

Other Clauses of Interest in Fee Agreements

Other Forms of Interest in Fee Agreements

1. ARBITRATION

A. ARBITRATION OF ALL DISPUTES INCLUDING CLAIMS OF MALPRACTICE

Any dispute between the parties [Attorney and Client] regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, including, without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and disputes regarding attorney fees and/or costs charged under this Agreement (except as provided in Paragraph B below) shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one person [Option: or agree upon a 3-person panel] to hear and determine the dispute.

Option: The arbitration provider shall be _____ [fill in the name of the arbitration provider] whose rules shall govern the arbitration.

Option: If the parties cannot agree on the selection of an arbitrator, a party may petition the Superior Court of _____ [fill in name of county] County and the procedures set forth in Code of Civil Procedure Section 1281.6 for Appointment of Arbitrators shall apply. The court will choose an impartial arbitrator and the court's decision shall be final and conclusive on all parties.

Option: Attorney and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05.

Option: Each party shall bear its own costs, expenses, attorney's fees and an equal share of the arbitrators' and administrative fees.

The venue for the arbitration and any post-award proceeding to confirm, correct or vacate the award shall be _____ [fill in name of county] County, California.

Client and Attorney confirm that they have read and understand subparagraphs A above, and voluntarily agree to binding arbitration. In doing so, Client and Attorney voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client may consult with an independent lawyer of Client's choice to review these arbitration provisions, and this entire agreement, prior signing this Agreement.

B. MANDATORY FEE ARBITRATION

Notwithstanding subparagraph A above, the parties acknowledge that in any dispute over attorney's fees, costs or both subject to the jurisdiction of the State of California over attorney's fees, charges, costs or expenses, Client has the right to elect arbitration pursuant to the fee arbitration act procedures as set forth in California Business and Professions Code Sections 6200-6206 (the Mandatory Fee Arbitration Act). If, after receiving a Notice of Client's Right to Fee Arbitration, Client does not elect to proceed under the Mandatory Fee Arbitration Act procedures, and files a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as provided in the previous paragraph A. Arbitration pursuant to the Mandatory Fee Arbitration Act is non-binding unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. The Mandatory Fee Arbitration Act procedures permit a court trial after arbitration, or a subsequent binding contractual arbitration if the parties have agreed to binding arbitration, if either party rejects the award within 30 days after the award is mailed to the parties.

2. MEDIATION CLAUSE

Attorney and Client agree to try to settle all disputes between them through private mediation before initiating any arbitration, litigation or other dispute resolution procedure. The disputes which are subject to mediation include without limitation the following: claims regarding the construction, application or performance of services, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and attorney's fees and costs. Any party to the agreement may initiate mediation through service of a written demand in person or by mail to the opposing party. Each party shall bear its own fees and costs for the mediation.

3. INTEREST CHARGES

If a bill is not paid when due, interest will be charged on the principal balance (consisting of any unpaid fees, costs, and/or expenses) shown on the bill. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10%] PER ANNUM). The unpaid balance will bear interest until paid.

[Interest may not be compounded without compliance with the California Civil Code, Appendix I, dealing with usury.]

4. REPLENISHING DEPOSIT

To commence the representation, Client has provided [must provide] Attorney with a \$_____ deposit. Attorney will hold the deposit in Attorney/Client Trust Account and apply it to each bill when rendered by Attorney. Client will pay any additional balance due upon receipt of Attorney's bills each month and also will replenish the deposit each month in the

amount of all payments made to Attorney from the deposit to return the deposit to _____. At the conclusion of the matter, the deposit will be applied to the final bill, in which event Client will be responsible for any amount due over and above the deposit or be entitled to a refund of any amount remaining after the final bill is satisfied in full.

5. ATTORNEY'S FEES CLAUSE*

The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code Sections 6200-6206, will be awarded reasonable attorney's fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

6. OTHER PAYOR CLAUSE – INSURANCE

Client has informed Attorney that Client may have insurance coverage which may pay for some or all of Attorney's fees that may become due under this Agreement. Attorney will make a claim with the insurer for compensation. It is understood, however, that if the insurance provider refuses or fails to pay Attorney for any reason, Client shall remain responsible for paying all Attorney's bills as they are rendered upon the billing and payment terms set forth in this Agreement. Should the insurance provider pay only a portion of the fees and costs, Client shall be responsible for the balance.

