Ethical Dilemmas in ADR

Speakers:
Hon. Robert Freedman (Ret.)
Shirish Gupta

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Ethical Dilemmas in ADR

Hon. Robert B. Freedman (Ret.)
Shirish Gupta

May 1, 2019
Asian American Bar Association
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Live Polling

- We will have live polls throughout the presentation. There are two ways to participate:

1. Website: **PollEV.com/jessicad038**
2. Texting:
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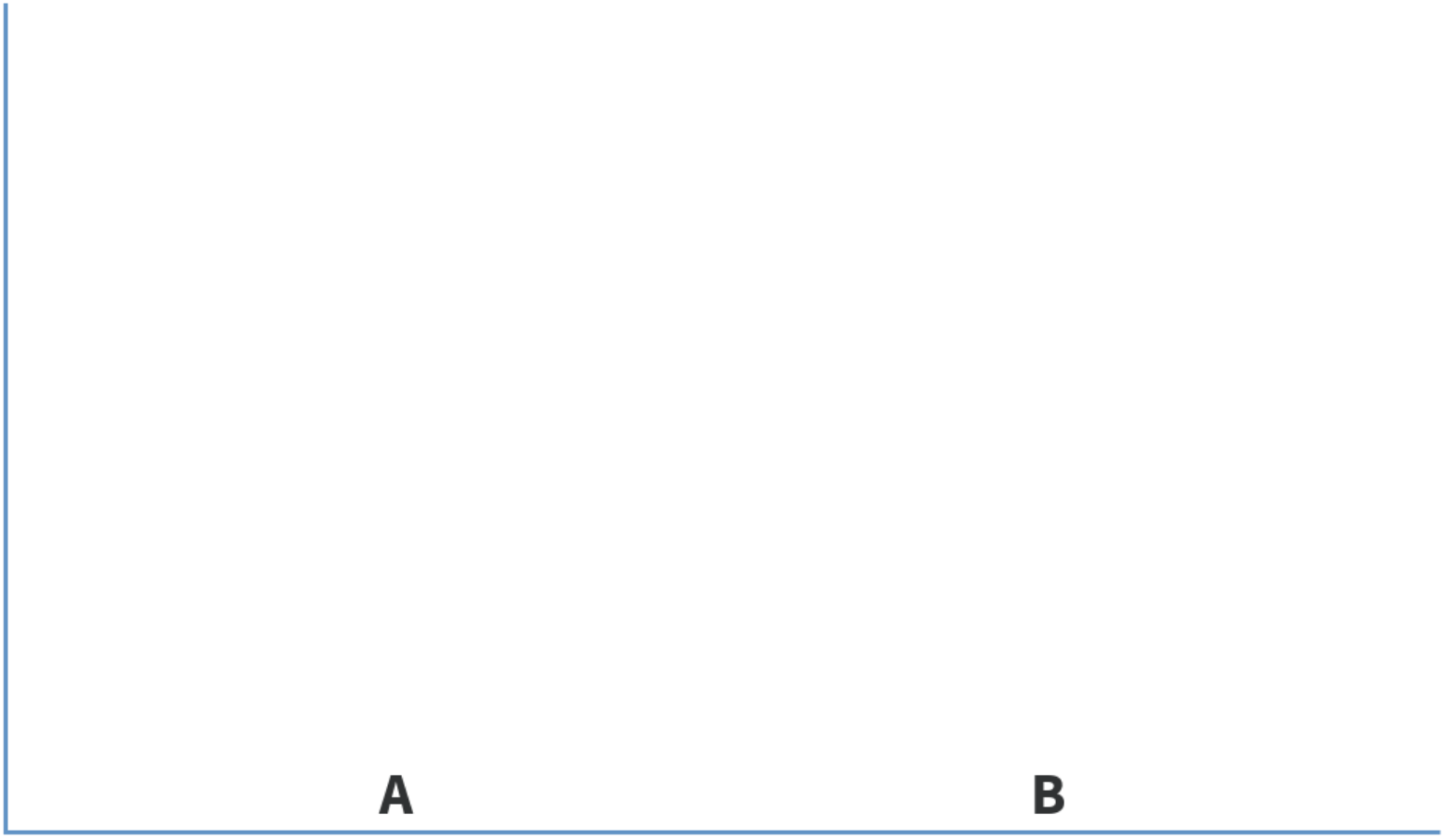


Course Overview

- Ethical issues confronting the advocate in ADR
- Ethics limits on lawyers during negotiations
- Duties of the neutral in ADR
- Confidentiality in mediation and arbitration
- Hypothetical scenarios

Hypothetical No. 1

In a conversation with her client about their looming trial date, attorney suggests mediating the case. Attorney thoroughly explains the mediation process and the confidentiality restrictions to her client.

The client gives verbal confirmation that she understands and agrees to go to mediation.

Under SB 954 is verbal confirmation sufficient?

Ethical Issues Confronting the Advocate in ADR

- Duty to explore alternatives to litigation and educate the client about available choices

- Senate Bill 954
  - Requires attorneys to provide printed disclosure of the confidentiality restrictions related to mediation that is signed by the client.
- Cal. Evidence Code §1122(a)(3)
  - a communication relating to the attorney's compliance with §1129 "may be used in an attorney disciplinary proceeding to determine whether the attorney has complied with §1129."

Rule 2.4 Lawyer as Third-Party Neutral (Effective 11/1/18)

- "(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows* or reasonably should know* that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client."

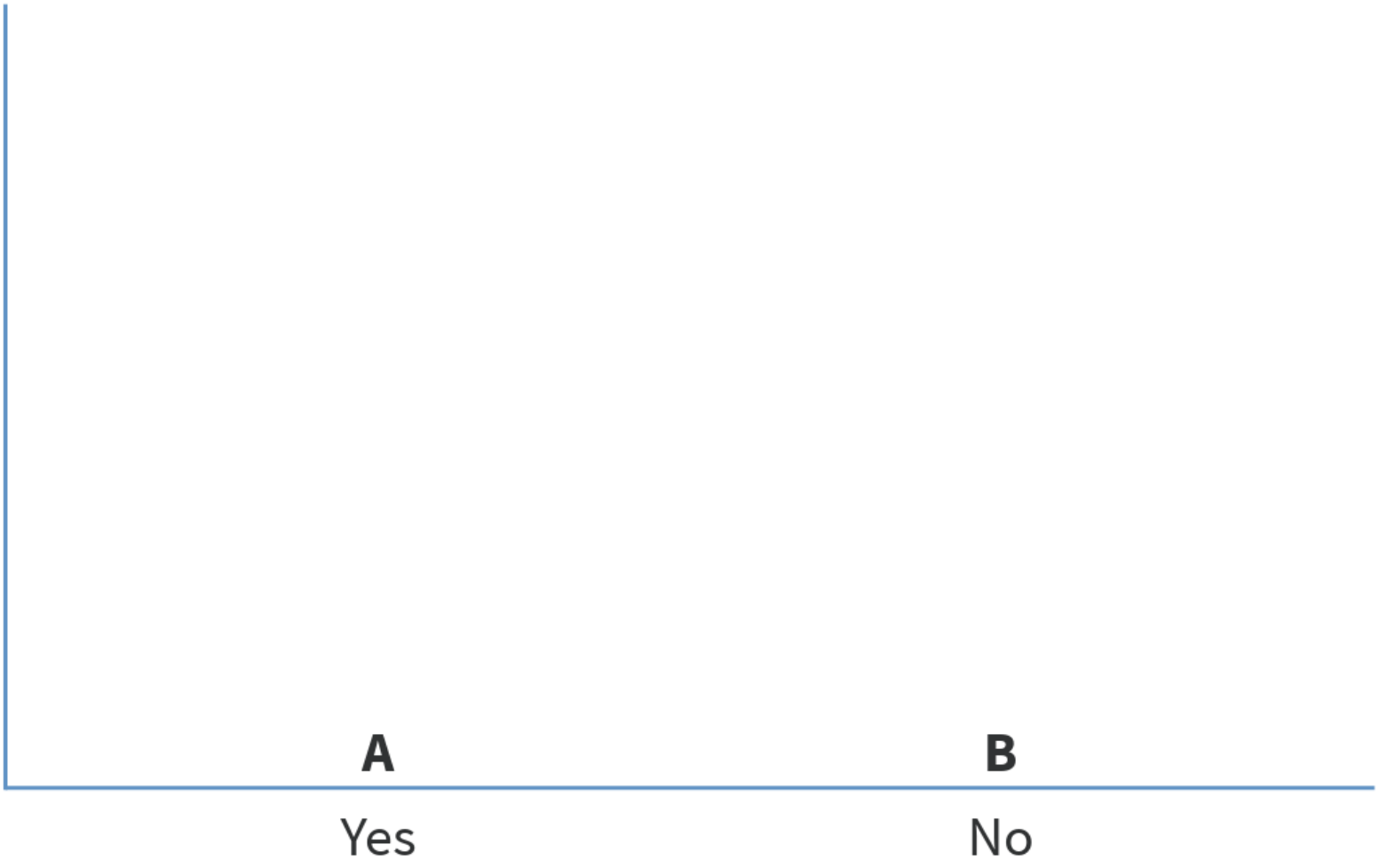
Ex Parte Communication with the Neutral

- Different rules with different types of ADR (Rule 3.5):
  - Mediation
  - Arbitration
  - Mediation/Arbitration (sometimes known as “Binding Mediation”)

Hypothetical No. 2

In the joint session, plaintiff's counsel asked defense counsel what the insurance policy limits are. Defense counsel says, "I believe we have $500,000." In separate caucus, defense counsel says the primary and excess limits are really $3 million, but refuses to allow the mediator to tell plaintiff.

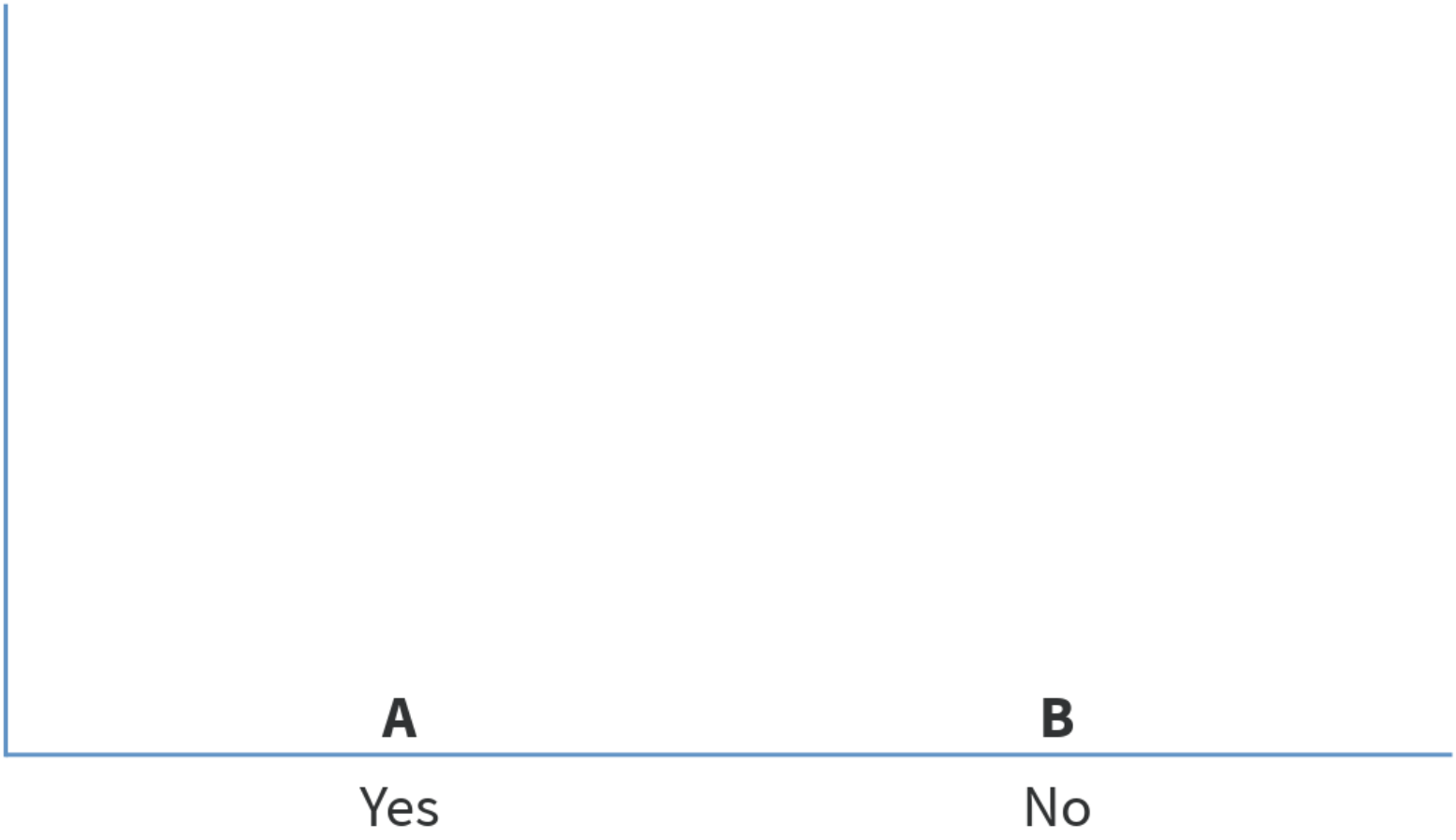
Can defense counsel ask the mediator not to tell plaintiff's counsel?



