March 29, 2022

TO: Members, Senate Judiciary Committee

SUBJECT: SB 1149 (LEYVA) CIVIL ACTIONS: AGREEMENTS SETTLING ACTIONS INVOLVING PUBLIC HEALTH OR SAFETY
OPPOSE – AS INTRODUCED FEBRUARY 16, 2022
SCHEDULED FOR HEARING – APRIL 5, 2022

The California Chamber of Commerce and the undersigned are **OPPOSED** to **SB 1149 (Leyva),** as introduced on February 16, 2022**,** because it will prevent parties from efficiently settling cases – raising costs and wasting time for both plaintiffs and defendants in a range of cases.

In short – **SB 1149** prohibits the parties to a lawsuit from including any terms that "restrict the disclosure of factual information related to the action," with a few limited exceptions,[1] for any cases involving a "condition" that "has caused, or is likely to cause" harm to a person, or involves any defective product".

SB 1149 Will Disincentivize Settlement – Even in Non-Meritorious Cases

First and foremost, this legislation will disincentivize efficient settlement of cases – regardless of their merits – and thereby increase litigation time and cost for both plaintiffs and defendants. For example: in a case where a defendant did not create a hazard or manufacture a defective product – and discovery makes that point clear to both parties. In that scenario, the defendant will still be dis-incentivized from settling the case because such a settlement would be public and would create the appearance of wrongdoing, despite it being more cost efficient for both parties to settle because: (1) the plaintiff now knows they are likely to lose at trial; and (2) the defendant believes they will win at trial, but will need to spend months-to-years of litigating and paying attorneys to reach trial.

Similarly, in a case where a defendant's product or condition did cause harm to the plaintiff, the defendant might desire to negotiate an early settlement and properly pay the plaintiff's costs. In such a scenario, one term of negotiation might very well be a correction of the defect going forward, and a recall of such products. However, in the event such a settlement is going to be made public, then the defendant is incentivized to litigate the case to trial even if their chance of success is slim. Moreover, delaying such a settlement might commensurately delay corrective action by the defendant, for fear that a correction would be used against them in litigation.

[1] The specific exceptions include: medical information, the amount of the settlement, citizenship status of individuals, and a more limited exception for trade secrets/proprietary customer lists. (*See proposed* Code of Civil Procedure Section 1002.9(d)(1)-(4)).

In either case – **SB 1149** disincentivizes efficient settlement among the parties to such litigation – and removes a potential term in present settlements from the negotiation of the parties.

SB 1149 Will Outlaw Long-Time Discovery Norms – Such as Producing Documents Under a Protective Order During Discovery

It is common in litigation for a party to produce a broad array of documents under a protective order, such that the opposing party can review them to determine their relevance, but cannot distribute copies or publish them. This is widely-used and common in litigation.[2] However, **SB 1149** would create an additional presumption against such an order (in conflict with the existing statute).[3]

Because of the breadth of **SB 1149's** language, such common practices would also now be prohibited – which will certainly only worsen the cost of discovery battles in litigation.

SB 1149 Also Contains Various Technical Components That May Not Be Functional

SB 1149 also appears to contain multiple provisions that may be unworkable or have unintended consequences, separate from its stated intent. For example – **SB 1149** also provides that any attorney who even *mistakenly* requests such a settlement term (for example, by sending over an old form settlement agreement on January 5th of 2023) would be subject to professional discipline from the State Bar of California. That is unprecedented to our knowledge, even in prior similar bills from your office.[4] In addition, **SB 1149** also provides that an exception can only be granted for trade secret/proprietary information if a party "*moves in good faith* for an order of nondisclosure." This language seems duplicative of (and potentially creating an ambiguous standard in light of) the ethical requirements already apply to all petitions, motions, or similar papers in California courts, provided for by California Civil Code 128.7.[5]

For these reasons, we are **OPPOSED** to **SB 1149 (Leyva).**

Sincerely,

Robert Moutrie
Policy Advocate
California Chamber of Commerce
on behalf of

Almond Alliance of California
Aubrey Bettencourt
American Property Casualty Insurance Association
Denneile Ritter
Association of California Egg Farmers
Debbie Murdock
California Apartment Association
Embert Madison
California Association of Winegrape Growers
Michael Miller
California Building Industry Association
Nick Cammarota

[2] *See Code of Civil Procedure* 2030.090(b), which provides for such an order.
[3] Relevant language in **SB 1149** is: "(c) Notwithstanding any other law, there shall be a presumption that the disclosure of information relating to a covered civil action shall not be restricted, and a court or arbitral tribunal shall not enter, by stipulation or otherwise, any order that restricts the disclosure of such information, except in the form of an order of nondisclosure, as provided in paragraph (3) of subdivision (d)."
[4] *See SB 331 (Leyva - 2021); SB 820 (Leyva - 2017).*
[5] Requiring all filings by an attorney implicit

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California Business Properties Association
Matthew Hargrove
California Chamber of Commerce
Rob Moutrie
California Farm Bureau
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California Manufacturers & Technology Association
Lily Movsisyan
California Pear Growers Association
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California Seed Association
Donna Boggs
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National Marine Manufacturers Association
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cc: Legislative Affairs, Office of the Governor
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RM:ldl