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CENTRAL DISTRICT OF CALIFORNIA
BY *Marsha Gales* DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF) GENERAL ORDER NO. 11-10
ALTERNATIVE DISPUTE) (Supersedes General Orders
RESOLUTION (ADR) PROGRAM) No. 04-01 and No. 07-01

1. SCOPE AND PURPOSE

1.1 Scope. This General Order (“Order”) governs the elective and presumptive referral of certain actions to the Alternative Dispute Resolution (ADR) Program for mediation with a neutral from the Mediation Panel (previously known as the Attorney Settlement Officer Panel) appointed by the Court. The Order shall be effective on December 1, 2011 and applies to actions which fall within the scope of this Order, regardless of when the actions commenced.

1.2 Purpose. The Court finds that the number of criminal and civil cases in this District, together with the adoption of Congressional requirements for the priority scheduling of criminal trials and the shortage of Judges in this District, have placed significant pressures on litigants, counsel, and the Court. The purpose of the ADR Program is to alleviate some of these pressures and to encourage the fair, speedy, and economical resolution of controversies by referring suitable cases to an impartial neutral who is experienced in one or more designated areas of law and in

1 the process of alternative dispute resolution.

2
3 **2. ADMINISTRATION**

4 **2.1 ADR Judge.** A district judge shall be appointed by the Chief Judge
5 to serve as Chair of the ADR Committee. That judge will also serve as the ADR
6 Judge of this Court. The ADR Judge shall serve as the primary liaison between the
7 Court and ADR Program staff, consulting with staff on matters of policy, program
8 design and evaluation, education, training and administration.

9 **2.2 Appointment of the ADR Program Director.** The ADR Program
10 shall be coordinated by an ADR Program Director at the direction of the Clerk of
11 Court.

12 **2.3 Duties of the ADR Program Director.** The duties of the ADR
13 Program Director shall be established by the Court, and shall include the following:

- 14 (a) Maintain, on the Court website, the current list of panel members
15 available to act as mediators;
- 16 (b) Report to the Court on the status and effectiveness of the ADR
17 Program, and maintain records, including disposition and
18 success rates, for this purpose;
- 19 (c) Serve as a neutral in selected cases;
- 20 (d) Perform any additional duties as the Court may direct which are
21 necessary for the efficient administration of the ADR Program.

22 **2.4 Duties of the Bar.** The Central District's Lawyer Representatives'
23 Mediation Panel Selection Committee will assist the Court with the ADR Program
24 in the following ways:

- 25 (a) Recruit suitable candidates for the Mediation Panel;
- 26 (b) Review candidate applications for the Mediation Panel and
27 provide advice to the Court in connection with the selection and
28 appointment of panel members; and

- 1 (c) Perform such additional duties as the Court may direct which are
2 necessary for the efficient administration of the ADR Program.
3

4 **3. MEDIATOR QUALIFICATIONS AND SELECTION**

5 **3.1 Qualifications.** A person may serve as a member of the Mediation

6 Panel if:

- 7 (a) the person has been a United States Appellate, District,
8 Magistrate or Bankruptcy Judge, or a California Judicial Officer;
9 or
10 (b) the person is currently a member in good standing of the Bar of
11 the United States District Court, Central District of California,
12 with at least 10 years legal practice experience, substantial
13 experience with or knowledge of civil litigation in federal court,
14 and significant expertise in one or more of the following areas:
15 (1) Admiralty
16 (2) Americans with Disabilities Act
17 (3) Antitrust
18 (4) Bankruptcy
19 (5) Business/Commercial Litigation
20 (6) Civil Rights
21 (7) Class Actions
22 (8) Consumer Credit
23 (9) Copyright/Trademark
24 (10) Employment/Discrimination/Wrongful Termination
25 (11) Environmental
26 (12) ERISA
27 (13) Foreclosure
28 (14) Insurance Coverage/Bad Faith

- 1 (15) Labor
- 2 (16) Patent
- 3 (17) Personal Injury
- 4 (18) Products Liability
- 5 (19) Real Estate/Construction
- 6 (20) Securities
- 7 (21) Tax

8 The Court may modify these and other minimum requirements in individual
9 circumstances for good cause. The Court shall only make such modification upon a
10 determination that the applicant has demonstrated satisfactory evidence of sufficient
11 education, training, skills and/or experience.

12 **3.2 Training Requirements.** In order to qualify for appointment to the
13 Mediation Panel, an applicant shall successfully complete a court-conducted
14 training course in mediation or provide proof that he or she has successfully
15 completed a court-approved training course in mediation. In order to qualify for
16 subsequent reappointments to the Mediation Panel, an applicant shall agree to
17 periodically participate in court-conducted or court-approved refresher or advanced
18 training. The Court may, in its discretion, waive the training requirements upon
19 application by the individual.

20 **3.3 Application for Appointment to Mediation Panel.** An application
21 for appointment to the Mediation Panel may be obtained from the ADR Program
22 Director or downloaded from the Court's website, www.cacd.uscourts.gov. The
23 application shall be submitted to the ADR Program Director.

24 **3.4 Appointment of Mediators to Panel.** Mediators shall be appointed to
25 the Mediation Panel by the Court. A panel member may ask the ADR Program
26 Director at any time to have his or her name removed from the panel roster. The
27 Court may, in its sole discretion, remove any person from the Mediation Panel who
28 violates this Order, *see* Section 11, or is unable to commit sufficient time to, or

1 otherwise meet the requirements of, panel membership.

2 **3.5 Term of Appointment.** Appointment to the Mediation Panel shall be
3 for a term of two years. The term may be renewed at the discretion of the Court
4 upon the consent and re-application of the panel member. Panel members who do
5 not reapply for appointment at the expiration of the two-year term will be removed
6 from the panel roster.

