

KATHERINE GALLO
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MEDIATION AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and among the parties hereto and their respective attorneys of record that:

1. The parties in the case of _____, _____ County Superior Court Case No. _____, and their respective attorneys of record, agree to mediation in this matter, with the fees of the mediator to be shared equally (50% by the plaintiff's side, and 50% by the defense side). The clients and their respective attorneys of record shall each be jointly and severally liable for their respective share of the mediator's reasonable fee for this mediation. The mediator's fee rate is \$ _____ an hour for all services rendered and time reasonably spent conducting the mediation. Each side hereto shall deposit the sum of \$ _____ (representing four (4) hours' worth of the mediator's time, split 50-50 between plaintiff and defendant) with the mediator by no later than the close of business on _____. Any unused portion of this deposit will be promptly refunded. All further sums due and owing for the mediator's services hereunder shall be paid in full within five (5) business days after submission of an invoice from the mediator. Checks should be made payable to _____ (Federal Tax I.D. No. _____).

2. All parties and signatories to this Agreement agree that this mediation, and all communications made during these mediation proceedings, are subject to and governed by the terms of California Evidence Code Section 703.5, and Sections 1115 through 1128. Section 1119 of the California Evidence Code states:

Except as otherwise provided in this chapter:

(a) No evidence of anything said or 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 250,¹ 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.

3. The parties hereto agree that if a settlement is reached which the settling parties intend to be a final settlement of all or some issues between or among them, a ‘short-form’ handwritten or typed memorandum of that settlement which sets forth the gist of the material terms of the settlement, and which is properly executed by the parties affected, will be binding and enforceable, and will be subject to disclosure and admissible in evidence for purposes of any proceeding to enforce such settlement, including but not limited to a motion pursuant to Code of Civil Procedure Section 664.6. The parties hereto further agree that any settlement which is placed on the record before the court or put in writing and duly executed after or in the course of this mediation can be enforced under CCP § 664.6, and that a copy of this Mediation Agreement or relevant portions thereof may likewise be admissible in order to establish that agreement. The parties to this Agreement also agree that, pursuant to Evidence Code Section 1120, subd. (b), this Mediation Agreement may be admissible in evidence in any action or proceeding, including but not limited to an action or proceeding the mediator may bring in order to collect his fee, or in defending any action or proceeding brought against him in connection with this mediation.

4. The parties hereto expressly waive and exclude the application of the time limits set forth in Evidence Code § 1125, subdivision (a)(5) to these mediation proceedings. That section states:

(a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

....

(5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

All parties and signatories to this Agreement agree that for purposes of confidentiality, absent

¹Evidence Code § 250 states: “ ‘Writing’ means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.”

any other indication that the mediation has concluded, these mediation proceedings shall be considered at an end if there is no communication concerning the subject matter of the mediation between the mediator and any of the parties or attorneys involved in this mediation, or their representatives, for 90 consecutive calendar days after the last mediation session.

5. The parties and signatories hereto understand and agree that the confidentiality protections normally afforded by engaging in mediation may become inapplicable in the event and to the extent the mediator or any participant herein becomes aware of the commission or likely commission of a crime of violence.

6. The parties and all signatories hereto understand and agree that the mediator is not practicing law, and owes no legal duty to them in connection with any acts or omissions made in his capacity as mediator of this case. The mediator is acting as a neutral, not an advocate, and the mediator is not and cannot “represent” anyone’s interests in this mediation. The parties understand and agree that even if the mediator gives his opinion, or makes statements concerning the law or legal matters, or assists in drafting a memorandum of settlement terms, that does not constitute “legal advice” or “legal services,” and they agree to rely solely upon their own judgment or advice from an attorney who is representing their interests, and not upon anything the mediator says or does.

7. The parties and all signatories hereto further agree that the mediator shall not be asked or compelled to testify in any action or proceeding or to produce any “writing” as defined in Evidence Code § 250, and they agree to abide by the terms of Evidence Code § 1127, which states:

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.

8. This Agreement is intended to cover and will apply to any future mediation communications or mediation sessions held in connection with this dispute, without the need for another writing signed by the parties affected.

I HAVE READ THE TERMS OF THIS MEDIATION AGREEMENT FOR THE CASE OF _____, AND I UNDERSTAND AND AGREE TO ITS TERMS.

DATED: _____

*Please PRINT your name and capacity (e.g., “Plaintiff,” or “Attorney for...”)
below your signature:*

_____	_____
_____	_____
_____	_____

KATHERINE GALLO
Mediator