

Agreement to Mediate/Confidentiality Agreement

In the Mediation of the Matter between

Plaintiff(s)/Disputant

-and-

Defendant(s)/Disputant

Case No.

The undersigned parties have agreed to enter into mediation with the intent of resolving the above referenced matter. Further, the parties acknowledge, understand and agree to the following:

1. All parties here state their good faith intention to complete their mediation by an Agreement. It is, however, understood that any party may withdraw from or suspend the mediation process at any time, for any reason.

The parties also understand that the Mediator may suspend or terminate the mediation, if she feels that the mediation will lead to an unjust or unreasonable result; if the Mediator feels that an impasse has been reached; or if the Mediator determines that she can no longer effectively perform her facilitative role.

2. The mediator has no liability for any act or omission in connection with the mediation.

3. The mediator is an impartial, neutral intermediary, whose role is to assist the parties in reaching a settlement of their controversy or claim by negotiation between or among themselves. The mediator cannot impose a settlement, but will assist the parties in achieving their own settlement.

4. The mediator is a neutral third party who may not, and will not, act as an advocate for or give legal or other professional advice to any party. In this regard, no professional-client relationship is created between any party and the mediator. Similarly, the mediator may assist the parties in putting their agreement in writing, but will not render legal or other professional advice to any party.

5. The parties are encouraged at all times to consult with, and to seek the advice of, legal counsel and all other experts and professionals as necessary and appropriate in the discretion of the parties before, during and after all mediation sessions, and particularly prior to executing any final agreement reached through mediation. The decision to retain such professionals is the sole responsibility of the party retaining such professional, and the Mediator can not recommend and will not assume any responsibility, including financial, or any other liability for the work of, any such professional.

6. This mediation is conducted pursuant to California Evidence Code Sections 1115 through 1128, governing confidentiality of Mediation proceedings. These sections provide, in pertinent part:

Section 1119. Mediation Confidentiality

1119. Except as otherwise provided in this chapter:

(a) No evidence of anything said or of any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

Section 1120. Types of evidence not covered:

1120. (a) Evidence otherwise admissible or subject to discovery outside of mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This chapter does not limit any of the following:

(1) The admissibility of an agreement to mediate a dispute.

(2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.

(3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

Section 1121. Mediator reports and communications

1121. Neither a mediator nor anyone else may submit to the court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing or orally in accordance with Section 1118.

Section 1127. Attorney's fees

1127. If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

7. Each party agrees to fully and honestly disclose all relevant information and writings as requested by the Mediator and all information requested by any other party, if the Mediator determines that the disclosure is relevant to the mediation discussions.

8. The parties and the Mediator agree that the mediator's fee for these mediation services shall be \$_____ per hour, with a four-hour/half-day minimum, payable prior to commencement of the initial mediation session. Payments of fees for each subsequent mediation session, if any is necessary, shall be made prior to each subsequent session, based on a reasonable time estimate made by the parties and/or their attorneys. The parties agree to be responsible for payment of all mediation fees and for all expenses incurred as a part of the mediation process and that the Mediator shall not be responsible for incurring any expenses as a part of the mediation process.

Additionally, after the initial mediation session, the parties agree to be responsible for the payment of fees incurred on an hourly basis, for all services rendered by the Mediator outside the actual mediation sessions, excluding the preparation, service and filing of a Statement of Agreement or Non-agreement, if necessary, and any correspondence thereto. Payment of these fees shall be due upon receipt of mediator's invoice for services rendered and are the joint and several obligation of each party and his/her attorney.

Should a party, at any time refuse to render payment for said fees or bear such expenses, the Mediator, at her sole discretion, may stop all work on behalf of the parties, including the drafting and/or distribution of the parties Agreement, and withdraw from the mediation.

9. The parties and their attorneys agree that, once scheduled, the presence of all parties and their attorneys of record are mandatory at the mediation, unless such presence has been previously excused by the Mediator in writing. Should any party or their attorney of record fail to appear at a scheduled mediation session, that party and their attorney, jointly and severally, shall be held responsible for full payment of the mediator's minimum fee, in the amount of \$_____.

10. The parties agree that the Mediator does not make any representations, warranties, promises or other undertaking except those contained in this Agreement, including but not limited to, any representation, warranty or promise that the parties will resolve their dispute or successfully mediate any or all of the issues related to the controversies that were the subject of the mediation; and that the Mediator does not have any authority to make any binding decisions or recommendations or to complete the making of an agreement or enforce any agreement. Accordingly, the parties hereby release the Mediator from any and all claims arising out of any agreement made by them as a result of any mediation process pursuant to this Agreement, and agree to indemnify and hold harmless the mediator from any loss or damage, including court costs and attorney's fees, resulting from any such claim.

11. The parties and their attorneys agree that if this case is settled as a result of the mediation process that the mediator may report the settlement to The Daily Journal Verdicts & Settlements

department for publication and that such report is not a breach of the provisions herein regarding mediation confidentiality. Counsel for all parties shall be given the opportunity to approve any document prepared by the mediator or any other party prior to its submission to The Daily Journal.

12. This agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one, entire Agreement.

This agreement is dated this _____ day of _____, 200_, and is signed before commencement of mediation by each of the persons whose signatures appear below.

Plaintiff/Disputant

Plaintiff/Disputant

Attorney for Plaintiff/Disputant

Defendant/Disputant

Defendant/Disputant

Attorney for Defendant/Disputant

Laurel Kaufer, Mediator