Hypothetical No. 3

In a contract dispute in which you represent a hospital making a claim against an insurance company, is it ethical for you to tell the mediator that you are authorized to settle the case for $200,000 and not a dollar less, when you know you have authority to accept $150,000?

Is it ethical for you to tell the mediator that you are authorized to settle the case for $200K when you know you have the authority to accept $150K?



Ethical Limits on Lawyers in Negotiations

- California Rules (effective 11/1/18)
  - Rule 4.1 Truthfulness in Statements to Others:
    - In the course of representing a client a lawyer shall not knowingly:*
      - (a) make a false statement of material fact or law to a third person;* or
      - (b) fail to disclose a material fact to a third person* when disclosure is necessary to avoid assisting a criminal or fraudulent* act by a client, unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e)(1) or rule 1.6.
- Bus. & Prof. Code
  - B&P Code, §6068(d) – Lawyer must employ "those means only as are consistent with truth" and not mislead any judicial officer.
  - B&P Code, §6128 – misdemeanor for lawyer to engage in any deceit of "the court or any party"

Duties of the Neutral in ADR

- Mediation
  - JAMS mediator ethical guidelines
- Arbitration
  - JAMS arbitrator ethical guidelines

Hypothetical No. 4

After a long day in mediation, the parties are close to an agreement that contains several contingencies requiring future good faith actions by the parties. The parties want to add a provision to the agreement that any future dispute relating to the settlement be subject to binding arbitration, and that the mediator be designated as the arbitrator. Can the parties and the mediator include such a provision?

Disclosure Requirements in Arbitration

- Neutral Obligation
  - *La Serena Properties, LLC v. Weisbach*, (2010) 186 Cal.App.4th 893, 112 Cal.Rptr.3d 597
  - *Honeycutt v. JPMorgan Chase Bank, N.A.* (2018) 25 Cal.App.5th 909

Arbitrators accepting other matters

- Ethics Standards for Neutral Arbitrators in Contractual Arbitration (adopted by the California Judicial Council)
  - Standard 12. Duties and limitations regarding future professional relationships or employment
- JAMS Arbitrator Ethics Guidelines
  - Section V: An arbitrator should ensure that he or she has no known conflict of interest regarding the case, and should endeavor to avoid any appearance of a conflict of interest.
    - D. An Arbitrator's disclosure obligations continue throughout the course of the Arbitration and require the Arbitrator to disclose, at any stage of the Arbitration, any such interest or relationship that may arise, or that is recalled or discovered. Disclosure should be made to all Parties, and the Arbitrator should accept such work only where the Arbitrator believes it can be undertaken without an actual or apparent conflict of interest. Where more than one Arbitrator is appointed, each should inform the others of the interests and relationships that have been disclosed.

Hypothetical No. 5

- What should a mediator do when during a mediation one of the lawyers tells the mediator she wants to propose her as an arbitrator in a large trade secret dispute that will require a three-week hearing?
- Does the mediator need to disclose this communication to the other side?
- Is the answer different if this occurs during an arbitration?

Hypothetical No. 6

In a mediation involving workplace sexual harassment claims, employer's counsel offers to settle the claim for a substantial sum on the condition that the claimant agrees not to disclose the settlement or identity of the parties or disparage the employer.

Is such an agreement in compliance with applicable law?

Does it make any difference if the mediation takes place before any civil action has been filed?

Hypothetical No. 6- continued

- Is the result any different if the settlement is proposed to resolve an ongoing arbitration or mediation?

- Why?

Confidentiality in Mediation

New additions to be aware of:

- Senate Bill 1300:
  - Unlawful employment practices: discrimination and harassment.
- Senate Bill 820:
  - Settlement agreements: confidentiality.

Confidentiality in Mediation

- Cal. Evidence Code §1119(b)
  - Admissibility/discovery/disclosure
  - *Rojas v. Superior Court (2004) 33 Cal.4th 407*
    - ✓ *Supreme Court rejected a "good cause" exception to the mediation privilege in finding that the "mediation privilege for "writings" applied to witness' statements, analyses of raw test data, and photographs prepared during mediation..."*
- Cal. Evidence Code §1119(c)
  - Communications confidential
- Cal. Evidence Code §1120
  - Exceptions to confidentiality
- Cal. Evidence Code §1121
  - Mediator Reports to the Judge

Confidentiality in Mediation

- Cal. Evidence Code §1122
  - Exceptions to Admissibility
    - ✓Waiver by parties
    - ✓3rd Party Rule
    - ✓Waiver by Neutral
- Cal. Evidence Code §703.5
  - Exceptions for certain family members

Confidentiality in Mediation

- JAMS Confidentiality Agreement
  - Cal. Evidence Code §1115-1128
  - CCP §664.6
  - Provides there is NO waiver of privilege by disclosure to mediator
- Waiver of 10 day automatic termination of mediation (Cal. Evidence Code §1125)
- CCP §2031.1 (Elder Abuse Cases)
  - Confidential settlements disfavored since 2004
- Injunction available for a party's breach of confidentiality

Confidentiality in Arbitration

- JAMS Rule 26(b)- Protective order from the arbitrator
  - Confidentiality covers arbitrator and JAMS, not the parties or witnesses, unless there is a protective order

- Included in the arbitration clause in the contract?

Hypothetical No. 7

The parties to a mediation reach a settlement during the course of the mediation, which is reduced to a writing and signed by all the parties at the mediation. The agreement does not recite the fact that the parties intend the agreement to be enforceable or binding, nor does it reference CCP §664.6. However, the settlement agreement is very detailed in all other respects.

Is the settlement agreement admissible or enforceable?

Settlement Agreements

- Written Settlement Agreement binding and enforceable by a court (CCP §664.6)
  - Thomas Dee Engineering Co., Inc v. Khtikian, A150008, 2018 WL 258998 (Cal. Ct. App., January 2, 2018) (*Note: Unpublished)*
- Importance of making agreement admissible (Evid. Code §1123) *Fair v. Bakhtiari (2006)*, 40 Cal.4th 189; *Stewart v. Preston Pipeline Inc. (2005)* 134 Cal. App. 4th 1565
- Mediator not acting as a lawyer – even if helps prepare settlement agreement
- Tax Implications of settlements?

Hypothetical No. 8

- Is it ethical for a lawyer to tell the mediator privately that his client is a knucklehead, and the lawyer wants the mediator to “get tough” to persuade the client to settle?
- What about this scenario? The client asks the mediator for his/her opinion of a final offer. Before answering, the mediator and counsel discuss the mediator’s opinion on the offer. The attorney thinks it is a very good offer while the mediator does not. The attorney then instructs the mediator to decline answering his client’s inquiry. Is it ok for the attorney to make this request? What should the mediator do?

Final Thoughts

- Questions?
- Thank you!

Senate Bill No. 954

CHAPTER 350

An act to amend Section 1122 of, and to add Section 1129 to, the Evidence Code, relating to mediation.

[Approved by Governor September 11, 2018. Filed with Secretary of State September 11, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 954, Wieckowski. Mediation: confidentiality: disclosure.

Under existing law, if a person consults a mediator or consulting service for the purpose of retaining mediation services, or if persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of a mediation consultation or in the course of the mediation is not admissible in evidence nor subject to discovery, and all communications, negotiations, and settlement discussions by and between participants or mediators are confidential, except as specified.

This bill would, except in the case of a class or representative action, require an attorney representing a person participating in a mediation or a mediation consultation to provide his or her client, as soon as reasonably possible before the client agrees to participate in the mediation or mediation consultation, with a printed disclosure, as specified, containing the confidentiality restrictions related to mediation, and to obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions. If an attorney is retained after an individual agrees to participate in a mediation or mediation consultation, the bill would require the attorney to comply with the printed disclosure and acknowledgment requirements as soon as reasonably possible after being retained. The bill would specify language that would be deemed compliant with the aforementioned printed disclosure and acknowledgment requirements. The bill would also provide that the failure of an attorney to comply with these disclosure requirements does not invalidate an agreement prepared in the course of, or pursuant to, a mediation. The bill would further provide that a communication, document, or writing related to an attorney's compliance with the disclosure requirements is not confidential and may be used in an attorney disciplinary proceeding if the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

The people of the State of California do enact as follows:

SECTION 1. Section 1122 of the Evidence Code is amended to read:

1122. (a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if any of the following conditions are satisfied:

(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(3) The communication, document, or writing is related to an attorney's compliance with the requirements described in Section 1129 and does not disclose anything said or done or any admission made in the course of the mediation, in which case the communication, document, or writing may be used in an attorney disciplinary proceeding to determine whether the attorney has complied with Section 1129.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

SEC. 2. Section 1129 is added to the Evidence Code, to read:

1129. (a) Except in the case of a class or representative action, an attorney representing a client participating in a mediation or a mediation consultation shall, as soon as reasonably possible before the client agrees to participate in the mediation or mediation consultation, provide that client with a printed disclosure containing the confidentiality restrictions described in Section 1119 and obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions.

(b) An attorney who is retained after an individual agrees to participate in the mediation or mediation consultation shall, as soon as reasonably possible after being retained, comply with the printed disclosure and acknowledgment requirements described in subdivision (a).

(c) The printed disclosure required by subdivision (a) shall:

(1) Be printed in the preferred language of the client in at least 12-point font.

(2) Be printed on a single page that is not attached to any other document provided to the client.

(3) Include the names of the attorney and the client and be signed and dated by the attorney and the client.

(d) If the requirements in subdivision (c) are met, the following disclosure shall be deemed to comply with the requirements of subdivision (a):

Mediation Disclosure Notification and Acknowledgment

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

• All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.

• Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.

• A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.

• A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

I, _____ [Name of Client], understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation.

NOTE: This disclosure and signed acknowledgment does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.

[Name of Client] _____ [Date signed] _____
[Name of Attorney] _____ [Date signed] _____

(e) Failure of an attorney to comply with this section is not a basis to set aside an agreement prepared in the course of, or pursuant to, a mediation.

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Mediators Ethics Guidelines

Introduction
The purpose of these Ethics Guidelines is to provide basic guidance to JAMS mediators regarding ethical issues that may arise during or related to the mediation process. Mediation is a voluntary, non-binding process using a neutral third party to help the parties reach a mutually beneficial resolution of their dispute. A mediator helps the parties reach a resolution by facilitating communication, promoting understanding, assisting them in identifying and exploring issues, interests and possible bases for agreement, and in some matters, helping parties evaluate the likely outcome in court or arbitration if they cannot reach settlement through mediation.

Mediation is by its nature a fluid and flexible process. JAMS mediators are not expected to adhere to any one process or approach, and are encouraged to rely on their creativity and experience to tailor each mediation as much as appropriate to meet the needs of the participants.

These Guidelines are national in scope and are necessarily general. They are not intended to supplant applicable state or local laws or rules. All JAMS mediators should be aware of applicable state statutes or court rules that may apply to the mediations they are conducting. In the event that these Guidelines are inconsistent with such statutes or rules, the mediators must comply with the applicable law.

Attorney mediators in particular should also be aware of state-specific rulings or guidance as to whether and in what circumstances mediation may be considered the practice of law. These rulings may have an impact on a mediator's practice in such respects as advertising and co-mediating with non-attorneys. In addition, mediators who are former judges should be aware of any state ethical standards or canons of judicial conduct regulating or guiding their efforts as mediators. Other professionals, such as licensed psychologists, also may have similar standards of conduct that may affect their mediation practice.

