



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

54-121 MAY 2019

REGULATION AND DISCIPLINE COMMITTEE III.I

DATE: May 16, 2019

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Andrew Tuft, Supervising Attorney, Office of Professional Competence
Isabel Liou, Attorney, Office of Professional Competence

SUBJECT: Revisions to Sample Fee Agreement Forms: Return from Public Comment and Request for Approval

EXECUTIVE SUMMARY

The State Bar's Committee on Mandatory Fee Arbitration (CMFA) has created documents collectively known as the Sample Fee Agreement forms to aid attorneys in the development of their own fee agreements that are compliant with applicable statutes, case law and the California Rules of Professional Conduct. These forms are not binding on the State Bar of California, the Board of Trustees or any persons or tribunals charged with regulatory responsibilities or any State Bar of California licensee.

The CMFA revised the Sample Fee Agreement forms to reflect revisions to the updated Rules of Professional Conduct, which went into effect on November 1, 2018. On March 14, 2019, the Committee on Regulation and Discipline (RAD) approved the circulation of the revised Sample Fee Agreement forms for a 45-day public comment period. Following the public comment period, the CMFA has made no changes to the Sample Fee Agreement forms and recommends that the Board approve these forms as circulated for public comment.

BACKGROUND

The State Bar of California publishes Sample Fee Agreement forms and makes them available on the State Bar's website. These forms were developed by the CMFA to provide attorneys with a template fee agreement that complies with the Business and Professions Code and the Rules of Professional Conduct. The Sample Fee Agreement forms include three types of agreements:

(1) hourly fee agreements for litigation matters; (2) hourly fee agreements for non-litigation matters; and, (3) contingency fee agreements. In addition, the State Bar also publishes an Instructions and Comments document describing the intended purpose and limitations of the sample fee agreements, as well as a collection of Optional Clauses and Disclosure Forms that may pertain to a particular engagement. Over the years, these forms have been updated when necessary to comport with changes to the law or the Rules of Professional Conduct. The last of these revisions occurred in July, 2015.

The CMFA updated the Sample Fee Agreement documents at their September 14, 2018, November 2, 2018, and February 1, 2019 meetings. In addition, the CMFA held a joint meeting with the Committee on Professional Responsibility and Conduct (COPRAC) on December 7, 2018, to discuss some of the revisions. The CMFA's work included revising and updating the Instructions and Comments, all three Sample Fee Agreements, and the Optional Clauses and Disclosure Forms. The revised documents are set for in Attachments A through C.

DISCUSSION

The CMFA proposed revisions to the Instructions, the three Sample Fee Agreements, and the Optional Clauses and Disclosure Forms to address changes necessitated by the updated Rules of Professional Conduct. While some of the revisions only required replacing the old Rule of Professional Conduct rule number with the new rule number, there were also substantive changes needed to the Sample Fee Agreement forms, which are outlined below.

DEPOSITING ADVANCES FOR FEES IN A CLIENT TRUST ACCOUNT

The CMFA updated the paragraph in the Instructions and Comments document pertaining to Deposits to highlight the new requirements under Rule of Professional Conduct 1.15(a) regarding the handling of advances for fees, costs and expenses.

MEDIATION

The CMFA updated both the Instructions and Comments document, and the Optional Clauses and Disclosure Forms document, concerning mediation clauses, to alert attorneys to the new requirements in Evidence Code section 1129, which requires an attorney to provide written disclosure to a client concerning mediation confidentiality. This disclosure includes informing the client that communications between the attorney and client in preparation for, or during, mediation are confidential and cannot be disclosed or used should the client later decide to sue the attorney for malpractice based on something that occurred during the mediation.

FLAT FEES

The CMFA updated both the Instructions and Comments document, and the Optional Clauses and Disclosure Forms document, pertaining to flat fees to refer to Rule of Professional Conduct 1.5(e) which defines a flat fee as a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and

which may be paid in whole or in part in advance of the lawyer providing those services. In addition, the Sample Fee Agreements were revised to reflect the written disclosure requirements of Rule of Professional Conduct 1.15(b), which are necessary should an attorney wish to deposit a flat fee paid in advance into his or her operating account.

On March 14, 2019, RAD approved a 45-day public comment period for the revised Sample Fee Agreement forms. The public comment period ended on May 1, 2019.

PUBLIC COMMENT

Two public comments were received, one from Susan Bassi on behalf of the Silicon Valley Public Trust Committee (SVPTC) and one from Johnny Delmar.

The comment from the SVPTC raises concerns about fee agreements in family law cases, generally. For example, the SVPTC recommends that an attorney's fee agreement must state that the attorney has an obligation to provide zealous representation as well as provide a reasonable expectation of costs likely to be incurred in a divorce or custody action. The SVPTC recommends that clients be advised that fee agreements "are not typically protected and could be subject to production." The SVPTC requests that attorneys acting as privately compensated temporary judges be required to provide additional disclosures to their clients. In addition, she raises concerns about specific lawyers in Santa Clara County. The comment is provided in Attachment D with the names of the specific lawyers she identifies redacted.

Mr. Delmar's comment is a sample fee agreement which he identifies as appropriate for a criminal defense attorney charging a flat fee. His sample fee agreement cuts and pastes the language from Rules of Professional Conduct 1.15(a) and (b), and 1.5(e). He also includes sample disclosure language providing notice of lack of professional liability insurance as required by rule 1.4.2. His comment is provided in Attachment D.

On Friday, May 3 the CMFA met and considered these comments in full. With respect to the SVPTC, the CMFA noted that the Sample Fee Agreements are intended for general purposes, and not specific to any particular practice area. Further, many of the concerns she raises are already addressed by the Rules of Professional Conduct. Additionally, some of what she raises, such as acting as a temporary judge, fall outside the scope of what the Sample Fee Agreements are intended to address.

With respect to Mr. Delmar, the CMFA noted that much of his sample fee agreement is already addressed in the Optional Clauses and Disclosure Forms document. The CMFA further noted that the Optional Clauses and Disclosure Forms document provides a more fulsome example of the type of disclosure that should be made when attempting to deposit a flat fee paid in advance into the lawyer's operating account as required by rule 1.15(b), as well as when the lawyer lacks of professional liability insurance as required by rule 1.4.2.

After review and consideration of both of the public comments received, the CMFA recommended that no further changes to the Sample Fee Agreement forms be made.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - compliance

RECOMMENDATIONS

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees, following the publication for a 45-day public comment period and in consideration of the comments received, and upon the recommendation of the Committee on Mandatory Fee Arbitration, hereby approves the publication of the revised Sample Fee Agreement forms, attached hereto in Attachment A - C.

ATTACHMENT(S) LIST

- A.** Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)
- B.** Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)
- C.** Sample Fee Agreement Forms: Optional Clauses and Disclosure Forms (Clean and Redline)
- D.** Full Text of Public Comments

ATTACHMENT A

Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

(CLEAN)

SAMPLE WRITTEN FEE AGREEMENTS FORMS

INSTRUCTIONS AND COMMENTS

I. INTRODUCTION

The Committee on Mandatory Fee Arbitration of the State Bar has prepared three sample attorney client fee agreements which the Board of Trustees has approved. They are advisory only, are not required, and are not binding on the Courts, the State Bar of California, the Board of Trustees, any persons or tribunals charged with regulatory responsibility or any members of the State Bar.

The three attached agreements are: (1) an hourly litigation agreement (2) an hourly non-litigation agreement and (3) a contingency fee agreement. There is another document entitled “Optional Clauses and Disclosure Forms” which lists optional provisions and disclosure forms which an attorney may need to consider in certain situations.

II. OVERVIEW

A. Intended Purpose and Limitations

Attorneys who are admitted to practice in California may use the attached sample agreements but should also use their own independent legal and business judgment when creating their attorney-client fee agreement. The samples are prepared in a formal contract style but the provisions can be incorporated into a letter fee agreement if the attorney chooses to use that format. Attorneys are encouraged to modify the samples to fit their needs, provided such modifications do not conflict with Bus. & Prof. Code § 6146 *et. seq.* or the Rules of Professional Conduct.

B. Summary of Statutes and Rules of Professional Conduct

- Non-Contingent Fee Agreements—B&P §6148

Business and Professions Code Section 6148 governs non-contingent fee agreements. It requires attorneys to have a written agreement whenever it is reasonably foreseeable that the client’s total expense, including attorneys’ fees, will exceed \$1,000. A written fee agreement is not required when services are rendered in an emergency to avoid prejudice to the client or where the writing is otherwise impractical, when the client is a corporation, when the client, after full disclosure, makes a written waiver of the benefits of Section 6148, or when the fee agreement is implied in fact by prior services of the same general kind having been rendered to and paid for by the client.

The agreement must state: (a) any basis for compensation including, but not limited to hourly rates, statutory or flat fees and other standard, rates and charges; (b) the general nature of the legal services to be provided; and (c) the responsibilities of attorney and client under the agreement. The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

ATTACHMENT A

Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

Section 6148(b) also requires attorneys to provide their clients with written bills. A client may request a bill at intervals of 30 days or greater. The attorney must provide the bill within 10 days after the demand. All bills must state the amount, rate and basis for calculation or other method of determining the attorney's fees and costs.

Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- **Contingent Fee Agreements—B&P §6147**

Business and Professions Code Section 6147 governs contingent fee agreements. It contains the same requirements as the Non-Contingent fee agreements discussed in the section above, and the following additional requirements:

- (a) A statement of the contingency fee percentage amount.
- (b) A statement as to how disbursements and costs will affect the contingency fee and the client's recovery.
- (c) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee agreement. This may include any amounts collected for the client by the attorney.
- (d) Unless the claim is subject to the provisions of Business and Professions Code Section 6146 (Claim Against Health Care Provider) a statement that the fee is not set by law but is negotiable between the attorney and client.
- (e) If the claim is subject to Section 6146, a statement that the rates set forth for that section are the maximum limits for the contingency fee and that the attorney and client may negotiate a lower rate.

The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- **Disclosure Concerning Professional Liability Insurance—CPRC 1.4.2**

California Rule of Professional Conduct (CPRC) 1.4.2 requires attorneys who know or reasonably should know that they do not have professional liability insurance to inform the client in writing at the time the client hires the attorney that the attorney does not have professional liability insurance. The attorney must disclose he/she is not insured whenever it is foreseeable the representation will exceed four hours or when, during the course of representation, the attorney no longer carries professional liability insurance. In the sample agreements, there is a provision to disclose whether you have professional liability insurance or not.

Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

III. INSTRUCTIONS FOR USE OF FORMS

A. Form No. 1: Hourly Litigation

- Conditions (Par. 1) and Effective Date (Par. 17)

Paragraph 1 (Conditions) and paragraph 17 (Effective Date) work together and outline various conditions which must be met before the fee agreement is binding on the parties. If the conditions are not met, the agreement may not take effect but the attorney may still be entitled to recover a reasonable fee. (B&P 6148(a), 6148(c))

- Scope of Services and Attorney's Duties (Par. 2) and Client's Duties (Par. 3)

The attorney should fill in a detailed description of the services to be provided. This may be a statutory requirement. (B&P 6148(a)(2)) This paragraph excludes representation in an appeal, collection proceedings after judgment or proceedings regarding renewal of a judgment. It also provides that a separate written agreement is required for these services and any other services not provided in the description. Paragraph 3 lists all the duties the client must fulfill during the attorney-client relationship, which may be a statutory requirement. (B&P 6148(a)(3))

- Deposit (Par. 4)

Although a deposit is not required, if the attorney chooses to require a deposit, he or she should keep this clause in the agreement and fill in the amount of the initial deposit and the date it must be paid. Rule of Professional Conduct 1.15(a) requires that advances for fees, costs and expenses must be deposited into the attorney's client trust account. Since an attorney cannot withdraw funds from the trust account without the client's authorization, an authorization is included in this paragraph. There is also a recitation that the deposit is not an estimate of the total fees and costs to be charged.

When the initial deposit is exhausted, the provision permits the attorney to require a further deposit and the attorney should fill in the amount. Finally, in the "Optional Clauses" document there is a provision for a "Replenishing Deposit" which permits the attorney to require the client replenish the deposit each month.

- Legal Fees (Par. 5)

Since Business & Professions Code Section 6148(a)(1) requires the attorney to list hourly rates, the attorney should fill in the rates for each attorney and the attorney's personnel. The provision also states that rates are subject to change on 30 days written notice to the client. The attorney may withdraw from the representation if the client declines to pay the increased rate and if permitted under the California Rules of Professional Conduct. The paragraph also contains a list of various tasks for which an attorney may charge the client. The agreement provides for a minimum charge of one-tenth of an hour. This list may be modified.

- Costs and Other Charges (Par. 6); Other Fees and Costs (Par. 7)

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

In paragraph 6 there is a list of common costs and expenses in a litigation matter. The attorney can add to or delete from the list and should fill in the rates for certain charges to comply with the statute. (If applicable, B&P 6148(b)) The provision also allows the attorney to hire experts and consultants and to obtain the client's consent before a certain amount is incurred. The attorney should fill in the amount in subparagraph (d).

Paragraph 7 describes the situation where the Court awards attorney's fees and costs to another party after trial or arbitration and states it is the obligation of the client to pay these fees and costs. It also recites the client understands that any award for attorney's fees to the client does not affect the amount of fees and costs the client owes the attorney under the fee agreement.

- Bills (Par. 8)

Paragraph 8 complies with the statute regarding billing requirements. (B&P 6148(b)) The attorney should fill in when payment is due. It also highlights the client's obligation to review each bill and communicate any objections, questions or concerns so the issue can be resolved promptly.

- Client Approval for Settlement (Par. 9)

Paragraph 9 recites the client has the absolute right to accept or reject settlement and the attorney will not settle or compromise the client's claim without the client's consent.

- Discharge and Withdrawal (Par. 10)

California Rule of Professional Conduct 1.16 recites the circumstances in which an attorney can or must withdraw from the representation. Paragraph 10 lists these circumstances and whether the attorney may recover attorney fees and costs after withdrawal.

- Conclusion of Services (Par. 11)

This paragraph states that final payment is due on completion of the attorney services, when an attorney is discharged or withdraws. It also contains a description concerning return of the client's original file under CPRC 1.16(e)(1) and whether the file will be maintained or disposed of when the client does not request its return. The attorney should fill in the period the attorney will keep the file. If the client wants the file to be retained for a different period of time, the provision requires that agreement to be in writing and specify who will bear the cost of storage.

- Disclaimer of Guarantee (Par. 12)

This paragraph states the attorney makes no guarantee about the outcome of the client's matter and any statements the attorney makes should not be construed as a guarantee. It also provides that any client deposit or attorney statements about fees and costs are not a limitation on fees or any guarantee they will not exceed the deposit or estimate. Since this is an important provision, the attorney and client should initial it acknowledging their understanding and agreement.

- No Tax Advice (Par. 14)

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

Since many documents an attorney prepares may have significant tax implications, this paragraph provides the attorney has not been retained to give tax advice and the client should consult with tax advisors regarding the matter. This paragraph should be deleted when the client hires the attorney to provide tax advice.

- Construction Clauses (Par. 15-18)

Paragraphs 15-18 are standard provisions concerning the construction of the agreement.

B. Form No. 2: Hourly Non-Litigation

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Hourly Non-Litigation Sample with the following exceptions:

- Scope of Services (Par. 2)

The references to litigation services are deleted.

- Client's Duties (Par. 3)

The references to legal proceedings are deleted.

- Deposit (Par. 4)

The references to trial and arbitration are deleted.

- Legal Fees (Par. 5)

The references to litigation fees are deleted.

- Costs and Other Charges (Par. 6)

The references to litigation costs are deleted.

- Other Costs and Fees (Par. 7)

The paragraph entitled "Other Costs and Fees" is deleted.

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

C. Form No. 3: Contingency

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Contingent Fee Agreement with the following exceptions:

- Scope of Services (Par. 2)

This paragraph excludes the defense of the client in any matter and the representation of the client on a cross-complaint or cross-claim.

- Legal Fees (Par. 4)

This paragraph complies with the statutory requirements of Business and Professions Code Section 6147, which governs contingent fee agreements. It also recites the attorney fee is based on the net recovery depending on the stage at which the settlement or judgment is reached. Since the amount of the fee is subject to negotiation, this provision can be changed. The optional clauses document contains other arrangements. The paragraph also addresses the situation where the Court orders another party to pay the client's attorney's fees and costs. It recites that the award is considered part of the client's recovery. Finally, the paragraph lists thirteen (13) factors from Rule of Professional Conduct 1.5 that are considered when determining whether an attorney is entitled to a fee when the attorney fails to comply with the requirements of Section 6147, when the attorney is discharged or when the attorneys withdraws with justifiable cause.

- Negotiability of Legal Fees (Par. 5)

Business and Professions Code Section 6147 requires this provision.

- Costs and Litigation Expenses (Par. 6)

This paragraph requires the client to pay for the costs of litigation and lists various costs which can be charged. It also states that any award of fees and costs as a discovery or other sanction or under a contract or statute shall belong to the attorney. If the Court assesses monetary sanctions against the client for bad faith, this provision states the client must pay the sanction.

- Lien (Par. 10)

This paragraph provides the attorney has a lien on all claims that are the subject of the attorney's representation. While under current law an attorney's lien in a contingency fee agreement (in contrast to an hourly engagement or a combination of hourly and contingency) is not an adverse interest as defined in Rule of Professional Conduct 1.8.1, it is recommended that the paragraph

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

recite the client may wish to seek the advice of an independent attorney before agreeing to this provision. It is also recommended that both client and attorney should initial this paragraph to acknowledge their understanding.

IV. OPTIONAL CLAUSES AND DISCLOSURE FORMS

A. Optional Clauses

There are many additional clauses an attorney may include in the fee agreement. Below is a compilation of additional clauses which are all optional. In addition, there are several disclosure forms an attorney may need to consider included in this section.

1. Arbitration Clause

An attorney may want to consult the firm's malpractice insurance carrier regarding its position on arbitration and particular arbitration provisions, including any award of attorney's fees.

The suggested clause is appropriate for binding arbitration of all claims other than fee disputes which are subject to non-binding arbitration under Business and Professions Code Sections 6200, *et seq.* The agreement provides for full disclosure to the client of the ramifications of those choices and the comparative advantages and disadvantages of other alternatives. This clause advises the client of the right to have an independent attorney review.

2. Mediation Clause

This is an optional clause. However, if used, Evidence Code section 1129(a) requires that attorneys provide written disclosure to the client regarding mediation confidentiality and that communications between the attorney and client made in preparation for the mediation, or during the mediation, are confidential and cannot be disclosed or used even if the client decides to sue attorney for malpractice because of something that happens during the mediation.

Under Business and Professions Code Section 6200, a mediation option may be offered to the parties after the attorney or client files a request for fee arbitration with some local bar association or the State Bar fee arbitration programs.

The attorney may want to consider this in determining whether to include a pre-filing mediation clause such as the suggested clause.

3. Interest Clause

It is legally and ethically proper to charge interest on fees. If the attorney elects to do so, this clause provides appropriate language. Please keep in mind that interest, if charged, must be reasonable so as not to violate either the prohibition against unconscionable fees nor the usury provisions of the California Constitution. A periodic interest rate that does not exceed 10% per annum simple interest should not violate California's usury law. Generally, interest should begin

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

running only after a certain specified period, i.e., thirty, sixty or ninety days after the billing invoice is rendered, if not paid within that time.

4. Replenishing Deposit

This is an alternative to Par. 4 in Forms 1 and 2, and provides for an automatically replenishing deposit.

5. Attorneys' Fees

An attorneys' fees clause is permitted, except that attorneys' fees are not recoverable in fee arbitrations under Business and Professions Code Sections 6200, *et seq.* Further, an attorney may not usually recover fees for representing him or herself. If this clause and an arbitration clause are both used, the attorney's fee provisions should be the same. Inclusion of this clause should be cleared with the attorney's malpractice insurance carrier.

6. Other Payor—Insurance

This clause may be used when an insurance company pays for some or all of the client's attorney fees. It also provides that if the insurance company refuses to pay the fees or only pays some of the fees, the client is still responsible for payment.

7. Flat Fee

This clause is a suggested alternative to Paragraph 5 (Legal Fees and Billing Practices) where the work is being performed on a fixed fee basis. Flat fees are governed by Rules 1.5(e) and 1.15(b) of the Rules of Professional Conduct, which require certain written disclosures and acknowledgment by the client where a flat fee paid in advance of performing the services will be deposited into the lawyer or law firm's operating account instead of a client trust account.

8. Division of Contingency Fees

This clause is required under California Rules of Professional Conduct 1.5.1 if the attorney wants to associate another attorney who is not a member of his or her firm and will split the contingency fee with the other attorney. The associated attorney should sign the fee agreement or other writing acknowledging the fee division.