7. FLAT FEE CLAUSE

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and does not depend on the amount of work performed or the results obtained. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client [Option 1: on ____ (insert date)]; [Option 2: in equal installments of \$_____ due _____]; [Option 3: when the work is completed]. The Flat Fee, upon payment, becomes the property of Attorney and need not be deposited into the Attorney/Client trust account. Either party may terminate the representation at any time, subject to Attorney's obligations under the Rules of Professional Conduct and the approval of the court if the matter is in litigation. If either party terminates the representation before Attorneys have provided all legal services described in this Agreement, Client may be entitled to a refund of all or part of the flat fee based on the value of the legal services performed prior to termination.

8. DIVISION OF CONTINGENCY FEES

Client agrees that attorney may associate other Attorneys to assist in the representation. Your legal fees under this agreement will not increase by reason of this association. The associated attorneys will receive _____ (fill in fraction or other method) of the fee and this firm will receive _____ (fill in fraction or other method).

By signing this agreement, I have read and understand the above and confirm my consent

to the terms of the association of counsel and division of fees.

9. “OTHER ATTORNEY” CLAUSE–HOURLY

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated by Attorney on an hourly basis at a rate of \$ _____ per hour. These charges will be billed by Attorney to Client as a cost as defined in this Agreement. [Option: or “billed directly to Client by the other attorney.”].

[NOTE: This language was not created for use in contingency cases.]

10. PAYMENT OF REFERRAL FEE

Client acknowledges that attorney _____ (fill in name) who referred the case to this firm/attorney will receive a referral fee of _____ (fill in percentage) of all sums paid in this matter. Your legal fees will not be increased by reason of the referral fee payment.

By signing this agreement, I confirm my consent to the terms of the payment of the referral fee.

11. LIEN—HOURLY FEE AGREEMENT.

Client hereby grants Attorney a lien on any and all claims that are the subject of Attorney’s representation under this Agreement. Attorney’s lien will be for any sums owing to Attorney for any unpaid costs, or attorney’s fees, at the conclusion of Attorney’s services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. An effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. The lien shall exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph __ [insert paragraph number pertaining to Costs]. Because a lien may affect Client’s property rights, Client may seek the advice of an independent lawyer of Client’s own choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Attorney will have a lien as specified above.

_____(Client initials here) _____(Attorney initials here)

12. EXCLUDED SERVICES

Attorney’s representation does not include independent or related matters that may arise, including, among other things, claims for property damage, workers’ compensation, disputes with a health care provider about the amount owed for their services, or claims for reimbursement

(subrogation) by any insurance company for benefits paid under an insurance policy. [Expand as necessary.]

13. CONTINGENCY LANGUAGE OPTIONAL CLAUSES

A. NO RECOVERY LANGUAGE

If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph __ [insert paragraph number pertaining to Costs]. These may include Client's obligation to pay attorney fees and costs of the type enumerated in Paragraph __ [insert paragraph number pertaining to Costs] to any prevailing party, either pursuant to statute or court order.

B. ATTORNEY ADVANCING COSTS LANGUAGE

Client will not be obligated to pay Attorney for costs, disbursements or expenses advanced by Attorney. However, if Client is not the prevailing party the court may award attorney fees and costs of the type enumerated in Paragraph __ [insert paragraph number pertaining to Costs] to any prevailing party and payment of such attorney fees and costs shall be the sole responsibility of Client.

C. NET RECOVERY OPTIONS

OPTION 1A:

STRAIGHT PERCENTAGE OF NET RECOVERY

The fee to be paid to Attorney will be ____ percent (____%) of the "net recovery". The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph __ [insert paragraph number pertaining to Costs].

OPTION 1B:

NET RECOVERY INCLUDING COURT ORDERED FEES

The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph __ [insert paragraph number pertaining to Costs]. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award shall be part of Client's net recovery and the contingent fee shall be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs.

OPTION 1C:

NET RECOVERY PLUS COURT ORDERED FEES

The term "net recovery" means (1) the total of all amounts received by settlement,

arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph __ [insert paragraph number pertaining to Costs]. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, Client agrees that the amount of the award shall be payable to Attorney in addition to Attorney's contingent fee, as additional compensation for extraordinary time and effort.

