

THE LITIGATION COUNSEL OF AMERICA

PRESENTS

**ATTORNEY-CLIENT ENGAGEMENT AGREEMENTS:
KEY LANGUAGE THAT EVERY ATTORNEY SHOULD
HAVE IN THEIR AGREEMENT**

Speaker

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Biography—Sean E. Ponist

Sean Ponist is the founder of the Ponist Law Group, a firm specializing in real estate, construction defect and business litigation. Prior to founding his own firm, Mr. Ponist was a prosecutor with the Marin County District Attorney's Office and in-house counsel for Marcus & Millichap Real Estate Investment Brokerage Company. He has successfully tried over 30 cases to verdict.

For the past nine years, Mr. Ponist has been recognized as a Super Lawyer, a distinction bestowed on less than 5% of attorneys, and has also been recognized as being one of the Best of the Bar by the San Diego Business Journal. Additionally, Mr. Ponist is a fellow of the Litigation Counsel of America, a trial lawyer honorary society whose membership is limited to less than one-half of 1% of North American lawyers, judges and scholars.



Mr. Ponist has also published numerous articles on real estate topics, including recent articles in *The Daily Journal* (“Recovering Lost Profits in Real Estate Transactions” and “Should Equitable Indemnity Apply Against Negligent Misrepresentation Claims?”), *California Lawyer* magazine (“The Nonrefundable Deposit – Not!”) and *Commercial Investment Real Estate* (“Going to the Source: Minimize your liability by providing attributions”).

He has further lectured on legal topics for various bar associations and other legal education providers, including “Deconstructing Commercial Leases,” “Commercial Real Estate Brokerage Standard of Care,” “Bringing Down the House: Assessing Damages in Real Estate Cases,” “Best Use of Experts in Real Estate Cases,” “The Rogue Agent: Agency Issues In Real Estate,” “When Real Estate Deals Go Bad,” “Agent-Principal Relationship,” and “Direct and Cross-Examination for Civil Litigators.”

Additionally, he has served as the Chair of the Real Property Section for the San Diego County Bar Association (SDCBA), Vice-Chair of the Real Property Section for the San Francisco Bar Association (BASF), and currently serves as the Vice-Chair of the Civil Litigation Section for the SDCBA, on the Board of the Construction section for the SDCBA and on the Board of the Real Property section for BASF.

Mr. Ponist graduated from UC Davis School of Law, receiving his Juris Doctor degree in 1999. Prior to law school, Mr. Ponist attended UCLA where he earned a Bachelor of Arts in Philosophy in 1995 and was a Departmental Scholar.

SYLLABUS

ATTORNEY-CLIENT ENGAGEMENT AGREEMENTS

I. ATTORNEY-CLIENT RELATIONSHIP

a. Are we in a relationship?

- i. The attorney/client relationship may be express or implied by contract, orally or in writing. (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 729; *Nichols v. Keller* (1993) 15 Cal.App.4th 1672, 1684; see also, *Perez v. Kirk & Carrigan* (Tex. App.—Corpus Christi 1991) 822 S.W.2d 261.)
- ii. A “client means a person or entity who, directly or through an authorized representative, consults a lawyer for the purposes of retaining the lawyer or securing legal service or advice from him in his professional capacity.” (Calif. Evid. Code § 951.)
- iii. Tricky area—implied contacts
 1. Have you (unwittingly) agreed to represent a prospective client? (Matter of Peavey (Rev. Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483, 489.)
 2. Clear refusal of employment. (*Benninghoff v. Sup. Ct. (State Bar)* (2006) 136 Cal.App.4th 61, 72.)
 3. Careful of lawyerly actions taken on behalf of a prospective client. (*Lister v. State Bar* (1990) 51 Cal.3d 1117, 1125, 1126.)
 4. Prospective client’s subjective belief insufficient. (*Zenith Ins. Co. v. Cozen O’Connor* (2007) 148 Cal.App.4th 998, 1010.)
- iv. Practice tip—send declination letters or non-retention letters

b. Consultations and Confidentiality

- i. Calif. Rule of Prof. Conduct 1.18 (new):

“(b) Even when no lawyer-client relationship ensues, a lawyer who has communicated with a prospective client shall not use or reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 that the lawyer learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received from the prospective client information protected by Business and Professions Code section

6068, subdivision (e) and rule 1.6 that is material to the matter, except as provided in paragraph (d). If a lawyer is prohibited from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).”

(See also, Restatement of Law Governing Lawyers (Third), § 15 [similar].)

ii. Practice tips:

1. Clear conflicts before hearing anything about the potential matter
2. Consultation agreements

II. THE ATTORNEY-CLIENT ENGAGEMENT AGREEMENT

a. Required when “reasonably foreseeable” that client’s total fees and costs will exceed \$1,000. (Calif. Bus. & Prof. Code §6148.)

b. Basic requirements—the agreement must state:

- (i) 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 and also requires attorneys to provide their clients with written bills. All bills must state the amount, rate and basis for calculation or other method of determining the attorney’s fees and costs.