9. "Other Attorney"—Hourly

This clause is required under California Rules of Professional Conduct Rule 1.5.1. This clause may be appropriate where the attorney contemplates working with another attorney who is not a partner, associate or shareholder of the attorney. Charging associate counsel fees as a cost in an hourly fee case is appropriate, but is a suspect practice in contingency fee litigation. Separate sample clauses are therefore offered for hourly and contingency fee cases.

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

10. Payment of Referral

This clause is required under California Rules of Professional Conduct 7.2(b) and provides that the payment of the referral fee to the referring attorney will not increase the client's legal fees.

11. Lien—Hourly Fee Agreement

This clause satisfies the requirements set forth in the Supreme Court case, *Fletcher v. Davis* (2004) 33 Cal. 4th 61. In that case the court held an attorney who wishes to secure payment of hourly legal fees and costs with a lien must comply with California Rules of Professional Conduct 1.8.1. That rule requires the attorney must advise the client in writing of the adverse consequences of the lien and advise the client of his or her right to obtain an independent attorney to review the lien provision before the client signs the fee agreement.

The attorney should have the client initial this clause.

12. Excluded Services

An attorney may limit or exclude certain services in the fee agreement and this clause provides for the exclusion. Under *Nichols v. Keller* (1993) 15 Cal. App. 4th 1672 the attorney must alert the client of the possible need to employ other counsel to handle the excluded services. Pursuant to *Meighan v. Shore* (1995) 34 CA 4th 1025, an attorney also must alert the client's spouse of a possible claim for loss of consortium and whether the attorney will be handling the loss of consortium claim.

13. Contingency Language Options

There are a variety of ways an attorney can represent a client in a contingent fee. These various clauses describe the various options including how the fee is paid, whether the client or the attorney advances cost and how it affects the client's recovery.

14. Consent to Use of E-mail and Cloud Services

This clause informs the client that attorney will communicate with e-mail and store electronic documents using cloud computing services.

B. Disclosure Forms

1. Third Party Payor Forms

A Third Party Payor agreement is appended. It can be used when someone other than the client pays the client's attorney's fees and costs. There is a selection to be made when completing the form. One selection allows an attorney to share information regarding the representation with the Third Party payor and the other selection prohibits sharing information.

2. Joint/Multiple Client Disclosure and Consent Form

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

This form may be appropriate for use when an attorney represents more than one individual/entity and wants to disclose potential conflicts of interest and obtain waivers.

3. Mediation Notification and Acknowledgement Form – Evidence Code Section 1129(a)

Under Evidence Code section 1129(a), you are required to provide a Mediation Notification Disclosure form to your client prior to attending a mediation. When using this form, it must be (1) on one page; (2) not attached to any other document given to the client; (3) be printed in at least 12 point font; (4) be in the client's preferred language; (5) be dated; and (6) include the names and signatures of the attorney and client.

V. CONCLUSION

These forms are disseminated in the hope that they will be useful to attorneys in their practice. Attorneys are urged to make alterations to these forms so that they conform to the attorney's practice and the needs and requirements of the attorney and clients, subject always to satisfying the statutory requirements for fee agreements and the Rules of Professional Conduct.

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

(REDLINE)

SAMPLE WRITTEN FEE AGREEMENTS FORMS

INSTRUCTIONS AND COMMENTS

I. INTRODUCTION

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B. Summary of Statutes and Rules of Professional Conduct

- Non-Contingent Fee Agreements—B&P §6148

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agreement. The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

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Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- Contingent Fee Agreements—B&P §6147

Business and Professions Code Section 6147 governs contingent fee agreements. It contains the same requirements as the Non-Contingent fee agreements discussed in the section above, and the following additional requirements:

- (a) A statement of the contingency fee percentage amount.
- (b) A statement as to how disbursements and costs will affect the contingency fee and the client's recovery.
- (c) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee agreement. This may include any amounts collected for the client by the attorney.
- (d) Unless the claim is subject to the provisions of Business and Professions Code Section 6146 (Claim Against Health Care Provider) a statement that the fee is not set by law but is negotiable between the attorney and client.
- (e) If the claim is subject to Section 6146, a statement that the rates set forth for that section are the maximum limits for the contingency fee and that the attorney and client may negotiate a lower rate.

The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- Disclosure Concerning Professional Liability Insurance—CPRC ~~1.4.23-410~~

California Rule of Professional Conduct (CPRC) ~~1.4.23-410~~ requires attorneys who know or reasonably should know that they do not have professional liability insurance to inform ~~the~~a client in writing at the time the client hires the attorney that the attorney does not have professional liability insurance. The attorney must disclose he/she is not insured whenever it is foreseeable the representation will exceed four hours or when, during the course of representation, the attorney no longer carries professional liability insurance. In the sample

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agreements, there is a provision to disclose whether you have professional liability insurance or not.

Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

III. INSTRUCTIONS FOR USE OF FORMS

A. Form No. 1: Hourly Litigation

- Conditions (Par. 1) and Effective Date (Par. 17)

Paragraph 1 (Conditions) and paragraph 17 (Effective Date) work together and outline various conditions which must be met before the fee agreement is binding on the parties. If the conditions are not met, the agreement may not take effect but the attorney may still be entitled to recover a reasonable fee. (B&P 6148(a), 6148(c))

- Scope of Services and Attorney's Duties (Par. 2) and Client's Duties (Par. 3)

The attorney should fill in a detailed description of the services to be provided. This may be a statutory requirement. (B&P 6148(a)(2)) This paragraph excludes representation in an appeal, collection proceedings after judgment or proceedings regarding renewal of a judgment. It also provides that a separate written agreement is required for these services and any other services not provided in the description. Paragraph 3 lists all the duties the client must fulfill during the attorney-client relationship, which may be a statutory requirement. (B&P 6148(a)(3))

- Deposit (Par. 4)

Although a deposit is not required, if the attorney chooses to require a deposit, he or she should keep this clause in the agreement and fill in the amount of the initial deposit and the date it must be paid. [Rule of Professional Conduct 1.15\(a\) requires that advances for fees, costs and expenses must be deposited into the attorney's client trust account.](#) Since an attorney cannot withdraw funds from the trust account without the client's authorization, an authorization is included in this paragraph. There is also a recitation that the deposit is not an estimate of the total fees and costs to be charged.

When the initial deposit is exhausted, the provision permits the attorney to require a further deposit and the attorney should fill in the amount. Finally, in the "Optional Clauses" document there is a provision for a "Replenishing Deposit" which permits the attorney to require the client replenish the deposit each month.

- Legal Fees (Par. 5)

Since Business & Professions Code Section 6148(a)(1) requires the attorney to list hourly rates, the attorney should fill in the rates for each attorney and the attorney's personnel. The provision also states that rates are subject to change on 30 days written notice to the client. The attorney may withdraw from the representation if the client declines to pay the increased rate and if permitted under the California Rules of Professional Conduct. The paragraph also contains a list of various tasks for which an attorney may charge the client. The agreement provides for a minimum charge of one-tenth of an hour. This list may be modified.

- Costs and Other Charges (Par. 6); Other Fees and Costs (Par. 7)

ATTACHMENT A

Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

In paragraph 6 there is a list of common costs and expenses in a litigation matter. The attorney can add to or delete from the list and should fill in the rates for certain charges to comply with the statute. (If applicable, B&P 6148(b)) The provision also allows the attorney to hire experts and consultants and to obtain the client's consent before a certain amount is incurred. The attorney should fill in the amount in subparagraph (d).

Paragraph 7 describes the situation where the Court awards attorney's fees and costs to another party after trial or arbitration and states it is the obligation of the client to pay these fees and costs. It also recites the client understands that any award for attorney's fees to the client does not affect the amount of fees and costs the client owes the attorney under the fee agreement.

- Bills (Par. 8)

Paragraph 8 complies with the statute regarding billing requirements. (B&P 6148(b)) The attorney should fill in when payment is due. It also highlights the client's obligation to review each bill and communicate any objections, questions or concerns so the issue can be resolved promptly.

- Client Approval for Settlement (Par. 9)

Paragraph 9 recites the client has the absolute right to accept or reject settlement and the attorney will not settle or compromise the client's claim without the client's consent.

- Discharge and Withdrawal (Par. 10)

California Rule of Professional Conduct ~~1.16~~~~3-700~~ recites the circumstances in which an attorney can or must withdraw from the representation. Paragraph 10 lists these circumstances and whether the attorney may recover attorney fees and costs after withdrawal.

- Conclusion of Services (Par. 11)

This paragraph states that final payment is due on completion of the attorney services, when an attorney is discharged or withdraws. It also contains a description concerning return of the client's original file under CPRC ~~1.16(e)(1)3-700(D)(1)~~ and whether the file will be maintained or disposed of when the client does not request its return. The attorney should fill in the period the attorney will keep the file. If the client wants the file to be retained for a different period of time, the provision requires that agreement to be in writing and specify who will bear the cost of storage.

- Disclaimer of Guarantee (Par. 12)

This paragraph states the attorney makes no guarantee about the outcome of the client's matter and any statements the attorney makes should not be construed as a guarantee. It also provides that any client deposit or attorney statements about fees and costs are not a limitation on fees or any guarantee they will not exceed the deposit or estimate. Since this is an important provision, the attorney and client should initial it acknowledging their understanding and agreement.

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

- No Tax Advice (Par. 14)

Since many documents an attorney prepares may have significant tax implications, this paragraph provides the attorney has not been retained to give tax advice and the client should consult with tax advisors regarding the matter. This paragraph should be deleted when the client hires the attorney to provide tax advice.

- Construction Clauses (Par. 15-18)

Paragraphs 15-18 are standard provisions concerning the construction of the agreement.

B. Form No. 2: Hourly Non-Litigation

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Hourly Non-Litigation Sample with the following exceptions:

- Scope of Services (Par. 2)

The references to litigation services are deleted.

- Client's Duties (Par. 3)

The references to legal proceedings are deleted.

- Deposit (Par. 4)

The references to trial and arbitration are deleted.

- Legal Fees (Par. 5)

The references to litigation fees are deleted.

- Costs and Other Charges (Par. 6)

The references to litigation costs are deleted.

- Other Costs and Fees (Par. 7)

The paragraph entitled "Other Costs and Fees" is deleted.

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

ATTACHMENT A

Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

C. Form No. 3: Contingency

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Contingent Fee Agreement with the following exceptions:

- Scope of Services (Par. 2)

This paragraph excludes the defense of the client in any matter and the representation of the client on a cross-complaint or cross-claim.

