

MEDIATION AGREEMENT

I have read the attached Mediation Agreement completely and understand its contents. I have initialed each page to indicate my understanding and agreement of the terms.

I wish to initiate mediation with THE LAW AND MEDIATION OFFICES OF HEIDI S. TUFFIAS, INC., A PROFESSIONAL CORPORATION, hereinafter ("LMOHST") and agree to the provisions and financial arrangements set forth.

Initial Deposit: _____

Hourly Rates

Heidi Tuffias:	\$550.00
Associate:	\$250.00 - \$350.00
Paralegal:	\$195.00
Legal Assistant:	\$150.00

Dated

(Print Name Under Signature)

Dated

(Print Name Under Signature)

THE LAW AND MEDIATION OFFICES OF
HEIDI S. TUFFIAS, INC., APC

Dated

By: Heidi S. Tuffias

MEDIATION AGREEMENT

I.

ESTABLISHMENT OF MEDIATION RELATIONSHIP

The undersigned wish to retain the services of the LAW AND MEDIATION OFFICES OF HEIDI S. TUFFIAS, INC., A PROFESSIONAL CORPORATION to mediate disputed issues. The Mediator is an attorney licensed to practice in the State of California working as a sole Mediator. All references to "Mediator" apply to the lawyer Mediator. The parties acknowledge that the Mediator has discussed the advantages and disadvantages of the Mediation process and compared that process with being represented by separate attorneys or having the issues resolved through negotiation between lawyers or by a judge in the court.

II.

RIGHT OF INDEPENDENT COUNSEL

During the Mediation, the parties are each encouraged to consult independent counsel at any time. Each party is entitled to the confidentiality of the attorney/client relationship in respect to any communication with an independent attorney. In particular, the parties should consult independent counsel prior to signing any final Agreement.

III.

MEDIATOR REPRESENTS NEITHER PARTY

The parties acknowledge that the Mediator does not represent the interests of either party and is not acting as an attorney. The parties acknowledge that the purpose of Mediation is to facilitate the ultimate resolution and agreement between the parties regarding the issues, problems, and disputes presented in Mediation and that the Mediator does not act as an advocate, representative, fiduciary, or counsel for either party.

IV.

IMPARTIALITY OF MEDIATOR

The parties acknowledge that: although the Mediator will be impartial and that the Mediator does not favor either party, there may be issues in which one party may be reasonable and the other may not be reasonable. The parties acknowledge that the Mediator has disclosed that she or he has a duty to inform the parties (if in the

Mediator's judgment) that one party's position is not reasonable. Further, the Mediator has a duty to pose alternatives, make suggestions, and provide legal information which will insure that final decisions are reasonable. In exercising this duty, the parties acknowledge that the Mediator may appear to be favoring the party with the reasonable position against the other party with the unreasonable position. The parties acknowledge that the Mediator has no duty to be neutral in respect to reasonableness. The Mediator has a duty to assure a balanced dialogue and to diffuse any manipulative or intimidating tactics.

V.
WAIVER OF CONFIDENTIALITY

The Mediator agrees to keep all communication from either of the parties confidential in respect to any third persons, unless express verbal consent is given by both parties. For the purpose of facilitating communication and resolving differences between the parties, each party specifically authorizes the Mediator to meet individually with either party. Therefore, the Mediator may meet with one party without the presence of the other. However, the parties acknowledge that the Mediator will not keep confidences between the parties. Do not provide information to the Mediator that you want to keep confidential from the other party.

VI.
RIGHT OF MEDIATOR TO WITHDRAW

The Mediator will attempt to resolve any outstanding disputes as long as both parties make a good faith effort to reach an agreement based on fairness to both parties. Both parties must be willing and able to participate in the process. The mediated agreement requires compromise, and both parties agree to attempt to be flexible and open to new possibilities for a resolution of the dispute. If the Mediator, in his or her professional judgment, concludes that agreement is not possible or that continuation of the mediation process would harm or prejudice one or both of the participants, the Mediator shall withdraw and the mediation shall conclude.