OPTION 1D:

NET RECOVERY GREATER OF NET OR COURT ORDERED FEES:

The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph __ [insert paragraph number pertaining to Costs]. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, Client agrees that the attorney's fees and costs payable to Attorney pursuant to this Agreement shall be the greater of: (i) the amount otherwise owed to Attorney under this Agreement if the award of attorney's fees and costs were disregarded; or (ii) the amount of the court ordered award of attorney's fees and costs.]

D. GROSS RECOVERY OPTIONS

OPTION 2A

STRAIGHT PERCENTAGE OF GROSS RECOVERY

The fee to be paid to Attorney will be _____ percent (___%) of the "gross recovery." The term, "gross recovery" means a percentage of the total of all amounts received by settlement, arbitration award or judgment before deducting any litigation costs and expenses set forth in Paragraph __ [insert paragraph number pertaining to Costs] which have been either advanced or incurred by Attorney on behalf of Client.

OPTION 2B

SCALED PERCENTAGE OF GROSS RECOVERY

The fee to be paid to Attorney will be a percentage of the "gross recovery", depending on the stage at which the settlement or judgment is reached. The term, "gross recovery" means a percentage of the total of all amounts received by settlement, arbitration award or judgment before deducting any litigation costs and expenses all costs and disbursements set forth in Paragraph 6 which have been either advanced or incurred by Attorney on behalf of Client.

Attorney's fee shall be calculated as follows:

- (a) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Attorney's fee will be _____ percent (___%) of the gross recovery;

(b) If the matter is resolved prior to ____ days before the date initially set for the trial or arbitration of the matter then Attorney's fee will be _____ percent (____%) of the gross recovery; and

(c) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be _____ percent (____%) of the gross recovery.

Disclosure and Consent-Third Party Payor Payment of Attorney's Fees and Costs

Under California Rules of Professional Conduct 3-310(F) an attorney may not accept compensation from one who is not the client without: (1) assuring the arrangement does not interfere with the attorney's independence or professional judgment on behalf of the client or with the attorney-client relationship, (2) providing for protection of client confidential information and secrets under Business & Professions Code Section 6068(e), (3) providing the client with a written disclosure of the relevant circumstances and the actual and foreseeable adverse consequences arising from the arrangement and (4) obtaining the client's informed written consent.

The potential adverse consequences of having a Third Party Payor responsible for payment of attorney's fees and costs is that the Third Party Payor may: (1) attempt to interfere with the attorney-client relationship between the attorney and client, (2) attempt to interfere with the attorney's exercise of independent professional judgment on behalf of the client, or (3) seek access to client confidential information or secrets contrary to the wishes of the client.

By signing this Agreement, Third Party Payor [insert name or entity] agrees to pay for all legal services which attorney provides to client and costs incurred in the representation of client. Client will remain responsible for and will pay attorney's bills in the event that third party payor fails for any reason to pay attorney's bills as they become due. If a refund is due at the conclusion of the representation, the refund will be paid to the person or entity who paid the fees and costs.

Third Party Payor [insert name or entity] acknowledges this agreement to pay for attorney's fees and costs does not make Third Party Payor a client of Attorney and that an attorney-client relationship will exist only between Attorney and Client. Third Party Payor further agrees that they will not interfere with the attorney-client relationship and will not interfere with the Attorney's exercise of independent professional judgment on behalf of the client. In furtherance of the independent nature of the attorney-client relationship, Third Party Payor acknowledges that it has no right to direct Attorney's handling of Client's matter.

It is also understood and acknowledged that Third Party Payor [insert name or entity] will have no right to information regarding the representation and Attorney will not disclose any confidential or privileged information to Third Party Payor, unless client gives written permission to discuss some or all of the Client's matter with Third Party Payor.

By signing this Agreement, Client and Third Party Payor [insert name or entity] acknowledge they have: (1) read and fully understand this disclosure and consent form, (2) agreed that Attorney may accept compensation from [insert name or entity] to provide legal services to Client under the terms and conditions of this Agreement and (3) that [insert name or entity] has been represented and advised by counsel in entering into this Agreement or has waived their right to such representation and advice.

