PUBLIC JUSTICE
IMPACT. CHANGE.

Date: May 13, 2022

To: **Members of the California State Senate**
From: **Public Justice**
Re: **SB 1149 (Leyva) – RESPONSE TO OPPOSITION FLOOR ALERT**

Public Justice is the proud sponsor of SB 1149 (Leyva), as amended on May 9, 2022. This important legislation will protect ordinary people by allowing the public to learn the truth about dangerous products and environmental hazards that today are far too often protected by a veil of secrecy.

For decades, settlement agreements between the parties in litigation and, more recently, stipulations for court orders and standing protective orders, have hidden information that the public has a right to know. This information relates not to legitimate trade secrets, but to dangers, defects, and hazards that must be brought to light with public disclosure, thereby protecting the public health. We have already provided a wide range of examples.

The Chamber of Commerce and CJAC recently joined in an opposition Floor Alert that repeats old, inaccurate myths and distortions, and adds some new disinformation. The information contained in this Floor Alert is surprising in the extent of its uniformly false claims:

1. SB 1149 will "interfere with long-time discovery norms."

FALSE. Discovery has always been open to the public. Broad secrecy orders are abnormal discovery. There is no basis for allowing secrecy of ordinary discovery information that is neither proprietary nor a trade secret. That secrecy only benefits corporations, permitting them to hide dangers from the public while continuing to profit from them. In the 2 to 3% of cases to which the bill applies, SB 1149 protects the public by restoring long-time discovery norms through eliminating this unwarranted secrecy.

2. SB 1149 will "infringe upon trade secrets and intellectual property rights."

FALSE. The legislation specifically recognizes the need for trade secrets and provides an appropriate procedure to allow trade secrets and other proprietary and personal information to remain confidential.

In addition, the opposition insists on repeating the **absolutely false claim** that "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." This ruse is **completely untrue**. As we have previously noted, lawsuits about business disputes are not "covered civil actions" under this bill and have nothing whatever to do with this bill.

3. SB 1149 will "permit public intervenors without interest in the claim."

FALSE. The legislative provision, section (f), clearly limits intervention to those "for whom it is reasonably foreseeable that the person will be substantially affected…."

4. SB 1149 will "incentivize frivolous demands and premature settlement agreements."

FALSE. This statement is contrary to all available evidence, both empirical and anecdotal. Companies have never been, nor will they be, in the habit of doling out money for frivolous lawsuits. Honest businesses have zero incentive to do this, for they defend their cases on the merits and do not fear openness. In fact, this opposition claim reinforces the idea that any company that would do this must have something to hide from the public. Since proprietary information remains protected, there is no legitimate reason why a company would not agree to openness.

5. "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 hazards is nonsensical."

FALSE. What is "nonsensical" – and, in fact, offensive – is this statement. For this to be true, then for over a dozen years, tens of millions of people and tens of thousands of doctors would have ignored the supposedly readily available truth about Oxycontin. Hundreds of thousands of women would have ignored the truth about Essure's dangers. Saying that somehow the public can overcome all the efforts at corporate secrecy by going to available information is an insult to the public.

In this extraordinarily disingenuous statement, the opposition apparently concludes that it is the victims' fault if they haven't figured out what companies have worked so hard to hide through secrecy. Indeed, while we now know about Oxy, Essure and many others, we do not know what other dangers lurk behind courthouse secrecy and remain unknown to the public to this day.

6. The term 'environmental hazard' is … undefined in any state statute."

FALSE. First, section (a)(2) of the bill defines this term and a "defective product" as one that "has caused, or is likely to cause, significant or substantial bodily injury or illness, or death." These words are entirely intelligible and clear.

Finally, the term "hazard" is neither vague nor unused in state statutes. For instance, among many examples, Business & Professions Code § 10084.1 requires the State Real Estate Fund to create a booklet that informs consumers about "common environmental hazards." And Health & Safety Code § 59000 creates the "Office of Environmental Health Hazard Assessment" within the state EPA.