7 **3.6 Oath Required.** Every mediator appointed to the Mediation Panel shall
8 take the oath or affirmation prescribed in 28 U.S.C. § 453.

9 **3.7 Minimum Case Requirement.** Panel members are expected to mediate
10 a minimum of two cases per appointment term. At least one case per term shall be a
11 case that has been assigned by the Court. Panel members who do not meet the
12 minimum case requirement will not be reappointed at the end of their term unless
13 they contact the ADR Program Director and establish good cause for reappointment.

14 **3.8 Compensation.**

15 **(a) Volunteer time.** Panel members shall volunteer their preparation
16 time and the first three hours of a mediation session. After three hours of a
17 mediation session, the panel member may (1) give the parties the option of
18 concluding the mediation; (2) continue the mediation and volunteer his or her time;
19 or (3) continue the mediation on such terms and rates as the panel member and all
20 parties agree. The mediation session will continue beyond three hours only if all
21 parties and the panel member agree.

22 **(b) Payment.** If the mediation session continues beyond three hours,
23 the terms and conditions of payment must be clearly communicated in writing to the
24 parties. The parties may agree to pay the fee in other than equal portions. The
25 parties must pay the mediator directly, or the mediator's law firm or employer, as
26 directed by the mediator. On a form survey provided by the Court (in the form
27 attached as "Exhibit I", *see* section 8.8 below), the mediator must promptly report to
28 the ADR Program the amount of payment received.

1 **3.9 Limits on Role of Mediator.** The panel member has no authority to
2 render a decision or to dictate a settlement.

3 **3.10 Immunities.** Panel members are performing quasi-judicial functions
4 and are entitled to the immunities and protections that the law accords to persons
5 serving in such capacity.

6 **3.11 Disqualification of Mediators.**

7 **(a) *Applicable Standards.*** No person may serve as a neutral in a
8 case in the Court’s ADR Program in violation of:

- 9 (1) the standards set forth in 28 U.S.C. § 455; or
10 (2) any applicable standard of professional responsibility or
11 rule of professional conduct; or
12 (3) other guidelines adopted by the Court concerning
13 disqualification of neutrals.

14 **(b) *Mandatory Disqualification and Notice of Recusal.*** A
15 prospective neutral who discovers a circumstance requiring disqualification must
16 immediately notify the parties and the ADR Program Director in writing. The
17 parties may not waive a basis for disqualification that is described in 28 U.S.C. §
18 455(b).

19 **(c) *Disclosure and Waiver of Non-Mandatory Grounds for***
20 ***Disqualification.*** If a prospective neutral discovers a circumstance that would not
21 compel disqualification under an applicable standard of professional responsibility
22 or rule of professional conduct or other guideline, or under 28 U.S.C. § 455(b), but
23 that might be covered by 28 U.S.C. § 455(a) (impartiality might reasonably be
24 questioned), the neutral shall promptly disclose that circumstance in writing to all
25 parties and the ADR Program Director. A party who has an objection to the neutral
26 based upon an allegation that the neutral has a conflict of interest must present this
27 objection in writing to the ADR Program Director within 10 calendar days of
28 learning the source of the potential conflict or shall be deemed to have waived

1 objection.

2 **(d) *Objections Not Based on Disclosure By Neutral.*** Within 7 days
3 of learning the identity of a proposed neutral, a party who objects to service by that
4 neutral must deliver to the ADR Program Director and to all other counsel a writing
5 that specifies the bases for the objection. The ADR Program Director shall
6 determine whether the proposed neutral will serve or whether another neutral should
7 be appointed.

8 **3.12 Related Cases/Multiple Cases with Common Party.** A panel
9 member may conduct a mediation for a group of related cases or a group of cases
10 with one common party if (1) all parties to all cases agree, in writing, (2) all parties
11 to all cases agree, in writing, to compensation terms and rates of the mediator,
12 subject to the limitations of section 3.8 above, and (3) the panel member discloses to
13 all parties the number of cases in which the panel member has previously conducted
14 mediations involving any of the parties participating in the current proceeding.

15 **3.13 Members of Mediation Panel.** All attorneys who are serving on the
16 Court's Attorney Settlement Officer Panel as of the date this Order becomes
17 effective shall automatically be appointed as members of the Mediation Panel after
18 they have taken the oath or affirmation prescribed in 28 U.S.C. § 453.

19
20 **4. ADR PROGRAM GENERAL PROVISIONS**

21 **4.1 Referral to the Court's Mediation Panel.** Cases may be referred to
22 the ADR Program for mediation with a neutral from the Mediation Panel in one of
23 two ways: 1) through the Court-Directed ADR Program, as described in section 5
24 below; and 2) under Civil L.R. 16-15, as described in section 6 below.

25 **4.2 Description: Mediation.** Mediation is a flexible, non-binding,
26 confidential process in which a neutral person (the mediator) facilitates settlement
27 negotiations. The mediator improves communication across party lines, helps
28 parties articulate their interests and understand those of their opponent, probes the

1 strengths and weaknesses of each party's legal positions, identifies areas of
2 agreement and helps generate options for a mutually agreeable resolution to the
3 dispute. A hallmark of mediation is its capacity to expand traditional settlement
4 discussion and broaden resolution options, often by exploring litigant needs and
5 interests that may be formally independent of the legal issues in controversy.

6 **4.3 Status of Discovery, Motions and Trial During the ADR Process.**

7 Any case referred to the ADR Program continues to be subject to management by
8 the judge to whom it is assigned. Selection of a case for ADR has no effect on the
9 normal progress of the case toward trial. Referral of a case to ADR is not grounds
10 for avoiding or postponing any deadline or obligation imposed by the case
11 management order, unless so ordered by the Court.

