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Christopher Sproul (Bar No. 126398)
ENVIRONMENTAL ADVOCATES
5135 Anza Street
San Francisco, California 94121
Telephone: (415) 533-3376, (510) 847-3467
Facsimile: (415) 358-5695
Email: csproul@enviroadvocates.com

Fredric Evenson (State Bar No. 198059)
ECOLOGY LAW CENTER
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

Counsel for Plaintiffs ECOLOGICAL RIGHTS FOUNDATION

ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 02 2016

CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ECOLOGICAL RIGHTS FOUNDATION,

Plaintiff,

v.

VIAIR CORPORATION,

Defendant.

Case No. CGC -16-554044

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

1
2 Plaintiff, Ecological Rights Foundation, in the public interest, based on information and belief,
3 knowledge and investigation of counsel, alleges as follows:

4 **INTRODUCTION**

5 1. This Complaint seeks civil penalties and an injunction against VIAIR Corporation
6 (“Defendant”) to remedy Defendant’s continuing failure to warn individuals in California about
7 exposures to lead and lead compounds (collectively “lead”), substances known to the State of
8 California to cause cancer, birth defects, and other reproductive harm. Such exposures have occurred
9 and continue to occur, through the handling and use of tools, including portable air compressors,
10 which are made, in whole or in part, of leaded brass or leaded bronze (collectively “leaded brass”)
11 that Defendant manufactures, distributes and/or sells in California (“Products”). These Products are
12 intended to be touched or handled by a consumer during the Products’ normal use. California
13 residents are exposed to lead when they handle or use the products and their skin contacts the leaded
14 brass parts of the Products. Lead is transferred from the leaded brass parts of the Products to the
15 hands of the people who touch those parts. The lead then enters their bodies when it is absorbed
16 directly through the skin, through mucous membranes, or through cuts and abrasions. Lead enters
17 their bodies when they touch their hands to their mouths, eyes, nose, or other mucous membranes.
18 Lead is also transferred from the products users’ hands to food that they handle, and is then ingested
19 with that food. For those Product users who smoke, lead is transferred from their hands to cigarettes
20 and is then ingested or inhaled when they smoke. Exposures to lead from the use and/or handling of
21 the Products thus occur via the dermal absorption, mucous membrane, subcutaneous, inhalation and
22 ingestion routes.

23 2. Under California’s Proposition 65, California Health & Safety Code § 25249.5, *et seq.*, it is
24 unlawful for businesses to knowingly and intentionally expose individuals in California to chemicals
25 known to the State to cause cancer, birth defects, or other reproductive harm, without providing clear
26 and reasonable warnings to individuals prior to the exposure. Defendant introduces its Products into
27 the California marketplace, exposing users of the Products, including pregnant women, to lead.
28 Despite the fact that Defendant exposes individuals in California to lead, Defendant provides no

1 warnings about the carcinogenic or reproductive hazards associated with such exposures.
2 Defendant's conduct thus violates the warning provision of Proposition 65. Health & Safety Code §
3 25249.6.

4 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7 to compel
5 Defendant to bring its business practices into compliance with Proposition 65 by providing a clear
6 and reasonable warning to each individual who has been, and who in the future may be, exposed to
7 lead in the ways set forth above. Plaintiff seeks an order that Defendant identify and locate each
8 individual person in California to whom Defendant conveyed Products during the past three years
9 and to provide each such individual, as well as new purchasers and Product users, a clear and
10 reasonable warning that use of the Products causes exposures to a chemical known the State of
11 California to cause cancer, birth defects and other reproductive harm.

12 4. In addition to injunctive relief, Plaintiff seeks civil penalties to remedy Defendant's failure
13 to provide clear and reasonable warnings regarding exposures to lead and lead compounds, chemicals
14 known to cause cancer, birth defects and other reproductive harm.

15 **PARTIES**

16 5. Plaintiff, Ecological Rights Foundation ("EcoRights") is a non-profit, public benefit
17 organization dedicated to, among other causes, protecting California residents from toxic exposures,
18 environmental and human health education, and consumer rights. EcoRights is incorporated under
19 the laws of the State of California and is a "person" pursuant to Health & Safety Code §25249.11(a).
20 EcoRights brings this enforcement action in the public interest pursuant to Health & Safety Code
21 §25249.7(d).

22 6. Defendant VIAIR Corporation is a person in the course of doing business within the meaning
23 of Health & Safety Code §25249.11. VIAIR Corporation markets, distributes, and/or sells the
24 Products for sale and use in the State of California.

25 7. Defendant employs more than ten people.