Dated: _____ CLIENT: _____

Dated: _____ THIRD PARTY: _____

Dated: _____ ATTORNEY: _____

Disclosure and Consent-Third Party Payor Payment of Attorney's Fees and Costs

Under California Rules of Professional Conduct 3-310(F) an attorney may not accept compensation from one who is not the client without: (1) assuring the arrangement does not interfere with the attorney's independence or professional judgment on behalf of the client or with the attorney-client relationship, (2) providing for protection of client confidential information and secrets under Business & Professions Code Section 6068(e), (3) providing the client with a written disclosure of the relevant circumstances and the actual and foreseeable adverse consequences arising from the arrangement and (4) obtaining the client's informed written consent.

The potential adverse consequences of having a third party payor responsible for payment of attorney's fees and costs is that the third party payor may: (1) attempt to interfere with the attorney-client relationship between the attorney and client, (2) attempt to interfere with the attorney's exercise of independent professional judgment on behalf of the client, or (3) seek access to client confidential information or secrets contrary to the wishes of the client.

By signing this Agreement, Third Party Payor [insert name or entity] agrees to pay for all legal services which attorney provides to client and costs incurred in the representation of client. Client will remain responsible for and will pay attorney's bills in the event that Third Party Payor fails for any reason to pay attorney's bills as they come due. If a refund is due at the conclusion of the representation, the refund will be paid to the person or entity who paid the fees and costs.

Third Party Payor [insert name or entity] acknowledges this agreement to pay for attorney's fees and costs does not make Third Party Payor a client of Attorney and that an attorney-client relationship will exist only between Attorney and Client. Third Party Payor further agrees that they will not interfere with the attorney-client relationship and will not interfere with the Attorney's exercise of independent professional judgment on behalf of the client. In furtherance of the independent nature of the attorney-client relationship, Third Party Payor acknowledges that it has no right to direct Attorney's handling of Client's matter.

Client has asked Third Party Payor to participate in consultations with Attorney and may continue to do so with the understanding that Third Party Payor's involvement in any communications with Attorney is solely to further the interests of Client. Communications involving Third Party Payor [insert name], are therefore intended to remain confidential and privileged as against persons or entities other than Attorney, Client and Third Party Payor. It is further understood and agreed that Attorney may share confidential information with Third Party Payor except when Client directs Attorney to keep information confidential. To the extent Client desires communications and information to remain confidential, Third Party Payor agrees that payment and receipt of Client confidential information or secrets shall not in any way limit Client's confidentiality rights or waive any privilege.

By signing this Agreement, Client and Third Party Payor [insert name or entity] acknowledge they have: (1) read and fully understand this disclosure and consent form, (2) agree that Attorney may accept compensation from [insert name or entity] to provide legal services to Client under the terms and conditions of this Agreement and (3) that [insert name or entity] has been represented and advised by counsel in entering into this Agreement or has waived their right to such representation and advice.

Dated: _____
Dated: _____
Dated: _____

CLIENT: _____
THIRD PARTY: _____
ATTORNEY: _____

Joint/Multiple Client Disclosure and Consent Form

Clients [NAME] and [NAME(s)] (“Joint Clients”) have asked Attorney to jointly represent them in [DESCRIBE MATTER]. While joint representation may result in economic or tactical advantages, it also involves risks and potential conflicts of interest. The California Rules of Professional Conduct require that before an attorney may concurrently represent two or more clients in a matter, the attorney must: (1) inform each client in writing of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the each client arising from the proposed joint representation, and (2) obtain the informed written consent of each client.

The purpose of this disclosure is to set forth potential conflicts of interest relating to the proposed joint representation, and what Attorney perceives to be the relevant circumstances and the actual and/or reasonably foreseeable adverse consequences. Assuming that both [**OR ALL IF MORE THAN TWO CLIENTS**] Clients provide their informed written consent, Attorney agrees to represent Joint Clients in [DESCRIBE MATTER]. Attorney understands that this arrangement is desired by Joint Clients as a means of securing the economic and tactical advantage of joint representation.