12 **4.4 Cases Assigned to a Magistrate Judge Pursuant to 28 U.S.C.**

13 **§ 636(c) and the Local Civil Rules.** The provisions of this Order are applicable to
14 those cases that are assigned to a magistrate judge pursuant to 28 U.S.C. § 636(c)
15 and the Civil Local Rules if the magistrate judge determines that the case would
16 benefit from participation in the ADR Program.

17 **4.5 Case Types Exempted.**

18 The following case types shall not be referred to the Mediation Panel:

- 19 (a) habeas corpus and extraordinary writs;
- 20 (b) immigration and naturalization;
- 21 (c) prisoner civil rights;
- 22 (d) social security;
- 23 (e) petitions to enforce IRS summonses.

24 **4.6 Cases Involving a Self-Represented Party.** The Court, in its

25 discretion, may order a case involving a self-represented party to the Mediation
26 Panel. In such cases, within seven (7) days of the Order/Referral to ADR, the party
27 proceeding without a lawyer and the opposing counsel must arrange for a phone
28 conference with the ADR Program Director to discuss ADR options.

1 **5. REFERRAL OF CASES TO THE COURT-DIRECTED ADR**
2 **PROGRAM**

3 **5.1 Court-Directed ADR Program.** With the exception of those case
4 types exempted in section 4.5 above and cases involving a party who is not
5 represented by counsel (*see* section 4.6), all civil cases which are assigned to judges
6 participating in the Court-Directed ADR Program are presumptively referred to the
7 Mediation Panel or a private dispute resolution process. The participating judges
8 are listed on the court website, www.cacd.uscourts.gov, ADR section, under “List of
9 District Judges Participating in the ADR Program.” In all such cases, a “Notice to
10 Parties of Court-Directed ADR Program” in the form attached as “Exhibit C” will
11 be provided to counsel at the time of the filing of the complaint or notice of removal
12 for service on all parties. Counsel are required to furnish and discuss with their
13 clients the “Notice to Parties: Court Policy on Settlement and Use of Alternative
14 Dispute Resolution” (the “ADR Notice to Parties”) and the ADR options available
15 to them before the conference described in section 5.2 below.

16 **5.2 The Parties’ Duty to Consider ADR, Confer and Report.** Unless
17 otherwise ordered, at the conference of the parties held pursuant to Fed. R. Civ. P.
18 26(f) and Civil L.R. 26-1, counsel shall meet and confer about whether their case is
19 best suited to a mediation with a neutral selected from the Mediation Panel or a
20 private mediation, and when the mediation should occur. *See* Civil L.R. 26-1(c).
21 The parties shall include their shared or separate views regarding the appropriate
22 ADR procedure and proposed date of the session in the written report required by
23 Fed. R. Civ. P. 26(f) and Civil L.R. 26-1.

24 **5.3 Order/Referral to ADR.** After considering the parties’ written report
25 required by Fed. R. Civ. P. 26(f) and Civil L.R. 26-1, the assigned judge will file an
26 Order/Referral to ADR, in the form attached as “Exhibit B.”

27 **5.4 Discretionary Referral.** For cases that do not meet the criteria of
28 section 5.1 of this Order but which the assigned judge determines would benefit

1 from participation in this Program, the assigned judge may file an “Order/Referral to
2 ADR,” in the form attached hereto as “Exhibit B.”

3 **5.5 Cases Transferred to a Judge Participating in the Court-Directed**
4 **ADR Program.** For cases that are transferred to a judge participating in the
5 Court-Directed ADR Program, a “Notice to Parties of Court-Directed ADR
6 Program” in the form attached as “Exhibit C” will be provided to counsel at the time
7 of the transfer by the courtroom deputy clerk for the judge receiving the case.

8 **5.6 Cases Transferred From a Judge Participating in the Court-**
9 **Directed ADR Program to a Judge Not Participating in the Court-Directed**
10 **ADR Program.** The provisions of this section are applicable to those cases that
11 are transferred to a judge who is not participating in the Court-Directed ADR
12 Program but who determines that the case would benefit from and should remain in
13 the Court-Directed ADR Program. If the judge who is not participating in the
14 Court-Directed ADR Program determines that the transferred case would not benefit
15 from mediation with a neutral selected from the Mediation Panel or private
16 mediation, then an order vacating the referral in the form attached hereto as “Exhibit
17 D” will be prepared and filed by the courtroom deputy clerk for the judge receiving
18 the case.

19 **5.7 Change in Ordered ADR Procedure.** If all parties wish to request a
20 change from the ordered ADR Procedure – from the Mediation Panel to private
21 mediation or from private mediation to the Mediation Panel – the parties shall file a
22 Request: ADR Procedure Selection (Exhibit A). In such instances, counsel shall
23 also notify the ADR Program Director of this change.

24
25 **6. REFERRAL OF CASES TO ADR PROGRAM PURSUANT TO CIVIL**
26 **LOCAL RULE 16-15.2**

27 **6.1 Cases Referred Pursuant to the Court-Directed ADR Program**
28 **Excepted.** Nothing in this section shall apply to cases referred to the ADR

1 Program pursuant to the Court-Directed ADR Program. Rules for the Court-
2 Directed ADR Program are found in section five of this Order.