VII.
FOLLOWING THE INSTRUCTION(S) OF THE MEDIATOR

The parties agree to follow the instructions of the Mediator throughout the Mediation process. Such instructions are designed to insure that both parties receive full disclosure and development of factual information and that each party has an equal understanding of such information prior to reaching an agreement.

VIII.
TERMINATION OF MEDIATION WITHOUT CAUSE

The Mediation may be terminated without cause by either party at any time. No reason must be given, either to the other party or to the Mediator. A decision to terminate Mediation must be made in writing. Mediation may not resume following said notification, unless expressly authorized by both parties.

Upon termination of mediation for any reason, the Mediator agrees not to counsel either party or represent either party against the other, in any court proceeding, adversary negotiation, or for any other reason involving a dispute between the parties.

IX.
VOLUNTARY DISCLOSURE OF
POSSIBLE PREJUDICIAL INFORMATION

The parties agree that, while Mediation is in progress, full disclosure of all information is essential to a successful resolution of the issues. Since the court process is not being used to compel information, any agreement made through Mediation may be rescinded in whole or in part if one party fails to disclose relevant information during the Mediation process. Since the voluntary disclosure of this information may give one party an advantage that may not have been obtained through the traditional adversarial process, the parties agree to release and hold harmless the Mediator from any liability or damages caused by voluntary disclosure of prejudicial information in the Mediation process that may be used in subsequent negotiations or court proceedings. The Mediator has no power to bind third parties not to disclose information furnished during Mediation.

X.
CALIFORNIA EVIDENCE CODES RELATED TO YOUR MEDIATION

The parties acknowledge that they are aware and have reviewed the following California Evidence Code sections:

Evidence Code section 1115

For purposes of this chapter:

- (a) “Mediation” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.
- (b) “Mediator” means a neutral person who conducts a mediation. “Mediator” includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.
- (c) “Mediation consultation” means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

Evidence Code section 1120

- (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.
- (b) This chapter does not limit any of the following:
 - (1) The admissibility of an agreement to mediate a dispute.
 - (2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.
 - (3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

California Evidence Code section 1121

Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

California Evidence Code section 1127

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

XI.
THE USE OF SETTLEMENT PROPOSALS

It is agreed that, while factual information learned through Mediation may be used in subsequent court proceedings, concessions, offers of settlement, suggestions by the Mediator, admissions by either party, or any other aspect of communication within the Mediation process made for the purpose of settlement may not be used in any subsequent court proceedings.

XII.
THE MEDIATOR SHALL NOT TESTIFY

The parties agree not to call or subpoena the Mediator to testify at any court proceeding nor to produce any document obtained or prepared from any Mediation session without the prior written authorization of both parties. If either party issues a subpoena regarding the Mediator or his or her documents, that party shall pay the Mediator his or her current hourly rate for all hours expended and shall pay all reasonable attorney fees of the other party in respect to the response, compliance, or resistance of said subpoena.

XIII.
THE MEDIATOR DOES NOT PROMISE RESULTS

Each party acknowledges that, since Mediation is a process of compromise, it is possible that either party might agree to settle on terms that might be considered to be less favorable in comparison to what the party might have received from a Judge after a contested court hearing, or through negotiation in which one or both of the parties have retained legal counsel. The Mediator makes no representations that the ultimate result

would be the same in kind or degree as might be concluded through negotiation or a contested trial on one or all of the issues. Any questions concerning fairness should be addressed to the Mediator as they occur. In addition, the spouses should consult with independent legal counsel to review compromises made during the course of Mediation, and all provisions of a final agreement prior to executing the Settlement Agreement and other court documents.

