

ALTERNATIVE DISPUTE RESOLUTION

**THE LAW DOES NOT ALLOW PERSONNEL OF THE OFFICE OF THE CLERK OF THE SUPERIOR COURT TO ASSIST IN THE SELECTION OR PREPARATION OF ANY FORMS OR TO ADVISE YOU AS TO ANY PROCEDURE TO BE FOLLOWED IN OBTAINING A JUDGMENT**

Attached is information on options for resolving disputes without going to trial.

<b>Form #</b>	<b>Title</b>	<b>Number of Copies</b>
N/A	Options for Resolving your Dispute	1
ADR-100	Statement of Agreement or Nonagreement	1
Clerk-CM100	Request to Vacate or Continue Initial Case Management Conference and Order	1

**ALL FORMS MUST BE TYPED OR LEGIBLY PRINTED IN BLACK INK AND SIGNED.** Complete all forms in their entirety, i.e., all boxes checked as applicable; attachments attached, if applicable; and “NONE”, “NOT APPLICABLE”, or “UNKNOWN” typed in if required.



# Alternative Dispute Resolution [ADR Packet]

## OPTIONS FOR RESOLVING YOUR DISPUTE

### There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach agreement.

### Advantages of ADR

Here are some potential advantages of using ADR:

- **Save Time:** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
- **Save Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and expert's fees.
- **Increase Control over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
- **Preserve Relationships:** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
- **Increase Satisfaction:** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
- **Improve Attorney-Client Relationships:** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

### What Are the ADR Options?

The most commonly used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

### Mediation

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In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. The Monterey County Superior Court offers a Court-Directed Mediation Program.

**Cases for Which Mediation May Be Appropriate:** Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use.

Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

**Cases for Which Mediation May Not Be Appropriate:** Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

## **Arbitration**

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In arbitration, a neutral person called an “arbitrator” hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may be either “binding” or “nonbinding.” *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator’s decision as final. Generally, there is no right to appeal an arbitrator’s decision in binding arbitration. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator’s decision. The Monterey County Superior Court offers a nonbinding judicial arbitration program.

**Cases for Which Arbitration May Be Appropriate:** Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

**Cases for Which Arbitration May Not Be Appropriate:** If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator’s award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

## **Neutral Evaluation**

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In neutral evaluation, each party gets a chance to present the case to a neutral person called an “evaluator.” The evaluator then gives an opinion on the strengths and weaknesses of each party’s evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator’s opinion is nonbinding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

**Cases for Which Neutral Evaluation May Be Appropriate:** Neutral evaluation may be most appropriate in cases in which there are technical issues that require expertise to resolve or the only significant issue in the case is the amount of damages.

**Cases for Which Neutral Evaluation May Not Be Appropriate:** Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

## **Settlement Conference**

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Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or neutral person called a “settlement officer” to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

MEDIATOR ( <i>Name and Address</i> ):    TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>STATEMENT OF AGREEMENT OR NONAGREEMENT</b> <input type="checkbox"/> First <input type="checkbox"/> Supplemental	CASE NUMBER:
<p><b>The mediator must complete, serve, and file this form</b></p> <ul style="list-style-type: none"> <li>• <b>within 10 days after conclusion of the mediation, or by an another date set by the court, in all cases assigned to mediation under the Civil Action Mediation Program. (Code Civ. Proc., § 1775 et seq.)</b></li> <li>• <b>as required by the court in other mediation programs.</b></li> </ul> <p><b>In completing this form, the mediator must not</b></p> <ul style="list-style-type: none"> <li>• <b>provide any information beyond what is specifically requested, or</b></li> <li>• <b>disclose any settlement terms, confidential communications, mediation conduct, or mediator conclusions or impressions. (Evid. Code, § 1115 et seq.)</b></li> </ul>	

1. I was appointed, assigned, or retained as the mediator in this case on (*date*):

2. The mediation (*check one*)

- a.  was not scheduled.
- b.  was scheduled but not held.
- c.  was held as follows:
- (1) Session dates (*specify all*):
- (2) Number of sessions:
- (3) Total length of sessions (*hours*):

3.  The mediation ended on (*date*):

- a.  in a full agreement.
- b.  in a partial agreement.
- c.  in nonagreement.

4.  The mediation has not yet ended. I submit this form to comply with the court's requirement to do so by a specified date. (*Complete the items below. In Civil Action Mediation Programs and where otherwise required by the court, file a supplemental Statement of Agreement or Nonagreement within 10 days after the mediation ends or by such other date as the court may set.*)

a. The mediator anticipates that the mediation will be completed by (*date*):

**NOTICE TO PARTIES:** This form does not extend any mediation completion deadline that the court has set. You must request any necessary extension from the court.

b. The next mediation session is scheduled for (*date*):

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF MEDIATOR)

**PROOF OF SERVICE OF STATEMENT OF AGREEMENT OR NONAGREEMENT**

1. At the time of service, I was over 18 years of age and **not a party to this action**.
2. My residence or business address is:
3.  The fax number or electronic service address from which I served the document is *(complete if service was by fax or electronic service)*:
4. I served the *Statement of Agreement or Nonagreement* (form ADR-100) on the person or persons below, as follows:

a. Name of person served	b. Manner of service <i>(specify personal, mail, fax, or electronic)</i>	c. Physical or mailing address, fax number, or electronic service address where person was served	d. Date of service	e. Time of service

