

**MEDIATION AND CONFIDENTIALITY AGREEMENT**  
[CALIFORNIA]

Nicholas DeWitt has been selected to preside as the mediator to assist the parties in seeking a settlement in the case entitled: [ADD CASE NAME].

1. **Good Faith Mediation:** The parties will mediate in good faith in an attempt to resolve the existing controversy without any obligation to reach a settlement.
2. **Role of the Mediator:** The mediator is an impartial, neutral intermediary, whose role is to assist the participants in reaching a settlement by negotiation between or amongst themselves. The mediator cannot impose a settlement but will assist the participants towards achieving their own settlement. The participants understand that the mediator does not act as an attorney or advocate for or give legal, tax or other professional advice to any participant. In this regard, no professional-client or fiduciary relationship is created between any participant and the mediator.
3. **Attorney Consultation:** The participants acknowledge that they are free to consult an attorney at any time during the mediation process. In the event the dispute is settled, the participants should have the settlement agreement independently reviewed by their own counsel prior to signing it.
4. **Applicable Statutes/Confidentiality/Ending Mediation:** The mediation is conducted pursuant to all applicable statutes, including but not limited to, California Rules of Court 1630 et seq., California Evidence Code Sections 703.5, 1115-1128, 1152 and Federal Rules of Evidence 408. The mediator may not testify in any proceedings pursuant to these statutes and the participants shall not seek to have the mediator testify.

Subject to certain limited exceptions set forth in the Evidence Code and case law, statements made during the mediation are confidential and are not admissible in any subsequent proceeding. This agreement of confidentiality extends to all information disclosed during the course of mediation, including but not limited to all statements made by the mediator, each party, their attorneys, other representatives and witnesses. However, written or oral agreements reached by the parties in the course of the mediation may, under certain circumstances, be admissible in a subsequent proceeding.

If this matter is not resolved, nothing in this agreement precludes the use of knowledge gained during the mediation to conduct discovery and otherwise prepare and assemble the facts necessary for presenting the parties' cases. Notwithstanding the above, the fact that the mediation took place, the time and dates of the sessions the identities of the participants, and the fact that a final settlement agreement was, or was not reached, is not confidential.

Nicholas DeWitt, Esq.  
Los Angeles Telephone: (213) 891-1114; Facsimile: (213) 891-1470  
Honolulu Telephone: (808) 523-1234; Facsimile: (808) 537-1377  
Email: [nickdewitt@sbcglobal.net](mailto:nickdewitt@sbcglobal.net); Website: [nicholasdewitt.com](http://nicholasdewitt.com)

Post-mediation communications between the mediator and any participant related to the mediation shall be confidential, and the participants expressly waive Evidence Code Section 1125(a)(5). Further the participants agree that the mediator may consult with colleagues about this matter and may describe this matter to colleagues for informational or educational purposes so long as the mediator does not disclose the participants' names or any other information that would specifically identify the participants.

**4. Limited Liability/Release and Indemnification:** The parties hereby 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 parties will reach an agreement on any of the issues, disputes or controversies discussed in the mediation. 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 limitations, attorneys' fees and expenses incurred in connection with such claim, action or proceeding brought by such participant.

**5. Mediator Compensation:** The mediator shall be paid for time spent in the review of written briefs and documents, other time required to prepare for the mediation, during the mediation and any appropriate follow-up as outlined in the Mediation Fee Schedule, sent with the confirmation letter, and incorporated herein by reference. Unless modified by agreement of the parties, each party shall bear his/her/its pro rata share of the applicable fees. The parties and their counsel acknowledge that they are jointly and severally liable for all fees assessed in the mediation process.

**6. Potential Conflicts 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 by reference to mediators) except for the following which have been disclosed to the participants: None.

To the extent any actual or potential conflicts of interest exist, the mediator does not believe they will affect his capacity to be impartial. By signing this Agreement, the participants expressly waive the conflicts and potential conflicts disclosed above. If any participant believes that the mediator is not impartial, such participant should immediately terminate the mediation.

**Mediation and Confidentiality Agreement**  
**Page 3 of 3**

Dated: \_\_\_\_\_

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Signature

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Printed name/Role in mediation

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