

ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 01 2016

CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

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8
9 Counsel for Plaintiffs ECOLOGICAL RIGHTS FOUNDATION

BY FAX

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 ECOLOGICAL RIGHTS FOUNDATION,

Case No.

CGC -16-554012

13 Plaintiff,

14 v.

15 SMART LIVING COMPANY;
TRADEMARK GLOBAL, LLC;
16 AKERUE INDUSTRIES LLC; and
THE BLUE ROOSTER COMPANY,

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

17 Defendants.

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2 Plaintiff, Ecological Rights Foundation, in the public interest, based on information and belief, and
3 knowledge and investigation of counsel allege as follows:
4

5 INTRODUCTION

6 1. This Complaint seeks civil penalties and an injunction against Smart Living Company;
7 Trademark Global, LLC; Akerue Industries, LLC; and The Blue Rooster Company (collectively
8 “Defendants”) to remedy Defendants’ continuing failure to warn individuals in California about
9 exposures to carbon monoxide, a chemical known to the State of California to cause reproductive
10 toxicity. Such exposures have occurred and continue to occur, through the use wood-burning outdoor
11 heating products, such as fire pits, fire rings, fire tables and chimeneas that Defendants manufacture,
12 distribute and/or sell in California (“Products”). These Products are intended to be used with wood
13 fuel and are primarily used for heating, ambience, and cooking. The combustion of wood causes
14 carbon monoxide to be released into the air. People using wood-burning outdoor heating products,
15 and those standing near the Products when wood fuel is burning in or on them, inhale the released
16 carbon monoxide.

17 2. Under California’s Proposition 65, California Health & Safety Code § 25249.5, *et seq.*, it is
18 unlawful for businesses to knowingly and intentionally expose individuals in California to chemicals
19 known to the State to cause cancer, birth defects, or other reproductive harm without providing clear
20 and reasonable warnings to individuals prior to their exposure. Defendants introduce wood-burning
21 outdoor heating products into the California marketplace, exposing users of the Products, including
22 pregnant women, to carbon monoxide. Despite the fact that Defendants expose pregnant women and
23 other consumers and individuals to carbon monoxide, Defendants provide no warnings about the
24 reproductive hazards associated with such exposures. Defendants’ conduct thus violates the warning
25 provision of Proposition 65. Health & Safety Code § 25249.6.

26 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7 to compel
27 Defendants to bring their business practices into compliance with Proposition 65 by providing a clear
28 and reasonable warning to each individual who has been and who in the future may be exposed to

1 carbon monoxide in the ways set forth above. Plaintiff seeks an order that Defendants identify and
2 locate each individual person to whom the Defendants conveyed wood-burning outdoor heating
3 products during the past three years and to provide to each such individual, as well as new purchasers
4 and Product users, a clear and reasonable warning that use of the Products causes exposures to a
5 chemical known to cause birth defects and other reproductive harm.

6 4. In addition to injunctive relief, Plaintiff seeks civil penalties to remedy the failure of
7 Defendants to provide clear and reasonable warnings regarding exposure to a chemical known to
8 cause birth defects and other reproductive harm.

9 PARTIES

10 5. Plaintiff, Ecological Rights Foundation (“ERF”) is a non-profit public benefit organization
11 dedicated to, among other causes, protecting California residents from toxic exposures,
12 environmental and human health education, and consumer rights. ERF is incorporated under the laws
13 of the State of California and is a "person" pursuant to Health & Safety Code §25249.11(a). ERF
14 brings this enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).

15 6. Defendant Smart Living Company is a person in the course of doing business within the
16 meaning of Health & Safety Code §25249.11. Smart Living Company markets, distributes, and/or
17 sells the Products for sale and use in the State of California.

18 7. Defendant Trademark Global, LLC is a person in the course of doing business within the
19 meaning of Health & Safety Code §25249.11. Trademark Global, LLC markets, distributes, and/or
20 sells the Products for sale and use in California.

21 8. Defendant Akerue Industries, LLC is a person in the course of doing business within the
22 meaning of Health & Safety Code §25249.11. Akerue Industries, LLC markets, distributes, and/or
23 sells the Products for sale and use in California.

24 9. Defendant The Blue Rooster Company is a person in the course of doing business within the
25 meaning of Health & Safety Code §25249.11. The Blue Rooster Company markets, distributes,
26 and/or sells the Products for sale and use in California.

27 10. Each Defendant employs more than ten people.

28 11.

1 **JURISDICTION**

2 12. The Court has jurisdiction over this action pursuant to California Health & Safety Code
3 Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court "original
4 jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6 of the
5 Health & Safety Code, which contains the statutes under which this action is brought, does not
6 grant jurisdiction to any other trial court.

7 13. This Court also has jurisdiction over Defendants because they are businesses that have
8 sufficient minimum contacts in California and within the County of San Francisco. Defendants
9 intentionally availed themselves of the California and San Francisco County markets. It is thus
10 consistent with traditional notions of fair play and substantial justice for the San Francisco County
11 Superior Court to exercise jurisdiction over Defendants.

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

14 **BACKGROUND FACTS**

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

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

24 16. On July 1, 1989, the State of California officially listed carbon monoxide as a chemical
25 known to cause developmental reproductive toxicity, which means harm to the developing fetus. On
26 July 1, 1990, carbon monoxide exposures became subject to the clear and reasonable warning
27 requirements under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code Section
28 25249.10(b).