3 **6.2 The Parties' Duty to Consider ADR, Confer and Report.** Unless
4 otherwise ordered, at the conference of the parties held pursuant to Fed. R. Civ. P.
5 26(f) and Civil L.R. 26-1, counsel shall meet and confer about which of the three
6 ADR procedures specified in Civil L.R. 16-15.4 (a settlement proceeding before the
7 assigned district judge or magistrate judge, the Mediation Panel or private
8 mediation) is best suited to the case and when the ADR session should occur. *See*
9 Civil L.R. 26-1(c). The parties shall include their shared or separate views
10 regarding the appropriate ADR procedure and proposed date of the session in the
11 written report required by Fed. R. Civ. P. 26(f) and Civil L.R. 26-1. This report
12 must be accompanied by a Request: ADR Procedure Selection, in the form attached
13 as "Exhibit A." *See* Civil L.R. 16-15.2.

14 **6.3 Order/Referral to ADR.** After considering the parties' written report
15 and Request: ADR Procedure Selection, the assigned judge will file an Order/
16 Referral to ADR, in the form attached as "Exhibit B."

17 **6.4 Referral to or Change in ADR at Any Time After Issuance of Initial**
18 **Case Management or Scheduling Order.** At any time after issuance of the initial
19 case management or scheduling order and before entry of final judgment, if all
20 parties agree that referral to a particular ADR procedure is appropriate, or wish to
21 request a change to the ordered ADR procedure, the parties shall file a Request:
22 ADR Procedure Selection (Exhibit A).

23
24 **7. SELECTION AND ASSIGNMENT OF MEDIATOR.**

25 **7.1 Selection of Mediator.**

26 **(a) *By Stipulation.*** The parties may stipulate to a mediator from the
27 Mediator Panel list maintained by the ADR Program Director and made available on
28 the Court's website. Upon obtaining the consent of the selected mediator, the

1 parties shall file a Stipulation Regarding Selection of Mediator, in the form attached
2 hereto as “Exhibit E.” If the parties have not filed a Stipulation Regarding Selection
3 of Mediator within twenty-one (21) days from the Order/Referral to ADR, the ADR
4 Program Director will assign a mediator.

5 (b) **By Assignment.** If the parties are unable to stipulate to a
6 mediator, they may ask that the ADR Program Director assign a mediator from the
7 Panel list. Such request for assignment shall be made by filing a Stipulation
8 Regarding Selection of Mediator, in the form attached hereto as “Exhibit E.”

9 **7.2 Notice of Assignment of Mediator.** A “Notice of Assignment of
10 Mediator” in the form attached hereto as “Exhibit F” shall be filed by the ADR
11 Program in every case in which a mediator from the Mediation Panel is selected by
12 the parties or assigned by the ADR Program Director. The ADR Program will
13 provide the panel member with a copy of the Notice of Assignment, a copy of the
14 current docket sheet and copies of any documents from the case file identified by
15 the panel member as being necessary for his or her preparation for the mediation.

16
17 **8. PROCEDURES FOR SCHEDULING AND CONDUCTING THE**
18 **MEDIATION**

19 **8.1 Mediator’s Initial Communication with Counsel.** Within thirty (30)
20 days of the Notice of Assignment of Mediator, the panel member must communicate
21 with counsel to schedule the mediation session. The communication may take the
22 form of a brief joint telephone conference with counsel, as described below, or in
23 writing, at the mediator’s discretion. A joint telephone conference with counsel
24 would likely include a discussion of the following matters:

- 25 (a) fixing a mutually convenient date, time and place for the
26 mediation;
27 (b) the procedures to be followed during the mediation;
28 (c) who shall attend the session on behalf of each party;

- (d) what material or exhibits shall be provided to the mediator prior to the mediation or brought by the parties to the mediation;
- (e) any issues or matters that the mediator would like the parties to address in their written mediation statements;
- (f) page limitations for mediation statements;
- (g) whether the parties are likely to want to continue beyond the three pro bono hours offered by the panel member and, if so, the terms and rates of the panel member (see section 3.8 above); and
- (h) any other matters that might enhance the quality of the mediation.

8.2 Notice: Date and Location of Mediation. Within thirty-five (35) days of the Notice of Assignment of Mediator, the mediator shall advise the ADR Program of the scheduled date of the mediation by filing a Notice of Mediation Date, in the form attached as “Exhibit G,” or by other communication. The mediator shall strive to schedule the mediation for the earliest possible date after the parties have had reasonable time to evaluate their case, thus minimizing the expense of the litigation. The mediation must be completed within the time-frame ordered by the assigned judge or, if no completion date has been ordered, no later than forty-five (45) days before the Final Pretrial Conference. *See* Civil L.R. 16-15.2. Counsel may seek a continuance of the ADR deadline from the assigned judge for good cause. The Court shall provide suitable space for the mediation if a request is made to the ADR Program Director. If, for any reason, the mediator is unable, within thirty-five (35) days of the Notice of Assignment, to set a mediation date, the mediator shall notify the ADR Program Director that a mediation could not be scheduled.

8.3 Continuances and Rescheduling. No continuance or rescheduling of the mediation shall be granted except upon agreement of the mediator. The ADR Program Director shall be notified of any continuance or rescheduling of the

1 mediation. Any continuance of the mediation beyond the completion date ordered
2 by the judge or imposed by local rule must be approved by the assigned judge.

3 **8.4 Mediation Statements.**

4 (a) *Content and Timing.* At the request of the mediator, each party
5 shall submit directly to the mediator a confidential mediation statement no later than
6 seven (7) calendar days before the session. The mediation statement shall outline
7 the underlying facts of the dispute, the key legal issues in the case, possible areas of
8 agreement and options for settlement, and the settlement history of the dispute, if
9 any. The mediation statement shall also identify, by name, and title or status:

- 10 (1) the person(s) with decision-making authority who, in
11 addition to counsel, will attend the mediation on behalf of
12 the party; and
13 (2) person(s) connected with either party (including insurer
14 representatives) whose presence at the mediation might
15 substantially improve the productivity of the mediation or
16 the prospects for settlement.