26 **JURISDICTION**

27 8. The Court has jurisdiction over this action pursuant to California Health & Safety Code
28 Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court "original

1 jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6 of the
2 Health & Safety Code, which contains the statutes under which this action is brought, does not
3 grant jurisdiction to any other trial court.

4 9. This Court also has jurisdiction over Defendant because it is a business that has sufficient
5 minimum contacts in California and within the County of San Francisco. Defendant intentionally
6 avails itself of the California and San Francisco County markets. It is thus consistent with
7 traditional notions of fair play and substantial justice for the San Francisco County Superior Court
8 to exercise jurisdiction over Defendant.

9 10. Venue is proper in San Francisco County Superior Court because one or more of the
10 violations arise in the County of San Francisco.

11 **BACKGROUND FACTS**

12 11. The People of the State of California have declared by initiative under Proposition 65 their
13 right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
14 reproductive harm." Proposition 65, § 1(b). To effectuate this goal, Proposition 65 prohibits exposing
15 people to chemicals listed by the State of California as known to cause cancer, birth defects, or other
16 reproductive harm without a "clear and reasonable warning" unless the business responsible for the
17 exposure can prove that it fits within a statutory exemption. Health & Safety Code Section 25249.6
18 states, in pertinent part:

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

23 12. On February 27, 1987, the State of California officially listed lead as a chemical known to
24 cause developmental reproductive toxicity. On October 1, 1992, the State of California officially
25 listed lead and lead compounds as chemicals known to cause cancer. One year after the initial listing,
26 lead exposures became subject to the clear and reasonable warning requirements under Proposition
27 65. 27 C.C.R. § 27001(b); Health & Safety Code Section 25249.10(b).

28 13. Plaintiff brings this enforcement action against Defendant pursuant to Health & Safety Code
Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a Notice of Violation
dated April 29, 2016, which on that date EcoRights sent to California's Attorney General, every

1 county District Attorney in California, and to the City Attorneys of every California City with a
2 population greater than 750,000. On the same day, Plaintiff sent substantively identical letters to
3 each Defendant. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b),
4 each Notice included the following information: (1) the name and address of each violator; (2) the
5 statute violated; (3) the time period during which violations occurred; (4) specific descriptions of the
6 violations, including (a) the routes of exposure to lead from the Products, and (b) the specific type
7 of Products sold and used in violation of Proposition 65; and (5) the name of the specific Proposition
8 65-listed chemical(s) that is/are the subject of the violations described in each Notice.

9 14. Attached to the Notice of Violation sent to Defendant was a summary of Proposition 65
10 prepared by California's Office of Environmental Health Hazard Assessment. In addition, each
11 Notice of Violation was accompanied by a Certificate of Service attesting to the service of the Notice
12 of Violation on each noticed party. Pursuant to Health & Safety Code Section 25249.7(d) and 11
13 C.C.R. § 3101, Plaintiff also sent a Certificate of Merit with each Notice of Violation attesting to the
14 reasonable and meritorious basis for the action. Plaintiff enclosed factual information sufficient to
15 establish the basis of the Certificate of Merit with the Notice of Violation letters sent to the Attorney
16 General.

17 15. None of the public prosecutors with the authority to prosecute violations of Proposition 65
18 has commenced and/or is diligently prosecuting a cause of action against Defendants under Health
19 & Safety Code Section 25249.5 *et seq.*, based on the claims asserted in EcoRight's Notices.

20 16. Defendant knows and intends that individuals, including pregnant women, will handle the
21 Products during use, thus exposing them to lead. Under Proposition 65, an exposure is "knowing"
22 where the party responsible for such exposure has "knowledge of the fact that a[n] . . . exposure to a
23 chemical listed pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that . .
24 . exposure is unlawful is required." 27 C.C.R. § 25102(n). This knowledge may be either actual or
25 constructive. *See, e.g.*, Final Statement of Reasons Revised (November 4, 1988) (pursuant to former
26 22 C.C.R. Division 2, § 12201). Defendant has been informed of the lead exposures caused by the
27 use of Products by the 60-Day Notice of Violation, and the accompanying Certificate of Merit served
28 on them by EcoRights. Defendant also has constructive knowledge of the lead exposures caused by

1 use of the Products. As a company that manufactures, markets, distributes and/or sells the Products
2 for use in the State of California, Defendant knows or should know that lead exposures to users of
3 the Products are a natural and foreseeable consequence of placing the Products into the stream of
4 commerce.

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

10 18. EcoRights has engaged in good faith efforts to resolve the claims alleged herein prior to
11 filing this complaint.

