FLOOR ALERT

SB 1149 (Leyva), as amended, April 7, 2022 – OPPOSE

The above coalition of organizations respectfully **OPPOSES SB 1149**, which would re-write decades of normal discovery practices, prevent parties from efficiently settling cases, stop businesses from being able to protect proprietary information, and lead to longer and costlier lawsuits. Specifically, SB 1149 would:

1. **Interfere with Long-Time Discovery Norms, Including Using Protective Orders During Discovery.**

   Protective orders are widely used and common in litigation. They are so common that most California's courts provide their own model protective orders for parties to use. Under these widely-used orders, a party can produce a broad array of confidential documents, such that the opposing party can review them to determine their relevance, but the opposing party cannot distribute copies or publish them. Then, if the opposing party wishes to make the documents public, they can go to the judge and seek to have the documents made public.

   Despite the routine nature of protective orders and the fact that they already allow a party to contest a confidentiality designation, SB 1149 would make such routine protective orders significantly harder to utilize by creating a presumption against such an order (in conflict with the existing statute) and by severely limiting the bases for which a protective order may be granted.

   Without a protective order, a party will not be able to efficiently provide confidential documents to their opponents for review. Instead, the party trying to protect their proprietary information will need to litigate the confidentiality of each piece of discovery with the court before producing it on the off chance that the opponent might try to release it publicly. As a result of this increase to discovery fighting, Courts will need to spend more valuable time and resources reviewing and ruling on potentially unnecessary discovery motions – which could just as easily have been resolved via existing law and under protective orders.

2. **Infringes Upon Trade Secrets and Intellectual Property Rights.**

   Under this bill, any information or evidence concerning the alleged product defect or environmental condition, regardless of whether the information is relevant to the action, is

presumed to be public. This policy would make any company doing business in California at risk of losing valuable proprietary information whenever they are sued.

SB 1149 creates a scenario where businesses seeking to gain access to valuable competitive intelligence need only sue their competitor and ask them to produce the documents and information on which their business was built. Businesses have the right to maintain their investments and remain competitive in the market, which is why the confidentiality of protective orders and settlement agreements have been routinely recognized by the courts.

Publicly releasing proprietary information would have disproportionate impacts on industries that rely on research and development as cornerstones to their market share. It is self-evident that, if trade secrets are not protected in one case, they will not receive protection in any case since the secrets will no longer be secret. The injustice of this policy is that sensitive business information is released even if the jury ultimately finds there is no defect or environmental condition!

3. **Public Intervenors Without Interest in the Claim Removes Necessary Confidentiality.** Another issue with this bill is who can intervene on behalf of the public. Under SB 1149, even if the parties to the litigation agree to a protective order, anyone acting on behalf of the public – the media, a YouTuber, blog writer, or anyone with an axe to grind – can intervene in the litigation and demand public disclosure of the business' proprietary information. A competitor does not need to sue to get their competition's information; instead, they can simply intervene on behalf of the public to get access to competitive trade secrets.

4. **Incentivizes Frivolous Demands and Premature Settlement Agreements.** SB 1149 would unwittingly create a *pre-lawsuit settlement mill* for plaintiff's attorneys. After a new claim is filed, Defendants will know that protecting their documents under a protective order is now much harder. To avoid the potential loss of critical proprietary information that will be much harder to protect, Defendants will be forced to pay to settle claims pre-discovery (even if the allegations have no merit) to protect their intellectual property.

In today's instant information world of online product reviews and social media exposés, where anyone with an Internet connection can find out anything at the touch of a smart screen, the notion that there is insufficient information available about potential product defects or environmental conditions is nonsensical. There is no compelling public policy need to widely expose proprietary business information in the large swath of litigation impacted by SB 1149. This bill will only serve to exacerbate an already unfriendly legal environment for California businesses without advancing any public health and safety interests.

For the foregoing reasons, the above coalition respectfully **OPPOSES SB 1149** and urges your **NO** vote. If you have any questions, contact Jaime Huff at jhuff@cjac.org or 916-956-2905.