JAMS strongly encourages its mediators to confront directly any ethical issues that arise in their cases as soon as the issue becomes apparent, and to seek advice on how to resolve such issues from the Regional Management Team.

I. A MEDIATOR SHOULD ENSURE THAT ALL PARTIES ARE INFORMED ABOUT THE MEDIATOR'S ROLE AND NATURE OF THE MEDIATION PROCESS, AND THAT ALL PARTIES UNDERSTAND THE TERMS OF SETTLEMENT.

A mediator should ensure that all parties understand and agree to mediation as a process, the mediator's role in that process and all parties' relationship to the mediator. The parties should also understand the particular procedures the mediator intends to employ, including whether and in what manner the mediator may help the parties evaluate the likely outcome of the dispute in court or arbitration if they cannot reach settlement through mediation. In addition, a mediator should be satisfied that the parties have considered and understood the terms of any settlement, and should, if appropriate, advise the parties to seek legal or other specialized advice.

If the mediator perceives that a party is unable to give informed consent to participation in the process or to the terms of settlement due to, for example, the impact of a physical or mental impairment, the process should not continue until the mediator is satisfied that such informed consent has been obtained from the party or the party's duly authorized representative.

In the event that, prior to or during a mediation session, it becomes appropriate to discuss the possibility of combining mediation with binding arbitration, the mediator should explain how a mediator's role and relationship to the parties may be altered, as well as the impact such a shift may have on the disclosure of information to the mediator. The parties should be given the opportunity to select another neutral to conduct the arbitration procedure.

II. A MEDIATOR SHOULD PROTECT THE VOLUNTARY PARTICIPATION OF EACH PARTY.

The right of the parties to reach a voluntary agreement is central to the mediation process. Consequently, a mediator should act and conduct the process in ways that maximize its voluntariness.

In most cases that are not court-ordered, parties to the mediation process arrive willing and able to engage in assisted negotiation. On infrequent occasions, however, a mediator may perceive that a party is being forced into and/or through the process, for example, by a family member or representative. In that event, a mediator should explore carefully with that party and the other parties, within the bounds of discretion and confidentiality, whether the mediation process should proceed, and, in any case, strive to ensure that the concerns of the reluctant party regarding the process are fully addressed.

Court-ordered mediation often carries an aspect of involuntariness into the process. A mediator should be sensitive to this dynamic and assure the parties that although they have been ordered to attend the mediation, a settlement can be reached only if it is to their mutual satisfaction.

III. A MEDIATOR SHOULD BE COMPETENT TO MEDIATE THE PARTICULAR MATTER.

A mediator should have sufficient knowledge of relevant procedural and substantive issues to be effective. It is the mediator's responsibility to prepare before the mediation session by reviewing any statements or documents submitted by the parties. A mediator should refuse to serve or withdraw from the mediation if the mediator becomes physically or mentally unable to meet the reasonable expectations of the parties.

IV. A MEDIATOR SHOULD MAINTAIN THE CONFIDENTIALITY OF THE PROCESS.

It is crucial that the mediator and all parties have a clear understanding as to confidentiality before the mediation begins. Before a mediation session begins, a mediator should explain to all parties (a) any applicable laws, rules or agreements prohibiting disclosure in subsequent legal proceedings of offers and statements made and documents produced during the session, and (b) the mediator's role in maintaining confidences within the mediation and as to third parties.

A mediator should not disclose confidential information without permission of all parties or unless required by law, court rule or other legal authority. A mediator must not use confidential information acquired during the mediation to gain personal advantage or advantage for others, or to affect adversely the interests of others. If the mediation is being conducted under rules or laws that require disclosure of certain information, a mediator should so notify the parties prior to beginning the mediation session. In addition, a mediator's notes, the parties' submissions and other documents containing confidential or otherwise sensitive information should be stored in a reasonably secure location and may be destroyed 90 days after the mediation has been completed or sooner if all parties so request or consent.

V. A MEDIATOR SHOULD CONDUCT THE PROCESS IMPARTIALLY.

A mediator should remain impartial throughout the course of the mediation. A mediator should be aware of and avoid the potential for bias based on the parties' backgrounds, personal attributes, or conduct during the session, or based on any pre-existing knowledge of or opinion about the merits of the dispute being mediated. A mediator should endeavor to provide a procedurally fair process in which each party is given an adequate opportunity to participate. If a mediator becomes incapable of maintaining impartiality, the mediator should withdraw promptly.

A mediator should disclose any information that reasonably could lead a party to question the mediator's impartiality. A mediator may proceed with the process unless a party objects to continuing service. A mediator should withdraw if a conflict of interest exists that casts serious doubt on the integrity of the process.

After a mediation is completed, a mediator should refrain from any conduct involving a party, insurer or counsel to the mediation that reasonably would cast doubt on the integrity of the mediation process, absent disclosure to and consent by all parties to the mediation. This does not preclude the mediator from serving as a mediator or in another dispute resolution capacity with a party, insurer or counsel involved in the prior mediation.

A mediator should exercise caution in accepting items of value, including gifts or payments for meals, from a party, insurer or counsel to a mediation during or after a mediation, particularly if the items are accepted at such a time and in such a manner as to cast doubt on the integrity of the mediation process.

A mediator should also avoid conflicts of interest in recommending the services of other professionals. If a mediator is unable to make a personal recommendation without creating a potential or actual conflict of interest, the mediator should so advise the parties and refer them to a professional referral service or association.

The JAMS Conflict of Interest Policy provides additional information regarding restricted conduct and should be adhered to by a JAMS mediator.

VI. A MEDIATOR SHOULD REFRAIN FROM PROVIDING LEGAL ADVICE.

A mediator should ensure that the parties understand that the mediator's role is that of neutral intermediary, not that of representative of or advocate for any party. A mediator should not offer legal advice to a party. If a mediator offers an evaluation of a party's position or of the likely outcome in court or arbitration, or offers a recommendation with regard to settlement, the mediator should ensure that the parties understand that the mediator is not acting as an attorney for any party and is not providing legal advice.

A mediator should be particularly sensitive to role differences if any party is unrepresented by counsel at the mediation, and should explain carefully the limitations of the mediator's role and obtain a written waiver of representation from each unrepresented party. If a mediator assists in the preparation of a settlement agreement and if counsel for any party is not present, the mediator should advise each unrepresented party to have the agreement independently reviewed by counsel prior to executing it.

A mediator should make an effort to keep abreast of developments within the mediator's jurisdiction concerning what constitutes the practice of law. Different bar associations have issued conflicting opinions about whether and when a mediator engages in the practice of law, and certain states or courts have rules regarding how and in what manner a mediator may evaluate the merits of a dispute.

VII. A MEDIATOR SHOULD WITHDRAW UNDER CERTAIN CIRCUMSTANCES.

A mediator should withdraw from the process if the mediation is being used to further illegal conduct, or for any of the reasons set forth above: lack of informed consent, a conflict of interest that has not or cannot be waived, a mediator's inability to remain impartial, or a mediator's physical or mental disability. In addition, a mediator should be aware of the potential need to withdraw from the case if procedural or substantive unfairness appears to have undermined the integrity of the mediation process.

VIII. A MEDIATOR SHOULD AVOID MARKETING THAT IS MISLEADING AND SHOULD NOT GUARANTEE RESULTS.

A mediator should ensure that any advertising or other marketing conducted on the mediator's behalf is truthful. A mediator should not guarantee results, especially if such guarantee could be perceived as favoring one type of disputant or industry over another.

For more information, please call your local JAMS office at 1-800-352-5267.

Arbitrators Ethics Guidelines

Introduction

A. The purpose of these Ethics Guidelines is to provide basic guidance to JAMS Arbitrators regarding ethical issues that may arise during or related to the Arbitration process. Arbitration is an adjudicative dispute resolution procedure in which a neutral decision maker issues an Award. Parties are often represented by counsel who argue the case before a single Arbitrator or a panel of three Arbitrators, who adjudicate, or judge, the matter based on the evidence presented.

B. Arbitration - either entered into voluntarily after a dispute has occurred, or as agreed to in a pre-dispute contract clause - is generally binding. By entering into the Arbitration process, the Parties have agreed to accept an Arbitrator's decision as final. There are instances when an Arbitrator's decision may be modified or vacated, but they are extremely rare. The Parties in an Arbitration trade the right to full review for a speedier, less expensive and private process in which it is certain there will be an appropriately expeditious resolution.

C. Other sets of ethics guidelines for Arbitrators exist, such as those promulgated by the National Academy of Arbitrators and jointly by the American Arbitration Association and the American Bar Association. An Arbitrator may wish to review these for informational purposes.

D. These Guidelines are national in scope and are necessarily general. They are not intended to supplant applicable state or local law or rules. An Arbitrator should be aware of applicable state statutes or court rules, such as laws concerning disclosure that may apply to the Arbitrations being conducted. In the event that these Guidelines are inconsistent with such statutes or rules, an Arbitrator must comply with the applicable law.

E. In addition, most states have promulgated codes of ethics for judges and other public judicial officers. In some instances, these codes apply to certain activities of private judges, such as court-ordered Arbitrations. Arbitrators should comply with codes that are specifically applicable to them or to their activities. Where the codes do not specifically apply, an Arbitrator may choose to comply voluntarily with the requirements of such codes.

F. The ethical obligations of an Arbitrator begin as soon as the Arbitrator becomes aware of potential selection by the Parties and continue even after the decision in the case has been rendered. JAMS strongly encourages Arbitrators to address ethical issues that may arise in their cases as soon as an issue becomes apparent, and where appropriate to seek advice on how to resolve such issues from the National Arbitration Committee.

G. The Guidelines in Articles I through IX apply to neutral Arbitrators regardless of the method by which they may have been selected. Article X is intended to apply to Party-appointed Arbitrators who are non-neutral.

Many Arbitration agreements provide for the appointment of an Arbitrator by each Party and the appointment of the third Arbitrator by the two Party-appointed Arbitrators. Party-appointed Arbitrators should be presumed to be neutral, unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise.

1. Where the Party-appointed Arbitrator is expected to be non-neutral, some of the Guidelines applicable to neutral Arbitrators do not apply or are altered to suit this process. For example, while non-neutral Arbitrators must disclose any matters that might affect their independence, the opposing Party ordinarily may not disqualify such person from service as an Arbitrator.
2. It is appropriate for the party appointed arbitrators to address the status of their service with the party that appointed them, with each other and with the neutral arbitrator and to determine whether the Parties would prefer that they act in a neutral capacity.

3. *Note regarding international Arbitrations.* Tripartite Arbitrations in which the Parties each appoint one Arbitrator are common in international disputes; however, all Arbitrators, by whomever appointed, are expected to be independent of the Parties and to be neutral. They are sometimes expected to communicate *ex parte* with the Party that appointed them solely for purposes of the selection of the chairman and not otherwise.

H. These Guidelines do not establish new or additional grounds for judicial review of Arbitration Awards.

Guidelines

I. AN ARBITRATOR SHOULD UPHOLD THE DIGNITY AND INTEGRITY OF THE OFFICE OF THE ARBITRATION PROCESS.

An Arbitrator has a responsibility to the Parties, to other participants in the proceeding, and to the profession. An Arbitrator should seek to discern and refuse to lend approval or consent to any attempt by a Party of its representative to use Arbitration for a purpose other than the fair and efficient resolution of a dispute.

II. AN ARBITRATOR SHOULD BE COMPETENT TO ARBITRATE THE PARTICULAR MATTER.

An Arbitrator should accept an appointment only if the Arbitrator meets the Parties' stated requirements in the agreement to arbitrate regarding professional qualifications. An Arbitrator should prepare before the Arbitration by reviewing any statements or documents submitted by the Parties. An Arbitrator should refuse to serve or should withdraw from the Arbitration if the Arbitrator becomes physically or mentally unable to meet the reasonable expectations of the Parties.

III. AN ARBITRATOR SHOULD INFORM ALL PARTIES OF THE ROLE OF THE ARBITRATOR AND THE RULES OF THE ARBITRATION PROCESS.

A. An Arbitrator should ensure that all Parties understand the Arbitration process, the Arbitrator's role in that process, and the relationship of the Parties to the Arbitrator.