1 17. Plaintiff brings this enforcement action against Defendants pursuant to Health & Safety
2 Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a Notice of
3 Violation dated June 9, 2016, which on that date ERF sent to California's Attorney General, every
4 county District Attorney in California, and to the City Attorneys of every California City with a
5 population greater than 750,000. On the same day, Plaintiff sent substantively identical letters to
6 each Defendant. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b),
7 each Notice included the following information: (1) the name and address of each violator; (2) the
8 statute violated; (3) the time period during which violations occurred; (4) specific descriptions of the
9 violations, including (a) the routes of exposure to carbon monoxide from the Products, and (b) the
10 specific type of Products sold and used in violation of Proposition 65; and (5) the name of the specific
11 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

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

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

23 20. Defendants both know and intend that individuals, including pregnant women, will use the
24 products for heating, ambience and/or cooking, thus exposing them to carbon monoxide. Under
25 Proposition 65, an exposure is "knowing" where the party responsible for such exposure has
26 "knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant to [Health & Safety Code
27 § 25249.8(a)] is occurring. No knowledge that . . . exposure is unlawful is required." 27 C.C.R. §
28 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final Statement of Reasons

1 Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, § 12201). Defendants have
2 been informed of the carbon monoxide exposures caused by the use of Products by the 60-Day Notice
3 of Violation, and the accompanying Certificate of Merit served on them by ERF. Defendants also
4 have constructive knowledge of the carbon monoxide exposures caused by Products. As companies
5 that manufacture, market, distribute and/or sell the Products for use in the State of California,
6 Defendants know or should know that carbon monoxide exposures to users of the Products are a
7 natural and foreseeable consequence of Defendants' placing the Products into the stream of
8 commerce.

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

14 22. ERF has engaged in good faith efforts to resolve the claims alleged herein prior to filing
15 this complaint.

16 **FIRST CAUSE OF ACTION**

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

18 23. ERF realleges and incorporates by reference into this First Cause of Action as if specifically
19 set forth herein, paragraphs 1 through 22, inclusive.

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

23 25. Carbon monoxide is a chemical listed by the State of California as known to cause
24 developmental reproductive toxicity.

25 26. Defendants know that the average use of the Products will expose users of the Products to
26 carbon monoxide. Defendants intend that the Products be used in a manner that results in exposures
27 to carbon monoxide.

28 27. Defendants have failed and continue to fail, to provide clear and reasonable warnings

1 regarding the reproductive toxicity of carbon monoxide to users of the Products.

2 28. Since at least three years prior to the Notice of Violation Letters, Defendants have violated
3 Proposition 65 by knowingly and intentionally exposing individuals to carbon monoxide without
4 first giving clear and reasonable warnings to such individuals regarding the reproductive toxicity of
5 carbon monoxide.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 8 1. Pursuant to the First Cause of Action, that Defendants be enjoined, restrained, and
9 ordered to comply with the provisions of Section 25249.6 of the California Health &
10 Safety Code;
- 11 2. That Defendants be ordered to make best efforts to identify and locate each individual
12 in California to whom they, or their customers or agents, distributed or sold Products
13 during the past three years, and to provide a warning to each such person that use of
14 the Product will expose that person to a chemical known to cause birth defects and
15 other reproductive harm;
- 16 3. That Defendants be assessed a civil penalty in an amount equal to \$2,500.00 per day
17 per individual exposed to carbon monoxide in violation of Section 25249.6 of the
18 California Health & Safety Code, as the result of Defendants' marketing, distributing,
19 and/or selling the Products for use in California.
- 20 4. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to
21 Plaintiff the attorneys' fees and costs it incurred in bringing this enforcement action;
22 and
- 23 5. For such other relief as this court deems just and proper.
- 24

25 Dated: September 1, 2016

ECOLOGY LAW CENTER

26 
27 _____
28 Fredric Evenson, Attorney for Plaintiff
ECOLOGICAL RIGHTS FOUNDATION

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

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. Smart Living Company, et al.

FOR COURT USE ONLY
ENDORSED FILED
Superior Court of California
County of San Francisco
SEP 01 2016
CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

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:
CGC-16-554012
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:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <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) <p>Non-PI/PD/WD (Other) Tort</p> <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) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | <p>Contract</p> <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) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <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) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <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) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <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. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> 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 1, 2016
Fredric Evenson
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

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.

Page 1 of 2

**SUMMONS
(CITACION JUDICIAL)**

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

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

Smart Living Company; Trademark Global, LLC; Akerue Industries, LLC; The Blue Rooster Company

**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) **CGC-16-554012**

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: **SEP 01 2016**
(Fecha)

CLERK OF THE COURT

Clerk, by **ARLENE RAMOS**, Deputy
(Secretario) (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)).

[SEAL]

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: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 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.

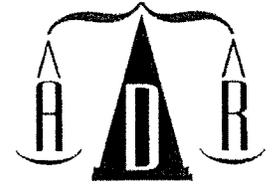
Operation: Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen 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 CASE NUMBER: DEPARTMENT 610 |
| 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) | |

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: _____ |
|--|-----------------------|

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: | CASE NUMBER: |
| DEFENDANT/RESPONDENT: | |

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

The Early Settlement Program:

- ▶ Helps you resolve cases **quickly and economically**
- ▶ Has been a trusted program for **over 20 years**
- ▶ Boosts 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 case's type of law
- ▶ **Low administrative fee** of \$205/party, capped at \$500 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 cost than 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
- ▶ 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.
Shartsis 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



THE BAR ASSOCIATION OF
SAN FRANCISCO

MEDIATION SERVICES



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.sfbbar.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.sfbbar.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.sfbbar.org/mediation) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.