5. The form ADR-100 was served by the following means *(check and complete all that apply)*:
  - a.  **Where personal service is indicated in item 4.b.**, I personally delivered the form ADR-100 to the persons for whom personal service is indicated, at the addresses listed in item 4.c. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office, or in a visible location in the office between the hours of 9 a.m. and 5 p.m. (2) For a party, delivery was made to the party or by leaving the document at the party's residence with some person not younger than 18 years of age between the hours of 8 a.m. and 6 p.m.
  - b.  **Where service by mail is indicated in item 4.b.**, I enclosed the form ADR-100 in a sealed envelope or package addressed to the persons at the addresses in item 4.c. and *(specify one)*:
    - (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
    - (2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident of or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
  - c.  **Where fax transmission is indicated in item 4.b.**, based on an agreement of the parties to accept service by fax transmission, I faxed the form ADR-100 to the persons at the fax numbers listed in item 4.c. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed, is attached.
  - d.  **Where electronic service is indicated in item 4.b.**, I caused the form ADR-100 to be served on the persons at the electronic service addresses listed in item 4.c., in accordance with a court order or an agreement of the parties allowing electronic service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):				
TELEPHONE NO.:		FAX NO. (Optional)		
EMAIL ADDRESS (Optional):				
ATTORNEY FOR (Name):				
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY</b>				
MAILING ADDRESS: 1200 Aguajito Road				
CITY AND ZIP CODE: Monterey, CA 93940				
PLAINTIFF/PETITIONER:				
DEFENDANT/RESPONDENT:				
<b>Request to Vacate or Continue Initial Case Management Conference and Order</b>				Case Number:
A CASE MANAGEMENT CONFERENCE is scheduled as follows:				
Date:	Time:	Dept.:	Div.:	Room:

▶ IF APPLICABLE, THIS REQUEST AND ORDER MUST BE FILED CONCURRENTLY WITH THE CASE MANAGEMENT STATEMENTS, WHICH ARE DUE NO LATER THAN 15 DAYS BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE.

▶ PER LOCAL RULE 6.08(e), **IF THE PARTIES DO NOT RECEIVE A SIGNED COPY OF THE ORDER GRANTING THE REQUEST, THEY MUST ATTEND THE CASE MANAGEMENT CONFERENCE.**

Counsel and the parties certify that the initial Case Management Conference should be vacated or continued for the following reasons [circle one]:

1. All parties have appeared and agree to engage in the below ADR program [check  one]:

- |  |  |
|--|--|
| <input type="checkbox"/> Court-Directed mediation        | <input type="checkbox"/> Private mediation   |
| <input type="checkbox"/> Nonbinding judicial arbitration | <input type="checkbox"/> Private arbitration |
| <input type="checkbox"/> Other:                          |  |

**THE PARTIES AGREE TO COMPLETE THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM WITHIN 90 DAYS OF THE FILING OF THIS FORM.** Further Case Management Conference is requested.

2. Case is concluded and judgment or dismissal has been entered as to all parties.
3. Case has settled; dismissal shall be filed on or before \_\_\_\_\_.
4. Case is at-issue and all parties agree that matter may be set for trial without the necessity of a Case Management Conference.
5. All defendants have not been served and the plaintiff has been granted an extension by the court until \_\_\_\_\_ to complete service on all defendants. Further Case Management Conference is requested.
6. A defendant has filed bankruptcy; case should be stayed pending the completion of bankruptcy. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any action by the debtor or the Bankruptcy Court that would act as a lifting of said stay.
7. Case has been removed to Federal Court. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any remand back to Superior Court or of any judgment or dismissal filed in the Federal Court.

**Request to Vacate or Continue Initial Case Management Conference and Order**

Case Number: \_\_\_\_\_

8. Plaintiff has obtained a default as to all defendants and will perfect the default by entry of court or clerk judgment in timely manner. Further Case Management Conference is requested.
9. All defendants have appeared and discovery is proceeding in a timely manner. For reasons set forth in the parties' Case Management Statements, the case should be designated (circle one) Category I, Category II or Category III. Parties anticipate case will be ready to set for trial as of \_\_\_\_\_ . Further Case Management Conference is requested.
10. Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_. Further Case Management Conference is requested.

\_\_\_\_\_  
Counsel for Plaintiff (*print name*)

\_\_\_\_\_  
Counsel for Defendant (*print name*)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Counsel for Plaintiff (*print name*)

\_\_\_\_\_  
Counsel for Defendant (*print name*)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

*For additional parties, attach additional signature pages as needed.*

Good Cause appearing, **IT IS SO ORDERED** that the Case Management Conference set for \_\_\_\_\_ is vacated.

Supplemental Case Management Statements shall be filed as set forth in 6 or 7 above.

Receipt of Dismissal is set for \_\_\_\_\_.

Further Case Management Conference is set for \_\_\_\_\_. Parties shall file Case Management Statements prior to said hearing per Local Rule 6.08(e).

**PLAINTIFF MUST SERVE A COPY OF THIS ORDER ON ALL PARTIES.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Judge of the Superior Court**