B. An Arbitrator may encourage the Parties to mediate their dispute but should not suggest that the Arbitrator serve as the mediator. In the event that, prior to or during the Arbitration, all Parties request an Arbitrator to participate in discussions of settlement or to combine the Arbitration with another dispute resolution process, the Arbitrator should explain how the Arbitrator's role and relationship to the Parties may be altered, including the impact such a shift may have on the willingness of the Parties to disclose certain information to the Arbitrator serving in the settlement-related role. Nothing in these Guidelines is intended to prevent an Arbitrator from acting as a neutral in another dispute resolution process in the same case, if requested to do so by all Parties and if an appropriate written waiver is obtained. The Parties should, however, be given the opportunity to select another neutral to conduct any such process.

IV. AN ARBITRATOR SHOULD MAINTAIN CONFIDENTIALITY APPROPRIATE TO THE PROCESS.

A. Unless otherwise agreed by the Parties, or required by applicable rules or law, an Arbitrator should keep confidential all matters relating to the Arbitration proceedings and decisions.

B. An Arbitrator should not discuss a case with persons not involved directly in the Arbitration unless the identity of the Parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification.

C. An Arbitrator may discuss a case with another member of the Arbitration panel hearing that case, whether or not all panel members are present.

D. An Arbitrator should not use confidential information acquired during the Arbitration proceeding to gain personal advantage or advantage of others, or to affect adversely the interest of another. An Arbitrator should not inform anyone of the decision in advance of giving it to all Parties. Where there is more than one Arbitrator, an Arbitrator should not disclose to anyone the deliberations of the Arbitrators.

E. An Arbitrator should not participate in post-Award proceedings, except (1) if requested to make a correction to or clarification of an Award, (2) if required by law or (3) if requested by all Parties to participate in a subsequent dispute resolution procedure in the same case.

V. AN ARBITRATOR SHOULD ENSURE THAT HE OR SHE HAS NO KNOWN CONFLICT OF INTEREST REGARDING THE CASE, AND SHOULD ENDEAVOR TO AVOID ANY APPEARANCE OF A CONFLICT OF INTEREST.

A. An Arbitrator should promptly disclose, or cause to be disclosed all matters required by applicable law and any actual or potential conflict of interest or relationship or other information, of which the Arbitrator is aware, that reasonably could lead a Party to question the Arbitrator's impartiality.

B. An Arbitrator may establish social or professional relationships with lawyers and members of other professions. There should be no attempt to be secretive about such relationships but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

C. An Arbitrator should not proceed with the process unless all Parties have acknowledged and waived any actual or potential conflict of interest. If the conflict of interest casts serious doubt on the integrity of the process, an Arbitrator should withdraw, notwithstanding receipt of a full waiver.

D. An Arbitrator's disclosure obligations continue throughout the course of the Arbitration and require the Arbitrator to disclose, at any stage of the Arbitration, any such interest or relationship that may arise, or that is recalled or discovered. Disclosure should be made to all Parties, and the Arbitrator should accept such work only where the Arbitrator believes it can be undertaken without an actual or apparent conflict of interest. Where more than one Arbitrator is appointed, each should inform the others of the interests and relationships that have been disclosed.

E. An Arbitrator should avoid conflicts of interest in recommending the services of other professionals. If an Arbitrator is unable to make a personal recommendation without creating a potential or actual conflict of interest, the Arbitrator should so advise the Parties and refer them to a professional service, provider or association.

F. After an Award or decision is rendered in an Arbitration, an Arbitrator should refrain from any conduct involving a Party, insurer or counsel to a Party to the Arbitration that would cast reasonable doubt on the integrity of the Arbitration process, absent disclosure to and consent by all the Parties to the Arbitration. This does not preclude an Arbitrator from serving as an Arbitrator or in another neutral capacity with a Party, insurer or counsel involved in the prior Arbitration, provided that appropriate disclosures are made about the prior Arbitration to the Parties to the new matter.

G. Other than agreed fee and expense reimbursement, an Arbitrator should not accept a gift or item of value from a Party, insurer or counsel to a pending Arbitration. Unless a period of time has elapsed sufficient to negate any appearance of a conflict of interest, an Arbitrator should not accept a gift or item of value from a Party to a completed Arbitration, except that this provision does not preclude an Arbitrator from engaging in normal, social interaction with a Party, insurer or counsel to an Arbitration once the Arbitration is completed.

H. Where relevant state or local rule or statute is more specific than these Guidelines as to Arbitrator disclosure, it should be followed.

VI. AN ARBITRATOR SHOULD ENDEAVOR TO PROVIDE AN EVENHANDED AND UNBIASED PROCESS AND TO TREAT ALL PARTIES WITH RESPECT AT ALL STAGES OF THE PROCEEDINGS.

A. An Arbitrator should remain impartial throughout the course of the Arbitration. Impartiality means freedom from favoritism either by word or action. The Arbitrator should be aware of and avoid the potential for bias based on the Parties' backgrounds, personal attributes or conduct during the Arbitration, or based on the Arbitrator's pre-existing knowledge of or opinion about the merits of the dispute being arbitrated. An Arbitrator should not permit any social or professional relationship with a Party, insurer or counsel to a Party to an Arbitration to affect his or her decision-making. If an Arbitrator becomes incapable of maintaining impartiality, the Arbitrator should withdraw.

B. An Arbitrator should perform duties diligently and conclude the case as promptly as the circumstances reasonably permit. An Arbitrator should be courteous to the Parties, to their representatives and to the witnesses, and should encourage similar conduct by all participants in the proceedings. An Arbitrator should make all reasonable efforts to prevent the Parties, their representatives, or other participants from engaging in delaying tactics, harassment of Parties or other participants, or other abuse or disruption of the Arbitration process.

C. Unless otherwise provided in an agreement of the Parties, (1) an Arbitrator should not discuss a case with any Party in the absence of every other Party, except that if a Party fails to appear at a hearing after having been given due notice, the Arbitrator may discuss the case with any Party who is present; and (2) whenever an Arbitrator communicates in writing with one Party, the Arbitrator should, at the same time, send a copy of the communication to every other Party. Whenever an Arbitrator receives a written communication concerning the case from one Party that has not already been sent to each Party, the Arbitrator should do so.

D. When there is more than one Arbitrator, the Arbitrators should afford each other full opportunity to participate in all aspects of the Arbitration proceedings.

VII. AN ARBITRATOR SHOULD WITHDRAW UNDER CERTAIN CIRCUMSTANCES.

A. An Arbitrator should withdraw from the process if the Arbitration is being used to further criminal conduct, or for any of the reasons set forth above - insufficient knowledge of relevant procedural or substantive issues, a conflict of interest that has not been or cannot be waived, the Arbitrator's inability to maintain impartiality, or the Arbitrator's physical or mental disability. In addition, an Arbitrator should be aware of the potential need to withdraw from the case if procedural or substantive unfairness appears to have irrevocably undermined the integrity of the Arbitration process.

B. Except where an Arbitrator is obligated to withdraw or where all Parties request withdrawal, an Arbitrator should continue to serve in the matter.

VIII. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A. An Arbitrator should, after careful deliberation and exercising independent judgment, promptly or otherwise within the time period agreed to by the Parties or by JAMS Rules, decide all issues submitted for determination and issue an Award. An Arbitrator's Award should not be influenced by fear or criticism or by any interest in potential future case referrals by any of the Parties or counsel, nor should an Arbitrator issue an Award that reflects a compromise position in order to achieve such acceptability. An Arbitrator should not delegate the duty to decide to any other person.

B. If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator should comply with such request unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she may inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

IX. AN ARBITRATOR SHOULD UPHOLD THE DIGNITY AND INTEGRITY OF THE ARBITRATION PROCESS IN MATTERS RELATING TO MARKETING AND COMPENSATION.

An Arbitrator should avoid marketing that is misleading or that compromises impartiality. An Arbitrator should ensure that any advertising or other marketing to the public conducted on the Arbitrator's behalf is truthful. An Arbitrator may discuss issues relating to compensation with the Parties but should not engage in such discussions if they create an appearance of coercion or other impropriety and should not engage in *ex parte* communications regarding compensation.

X. ETHICAL GUIDELINES APPLICABLE TO NON-NEUTRAL ARBITRATORS.

These Guidelines are applicable to non-neutral Arbitrators, except as follows:

Guideline III: A non-neutral Arbitrator should ensure that all Parties and other Arbitrators are aware of his or her non-neutral status.

Guideline V: A non-neutral Arbitrator is obligated to make disclosures of any actual or potential conflicts of interest, although a non-neutral Arbitrator is not obligated to withdraw if requested to do so only by the party who did not appoint him or her.

Guideline VI:

1. A non-neutral Arbitrator may be predisposed toward the Party who appointed him or her but in all other respects is obligated to act in good faith and with integrity and fairness.
2. A non-neutral Arbitrator may engage in *ex parte* communication with the Party that appointed him or her, but should disclose to the Parties and the other Arbitrators the fact that such communications are occurring and should honor any agreement reached with the Parties and the other Arbitrators regarding the timing and nature of such communications.

Guideline IX: The compensation arrangements between a non-neutral Arbitrator and the Party that appointed him or her usually is treated as confidential but may be disclosed in connection with any fee application in the Arbitration proceeding.

For more information, please call your local JAMS office at 1-800-352-5267.

MEMORANDUM

TO: All parties (see attached service list):
FROM: JAMS
DATE:
RE:

JAMS Ref. #: Panelist:

Your confidence in selecting JAMS to arbitrate this matter is appreciated. In accordance with the disclosure requirements of C.C.P. §§ 170.1, 1281.6, 1281.85, 1281.9, 1281.95, and 1297.121; JAMS Ethical Guidelines for Arbitrators, and California Rules of Court Ethics Standards for Neutral Arbitrators in Contractual Arbitration the following information is submitted.

Based upon the arbitrator's own knowledge as well as a good faith search of records available to the arbitrator and JAMS personnel and, further based on the information supplied concerning the names of the parties and their counsel, we attach a disclosure report and checklist listing any prior or pending cases involving the parties, counsel or counsels' firms. The attached report was prepared by JAMS personnel and reviewed by the arbitrator. Nothing in this report would, in the arbitrator's opinion, prohibit the arbitrator from impartially serving in this case.

The nominated or appointed arbitrator has made a reasonable effort to inform him/herself of any matters that could cause a person aware of the facts to reasonably entertain a doubt that as the proposed arbitrator s/he would be able to be impartial. In addition, s/he has disclosed all such matters to the parties to the best of his/her knowledge according to statutory and ethical guidelines. CRC Ethics Standards 7(b). With respect to any service commenced prior to July 1, 2002 by the arbitrator as a dispute resolution neutral other than as an arbitrator in another pending or prior case involving a party or lawyer in the current arbitration or a lawyer who is currently associated in the private practice of law with a lawyer in the arbitration, the arbitrator has sought the information from the dispute resolution provider organizations administering those prior services and has disclosed all required information within the arbitrator's knowledge pertaining to those services/relationships. CRC Ethics Standards 7(b)(5)(D).

Each participant in this arbitration is asked to advise all parties and JAMS of any information that is inconsistent with or not included in the provided disclosure, such as any matters that may affect the arbitrator's ability to be impartial. Please advise the arbitrator's Case Manager %%CA_NAME at %%CA_PHONE if you know of any additional information that should be in the disclosure report to all parties. The Case Manager can arrange a conference call to discuss any supplemental information or disclosure questions. JAMS and the arbitrator will rely upon the parties' disclosure to us of information which is inconsistent with or not included in the disclosure provided.

Please be advised that if item 16 of the Arbitrator Disclosure Checklist is checked "yes," the arbitrator **will** entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party, lawyer in the arbitration, or lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration while that arbitration is pending, including offers to serve as a dispute resolution neutral in another case. In non-consumer arbitrations, this disclosure satisfies the arbitrator's continuing obligation pursuant to Ethics Standards 7(e), and constitutes a waiver of any further requirement to disclose subsequent employment involving the same parties or lawyers or law firms. Any request to disqualify an arbitrator after appointment shall be governed by the applicable JAMS Rules.

