

Form 103 Mediator Agreement

Mediator Name and address

July 6, 2018

Name of Attorney One
Attorney for

Name of Attorney two
Attorneys for

Re: Mediation Retainer Agreement
(LASC Vendor Resource Program)
Mediation of (Case Name) **A vs B**. LASC Case No. _____
Mediation Hearing Date _____

Dear Counsel and Parties:

By signing below, each of the parties and counsel agrees to enter into a dispute resolution process with [Name] as Mediator ("Mediator"). Each of you understands and agrees to the following terms and conditions:

1. The parties and counsel retain the services of Mediator to serve as a Neutral in this matter. Mediator is a qualified independent panel member of the Mediation Center of Los Angeles (the "Center"), a 501(c)(3) non-profit organization, and will conduct the mediation in accordance with the Center's Los Angeles Superior Court Civil Mediation Vendor Resource List Program ("the Program")
2. Mediator is an independent contractor and is not an agent or employee of the Center or the LA Superior Court. Mediator is not serving as an attorney in this mediation process. Mediator does not represent any party to the litigation but serves only as an independent neutral to facilitate settlement discussions of the parties. As a neutral third party, Mediator may not and will not act as an advocate for or give legal or other professional advice to any party. No attorney-client relationship is created between any party and Mediator.
3. Mediator may be asked to or for other reason may assist the parties to negotiate settlement of the lawsuit that both parties may agree to. Upon request, Mediator may assist the parties in drafting their Settlement Agreement. But the parties and their legal counsel are solely responsible for the content, terms and conditions and all other aspects of any such agreement. Mediator is not responsible for the content or assuring that the final agreement contains all the terms and conditions required for enforcement, or any other aspect of any agreement.
4. The parties and counsel recognize and agree that mediation is a voluntary process that includes joint sessions with all parties as well as private sessions or meetings with one side or another that are confidential. The parties consent to private meetings, whether before or after or in lieu of joint session (in Mediator's discretion). The parties grant permission to dispense with any joint session if in Mediator's discretion such joint sessions would not be sufficiently productive.
5. Mediations are confidential. Prior to the start of mediation, each party, participant and counsel will sign the Center's "Mediation Confidentiality Agreement, Fees, Release and Waiver" in connection with this dispute resolution process. No communications and no documents used in the course of mediation may be used in any further proceedings with few exceptions.
6. Attorneys. Each party acknowledges that they have been informed and are aware that he or she or it should obtain advice of an independent attorney before signing this document or any settlement agreement. The parties are aware that this document and a settlement agreement, if any, will directly affect their rights, and that the absence of an attorney signature on this document indicates that party waived the right to have attorney representation and have assumed the risk of proceeding without an attorney. The parties have been informed that they are free to consult an attorney at any time during the dispute resolution process. If the dispute is settled, the parties are advised to have the settlement agreement independently reviewed by their counsel prior to executing it. Mediator has no responsibility or obligation to advise the parties about the terms of any settlement they may enter.

7. Each party shall pay the Center in advance a nonrefundable administrative fee of \$50 prior to the start of the mediation. The Center receives no other fees from the parties, the mediator or the court.

8. The Mediator's fee for this mediation pursuant to the Center's court Program is \$150 per hour for the first three hours for a total of \$450 payable in advance to the Mediator. This fee pays for three hours of the Mediator's time at the hearing. It is earned upon receipt and is non-refundable, even if all or some of the three hours is not used. Any additional mediator services requested by the parties in excess of the initial three hours shall be billed in half hour increments at \$390 per hour. Unless the parties agree to allocate the fees among themselves differently, the fees will be allocated by default equally among all sides to the lawsuit on a "per side" basis. (By way of example, the split of \$450 for the first three hours would be \$225\ for each "side" if there are two sides, \$150.00 for each of three sides, \$112.50 for each of four sides and so forth.) Attorneys and all parties they represent are considered one "side" and all members of each "side" jointly and severally promise to make all payments due from that side. If not on a "per side" basis, the parties shall notify the Mediator how they have chosen to allocate the fees. Mediator will not charge for convening or preparation time.

9. The non-refundable initial fee of \$450 for the first three hours shall be paid at least 15 days before the mediation begins, or, if the mediation is set to start less than one week after the date hereof, then at the start of the mediation. Attorneys and all parties they represent jointly and severally promise to make all payments due from that side.

10. All checks should be made payable to "[Mediator Name]" and sent to the above address in this letterhead. Initial fees are due and owing at the time the engagement is calendared and confirmed. Except as to the nonrefundable \$450 for the first three hours, any otherwise unearned fees will be refunded, subject to and in accordance with Paragraph 12 . For the second and additional sessions of mediation, a fee deposit shall be due in the amount of \$1,170.00, for an additional 3 hours and shall be split between or among the sides, as above. If any additional retainer is not used, any unused portion shall be refunded subject to the provisions of paragraph 12] but the parties should assume that all of any advance(s) will be used and that there will be no refund.

11. The total fee may be more than the initial \$450 retainer. If additional compensation is due beyond the retainer, the additional compensation shall be paid on request at the completion of each day's session or, if not requested, on receipt of the billing statement. A client's refusal or inability to pay shall not excuse the undersigned attorney, who shall be responsible to pay the Neutral Mediator in any event. Fees after the initial mediation session include any additional time of the Neutral in continuing to expend efforts to settle the case, including but not limited to additional time in mediation sessions, travel time, time for reviewing briefs and other documents submitted by the parties, time for post mediation communications, drafting documents, and giving any required notices to the parties, the Center, and/or the Court.