17 (b) *Confidential Nature of Statement.* Mediation statements shall
18 be subject to the protection afforded by the confidentiality provisions contained in
19 section 9 below. Mediation statements must not be filed and the assigned judge
20 shall not have access to them. The mediator may, with the consent of the parties,
21 request that counsel serve the statements on other parties to the lawsuit.

22 **8.5 Appearance by Party Representative.** Each party shall appear at the
23 mediation in person or by a representative with final authority to settle the case,
24 which in the case of lawsuits brought against the United States or any of its agencies
25 as a party, shall involve the attendance of an attorney charged with responsibility for
26 the conduct of the case and who has final settlement authority as provided by his or
27 her superiors. A corporation or other non-governmental entity satisfies this
28 attendance requirement if represented by a person who has final settlement authority

1 and who is knowledgeable about the facts of the case. Representatives of insurers
2 with decision-making authority are required to attend mediation sessions, unless
3 personal attendance is excused by the mediator. At the discretion of mediator, and
4 only with the mediator's express authorization, parties residing outside the Central
5 District may have a representative with final settlement authority available by
6 telephone during the entire proceeding, in lieu of personal appearance. *See* Civil
7 L.R. 16-15.5(b).

8 **8.6 Attendance of Trial Attorney.** Each party shall be represented at
9 the mediation by the attorney who is expected to try the case, unless excused for
10 good cause by the mediator, in accordance with Civil L.R. 16-15.5(c).

11 **8.7 Participant Surveys.** At the time of the mediation, the mediator shall
12 distribute to each litigant and attorney an "ADR Program Participant Survey" in the
13 form attached hereto as Exhibit J, to be returned directly to the ADR Program. The
14 Participant Surveys are not to be filed with the Court.

15 **8.8 Attendance Sheet and 'Survey for Mediators and Report of**
16 **Payment.'** The mediator shall collect contact information from each mediation
17 participant on the Mediation Attendance Record in the form attached hereto as
18 "Exhibit H." The mediator shall submit the completed form directly to the ADR
19 Program, with the "Survey for Mediators and Report of Payment," in the form
20 attached hereto as "Exhibit I." The Mediation Attendance Record and Mediator
21 Survey are not to be filed with the court. The ADR Program will use the
22 Attendance Record to follow up with those participants of the mediation session
23 who have not yet returned an "ADR Program Participant Survey," in the form
24 attached hereto as "Exhibit J."

25 **8.9 Report to the Court.** Within five days after the conclusion of the
26 mediation session, the mediator shall electronically file with the Court a "Mediation
27 Report" in the form attached hereto as "Exhibit K," advising the Court as to whether
28 the parties appeared at the mediation as required by Civil L.R. 16-15.5(b) and

1 whether or not the case settled. Regardless of the outcome of the mediation session,
2 the mediator will not provide the judge with any details of the substance of the
3 mediation session. With the filing of the Mediation Report, the parties are advised
4 that they must notify the trial judge's courtroom deputy clerk of the fact of
5 settlement and promptly file documents regarding the final disposition of the case.
6 *See* Civil L.R. 16-15.7.

7 If no mediation was held, the mediator shall electronically file with the Court
8 a Mediation Report, indicating that a mediation did not take place. If the case did
9 not settle at the mediation session but is later settled with the assistance of the
10 mediator, the mediator shall file a subsequent Mediation Report.

11
12 **9. CONFIDENTIALITY**

13 **9.1 Confidential Treatment.** Except as provided in section 9.2 below, this
14 Court, the mediator, all counsel and parties, and any other persons attending the
15 mediation shall treat as "confidential information" the contents of the written
16 mediation statements, any documents prepared for the purpose of, in the course of,
17 or pursuant to the mediation, anything that happened or was said relating to the
18 subject matter of the case in mediation, any position taken, and any view of the
19 merits of the case expressed by any participant in connection with any mediation.

20 "Confidential information" shall not be:

- 21 (a) disclosed to anyone not involved in the litigation;
22 (b) disclosed to the assigned judges; or
23 (c) used for any purpose, including impeachment, in any pending or
24 future proceeding in this court or any other forum.

25 **9.2 Limited Exceptions to Confidentiality.** This rule does not prohibit:

- 26 (a) disclosures as may be stipulated by all parties and the mediator;
27 (b) disclosures as may be stipulated by all parties, without the
28 consent of the mediator, for use in a subsequent confidential

1 ADR or settlement proceeding;

2 (c) a report to or an inquiry by the ADR Judge pursuant to sections
3 10 and 11 below, regarding a possible violation of policies and
4 procedures governing the ADR Program;

5 (d) the mediator from discussing the mediation process with the
6 ADR Program staff, who shall maintain the confidentiality of the
7 process;

8 (e) any participant or the mediator from responding to an
9 appropriate request for information duly made by persons
10 authorized by the Court to monitor or evaluate the Court's ADR
11 program;

12 (f) disclosures as are required by this Order, related ADR forms,
13 and as otherwise required by law; or

14 (g) in an action or proceeding to enforce a settlement, the admission
15 of a written settlement agreement or a settlement placed on the
16 record, reached as a result of mediation.

17 **9.3 Confidentiality Agreement.** The mediator may ask the parties and all
18 persons attending the mediation to sign a confidentiality agreement on a form
19 provided by the Court and attached as "Exhibit L." The confidentiality provisions
20 of this section apply regardless of whether a confidentiality agreement is signed.

21 **9.4 Scope.** Nothing in this rule is intended to limit any applicable privilege
22 or rule of evidence designed to protect mediation confidentiality, and any such
23 broader protection shall control if applicable. *See* Civil L.R. 16-15.8.