12 **FIRST CAUSE OF ACTION**

13 **(Violations of Health & Safety Code §25249.6)**

14 19. EcoRights realleges, and incorporates by reference into this First Cause of Action as if
15 specifically set forth herein, paragraphs 1 through 18, inclusive.

16 20. Defendant is a person in the course of doing business within the meaning of Health & Safety
17 Code § 25249.11 who, by manufacturing, marketing, distribution, sale or otherwise placing the
18 Products into the stream of commerce, violated, violates or threatens to violate Proposition 65.

19 21. Lead and lead compounds are substances listed by the State of California as known to cause
20 cancer and developmental reproductive toxicity.

21 22. Defendant knows that the normal use of the Products will expose Product users to lead.
22 Defendants intend that the Products be used in a manner that results in exposures to lead.

23 23. Defendant has failed and continues to fail, to provide clear and reasonable warnings
24 regarding the carcinogenicity and reproductive toxicity of lead to Product users.

25 24. Since at least three years prior to the Notice of Violation Letters, Defendant has violated
26 Proposition 65 by knowingly and intentionally exposing individuals to lead without first giving clear
27 and reasonable warnings to such individuals regarding the carcinogenicity and reproductive toxicity
28 of lead.

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendant as follows:

- 3 1. Pursuant to the First Cause of Action, that Defendant be enjoined, restrained, and
4 ordered to comply with the provisions of Section 25249.6 of the California Health &
5 Safety Code;
- 6 2. That Defendant be ordered to make best efforts to identify and locate each individual
7 in California to whom it, or its customers or agents, distributed or sold Products
8 during the past three years, and to provide a warning to each such person that use of
9 the Product will expose that person to a chemical known to the State of California to
10 cause cancer, birth defects and other reproductive harm;
- 11 3. That Defendant be assessed a civil penalty in an amount equal to \$2,500.00 per day
12 per individual exposed to lead in violation of Section 25249.6 of the California Health
13 & Safety Code, as the result of Defendant's marketing, distributing, and/or selling the
14 Products for use in California.
- 15 4. That pursuant to Civil Procedure Code § 1021.5, Defendant be ordered to pay Plaintiff
16 the attorneys' fees and costs it incurred in bringing this enforcement action; and
- 17 5. For such other relief as this court deems just and proper.
- 18

19 Dated: September 2, 2016

ECOLOGY LAW CENTER

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21 _____
22 Fredric Evenson, Attorney for Plaintiff
23 ECOLOGICAL RIGHTS FOUNDATION
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27
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ECOLOGY LAW CENTER
P.O. Box 1000
SANTA CRUZ, CALIFORNIA 95061
TELEPHONE: (831) 454-8216
EMAIL: EVENSON@ECOLOGYLAW.COM

APRIL 29, 2016

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

Sammy Chu Or current President/CEO VIAIR Corporation 15 Edelman Irvine, CA 92618	Sammy Chu Registered Agent, VIAIR Corporation 15 Edelman Irvine, CA 92618
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AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 Concerning Exposures from Leaded Brass

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the above companies have violated and are in ongoing violation of California Health & Safety Code § 25249.6, which provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual."

Pursuant to California Health & Safety Code § 25249.7, ERF intends to bring an enforcement action 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this notice letter. The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached Certificate of Service.

This Notice of Violations ("Notice") is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). Attached for your reference is a summary, "Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" prepared by the California Office of Environmental Health Hazard Assessment ("OEHHA"). Pursuant to Title 11, C.C.R. § 3100, a Certificate of Merit is also attached.

The above-referenced violations occur when California residents come into contact with tools, including portable air compressors, which have components made, in whole or in part, of leaded-brass or leaded-bronze (collectively "leaded brass"), both of which are alloys that contain **lead and lead compounds** ("lead"). The characteristic common to each of the tool products subject to this Notice is that the product incorporates a component made of leaded brass that is touched or handled by a consumer as part of the normal use of the product. Below is a non-exclusive list of examples of these types of products. Though specific models or SKU or product numbers are given as examples, this Notice pertains to all models, and all variations, of the specific type of product of which the named model is an example. This non-exclusive list of examples of the type of products that are subject to this Notice is for the recipient's benefit and is not meant to be an

exhaustive or comprehensive identification of each specific offending product.

VIAIR 85P Portable Compressor P/N 00085 (UPC 818114 000850)

The noticed parties, named above and on the attached Certificate of Service, manufacture, market, distribute and/or sell these products in California. The leaded brass parts of the products that are handled by the products' users contain high levels of lead and lead compounds, chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.