DISCLOSURE CHECKLIST FOR ALL ARBITRATIONS

Arbitrator Disclosure Checklist pursuant to:

- CCP §§ 170.1, 1281.6, 1281.85 1281.9, 1281.95, 1297.121
- JAMS Ethical Guidelines for Arbitrators
- California Rules of Court Ethics Standards for Neutral Arbitrators in Contractual Arbitration (hereinafter "CRC Ethics Standards")

Case Title:
JAMS Ref. #:
Panelist Name:
Checklist supplements disclosure reports 16A & 16C

	Yes	No
1. Arbitrator or member of arbitrator's Immediate or Extended Family [The term "member of the arbitrator's 'Extended Family'" includes the members of arbitrator's Immediate Family (The term "member of arbitrator's 'Immediate Family'" includes the arbitrator's spouse or domestic partner, as defined in Family Code section 297, and a minor child living in arbitrator's household) and the parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, siblings, uncles, aunts, nephews, or nieces of the arbitrator or the arbitrator's spouse or domestic partner or the spouse or domestic partner of such person.] is a party, the spouse or domestic partner of a party, an officer, director, or trustee of a party? CRC Ethics Standards 7(d)(1).	( )	( )
2. a. Arbitrator, or the spouse, former spouse, domestic partner, child, sibling, or parent of the arbitrator or the arbitrator's spouse or domestic partner is:		
(A) A lawyer in the arbitration?	( )	( )
(B) The spouse or domestic partner of a lawyer in the arbitration?	( )	( )
(C) Currently associated in private practice of law with a lawyer in the arbitration? CRC Ethics Standards 7(d)(2).	( )	( )
2.b. Has the arbitrator or the arbitrator's spouse or domestic partner been associated in the private practice of law with a lawyer in the arbitration within the preceding two years? CRC Ethics Standards 7(d)(2)(B).	( )	( )
3. Arbitrator or a member of arbitrator's Immediate Family has or has had a significant personal relationship with any party or lawyer for a party? CRC Ethics Standards 7(d)(3).	( )	( )
4. Arbitrator is serving or within preceding 5 years has served:		
(A) As a neutral arbitrator in another arbitration involving a party, lawyer for a party, or law firm for a party to the current arbitration?	( )	( )
(B) As a party-appointed arbitrator in another arbitration for either a party, lawyer for a party, or law firm for a party?	( )	( )
(C) As a neutral arbitrator in another arbitration in which s/he was selected by a person serving as a party-appointed arbitrator in the current arbitration?	( )	( )

If the combined total of the cases disclosed under (A), (B) or (C) is greater than 5, arbitrator must state the total number of cases in which arbitrator served in each capacity and the number of cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party. CRC Ethics Standards 7(d)(4)(C).

Yes **No**

5. Arbitrator is serving or has served as a dispute resolution neutral other than an arbitrator in another pending or Prior Case involving a party or lawyer in the current arbitration or a lawyer who is currently associated in the private practice of law with a lawyer in the arbitration? ( ) ( )

(A) For purposes of this question "Prior Case" means any case in which the arbitrator concluded his/her service as a dispute resolution neutral within 2 years prior to the date of the arbitrator's proposed nomination or appointment.
(B) If the arbitrator is serving or has served in such capacity, s/he must disclose:

(i) the names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case;

(ii) the dispute resolution neutral capacity (mediator, referee, etc.) in which the arbitrator is serving or served in the case; and

(iii) in each such case in which the arbitrator rendered a decision as a temporary judge or referee, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(C) If the total number or cases disclosed under this question is greater than 5, the arbitrator must provide a summary of the cases that states (i) the number of pending cases in which the arbitrator is currently serving in each capacity; (ii) the number of prior cases in which the arbitrator previously served in each capacity; (iii) the number of prior cases in which the arbitrator rendered a decision as a temporary judge or referee; and (iv) the number of such prior cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party. CRC Ethics Standards 7(d)(5)(c).
This information is set forth in the attached Disclosure Reports.

6.a. Arbitrator has or has had an attorney-client relationship with a party or lawyer for a party to the current arbitration, including:

(A) An officer, a director, or trustee of a party is or, within the preceding 2 years, was a client of the arbitrator in the arbitrator's private practice of law or a client of a lawyer with whom the arbitrator is or was associated in the private practice of law? ( ) ( )
(B) In any other proceeding involving the same issues, the arbitrator gave advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration? ( ) ( )
(C) The arbitrator served as a lawyer for or as an officer of a public agency which is a party and personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration. CRC Ethics Standards 7(d)(7). ( ) ( )

6.b. The arbitrator or a member of the arbitrator's Immediate Family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a party or for a lawyer in the arbitration. CRC Ethics Standards 7(d)(8). ( ) ( )

7. Arbitrator or arbitrator's Immediate Family has or has had any other professional relationship with a party or lawyer for a party? CRC Ethics Standards 7(d)(9). ( ) ( )

8. Arbitrator or member of arbitrator's Immediate Family has a Financial Interest in a party? ( ) ( )
CRC Ethics Standards 7(d)(10).

The term "Financial Interest" according to Calif. Code of Civil Procedure § 170.5 means ownership of more than a 1% legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of $1,500, or a relationship as director, advisor or other active participant in the affairs of a party except as follows: (1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest"

in those securities unless the judge participates in the management of the fund. (2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization. (3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

	Yes	**No**
9. Arbitrator or member of arbitrator's Immediate Family has a financial interest in the subject matter of the arbitration? CRC Ethics Standards 7(d)(11).	( )	( )
10. Arbitrator or member of arbitrator's Immediate Family has an interest that could be substantially affected by the outcome of the arbitration? CRC Ethics Standards 7(d)(12).	( )	( )
11. Arbitrator or member of arbitrator's Immediate or Extended Family has personal knowledge of disputed evidentiary facts relevant to the arbitration? A person likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts. CRC Ethics Standards 7(d)(13).	( )	( )
12. Is the arbitrator a member of an organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation? Membership in a religious organization, official military organization of the United States, or a nonprofit youth organization need not be disclosed unless it would interfere with the arbitrator's proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning the arbitrator's ability to act impartially. CRC Ethics Standards 7(d)(14).	( )	( )
13. Is there any other matter that:		
(A) Might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial?	( )	( )
(B) Leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration?	( )	( )
(C) Otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice? CRC Ethics Standards 7(d)(15).	( )	( )
14. Is the arbitrator not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment? CRC Ethics Standards 7(e)(2).	( )	( )
15. Are there any constraints on the arbitrator's availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner? CRC Ethics Standards 7(e)(2).	( )	( )
16. Will the arbitrator entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party, lawyer in the arbitration, or lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration while that arbitration is pending, including offers to serve as a dispute resolution neutral in another case? CRC Ethics Standards 7(b)(2). **If this is a nonconsumer arbitration, this disclosure constitutes a waiver of any further requirement to disclose offers of subsequent employment involving the same parties or lawyers or law firms. (CRC Ethics Standards 12(b).) If this is a consumer arbitration, the arbitrator will inform the parties of a subsequent offer while this arbitration is pending. (CRC Ethics Standards 12(d).**	( )	( )
17. Does the arbitrator have any current arrangement with a party concerning prospective employment or other compensated service as a dispute resolution neutral or is he or she participating in or, within the last two		

years, has he or she participated in discussions regarding such prospective employment or service with a party? CRC Ethics Standards 7(d)(6). (**X**) ( )
The arbitrator is a full-time dispute resolution neutral, working exclusively through JAMS. It is possible that over the past two (2) years, the neutral or JAMS has been contacted by a party or one or more of the attorneys in this case regarding prospective employment on another matter which may or may not have resulted in his or her selection.

Yes **No**

18. Has or will the arbitrator at any time, without the informed written consent of a party, enter(ed) into any professional relationship or accept(ed) employment in another matter in which information that s/he has received in confidence from a party by reason of serving as an arbitrator in a case is material? CRC Ethics Standards 12(e). ( ) ( )

19. In a binding arbitration of any claim for more than three thousand dollars ($3,000) pursuant to a contract for the construction or improvement of residential property consisting of one to four units, the arbitrator shall, within 10 days following his or her appointment, provide to each party a written declaration under penalty of perjury disclosing the following: N/A ____

(A) Whether the arbitrator or his/her employer or arbitration service had or has a personal or professional affiliation with either party? ( ) ( )

(B) Whether the arbitrator or his/her employer or arbitration service has been selected or designated as an arbitrator by either party in another transaction? CCP § 1281.95. ( ) ( )

20. Has the arbitrator sought information about relationships or other matters involving his or her Immediate Family, Extended Family living in his or her household, and former spouse? CRC Ethics Standards 9(b). (**X**) ( )
Unless otherwise disclosed below, the arbitrator has made a general inquiry of his or her family members about their potential connection to matters that may be handled by the arbitrator. Those family members have indicated they do not intend to provide the arbitrator with specific information or answer specific inquiries. The arbitrator will advise the parties of any connections of which s/he is independently aware by virtue of his/her direct knowledge and will make specific inquiries where so warranted or specifically requested by a party. Otherwise, this satisfies the disclosure requirements of Ethics Standard 9(b) and constitutes a waiver of any further requirement to make specific inquiry of family members.

21. Do you participate in social networking sites such as Facebook, Twitter, or LinkedIn? ( ) ( )

If the arbitrator marked this question, "Yes," it is possible that one of the lawyers or member of a law firm involved in this matter is in some way connected to the Arbitrator through this professional networking application. However, none of these contacts rises to the level of a prior business relationship that might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial, unless otherwise noted below.

22. Has the arbitrator been disbarred or had his or her license to practice a profession or occupation revoked by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere? CRC Ethics Standards 7(e). ( ) ( )

23. Has the arbitrator resigned his or her membership in the State Bar or another professional or occupational licensing agency or board, whether in California or elsewhere, while public or private disciplinary charges were pending? CRC Ethics Standards 7(e). ( ) ( )

24. Other than that covered under Question 22 above, within the preceding 10 years, has public discipline been imposed on the arbitrator by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere? CRC Ethics Standards 7(e). ( ) ( ).

Public discipline means any disciplinary action imposed on the arbitrator that the professional occupational disciplinary agency or licensing board identifies in its publicly available records or in response to a request for information about the arbitrator from a member of the public.

25. The following immediate family members of the arbitrator are admitted to the practice of law (provide relationship to arbitrator, name and law firm):

The attorneys listed above have declined to provide any information with respect to their cases or clients, as such information is confidential. The arbitrator has no independent knowledge of any such matters to disclose.

If the arbitrator has answered "yes" to any of the above questions, except questions 16, 17, and 20, s/he will explain below and/or see attached rider:

Question #:	Explanation:
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Declarations of Arbitrator:

1. Having been nominated or appointed as an arbitrator, I have made a reasonable effort to inform myself of any matters that could cause a person aware of the facts to reasonably entertain a doubt that as the arbitrator I would be able to be impartial. In addition, I have disclosed all such matters to the parties. CRC Ethics Standards 7(d).

2. With respect to any service commenced prior to July 1, 2002 by me as a dispute resolution neutral other than as an arbitrator in another pending or prior case involving a party or lawyer in the current arbitration or a lawyer who is currently associated in the private practice of law with a lawyer in the arbitration, I have sought the information from the dispute resolution provider organizations administering those prior services and have disclosed all required information within my knowledge pertaining to those services/relationships. CRC Ethics Standards 9.

3. I practice in association with JAMS. Each JAMS neutral, including me, has an economic interest in the overall financial success of JAMS. In addition, because of the nature and size of JAMS, the parties should assume that one or more of the other neutrals who practice with JAMS has participated in an arbitration, mediation or other dispute resolution proceeding with the parties, counsel or insurers in this case and may do so in the future.

4. My responses to the questions above are true and correct to the best of my knowledge, and I realize that my response to question # 19 above is declared under penalty of perjury.

5. Please note JAMS neutrals regularly engage in speaking engagements, CLEs, discussion groups and other professional activities, and it is possible that a lawyer or law firm connected with this proceeding either attended, participated or was on a panel with the Arbitrator.

6. Attached are the JAMS Arbitration Administration Policies and Arbitrator Fee Schedule, which, along with the rules applicable to this particular arbitration, address disclosures required by CRC Ethics Standard 16.

Date:_____ Signature of Arbitrator:_____

Important Note Regarding Consumer Arbitration:

Based on the parties' written submissions, JAMS has determined that this:

IS <u>NOT</u> a Consumer Arbitration ( )

<u>IS</u> a Consumer Arbitration ( )
See "Supplemental Arbitrator Disclosure for Consumer Arbitrations."

As defined by California Rules of Court Ethics Standards for Neutral Arbitrators, Standard 2(d) and (e):

"Consumer arbitration" means an arbitration conducted under a pre-dispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

(1) The contract is with a consumer party, as defined below;

(2) The contract was drafted by or on behalf of the non-consumer party; and

(3) The consumer party was required to accept the arbitration provision in the contract.

"Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

(1) An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;

(2) An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;

(3) An individual with a medical malpractice claim that is subject to the arbitration agreement; or

(4) An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

Senate Bill No. 1300

CHAPTER 955

An act to amend Sections 12940 and 12965 of, and to add Sections 12923, 12950.2, and 12964.5 to, the Government Code, relating to employment.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1300, Jackson. Unlawful employment practices: discrimination and harassment.

