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MEDIATOR

ARBITRATOR

Advocate

Counselor

Advisor

January 2, 2020

Mediation Agreement

Date:

Time:

Location:

The parties represented by the undersigned counsel have agreed to submit their dispute to mediation using the services of Gary N. Stern, principal with SternLaw: Law Office of Gary N. Stern, as mediator. The following are the terms of the mediation proceedings to which the parties agree:

Confidentiality

Mediation is a voluntary proceeding by which the parties desire to cooperate to resolve their dispute by mutual agreement. The proceedings are entirely confidential pursuant to certain rules that are set forth below to which the parties agree.

The parties agree that the mediation process is conducted pursuant to Rules of Court Rules 1630 et seq. and is to be considered settlement negotiations for the purpose of protecting disclosures made during such conferences from later discovery or use in evidence. The Mediation will conform to provisions of C.C.P. section 1775.10 and related sections of the Evidence Code, including sections 703.5 and 1115 et. seq. relating to Mediation and section 1152 of the Evidence Code. In this regard, all of the information disclosed during the course of the mediation is to be treated as confidential pursuant to the provisions of Evidence Code section 1119, which provides in substance that evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled in any civil action. For purposes of confidentiality, the mediation shall not be deemed terminated pursuant to Evidence Code section 1120 (5) by failure of communication with the mediator for 10 calendar days, it being the intent of the parties that any communication with the mediator relating to this matter regardless of the time, shall be deemed confidential and shall not be admissible pursuant to Evidence Code section 1119.

Further, no document prepared for the purpose of, or in the course of the mediation, or

copy thereof, is admissible in evidence, *except in the event a settlement agreement is reached between the parties which resolves the conflict and leads to a dismissal of the lawsuit*, in which case the written settlement agreement shall be admissible in evidence. Otherwise, the entire procedure shall be deemed confidential. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any party or by a party's agent or attorney are confidential and privileged. The parties agree that if a full and final settlement agreement is reached, it shall be in writing and if the parties agree, may be submitted to the court for confirmation and approval. If a final settlement agreement is signed by the parties, it will be immediately effective and binding, unless the agreement provides otherwise and shall be subject to Evidence Code section 1123. Any agreement signed by the parties shall be enforceable pursuant to CCP section 664.6.

It is expressly represented by the parties retaining Mr. Stern that they have fully complied with the relevant provisions of Evidence Code sections 1122 and 1129, the laws that require an attorney to obtain from his/her client a signed acknowledgement regarding confidentiality in mediation.

Limited Liability and Indemnification

The participants agree to release the Mediator from any and all claims arising out of their failure to reach agreement or their decision to enter into any agreement or any other aspect of the mediation process. Further, the Mediator makes no representation that the participant will reach an agreement on any of the issues, disputes, or controversies discussed in the mediation, nor does Mediator have any responsibility for or liability concerning the terms and conditions of any settlement agreement reached by the parties. Any party who brings any claim, action or proceeding of any nature against the Mediator or who seeks to have the Mediator testify 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.

Fee Agreement

The Mediator's fee shall be divided equally between the parties, unless another arrangement is requested by the parties. The Mediation fee is \$2,500.00 for a one-half day session (generally four hours) and \$5,000.00 for a full day session. To reserve a mediation session, each party to the mediation hearing shall transmit to the Mediator their pro rata shares of the full amount due for the agreed type of session (half or full day) no later than 7 days prior to the scheduled mediation session. In the event the mediation session continues for a substantial period of time beyond the agreed time ("substantial" is generally considered to be one-half hour in excess of the agreed time), the parties will be billed their pro rata share at the rate of \$625.00 per hour. Other arrangements for a given case, related to travel, or time to be reserved must be

confirmed in writing. It is respectfully requested that your payment be sent to Mr. Stern no later than one week after return of the signed retainer, it being understood that the signed retainer and payment are both due no later than 7 days prior to the scheduled mediation session, in order to secure Mr. Stern's time as scheduled.

Cancellation/Rescheduling: There will be no charge for rescheduling if done 24 hours in advance; if a party wishes to reschedule less than 24 hours before the scheduled session, there is a \$250.00 administrative charge. If a mediation session is cancelled 48 hours or more in advance of a scheduled session, Mr. Stern will fully refund the fees paid by both sides. If cancellation occurs less than 48 hours before the hearing, \$1,250.00 of the amount paid will be retained by Mr. Stern as earned in connection with mediation preparation; the balance will be promptly refunded.

No Conflict of Interest

The Mediator is unaware of any actual or potential conflicts of interest which would amount to grounds for disqualification in accordance with California Code of Civil Procedure section 170.1 (applicable to judges and reference to mediators).

By signing below, you have indicated that you are authorized to execute this confidentiality and fee agreement on behalf of your clients as their agents and that the terms set forth above are approved. As mediator selected by the parties, I acknowledge the parties' agreement for confidentiality and agree to be bound by its provisions.

If the above terms and conditions are acceptable to you and your clients, please sign a copy of this letter below where indicated and return to me by mail or you may scan and email to gstern@sternlaw.org.

We consent to the above terms on the date set forth below:

Dated:



Gary N. Stern, Mediator

Counsel

Counsel

Counsel