- Legal Fees (Par. 4)

This paragraph complies with the statutory requirements of Business and Professions Code Section 6147, which governs contingent fee agreements. It also recites the attorney fee is based on the net recovery depending on the stage at which the settlement or judgment is reached. Since the amount of the fee is subject to negotiation, this provision can be changed. The optional clauses document contains other arrangements. The paragraph also addresses the situation where the Court orders another party to pay the client's attorney's fees and costs. It recites that the award is considered part of the client's recovery. Finally, the paragraph lists ~~thirteen~~eleven (13+) factors from Rule of Professional Conduct ~~1.54-200~~ that are considered when determining whether an attorney is entitled to a fee when the attorney fails to comply with the requirements of Section 6147, when the attorney is discharged or when the attorneys withdraws with justifiable cause.

- Negotiability of Legal Fees (Par. 5)

Business and Professions Code Section 6147 requires this provision.

- Costs and Litigation Expenses (Par. 6)

This paragraph requires the client to pay for the costs of litigation and lists various costs which can be charged. It also states that any award of fees and costs as a discovery or other sanction or under a contract or statute shall belong to the attorney. If the Court assesses monetary sanctions against the client for bad faith, this provision states the client must pay the sanction.

- Lien (Par. 10)

This paragraph provides the attorney has a lien on all claims that are the subject of the attorney's representation. While under current law an attorney's lien in a contingency fee agreement (in contrast to an hourly engagement or a combination of hourly and contingency) is not an adverse

ATTACHMENT A

Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

interest as defined in Rule of Professional Conduct [1.8.13-300](#), it is recommended that the paragraph recite the client may wish to seek the advice of an independent attorney before agreeing to this provision. It is also recommended that both client and attorney should initial this paragraph to acknowledge their understanding.

IV. OPTIONAL CLAUSES AND DISCLOSURE FORMS

A. Optional Clauses

There are many additional clauses an attorney may include in the fee agreement. Below is a compilation of additional clauses which are all optional. In addition, there are several disclosure forms an attorney may need to consider included in this section.

1. Arbitration Clause

An attorney may want to consult the firm's malpractice insurance carrier regarding its position on arbitration and particular arbitration provisions, including any award of attorney's fees.

The suggested clause is appropriate for binding arbitration of all claims other than fee disputes which are subject to non-binding arbitration under Business and Professions Code Sections 6200, *et seq.* The agreement provides for full disclosure to the client of the ramifications of those choices and the comparative advantages and disadvantages of other alternatives. This clause advises the client of the right to have an independent attorney review.

2. Mediation Clause

This is an optional clause. [However, if used, Evidence Code section 1129\(a\) requires that attorneys provide written disclosure to the client regarding mediation confidentiality and that communications between the attorney and client made in preparation for the mediation, or during the mediation, are confidential and cannot be disclosed or used even if the client decides to sue attorney for malpractice because of something that happens during the mediation.](#)

Under Business and Professions Code Section 6200, a mediation option may be offered to the parties after the attorney or client files a request for fee arbitration with some local bar association or the State Bar fee arbitration programs.

The attorney may want to consider this in determining whether to include a pre-filing mediation clause such as the suggested clause.

3. Interest Clause

It is legally and ethically proper to charge interest on fees. If the attorney elects to do so, this clause provides appropriate language. Please keep in mind that interest, if charged, must be reasonable so as not to violate either the prohibition against unconscionable fees nor the usury provisions of the California Constitution. A periodic interest rate that does not exceed 10% per

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

annum simple interest should not violate California's usury law. Generally, interest should begin running only after a certain specified period, i.e., thirty, sixty or ninety days after the billing invoice is rendered, if not paid within that time.

4. Replenishing Deposit

This is an alternative to Par. 4 in Forms 1 and 2, and provides for an automatically replenishing deposit.

5. Attorneys' Fees

An attorneys' fees clause is permitted, except that attorneys' fees are not recoverable in fee arbitrations under Business and Professions Code Sections 6200, *et seq.* Further, an attorney may not usually recover fees for representing him or herself. If this clause and an arbitration clause are both used, the attorney's fee provisions should be the same. Inclusion of this clause should be cleared with the attorney's malpractice insurance carrier.

6. Other Payor—Insurance

This clause may be used when an insurance company pays for some or all of the client's attorney fees. It also provides that if the insurance company refuses to pay the fees or only pays some of the fees, the client is still responsible for payment.

7. Flat Fee

This clause is a suggested alternative to Paragraph 5 (Legal Fees and Billing Practices) where the work is being performed on a fixed fee basis. Flat fees are governed by Rules 1.5(e) and 1.15(b) of the Rules of Professional Conduct, which require certain written disclosures and acknowledgment by the client where a flat fee paid in advance of performing the services will be deposited into the lawyer or law firm's operating account instead of a client trust account.

8. Division of Contingency Fees

This clause is required under California Rules of Professional Conduct ~~1.5.12-200~~ if the attorney wants to associate another attorney who is not a member of his or her firm and will split the contingency fee with the other attorney. The associated attorney should sign the fee agreement or other writing acknowledging the fee division.

9. "Other Attorney"—Hourly

This clause is required under California Rules of Professional Conduct Rule ~~1.5.12-200~~. This clause may be appropriate where the attorney contemplates working with another attorney who is not a partner, associate or shareholder of the attorney. Charging associate counsel fees as a cost

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

in an hourly fee case is appropriate, but is a suspect practice in contingency fee litigation. Separate sample clauses are therefore offered for hourly and contingency fee cases.

10. Payment of Referral

This clause is required under California Rules of Professional Conduct ~~7.2(b)2-200~~ and provides that the payment of the referral fee to the referring attorney will not increase the client's legal fees.

11. Lien—Hourly Fee Agreement

This clause satisfies the requirements set forth in the Supreme Court case, *Fletcher v. Davis* (2004) 33 Cal. 4th 61. In that case the court held an attorney who wishes to secure payment of hourly legal fees and costs with a lien must comply with California Rules of Professional Conduct ~~1.8.13-300~~. That rule requires the attorney must advise the client in writing of the adverse consequences of the lien and advise the client of his or her right to obtain an independent attorney to review the lien provision before the client signs the fee agreement.

The attorney should have the client initial this clause.

12. Excluded Services

An attorney may limit or exclude certain services in the fee agreement and this clause provides for the exclusion. Under *Nichols v. Keller* (1993) 15 Cal. App. 4th 1672 the attorney must alert the client of the possible need to employ other counsel to handle the excluded services. Pursuant to *Meighan v. Shore* (1995) 34 CA 4th 1025, an attorney also must alert the client's spouse of a possible claim for loss of consortium and whether the attorney will be handling the loss of consortium claim.

13. Contingency Language Options

There are a variety of ways an attorney can represent a client in a contingent fee. These various clauses describe the various options including how the fee is paid, whether the client or the attorney advances cost and how it affects the client's recovery.

14. Consent to Use of E-mail and Cloud Services

This clause informs the client that attorney will communicate with e-mail and store electronic documents using cloud computing services.

B. Disclosure Forms

1. Third Party Payor Forms

A Third Party Payor agreement is appended. It can be used when someone other than the client pays the client's attorney's fees and costs. There is a selection to be made when completing the form. One selection allows an attorney to share information regarding the representation with the Third Party payor and the other selection prohibits sharing information.

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Sample Fee Agreement Forms: Instructions and Comments (Clean and Redline)

2. Joint/Multiple Client Disclosure and Consent Form

This form may be appropriate for use when an attorney represents more than one individual/entity and wants to disclose potential conflicts of interest and obtain waivers.

3. [Mediation Notification and Acknowledgement Form – Evidence Code Section 1129\(a\)](#)

[Under Evidence Code section 1129\(a\), you are required to provide a Mediation Notification Disclosure form to your client prior to attending a mediation. When using this form, it must be \(1\) on one page; \(2\) not attached to any other document given to the client; \(3\) be printed in at least 12 point font; \(4\) be in the client's preferred language; \(5\) be dated; and \(6\) include the names and signatures of the attorney and client.](#)

V. CONCLUSION

These forms are disseminated in the hope that they will be useful to attorneys in their practice. Attorneys are urged to make alterations to these forms so that they conform to the attorney's practice and the needs and requirements of the attorney and clients, subject always to satisfying the statutory requirements for fee agreements and the Rules of Professional Conduct.

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

(CLEAN)

Form No. 1
Sample Written Fee Agreement¹
Hourly Litigation

LAW FIRM
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

3. CLIENT’S DUTIES

Client agrees to be truthful with Attorney and not withhold information. Further Client agrees to cooperate, to keep Attorney informed of any information or developments which

¹ This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

4. DEPOSIT

Client agrees to pay Attorney an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposits, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's fees and costs ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to withdraw the amount that is identified in the objection shall be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within ____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT] at any time before a trial or arbitration date is set. Once a trial or arbitration date is set, Client will pay all sums then owing and deposit the Attorney's fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit.

5. LEGAL FEES AND BILLING PRACTICES

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour
Law clerks	_____	/hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client, witnesses, opposing counsel, court personnel or other persons. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent.] Time is billed in minimum increments one-tenth (.1) of an hour. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

6. COSTS AND OTHER CHARGES

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, translator/interpreter fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [] [PROVIDE RATE] cents per page; (3) facsimile charges – [] [PROVIDE RATE] cents per page; (4) postage at cost; and (5) computerized legal research at cost.
- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged ____% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.

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(c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

(d) Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

7. OTHER FEES AND COSTS

Client understands that if Client's case proceeds to court action or arbitration, the court may award attorney fees as well as some or all of the type of costs enumerated in Paragraph 6 above to the other party or parties. Payment of such attorney fees and costs shall be the sole responsibility of Client. Similarly, other parties may be required to pay some or all of the fees and costs incurred by the Client. Client acknowledges that any such determination does not in and of itself affect the amount of the fees and costs to be paid by Client to Attorney pursuant to this agreement.

8. BILLS

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

10. DISCHARGE AND WITHDRAWAL

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

11. CONCLUSION OF SERVICES

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____, [PROVIDE LENGTH OF TIME] after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

12. DISCLAIMER OF GUARANTEE AND ESTIMATES

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by Client, or estimate of fees given by Attorney, are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

13. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct 1.4.2(a), I am informing you in writing that I ____ have ____ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

14. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

17. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

18. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____

ATTORNEY

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Form No. 2
Sample Written Fee Agreement²
Hourly Non-Litigation

LAW FIRM
ADDRESS
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect retroactive to [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required.

3. CLIENT’S DUTIES

² This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations, which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Client agrees to be truthful with Attorney and not to withhold information, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents.

4. DEPOSIT

Client agrees to pay Attorney an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposit, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorneys' fees and costs ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney shall not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within ____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT] .

