

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

Malcolm Sher's Tax ID # 68-040-2961

Re: Mediation of Smith v. Jones

This agreement is made this _____ day of _____, 2017, between the undersigned parties ("parties") 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 and therefore is not providing legal advice or counsel for any party. The parties are advised and encouraged to obtain legal advice 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 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 agree to allow the Mediator to share the information with other parties.

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 §§703.5, 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 is protected by quasi-judicial immunity and 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 charge for this mediation will be at the rate of \$450 per hour. This encompasses pre-conference telephone calls with the parties and/or counsel, which are confidential and considered as mediation time, site visits, and time in the mediation session itself. There is a four-hour minimum charge for the mediation session, itself. **The Mediator must receive \$6,000 (\$3,000 each) as a deposit for mediator fees no later than fourteen days before the scheduled mediation session.** This is only a deposit. If the Mediator spends more time, a final bill reflecting the additional time will be sent following the mediation session and will be paid within ten days thereafter. Unused mediator fees will be promptly refunded. Parties, including principals of parties,, counsel and insurers, if any, are jointly and severally responsible for payment of mediator fees. Any lawsuit to collect mediator fees will be venued in Contra Costa County. If the mediation is cancelled within seven (7) days of the scheduled session date, and the session is not re-scheduled, the canceling party(ies) will be charged for four hours of the Mediator’s time.

Parties’ Signatures

Attorneys’ Signatures