California residents are exposed to lead when they handle or use the products and their skin contacts the leaded brass parts of the products. Lead is transferred from the leaded brass parts of the products to the hands of the people who touch those parts. The lead then enters their bodies when it is absorbed directly through the skin, through mucous membranes, or through cuts and abrasions. Lead enters their bodies when they touch their hands to their mouths, eyes, nose, or other mucous membranes. Lead is also transferred from the products users' hands to food that they handle, and is then ingested with that food. For those product users who smoke, lead is transferred from their hands to cigarettes and is then ingested or inhaled when they smoke. Exposures to lead and lead compounds from the use and/or handling of the products thus occur via the dermal absorption, mucous membrane, subcutaneous, inhalation and ingestion routes. These exposures occur in homes, workplaces, and everywhere else throughout California where these products are handled or used. These violations are alleged for occupational exposures as well as for consumer and environmental exposures. ERF does not, however, allege occupational exposure violations as to any of these products manufactured outside of California, except as to workplaces these businesses themselves maintain in California.

The noticed parties did not and do not provide people with clear and reasonable warnings before they expose them in California to lead. The above-referenced violations have occurred every day since at least April 29, 2013 and will continue every day until the lead is removed from the products or until clear and reasonable warnings are given.

ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. The following individual is the responsible individual within ERF for purposes of this Notice:

James Lamport, Executive Director
Ecological Rights Foundation
867 B Redwood Drive
Garberville, California 95542
Telephone: (707) 923-4372

ERF has retained the following counsel to represent them in this matter (please direct communications to counsel):

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

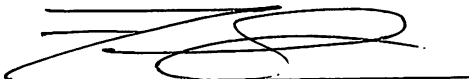
Notice for Occupational Exposures Governed by the California State Plan for Occupational Safety and Health

In accord with California Code of Regulations, title 8, section 338, subdivision (b), ERF hereby gives you the following notice: This Notice alleges violations of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

Resolution of Noticed Claims:

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. ERF is willing to settle this matter to the extent legally possible prior to the commencement of any enforcement action. Settlement terms would require that the unwarned exposures described in this Notice of Violation be stopped. That would require at least the following: 1) a potential recall of products already sold; 2) that either warnings be given to all future purchasers in California of the products subject to this Notice, that the products be reformulated to eliminate the exposures described in the Notice, or that you stop marketing, distributing or selling the products in California; 3) that you locate and provide a warning compliant with 27 Cal. Code Regs Section 25601 to each person who has been subject to the unwarned exposures described in the Notice to the extent those exposures are caused by products that were sold in California during the past three years; and 4) that you pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). It should be noted that ERF cannot finalize any settlement of this matter until 70 days has elapsed since the sending of the Notice and unless no public enforcer has begun an enforcement action concerning the violations described in the Notice. Any settlement on behalf of the public interest must be approved by the California Superior Court on noticed motion with 45 days notice to the California Attorney General. The Attorney General may appear at any approval hearing and oppose a settlement if he or she believes the proposed settlement is not in the public interest. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

Sincerely,



Fredric Evenson

Certificate of Merit
Health & Safety Code Section 25249.7(d)

I, Fredric Evenson, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the attorney for the noticing party.

(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.

(4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

(5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: April 29, 2016

By:


Fredric Evenson

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. My business address is 1285 Eucalyptus Road, Petaluma CA 94952.

On April 29, 2016 I served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 4) Certificate of Service

by enclosing copies of the same in a sealed envelope addressed to each person shown below and depositing the envelope in the U.S. mail with postage fully prepaid for delivery by Certified Mail. Place of mailing: Santa Cruz, CA.

Sammy Chu Or current President/CEO VIAIR Corporation 15 Edelman Irvine, CA 92618	Sammy Chu Registered Agent, VIAIR Corporation 15 Edelman Irvine, CA 92618
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On April 29, 2016 I also served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the Certificate of Merit (only sent to Attorney General)
- 4) Certificate of Service

by enclosing copies of the same in sealed envelopes addressed to each of the public enforcement agencies listed on the attached Service List, and depositing the envelopes in the U.S. mail with postage fully prepaid for delivery by First Class Mail. Place of mailing: Santa Cruz, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed April 29, 2016, at Santa Cruz, CA.