5. LEGAL FEES AND BILLING PRACTICES

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour
Law clerks	_____	/hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client and other parties and attorneys. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent]. Time is billed in minimum increments of one-tenth (.1) of an hour. Attorney will charge for waiting time and for travel time, both local and out of town.

6. COSTS AND OTHER CHARGES

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include notary fees, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, translator/interpreter fees, consultants' fees and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [] [PROVIDE RATE] cents per page; (3) facsimile charges – [] [PROVIDE RATE] cents per page; (4) postage at costs; and (5) computerized legal research at cost.
- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged ____% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.
- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

(d) Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

7. **BILLS**

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

8. **CLIENT APPROVAL NECESSARY FOR SETTLEMENT**

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

9. **DISCHARGE AND WITHDRAWAL**

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

10. **CONCLUSION OF SERVICES**

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which agreement may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

11. DISCLAIMER OF GUARANTEE AND ESTIMATES

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of fees given by Attorney are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

12. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct 1.4.2.(a), I am informing you in writing that I _____ have _____ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

13. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

15. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

16. MODIFICATION BY SUBSEQUENT AGREEMENT

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

17. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____

ATTORNEY

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Form No. 3
Sample Written Fee Agreement³
Contingency Fee Agreement

LAW FIRM
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit for costs, if any, called for under Paragraph 7; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

This Agreement also does not include defending Client against, or representing Client in, any claims that may be asserted against Client as a cross-claim or counter-claim in Client’s case.

³ This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code Section 6147 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

If any such matters arise later, Attorney and Client will either negotiate a separate agreement if Client and Attorney agree that the Attorney will perform such additional legal work or Client will engage separate counsel with respect to the cross-claim or counter-claim or additional legal work.

3. CLIENT'S DUTIES

Client agrees to be truthful with Attorney and not to withhold information. Further, Client agrees to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

4. LEGAL FEES

Attorney will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 6.

The fee to be paid to Attorney will be a percentage of the "net recovery," depending on the stage at which the settlement or judgment is reached. The term "net recovery" means: (1) the total of all amounts received by settlement, arbitration award or judgment, including any award of attorney's fees, (2) minus all costs and disbursements set forth in Paragraph 6. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award will be part of Client's net recovery and the contingent fee will be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs. Net recovery will also include the reasonable value of any non-monetary proceeds.

Attorney's fee will 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 _____[PROVIDE RATE] percent (____%) of the net recovery;
- (b) If the matter is resolved prior to ____ [PROVIDE NUMBER] days before the initial trial or arbitration date, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery; and
- (c) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

In the event of Attorney's discharge, or withdrawal with justifiable cause, as provided in Paragraph 13, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Attorney will be entitled to be paid by Client a reasonable fee for the legal services provided. Such fee will be determined by considering the following factors:

- (1) Whether the Attorney engaged in fraud or overreaching in negotiating or setting the fee;
- (2) Whether the Attorney failed to disclose material facts;
- (3) The amount of the fee in proportion to the value of the services performed;
- (4) The relative sophistication of the Attorney and the Client;
- (5) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
- (6) The likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Attorney;
- (7) The amount involved and the results obtained;
- (8) The time limitations imposed by the Client or by the circumstances;
- (9) The nature and length of the professional relationship with the Client;
- (10) The experience, reputation, and ability of the Attorney;
- (11) Whether the fee is fixed or contingent;
- (12) The time and labor required;
- (13) The informed consent of the Client to the fee.

5. NEGOTIABILITY OF LEGAL FEES

Client understands that the rates set forth above are not set by law, but are negotiable between Attorney and Client.

6. COSTS AND LITIGATION EXPENSES/OTHER ATTORNEY'S FEES

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney.

Costs, disbursements and litigation expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, interpreter/translator fees, outside photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [] [PROVIDE RATE] cents per page; (3) facsimile charges – [] [PROVIDE RATE] cents per page; (4) messenger services – at cost; (5) postage at cost; and (6) computerized legal research at cost.

Client understands that, as set forth in Paragraph 7 below, a deposit for costs may be required before the expenditure is made by Attorney.

To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in Attorney's judgment.

Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

A. Client's Responsibility for Prevailing Party or Court Ordered Fees and Costs to Other Party

Client understands that if Client's case proceeds to court action or arbitration and Client loses or is not the prevailing party, the court may award Attorney fees as well as some or all of the type of costs enumerated in this Paragraph 6 to the winning or prevailing party or parties. Payment of such attorney fees and costs will be the sole responsibility of Client.

If an award of fees and/or costs to be paid by another party is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

and/or costs Attorney is entitled to charge Client or that only the fees and/or costs which were allowed were reasonable.

B. Allocation of Court Award for Statutory or Contract Fees and Costs

Client agrees that any award of fees and costs that may be awarded pursuant to contract or statute will belong exclusively to Attorney. Client further agrees that, whether or not attorney's fees or costs are awarded by the court in Client's case, if there is a recovery other than an award of fees and costs pursuant to contract or statute Client will remain responsible for the payment, in full, of the attorney's fees and costs in accordance with this Agreement. However, any payment of court-awarded fees and/or costs by a third party will be credited against the amount of fees and/or costs owed by Client under this Agreement. Therefore, 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.

C. Responsibility For and Allocation Of Sanctions

Client agrees that any award of fees and costs that may be awarded as discovery or other sanctions shall not be considered part of the Client's recovery and shall belong exclusively to Attorney as additional compensation for extraordinary time and effort.

The court may assess monetary sanctions, (including attorney fees and costs) against Client for bad faith conduct, including of discovery proceedings prior to trial, or inappropriate conduct during or even after trial. Any such award will be entirely the responsibility of Client.

7. DEPOSIT

Client agrees to pay Attorney an initial deposit for costs of \$_____ [PROVIDE AMOUNT], to be returned with this signed Agreement. Attorney will hold this initial deposit in a trust account. Client hereby authorizes Attorney to use that deposit to pay the costs, disbursements and other expenses incurred under this Agreement.

Client agrees that Attorney's right to recover costs and expenses from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client therefore authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's costs and expenses ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed costs and/or expenses

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed costs and/or expenses into the Client Trust Account during the pendency of the dispute.

When Client's deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$ _____ [PROVIDE AMOUNT].

Once a trial or arbitration date is set, Attorney will require Client to pay all sums then owing, and to deposit the costs Attorney estimates will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees likely to be assessed. Those sums may exceed the maximum deposit.

Client agrees to pay all deposits required under this Agreement within ____ [PROVIDE NUMBER] days of Attorney's demand. Any deposit that is unused at the conclusion of Attorney's services will be promptly refunded to Client.

8. BILLS FOR COSTS AND EXPENSES

Attorney will send Client periodic bills for costs and expenses incurred. Except as provided in Paragraph 7 ("Deposit"), each bill is to be paid in full within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

10. LIEN

Attorney has 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. In the event Attorney withdraws from representing Client without cause, Attorney will not be entitled to any lien for fees. The lien will exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph 6. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

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)

11. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct 1.4.2.(a), Attorney is informing Client in writing that Attorney ____has ____ does not have [SELECT APPROPRIATE RESPONSE] professional liability insurance.

12. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

13. DISCHARGE AND WITHDRAWAL

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's costs and expenses as required by this Agreement. Notwithstanding the discharge and provided there is a recovery, Client will remain obligated to pay Attorney at a reasonable rate for all services provided and to reimburse Attorney for all costs advanced.

Notwithstanding Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs and expenses incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Attorney's services, Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge. In the event Attorney voluntarily withdraws from representing Client without cause, Attorney waives, and will not be entitled to be paid, any fees by Client but will be entitled to be reimbursed for any costs and expenses already advanced by Attorney.

14. CONCLUSION OF SERVICES

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for costs and expenses will be due and payable immediately. Client may have access to Client's case file at Attorney's

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office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter have concluded, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfers possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

15. RECEIPT OF PROCEEDS

All proceeds of Client's case will be deposited into Attorney's trust account for disbursement in accordance with the provisions of this Agreement.

16. DISCLAIMER OF GUARANTEE

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of this matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of costs and expenses given by Attorney will not be a limitation on costs and expenses or a guarantee that costs and expenses will not exceed the amount of the deposit or estimate. Actual costs and expenses may vary significantly from estimates given.

17. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

18. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

19. MODIFICATION BY SUBSEQUENT AGREEMENT

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both parties.

20. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of the Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

LAW FIRM NAME

By: _____

ATTORNEY

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

(REDLINE)

Form No. 1
Sample Written Fee Agreement¹
Hourly Litigation

LAW FIRM
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

¹ This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

3. CLIENT'S DUTIES

Client agrees to be truthful with Attorney and not withhold information. Further Client agrees to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

4. DEPOSIT

Client agrees to pay Attorney an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposits, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's fees and costs ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to withdraw the amount that is identified in the objection shall be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within ____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT] at any time before a trial or arbitration date is set. Once a trial or arbitration date is set, Client will pay all sums then owing and deposit the Attorney's fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit.

5. LEGAL FEES AND BILLING PRACTICES

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour
Law clerks	_____	/hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client, witnesses, opposing counsel, court personnel or other persons. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent.] Time is billed in minimum increments one-tenth (.1) of an hour. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

6. COSTS AND OTHER CHARGES

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, translator/interpreter fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [] [PROVIDE

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

RATE] cents per page; (3) facsimile charges – [___] [PROVIDE RATE] cents per page; (4) postage at cost; and (5) computerized legal research at cost.

- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged ____% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.
- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.
- (d) Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

7. OTHER FEES AND COSTS

Client understands that if Client's case proceeds to court action or arbitration, the court may award attorney fees as well as some or all of the type of costs enumerated in Paragraph 6 above to the other party or parties. Payment of such attorney fees and costs shall be the sole responsibility of Client. Similarly, other parties may be required to pay some or all of the fees and costs incurred by the Client. Client acknowledges that any such determination does not in and of itself affect the amount of the fees and costs to be paid by Client to Attorney pursuant to this agreement.

8. BILLS

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

10. DISCHARGE AND WITHDRAWAL

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

11. CONCLUSION OF SERVICES

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____, [PROVIDE LENGTH OF TIME] after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

12. DISCLAIMER OF GUARANTEE AND ESTIMATES

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by Client, or estimate of fees given by Attorney, are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

13. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct [1.4.2\(a\)](#)~~3-410~~, I am informing you in writing that I _____ have _____ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

14. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

17. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

18. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____

ATTORNEY

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Form No. 2
Sample Written Fee Agreement²
Hourly Non-Litigation

LAW FIRM
ADDRESS
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect retroactive to [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required.