24
25 **10. VIOLATIONS OF THIS ORDER BY COUNSEL OR A PARTY**

26 **10.1 Informal Resolution.** Without prejudice to the use of more formal
27 procedures set forth in sections 10.2 and 10.3 below, a complaint alleging that any
28 person or party has materially violated this Order may be presented informally to the

1 ADR Program Director, who will attempt to resolve the matter to the satisfaction of
2 all concerned.

3
4 **10.2 Reporting Violation.**

5 A formal complaint alleging that any person or party has materially violated
6 this Order must be presented in writing (not electronically) to the ADR Program
7 Director, who will refer the matter to the ADR Judge. The letter of complaint must
8 be accompanied by a competent declaration. Copies of the letter and declaration
9 must be sent contemporaneously to all other parties. If the assigned judge is the
10 ADR Judge, the ADR Program Director will refer the letter of complaint and
11 declaration to the Vice Chair of the ADR Committee or the Vice Chair's designee.
12 The declaration must be marked "Confidential-Not to be Filed" and must neither be
13 filed nor disclosed to the assigned judge.

14 **10.3 Proceeding in Response to Complaint or Report of Violation and**
15 **Sanctions.** If, upon receiving an appropriately presented and supported complaint
16 or report of a material violation of this Order, the ADR Judge determines that the
17 matter warrants further proceedings, the ADR Judge may refer the matter to the
18 ADR Program Director to explore the possibility of resolving the complaint
19 informally in accordance with section 10.1 above. If no such referral is made, or if
20 the matter is not resolved informally, the ADR Judge for this matter shall take
21 appropriate action. The ADR Judge may issue an order to show cause why
22 sanctions should not be imposed. Any such sanctions proceedings shall be
23 conducted on the record but under seal. The ADR Judge will afford all interested
24 parties an opportunity to be heard before deciding whether to impose sanctions.

25
26 **11. VIOLATION OF THIS ORDER BY A PANEL MEMBER**

27 **11.1 General Provision.** This rule is intended to promote the fair and
28 timely resolution of complaints related to a mediator's performance in discharging

1 his or her duties as a panel member. This section shall not limit the Court's
2 authority to, in its sole discretion, determine who may be included on or removed
3 from the panel or to take any other action not specifically contemplated by this
4 section, in order to ensure that the quality of services provided by the Court
5 Mediation Panel is commensurate with the Court's expectations and consistent with
6 the Court's role in the administration of justice.

7 **11.2 Confidentiality of Complaint Proceedings.** No information or
8 record concerning the receipt, investigation or resolution of any complaint made
9 under this section may be open to the public. The Court shall maintain sufficient
10 information about each complaint and its disposition to identify any history or
11 patterns of complaints submitted under this section.

12 **11.3 Informal Complaints.** Informal complaints regarding a panel
13 member's performance shall be brought to the attention of the ADR Program
14 Director, who will conduct a preliminary review to determine whether the complaint
15 can be informally resolved or merits a formal investigation.

16 **11.4 Formal Complaint Set Forth in Writing.** Any complaint regarding a
17 panel member's performance that cannot be resolved informally shall be submitted
18 in writing to the ADR Program Director. The complaint is not to be filed nor
19 presented to the assigned judge. The complaint shall describe with particularity the
20 matter, conduct and circumstances triggering the complaint. The ADR Program
21 Director shall send the complainant a written acknowledgment that the complaint
22 has been received.

23 **11.5 Proceedings in Response to Formal Complaint.** The ADR
24 Committee shall promptly review the complaint to determine whether the matter
25 warrants further investigation. If the ADR Committee determines that further
26 investigation is warranted, the ADR Judge shall conduct an investigation, or appoint
27 a subcommittee of ADR Committee members to conduct an investigation, and
28 present a report of the investigation to the full committee. As part of such

1 investigation, the panel member shall be afforded an opportunity to respond to the
2 complaint. Upon conclusion of the investigation and receipt of the report, the ADR
3 Committee shall make a final determination as to what, if any, action shall be taken.

4 **11.6 Notice of Final Action in Response to Formal Complaint.** The
5 Court shall notify the complainant and the panel member, in writing, of the final
6 disposition of the complaint.

7
8 **12. EFFECTIVE DATE**

9 This General Order shall become effective on December 1, 2011.

10
11 IT IS SO ORDERED.

12 

13 _____
14 CHIEF UNITED STATES DISTRICT JUDGE

15
16 *Date of Approval by the Court:* August 12, 2011

17
18 *Date of Filing by the Clerk:* August 15, 2011

Exhibit A

Name, Address and Telephone Number of Attorney(s):

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER

v.

Plaintiff(s)

REQUEST:
ADR PROCEDURE SELECTION

Defendant(s).

Pursuant to Civil L.R.16-15, the parties request that the Court approve the following ADR procedure:

- ADR PROCEDURE NO. 1** - The parties shall appear before the
 - district judge *or* magistrate judge assigned to the case for such settlement proceedings as the judge may conduct or direct.
- ADR PROCEDURE NO. 2** - The parties shall appear before a neutral selected from the Court's Mediation Panel for mediation.
- ADR PROCEDURE NO. 3** - The parties shall participate in a private dispute resolution proceeding.

Dated: _____

Attorney for Plaintiff _____

Dated: _____

Attorney for Plaintiff _____

Dated: _____

Attorney for Defendant _____

Dated: _____

Attorney for Defendant _____

NOTE: If additional signatures are required, attach an additional page to this request.

Exhibit B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER

v.

Plaintiff(s)

Defendant(s).