Christopher M. Crow

Service List

Office of the District Attorney Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	Office of the District Attorney Lassen County 220 S. Lassen Street, Suite 8 Susanville, CA 96130	Office of the District Attorney San Benito County 419 4th Street Hollister, CA 95023	Office of the District Attorney Tehama County P.O. Box 519 Red Bluff, CA 96080
Office of the District Attorney Alpine County P.O. Box 248 Markleeville, CA 96120	Office of the District Attorney Los Angeles County 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012	Office of the District Attorney San Bernardino County 303 W. Third Street San Bernardino, CA 92415	Office of the District Attorney Trinity County P.O. Box 310 Weaverville, CA 96093
Office of the District Attorney Amador County 708 Court Street, #202 Jackson, CA 95642	Office of the District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	Office of the District Attorney San Diego County 330 W. Broadway, Suite 1300 San Diego, CA 92101	Office of the District Attorney Tulare County 221 South Mooney Blvd., Suite 224 Visalia, CA 93291
Office of the District Attorney Butte County 25 County Center Drive Oroville, CA 95965	Office of the District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	Office of the District Attorney San Francisco County 850 Bryant Street, #322 San Francisco, CA 94103	Office of the District Attorney Tuolumne County 423 N. Washington Street Sonora, CA 95370
Office of the District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	Office of the District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338	Office of the District Attorney San Joaquin County 222 East Weber Ave., #202 Stockton, CA 95202	Office of the District Attorney Ventura County 800 South Victoria Avenue Ventura, CA 93009
Office of the District Attorney Colusa County 346 5th Street, Suite 101 Colusa, CA 95932	Office of the District Attorney Mendocino County P.O. Box 1000 Ukiah, CA 95482	Office of the District Attorney San Luis Obispo County County Govt. Center, #450 San Luis Obispo, CA 93408	Office of the District Attorney Yolo County 301 Second Street Woodland, CA 95695
Office of the District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553	Office of the District Attorney Merced County 550 West Main Street Merced, CA 95340	Office of the District Attorney San Mateo County 400 County Center, Third Floor Redwood City, CA 94063	Office of the District Attorney Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
Office of the District Attorney Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	Office of the District Attorney Modoc County 204 S. Court Street Room 202 Alturas, CA 96101	Office of the District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	Oakland City Attorney City Hall, 6th Floor 1 Frank Ogawa Plaza Oakland, California 94612
Office of the District Attorney El Dorado County 515 Main Street Placerville, CA 95667	Office of the District Attorney Mono County P.O. Box 617 Bridgeport, CA 93517	Office of the District Attorney Santa Clara County 70 West Hedding Street San Jose, CA 95110	Office of the City Attorney City of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102
Office of the District Attorney Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	Office of the District Attorney Monterey County P.O. Box 1131 Salinas, CA 93902	Office of the District Attorney Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	Office of the City Attorney City of Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
Office of the District Attorney Glenn County P.O. Box 430 Willows, CA 95988	Office of the District Attorney Napa County P.O. Box 720 Napa, CA 94559	Office of the District Attorney Shasta County 1355 West Street Redding, CA 96001	Office of the City Attorney City of San Jose 200 E. Santa Clara St. San Jose, CA 95113
Office of the District Attorney Humboldt County 825 5th Street, 4th Floor Eureka, CA 95501	Office of the District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959	Office of the District Attorney Sierra County P.O. Box 457 Downieville, CA 95936	Office of the City Attorney City of Los Angeles 200 N. Main Street, Suite 800 Los Angeles, CA 90012
Office of the District Attorney Imperial County 940 West Main Street, Suite 102 El Centro, CA 92243	Office of the District Attorney Orange County 401 Civic Center Drive West Santa Ana, CA 92701	Office of the District Attorney Siskiyou County P.O. Box 986 Yreka, CA 96097	Office of the City Attorney City of San Diego 1200 Third Ave., Suite 1620 San Diego, CA 92101
Office of the District Attorney Inyo County P.O. Box D Independence, CA 93526	Office of the District Attorney Placer County 10810 Justice Center Drive Roseville, CA 95678	Office of the District Attorney Solano County 675 Texas Street, Suite 4500 Fairfield, CA 94533	Proposition 65 Enforcement Reporting Attn: Prop 65 Coordinator 1515 Clay Street P.O. Box 70550 Oakland, CA 94612
Office of the District Attorney Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	Office of the District Attorney Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Office of the District Attorney Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
Office of the District Attorney Kings County 1400 West Lacey Blvd. Hanford, CA 93230	Office of the District Attorney Riverside County 3960 Orange Street Riverside, CA 92501	Office of the District Attorney Stanislaus County 832 12th Street, Suite 300 Modesto, CA 95354	
Office of the District Attorney Lake County 255 N. Forbes Street Lakeport, CA 95453	Office of the District Attorney Sacramento County 901 G Street Sacramento, CA 95814	Office of the District Attorney Sutter County 446 Second Street, Suite 102 Yuba City, CA 95991	

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Fredric Evenson (SBN # 198059)
Ecology Law Center
P.O. Box 1000
Santa Cruz, CA 95061
TELEPHONE NO.: (831) 454-8216 FAX NO.: (415) 358-5695
ATTORNEY FOR (Name): Ecological Rights Foundation