3. CLIENT’S DUTIES

² This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations, which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Client agrees to be truthful with Attorney and not to withhold information, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents.

4. DEPOSIT

Client agrees to pay Attorney an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposit, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorneys' fees and costs ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney shall not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within ____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT] .

5. LEGAL FEES AND BILLING PRACTICES

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour
Law clerks	_____	/hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client and other parties and attorneys. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent]. Time is billed in minimum increments of one-tenth (.1) of an hour. Attorney will charge for waiting time and for travel time, both local and out of town.

6. COSTS AND OTHER CHARGES

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include notary fees, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, translator/interpreter fees, consultants' fees and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [___] [PROVIDE RATE] cents per page; (3) facsimile charges – [___][PROVIDE RATE] cents per page; (4) postage at costs; and (5) computerized legal research at cost.
- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged _____% [PROVIDE RATE] of the hourly rates for the time legal

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

personnel spend traveling.

- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.
- (d) Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

7. **BILLS**

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

8. **CLIENT APPROVAL NECESSARY FOR SETTLEMENT**

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

9. **DISCHARGE AND WITHDRAWAL**

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

10. **CONCLUSION OF SERVICES**

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which agreement may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

11. DISCLAIMER OF GUARANTEE AND ESTIMATES

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of fees given by Attorney are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

12. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct [1.4.2.\(a\)](#)~~3-410~~, I am informing you in writing that I ____ have ____ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

13. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

15. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

16. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

17. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____

ATTORNEY

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

Form No. 3
Sample Written Fee Agreement³
Contingency Fee Agreement

LAW FIRM
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit for costs, if any, called for under Paragraph 7; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

³ This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code Section 6147 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

This Agreement also does not include defending Client against, or representing Client in, any claims that may be asserted against Client as a cross-claim or counter-claim in Client's case. If any such matters arise later, Attorney and Client will either negotiate a separate agreement if Client and Attorney agree that the Attorney will perform such additional legal work or Client will engage separate counsel with respect to the cross-claim or counter-claim or additional legal work.

3. CLIENT'S DUTIES

Client agrees to be truthful with Attorney and not to withhold information. Further, Client agrees to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

4. LEGAL FEES

Attorney will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 6.

The fee to be paid to Attorney will be a percentage of the "net recovery," depending on the stage at which the settlement or judgment is reached. The term "net recovery" means: (1) the total of all amounts received by settlement, arbitration award or judgment, including any award of attorney's fees, (2) minus all costs and disbursements set forth in Paragraph 6. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award will be part of Client's net recovery and the contingent fee will be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs. Net recovery will also include the reasonable value of any non-monetary proceeds.

Attorney's fee will 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 _____[PROVIDE RATE] percent (____%) of the net recovery;
- (b) If the matter is resolved prior to ____ [PROVIDE NUMBER] days before the initial trial or arbitration date, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery; and

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

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

In the event of Attorney's discharge, or withdrawal with justifiable cause, as provided in Paragraph 13, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Attorney will be entitled to be paid by Client a reasonable fee for the legal services provided. Such fee will be determined by considering the following factors:

(1) ~~(4)~~ Whether the Attorney engaged in fraud or overreaching in negotiating or setting the fee;

(2) Whether the Attorney failed to disclose material facts;

~~(4)~~(3) The amount of the fee in proportion to the value of the services performed;

(4) The relative sophistication of the Attorney and the Client;

(5) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;

(6) The likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Attorney;

(7) The amount involved and the results obtained;

(8) The time limitations imposed by the Client or by the circumstances;

(9) The nature and length of the professional relationship with the Client;

(10) The experience, reputation, and ability of the Attorney;

(11) Whether the fee is fixed or contingent;

(12) The time and labor required;

(13) The informed consent of the Client to the fee.

ATTACHMENT B

Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

5. NEGOTIABILITY OF LEGAL FEES

Client understands that the rates set forth above are not set by law, but are negotiable between Attorney and Client.

6. COSTS AND LITIGATION EXPENSES/OTHER ATTORNEY'S FEES

Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney.

Costs, disbursements and litigation expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, interpreter/translator fees, outside photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [] [PROVIDE RATE] cents per page; (3) facsimile charges – [] [PROVIDE RATE] cents per page; (4) messenger services – at cost; (5) postage at cost; and (6) computerized legal research at cost.

Client understands that, as set forth in Paragraph 7 below, a deposit for costs may be required before the expenditure is made by Attorney.

To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in Attorney's judgment.

Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

A. Client's Responsibility for Prevailing Party or Court Ordered Fees and Costs to Other Party

Client understands that if Client's case proceeds to court action or arbitration and Client loses or is not the prevailing party, the court may award Attorney fees as well as some or all of the

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Sample Fee Agreement Forms: Three Sample Fee Agreements (Clean and Redline)

type of costs enumerated in this Paragraph 6 to the winning or prevailing party or parties. Payment of such attorney fees and costs will be the sole responsibility of Client.

If an award of fees and/or costs to be paid by another party is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Attorney is entitled to charge Client or that only the fees and/or costs which were allowed were reasonable.

B. Allocation of Court Award for Statutory or Contract Fees and Costs

Client agrees that any award of fees and costs that may be awarded pursuant to contract or statute will belong exclusively to Attorney. Client further agrees that, whether or not attorney's fees or costs are awarded by the court in Client's case, if there is a recovery other than an award of fees and costs pursuant to contract or statute Client will remain responsible for the payment, in full, of the attorney's fees and costs in accordance with this Agreement. However, any payment of court-awarded fees and/or costs by a third party will be credited against the amount of fees and/or costs owed by Client under this Agreement. Therefore, 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.

C. Responsibility For and Allocation Of Sanctions

Client agrees that any award of fees and costs that may be awarded as discovery or other sanctions shall not be considered part of the Client's recovery and shall belong exclusively to Attorney as additional compensation for extraordinary time and effort.

The court may assess monetary sanctions, (including attorney fees and costs) against Client for bad faith conduct, including of discovery proceedings prior to trial, or inappropriate conduct during or even after trial. Any such award will be entirely the responsibility of Client.

7. DEPOSIT

Client agrees to pay Attorney an initial deposit for costs of \$_____ [PROVIDE AMOUNT], to be returned with this signed Agreement. Attorney will hold this initial deposit in a trust account. Client hereby authorizes Attorney to use that deposit to pay the costs, disbursements and other expenses incurred under this Agreement.

Client agrees that Attorney's right to recover costs and expenses from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE

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NUMBER] days after the date a bill is sent to Client. Client therefore authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's costs and expenses ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed costs and/or expenses from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed costs and/or expenses into the Client Trust Account during the pendency of the dispute.

When Client's deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT].

Once a trial or arbitration date is set, Attorney will require Client to pay all sums then owing, and to deposit the costs Attorney estimates will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees likely to be assessed. Those sums may exceed the maximum deposit.

Client agrees to pay all deposits required under this Agreement within ____ [PROVIDE NUMBER] days of Attorney's demand. Any deposit that is unused at the conclusion of Attorney's services will be promptly refunded to Client.

8. BILLS FOR COSTS AND EXPENSES

Attorney will send Client periodic bills for costs and expenses incurred. Except as provided in Paragraph 7 ("Deposit"), each bill is to be paid in full within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

10. LIEN

Attorney has 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.

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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. In the event Attorney withdraws from representing Client without cause, Attorney will not be entitled to any lien for fees. The lien will exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph 6. 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)

11. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct 1.4.2.(a)~~3-410~~, Attorney is informing Client in writing that Attorney ____has ____ does not have [SELECT APPROPRIATE RESPONSE] professional liability insurance.

12. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

13. DISCHARGE AND WITHDRAWAL

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's costs and expenses as required by this Agreement. Notwithstanding the discharge and provided there is a recovery, Client will remain obligated to pay Attorney at a reasonable rate for all services provided and to reimburse Attorney for all costs advanced.

Notwithstanding Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs and expenses incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Attorney's services, Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge. In the event Attorney voluntarily withdraws from representing Client without cause, Attorney waives, and will not be entitled to be paid, any

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fees by Client but will be entitled to be reimbursed for any costs and expenses already advanced by Attorney.

14. CONCLUSION OF SERVICES

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for costs and expenses will be due and payable immediately. Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter have concluded, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfers possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

15. RECEIPT OF PROCEEDS

All proceeds of Client's case will be deposited into Attorney's trust account for disbursement in accordance with the provisions of this Agreement.

16. DISCLAIMER OF GUARANTEE

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of this matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of costs and expenses given by Attorney will not be a limitation on costs and expenses or a guarantee that costs and expenses will not exceed the amount of the deposit or estimate. Actual costs and expenses may vary significantly from estimates given.

17. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

18. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

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If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

19. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both parties.

20. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of the Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

LAW FIRM NAME

By: _____

ATTORNEY

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Sample Fee Agreement Forms: Optional Clauses and Disclosure Forms (Clean and Redline)

(CLEAN)

Optional Clauses and Disclosure Forms

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 to signing this Agreement.

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Sample Fee Agreement Forms: Optional Clauses and Disclosure Forms (Clean and Redline)

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 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 by failing to file 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 non-binding 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

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 or , if agreed to by the parties in advance, by e-mail to the opposing party. The mediation session will occur at a time mutually agreed upon by the parties in consultation with a mutually selected mediator, though no later than ___ days after the date of services of the initial notice, unless otherwise agreed by the parties and mediator. Each party shall bear its own fees and costs for the mediation. Under Evidence Code section 1129(a), Attorney is required to provide notice and have Client acknowledge certain confidentiality restrictions prior to participating in mediation. Attorney will provide Client with the Notice and Acknowledgement form.

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.

4. REPLENISHING DEPOSIT

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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 in an amount necessary to return the deposited amount 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 remaining amount due over and above the deposit. If no amount remains due after the deposited funds have been applied to the final invoice, and should any deposited funds remain, Client is entitled to and will have those funds returned in a timely manner.

5. ATTORNEY'S FEES

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- INSURANCE

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

7. FLAT FEE

OPTION 1: FLAT FEE PAID UPON COMPLETION OF SERVICES; OR, PAID IN ADVANCE AND HELD IN CLIENT TRUST ACCOUNT

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client [Alternative 1: when the work is completed]; [Alternative 2: in advance of the services to be rendered on (*insert date*) and will be withdrawn after the work is completed]; [Alternative 3: in equal installments of \$_____ due on _____].

OPTION 2: WHERE FLAT FEE PAID IN ADVANCE EXCEEDS \$1,000 AND

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ATTORNEY SEEKS CLIENT AGREEMENT TO DEPOSIT IN AN OPERATING ACCOUNT

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client in advance of the services to be rendered on [insert date].

