zilaco is the holder of a valid license issued by the DHS to  
15 operate the 59 bed SNF known as El Monte Care Center located in El Monte,  
16 California ("El Monte"). El Monte currently participates in the Medi-Cal program  
17 and is heavily dependent on the continued participation in the program. In  
18 particular, approximately 88% of El Monte's revenue is received from  
19 reimbursement provided through the Medi-Cal program. Certain employees are  
20 currently represented by a labor organization. However, some of the represented  
21 employees are seeking the decertification of the labor organization. El Monte  
22 requires legal advice as to its legal rights under the National Labor Relations Act  
23 but, because of its heavy reliance on the Medi-Cal program and the prohibitions of  
24 AB 1889, cannot obtain such advice. It likewise has a need to communicate with  
25 its employees and has a need to utilize supervisors and other management personnel  
26 and may need to create and distribute print or other materials for this purpose.  
27 However, El Monte may be unable to participate in any of these protected activities.  
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1 If it could take any of these actions, El Monte will be required to expend significant  
2 financial resources to attempt to comply with the provisions of AB 1889 and its  
3 certification and reporting requirements.

4           24. Del Rio is the holder of a valid license issued by the DHS to  
5 operate two facilities known as Del Rio Convalescent, a 99 bed SNF in Bell  
6 Gardens, California and Del Rio Gardens Care Center (“Del Rio Gardens”), and 84  
7 bed SNF also located in Bell Gardens. Both facilities participate in the Medi-Cal  
8 program and are heavily dependent on their continued participation in the program.  
9 They have faced, are currently facing and/or will likely face union organizing  
10 and/or decertification activities. As a result of AB 1889, these plaintiffs’  
11 constitutional and statutory rights are presently being chilled, impaired and  
12 impermissibly interfered with. Further, attempts at compliance with AB 1889 will  
13 require significant expenditures.

14           25. Beverly Health and Rehabilitation Services, Inc. is the holder of  
15 a valid license issued by the DHS to operate the 76 bed SNF known as Beverly  
16 Manor in Costa Mesa, California (“Beverly Manor”). It has faced, is currently  
17 facing and/or will likely face union organizing and/or decertification activities. As  
18 a result of AB 1889, this plaintiff’s constitutional and statutory rights are presently  
19 being chilled, impaired and impermissibly interfered with. Further, attempts at  
20 compliance with AB 1889 will require significant expenditures.

21           26. The Internext Group (“Internext”) holds valid licenses issued by  
22 the DHS to operate two facilities know as Lutheran Health Facility, a 50 bed SNF  
23 in Alhambra, California (“Lutheran”) and Villa Gardens Health Care Unit, a 54 bed  
24 SNF in Pasadena, California (“Villa Gardens”). Both facilities participate in the  
25 Medi-Cal program and are heavily dependent on their continued participation in the  
26 program. Based on recent union organizing activity over the last 15 to 18 months at  
27 both Lutheran and Villa Gardens, both facilities expect to make expenditures  
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1 subject to the prohibitions of AB 1889. As a result of AB 1889, these plaintiffs'  
2 constitutional and statutory rights are presently being chilled, impaired and  
3 impermissibly interfered with. Further, attempts at compliance with AB 1889 will  
4 require significant expenditures. The Attorney General is charged under AB 1889  
5 with administering and enforcing its provisions.

6           27. The DHS is the single state agency designated by the State of  
7 California for the purpose of administering the Medi-Cal program. The Medi-Cal  
8 program is a joint state-federal program established by the federal government to  
9 provide health services, including long term care services to poor and needy  
10 individuals who qualify under certain state and federal requirements. DHS  
11 implements the federal certification requirements set forth in 42 U.S.C. Section  
12 1395 *et sec* and 42 C. F. R. Sections 483.1 *et sec* (1991) in order to determine  
13 whether health facilities qualify for participation in the Medi-Cal program based  
14 upon the quality of care provided to their residents. It also evaluates whether  
15 facilities qualify for licensure under state quality of care requirements. It also  
16 establishes facility reimbursement for the purposes of the Medi-Cal program  
17 through specifying cost reporting, rate setting and auditing methodologies.