ORDER/REFERRAL TO ADR

The Court, having considered the parties' Request: ADR Procedure Selection, the Notice to Parties of Court-Directed ADR Program, or the report submitted by the parties pursuant to Fed. R. Civ. P. 26(f) and Civil L.R. 26-1, hereby:

ORDERS this case referred to:

- ADR PROCEDURE NO. 1:** (district judge *or* magistrate judge assigned to the case for such settlement proceedings as the judge may conduct or direct).
- ADR PROCEDURE NO. 2:** This case is referred to the ADR Program. Within twenty-one (21) days, plaintiff shall obtain the consent of a neutral listed on the Court's Mediation Panel who will conduct the mediation, and file form ADR-2, Stipulation Regarding Selection of Panel Mediator. If the parties have not selected and obtained the consent of a Panel Mediator within twenty-one (21) days, the ADR Program (213-894-2993) will assign one. Forms and a list of the Panel Mediators are available on the Court website, www.cacd.uscourts.gov. Absent extraordinary circumstances, parties cannot request a continuance within three (3) business days of a scheduled mediation.
- ADR PROCEDURE NO. 3 :** (Private mediation).

The ADR proceeding is to be completed no later than: _____

The Court further sets a status conference for: _____

For ADR Procedure Nos. 1 and 3, counsel are responsible for contacting the judge or private mediator at the appropriate time to arrange for further proceedings.

Dated: _____

United States District Judge/Magistrate Judge

Exhibit C

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

v.

PLAINTIFF(S)

DEFENDANT(S)

**NOTICE TO PARTIES OF
COURT-DIRECTED ADR PROGRAM**

NOTICE TO PARTIES:

It is the policy of this Court to encourage settlement of civil litigation when such is in the best interest of the parties. The Court favors any reasonable means, including alternative dispute resolution (ADR), to accomplish this goal. *See* Civil L.R. 16-15. Unless exempted by the trial judge, parties in all civil cases must participate in an ADR process before trial. *See* Civil L.R. 16-15.1.

The district judge to whom the above-referenced case has been assigned is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation. *See* General Order No. 11-10, §5. For more information about the Mediation Panel, visit the Court website, www.cacd.uscourts.gov, under "ADR."

Pursuant to Civil L.R. 26-1(c), counsel are directed to furnish and discuss with their clients the attached ADR Notice To Parties *before* the conference of the parties mandated by Fed.R.Civ.P. 26(f). Based upon the consultation with their clients and discussion with opposing counsel, counsel must indicate the following in their Joint 26(f) Report: 1) whether the case is best suited for mediation with a neutral from the Court Mediation Panel or private mediation; and 2) when the mediation should occur. *See* Civil L.R. 26-1(c).

At the initial scheduling conference, counsel should be fully prepared to discuss their preference for referral to the Court Mediation Panel or to private mediation and when the mediation should occur. The Court will enter an Order/Referral to ADR at or around the time of the scheduling conference.

Clerk, U. S. District Court

By _____
Deputy Clerk

Date

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE TO PARTIES: COURT POLICY ON SETTLEMENT
AND USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)
Counsel are required to furnish and discuss this Notice with their clients.**

Despite the efforts of the courts to achieve a fair, timely and just outcome in all cases, litigation has become an often lengthy and expensive process. For this reason, it is this Court's policy to encourage parties to attempt to settle their disputes, whenever possible, through alternative dispute resolution (ADR).

ADR can reduce both the time it takes to resolve a case and the costs of litigation, which can be substantial. ADR options include mediation, arbitration (binding or non-binding), neutral evaluation (NE), conciliation, mini-trial and fact-finding. ADR can be either Court-directed or privately conducted.

The Court's ADR Program offers mediation through a panel of qualified and impartial attorneys who will encourage the fair, speedy and economic resolution of civil actions. Panel Mediators each have at least ten years of legal experience and are appointed by the Court. They volunteer their preparation time and the first three hours of a mediation session. This is a cost-effective way for parties to explore potential avenues of resolution.

This Court requires that counsel discuss with their clients the ADR options available and instructs them to come prepared to discuss the parties' choice of ADR option (settlement conference before a magistrate judge; Court Mediation Panel; private mediation) at the initial scheduling conference. Counsel are also required to indicate the client's choice of ADR option in advance of that conference. *See* Civil L.R. 26-1(c) and Fed.R.Civ.P. 26(f).

Clients and their counsel should carefully consider the anticipated expense of litigation, the uncertainties as to outcome, the time it will take to get to trial, the time an appeal will take if a decision is appealed, the burdens on a client's time, and the costs and expenses of litigation in relation to the amounts or stakes involved.

With more than 14,700 civil cases filed in the District in 2013, less than 1 percent actually went to trial. Most cases are settled between the parties; voluntarily dismissed; resolved through Court-directed or other forms of ADR; or dismissed by the Court as lacking in merit or for other reasons provided by law.

For more information about the Court's ADR Program, the Mediation Panel, and the profiles of mediators, visit the Court website, www.cacd.uscourts.gov, under "ADR."

Exhibit D

Exhibit E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER:

v. Plaintiff(s)

Defendant(s).

STIPULATION REGARDING
SELECTION OF PANEL MEDIATOR

CHECK ONLY ONE BOX:

- The parties stipulate that _____ may serve as the Panel Mediator in the above-captioned case. Plaintiff has obtained the Panel Mediator's consent to conduct the mediation.
- The parties request that the ADR Program staff assign to the above-captioned case a Panel Mediator with expertise in the following area of law : _____

Dated: _____

Attorney For Plaintiff _____

Dated: _____

Attorney For Plaintiff _____

Dated: _____

Attorney For Defendant _____

Dated: _____

Attorney For Defendant _____

Attorney for Plaintiff to electronically file original document.

Exhibit F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER

v.

Plaintiff(s)

Defendant(s).

