

CALIFORNIA CONFIDENTIALITY AGREEMENT

This is an agreement by and between the undersigned parties (“the parties”), and their respective representatives and counsel, who desire to enter into mediation with the intention of resolving all issues arising from an existing controversy. The parties and the mediator agree as follows:

1. **Settlement Negotiation.** The mediation shall be considered to be a settlement negotiation as contemplated by the California Evidence Code. In the event that this matter is not resolved in mediation, any offer of settlement shall be inadmissible pursuant to the provisions of Evidence Code sections 1152 and 1119.

2. **Confidentiality.** All communications in connection with or in the course of the mediation are confidential and the provisions of Evidence Code sections 703.5 and 1115 et. seq., are incorporated herein by this reference. Confidentiality applies to anything communicated, exchanged, said, done or occurring in the convening and course of the mediation, whether oral or written, including discussions between the mediator and any party or counsel until termination of the mediation.

3. **NO RECORDING POLICY:** Pursuant to this Agreement, all parties and their respective representatives and counsel acknowledge and agree that any and all audio, video and photographic recording during pre-mediation, mediation and/or post-mediation communications of any kind are expressly prohibited.

4. **Documents Submitted.** To the extent that information or documents are privileged, such privilege is not altered or affected by disclosure to the mediator or the parties during mediation. All documents submitted to the mediator relating to the mediation will be destroyed by the mediator within 30 days of the mediation.

5. **Continuing process.** The mediation process may continue until settlement of the matter in writing, until a party notifies the other that the mediation is terminated, or the mediator provides written notice of termination. In that event, subsequent oral or written communication between or among the parties and the mediator, as part of the mediator’s continuing effort to resolve the dispute, shall be subject to this agreement. Accordingly, the parties waive the automatic termination provisions of Evidence Code section 1125(a)(5).

6. **Settlement Enforcement.** In the event that it may become necessary to introduce in a court proceeding or arbitration a written settlement agreement prepared and signed during or after the mediation for the purpose of enforcing the provisions of such agreement under CCP sections 664.6 or 664.7 or otherwise, the parties agree to waive the mediation confidentiality provisions of the Evidence Code for that purpose only.

7. **Recourse for Breach.** The parties understand, acknowledge and agree that neither Esq. Mediation, nor the mediator have the authority, power, obligation, jurisdiction or other ability to enforce the provisions of this agreement or the provisions of the Evidence Code that apply to this mediation proceeding or to provide or fashion a remedy for any claimed breach of this agreement. The parties understand and agree that their sole forum to seek redress for any claimed breach of this agreement by any other party shall be the court or arbitration proceeding where the action is pending. The parties understand and agree that neither Esq. Mediation nor the mediator shall have any responsibility to testify in such proceedings, or to present evidence, or provide information or otherwise be involved in such proceedings and the parties shall not require or request Esq. Mediation or the mediator to initiate, support or become involved in such proceedings. The participants in this mediation shall not subpoena the mediator nor any employee or officer of Esq. Mediation or request any documents from them that were created or prepared in connection with this mediation.

8. **Legal Advice.** The mediator is serving as a neutral person who is assisting the parties in an effort to resolve their dispute. The mediator does not act as an advocate for any party. The mediator’s statements do not constitute legal advice to any party. The parties shall seek and rely solely on the legal advice that they obtain from their counsel. If

the mediator assists the parties in preparing a settlement agreement, the parties agree that the mediator is acting as a mere scrivener and the parties shall have such settlement agreement reviewed and approved by their legal counsel before executing the agreement and the mediator shall have no liability for any error or omission with respect to such settlement agreement.

9. Limited Liability, Release and Indemnification. All parties and participants hereby agree that the mediator has no liability for any act or omission in connection with or arising out of the mediation. (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 855, n.6 and 860.) Further, the mediator makes no representation that the participants will reach an agreement on any of the issues, disputes or controversies discussed in the mediation. Any participant who brings any claim, action or proceeding of any nature against the mediator or who seeks to have the mediator testify in any proceeding shall be responsible to indemnify the mediator for any expenses, loss or damage incurred, including, without limitation, attorney's fees and expenses incurred in connection with such claim, action or proceeding brought by such participant.

In consideration of the fact that the parties are disclosing sensitive information in reliance on this agreement, all parties agree that breach of this confidentiality may cause irreparable injury for which monetary damages would be inadequate. Consequently, any party asserting a breach of this agreement may seek injunctive relief to prevent disclosure of information disclosed during the mediation.

Any party breaching this agreement shall be liable for and shall indemnify the non-breaching parties and the mediator for all costs, expenses, liabilities and fees, which may be incurred as a result of such breach.

10. ADR Administrator. Nothing contained in this agreement shall preclude a report to any Court's ADR Administrator or prevent Esq. Mediation or the mediator from responding to an inquiry from the ADR Administrator pursuant to California Rule of Court sections 3.850-3.868; 3.890-3.898.

11. Multiple Counterparts and Faxed Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed or electronic signatures shall be deemed valid as if they were inked originals.

12. Severability. If any provision of this Agreement, or its application to any person, place, or circumstance, is held by a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

By executing a copy of this Agreement, the undersigned agree to the foregoing.

SIGNATURE PAGE TO FOLLOW

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