XIV.
BOTH PARTIES ARE RESPONSIBLE FOR FEES

The parties hereby agree to be jointly and severally responsible for the fees for both the attorney and the consulting professionals. If, for any reason, the fee of the Mediator is not paid within fifteen (15) days of billing, the Mediator reserves the right to unilaterally refuse to render any further professional services for the parties. The parties agree that, in addition to the payment of any agreed upon fees, each of the parties shall be liable for any costs of collecting the total amount of the fee, including reasonable attorney fees for collecting said fees. The parties agree that a reasonable attorney fee is the hourly rate indicated in the following paragraph.

XV.
FEES

Time for all legal personnel, including but not limited to attorneys, paralegals, and law clerks is charged in minimum increments of .20 hours, as set forth in the Schedule. Any minimum time charges for a specific task noted on the Schedule are subject to periodic change in the same manner provided for the basic hourly rates as set forth above.

XVI.
BILLINGS

Mediator shall render to Parties statements on a monthly basis setting forth an itemized detail of the services rendered on your behalf for fees and reimbursements to which Mediator is entitled on account of services rendered under this agreement. The amounts indicated to be due and owing on statements shall be paid forthwith and in any event not later than 20 days after each statement is rendered. Mediator' invoice shall clearly state the basis thereof, including the amount, rate and basis of calculation (or other method of determination) of Mediator fees.

Parties and Mediator agree that it is impossible to estimate how much the mediator's fees and costs will be in advance and therefore no prediction of the total bill can be made.

If any bill is not paid in a timely manner, Parties agree to pay finance charges at the rate of one percent per month on the outstanding balance.

Set payments on a monthly basis can be arranged by agreement of the Mediator and Parties, in minimum amounts set forth on the SCHEDULE.

If either of the PARTIES make an appointment with a MEDIATOR and cancels less than twenty-four hours in advance of said of appointment, the PARTIES will be charged the full cost of the appointment. For example, if the appointment is scheduled for 3 hours, you will be billed for all 3 hours if you fail to cancel the appointment within twenty-four hours.

XVII. BINDING ARBITRATION

All disputes between us regarding any aspect of our professional relationship including but not limited to collection of fees or professional negligence will be resolved by binding arbitration administered through the Los Angeles County Bar Association pursuant to Sections 1280 et seq. of the Code of Civil Procedure and not by litigation in court. By this provision, we are both giving up our right to have any such dispute decided by a judge or a jury and we are each giving up the right of appeal.

The prevailing party in any arbitration between us will be entitled to reasonable attorney's fees and costs. Any litigation or arbitration between us will take place in Los Angeles County and California law will apply.

It is important for you to know that under California law a mediator has complete immunity from suit regarding negligence or malpractice or any other cause of action. This means that you cannot recover from our firm for any damage arising out of the mediation relationship. As an attorney, the mediator has errors and omissions coverage in effect.

Before signing this agreement you have a right to consult an independent

attorney about the legal consequences to you of signing this agreement and in particular, your waiver of jury trial and agreement to decide all disputes by binding arbitration.

XVIII.
MEDIATOR'S FEES

Should it be necessary to institute any legal action for the enforcement of this agreement, the prevailing party shall be entitled to receive all court costs and reasonable attorney's fees incurred in such action from the other party.

XIX.
DISPOSITION OF CLIENT FILE

After Mediation is concluded, either by Judgment, settlement or other termination of mediation, Mediator will maintain Client's files and materials relating to the case for a period of five (5) years. During the five (5) year period, upon mutual agreement of both parties, they may take possession of file(s) by notifying Mediator in writing and providing to Mediator a reasonable amount of time to retrieve said file(s) and/or to make copies of any portions Mediator desires to retain. Absent mutual written agreement of the parties or Court order, the Mediator shall not release any portion of the file to either Client. At the conclusion of the five (5) year period, Mediator will dispose of all materials, files and records after making a reasonable attempt to notify Clients of Mediator's intention to do so.

Clients agree to keep Mediator apprised of their current mailing addresses to enable Mediator to locate and notify clients at the termination of the five (5) year period

XIX.
EXECUTION OF MEDIATION AGREEMENT

The parties have carefully read and considered each and every provision of this Agreement and by their signatures above hereby agree to each provision herein without reservation.