

[SAMPLE] MEDIATION AGREEMENT

Mediation of: _____

AGREEMENT TO MEDIATE AND CONFIDENTIALITY ACKNOWLEDGMENT

This agreement is made this ____ day of _____, 2026, between the undersigned parties (“the parties”) and Matt Wertheim (“Mediator”). It may be signed in counterparts.

1. Role of the Mediator

The parties agree to mediate their dispute with the Mediator. His job is to help the parties negotiate and explore resolution/settlement options. He does not decide issues or make rulings.

The Mediator will remain neutral and does not represent any party. He does not give legal advice. Parties are encouraged to consult their own attorneys before signing any settlement agreement.

The Mediator does not guarantee settlement/resolution, and his fee is not tied to the outcome.

2. The Mediation Process

Mediation begins when the Mediator is first contacted by the parties or their attorneys.

Unless everyone agrees otherwise, the mediation ends if there is no communication for ten (10) calendar days after the last joint session or caucus.

Before the mediation day, the Mediator may speak privately with one or more parties by phone or video. These conversations are confidential and included in the mediation at no extra charge.

The mediation session will be in person or via video-conferencing as determined by the parties. The Mediator may meet with all parties together or separately in private caucuses. Information shared in caucus may be disclosed to the other side unless a party clearly instructs the Mediator not to share it. The Mediator will travel if there are mobility issues for an in-person mediation.

3. Confidentiality (Evidence Code §§1119–1129)

Mediation communications are confidential under California law.

- Nothing said, admitted, or written for mediation (as defined in Evidence Code §250) is admissible or discoverable. Evidence Code §1119.

- Evidence that is otherwise admissible or discoverable does not become protected simply because it was discussed in mediation. Evidence Code §1120.
- With limited statutory exceptions, all communications, negotiations, and settlement discussions in mediation remain confidential. Evidence Code §§703.5, 1119–1129.

No one may record any part of the mediation, including virtual sessions.

4. Settlement Agreements

Any settlement reached will be put in writing and signed by the parties on the day of the mediation, unless more time is needed to finalize the document.

Unless the parties agree otherwise, settlement terms are confidential except where disclosure is required by law or needed to enforce the agreement under Code of Civil Procedure §664.6.

5. Mediator Immunity

The Mediator has quasi-judicial immunity and cannot testify in later civil proceedings about statements, conduct, or decisions made during mediation, except in the limited circumstances allowed by Evidence Code §§703.5 and 1121 (e.g., contempt, criminal conduct, State Bar matters, or judicial disqualification issues).

The Mediator may destroy notes, briefs, and materials after the mediation ends.

6. Mediator's Fee

The parties have reserved _____, 2026, for an in-person mediation beginning at _____. and continuing until completed. If negotiations are ongoing and no impasse has been reached, the Mediator will continue past 5:00 p.m.

The total fee is _____, split equally (\$_____ per side). Fees are due at least five (5) days before the mediation, if possible.

The fee is non-refundable and includes all preparation time, review of briefs, research, pre-mediation calls, and any post-session follow-up. If the mediation is cancelled and the Mediator cannot fill the date with another case, 50% of the fee will be refunded.