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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 04 2008

GORDON PARK-LI, Clerk
BY: DEBORAH STEPPE
Deputy Clerk
CASE MANAGEMENT CONFERENCE SET

NOV 07 2008 -9:00 AM

8 DEPARTMENT 212
SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

CSC-08-475980

12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 ACTION SPORTS IMAGE, LLC; NEELY)
17 MANUFACTURING II, LLC; and Defendant)
18 DOES 1 through 200, inclusive,)

19 Defendants.)

Case No. _____

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code §25249.6 *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 INTRODUCTION

5 1. This complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of Defendants' soft food and beverage containers that
10 contain Lead (the "Products"). Consumers, including children, are exposed to Lead when they
11 use the Products.

12 2. Under California's Proposition 65, Health and Safety Code §25249.5 *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
15 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
16 introduce Products contaminated with significant quantities of Lead into the California
17 marketplace, exposing consumers of their Products, many of whom are children, to Lead.

18 3. Despite the fact that Defendants expose children and other consumers to
19 Lead, Defendants provide no warnings whatsoever about the carcinogenic or reproductive
20 hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision
21 of Proposition 65. Health & Safety Code §25249.6.

22 PARTIES

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
24 non-profit corporation dedicated to protecting the public from environmental health hazards and
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
26 State of California. CEH is a "person" within the meaning of Health & Safety Code
27 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
28 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy

1 Products in California and/or by having such other contacts with California so as to render the
2 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
3 play and substantial justice.

4 12. Venue is proper in the San Francisco Superior Court because one or more
5 of the violations arise in the County of San Francisco.

6 **BACKGROUND FACTS**

7 13. The People of the State of California have declared by initiative under
8 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
9 defects, or other reproductive harm.” Proposition 65, §1(b).

10 14. To effectuate this goal, Proposition 65 requires that individuals be
11 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
12 State of California as known to cause cancer, birth defects or other reproductive harm unless the
13 business responsible for the exposure can prove that it fits within a statutory exemption. Health
14 & Safety Code §25249.6 states, in pertinent part:

15 No person in the course of doing business shall knowingly and
16 intentionally expose any individual to a chemical known to the
17 state to cause cancer or reproductive toxicity without first giving
18 clear and reasonable warning to such individual. . .

19 15. On February 27, 1987, the State of California officially listed lead as a
20 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
21 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
22 the developing fetus, “female reproductive toxicity,” which means harm to the female
23 reproductive system, and “male reproductive toxicity,” which means harm to the male
24 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,
25 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
26 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
27 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

28 16. On October 1, 1992, the State of California officially listed lead and lead
compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were

1 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
2 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
3 §12000(c); Health & Safety Code §25249.10(b).

4 17. Young children are especially susceptible to the toxic effects of Lead.
5 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
6 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
7 absorb and retain more Lead in proportion to their weight than do adults. Young children also
8 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
9 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
10 small doses received in childhood, over time, can cause adverse health impacts, including but not
11 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
12 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
13 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

14 18. There is no safe level of exposure to Lead and even minute amounts of
15 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard,
16 DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the effect of
17 childhood Lead exposure declared that even the smallest detectable amount of blood Lead levels
18 in children can mean the difference between an A or B grade in school. Lanphear, BP, Dietrich,
19 K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents";
20 *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into
21 adulthood and found a sevenfold increase in the risk for developing a reading disability among
22 children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger,
23 D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in
24 Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

25 19. Defendants' Products contain sufficient quantities of Lead such that
26 consumers, including children, who handle the Products and handle and ingest items stored
27 inside the Products are exposed to Lead through the average use of the Products. The route of
28 exposure for the violations is direct ingestion when consumers, including children, place items

1 that have been stored in the Products in their mouths; ingestion via hand to mouth contact after
2 consumers, including children, touch or handle the Products or items that have been stored in the
3 products; and dermal absorption directly through the skin when consumers, including children,
4 touch or handle the Products or items that have been stored in the Products.

5 20. Any person acting in the public interest has standing to enforce violations
6 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
7 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
8 action within such time. Health & Safety Code §25249.7(d).

9 21. More than sixty days prior to naming each Defendant in this lawsuit, CEH
10 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
11 the District Attorneys of every county in California, the City Attorneys of every California city
12 with a population greater than 750,000 and to each of the named Defendants. In compliance with
13 Health & Safety Code §25249.7(d) and 22 CCR §12903(b), each of the Notices included the
14 following information: (1) the name and address of the violators; (2) the statute violated; (3) the
15 time period during which violations occurred; (4) specific descriptions of the violations,
16 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
17 Products sold and used in violation of Proposition 65; and (5) the name of the specific
18 Proposition 65-listed chemical (Lead) that is the subject of the violations described in each of the
19 Notices.