The California Fair Employment and Housing Act (FEHA) prohibits various actions as unlawful employment practices unless the employer acts based upon a bona fide occupational qualification or applicable security regulations established by the United States or the State of California. In this regard, FEHA makes it an unlawful employment practice for an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to engage in harassment of an employee or other specified person. FEHA also makes harassment of those persons by an employee, other than an agent or supervisor, unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.

Under FEHA, an employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees and other specified persons, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

This bill would specify that an employer may be responsible for the acts of nonemployees with respect to other harassment activity.

The bill, with certain exceptions, would prohibit an employer, in exchange for a raise or bonus, or as a condition of employment of continued employment, from requiring the execution of a release of a claim or right under FEHA or from requiring an employee to sign a nondisparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment. The bill would provide that an agreement or document in violation of either of those prohibitions is contrary to public policy and unenforceable.

FEHA provides that an employer may be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors,

knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

This bill would instead make the above provision apply with respect to any type of harassment prohibited under FEHA of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace.

FEHA requires employers with 50 or more employees to provide at least 2 hours of prescribed training and education regarding sexual harassment to all supervisory employees within 6 months of their assumption of a supervisory position and once every 2 years, as specified.

This bill would also authorize an employer to provide bystander intervention training, as specified, to their employees.

FEHA authorizes the court in certain circumstances and in its discretion to award the prevailing party in a civil action reasonable attorney's fees and costs, including expert witness fees.

This bill would provide that a prevailing defendant is prohibited from being awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought or that the plaintiff continued to litigate after it clearly became so.

This bill would declare the intent of the Legislature about the application of FEHA in regard to harassment.

This bill would incorporate additional changes to Section 12940 of the Government Code proposed by SB 1038 to be operative only if this bill and SB 1038 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 12923 is added to the Government Code, immediately following Section 12922, to read:

12923. The Legislature hereby declares its intent with regard to application of the laws about harassment contained in this part.

(a) The purpose of these laws is to provide all Californians with an equal opportunity to succeed in the workplace and should be applied accordingly by the courts. The Legislature hereby declares that harassment creates a hostile, offensive, oppressive, or intimidating work environment and deprives victims of their statutory right to work in a place free of discrimination when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine the victim's personal sense of well-being. In this regard, the Legislature affirms its approval of the standard set forth by Justice Ruth Bader Ginsburg in her concurrence in Harris v. Forklift Systems (1993) 510 U.S. 17 that in a workplace harassment suit "the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment. It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment

so altered working conditions as to make it more difficult to do the job." (Id. at 26).

(b) A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment. In that regard, the Legislature hereby declares its rejection of the United States Court of Appeals for the 9th Circuit's opinion in Brooks v. City of San Mateo (2000) 229 F.3d 917 and states that the opinion shall not be used in determining what kind of conduct is sufficiently severe or pervasive to constitute a violation of the California Fair Employment and Housing Act.

(c) The existence of a hostile work environment depends upon the totality of the circumstances and a discriminatory remark, even if not made directly in the context of an employment decision or uttered by a nondecisionmaker, may be relevant, circumstantial evidence of discrimination. In that regard, the Legislature affirms the decision in Reid v. Google, Inc. (2010) 50 Cal.4th 512 in its rejection of the "stray remarks doctrine."

(d) The legal standard for sexual harassment should not vary by type of workplace. It is irrelevant that a particular occupation may have been characterized by a greater frequency of sexually related commentary or conduct in the past. In determining whether or not a hostile environment existed, courts should only consider the nature of the workplace when engaging in or witnessing prurient conduct and commentary is integral to the performance of the job duties. The Legislature hereby declares its disapproval of any language, reasoning, or holding to the contrary in the decision Kelley v. Conco Companies (2011) 196 Cal.App.4th 191.

(e) Harassment cases are rarely appropriate for disposition on summary judgment. In that regard, the Legislature affirms the decision in Nazir v. United Airlines, Inc. (2009) 178 Cal.App.4th 243 and its observation that hostile working environment cases involve issues "not determinable on paper."

SEC. 2. Section 12940 of the Government Code is amended to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an

employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business

necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of

those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or

observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

SEC. 2.5. Section 12940 of the Government Code is amended to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring

into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color,

national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(B) An employee of an entity subject to this subdivision who is alleged to have engaged in any harassment prohibited by this section may be held personally liable for any act in violation of subdivision (h).

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely and good faith interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

SEC. 3. Section 12950.2 is added to the Government Code, to read:

12950.2. An employer may also provide bystander intervention training that includes information and practical guidance on how to enable bystanders to recognize potentially problematic behaviors and to motivate bystanders to take action when they observe problematic behaviors. The training and education may include exercises to provide bystanders with the skills and confidence to intervene as appropriate and to provide bystanders with resources they can call upon that support their intervention.

SEC. 4. Section 12964.5 is added to the Government Code, to read:

12964.5. (a) It is an unlawful employment practice for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, to do either of the following:

(1) (A) For an employer to require an employee to sign a release of a claim or right under this part.

(B) As used in this section, "release of claim or right" includes requiring an individual to execute a statement that he or she does not possess any claim or injury against the employer or other covered entity, and includes the release of a right to file and pursue a civil action or complaint with, or otherwise notify, a state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity.

(2) (A) For an employer to require an employee to sign a nondisparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment.

(B) For purposes of this paragraph, "information about unlawful acts in the workplace" includes, but is not limited to, information pertaining to sexual harassment or any other unlawful or potentially unlawful conduct.

(b) Any agreement or document in violation of this section is contrary to public policy and shall be unenforceable.

(c) (1) This section does not apply to a negotiated settlement agreement to resolve an underlying claim under this part that has been filed by an employee in court, before an administrative agency, alternative dispute resolution forum, or through an employer's internal complaint process.

(2) As used in this section, "negotiated" means that the agreement is voluntary, deliberate, and informed, provides consideration of value to the employee, and that the employee is given notice and an opportunity to retain an attorney or is represented by an attorney.

SEC. 5. Section 12965 of the Government Code is amended to read:

12965. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, mediation, or persuasion, or in advance thereof if circumstances warrant, the director in the director's discretion may bring a civil action in the name of the department on behalf of the person claiming to be aggrieved. Prior to filing a civil action, the department shall require all parties to participate in mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation. In any civil action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by that person's own counsel. The civil action shall be brought in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office.

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, mediation, or civil action pursuant to Section 12961, a civil action shall be brought, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, a civil action shall be brought, if at all, within two years after the filing of the complaint. For all other complaints, a civil action shall be brought, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation, mediation, or civil action as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If a civil action is not brought by the department within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees, except that, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.

(c) A court may grant as relief in any action filed pursuant to subdivision (a) any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures. In addition, in order to vindicate the purposes

and policies of this part, a court may assess against the defendant, if the civil complaint or amended civil complaint so prays, a civil penalty of up to twenty-five thousand dollars ($25,000) to be awarded to a person denied any right provided for by Section 51.7 of the Civil Code, as an unlawful practice prohibited under this part.

(d) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

(3) This subdivision is intended to codify the holding in Downs v. Department of Water and Power of City of Los Angeles (1997) 58 Cal.App.4th 1093.

(e) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Equal Employment Opportunity Commission to the Department of Fair Employment and Housing.

(C) After investigation and determination by the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission agrees to perform a substantial weight review of the determination of the department or conducts its own investigation of the claim filed by the aggrieved person.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) shall expire when the federal right-to-sue period to commence a civil action expires, or one year from the date of the

right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and Senate Bill 1038. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 12940 of the Government Code, and (3) this bill is enacted after Senate Bill 1038, in which case Section 2 of this bill shall not become operative.

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Senate Bill No. 820

CHAPTER 953

An act to add Section 1001 to the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 820, Leyva. Settlement agreements: confidentiality.

Existing law prohibits a provision in a settlement agreement that prevents the disclosure of factual information related to the action in a civil action with a factual foundation establishing a cause of action for civil damages for certain enumerated sexual offenses. Existing law prohibits a court from entering an order in any of these types of civil actions that restricts disclosure of this information, as specified, and it makes a provision in a settlement agreement that prevents the disclosure of factual information related to the action, entered into on or after January 1, 2017, void as a matter of law and against public policy.

This bill would prohibit a provision in a settlement agreement that prevents the disclosure of factual information relating to certain claims of sexual assault, sexual harassment, or harassment or discrimination based on sex, that are filed in a civil or administrative action. The bill would make a provision in a settlement agreement that prevents the disclosure of factual information related to the claim, as described in the bill, entered into on or after January 1, 2019, void as a matter of law and against public policy. The bill would also provide that a court may consider the pleadings and other papers in the record, or any other findings of the court in determining the factual foundation of the causes of action specified in these provisions. The bill would create an exception, not applicable if a party is a government agency or public official, for a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, if the provision is included within the settlement agreement at the request of the claimant.

The people of the State of California do enact as follows:

SECTION 1. Section 1001 is added to the Code of Civil Procedure, immediately preceding Section 1002, to read:

1001. (a) Notwithstanding any other law, a provision within a settlement agreement that prevents the disclosure of factual information related to a

claim filed in a civil action or a complaint filed in an administrative action, regarding any of the following, is prohibited:

(1) An act of sexual assault that is not governed by subdivision (a) of Section 1002.

(2) An act of sexual harassment, as defined in Section 51.9 of the Civil Code.

(3) An act of workplace harassment or discrimination based on sex, or failure to prevent an act of workplace harassment or discrimination based on sex or an act of retaliation against a person for reporting harassment or discrimination based on sex, as described in subdivisions (h), (i), (j), and (k) of Section 12940 of the Government Code.

(4) An act of harassment or discrimination based on sex, or an act of retaliation against a person for reporting harassment or discrimination based on sex, by the owner of a housing accommodation, as described in Section 12955 of the Government Code.

(b) Notwithstanding any other law, in a civil matter described in paragraphs (1) to (4), inclusive, of subdivision (a), a court shall not enter, by stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with subdivision (a).

(c) Notwithstanding subdivision (a) and (b), a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, including pleadings filed in court, may be included within a settlement agreement at the request of the claimant. This subdivision does not apply if a government agency or public official is a party to the settlement agreement.

(d) Except as authorized by subdivision (c), a provision within a settlement agreement that prevents the disclosure of factual information related to the claim described in subdivision (a) that is entered into on or after January 1, 2019, is void as a matter of law and against public policy.

(e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the disclosure of the amount paid in settlement of a claim.

(f) In determining the factual foundation of a cause of action for civil damages under subdivision (a), a court may consider the pleadings and other papers in the record, or any other findings of the court.

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Hon. Robert B. Freedman (Ret.)

Case Manager

Aimee Hwang
T: 415-774-2607
F: 415-982-5287
Two Embarcadero Center, Suite 1500, San Francisco, CA 94111
ahwang@jamsadr.com

Biography

Hon. Robert B. Freedman (Ret.) brings to JAMS 21 years of experience on trial courts in Alameda County and 27 years of civil litigation experience as an attorney prior to joining the bench. Having served as the Assistant Presiding Judge, as well as Supervising Judge/Civil Direct Calendaring, he values efficiency and enjoys working with technically savvy attorneys.

Respected by lawyers on both sides of the aisle, Judge Freedman places a high premium on civility and is lauded for his even-handed demeanor. Described by those who have appeared before him as exceptionally bright, he is able to quickly grasp complex issues.

ADR Experience and Qualifications

- Served as Assistant Presiding Alameda County Superior Court.
- Presided over cases in the Alameda Superior Court Complex Litigation Department and as Asbestos Case Management Judge.
- Presided over and settled countless matters in all areas of civil litigation including asbestos, employment class actions, construction defect, personal injury and governmental agency disputes.