FOR COURT USE ONLY
ENDORSED FILED
Superior Court of California
County of San Francisco
SEP 02 2016
CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, 94102
BRANCH NAME:

CASE NAME:
Ecological Rights Foundation v. VIAIR Corporation

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CC-16-554044**
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties d. Large number of witnesses
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 2, 2016
Fredric Evenson
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

VIAIR Corporation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Ecological Rights Foundation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of the State of California
County of San Francisco
400 McAllister St., San Francisco, CA 94102

CASE NUMBER (Número del caso) **080-16-554044**

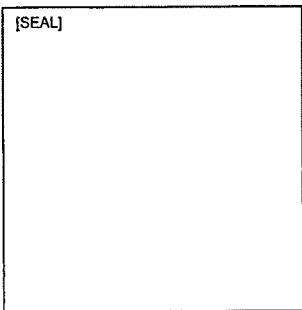
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Fredric Evenson, P.O. Box 1000, Santa Cruz, CA 95061; (831) 454-8216; evenson@ecologylaw.com

DATE: (Fecha) **SEP 02 2016**

CLERK OF THE COURT Clerk, by (Secretario)

ARLENE RAMOS, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

BY FAX

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: FEB-01-2017
TIME: 10:30AM
PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

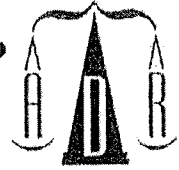
[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco
**Alternative Dispute Resolution
Program Information Package**



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"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 trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **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,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet)
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3869

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below:

1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

Operation: Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: www.sfbar.org/esp.

Cost: BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see enclosed brochure.

(B) MANDATORY SETTLEMENT CONFERENCES: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

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

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management. Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

Cost: BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see the enclosed brochure.

(B) JUDICIAL MEDIATION provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at anytime throughout the litigation process.

Operation: Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge for the Judicial Mediation program.

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may elect any private mediator of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who 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.

(A) JUDICIAL ARBITRATION: 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.

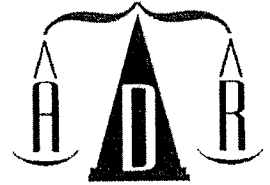
Operation: Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. 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 trial within 60 days after the arbitrator's award has been filed. Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. There is no cost to the parties for judicial arbitration.

(B) PRIVATE 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.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF.



Superior Court of California County of San Francisco



HON. JOHN K. STEWART
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with 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 personal injury, 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 Michael I. Begert
The Honorable Suzanne R. Bolanos
The Honorable Angela Bradstreet
The Honorable Andrew Y.S. Cheng
The Honorable Samuel K. Feng
The Honorable Charles F. Haines

The Honorable Harold E. Kahn
The Honorable Curtis E.A. Karnow
The Honorable Charlene P. Kiesselbach
The Honorable James Robertson, II
The Honorable Richard B. Ulmer, Jr.
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed, every effort will be made to fulfill the parties' choice. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability 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.

Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3869

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO : ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- Early Settlement Program of the Bar Association of San Francisco (BASF)** - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbar.org/esp
- Mediation Services of BASF** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation
- Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

30-90 days 90-120 days Other (please specify) _____

Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

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

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

Plaintiff Defendant Cross-defendant

Plaintiff Defendant Cross-defendant

Dated: _____

Dated: _____

Additional signature(s) attached

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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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:

f. Fax number:

e. 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. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) 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.

(3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
--	-----------------------

11. 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*):

12. Jurisdiction

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

- Bankruptcy Other (*specify*):

Status:

13. 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 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. 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*):

15. Other motions

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

16. 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> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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17. 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 90-98 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):

18. Other issues

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

19. 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):

20. 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 alternative dispute resolution, 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)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.



Superior Court of California County of San Francisco

Expedited Jury Trial Information Sheet

What is an expedited jury trial?

An expedited jury trial is a trial that is much faster and has a smaller jury than a traditional jury trial. An expedited jury trial differs from a regular jury trial in several ways:

- **The trial will be shorter.** Each side has 3 hours to make opening statements, present witnesses and evidence, and make closing statements.
- **The jury will be smaller.** There will be 8 jurors instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer preemptory challenges.
- **Parties will waive some post trial motions and rights to appeal.** Appeals are allowed only if there is: (1) Misconduct of the judicial officer that materially affected substantial rights of a party; (2) Jury misconduct; or (3) Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds.

Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

Is the decision of the jury binding on the parties?

Generally, yes. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. However, parties who take part in expedited jury trials are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also impose a cap, or maximum, on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are commonly known as "high/low agreements."