18           28. Frank G. Vanacore is the Chief of the Audit Review and  
19 Analysis Section of the DHS and is responsible for sending and processing  
20 certification forms for compliance with the provisions of AB 1889 and  
21 recommending that facilities be terminated from the Medi-Cal program based upon  
22 their failure to comply with the certification requirement set forth in AB 1889.

23           29. Diana M. Bontá, R.N., Dr., P.H. is the Director of the California  
24 Department of Health Services, the responsible state official for the activities of the  
25 DHS. Any decision to terminate a health facility from the Medi-Cal program  
26 would be made and carried out by and under the authority of the Director.  
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1                   33. Under AB 1889, State contractors and recipients of State funds  
2 are prohibited from incurring costs “to assist, promote, or deter union organizing”,  
3 unless they establish costly accounting procedures to attempt to document the  
4 segregation of funds so that no State funds contribute to the prohibited activity.  
5 Cal. Govt. Code §§16645.1(a) and (b), 16645.2(a) and (b). Moreover, State  
6 contractors are required to provide proof of such accounting upon request by the  
7 Attorney General. *See id.* Violators are assessed treble damages—the amount  
8 allegedly improperly expended, plus a civil penalty of double that amount. *See Cal.*  
9 *Gov’t Code §§ 16645.1(c), 16645.2(d).* Furthermore, State contractors may not  
10 assist, promote, or deter union organizing by employees who are performing work  
11 on a service contract for the State or State agency, regardless of whether the  
12 employer does so with other sources. *See Cal. Gov’t Code § 16645.3(a).* Penalties  
13 are assessed at \$1,000 per employee per violation. An employer who conducts  
14 business on State property pursuant to a contract or lease may not use that property  
15 to hold a meeting with any employees or supervisors if the purpose is to assist,  
16 promote, or deter union organizing. *See Cal. Gov’t Code § 16645.5(a).* Violators  
17 are assessed a civil penalty of \$1,000 per employee per meeting. *See Cal. Gov’t*  
18 *Code § 16645.5(b).* AB 1889 further prohibits “legal and consulting fees and  
19 salaries of supervisors and employees, incurred for research for, or preparation,  
20 planning, or coordination of, or carrying out, an activity to assist, promote, or deter  
21 union organizing.” *See Cal. Gov’t Code § 16645.6(a).* AB 1889 further prohibits  
22 private employers which receive in excess of \$50,000 pursuant to state contracts  
23 and \$10,000 pursuant to state programs from using state funds to assist, promote, or  
24 deter union organizing. Cal. Gov’t Code §§ 16645.4 and 16645.7. Public  
25 employers which receive state funds are also prohibited from using state funds to  
26 assist, promote or deter unionization, and public officials who knowingly authorize  
27 an expenditure which violates that prohibition are personally liable for the  
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1 expenditures. Cal. Gov't Code § 16646.6. However, AB 1889 does not prohibit  
2 activities performed, or expenses incurred, in connection with a dressing a  
3 grievance or negotiating or administering a collective bargaining agreement. Cal.  
4 Gov't Code § 16647. None of these provisions address the quality or manner of  
5 providing services. Rather, they restrict employers' expenditures, and therefore any  
6 activity, to engage in even non-coercive speech, thus, requiring employer neutrality  
7 toward unionization and to forfeit rights they have under Federal law.

8           34. In marked contrast, AB 1889 explicitly allows an employer to  
9 allow unions access to the employer's facilities, including those leased from the  
10 State; and it specifically permits an employer to voluntarily enter into an agreement  
11 with a union recognizing the union as the exclusive representative of its employees.  
12 *See* Cal. Gov't Code §16647.