Representative Matters

Business/Commercial

- *Randolph v. AT&T Wireless, RG05-193855.* Class alleged AT&T Wireless's unfair and deceptive practice of imposing an undisclosed charge to customers, applied like a tax, to recover a business overhead expense it had to pay to operate as a wireless carrier
- *Thomas v Global Vision Products RG03-091195.* $30 million settlement agreement between Global Vision Products Inc. and a class of plaintiffs that claimed the company falsely billed its hair loss treatment system and that the TV, radio, print and Internet ad campaigns used fabricated medical studies, fictitious clinics and experts, and unsubstantiated testimony
- *General Motors Dex-Cool/Gasket Cases JCCP004495.* Nationwide class action brought by motorists who claimed GM's Dex-Cool coolant damaged the engines in their vehicles; the settlement resolved the claims of all plaintiffs except those in Missouri, and awarded refunds of up to $800 to current and former owners and lessees of certain GM models for related engine repairs; recovery by class members truncated after GM entered bankruptcy
- *In re Chiron Shareholder Deal RG05-230567.* Class action brought by shareholders seeking injunctive relief to prevent the controlling shareholder, from acquiring the remaining shares for an inadequate price and alleging that the defendants misused non-public information about the company to acquire it at a significant discount from its true value
- *Staudenraus v. Bisno.* Matter involving a claim of investor fraud by a limited partner against a general partner

Construction Defect/Insurance

- *Golden State Developers v. Allied Insurance Corporation* and cross-actions RG10509252. Insurance Coverage/Bad Faith action involving multiple residential developments and related construction defect actions and cross claims for contribution among carriers

Employment

- *Savaglio, et al. a. Wal-Mart Stores, Inc., et al. A110120, A111606*. Resolved post-trial motions in a statewide wage and hour class action in which a jury awarded a class of 116,000 Wal-Mart workers $57 million in compensatory damages and $115 million in punitive damages for missed meal and rest breaks
- *Andrews v. Lawrence Livermore National Laboratory.* Wrongful termination case with 130 individual plaintiffs alleging age discrimination which was litigated in two separate jury trials; matter settled while cross-appeals pending
- *Duran v. U.S. Bank, No. 2001-35537.* Wage and hour class action involving business bankers and the outside salesperson exemption. California Supreme Court provided guidance for the certification of class actions in wage and hour misclassification litigation and the use of representative testimony and statistical evidence at trial of such a class action
- *Washington Mutual /JP Morgan Chase Wage & Hour Cases JCCP0044976.* Three class actions alleging the banks failed to pay overtime to a group of about 4,000 current and former loan consultants across the nation; resulted in a $38 million settlement

Government/Public Agency

- *Alliance For McKillop Road v. City of Oakland January 28, 2008No. RG07342506.* Claims brought by property owners against several public entities for damage arising out of a May 13, 2006, landslide caused by soil erosion in Sausal Creek which damaged private residences on McKillop Road, the road itself, and sewer and water lines
- *Capitol People First v. Department of Developmental Services, et al.* Class action involving persons with developmental disabilities in California who reside in facilities with a capacity of 16 or more, and persons at risk of placement in such facilities alleging violation of the Lanterman Developmental Disabilities Services Act, state nondiscrimination laws and the Americans with Disabilities Act; settlement required the state to increase efforts to inform about options, and to assign caseworkers to annual status meetings, scheduled so the patients can attend

Honors, Memberships, and Professional Activities

- Judicial Member, Board of Governors of the Association of Business Trial Lawyers, Northern California Chapter, 2007-Present
- Member, Information Technology Advisory Committee (formerly Court Technology Advisory Committee) to the Judicial Council, 2014- 2017
- Distinguished Judicial Service Award, San Francisco Trial Lawyers Association, 2012
- Board of Trustees, Bernard E. Witkin Alameda County Law Library, 2000-2007
    - President, 2003-2004
- Alameda County Trial Judge of the Year, Alameda-Contra Costa Trial Lawyers Association, 2008
- Faculty member at the California Judicial College, 1998-2002
- President, Alameda County Bar Foundation, 1995
- Member, Civil and Small Claims Advisory Committee to the California Judicial Council
- President, Alameda County Bar Association, 1988

ADR Profiles

- "Judge's Judge," Daily Journal, ADR Profile, December 21, 2018

Background and Education

- Judge, Alameda County Superior Court, 1998-2017
- Judge, Oakland-Piedmont-Emeryville Municipal Court, 1996-1998
- Solo Practitioner, 1995-1996
- Partner, Wald, Freedman, Chapman, and Bendes (and predecessor entities), 1969-1995
- J.D., University of California, Berkeley School of Law (formerly Boalt Hall), 1968
- B.A., with Honors, University of California, Los Angeles, 1965

*Judge Freedman was disciplined in 2007 by the Commission on Judicial Performance for not deciding bench trial decisions and motions within the required 90 days. Thereafter, Judge Freedman went on to serve the court for ten more years as one of its leaders, handling complex cases and the court's technology committee. For further details regarding the discipline, please see the Commission's website.

Disclaimer

Shirish Gupta

Case Manager

Cynthia Victory
T: 408-346-0736
F: 408-295-5267
160 W. Santa Clara St., Suite 1600, San Jose, CA 95113
cvictory@jamsadr.com

Biography

Shirish Gupta is an award-winning neutral known for his legal acumen and economic prowess, which makes him particularly adept at diving into complex financial/technical disputes, including IP, securities and accounting, and class actions. Shirish is sought out by Silicon Valley startups, as well as Fortune 500 companies. In 2014, *The Recorder* conducted an extensive survey of Bay Area attorneys and named Shirish the Best Independent Mediator.

Shirish is an active, hands-on mediator who works with the parties until the matter is fully resolved. For example, he once mediated a global settlement of all 36 pending and contemplated actions.

Prior to joining JAMS, Shirish practiced law with Mayer Brown, Howard Rice and Flashpoint Law. His practice focused on the areas he specializes in as a neutral – commercial, securities, class actions, IP, founder disputes and employment.

In 2013, Shirish's mediation skills were recognized when he was recruited to mediate Superstorm Sandy insurance coverage claims in New York. At the peak, he was mediating and resolving 4 claims per day. In 2016-2018, Shirish recognized the ongoing harm caused by Sandy and helped resolve homeowner flood insurance claims in New York and New Jersey, taking the time to learn the homeowner’s concerns and helping explain the intricacies of FEMA’s flood insurance policies.

Shirish serves as a Lecturer at UC Berkeley Law School and an Adjunct Professor at UC Hastings. He is sought out by law firms and in-house departments for mediation and negotiation trainings.

Shirish has been a leader in the majority and diverse bar associations. Shirish served as Co-Chair of the California State Bar Council of Sections, President of the South Asian Bar of Northern California and Alternate Regional Governor of National Asian Pacific American Bar Association. He currently serves in the Intellectual

Property Section of Asian Pacific American Bar Association of Silicon Valley.

When not mediating, Shirish can usually be found on a soccer pitch refereeing.

ADR Experience and Qualifications

- Active ADR practice since 2010
- *Recorder's* Best Independent Mediator for 2014
- Lecturer at UC Berkeley School of Law
- Adjunct Professor of Law at UC Hastings

Representative Matters

Mr. Gupta has mediated or arbitrated disputes over the following issues:

- **Banking**
  - Identity theft victim claiming that the issuer illegally did a hard pull to verify a fraudulent credit application
  - Debtor claiming that collection agency illegally disclosed collection efforts to a third party
  - Whether CRAs and creditors adequately and timely reported the notices of bankruptcy
  - Homeowner claiming that he was not given adequate notice of foreclosure sale
  - Multiple homeowners claiming that they were given mortgages they could not afford and should not have qualified for
  - Multiple homeowners claiming that the banks were not processing their HAMP properly
- **Business/Commercial**
  - **Tech**
    - Contract dispute between Fortune 50 companies over mutual obligations under a Master SLA and numerous amendments
    - SAAS provider non-payment claim against cryptocurrency client
    - University alleging that software developer failed to meet milestones and deliver working software
    - International dispute between European software developer and US platform over software license payments and automatic renewals
    - Dispute between a software developer and a Fortune 100 virtual cloud provider alleging breach of software licensing agreement
    - Outside sales company claiming failure to pay over $300k in commissions for sales of startup company's software
    - Contract dispute between software developer/IT services provider and hardware company claiming $1.5M breach of payment terms
    - Asset purchaser claiming engineering staffing company misrepresented the value of its service contracts
    - Dispute between a smartphone company and an IT services provider claiming nonperformance.
    - Payment dispute between a Russian software developer and a Bay Area startup
    - Dispute between a retail PoS integrator and Southern California retail chain over payment and performance
    - Dispute between a mobile app developer and a startup customer alleging $400k in unpaid development fees with customer counter-claiming for a refund due to allegedly defective apps
    - Dispute between EMEA-based reseller and a US corporation alleging non-payment of $300k in reseller fees
    - Dispute between co-founders and software engineers over founders shares
    - $500k online advertising commission dispute between website and advertiser
  - **Non-Tech**

        - Omnibus mediation of 43 filed + four yet to be filed cases involving in a series of multi-party Fair Credit Reporting Act disputes
        - Distribution and royalty dispute between US smart-toy manufacturer and European distributor
        - International dispute over whether an aluminum bricker machine is defective
        - Brazilian purchaser of a medical device attempting to rescind a non-refundable multi-million dollar purchase
        - Dispute between large Indian grocery wholesaler and an Indian retail chain claiming $450k non-payment
        - Royalty dispute between educator and publisher
        - Shareholder dispute involving a cash-poor closely held corporation with illiquid assets
        - Dispute between third-party litigation funder and the attorney over the adequacy and value of legal services
        - Dispute between the star of a series of dog training instructional videos and the production company over IP rights
        - Breach of patent license and manufacturing agreement dispute between a China-based patent-owner and a white label manufacturer in North America
        - Dispute between US reseller and a China-based supplier over alleged defective products
        - Dispute under the Fair Credit Reporting Act brought by an employee against one of the largest background check providers alleging rejection of employment based on false information in the credit report
        - Dispute between software engineering staffing agencies over commissions and enforcement of non-compete provisions
        - Payment dispute between incubator and startup tenant
        - Cases involving California Unfair Competition Law (B&P Code 17200) claims between competitors and suppliers
        - Arbitration of attorneys' fees portion of case post-settlement of a wage & hour action
- **Civil Rights**
    - Parent of elementary school student complaining over use of yoga, meditation and new age music containing religious lyrics in classroom
    - Latina women alleging that a police officer racially profiled and planted evidence on her
    - Veteran who lost his eye when tased by a police officer
    - Undergraduate claiming that University's failure to provide notetaking accommodations caused student to get incomplete and thus lose financial aid
    - Undergraduate claiming that University's failure to record and transcribe lectures to accommodate student's auditory disability caused student to fail classes
    - Visually impaired customer contending that national retailer's website was inaccessible
    - Access in retail stores (changing stalls, checkout counters, bathrooms, aisles, entryways, parking lots), public parks, and county jails
    - Claim that hotel bathroom and parking lot were inaccessible
    - Personal injuries suffered by disabled inmate while incarcerated
    - Claim of inaccessibility against the private landlord of a historically-registered building that housed a federal court because it lacked a wheelchair ramp
    - Wheelchair bound parolee claiming that state-licensed facility was not programmatically or architecturally complaint
    - Municipalities/counties sued for non-inaccessible facilities/amenities
    - Apportionment of liability between landlord and tenant for access violations
- **Construction**
    - Retirement community claiming that carpeting was defective and installed improperly
    - Landlord claiming defective construction of a commercial laundromat
    - Landlord claiming that general contractor abandoned commercial renovation project with contractor claiming performance was excused because landlord breached its payment obligations
    - Claim that licensed contractor rented out its license to an out-of-state contractor
- **Employment**
    - Age discrimination and defamation claims brought by a terminated older software engineer against a Silicon Valley company
    - Age discrimination claim by janitor denied promotion at a startup
    - Age discrimination claim against growing startup with a young workforce and young customers
    - Pre-suit age discrimination claim by deli manager against a prominent supermarket chain
    - Pre-suit age discrimination claim by cashier against a local supermarket

