SUPERIOR COURT OF CALIFORNIA
COUNTY OF CALAVERAS

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

NOTICE: Pursuant to the California Rules of Court, in all general civil cases1 filed after June 30, 2001, plaintiffs must serve a copy of this ADR information package on each defendant along with the complaint. Cross-complainants shall serve a copy of the ADR information package on any new parties to the action along with the cross-complaint.

SUMMARY OF CONTENTS. This ADR information package contains (a) general information about the principal ADR processes, (b) information about ADR processes available at the court, and (c) an ADR stipulation form.

GENERAL INFORMATION ABOUT ADR. Did you know that most civil lawsuits settle without a trial? And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are know as "alternative dispute resolution" (ADR).

The most common forms of ADR are mediation, arbitration, and case evaluation. There are a number of other kinds of ADR as well. In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called "neutrals." For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court. ADR is not new. ADR is available in many communities, through dispute resolution programs and private neutrals.

Advantages of ADR - ADR can have a number of advantages over a lawsuit.

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

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

Disadvantages of ADR - ADR may not be suitable for every dispute.

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

- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

Three common Types of ADR - Following are the three most common ADR methods.

1. **Mediation**. In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do.

   Mediation is a cooperative process, in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other, where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

   Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Mediation also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how each other sees things.

   Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or cannot have enough bargaining power in mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

2. **Arbitration**. In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation, where the mediator helps the parties reach their own resolution. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Because of the large number or cases awaiting trial in many courts, a dispute normally can be heard much more quickly by an arbitrator than by a judge. Often a case that may take a week to try in court can be heard by an arbitrator in a matter or hours, because evidence can be submitted by documents (like medical reports and bills and business records), rather than by testimony.

   There are two kinds of arbitration in California. Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and, normally, is binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trail or an appeal of that decision. By contrast, a decision by an arbitrator in a case referred by the courts, known as "judicial arbitration," is not binding, unless the parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

   Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute. Arbitration may not be a good idea when the parties want to resolve their dispute by themselves, or with the aid of a neutral.

3. **Case Evaluation**. In case evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments, and makes an evaluation of the case. Each party gets a chance to present their case and hear the other side. This may lead to settlement, or at lease help the parties prepare to resolve the dispute later on.

   Case evaluation, like mediation, can come early in the dispute and save time and money. Case evaluation is most effective when someone has an unrealistic view of the dispute or when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

   Case evaluation may not be a good idea when it is too soon to tell what the case is worth or when the dispute is about something besides money, like a neighbor playing loud music late at night.

Additional Information - There are other types of ADR beside mediation, arbitration, and case evaluation. Some of these are conciliation, settlement conferences, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are using.

Two widely used ADR services are the American Arbitration Association (www.adr.org) 800/778-7879 and Judicial Arbitration / Mediation Services (www.jamsadr.com) 916/921-5300. Both services offer experienced neutrals, often retired judges or attorney specialists, who can help you set up your ADR process, agree to common rules and proceed to solving or limiting a dispute.

Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts than can be enforced by a judge. You may wish to seek the advice of any attorney as to your legal rights and other matters relating to the dispute.

COURT SUPERVISED ADR. Calaveras County Superior Court expects all attorneys and litigants to seriously consider and evaluate ADR options to be implemented in each case. The Court prefers that the parties choose the ADR process that best fits the particular needs and facts of a given dispute.(CCP § 1280 et. seq, CRC 3.830) Absent agreement by the parties, the Court requires certain cases to participate in judicial arbitration.

Court Ordered Judicial Arbitration - For applicable cases, judicial arbitration will be required as follows:

- Cases may be ordered into arbitration with or without agreement of the parties.(CCP § 1141.11, CRC 3.810)
- Unless named in a written agreement (see attached), 3 arbitrators will be selected by the court.(CRC 3.815)
- Within 10 days from the date the arbitrators are selected by the court, each party (or side) may reject one of the 3 proposed arbitrators, and the court shall appoint one of the remaining proposed arbitrators.(CRC 3.815)
- Within 15 days from the date the arbitrator is appointed by the court, the arbitrator shall notify the parties and the court of the date, time and place for the arbitration hearing.(CRC 3.815)
- No private (Ex Parte) communications with the arbitrator are allowed except as necessary for scheduling or requesting a continuance.(CRC 3.829)
- Parties that settle the case, must notify the arbitrator at least 2 days prior to the hearing.(CRC 3.829)
- Parties with authority to settle are required to be present at the arbitration hearing. (CRC 3.874)
- The arbitration hearing shall be completed within 90 days of the appointment of the arbitrator, requests for continuances to extend the 90 days, require a court order after noticed motion.(CRC 3.817 & 3.821)
- Within 10 days after the arbitration hearing, the arbitrator shall serve and file the award.(CRC 3.825)
- The arbitration award shall be final and binding unless a party files a request for trial within 30 days after the date the arbitration award was filed.(CCP 1141.20, CRC 3.826)
- If a timely request for trial is filed the case will be set on the case management calendar.(CCP § 1141.20)
- If the judgment upon trial is not more favorable than the arbitration award for the party who rejected the award and requested the trial, that party may be assessed with the other side's nonrefundable attorneys fees and costs.(CCP § 1141.21)

The following page is the court approved ADR stipulation form.

The Court Ordered Judicial Arbitration procedure outlined above is taken from the California Code of Civil Procedure and Rules of Court. The procedure has been summarized and abbreviated in order to familiarize parties with the procedure. It is not intended as legal advice or to be relied upon for any particular case. You are directed to read the entire statutory section as cited and/or consult an attorney before making a decision regarding selecting or rejecting an arbitrator, continuances, and accepting or rejecting an arbitration award.

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME, ADDRESS, PHONE) ATTORNEY FOR: (NAME)	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CALAVERAS COURT LOCATION: 400 Government Center Drive MAILING ADDRESS: 400 Government Center Drive CITY & ZIP CODE: San Andreas, CA 95249	
PLAINTIFF: VS DEFENDANT:	CASE NO.:

STIPULATION AND ORDER REFERRING MATTER TO ALTERNATIVE DISPUTE RESOLUTION

The parties hereto stipulate and agree to be bound by an order referring this case to the following alternative dispute resolution process (check one box below):

Private Mediation
Private Settlement Conference
Private Neutral Evaluation
Other ADR Process: _____

Binding Private Arbitration
Non-binding Private Arbitration
Judicial Arbitration

The ADR process will be conducted by (name of neutral): _____
Provider's Address: _____
_____
Provider's Telephone: _____ Fax: _____

The ADR process will be conducted on (date): _____ OR
The ADR process will be conducted on a date set by the neutral.

The costs for the ADR process will be shared equally by parties, OR
The costs will be borne as follows: _____

_____ _____
Type or print name of party without attorney Attorney for Plaintiff/Petitioner Defendant/Respondent/Contestant — (SIGNATURE) Attorney or party without attorney

_____ _____
Type or print name of party without attorney Attorney for Plaintiff/Petitioner Defendant/Respondent/Contestant — (SIGNATURE) Attorney or party without attorney

Additional parties' consents are attached hereto on _____ (number) additional page(s).

It is ordered that the case is referred to the ADR process indicated above. Each party must appear at such ADR process with persons having full authority to resolve the dispute.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

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