

**AGREEMENT TO MEDIATE, TO PAY MEDIATION FEES AND CONFIDENTIALITY  
ACKNOWLEDGMENT**

**Malcolm Sher's Tax ID #**

**Re: Mediation of**

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, between the undersigned Attorneys and Clients ("parties" and "attorneys"), and Malcolm Sher, hereinafter referred to as "mediator". This agreement may be executed in counterparts.

1. The parties agree to submit their dispute to mediation conducted by Malcolm Sher. Parties understand that mediation is entirely voluntary and any party may terminate it at any time. The mediator has no power to decide issues or make decisions for the parties. Nor is the mediator acting as a representative or advocate for any of the parties, including self-represented parties. He will not be providing legal or tax advice to counsel or any participant. The parties, including self-represented parties are advised and encouraged to obtain legal and tax advice before and throughout the mediation process and before signing any settlement agreement. The mediator's role will be to assist in the negotiation by facilitating the parties' communication. No guarantee of a specific outcome is made and payment of mediator fees is not contingent on a settlement being reached.

2. The mediator may hold private sessions/caucuses with only one party. Such caucuses are designed to improve the mediator's understanding of the parties' positions and to explore options. Information gained by the mediator during a caucus remains confidential unless the parties and attorneys agree to allow the mediator to share the information with other parties and attorneys.

3. With certain exceptions, no evidence of anything said or any admission made, and no writing, as defined by Evidence Code § 250, for the purposes of, or 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 non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given. With some exceptions, all communications, negotiations, or settlement discussions by and between the parties in the course of mediation or a mediation consultation shall remain confidential. (Evidence Code §§1115 – 1126 and 1152).

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

5. The mediator shall not be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in connection with a prior

mediation, except as to a statement or conduct that could give rise to civil or criminal contempt, constitute a crime, be the subject of an investigation by the State Bar or Commission on Judicial Performance, or give rise to disqualification procedures under CCP §170.1(a)(1) or (c) (Evidence Code §703.5 and 1121).

6. The mediator charges at the rate of **\$450** per hour, unless the mediator agrees to other arrangements with parties and counsel. Except for court-sponsored or bar association-sponsored mediations, there is a minimum charge of four billable hours. Parties and their attorneys are jointly and severally responsible for mediator fees. **A deposit of \$ \_\_\_\_\_ split between the parties, (\$ \_\_\_\_\_ each) must be sent with a signed copy of this agreement and the Mediation Briefs.** A final bill will be sent following the mediation session and must be paid in full within thirty days. Any additional time beyond that provided for by the deposit will be billed and any unused funds will be refunded. The mediator will honor the “no charge” time requirements of any court-sponsored or bar association-sponsored program in which the mediator is a participant, provided notification is received from the court or bar association that the mediation is conducted under its auspices. Mediator time may be used for preparation, review of briefs, documents, pleadings, site visits, pre-mediation telephone conferences with counsel, and the mediation session, itself. If the mediation is cancelled within seven days of the scheduled hearing date, the canceling party(ies) will be charged for four hours of mediator’s time.

Parties’ Signatures

Attorneys’ Signatures

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