

Mediation Agreement

Parties to the Mediation:

Party(ies)	Claimant, Respondent, etc.	Represented By	Counsel's Phone	Counsel's Email

This is an agreement among the Parties and Counsel listed above (collectively the "Parties" and singly a or any "Party", and "Counsel" or "all Counsel") to mutually engage Louis H. Castoria (the "Mediator") to conduct a _____ (Full-Day/Half-Day) mediation in the dispute among the Parties relating to _____ (hereinafter the "Dispute").

The Parties, their Counsel, and the Mediator understand and agree as follows:

1. Purpose of Mediation

The Parties and all Counsel hereby appoint the Mediator to conduct a mediation in the Dispute. The Parties and all Counsel understand that mediation is a process in which the Mediator assists Parties to reach agreement in a consensual and confidential manner. The Parties and all Counsel understand that the Mediator has no power or authority to decide disputed issues for the Parties. The Parties and all Counsel understand that the Mediator's objective is to facilitate the Parties themselves reaching an agreement to resolve the Dispute.

The Parties and all Counsel further understand that mediation is not a substitute for independent legal advice, and that the Mediator will not be providing legal advice to any Party or Counsel. The Parties are encouraged to obtain legal advice from their Counsel throughout the mediation process, including legal review of any settlement agreement that is reached as a result of the mediation before signing that agreement.

2. Scope of Mediation

The Parties and all Counsel agree that the mediation will be limited to the Dispute, as described above. With the Parties' and the Mediator's written consent the scope of the mediation may be expanded to include other matters.

3. Mediation Is a Voluntary Process

Except when ordered by a court or required by a contract, mediation is a voluntary

process. By agreeing to mediate, the Parties and all Counsel acknowledge their good faith intention to attempt to resolve the Dispute through a settlement agreement. With the exception of court-ordered and contractually required mediations that are specified to occur over a certain number of hours or days, any Party may withdraw from the mediation at any time, for any reason, though the mediation may continue as to other Parties if those Parties so agree.

The Mediator may suspend or terminate the mediation if he feels that the mediation is taken place for an improper purpose, if he feels that an irresolvable impasse has been reached, or if the Mediator determines that he can no longer effectively perform his facilitative role.

4. Confidentiality

It is understood between the Parties, all Counsel, and the Mediator that the mediation will be strictly confidential, with only such limited exceptions as the applicable law requires, if any. The Parties and all Counsel agree that this confidentiality extends to all mediation discussions, including all written, oral and digital communications related to the mediation with or among any of the Parties, their counsel, and their advisors, and any unsigned settlement agreements, which shall not be admissible in any court proceeding. Only a settlement agreement fully signed by the Parties may be so admissible, unless the Parties who have executed the settlement agreement agree in writing to make it effective as between them.

The Parties further agree to not name the Mediator as a witness in any action or proceeding regarding any issue(s) or claim(s) relating to the Dispute, or subpoena the Mediator to testify concerning the mediation or to provide any materials from the mediation in any action or proceeding by or against any of the Parties.

The Parties understand the Mediator may have an ethical responsibility to break confidentiality if he suspects a party or another person may be in danger of physical harm.

5. Mediation Briefs

The Mediator believes that concise, factual briefs that cite only the most dispositive legal authorities can greatly aid in making mediations efficient and productive. They are not required, but if submitted should follow these parameters:

- Formatted as a letter to the Mediator, not as a pleading, with 1½ spaced text
- Marked as “Confidential Mediation Information” on first page
- Received by the Mediator via email 5 business days before the scheduled mediation, with hard copy by mail, double-sided printing and 3-hole punched
- Briefs of 10 or fewer pages, including exhibits, are appreciated; the Mediator charges per hour for study of longer briefs (please see below)

- The Mediator prefers that all Parties share their mediation briefs with each other, emailed concurrently with emailing them to the Mediator, though all Parties may agree not to exchange briefs by written communication to the Mediator; any Party may also submit a short “Mediator’s Eyes Only” supplement to its brief containing information that the Mediator will not share with other Parties during the Mediation
- Concise chronologies of key dates, prior Court rulings in the case, and copies of governing statutes are welcomed, and not apply toward the page count.