20 22. CEH also sent a Certificate of Merit for each of the Notices to the
21 California Attorney General, the District Attorneys of every county in California, the City
22 Attorneys of every California city with a population greater than 750,000 and to the named
23 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each of
24 the Certificates certified that CEH’s counsel: (1) has consulted with one or more persons with
25 relevant and appropriate experience or expertise who reviewed facts, studies or other data
26 regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information
27 obtained through such consultations, believes that there is a reasonable and meritorious case for a
28 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with

1 Health & Safety Code §25249.7(d) and 11 CCR §3102, each of the Certificates served on the
2 Attorney General included factual information – provided on a confidential basis – sufficient to
3 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH’s
4 counsel and the facts, studies or other data reviewed by such persons.

5 23. None of the public prosecutors with the authority to prosecute violations
6 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the
7 Proposition 65 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims
8 asserted in the Notice.

9 24. Defendants both know and intend that individuals, including children, will
10 handle the Products and handle and ingest items stored inside the Products, thus exposing them
11 to Lead.

12 25. The Products are typically made from polyvinyl chloride (“PVC”). The
13 association between PVC and Lead exposure has been widely discussed in the media in recent
14 years, with particular attention given to products made from PVC that are marketed exclusively
15 to children. Defendants’ Products are also made with pigments, many of which contain Lead.
16 Many of the Defendants’ Products are exclusively made for and marketed to children.

17 26. Defendants have been informed of the Lead in their Products by the 60-
18 day notice of violation served on them by CEH and from media reports.

19 27. Nevertheless, Defendants continue to expose consumers, including
20 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
21 reproductive hazards of Lead.

22 28. CEH has engaged in good-faith efforts to resolve the claims alleged herein
23 prior to filing this complaint.

24 29. Any person “violating or threatening to violate” Proposition 65 may be
25 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
26 violate” is defined to mean “to create a condition in which there is a substantial probability that a
27 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
28 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

1 **FIRST CAUSE OF ACTION**

2 **(Violations of the Health & Safety Code §25249.6)**

3 30. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 29 inclusive.

5 31. By placing the Products into the stream of commerce, Defendants are a
6 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

7 32. Defendants know that average use of the Products will expose users of the
8 Products to Lead. Defendants intend that the Products be used in a manner that results in users
9 of the Products being exposed to Lead contained in the Products.

10 33. The Defendants have failed, and continue to fail, to provide clear and
11 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
12 the Products.

13 34. Lead is a chemical listed by the State of California as known to cause
14 cancer, birth defects and other reproductive harm.

15 35. By committing the acts alleged above, the Defendants have at all times
16 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
17 individuals to Lead without first giving clear and reasonable warnings to such individuals
18 regarding the carcinogenicity and reproductive toxicity of Lead.

19 Wherefore, CEH prays judgment against the Defendants, as set forth hereafter.

20 **PRAYER FOR RELIEF**

21 Wherefore, CEH prays for judgment against Defendants as follows:

22 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
23 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
24 Proposition 65 according to proof;

25 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
26 preliminarily and permanently enjoin Defendants from offering the Products for sale in
27 California with sufficient quantities of Lead such that users of the Products are exposed to a
28 "significant amount" of Lead under Proposition 65 without providing clear and reasonable

1 warnings, as CEH shall specify in further application to the Court;

2 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
3 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
4 Products sold by Defendants, as CEH shall specify in further application to the Court;

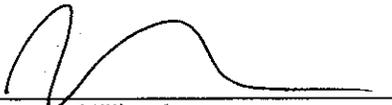
5 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other
6 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

7 5. That the Court grant such other and further relief as may be just and
8 proper.