How do I qualify for an expedited jury trial?

The process can be used in any civil case. To have an expedited jury trial, both sides must want one. Each side must agree that it will use only three hours to put on its case and agree to the other rules described above. This agreement must be put in writing in a Stipulation and submitted along with a Proposed Consent Order Granting an Expedited Jury Trial, which is given to the court for approval. The court will usually agree to the Consent Order.

How do I request an expedited jury trial?

To have an expedited jury trial, both sides must submit a Stipulation and Proposed Consent Order for Expedited Jury Trial to the court for approval. This may happen at three stages of litigation:

- 1) **At Filing and Prior to Setting of a Trial Date:** Parties may submit a Stipulation to Expedited Jury Trial to Dept. 610 using the attached short form (see below). Parties must

also submit a Proposed Consent Order for Expedited Jury Trial to Dept. 610.

2) **After a Trial Date has been Set:** Parties submit a Stipulation and Proposed Consent Order for Expedited Jury Trial directly to Dept. 206 at least 30 days prior to the assigned trial date.

3) **After Trial Assignment:** A Proposed Consent Order for Expedited Jury Trial may be submitted immediately to the assigned trial department not less than 30 days prior to the assigned trial date.

Also, after a case is assigned to a particular judge for trial, the parties may ask the trial judge to have an Expedited Jury Trial, and the judge may permit the parties to then sign the appropriate Stipulation and Proposed Consent Order for Expedited Jury Trial.

Can I change my mind after agreeing to an expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in an expedited jury trial the agreement is binding on both sides.

Expedited Jury Trial Request
Please submit a copy of this request to Dept. 610.

Case No. _____

Case Name: _____ v. _____

The parties would like this action to be submitted to an Expedited Jury Trial.

The parties shall submit a consent order to the Court on or by _____

Name of Party Name of Party/Attorney Signature of Party
Dated: _____

Name of Party Name of Party/Attorney Signature of Party
Dated: _____

Name of Party Name of Party/Attorney Signature of Party
Dated: _____

Please note: a [Proposed] Consent Order for Expedited Jury Trial is still required in addition to this stipulation form.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.12 and in rules 3.1545–3.1552 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at www.leginfo.ca.gov/calaw.html. The rules are at www.courts.ca.gov/rules.

**Information adapted from Judicial Council's Expedited Jury Trial Information Sheet EJT-010-INFO, New January 1, 2011*

The Early Settlement Program:

- ▶ Helps you resolve cases quickly and economically
- ▶ Has been a trusted program for over 20 years
- ▶ Boasts a 78% settlement rate and 97% satisfaction rate

Early Settlement provides:

- ▶ Panels of experienced trial attorneys (all with at least 10 years of experience)
- ▶ Three free hours of settlement conference time per case, including one hour of preparation time
- ▶ Panelists who are matched with the cases type of law
- ▶ Low administrative fee of \$295/party, capped at \$590 for parties represented by the same counsel

FAST

Do you have a case filed in San Francisco Superior Court and want to settle sooner than your trial date?

ECONOMICAL

Want a settlement option with less stress and no cost in trial?

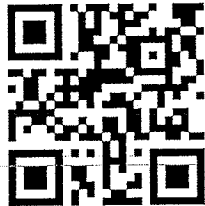
FAIR

Want the skills of experienced panelists in arriving at a realistic, satisfying settlement?

Consider The Bar Association of San Francisco's

Early Settlement Program

Learn more about the Early Settlement Program—scan the QRCode or visit www.sfbar.org/adr/esp



What is ESP?

The Bar Association of San Francisco's **Early Settlement Program (ESP)** is available as one of San Francisco Superior Court's Alternative Dispute Resolution (ADR) programs (Local Rule 4.3).

ESP is a **highly successful** ADR program that handles cases in areas of law such as business, personal injury, employment, labor, civil rights, discrimination, insurance, malpractice, landlord/tenant, and many others.

ESP is **unique** in that the panelists, in helping you move toward settlement, can provide you confidential feedback about their evaluation of your case, including opinions as to potential case value.

For more information as well as the complete Policies & Procedures, go to: www.sfbar.org/esp

Who are the Panelists?

They are experienced attorneys with **at least 10 years of trial experience.** Panels consist of one plaintiff and one defense attorney. Sometimes an attorney who is experienced in both types of representation serves as a solo panelist.