13           35. Beginning March 1, 2002, the DHS Services Audit Division  
14 began sending out a letter requiring that SNFs and ICFs certify that they will  
15 comply with AB 1889, specifically with California Government Code Section  
16 16645.7, or forfeit their right to participate in, and receive funds from, the Medi-Cal  
17 program. Recipients of this letter were given only forty-five days from the letter's  
18 date, February 28, 2002, or until April 15, 2002, to respond. (A true and correct  
19 copy of this letter is attached hereto as Exhibit C.) On March 15, 2002, the DHS  
20 subsequently sent the identical letters and certification demands to ICF-DDs  
21 participating in the Medi-Cal program. (A true and correct copy of the letter is  
22 attached hereto as Exhibit D.) Based upon statements made by defendant Vanacore  
23 and other authorized DHS representatives, plaintiffs are informed and, therefore,  
24 believe that identical letters and certification demands will be sent to acute care  
25 hospitals participating in the Medi-Cal program.



1 **V.**  
2 **CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**

3 36. AB 1889 is unconstitutional under both the United States and  
4 California Constitutions in the following particulars:

5 a. AB 1889 violates the Fourteenth Amendment to the  
6 United States Constitution which protects the freedom of speech  
7 guarantees found in the First Amendment to the United States  
8 Constitution and Article I, Section 2(a) of the California Constitution  
9 in ways that include, but are not limited to: (1) engaging in content  
10 based discrimination by allowing State funds and State property to be  
11 used for expression and other activities to promote unionization (by  
12 unions and by employers complicit in extending recognition to unions  
13 without employee free choice elections), while repressing expression  
14 by employers concerning the merits of unionization; (2) requiring  
15 State contractors, grantees of State funds, State program participants  
16 and lessees of State property to relinquish their freedom of speech  
17 rights as a condition of entering into State service contracts, receiving  
18 State monies, participating in State programs and leasing State land;  
19 (3) prohibiting public employers and public officials from exercising  
20 their constitutional rights to engage in non-neutral speech concerning  
21 unionization; (4) exacting a penalty for the exercise of constitutional  
22 rights; (5) placing economic and administrative burdens on those who  
23 exercise constitutional rights by requiring expensive and onerous  
24 record keeping requirements so as to show that constitutionally  
25 protected activities were not funded by State funds; (6) being so vague  
26 as to chill the exercise of protected free speech rights; and  
27 (7) imposing a prior content based restraint on constitutionally  
28 protected expressions.

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b. AB 1889 violates the Equal Protection Clause guarantees of the Fourteenth Amendment of the United States Constitution and Article I, Section 7(a) of the California Constitution in ways that include, but are not limited to: (1) favoring unions wishing to advance their cause with employees while requiring State contractors, grantees, program participants, public employers, public officials and lessees questioning unionization to remain silent and forego free speech and NLRA rights during union organizing drives and elections; (2) favoring employers who recognize unions without elections over employers who do not; (3) treating differently all California employers who lease, contract with, or receive money from the State than those employers who do not fit within those categories, thus allowing one group constitutional and NLRA rights, while denying the other group theirs; and (4) denying State contractors, fund recipients, program participants, public employers, public officials and lessees the right to consult with and be represented by legal counsel.

c. AB 1889 violates the Due Process Clause guarantees of the Fourteenth Amendment of the United States Constitution and Article I, Section 7(a) of the California Constitution in ways that include, but are not limited to denying State contractors, fund recipients, program participants and lessees the right to consult with and be represented by legal counsel.

37. AB 1889 is preempted by the NLRA, including preemption under 8(c) of the NLRA which states, “The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or

1 force or promise of benefit.” 29 U.S.C. section 158(c). AB 1889 is preempted  
2 under 8(c) of the NLRA pursuant to the *Garmon* preemption under *San Diego Bldg.*  
3 *Trades Council v. Garmon*, 359 U.S. 236, 79 S. Ct. 773, L. Ed. 2d 775 (1959), in  
4 that AB 1889 purports to frustrate or prohibit conduct permitted and rights  
5 guaranteed to employers under the NLRA. AB 1889 is also preempted under the  
6 NLRA pursuant to the *Machinists* preemption under *International Association of*  
7 *Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm’n*,  
8 427 U.S. 132, 96 S. Ct. 2548, 49 L. Ed. 2d 396 (1976), in that it purports to regulate  
9 areas Congress intentionally left to be controlled by the free play of economic  
10 forces.