9 Dated: June 4, 2008

Respectfully submitted,

10 LEXINGTON LAW GROUP, LLP

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13 Howard Hirsch
14 Attorneys for Plaintiff
15 CENTER FOR ENVIRONMENTAL
16 HEALTH
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EXPERIENCED MEDIATORS ARE
AVAILABLE IN THE FOLLOWING AREAS

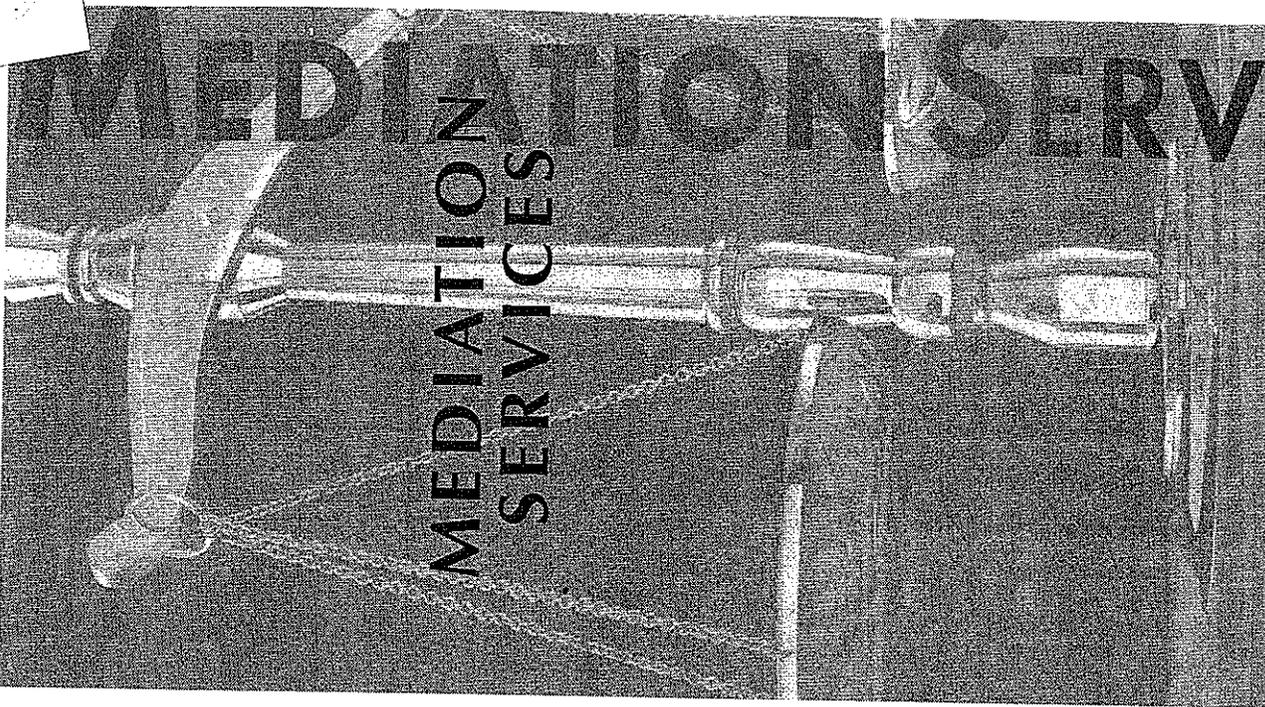
Business
Civil Rights
Commercial
Construction
Contracts
Disability
Discrimination
Education
Employment/Workplace
Environmental
Family
Fee Disputes
Financial
Gay/Lesbian/Bisexual/Transgender Issues
Government
Insurance
Intellectual Property
Intra-Organizational
Labor
Landlord/Tenant
Land Use
Malpractices:
Legal-Medical-Professional
Partnership Dissolutions
Personal Injury
Probate/Trust
Products Liability
Real Estate
Securities
Taxation
Uninsured Motorist
Women's Issues
And more...

PROCEDURES, FORMS, MEDIATOR BIOGRAPHIES AND PHOTOGRAPHS:

www.sfbar.org/mediation

QUESTIONS?

adr@sfbar.org or 415-982-1600



MEDIATION SERVICES



THE BAR ASSOCIATION
OF SAN FRANCISCO

What is BASF's Mediation Service?

Mediation is a voluntary, private dispute resolution process in which a trained mediator assists the parties in reaching an outcome that is mutually agreeable.

Mediation Services was established by The Bar Association of San Francisco (BASF) with extensive input from experienced mediators, litigators and judges. This traditional mediation service is an approved alternative to court ordered Arbitration or Early Settlement.

How Does it Work?

BASF's Mediation Services works quickly, matching a qualified mediator to a case within days. The assignment process is flexible; experienced BASF staff can suggest a mediator, or you can request three biographies to choose from, or request a particular mediator from our Web site.

How Much Does the Service Cost?

Mediators generously provide one hour of preparation and two hours of session time free of charge as a service to BASF and the community. To qualify for the pro-bono hours, parties must file the Consent to Mediate form with BASF. Hourly fees beyond those three hours vary depending on the mediator selected. BASF charges a small administrative fee, which pays for the costs of running the program.