California law and Rule 3-310(C)(1) of the Rules of Professional Conduct require Attorneys to provide written disclosure of any actual and reasonably foreseeable adverse consequences arising from the proposed joint representation, and to obtain all clients’ informed written consent to the joint representation. While Attorneys do not perceive any actual or reasonably foreseeable adverse consequences at this time, Clients should consider the following potential adverse consequences prior to consenting to the proposed joint representation:

(1) When an attorney represents only one client, there is no concern regarding shared or divided loyalties; rather all of the attorney’s efforts are focused on representing the interests of that one client. When an attorney represents two or more clients in the same matter, the attorney acts to protect the interests of each client, which may result in divided, or at least shared, attorney-client loyalties. Issues may arise as to which Attorney’s representation of any one client may be limited by Attorney’s representation of any other joint client. While neither Attorney nor Clients are aware of any such issues at this time, divided loyalty is always a risk in the event of joint representation.

(2) Attorneys owe clients a duty to preserve secrets and confidential communications, unless that duty is excused by the State Bar Act, the Rules of Professional Conduct or other law. When an attorney represents more than one client in a matter, pursuant to Evidence Code §962 and California case, law there is no attorney-client privilege with respect to communications that take place between any of the Joint Clients and the attorney should any of the Joint Clients ever have a dispute in which those communications are relevant. Attorney has a duty to keep all of the Joint Clients reasonably informed of significant developments. Any information either of the Joint Clients discloses to Attorney during the course of the joint representation may be disclosed to the jointly represented clients during the course of the joint representation.

(3) Conflicts may arise in particular with regard to: (a) litigation strategies that can impact different clients differently; and (b) settlement issues, inasmuch as Joint Clients may each have different ideas regarding the propriety of settlement. At this point, Attorney does not have sufficient information to evaluate whether a potential settlement presents a conflict between the Joint Clients' interests. If Attorney perceives there is a conflict with respect to a settlement demand or litigation strategy, there may be a need for Joint Clients to consult independent counsel.

(4) Joint representation may also create an issue regarding custody, or control, of the original file when an attorney-client relationship ends. By signing this agreement, each of you agree that if Attorney stops representing one of you, but continues to represent the other(s), the client(s) represented by Attorney is entitled to maintain custody or control of the original file. The other party or parties is/are entitled to a copy of Client Papers as defined in Rule 3-700(D) of the Rules of Professional Conduct.

(5) In the event of a dispute or conflict between any of the Joint Clients, there is a risk that Attorney may be disqualified from representing one or more of the Joint Clients or that it may otherwise be inappropriate for Attorney to continue with the joint representation absent written consent from each of the Joint Clients.

(6) [FOR USE WHEN REPRESENTING MULTIPLE PLAINTIFFS]

If there is insufficient insurance or assets to cover the damages of each client, there may be disputes regarding how to allocate the insurance proceeds or assets between the Joint Clients.

(6) [FOR USE WHEN REPRESENTING MULTIPLE DEFENDANTS]

If there is a judgment against any of the Joint Clients which is not covered by insurance, that client may have rights of indemnity against one or more of the other parties. If any disputes should arise between the Joint Clients, Attorney will not advise or represent any of the clients in connection with any claim for contribution or indemnity that it may have against any of the other clients.

[OPTION RE PUNITIVE DAMAGES]

The complaint includes a claim for punitive damages, which presents the potential for a conflict inasmuch as an award of punitive damages is not insurable. Attorney will endeavor to keep each of the Joint Clients advised as to their potential risks and exposure with respect to the punitive damage claim, or with respect to any over policy limits claims should one ever be made.

Because there is currently no conflict of interest, Attorney may jointly represent Joint Clients in connection with the [DESCRIBE MATTER] provided that Joint Clients both/all give your informed consent in writing. Each Joint Client should feel free to consult with independent counsel before finalizing your decision to proceed with the joint representation, including whether or not to sign this conflict disclosure and waiver. Attorney emphasizes that each Joint

Client remains free to seek independent counsel at any time even if they decide to sign this consent.

Notwithstanding the foregoing, it is Attorney's current understanding that each of the Joint Clients desires to have Attorney jointly represent them in the **[DESCRIBE MATTER]**. By signing this Disclosure and Consent, each client expressly acknowledges that he/she or it (acting through its authorized representative): (1) has carefully read and fully understands the disclosures set forth above; (2) has carefully considered all of the circumstances and potential conflicts described above; (3) has had the opportunity to consult with independent counsel regarding the disclosures and consent in this agreement; and (4) agrees to the joint representation by Attorney of Clients in **[DESCRIBE MATTER]**.

Dated: _____

Dated: _____