Costs

There is a **\$295 administrative fee per party, capped at \$590 for multiple parties represented by the same attorney, to pay for the cost of running this program. If you have a fee waiver with the Superior Court, your fee will be waived by the ESP program.**

Contact

- ▶ [email: esp@sfbar.org](mailto:esp@sfbar.org)
- ▶ **phone: 415-982-1600**
- ▶ **fax: 415-989-0381**

Steps:

The forms you need can be found at www.sfbar.org/esp, or email adr@sfbar.org or call 415-782-8905 for a packet to be sent to you.

- ➊ Please complete the ESP Agreement and return it to BASF via email at adr@sfbar.org or by fax to 415-989-0381. You don't have to get the other parties to sign, just send yours.
- ➋ When all parties have signed the ESP Agreement, you will be sent the Notice of ESP, along with an invoice.
- ➌ There is a \$295 administrative fee per party, with a cap of \$590 for multiple parties represented by the same attorney. You can pay by check, money order or credit card.
- ➍ Send your administrative fee by fax, email or mail to: BASF / ESP, 301 Battery Street, Third Floor, San Francisco, California 94111.
- ➎ When BASF receives the fees from all parties, your matter will be assigned to a panelist (or panel of 2), who you will work with to set the date, time and location for your conference.
- ➏ If you must reschedule your ESP conference date, work with the other side and your panelist(s) to set the new date. BASF does not need to be notified.
- ➐ Before your conference, provide a copy of your description of the dispute to all parties and panelists. BASF does not need a copy.
- ➑ If the matter is settled in your ESP conference, congratulations!
- ➒ If the matter is not settled in your ESP conference, your initial court date remains the same.

Experienced mediators are available in the following areas

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

TESTIMONIALS

"This was the third attempt to mediate this case, and the BASF mediator was far and away the best mediator. I dare say that we would not have settled today but for his efforts."

*George Yuhas, Esq.
Orrick, Herrington & Sutcliffe LLP*

"We had an excellent experience and, after 8 1/2 hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

*Robert Charles Friese, Esq.
Shartis Friese LLP*

"When the other side made their offer, I thought there was no way we would reach an agreement – we were too far apart, but the mediator brought us together. He saved me a lot of time and aggravation by facilitating a settlement. Thanks!"

*Leslie Caplan
Global Warming Campaign Manager
Bluewater Network*

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

*Mark Abelson, Esq.
Campagnoli, Abelson & Campagnoli*

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

*Denise A. Leadbetter, Esq.
Zacks, Utrecht & Leadbetter*



PROCEDURES, PODCASTS,
FORMS, MEDIATOR BIOGRAPHIES
AND PHOTOGRAPHS.
www.sfbar.org/mediation

adr@sfbar.org or
415-982-1600



MEDIATION SERVICES



THE BAR ASSOCIATION OF
SAN FRANCISCO

WHAT IS BASF'S MEDIATION SERVICE?

The Bar Association of San Francisco's Mediation Services is a private mediation service which will assist you with almost any type of dispute, from simple contract disputes to complex commercial matters.

WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our extensive experience requirements. By going through BASF you receive the services of these highly qualified mediators at a great value.

HOW DO I LEARN MORE ABOUT THE MEDIATORS?

BASF's website at www.sfbar.org/mediation provides bios, photos and hourly rates of mediators. You can search by name or by area of law needed for your case. BASF staff is always available to assist you with selection or to answer questions.

HOW MUCH DOES THE SERVICE COST?

A \$295 per party administrative fee is paid to BASF at the time the Consent to Mediate form is filed. This fee covers the first hour of mediator preparation time and the first two hours of session time. Time beyond that is paid at the mediator's normal hourly rate.

HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website (www.sfbar.org/mediation) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF staff to assist with the selection.

WHY SHOULD I GO THROUGH BASF? CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

BASF mediators have agreed to provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the free hours unless you notify us. Once you have filed with us, you will talk directly to the mediator to ask questions and to set a convenient mediation date and time.

HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. BASF mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

WHO CAN USE THE SERVICE?

BASF mediation can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during a court action.

OUR CASE IS FILED IN COURT. HOW DO WE USE BASF'S MEDIATION SERVICES?

When you file the San Francisco Superior Court's Stipulation to ADR form, check the box indicating "Mediation Services of BASF." Then complete BASF's Consent to Mediate form found on our website and file it with us. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?

Once all parties have filed all the paperwork, BASF can normally have you in touch with the mediator within a day or two. If there is a deadline, BASF staff will give the matter top priority.

WHAT TYPES OF DISPUTES CAN I MEDIATE?

BASF mediators are trained in 30+ areas of law. If you don't see the area you need on our website or in this brochure, contact us; it is very likely we can match your need with one of our panelists.

MORE INFORMATION

Visit our website (www.sfbar.org/mediation) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.