Who Can Use the Service?

The service can be utilized by anyone whether or not the dispute has been filed in a court. If a legal action is already underway, it can be used at any time during the litigation process and is not limited to San Francisco County litigants.

Who Are the Mediators?

Experienced mediation professionals are available to assist in most areas of dispute, ranging from multi-party commercial matters to individuals in conflict. Each has been pre-approved pursuant to strict educational and experience requirements. In fact, our mediators average 15 years of mediation experience and 125 hours of formal mediation training.

More Information

Our Web site - www.sfbar.org/mediation - provides photographs, short biographies and hourly rates of our mediators. You can search by name or by area of law.

If you don't see the area you need in our 30+ panels, just contact us at adr@sfbar.org; it is very likely we can match your need with one of our panelists.

Alternative Dispute Resolution (ADR) Program Information Package

Alternatives to Trial

**There are other ways to
resolve a civil dispute.**

**The plaintiff must serve a copy of the ADR information package
on each defendant along with the complaint. (CRC 201.9(c))**

**Superior Court of California
County of San Francisco**

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- ***ADR can save time.*** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ***ADR can save money.*** Court costs, attorneys fees, and expert fees can be saved.
- ***ADR can be cooperative.*** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- ***ADR can reduce stress.*** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- ***ADR encourages participation.*** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ***ADR is flexible.*** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- ***ADR can be more satisfying.*** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

- **If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.**
- **There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.**
- **The neutral may charge a fee for his or her services.**
- **If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.**
- **Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.**

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court

**"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."
(Superior Court Local Rule 4)**

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

JUDICIAL ARBITRATION

Description

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

Operation

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

Cost

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

MEDIATION

Description

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

Operation

San Francisco Superior Court Local Court Rule 4 provides three different voluntary mediation programs for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at www.sfgov.org/courts. Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Private Mediation

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

Mediation Services of the Bar Association of San Francisco

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by the court pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$200 per party administration fee, parties select a specific mediator from the list of court approved mediation providers. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at www.sfbar.org, or you may call BASF at 415-782-9000.

Judicial Mediation

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.

Cost

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

EARLY SETTLEMENT PROGRAM

Description

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

Operation

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

If a matter is assigned to the ESP by the Court, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

Cost

All parties must submit a \$250 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 782-9000 ext. 8717.

For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution,
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

or visit the Superior Court Website at
http://sfgov.org/site/courts_page.asp?id=3672

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

v.
Plaintiff

Defendant

Case No. _____

**STIPULATION TO ALTERNATIVE
DISPUTE RESOLUTION**

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- | | | |
|---|---|---|
| <input type="checkbox"/> Private Mediation | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation |
| <input type="checkbox"/> Binding arbitration | | Judge _____ |
| <input type="checkbox"/> Non-binding judicial arbitration | | Judge _____ |
| <input type="checkbox"/> BASF Early Settlement Program | | |
| <input type="checkbox"/> Other ADR process (describe) _____ | | |

Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Additional signature(s) attached

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

- a. The trial has been set for (date):
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. days (specify number):
- b. hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. Fax number:
- f. E-mail address:
- g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference (specify code section):

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel has has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. All parties have agreed to a form of ADR. ADR will be completed by (date):
- c. The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) Mediation
 (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 (4) Binding judicial arbitration
 (5) Binding private arbitration
 (6) Neutral case evaluation
 (7) Other (specify):

e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

a. Insurance carrier, if any, for party filing this statement (name):

b. Reservation of rights: Yes No

c. Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

Bankruptcy Other (specify):

Status:

14. Related cases, consolidation, and coordination

a. There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

Additional cases are described in Attachment 14a.

b. A motion to consolidate coordinate will be filed by (name party):

15. Bifurcation

The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Discovery

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
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- c. The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): none attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached



Superior Court of California County of San Francisco

HON. DAVID BALLATI
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR PROGRAM ADMINISTRATOR

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David J. Ballati
The Honorable Anne Bouliane
The Honorable Ellen Chaitin
The Honorable Robert L. Dondero
The Honorable Ernest H. Goldsmith
The Honorable Harold E. Kahn
The Honorable Patrick J. Mahoney
The Honorable Tomar Mason

The Honorable James J. McBride
The Honorable Kevin M. McCarthy
The Honorable John E. Munter
The Honorable Ronald Quidachay
The Honorable A. James Robertson, II
The Honorable John K. Stewart
The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Program Administrator will facilitate assignment of cases that qualify for the program.

Note: Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3876