Client has the right to (1) require that the flat fee be deposited into Attorney's Client Trust Account until the fee is earned; and (2) a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the flat fee has been paid are not completed. Having been informed of these rights, Client hereby agrees to the flat fee being deposited into Attorney's operating account. _____ (Client signature here); or: Client does not agree to the flat fee being deposited into Attorney's operating account and instead requires that the fee be deposited into Attorney's Client Trust Account. _____ (Client signature here).

OPTION 3: WHERE FLAT FEE PAID IN ADVANCE IS \$1,000 OR LESS AND ATTORNEY SEEKS TO DEPOSIT IN AN OPERATING ACCOUNT

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client in advance of the services to be rendered on [insert date]. The fee will be deposited into the Attorney's operating account.

Attorney hereby discloses to Client that Client has the right to (1) require that the flat fee be deposited into Attorney's Client Trust Account until the fee is earned; and (2) a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the flat fee has been paid are not completed.

8. DIVISION OF CONTINGENCY FEES

Client agrees that Attorney may associate other attorneys to assist in the representation. Client's 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, Client has read and understands the above and confirms his/her/its consent to the terms of the association of counsel and division of fees.

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9. “OTHER ATTORNEY”–HOURLY

OPTION 1 BILLED AS A COST

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 2 DIRECT BILLED

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated on an hourly basis at a rate of \$_____ per hour. These charges will be billed directly to Client by attorney [name].

[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 Attorney/firm will receive a referral fee of _____ (fill in percentage) of all sums paid in this matter. Client’s legal fees will not be increased by reason of the referral fee.

By signing this agreement, Client confirms his/her/its 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)

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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. OPTIONAL CONTINGENCY LANGUAGE

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 will 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,

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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 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;

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(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.

14. CONSENT TO USE OF E-MAIL AND CLOUD SERVICES

In order to provide Client with efficient and convenient legal services, Attorney will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, Client is consenting to such e-mail transmissions with Client and Client's representatives and agents.

In addition, Attorney uses a cloud computing service with servers located in a facility other than Attorney's office. Most of Attorney's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, Client understands and consents to having communications, documents and information pertinent to the Client's matter stored through such a cloud-based service.

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

Under California Rules of Professional Conduct 1.8.6 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.

SELECT ONE:

___ 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.

OR

___ 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) 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

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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: _____

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 1.7 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

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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 materials and property as defined in Rule 1.16(e)(1) 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.

Select one

(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.

or

(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.

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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: _____

CLIENT: _____

Dated: _____

CLIENT: _____

Dated: _____

ATTORNEY: _____

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Sample Fee Agreement Forms: Optional Clauses and Disclosure Forms (Clean and Redline)

Mediation Disclosure Notification and Acknowledgement

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 acknowledgement 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 Client] _____ [Date signed] _____

[Name of Attorney] _____ [Date signed] _____

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(REDLINE)

Optional Clauses and Disclosure Forms

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 to signing this Agreement.

B. MANDATORY FEE ARBITRATION

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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 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 by failing to file 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 non-binding 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

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 or, if agreed to by the parties in advance, by e-mail to the opposing party. The mediation session will occur at a time mutually agreed upon by the parties in consultation with a mutually selected mediator, though no later than ___ days after the date of services of the initial notice, unless otherwise agreed by the parties and mediator. Each party shall bear its own fees and costs for the mediation. [Under Evidence Code section 1129\(a\), Attorney is required to provide notice and have Client acknowledge certain confidentiality restrictions prior to participating in mediation. Attorney will provide Client with the Notice and Acknowledgement form.](#)

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.

4. REPLENISHING DEPOSIT

To commence the representation, Client has provided [must provide] Attorney with a

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\$_____ 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 in an amount necessary to return the deposited amount 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 remaining amount due over and above the deposit. If no amount remains due after the deposited funds have been applied to the final invoice, and should any deposited funds remain, Client is entitled to and will have those funds returned in a timely manner.

5. ATTORNEY'S FEES

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- INSURANCE

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

7. FLAT FEE

OPTION 1: FLAT FEE PAID UPON COMPLETION OF SERVICES; OR, PAID IN ADVANCE AND HELD IN CLIENT TRUST ACCOUNT

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement 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 [~~Alternative~~~~Option~~ 1: when the work is completed]; [~~Alternative~~ 2: in advance of the services to be rendered on (insert date) and will be withdrawn after the work is completed]; [~~Alternative~~ 3: on _____ (insert date)]; [~~Option~~ 2: in equal installments of \$_____ due on _____].;

OPTION 2: WHERE FLAT FEE PAID IN ADVANCE EXCEEDS \$1,000 AND ATTORNEY SEEKS CLIENT AGREEMENT TO DEPOSIT IN AN OPERATING ACCOUNT

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Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client in advance of the services to be rendered on [insert date].

Client has the right to (1) require that the flat fee be deposited into Attorney's Client Trust Account until the fee is earned; and (2) a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the flat fee has been paid are not completed. Having been informed of these rights, Client hereby agrees to the flat fee being deposited into Attorney's operating account. _____ (Client signature here); or: Client does not agree to the flat fee being deposited into Attorney's operating account and instead requires that the fee be deposited into Attorney's Client Trust Account. _____ (Client signature here).

OPTION 3: WHERE FLAT FEE PAID IN ADVANCE IS \$1,000 OR LESS AND ATTORNEY SEEKS TO DEPOSIT IN AN OPERATING ACCOUNT~~[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.~~

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client in advance of the services to be rendered on [insert date]. The fee will be deposited into the Attorney's operating account.

Attorney hereby discloses to Client that Client has the right to (1) require that the flat fee be deposited into Attorney's Client Trust Account until the fee is earned; and (2) a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the flat fee has been paid are not completed.

8. DIVISION OF CONTINGENCY FEES

Client agrees that Attorney may associate other attorneys to assist in the representation. Client's 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).

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By signing this agreement, Client has read and understands the above and confirms his/her/its consent to the terms of the association of counsel and division of fees.

9. “OTHER ATTORNEY”—HOURLY

OPTION 1 BILLED AS A COST

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 2 DIRECT BILLED

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated on an hourly basis at a rate of \$_____ per hour. These charges will be billed directly to Client by attorney [name].

[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 Attorney/firm will receive a referral fee of _____ (fill in percentage) of all sums paid in this matter. Client’s legal fees will not be increased by reason of the referral fee.

By signing this agreement, Client confirms his/her/its 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.

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_____(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. OPTIONAL CONTINGENCY LANGUAGE

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 will 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:

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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 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

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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.

14. CONSENT TO USE OF E-MAIL AND CLOUD SERVICES

In order to provide Client with efficient and convenient legal services, Attorney will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, Client is consenting to such e-mail transmissions with Client and Client's representatives and agents.

In addition, Attorney uses a cloud computing service with servers located in a facility other than Attorney's office. Most of Attorney's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, Client understands and consents to having communications, documents and information pertinent to the Client's matter stored through such a cloud-based service.

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

Under California Rules of Professional Conduct ~~1.8.63-310(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.

SELECT ONE:

___ 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.

OR

___ 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) 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

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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: _____

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 ~~1.73-310(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

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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 materials and property~~Papers~~ as defined in Rule 1.16(e)(1)~~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.

Select one

(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.

or

(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.

ATTACHMENT C

Sample Fee Agreement Forms: Optional Clauses and Disclosure Forms (Clean and Redline)

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: _____

CLIENT: _____

Dated: _____

CLIENT: _____

Dated: _____

ATTORNEY: _____

ATTACHMENT C

Sample Fee Agreement Forms: Optional Clauses and Disclosure Forms (Clean and Redline)

Mediation Disclosure Notification and Acknowledgement

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 acknowledgement 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 Client] _____ [Date signed] _____

[Name of Attorney] _____ [Date signed] _____

ATTACHMENT C

Sample Fee Agreement Forms: Optional Clauses and Disclosure Forms (Clean and Redline)

ATTACHMENT D

Full Text of Public Comments

From: Susan Bassi [<mailto:gilroybassi@gmail.com>]
Sent: Sunday, April 14, 2019 11:42 AM
To: Mandatory Fee Arbitration, State Bar of California
Subject: Public Comment - Fee Forms

This comment is brought on behalf of the Silicon Valley Public Trust Committee and is intended for consideration of the unsophisticated legal consumer involved in a family law matter (divorce or custody).

Family Law:

Fee Agreements for lawyers in family law cases are highly problematic and the proposed forms continue to inadequately inform unsophisticated legal consumers in a manner that protect the public. Divorcing couples typically have no education and training in the law, and the use of limited scope representation, or pro se litigant compelled to litigate against a spouse afforded general scope representation is especially insidious. Divorce cases in Santa Clara County that took 1-2 years to complete prior to 2000 now take 10-15 years and may never completely and lawfully divide property when there is a lack of legal parity. Further, use of experts, court appointed experts or stipulations for privately compensated temporary judges (lawyers) add to the costs of ligation in a manner that is secreted by initial fee agreements presented by a small group of lawyers in a manner that provides for antitrust activity that is cloaked in secrecy of fee agreements. For unsophisticated legal consumers, such as those couples seeking divorces, the forms should provide information that reflects the attorney's obligation to provide a zealous representation as well as provide a reasonable expectation of costs likely to be incurred in a divorce or custody action.

If the goal of the Bar is to protect the public, fee agreements should include the following:

1. Retainer agreement- Fee Agreements often state a retainer amount a client is expected to pay . An audit of over 2000 family court cases In Santa Clara County interviews reveal that a core group of lawyers use practices of issuing fee agreements in a manner that serves to secret actual costs and conceal financial exposure involved in retaining an attorney, a minor's counsel, or a lawyer acting as a privately compensated temporary judge pursuant to Civil Code of Procedure 638 and 639. Through interviews with clients, inspection of court files, and review of related fee agreements a core group of family law attorneys appear to vary requested fee agreements based on the lawyer on the other side. [REDACTED] was known to request retainers in an amount varying between \$5-50,000 in cases opposing attorney [REDACTED]. Further, there is an appearance that while family courts are designed to be courts of equity, lawyers representing the " out" spouse, typically the wife, tend to charge more and request to withdraw from cases after failing to file motions requesting fees from the court under Family Code Section 2030, or 2032. This serves to give an illusion to a new client that the retainer is an amount that will be needed to complete the divorce. Litigants

soon learn that retainers can typically be sufficient only for a few months of work and divorces since 2000 have taken on average, where a core group of lawyers are retained, over 7 years. Further, if a family law attorney fails to address reimbursements, contempt, or discovery, a case can linger for years and never be lawfully completed.