- Trade secret misappropriation claim against sales reps who joined competitor
- Wrongful termination claim by unionized employee who was terminated for making nooses at work but then reinstated by an arbitrator
- Wrongful termination claim by teacher who complained about the curriculum for her special needs students
- Misclassification claims by drivers for app based transportation network company
- Wage and overtime claims by roofer who was paid in part in cash
- Wage claims by terminated CEO of a startup medical device company suffering a cash crunch
- Wrongful termination claim for refusing to smoke marijuana (pre-legalization) with co-workers
- Wrongful termination claim by workers who were allegedly required to remove mold from food so it could be sold to the public
- PAGA claims and putative meal/rest break class arbitration involving national transportation and logistics company
- PAGA claims by clerical assistant, temporary office worker and front desk coordinator against a national staffing agency and its local franchisee
- PAGA claim by counter sales clerk against national tool rental company
- Wrongful termination claim by neonatologist who claimed that she was terminated for complaining of supervisor's alleged anti-religious bias
- Wrongful termination dispute between Master craftsman and an artisanal furniture company
- Wrongful termination action by employee terminated for making racial slurs at work
- Wage & hour dispute brought by employees of a startup against their dissolved employer and its alleged successor-in-interest
- Retaliation case involving a retail sales clerk alleging termination as retaliation for reporting wage/hour violations
- Dispute between employees and a retail startup over ownership interest
- Fair Credit Reporting Act (FCRA) case brought by prospective employee against employer for rescinding offer based on an alleged false credit report
- Wage & hour case involving a retail sales clerk claiming missed meal/rest breaks over a two month period
- Disability discrimination case over a hospital housekeeping supervisor seeking time off to recover from back injury
- Disability discrimination matter involving a public entity clerk and claims of nearly $1M in emotional distress damages
- Wrongful termination dispute between a supermarket employee and a national chain
- HR recruiters claiming that they were not compensated for all meal/rest breaks missed
- Claims against a staffing agency for failure to pay missed meal/rest breaks
- Heavy equipment driver claiming that he was not paid a prevailing wage for the portion of time worked on a government contract
- Racial discrimination case between an Army Lieutenant and his superior officer
- Racial discrimination claim against a prominent doctor's group by a female African-American medical technician
- Unionized delivery driver alleging sexual harassment and disability discrimination
- Driver fired for gross insubordination for taking pictures on company property claiming retaliation for opposing harassment
- Undocumented immigrant working as a dishwasher/cook claiming unpaid overtime, meal/rest breaks
- Pre-suit pregnancy discrimination claim alleging that a new mother was instructed to pump in a toilet stall
- Pre-suit sexual orientation discrimination claim by a gay assistant harbormaster
- Restaurant workers alleging that they were not given meal/rest breaks
- Sous chef claiming that he was misclassified as exempt and should have qualified for overtime
- Delivery drivers and stock-room workers alleging failure to pay overtime or give meal/rest breaks
- Developmentally disabled dishwasher claiming he was wrongly terminated and inadequately supervised
- Female corrections officers claiming that they were being subjected to gender harassment and pornography at work
- Minority police officers claiming that the police chief refused to promote or terminated them based on their race
- Claim that a former employer is refusing to honor the terms of a severance agreement
- Undocumented immigrant working as a nursing home orderly claiming failure to pay minimum wage and overtime or provide meal/rest breaks

- Government agency claiming that former senior officer converted over $100k of equipment for personal use

- **Founder Disputes**
  - Buyout of minority shareholder of a brewery
  - Buyout of minority shareholder of a political advertising company
  - Buyout of minority shareholder of virtual currency startup
  - Buyout of 50% owner in real estate
  - Buyout of co-founder's shares in startup aimed at reducing food waste
  - Failure of solar panel startup co-founder to respond to a capital call
  - Failure of paint startup limited partner to respond to a capital call
  - Shareholder dispute at an employee-owned closely held company
- **Insurance Coverage**
  - Loss of use claim for a Boeing 777 struck and damaged by a catering truck while parked at the gate
  - Apportionment claim between insurers of a staffing company, property manager and facility over a worker's traumatic brain injury
  - Mass disaster property damage coverage claims (Superstorm Sandy)
  - Million dollar business interruption coverage claims for Manhattan law firms (Superstorm Sandy)
  - Business damage claims by supermarkets and retailers whose stores had been flooded and corroded by seawater
  - Disputes involving public entities that are both self-insured and part of government insurance pools
  - Whether excess coverage policy was adequately rescinded based on insured's alleged failure to disclose facts that led to a recall of its product
  - Whether the facts causing a food supplier's product to be contaminated with salmonella was a single occurrence
- **Intellectual Property**
  - **Copyright**
    - Copyright, trademark and design patent claims against paint sprayer distributor
    - Royalty dispute between musicians
    - Public broadcast of copyrighted boxing match without permission
    - Publisher claiming that the author of copyrighted work was selling an unauthorized new version of the work
    - Use of copyrighted videos/photos beyond the terms of the license
    - Display of copyrighted photos on a commercial website without a license
    - Claims that an imported textiles' design and patterns infringed a copyrighted design
    - Ex-co-founder alleging joint ownership of code that he had helped develop
  - **Trademark and False Advertising**
    - Estate of famous jazz musician contending that brewery was using the name and likeness outside the scope of the license
    - ACPA claim by Midwest company against alleged cybersquatter of a three letter .com mark
    - Consumer-facing security software company claiming that home security hardware and software service with nearly identical name infringed its mark
    - Dispute between Italian and American jewelry designs
    - National packaged food company alleging that a regional food provider with nearly identical name was infringing registered trademark
    - Mortgage finance companies with similar names
    - Use of famous person's name, image, and likeness in videos and on the web allegedly without permission
    - Use of a franchised gym's trademarks after the franchise agreement had allegedly been breached
    - Importation of footwear infringing trademarked design and marks
    - Cellphone cases/peripherals
  - **Patent**
    - HDD arm patent claim against Japanese manufacturer
    - DVD software patent claim by non-practicing entity against Fortune 500 OEM
    - Multiple actions brought by a Chapter 11 non-practicing entity against OEMs over Flash memory patents
    - Signal processing method patent by widely licensed non-practicing entity against OEM
    - USB interface hardware patent claim by non-practicing entity against multiple Fortune 500 OEMs

        - Arterial stent patent claim by non-practicing entity against medical device maker
        - Semiconductor method patent claim by non-practicing entity
        - Network security method patents by non-practicing entity against network device manufacturer
        - Self-defense patent claim by non-practicing entity against cardiac monitoring device manufacturer
        - Salmon fishing flasher's design patent claim against competitor
        - Gift card security method patent claim against competitor
        - Shower fixture manufacturer asserting an assembly patent against its former customer
        - Cellphone case patent claim by non-practicing entity against case and peripherals distributor
        - Network security patent claim by non-practicing entity against mid-size company
        - Post-license sales of a product using a patented claim
        - Whether an upstream patent license covered a downstream OEM
- **Other**
    - Class action alleging TPCA and Rosenthal violations for using an autodialer to collect medical debt
- **Personal Injury**
    - Customer who tripped and fell over a clothing rack in a department store
    - Personal injuries suffered when a paraplegic's wheelchair tipped over on a public park trail that lacked a guardrail
    - Alleged sexual assault by taxi-cab driver against female paraplegic passenger
    - Complications from surgery resulting in permanent loss of bladder control
    - Death of young mother of three after delivery
- **Professional Liability**
    - Medical malpractice claims against county health systems and the VA
    - $1.5M contingency fee award dispute between an attorney and client
    - $150k contingency fee award dispute resulting from successful real estate action during the Great Recession
    - Dozens of attorney fee arbitrations and mediations
- **Real Estate and Foreclosure**
    - Downhill homeowner claiming that uphill property was improperly channeling its rainwater and causing mudslides
    - Condo seller allegedly failing to disclose thin-ness of the walls and lack of privacy from neighbors
    - Landlord complaining that commercial tenant abandoned a half-completed remodeling project during Great Recession
    - Homeowner association-member disputes over use of common space and payment of dues
    - Commercial landlord-tenant disputes
- **Warranty**
    - Claim that automobile navigation and entertainment system were defective and instructed the driver to drive into a lake

Representative Legal Experience

Prior to becoming a full-time neutral, Mr. Gupta handled the following representative matters:

- First chair construction defect and commercial landlord-tenant trial
- First chair employment arbitration concerning the vesting of stock options
- Represented a sexual harassment claimant before the DFEH
- Defended an employer in a matter before the Department of Industrial Relations
- Defended patent infringement cases involving tooth whitening, dental pouches and laminate flooring
- Defended a trademark infringement action involving the "DOSA" mark
- Resolved, pre-litigation, a copyright claim over the use and public performance of a musical composition
- Defended several securities fraud and related derivative actions
- Filed consumer class actions against Apple (iPhone), Kashi (all natural), Naked Juice (all natural)
- Defended consumer class actions over car batteries, anti-virus software and PC optimization software
- Internal investigations which resulted in the resignation of the CFO and Chief Accounting Officer
- Founder disputes
- Supervising counsel for employment actions filed in New York and Massachusetts
- Breach of contract over website development and sales

- Dissolution of joint ventures
- Investor counsel on a Series A financing
- Advisor to entrepreneurs and pre-Series A companies
- Acquirer counsel on a corporate acquisition
- Negotiated several commercial leases

Honors, Memberships, and Professional Activities

- **Honors**
  - Best Independent Mediator, *The Recorder*, 2014
  - Northern California *Super Lawyer*, 2013-Present
  - South Asian Bar Association of North America's Cornerstone Award, 2015
  - Coach of the Year – Foster City AYSO, 2014
  - Southern California's Top Rated Lawyers, 2012-2013
  - *Super Lawyers* Bay Area Rising Star in ADR, 2010-2012
  - National Asian Pacific American Bar Assoc.'s (NAPABA) Best Under 40 Award, 2007
- **Memberships/Professional Activities**
  - State Bar of California: Council of Sections Co-Chair (2015-2016); Solo and Small Firm Section Chair (2013-2014)
  - South Asian Bar Association of Northern California President, 2006-2008
  - San Francisco Bay Area Intellectual Property Inn of Court Barrister, 2003-Present
  - California Minority Corporate Counsel Program Member, 2009-Present
  - National Asian Pacific American Bar Association, Alternate Regional Governor, 2008-2010
  - American Association of Physicians of Indian Origin Ethics and Grievances Committee Advisor, 2010-2011
  - South Asian Bar Association of North America: Board Member (2006-2007); National Convention Co-chair (2007: San Francisco)
  - U.S. Courts of Appeals for the Ninth Circuit and the Federal Circuit
  - U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California
- **Authored Articles**
  - "Expedite your Settlement Using Bracketing," Law.com, January 13, 2017; "Mediations Need A Plan of Action," *Daily Journal*, October 16, 2015; Common Negotiating Mistakes," Flashpoint Mediation, February 2015; "Common Attorney Fee Disputes & Solutions," Flashpoint Mediation, January 2015; "Crafting a Solid Attorney-Client Fee Agreement," Flashpoint Mediation, Jan 2015; and "Mediation Statements," Flashpoint Mediation, June 2014
- **Speaking Engagements**
  - Northern District Practice Program: Mediation, Settlement Conference, and Case Management (2018: San Jose); PLI Negotiation Skills (2016-2019: San Francisco); Ten Ways to Win for Your Client at Mediation (2018: Oakland); Negotiating via Text (2018: San Francisco); Learning from Experience: Making Arbitration Work (2018: San Francisco); Effective Negotiation and Settlement Strategies (2015: San Francisco); Anatomy of an Arbitration (2015: San Diego); Ethics in Arbitration Agreements, Fee Agreements, Joint and Successive Representation (2015: San Mateo); Carden Academy Commencement Keynote Address (2014: San Jose); Arbitrating a FRAND License for a Standards Essential Patent (2014: Redwood City); To Post or Not: The Social Media Ethical Dilemma (2014: Oakland, Riverside); ADA and Accessibility Risk Management for Law Firms (2013: Long Beach); Thinking on Your Feet at a Mediation (2012: Long Beach, Philadelphia, Ventura); Mock Mediation: A Behind the Scenes Look at a Mediation (2011: Long Beach); NASABA Idol - Interactive Workshop Focusing on Negotiation Strategies in Mediation (2010: Boston); New Initiatives in ADR in India (2006: Menlo Park); Mediation in Intellectual Property Matters in the U.S. (2005: New Delhi); Hot Topics in Trademark Law (2012: Monterey); Implications of Recent Patent Case Law (2012: San Jose)
- **ADR Profile**
  - "The Next Generation of Neutrals," ADR Profile, *Bloomberg BNA*, August 13, 2016
  - "Teaching Talent," ADR Profile, *Daily Journal*, July 8, 2016

Background and Education

- Principal, Flashpoint Mediation (San Mateo, Sacramento, and Irvine, CA), 2010-2015
- Principal, Flashpoint Law (San Mateo and Irvine, CA), 2008-2015
- Senior Litigation Associate, Mayer Brown (Palo Alto, CA), 2002-2008

- Litigation Associate, Howard Rice Nemerovski Canady Falk & Rabkin (now Arnold & Porter) (San Francisco, CA), 1999-2001
- J.D., University of Chicago Law School
- B.A., *magna cum laude*, Double Major: Economics and Legal Studies, UC Berkeley

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