11           38. AB 1889 is preempted by the LMRDA, which comprehensively  
12 regulates the reports that employers, labor relations consultants, labor  
13 organizations, and officers and employees of labor organizations must make to the  
14 public regarding labor relations issues. The LMRDA expressly exempts employers  
15 from the very record keeping and reporting obligations which are required under  
16 AB 1889.

17           39. AB 1889 is preempted by the Medicare Act and the Medicaid  
18 Act, which regulates provider cost reporting and reimbursement, and so  
19 comprehensively occupies the field with its complex regulatory system  
20 demonstrating that Congress left no room for the states to supplement it. AB 1889  
21 violates the provisions of the State Plan Medicaid Act and the Medicare Act by: (a)  
22 prohibiting facilities from spending monies for specified purposes when the State  
23 Plan allows facilities to report certain costs for the same purposes in establishing  
24 Medi-Cal reimbursement rates and (b) making the Office of the Attorney General  
25 responsible for its administration and enforcement when the DHS is the single state  
26 agency designated for the administration of the Medi-Cal program.

1                   40. Without a declaratory judgment and an injunction enjoining  
2 enforcement of AB 1889, Plaintiffs and their members will be deprived of the rights  
3 sought to be enforced by this Complaint.

4                   41. Plaintiffs have no adequate remedy at law as to the matters for  
5 which they seek an injunction and are now enduring, and in the future will endure.

6                   **WHEREFORE**, Plaintiffs hereby request that the Court enter a  
7 judgment:

8                   a. Declaring that:

9                                   (i) AB 1889 is unconstitutional under the United  
10 States Constitution and the California Constitution;

11                                   (ii) AB 1889 is preempted by the NLRA, the LMRDA,  
12 and the Medicare Act;

13                                   (iii) AB 1889 is unenforceable by any party, including,  
14 but not limited to the State of California and its subdivisions, the California  
15 Department of Health Services, the Attorney General of California, and  
16 private citizens as taxpayers.

17                   b. Temporarily, preliminarily and permanently enjoining the  
18 State of California and all of its subdivisions and the Attorney General and all  
19 others acting in concert with them, and each of them, from:

20                                   (i) enforcing any of the provisions of AB 1889;

21                                   (ii) requiring Medi-Cal providers to certify that they  
22 will comply with the provisions of AB 1889; and

23                                   (iii) terminating a Medi-Cal providers from the Medi-  
24 Cal program based upon failure to comply with the certification requirement  
25 or any other portion of AB 1889.

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c. Granting such further relief to Plaintiffs as may be just and proper under the circumstances.

Dated: April 10, 2002

STEPHEN P. PEPE  
BRENT J. NORTH  
RENEE M. SPIGARELLI  
O'MELVENY & MYERS LLP

MARK E. REAGAN  
MARK A. JOHNSON  
HOOPER, LUNDY & BOOKMAN,  
INC.

STEPHEN A. BOKAT  
NATIONAL LITIGATION CENTER  
OF THE U.S. CHAMBER OF  
COMMERCE

By \_\_\_\_\_  
Brent J. North  
Attorneys for The Chamber of  
Commerce of the United States,  
California Chamber of Commerce,  
Employers Group, California  
Healthcare Association, California  
Manufacturers and Technology  
Association, California Association of  
Health Facilities, California  
Association of Homes & Services for  
the Aging, Bettec Corporation,  
Marksherm Corporation, Zilaco, Inc.,  
Zilaco, Del Rio Healthcare Inc.,  
Beverly Health & Rehabilitation  
Services, Inc. dba Beverly Manor --  
Costa Mesa, Internext Group.