Family law attorneys are precluded from promising outcomes, and in a community property state the outcome of dividing property equally should be assured. Further, a fee agreement should set forth what will be performed for the fee, and when. At the beginning of the case, discovery, disclosures, fees and temporary support are required. A lawyer who fails to perform these duties, and an opposing counsel failing to do the same, provides for fee agreements that are overly broad, vague and fail to assure zealous representation. These agreements combined with close relationships of local family law attorneys through a county bar association provides for an economic incentive for potential antitrust and predatory business practices that are tolerated by local courts.

RECOMMENDATION: When drafting a fee agreement and requesting a retainer, an attorney should be required to disclose - (1) The number of family law cases they have preformed, (2) the length of time the cases were pending and the average cost those cases saw in attorney fees and costs related to the action. (3) The number and costs of experts an attorney reasonably expects to use to reach a final trial, and a comparison of costs should a case settle, with consideration of how long settlement took into the action.

2. **Disclosures** - Clients should be advised that fee agreements are not typically protected and could be subject to production. A family law attorney should also disclose in that agreement other lawyers and experts they worked with in the past that were inclined to settle and those who litigated every issues. This would inform clients of the likelihood of settlement given the retained lawyer's personal and professional relationships.

3. **Fee Agreements for Privately Compensated Temporary Judges-** Pursuant to CCP 638 and 639 lawyers are often selected voluntarily or by court appointment in divorce cases. An audit and review in Santa Clara County shows the following:

A. Lawyers and business entities including JAMS show vast irregularities in these positions. While California Rules of Court 2.831- 3.905 describe the procedural requirements for lawyers to obtain jurisdiction, ALL of the cases audited in Santa Clara County where these appointments were made show :

- Superior Court Judges fail to comply with the law that requires findings of the ability of parties to pay for these assignments.
- Court Clerks regularly fail to comply with the law in posting these assignments as California Rules of Court 2.834 requires.

- Superior Courts often use lawyers in settlement conferences as judge pro tems. and these lawyers later obtain lucrative private judging assignments in a manner that constitutes illegal activity including collusion, case rigging and antitrust or RICO activity.
- Review of fee agreements combined with a 2004 report by the Judicial Council to the State Legislature shows the fee agreements used by lawyers acting as privately compensated judges fail to:

Make adequate disclosures that would allow for a reasonable person to discern articulated costs, or a potential for bias, when a steady stream of income, and reciprocal appointments are seen in a county involving a small group of lawyers acting in high asset divorce cases that severs to convert community property to the fees and profits of these lawyers.

B. Once appointed, lawyers acting in a 638 and 639 appointment are rarely supervised by the court and therefore are allowed to bill and charge without oversight making this practice ripe for public corruption and criminal activity.

C. The state bar website does not differentiate between lawyers qualified to represent clients or serve through court appointments as minor's counsel and privately retained temporary judges. The legal consumer has no viable way to verify these credentials, which allows these appointments to be secreted from the public and ripe for over billing and mischarging.

RECOMMENDATION: Any Fee Agreement issued by a lawyer acting as a privately compensated temporary judge should include:

The rate of retainer.

The anticipated time and costs to complete the assignment.

Disclosure of all cases assigned and the lawyers acting in those cases.

Disclosure of costs and time seen in prior assignments.

Costs of associates, court reporters and fees associated and anticipated during the assignment.

This agreement should be required to be attached to the stipulation or order appointing the lawyer to act in a divorce case pursuant to CCP 638 or 639.

4. Disclosure of Malpractice Insurance

In the absence of a requirement to disclose malpractice , family law litigants in particular are disadvantaged. If one spouse is able to retain a lawyer capable of paying malpractice insurance, and the other is not, there is an inherent disparity. If a lawyer for one spouse should engage in malpractice and that spouse could litigate against their former attorney, while the opposing spouse could not, then there is gross unfairness. A lack of legal parity. Lawyers with malpractice insurance should not only have to disclose it in a fee agreement, it

should be noted on the lawyer's profile and in referrals by the state or county bar.

5. Disclosure of Collection

A disturbing, and deceptive, pattern has emerged in the Santa Clara County family law community that should be addressed in state mandated requirements of attorney fee agreements. Legal staffers report that upon doing a " conflict check", lawyers in Santa Clara County including; [REDACTED]

[REDACTED] and others, have of searching Lexis Nexus for properties and equity that could be easily converted to fees, rather than considering a family law case on the merits and working efficiently to assure court orders that assure legal parity as is the strong policy of the state under Family Code Section 2030.

Parties in private judging cases are exposed to unethical and predatory lawyers who issue billing information in legal pleadings or in a manner that fails to allow a proper review in order to make timely objections. Lawyers acting as quasi judicial officers are afforded the opportunity to bypass elections and disclosures in order to act as judges in divorce cases, presumably to make these cases less costly and more private, CRC 2.834 requiring these proceedings to be open notwithstanding. B stating retainers and hourly billing rates, then allowing cases to grow out of control in order to collect more in fees. An alarming number of cases show that instead of dividing equity in the family home these lawyers are allowing cases to get out of control, then obtain orders to have properties sold, or liened to collect their fees. These amounts are not minor amounts. In many cases lawyers are earning between \$50,000 - and \$4 million in the modern Silicon Valley divorce case. A search of properties of divorced couples finds an alarming number of liens encumbering real properties that serve to benefit a core group of local lawyers engaging in antitrust activity. Clients report that when these lawyers were retained, they were never informed the courts would assist the lawyers in selling their homes or burdening those homes with liens. This practice has become so wide spread that few families experiencing a divorce in Silicon Valley are able to retain the family home. Effectively a small group of lawyers are dragging out cases, charging unconscionable fees and then collecting the fees against home equity of families and to the detriment of a divorcing couple's children.

6. Appointment of Lawyers for Children

An audit of cases involving an attorney acting as a court appointed lawyer for children shows deceptive billing practice that not only burden private parties, but taxpayers who often pay these lawyers when the parties can not. Further, these appointments appear not be made objectively , but more based on judicial bias and favoritism, or under duress. Parents report that while several lawyers obtain qualifications and trainings for these appointments, the lawyers acting to quietly

resolve disputes and acting in the best interest of children, rarely are appointed in cases. On the other hand, lawyers who regularly work with a core group of lawyers, custody evaluators, reunification and private judges work to incite conflict and drive up legal costs in a manner that is self-serving, provides unjust enrichment and does little to protect children. Further, in the cases that were audited, these lawyers can often be seen billing to represent children for as long as 10 years, and until the children simply age out of the system, yet continue to suffer extreme emotional and financial harm based on the conduct of lawyers appointed to represent them in their parent's divorce. Further, once the appointment is made, the lawyers continue to bill beyond the private funds and often collect fees from county and state courts that surpass funds spent on children for child support, medical care, education and quality of life activities. Parents report that lawyers regularly appointed to represent children often do so when one parent cannot afford their own lawyer, and the fee agreements are either not presented or not required, and bills are not produced or reviewed.

Recommendation: All lawyers acting to represent children in a divorce case should be required to submit fee agreements that include the fees, costs and disclosure of costs from other cases.

California requires every business sector in the state to reasonably inform consumers of anticipated costs with guidelines to assure oversight that billings do not result in predatory or deceptive practice, until the State Bar assures uniformity and transparency of these agreements, the public right to know, and state oversight of these costs will continue to be compromised.

Respectfully Submitted,
Susan Bassi
P.O. Box 2220
Los Gatos, CA 95031
(831)320-6421

From: johnnydelmar [mailto:johnnydelmar@gmail.com]
Sent: Wednesday, May 01, 2019 12:33 PM
To: Mandatory Fee Arbitration, State Bar of California
Subject: Fee Agreement

As a criminal defense attorney in private practice, sole practitioner, where clients typically cannot afford to pay hourly rates, a contract might look like this.

ADDRESS

NOTICE: FEES IN THIS CONTRACT ARE NEGOTIABLE; ATTORNEY FEES ARE NOT SET BY LAW

1. **IDENTIFICATION OF THE PARTIES:** This agreement, executed in duplicate with each party receiving an executed original, is made between JANE DOE, hereafter referred to as “attorney” and RICHARD ROE, hereafter referred to as “Client.”

2. This agreement is required by Business and Professions Code section 6148 and is intended to fulfill the requirement of that section.

3. **LEGAL SERVICES TO BE PROVIDED:** The legal services to be provided by Attorney to Client are as follows: Representation in Marin County to defend charges of Vehicle Code 23152(a), 23152(b), including Department of Motor Vehicle hearing, expungement when Client becomes eligible. Attorney has requested a DMV hearing on client’s behalf. **SERVICES NOT INCLUDED:** Trial, Appeals. The arraignment in this matter is May 12, 2019.

4. **ATTORNEY FEES:** \$3,500.00 flat fee. Attorney bills at \$250.00 an hour in the event client requests a refund in whole or in part.

5. Pursuant to Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons (a):

All funds received or held by a lawyer or law firm for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account” or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client’s business and the other jurisdiction.

(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer’s or law firm’s operating account, provided:

(1) the lawyer or law firm discloses to the client in writing that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and

(2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing signed by the client.

Client acknowledges that he or she understands these rights and waives them by initialing.

[Initials]

[Initials]

6. Pursuant to Cal. Rules of Prof'l Conduct, Rule 1.5 (e) "A lawyer may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the lawyer providing those services." Client acknowledges that this is a flat fee contract by initialing.

[Initials]

[Initials]

7. **RESPONSIBILITIES OF ATTORNEY AND CLIENT.** Attorney will advise Client, perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries. Client will be truthful and cooperative with Attorney; keep Attorney reasonably informed of developments and of Client's address, telephone number, and whereabouts, and timely make any payments required by this agreement. Attorneys with whom I associate may appear in court on your behalf if I am unavailable. **YOU WILL BE TOLD OF THIS PRIOR TO COURT AND THIS WILL ONLY BE FOR A CONTINUANCE OR OTHER NON-HEARING TYPE OF PROCEDURAL APPEARANCE. I WILL PERSONALLY HANDLE ALL MATTERS RELATING TO YOUR CASE.**

8. **COSTS:** Client is responsible for all costs of including but not limited to, translators for office meetings, discovery charges by the District Attorney, ordering transcripts, preparation of exhibits etc.

9. **ERRORS AND OMISSIONS INSURANCE COVERAGE.** Attorney does not maintain errors and omissions for criminal cases.

The foregoing is agreed to by:

Date: _____

JANE DOE

Date: _____

RICHARD ROE