



MEDIATION CONFIDENTIALITY AGREEMENT

The parties, attorneys and/or their representatives have agreed to retain Carole Helfert Aragon as their mediator for the purpose of assisting in the resolution of their dispute described below, and have signed the Mediation Retention Agreement which is incorporated herein by this reference.

Name of Case/Matter: _____

Case # (if any): _____

1. Mediation is a voluntary process, and any resolution or partial resolution of the dispute will be confirmed in writing by a settlement agreement voluntarily signed by all parties to the dispute.
2. Any party or participant in the mediation may withdraw at any time, unless the remaining parties or participants agree to continue the mediation to resolve those disputes which do not involve the party or participant who has withdrawn; provided however, all parties and participants agree to remain bound by the terms of this Confidentiality Agreement.
3. In order to promote honest and open communications and allow for the exchange of sensitive or confidential information, mediation is deemed to be confidential and is protected under the California Evidence Code, Sections 703.5, 1115 – 1128, and 1152, and any corresponding or similar federal law, or statutes in the state where this mediation is located. For reference, a copy of the relevant California Evidence Code Sections are attached.
4. The parties agree to be bound by this Mediation Confidentiality Agreement as well as all state and federal laws and statutes regarding mediation confidentiality which begins with the very first communication with the mediator, and includes all conversations, whether in person or by telephone, and all records, reports, briefs or any other documents whether provided to the mediator in hard copy or by email. Documents and notes of any form which are created or produced during the mediation are also deemed to be confidential communications.
5. Mediation confidentiality means that all statements or written materials as described above are deemed to be privileged settlement communications, and are made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any later arbitration, or other legal proceeding. The attorney-client and work product privileges are not waived by disclosure of information or documents to the mediator.
6. All confidential and protected mediation communications and materials retain their protected status even after the mediation ends, and includes any signed, written settlement agreement prepared in connection with the conclusion of the mediation.



7. The parties and participants understand and agree that if this dispute is resolved, the settlement will be confirmed by written agreement which may be signed in whole or in counterparts, and is binding and legally enforceable as a contract between and among the parties and participants. This means the settlement agreement may be admissible in a subsequent legal proceeding for enforcement purposes; provided however, the mediator may not be called to testify for any purpose, may not be compelled to disclose any information or materials, and has no liability for any act or omission to act in connection with the mediation or the enforcement of the settlement agreement.

8. Carole Helfert Aragon is a licensed attorney in the State of California. However, as the mediator, she is a neutral settlement facilitator who does not give any legal advice nor act as counsel or as an advocate for any party or participant in the mediation. The mediator’s communications with the parties, their lawyers and/or representatives are opinions only and are considered to be confidential in the context of the mediation, but shall not be considered to be legal advice or create any attorney-client relationship.

9. Any communication or document revealed in confidence to the mediator during separate meetings with a party or participant will not be disclosed to the other party or anyone else without the permission of the disclosing party. The mediator may ask for permission to disclose certain information if there is a belief that such disclosure will facilitate a resolution of the dispute.

Carole Helfert Aragon, Mediator

Date

ACCEPTED AND AGREED TO BEFORE COMMENCEMENT OF THE MEDIATION ON:

DATE: _____, 20 ____, BY:

PARTIES:

Name

Signature

Name

Signature

Name

Signature

Name

Signature



ATTORNEYS/REPRESENTATIVES:

Name

Signature

Name

Signature

Name

Signature

Name

Signature

Name

Signature

Name

Signature

OTHER PARTICIPANTS:

Name

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CALIFORNIA EVIDENCE CODE

703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

(Amended by Stats. 1994, Ch. 1269, Sec. 7. Effective January 1, 1995.)



CALIFORNIA EVIDENCE CODE, DIVISION 9

CHAPTER 2 - MEDIATION

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.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1116. (a) Nothing in this chapter expands or limits a court's authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.

(b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1117. (a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115.

(b) This chapter does not apply to either of the following:

(1) A proceeding under Part 1 (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

(2) A settlement conference pursuant to Rule 3.1380 of the California Rules of Court.

(Amended by Stats. 2007, Ch. 130, Sec. 84. Effective January 1, 2008.)



1118. An oral agreement in accordance with Section 1118 means an oral agreement that satisfies all of the following conditions:

- (a) The oral agreement is recorded by a court reporter or reliable means of audio recording.
- (b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.
- (c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding, or words to that effect.
- (d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

(Amended by Stats. 2010, Ch. 328, Sec. 64. Effective January 1, 2011.)

1119. Except as otherwise provided in this chapter:

- (a) No evidence of anything said or any admission made for the purpose of, 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 noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.
- (b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.
- (c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

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.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

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.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1122. (a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:

(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1123. A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

(a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.

(b) The agreement provides that it is enforceable or binding or words to that effect.

(c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.

(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.



(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1124. An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

- (a) The agreement is in accordance with Section 1118.
- (b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.
- (c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1125. (a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that fully resolves the dispute.
- (2) An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.
- (3) The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.
- (4) A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.
- (5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

- (1) The parties execute a written settlement agreement that partially resolves the dispute.
- (2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.



(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1126. Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

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.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)

1128. Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)



CALIFORNIA EVIDENCE CODE

1152. (a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it.

(b) In the event that evidence of an offer to compromise is admitted in an action for breach of the covenant of good faith and fair dealing or violation of subdivision (h) of Section 790.03 of the Insurance Code, then at the request of the party against whom the evidence is admitted, or at the request of the party who made the offer to compromise that was admitted, evidence relating to any other offer or counteroffer to compromise the same or substantially the same claimed loss or damage shall also be admissible for the same purpose as the initial evidence regarding settlement. Other than as may be admitted in an action for breach of the covenant of good faith and fair dealing or violation of subdivision (h) of Section 790.03 of the Insurance Code, evidence of settlement offers shall not be admitted in a motion for a new trial, in any proceeding involving an additur or remittitur, or on appeal.

(c) This section does not affect the admissibility of evidence of any of the following:

(1) Partial satisfaction of an asserted claim or demand without questioning its validity when such evidence is offered to prove the validity of the claim.

(2) A debtor's payment or promise to pay all or a part of his or her preexisting debt when such evidence is offered to prove the creation of a new duty on his or her part or a revival of his or her preexisting duty.

(Amended by Stats. 1987, Ch. 496, Sec. 1.)