

ASSEMBLY BILL

No. 1183

Introduced by Assembly Member Jones

February 22, 2013

An act to amend Sections 2030.300, 2031.310, and 2033.290 of the Code of Civil Procedure, relating to civil discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 1183, as introduced, Jones. Civil discovery: motion to compel further response.

Existing law authorizes the propounding party, upon receipt of a response to interrogatories, a demand for document production, or requests for admissions, to move for an order compelling a further response under specified circumstances. Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or any later agreed-upon date, the propounding party waives any right to compel a further response.

This bill would provide that the 45-day period from service of a response or supplemental response in which notice of a motion to compel further response to discovery or must occur, begins to run after the receipt of a verified response or supplemental verified response.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2030.300 of the Code of Civil Procedure
- 2 is amended to read:

1 2030.300. (a) On receipt of a response to interrogatories, the
2 propounding party may move for an order compelling a further
3 response if the propounding party deems that any of the following
4 apply:

5 (1) An answer to a particular interrogatory is evasive or
6 incomplete.

7 (2) An exercise of the option to produce documents under
8 Section 2030.230 is unwarranted or the required specification of
9 those documents is inadequate.

10 (3) An objection to an interrogatory is without merit or too
11 general.

12 (b) A motion under subdivision (a) shall be accompanied by a
13 meet and confer declaration under Section 2016.040.

14 (c) Unless notice of this motion is given within 45 days of the
15 service of the *verified* response, or any supplemental *verified*
16 response, or on or before any specific later date to which the
17 propounding party and the responding party have agreed in writing,
18 the propounding party waives any right to compel a further
19 response to the interrogatories.

20 (d) The court shall impose a monetary sanction under Chapter
21 7 (commencing with Section 2023.010) against any party, person,
22 or attorney who unsuccessfully makes or opposes a motion to
23 compel a further response to interrogatories, unless it finds that
24 the one subject to the sanction acted with substantial justification
25 or that other circumstances make the imposition of the sanction
26 unjust.

27 (e) If a party then fails to obey an order compelling further
28 response to interrogatories, the court may make those orders that
29 are just, including the imposition of an issue sanction, an evidence
30 sanction, or a terminating sanction under Chapter 7 (commencing
31 with Section 2023.010). In lieu of, or in addition to, that sanction,
32 the court may impose a monetary sanction under Chapter 7
33 (commencing with Section 2023.010).

34 SEC. 2. Section 2031.310 of the Code of Civil Procedure is
35 amended to read:

36 2031.310. (a) On receipt of a response to a demand for
37 inspection, copying, testing, or sampling, the demanding party
38 may move for an order compelling further response to the demand
39 if the demanding party deems that any of the following apply:

40 (1) A statement of compliance with the demand is incomplete.

1 (2) A representation of inability to comply is inadequate,
2 incomplete, or evasive.

3 (3) An objection in the response is without merit or too general.

4 (b) A motion under subdivision (a) shall comply with both of
5 the following:

6 (1) The motion shall set forth specific facts showing good cause
7 justifying the discovery sought by the demand.

8 (2) The motion shall be accompanied by a meet and confer
9 declaration under Section 2016.040.

10 (c) Unless notice of this motion is given within 45 days of the
11 service of the *verified* response, or any supplemental *verified*
12 response, or on or before any specific later date to which the
13 demanding party and the responding party have agreed in writing,
14 the demanding party waives any right to compel a further response
15 to the demand.

16 (d) In a motion under subdivision (a) relating to the production
17 of electronically stored information, the party or affected person
18 objecting to or opposing the production, inspection, copying,
19 testing, or sampling of electronically stored information on the
20 basis that the information is from a source that is not reasonably
21 accessible because of the undue burden or expense shall bear the
22 burden of demonstrating that the information is from a source that
23 is not reasonably accessible because of undue burden or expense.

24 (e) If the party or affected person from whom discovery of
25 electronically stored information is sought establishes that the
26 information is from a source that is not reasonably accessible
27 because of the undue burden or expense, the court may nonetheless
28 order discovery if the demanding party shows good cause, subject
29 to any limitations imposed under subdivision (g).

30 (f) If the court finds good cause for the production of
31 electronically stored information from a source that is not
32 reasonably accessible, the court may set conditions for the
33 discovery of the electronically stored information, including
34 allocation of the expense of discovery.

35 (g) The court shall limit the frequency or extent of discovery
36 of electronically stored information, even from a source that is
37 reasonably accessible, if the court determines that any of the
38 following conditions exists:

39 (1) It is possible to obtain the information from some other
40 source that is more convenient, less burdensome, or less expensive.

1 (2) The discovery sought is unreasonably cumulative or
2 duplicative.

3 (3) The party seeking discovery has had ample opportunity by
4 discovery in the action to obtain the information sought.

5 (4) The likely burden or expense of the proposed discovery
6 outweighs the likely benefit, taking into account the amount in
7 controversy, the resources of the parties, the importance of the
8 issues in the litigation, and the importance of the requested
9 discovery in resolving the issues.

10 (h) Except as provided in subdivision (j), the court shall impose
11 a monetary sanction under Chapter 7 (commencing with Section
12 2023.010) against any party, person, or attorney who
13 unsuccessfully makes or opposes a motion to compel further
14 response to a demand, unless it finds that the one subject to the
15 sanction acted with substantial justification or that other
16 circumstances make the imposition of the sanction unjust.

17 (i) Except as provided in subdivision (j), if a party fails to obey
18 an order compelling further response, the court may make those
19 orders that are just, including the imposition of an issue sanction,
20 an evidence sanction, or a terminating sanction under Chapter 7
21 (commencing with Section 2023.010). In lieu of, or in addition to,
22 that sanction, the court may impose a monetary sanction under
23 Chapter 7 (commencing with Section 2023.010).

24 (j) (1) Notwithstanding subdivisions (h) and (i), absent
25 exceptional circumstances, the court shall not impose sanctions
26 on a party or any attorney of a party for failure to provide
27 electronically stored information that has been lost, damaged,
28 altered, or overwritten as the result of the routine, good faith
29 operation of an electronic information system.

30 (2) This subdivision shall not be construed to alter any obligation
31 to preserve discoverable information.

32 SEC. 3. Section 2033.290 of the Code of Civil Procedure is
33 amended to read:

34 2033.290. (a) On receipt of a response to requests for
35 admissions, the party requesting admissions may move for an order
36 compelling a further response if that party deems that either or
37 both of the following apply:

- 38 (1) An answer to a particular request is evasive or incomplete.
- 39 (2) An objection to a particular request is without merit or too
40 general.

1 (b) A motion under subdivision (a) shall be accompanied by a
2 meet and confer declaration under Section 2016.040.

3 (c) Unless notice of this motion is given within 45 days of the
4 service of the *verified* response, or any supplemental *verified*
5 response, or any specific later date to which the requesting party
6 and the responding party have agreed in writing, the requesting
7 party waives any right to compel further response to the requests
8 for admission.

9 (d) The court shall impose a monetary sanction under Chapter
10 7 (commencing with Section 2023.010) against any party, person,
11 or attorney who unsuccessfully makes or opposes a motion to
12 compel further response, unless it finds that the one subject to the
13 sanction acted with substantial justification or that other
14 circumstances make the imposition of the sanction unjust.

15 (e) If a party then fails to obey an order compelling further
16 response to requests for admission, the court may order that the
17 matters involved in the requests be deemed admitted. In lieu of,
18 or in addition to, this order, the court may impose a monetary
19 sanction under Chapter 7 (commencing with Section 2023.010).