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AB-2230 Civil actions. (2017-2018)

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Date Published: 09/10/2018 09:00 PM

Assembly Bill No. 2230

CHAPTER 317

An act to amend Sections 660, 663a, 2030.300, 2031.310, and 2033.290 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 10, 2018. Filed with Secretary of State September 10, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2230, Berman. Civil actions.

(1) Existing law authorizes a court to determine a motion for a new trial or a motion to set aside and vacate a judgment within 60 days after the mailing of notice of entry of judgment by the clerk of the court, or 60 days after service on the moving party by any party of written notice of entry of judgment, or, if that notice has not been given, within 60 days after filing the first notice of intention to move for a new trial or to set aside and vacate a judgment.

This bill would extend each of the periods described above to 75 days and make nonsubstantive, technical changes to these provisions.

(2) Existing law establishes procedures for conducting discovery in civil actions. Existing law provides that, in the case of interrogatories, demands for inspection, and requests for admissions, a party who objects to a discovery response for specified reasons may file a motion to compel a further response. Under the California Rules of Court, this motion must be accompanied by a separate statement providing information necessary to understand each discovery request and all the responses to it that are at issue.

This bill would allow the court to require, in lieu of a separate statement, a concise outline of the discovery request and each response in dispute. The bill would provide that these provisions would become operative on January 1, 2020.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 660 of the Code of Civil Procedure is amended to read:

660. (a) On the hearing of the motion, reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions and documentary evidence offered at the trial and to the report of the proceedings on the trial taken by the phonographic reporter, or to any certified transcript of the report or if there be no such report or certified transcript, to proceedings occurring at the trial that are within the recollection of the judge; when the proceedings at the trial have been phonographically reported, but the reporter's notes have not been transcribed, the

reporter shall, upon request of the court or either party, attend the hearing of the motion and read his or her notes, or such parts thereof as the court, or either party, may require.

(b) The hearing and determination of the motion for a new trial shall have precedence over all other matters except criminal cases, probate matters, and cases actually on trial, and it shall be the duty of the court to determine the motion at the earliest possible moment.

(c) Except as otherwise provided in Section 12a of this code, the power of the court to rule on a motion for a new trial shall expire 75 days after the mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 75 days after service on the moving party by any party of written notice of entry of judgment, whichever is earlier, or if that notice has not been given, 75 days after the filing of the first notice of intention to move for a new trial. If the motion is not determined within the 75-day period, or within that period as extended, the effect shall be a denial of the motion without further order of the court. A motion for a new trial is not determined within the meaning of this section until an order ruling on the motion is entered in the permanent minutes of the court or signed by the judge and filed with the clerk. The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though that minute order, as entered, expressly directs that a written order be prepared, signed, and filed. The minute entry shall in all cases show the date on which the order is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

SEC. 2. Section 663a of the Code of Civil Procedure is amended to read:

663a. (a) A party intending to make a motion to set aside and vacate a judgment, as described in Section 663, shall file with the clerk and serve upon the adverse party a notice of his or her intention, designating the grounds upon which the motion will be made, and specifying the particulars in which the legal basis for the decision is not consistent with or supported by the facts, or in which the judgment or decree is not consistent with the special verdict, either:

(1) After the decision is rendered and before the entry of judgment.

(2) Within 15 days of the date of mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him or her by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest.

(b) Except as otherwise provided in Section 12a, the power of the court to rule on a motion to set aside and vacate a judgment shall expire 75 days from the mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or 75 days after service upon the moving party by any party of written notice of entry of the judgment, whichever is earlier, or if that notice has not been given, 75 days after the filing of the first notice of intention to move to set aside and vacate the judgment. If that motion is not determined within the 75-day period, or within that period as extended, the effect shall be a denial of the motion without further order of the court. A motion to set aside and vacate a judgment is not determined within the meaning of this section until an order ruling on the motion is entered in the permanent minutes of the court, or signed by the judge and filed with the clerk. The entry of an order to set aside and vacate the judgment in the permanent minutes of the court shall constitute a determination of the motion even though that minute order, as entered, expressly directs that a written order be prepared, signed, and filed. The minute entry shall, in all cases, show the date on which the order is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

(c) The provisions of Section 1013 extending the time for exercising a right or doing an act where service is by mail shall not apply to extend the times specified in paragraphs (1) and (2) of subdivision (a).

(d) The moving, opposing, and reply briefs and any accompanying documents shall be filed and served within the periods specified by Section 659a and the hearing on the motion shall be set in the same manner as the hearing on a motion for new trial under Section 660.

(e) An order of the court granting a motion may be reviewed on appeal in the same manner as a special order made after final judgment.

SEC. 3. Section 2030.300 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

(2) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

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

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

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

SEC. 4. Section 2031.310 of the Code of Civil Procedure is amended to read:

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

- (1) A statement of compliance with the demand is incomplete.
- (2) A representation of inability to comply is inadequate, incomplete, or evasive.
- (3) An objection in the response is without merit or too general.

(b) A motion under subdivision (a) shall comply with each of the following:

- (1) The motion shall set forth specific facts showing good cause justifying the discovery sought by the demand.
- (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040.
- (3) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

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

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

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

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

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

- (1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.
- (2) The discovery sought is unreasonably cumulative or duplicative.
- (3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

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

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

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

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

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

SEC. 5. Section 2033.290 of the Code of Civil Procedure is amended to read:

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

(1) An answer to a particular request is evasive or incomplete.

(2) An objection to a particular request is without merit or too general.

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

(2) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

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

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

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

SEC. 6. Sections 3, 4, and 5 of this act shall become operative on January 1, 2020.