NOTICE OF ASSIGNMENT
OF PANEL MEDIATOR

_____ is assigned to serve as the Panel Mediator in the above captioned case. This assignment is made because:

- The parties have stipulated to appointment of the Panel Mediator.
- The ADR Program staff has assigned the Panel Mediator.

The mediation in this case is to be completed no later than:

- _____, as ordered by the assigned judge.
- forty-five days prior to the final pretrial conference, consistent with Civil L.R. 16-15.2.

Counsel shall familiarize themselves with the requirements of General Order No. 11-10 which governs the ADR Program. Within thirty (30) days of this Notice, the Mediator will communicate with counsel to set the date of the mediation within the time requirements set forth above. *See* General Order No. 11-10, §8.1.

Counsel are reminded that the written mediation statements which may be required by the Mediator (*see* General Order No. 11-10, §8.4) shall NOT be filed with the Court. Counsel are further reminded that each party shall appear at the mediation in person or by a representative with final authority to settle the case. *See* General Order No. 11-10, §8.5.

Clerk, U.S. District Court

Dated: _____

By: _____
ADR Program Director

ADR Program Office to electronically file original and cc: Mediator

Exhibit G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER:

v.

Plaintiff(s)

Defendant(s).

NOTICE OF
MEDIATION DATE

YOU ARE HEREBY NOTIFIED THAT THE PANEL MEDIATOR HAS SCHEDULED A MEDIATION
IN THE ABOVE-CAPTIONED CASE

for _____ at _____ a.m. / p.m.

LOCATION: _____

**The mediation session must be completed and an ADR-03 Report must be filed on or before the
Court-ordered completion date.**

Continuances are not favored and can only be granted by the Mediator up to the Court-ordered completion date. Absent extraordinary circumstances, parties cannot request a continuance within three (3) business days of a scheduled mediation.

Dated: _____

Panel Mediator: _____

Address: _____

Phone: _____

Exhibit H

Form ADR-18: Mediation Attendance Form
Deleted 8/29/13

The Court deleted form ADR-18, *Mediation Attendance Form*.

Exhibit I

Form ADR-16: Survey for Mediators and Report of Payment
Deleted 8/29/13

The Court deleted and replaced the form ADR-16, *Survey for Mediators and Report of Payment*, with an online system (Survey Monkey) to capture the responses to surveys from Panel Mediators. The survey is available on the ADR page of the Court website.

Exhibit J

Form ADR-15: ADR Program Participant Survey
Deleted 8/29/13

The Court deleted and replaced the form ADR-15, *ADR Program Participant Survey*, with an online system (Survey Monkey) to capture the responses to surveys from mediation participants. The survey is available on the ADR page of the Court website.

Exhibit K

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER

v. Plaintiff(s)

Defendant(s).

MEDIATION REPORT

Instructions: The mediator must file this Report within 5 days after the conclusion of a mediation session even if the negotiations continue. If the case later settles with the assistance of the mediator, the mediator must file a subsequent Report.

1. A mediation was held on (date): _____ .
 A mediation did not take place because the case settled before the session occurred.
2. The individual parties and their respective trial counsel, designated corporate representatives, and/or representatives of the party's insurer:
 - Appeared as required by Civil L.R. 16-15.5(b).
 - Did not appear as required by Civil L.R. 16-15.5(b).
 - Plaintiff or plaintiff's representative failed to appear.
 - Defendant or defendant's representative failed to appear.
 - Other:
3. Did the case settle?
 - Yes, fully, on _____ (date).
 - Yes, partially, and further facilitated discussions are expected. (See No. 4 below.)
 - Yes, partially, and further facilitated discussions are **not** expected.
 - No, and further facilitated discussions are expected. (See No. 4 below.)
 - No, and further facilitated discussions are **not** expected.
4. If further facilitated discussions are expected, by what date will you check in with the parties?
_____ .

Dated: _____

Signature of Mediator

Name of Mediator (print)

The Mediator is to electronically file original document.

Exhibit L

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER:

Plaintiff(s)

v.

Defendant(s).

**MEDIATION
CONFIDENTIALITY AGREEMENT**

RETURN A COPY OF THIS AGREEMENT TO THE ADR PROGRAM OFFICE. DO NOT FILE WITH THE COURT.

Consistent with Central District of California Civil L.R. 16-15, General Order 11-10, related Federal Rules of Evidence and to the extent applicable, California Evidence Code Sections 703.5 and 1115-1128, the participants in mediation in the above-captioned case agree that:

1. No written or oral communication made by any party, attorney, mediator or other participant in a mediation in the above-named case may be used for any purpose in any pending or future proceeding unless all parties, including the mediator, so agree.
2. The parties agree that evidence admissible or subject to discovery or disclosure shall not be inadmissible or protected from disclosure solely by reason of its introduction or use in the mediation. Disclosure of information that otherwise is privileged shall not alter its privileged character.
3. The parties shall not subpoena the mediator or any documents submitted to or prepared by the mediator in connection with or during the mediation. The mediator shall not testify voluntarily on behalf of a party.
4. This agreement shall not preclude the reporting of information to the Central District of California ADR Program Office pursuant to General Order 11-10.
5. In an action or proceeding to enforce a settlement, this agreement shall not render inadmissible a written settlement agreement, or a settlement placed on the record, reached as a result of the mediation.

Dated: _____

Print Name

Print Name

Signature

Signature

Email address

Email address

Describe Role in Mediation

Describe Role in Mediation

Print Name

Signature

Email address

Describe Role in Mediation

Print Name

Signature

Email address

Describe Role in Mediation

Print Name

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Describe Role in Mediation

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Describe Role in Mediation

Print Name

Signature

Email address

Describe Role in Mediation

NOTE: If additional signatures are required, attach an additional page to this request.