12. Failure of a party to pay additional fees in a timely manner may lead to Mediator withdrawing as a Neutral in this dispute. Other grounds for Mediator withdrawal include without limitation, incivility engaged in by any party or their counsel, court order, ruling or court procedure that directly or indirectly calls for cessation of mediation, ethical issues that may arise which in the judgment of Mediator, requires withdrawal.

13. In the event it becomes necessary for Mediator or the Center to bring legal action to enforce rights under the Agreement and/or defend against any claim by any party or nonparty, the prevailing party shall be entitled to recover its reasonable legal fees and court costs, and Mediator shall be entitled to recover Mediator's fees in the event Mediator chooses to represent Mediator's self. Notwithstanding anything herein or by statute to the contrary, this Agreement shall be admissible in any action or proceeding to collect fees and charges due hereunder and/or otherwise to enforce its terms.

14. Cancellations/continuances: Once the mediation has been scheduled, if request for cancellation or continuance or notice of cancellation or continuance is received by the mediator four or more calendar days prior to the scheduled mediation, a cancellation/continuance fee of \$150 will be assessed to and paid by the side(s) requesting cancellation/continuance. If such notice is received three calendar days or less prior to the

scheduled mediation, then a cancellation/continuance fee of \$250.00 will be assessed to and paid by the side(s) requesting the cancellation/continuance. Any charges which the Mediator has become obligated to pay for conference room rental, travel costs, hotel, or other charges will be added to the cancellation/continuance Fees. The cancellation/continuance charges stated herein are in addition to any fees or costs otherwise due pursuant to this agreement.

15. Pass Through Charges for Conference Room Rentals: Mediator may arrange for conference rooms for conducting the mediation. Mediator will notify the parties of the fees for the use of the conference room and such expenses shall be paid by the parties in advance of the mediation together with the \$450 retainer fee. Parties/counsel will be solely responsible for conference room rental and all other charges, not the Mediator.

16. Potential Conflicts of Interest: The Neutral is unaware of any actual or potential conflict of interest which would amount to ground for disqualification in accordance with California Code of Civil Procedure 170.1 (applicable to judges and for this analysis, treated as if applicable to Neutrals) except as enumerated below.

None.

17. To the extent any actual or potential conflicts of interest exist, Mediator does not believe it will affect Mediator's capacity to be impartial. By signing this Agreement, the parties and counsel waive the conflicts and potential conflicts disclosed below herein:

18. The parties and counsel recognize that Mediator may maintain online "relationships" with numerous Facebook friends, LinkedIn connections, other contacts, references, recommenders, endorsers,, etc., including people or firms on websites, Mediator's own, and all forms of Social Media and Mediator may encounter parties and/or counsel at professional functions, social function, community functions and otherwise. . The parties and counsel agree that Mediator is not disqualified from acting as a Neutral herein due to any such online "relationships."

19. MEDIATOR AND THE CENTER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY ACT OR OMISSION IN CONNECTION WITH THE DISPUTE, THE DISPUTE RESOLUTION PROCESS OR OUTCOME OF THE PROCESS. ALL COUNSEL AND PARTIES WAIVE ANY AND ALL CLAIMS EACH MAY HAVE AGAINST MEDIATOR, THE CENTER AND THE LA SUPERIOR COURT ARISING FROM MEDIATOR'S SERVICES OR CLAIMED ERROR OR ADMISSION IN DELIVERING SERVICES, OR OTHER ACT OR OMISSION IN RELATION TO THE PARTIES, COUNSEL OR THE DISPUTE. A PARTY WHO BRINGS A CLAIM, ACTION OR PROCEEDING OF ANY NATURE AGAINST MEDIATOR AND/OR THE CENTER OR WHO SEEKS TO HAVE MEDIATOR OR ANY REPRESENTATIVE OF THE CENTER TESTIFY SHALL BE RESPONSIBLE TO INDEMNIFY THE MEDIATOR FOR ANY AND ALL EXPENSES, LOSSES OR DAMAGES INCURRED, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES, COSTS AND EXPENSES INCURRED IN CONNECTION WITH SUCH CLAIM, ACTION OR PROCEEDING BROUGHT BY SUCH PARTICIPANT.

20. If a party or counsel subpoenas or otherwise seeks to compel Mediator or any representative of the Center to testify or produce a writing, whether or not the court or other adjudicative body determines that the testimony or writing is admissible or inadmissible or whether or not protected from disclosure by Chapter 2, Division 9 of the California Evidence Code (commencing with section 1115), the Court or other adjudicative body making the determination shall award reasonable attorney's fees and costs to Mediator and the Center, as applicable, and the usual hourly rate for all of Mediator's time including but not limited to review, deposition, travel, testimony, or for any other related purpose, against the person seeking the testimony or writing.

21. This Agreement may be signed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. Notwithstanding anything herein to the contrary, this Agreement shall bind the parties and their successors in interest. A facsimile copy or electronic version of the signature will be treated the same as an original.

22. If the foregoing is acceptable, please sign the original where indicated and return the same to me at the address set forth above, together with your retainer check payable to Mediator or completed credit card slip.

[Optional. I appreciate the confidence you have expressed in me by selecting me as your Mediator, and I thank you for the opportunity to assist you in this matter.]

Very truly yours,

Date:

Date:

Mediator (Printed Name)

Signature

AGREED TO AND ACCEPTED
CONFLICTS OF INTEREST ARE WAIVED;
WAIVER AND RELEASE DESCRIBE ABOVE ARE AGREED TO:

Date

Date

Name Printed

Name Printed

Signature

Signature

Date

Date

Name Printed

Name Printed

Signature

Signature

Date

Date

Name Printed

Name Printed

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Signature