6. Mediation Fees

- a. Half-Day and Full-Day Charges. The Parties and the mediator agree that the fee for the mediator shall be \$2,000 for a half-day mediation (defined as four or fewer hours’ time in a day, not counting preparation time by the Mediator) or \$3,750 per full-day mediation (defined greater than four hours and less than 10 hours’ time in a day, not counting preparation time by the Mediator). Mediations scheduled as Half-Day
- b. Preparation by the Mediator. The Mediator does not charge for time required to study the mediation brief submitted by any Counsel representing one or more Parties that is fewer than 11 pages in length, including exhibits, but does charge any Party or Parties jointly represented by Counsel whose mediation brief, including exhibits, exceeds 10 pages. The time charged \(\$375/hour or part thereof) commences after the Mediator has studied the first 10 pages of the brief, including exhibits, have been studied. The Mediator does not charge for time spent communicating with the parties by phone or email regarding scheduling or other logistics of the mediation. The Mediator will hold a private phone call of 15 or fewer minutes with each of the Counsel in the case in advance of the mediation, without charge.
- c. Session hours after the flat fees. After a mediation session exceeds its scheduled time, the Mediator’s time is billed at a rate of \$375 per hour or partial hour. After a Mediation session terminates, the Mediator’s communications with a Party or jointly represented Parties shall be billed to that Party/those Parties at a rate of \$375 per hour or partial hour.
- d. Mediator’s expenses.
 - i. Travel. The Mediator does not charge for driving time within the 9 Bay Area Counties, but does charge for car mileage at the then-applicable IRS mileage reimbursement rates. The Mediator may, at his option, charge for a hotel room on the night before any mediation held outside San Francisco or San Mateo Counties and beginning before 10:00 AM or ending after 7:00 PM. If air travel is deemed necessary,

the Mediator will charge for airfare (coach class, refundable), airport parking, and local ground transportation.

- ii. Facilities. The Mediator does not provide mediation facilities. It is preferable that one of a law firms representing one of more of the Parties will make conference room space available for the mediation, without charge to any Party or the Mediator. If this is not acceptable to any Party, the Mediator will reserve conference room space for the mediation at a rentable facility, such as Regus, with the cost to be borne by the Parties in the “Responsibility for Payment” section below.
- e. Responsibility for Payment; Deposit; Cancellation. Unless otherwise agreed in writing, the Parties are jointly and severally responsible to pay the Mediator's fees and expenses, except those fees expenses billed solely to a Party or to jointly represented Parties after a mediation session terminates.

Each Party or group of jointly-represented Parties shall pay a Deposit Payment to the Mediator **no later that twenty business days prior to the date of the mediation.** The Deposit Payment may be made by check received by the Mediator by the deadline for payment, or by credit card charge made through the Mediator’s website, www.castoriadisputeresolution.com. The amount of the Deposit Payment is the Half-Day or Full-Day fee, stated above, divided by the number of Parties, a jointly-represented group of Parties being treated as a single Party for this purpose. For example, if Law Firm 1 represents Party A, Law Firm 2 represents Party B, and Law Firm 3 represents Parties C, D, and E, the Deposit Payment would be paid in three equal amounts, with C, D, and E jointly paying one-third of the total Deposit Payment.

If a mediation date is canceled more than ten business days before it is set to occur, and if the Mediator is unable to schedule another mediation of the same or greater length for that date, 50 percent of the Deposit Payments will be reimbursed to the paying Parties, less their ratable share of any cancellation fees for conference room rental, air travel, or hotel incurred by the Mediator.

The Mediator may cancel a mediation date due to health or other circumstances beyond his control, in which case the Deposit Payments will be reimbursed in full, without interest. The Mediator may also cancel a mediation and withdraw from the mediation if any Party has not paid his/her/its Deposit Payment by the deadline to do so.

7. Mediator Not Acting as Counsel

It is understood and agreed by all Parties, all Counsel, and the Mediator that the Mediator is not acting as legal counsel for any Party or Parties in connection with the mediation. It is further understood that the Mediator is employed as a lawyer in the law firm of Kaufman, Dolowich & Voluck, LLP (the "KDV Firm"), but is not acting on behalf of the KDV Firm or any of its clients in connection with the mediation. The Parties and their Counsel hereby release any and all claims they have or may later have against the KDV Firm and its partners and personnel arising from, relating to, or connection with the mediation, whether known or unknown. As to the claims so released, all Parties and all Counsel hereby waive their rights under Section 1542 of the California Civil Code, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

IT IS SO AGREED.

Dated this ___ day of _____, 201_

[Signatures]

[Party or Law Firm 1]

[Party or Law Firm 2]

[Etc.]

Louis H. Castoria,
Mediator