

11TH HOUR MEDIATION

MEDIATION/CONFIDENTIALITY AGREEMENT FORM

[David M. Karen or P. Mark Kirwin] has been selected to assist the parties to seek a settlement in the case entitled:

Case Name: _____ v. _____

Case No.: _____

The undersigned parties acknowledge, understand and agree to the following:

1. **Role of 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 Mediator does not act as an attorney or advocate for or give legal, tax or other professional advice to any participants. In this regard, no professional-client or fiduciary relationship is created between any participant and the Mediator.
2. **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.
3. **Applicable Statutes/Confidentiality:** The mediation is conducted pursuant to California Rules of Court Rules 1630 et seq., and California Evidence Code §§703.5, 115-1128, 1152 and other sections or successor section of the California Evidence Code and any Federal law counterparts, if applicable, governing, among other things, the confidentiality of mediation proceedings. 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 Evidence code and case law, statements made during the mediation are confidential, are generally not subject to discovery outside the mediation process, and are not admissible in any subsequent proceeding. 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.

Post-mediation communications between the Mediator and any participant related to the mediation shall be confidential. The participants agree that the Mediator may consult with colleagues about this matter and may describe this matter to colleagues for educational purposes so long as the Mediator does not disclose the participant's names or any other information which would specifically identify the participants. These terms of confidentiality do not apply to this agreement.

4. **Limited Liability, Release and Indemnification:** The participants 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 participants 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 seek to have the Mediator testify shall be responsible to indemnify the Mediator for any expenses, loss or damage incurred, including, without limitation, attorney s fees and expenses incurred in connection with such claim, action or proceeding brought by such participant.

5. **Mediator Compensation:** \$195.00 per hour per party, four (4) hour minimum (Half Day), eight (8) hour minimum (Full Day). Invoices will document time incurred in increments of a tenth of an hour and will reflect all time and costs incurred, including telephone conferences, document review, travel or travel related expenses (no travel time invoiced) and appearances at Mediation. Invoices are due and payable upon receipt from counsel, efforts regarding collection subject to costs and attorney fees to prevailing party, including *in pro per* representation at prevailing rates.
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.

To the extent any actual or potential conflicts of interest may exist, the mediator does not believe same will affect his/her capacity to be impartial. The participants expressly waive any such conflicts or potential conflicts and desire the Mediator to assist them in efforts to resolve the dispute herein.

Counsel and represented clients are requested to sign below to acknowledge the agreement to the terms herein.

Dated: _____

Mediator: _____

David M. Karen *or* P. Mark Kirwin

Counsel:

---, Attorney for Plaintiff

---, Attorney for Defendant

Parties:

---, Plaintiff

---, Defendant