

California Imposes New Discovery Requirement: Initial Disclosures

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New Discovery Requirement Imposed by California Civil Code Bill (SB 235)

Specifically, the new law amends California Code of Civil Procedure section 2016.090 and institutes a procedure for initial disclosures of information and documents that is similar to the Federal Rules of Civil Procedure. The changes apply to civil actions filed on or after January 1, 2024, and remain in effect until January 1, 2027.

Quick Hits

- SB 235 amends California Code of Civil Procedure section 2016.090 and imposes new discovery obligations requiring parties to make initial witness and document disclosures within sixty days of another party's request.
- SB 235 requires that courts impose a \$1,000 sanction on parties that fail to comply/act in good faith with the new law.
- The new law applies to all cases filed on or after January 1, 2024.

California Code of Civil Procedure section 2016.090 currently authorizes the court, with the stipulation of the parties to a civil action, to order the parties to provide initial disclosures within forty-five days of the court's order.

SB 235 amends California Code of Civil Procedure section 2016.090 to require each party that has appeared in a civil action to provide initial disclosures within sixty days of a demand by any party to the action unless the parties otherwise stipulate.

The initial disclosures must include the following:

- “The names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information ... that the disclosing party may use to support its claims or defenses, or that is relevant to the subject matter of the action or the order on any motion made in that action.” SB 235 excludes information that would be used solely for impeachment. It also excludes expert witnesses and consultants whom a party later may designate as experts;
- “A copy, or a description by category and location, of all documents” that fall within the same categories above; and
- Any relevant insurance policies that may be used “to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.”

The disclosing party must verify the disclosures via a written declaration by the party or the party’s authorized representative or counsel.

The initial disclosure requirements do not apply to:

- any party in an action who is not represented by counsel;
- unlawful detainer actions;
- actions brought in the small claims division of a court;
- actions commenced under the Family Code or Probate Code; or
- an action in which a party has been granted preference pursuant to California Code of Civil Procedure section 36.

Notably, SB 235 makes it clear that “[a] party is not excused from making its initial disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party’s disclosures, or because another party has not made its disclosures.”

In accordance with existing law, a party may propound supplemental demands for information twice before the initial setting of a trial date and once after the initial setting of a trial date.

SB 235 also raises the mandatory discovery abuse sanction from \$250 to \$1,000, upon a finding that a party “did not respond in good faith to a request for the production of documents,” “produced requested documents within seven days before the court was scheduled to hear a motion to compel production of the records,” or “failed to confer ... in a reasonable and good faith attempt to resolve informally any dispute concerning the request.” The court may excuse the sanction upon making a written finding that the party “acted with substantial justification or that other circumstances make the

imposition of the sanction unjust.”

Key Takeaways

SB 235 falls in line with the obligations dictated by the Federal Rules of Civil Procedure, Rule 26(a)(1), wherein parties are required to disclose witnesses and documents “*that the disclosing party may use to support its claims or defenses.*” (Emphasis added.) It is important to note that SB 235 goes beyond Rule 26 in that the parties must disclose witnesses and documents that are *relevant* to the case, which means that a party must disclose witnesses and documents that may potentially be harmful to its case.

In short, SB 235 promotes a potentially streamlined discovery process that may force parties to evaluate their positions sooner than they otherwise would have. SB 235 also may reduce the amount of discovery needed by parties, given that the parties are now required to disclose all existing relevant witness information and documents at the outset.

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