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. (*Ibid.*; see also, 22 NYCRR 1215 [similar].)

c. Contingency fee requirements (Calif. Bus. & Prof. Code §6147) same requirements as the non-contingent fee agreements as well as the following additional requirements:

- (i) A statement of the contingency fee percentage amount.
- (ii) A statement as to how disbursements and costs will affect the contingency fee

and the client’s recovery.

(ii) 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.

(iv) 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.

(v) 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.

d. Beyond the basics:

- i. Disclosure re lack of professional liability insurance (Calif. Rule of Professional Responsibility 1.4.2);
- ii. Defining client and scope of representation;
- iii. Arbitration/mediation clauses;
- iv. Payment of referral fees (Calif. Rule of Professional Responsibility 1.5.1);
- v. Retainer/billing/payment clauses;
- vi. Retention of client file (Calif. State Bar, Formal Opinion NO. 2001-157);
- vii. Lien clauses;
- viii. Third-party payor provisions (Calif. Rule of Professional Responsibility 1.8.6; see also, *Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 428-429);
- ix. Conflicts of interest;
- x. No guarantee of results.

(See attached sample agreement)

Sample Fee Agreement

[Date]

The [redacted] (“Attorney”) and CLIENT as well any closely held entities thereof (“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 Client returns a signed copy of this Agreement and pays the initial security retainer called for under Paragraph 4.

2. SCOPE OF SERVICES. Client is hiring Attorney to represent Client in the following matter: [describe – case info and/or description of dispute]. If the scope of services involves a court action or arbitration proceedings in which Attorney is representing Client, Attorney will represent Client in such proceeding until a settlement is reached or judgment is entered, subject to Paragraph 12 below. In any such proceeding, subject to Paragraph 12 below, Attorney will make or oppose any appropriate post-trial motions on Client’s behalf.

(a) After judgment and post-trial motions, Attorney will not represent Client on any appeal, or in any proceeding to execute on or enforce any judgment, unless Client and Attorney enter into a new agreement that Attorney will provide such services and also agree upon additional fees to be paid to Attorney for such services. In addition to a separate agreement for an appeal or execution on or enforcement of a judgment, services in any matter not described above will require a separate written agreement.

(b) Attorney does not provide tax advice. Income, estate and property taxes may be affected by actions taken in Client’s matter, and judgments or settlements paid or recovered, and Attorney strongly recommends Client consult his or her tax advisor to ascertain the potential tax implications of any settlement, judgment, or other recovery or payment in Client’s matter.

3. CLIENT’S DUTIES. Client agrees to be truthful with Attorney, to cooperate with Attorney, to keep Attorney informed of any information or developments which may come to Client’s attention concerning the matter, 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 fully cooperate with Attorney in providing information and documents necessary for the representation in the described matter and will appear when necessary at legal proceedings.

4. SECURITY RETAINER. Client agrees to pay Attorney an initial security retainer of \$XXXXXX. The security retainer will be deposited into the firm’s client trust account and will be held as security for the payment of Attorney invoices until the completion of the engagement, and then will be applied to the final invoice with any remaining balance returned to Client at that time. Should Client fail to timely pay any invoice without timely written objection and justification, Attorney may apply the retainer to the outstanding balance and require replenishment of the retainer before providing any further legal services.

(a) In the event that the engagement involves civil litigation or arbitration proceedings, Client agrees to increase the security retainer to \$XX,XXX before the first appearance date by Attorney in any such litigation or arbitration proceedings.

(b) In the event Client fails to pay any invoice within fifteen (15) days, in addition to any other remedies, the security retainer shall be increased to \$XX,XXX as a condition of continued representation, and Client agrees to increase the security retainer to such amount within fifteen (15) days of request.

(c) In matters involving civil litigation or arbitration proceedings, 100 days before the date set for trial or arbitration hearing the security retainer shall be increased to \$XX,XXX, and Client agrees to increase the security retainer within at the earlier of such time or fifteen (15) days of request.

(d) If, within the reasonable discretion of Attorney, the security retainer becomes inadequate based on past or anticipated fees and costs in the matter, Attorney may increase the security retainer up to the highest amount previously invoiced in a given month or the amount anticipated to be invoiced in an upcoming month and Client agrees to increase the security retainer to that amount within fifteen (15) days of request.

* * *

Client agrees that failure to timely make an increased retainer payment upon request as set forth above shall constitute good cause for withdrawal as set forth in paragraph 12 below, entitling Attorney to withdraw from this engagement and related litigation.

5. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Attorney's prevailing rates for all time spent on Client's matter by Attorney or Attorney's legal personnel. Time is charged in minimum units of one tenth (.10) of an hour. On behalf of Attorney, [REDACTED] will be principally responsible for performing the legal services for Client, although he may involve or delegate assignments as he deems appropriate to other attorneys and legal assistants.

(a) The hourly billing rate for Mr. [REDACTED]'s services is \$ [REDACTED]. The hourly billing rate for Ms. [REDACTED]'s services is \$ [REDACTED]. The hourly rate for other attorneys ranges between \$ [REDACTED] and \$ [REDACTED] and for paralegals, law clerks and legal assistants ranges between \$ [REDACTED] and \$ [REDACTED]. The foregoing rates are good for one year, after which they are subject to change on 30 days' written notice to client. If Client declines to pay any increased rates, Attorney will have the right to withdraw as Attorney for Client.

(b) The time charged will include, among other legal services on the matter, time spent on telephone calls, emails and other correspondence relating to Client's matter, and time spent by legal personnel assigned to Client's matter conferring between themselves about the matter, as is reasonably necessary. If more than one of the legal personnel participates in a telephone call, office conference, or attends a meeting or other proceeding, each will charge for the time spent. Attorney will charge for waiting time.

(c) Attorney will charge for travel time, both local and out of town. Attorney maintains offices in San Diego, California and San Francisco, California. If the matter is venued in Southern California, any necessary travel time will be calculated from Attorney's San Diego office. If the matter is venued in Northern California, any travel time necessary will be calculated from Attorney's San Francisco office. If the matter is venued outside of California, any travel time necessary will be billed from Attorney's main office in San Diego.

Should Client fail to timely make payment, Attorney may require that Client bring Client's account current before providing any further legal services.

6. COSTS AND OTHER CHARGES.

(a) Attorney may advance and/or incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses. The costs and expenses commonly include service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, electronic research 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. Attorney is not obligated to advance costs, however, and may require Client to do so.

(b) Travel Costs. Client agrees to pay transportation, meals, lodging and other costs associated with any necessary travel by Attorney and Attorney's personnel. As Attorney's main office is in San Diego, any travel costs from its main office will be charged to Client, including airfare, meals, transportation, parking, and lodging. As indicated in paragraph 5(c) above, however, Attorney does not charge for travel time between San Diego and San Francisco.

(c) Experts, Consultants and Investigators. To aid in the representation in Client's matter, 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.

Client understands that if Client's case proceeds to court action or arbitration, the court may award attorney fees and costs to the prevailing party if authorized by contract or statute. Payment of any such fees and costs are the sole responsibility of the litigant, not the attorney. Thus, in the event that Client is deemed the prevailing party, the other party may be required to pay some or all of the fees and costs incurred by the Client; conversely, in the event that the other party is deemed the prevailing party, Client may be required to pay some or all of the fees and costs incurred by the other party. In either event, Client understands and acknowledges that Client's obligation to pay Attorney's fees and costs pursuant to this agreement is not affected by any award by a court or arbitrator.

7. BILLING STATEMENTS. Attorney will send Client monthly statements for fees and costs. Each statement will be payable within 15 days of its mailing date. The

statements will include the rate and amount of the fees and costs. Any objection to the statement must be made in writing and received within the time provided for payment, otherwise objections are waived and Client's obligation to pay the indicated fee becomes fixed.

8. INTEREST CHARGES. If a billing statement is not paid when due, interest will be charged on the principal balance (fees, costs, and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of ten percent (10%) annual interest. The unpaid balance will bear interest until paid.

9. LIEN. Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of the representation under this Agreement, and on any monies held by Attorney as a retainer. Additionally, Client grants Attorney a lien on any award of attorney fees or costs in the matter. The lien will be for any sums owing to Attorney at the conclusion of services performed. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise, and to all retainer funds held in Attorney's attorney client trust account. The effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds held or funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. Because a lien may affect Client's property rights, Client may wish to seek the advice of an independent lawyer of Client's choice before agreeing to this provision. 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)

10. PAYMENTS BY CLIENT INSURER. In the event Client may have insurance coverage which may pay for some or all of Attorney's fees which may become due under this Agreement, Attorney will submit the statement for fees and costs to the insurer for payment as a courtesy to Client. It is understood, however, that if the insurance provider refuses or fails to pay Attorney for any reason, Client shall remain responsible for paying all Attorney's statements for fees and costs as they are rendered upon the billing and payment terms set forth in this Agreement. Should the insurance provider pay only a portion of the fees and costs, Client shall be responsible for the balance.

11. OTHER PAYOR CLAUSE. Payment may be made by Client directly or on behalf of Client by another. It is understood that Client shall nonetheless ultimately remain responsible for paying all Attorney's fees as they are rendered upon the billing and payment terms set forth in this Agreement. There are potential risks associated with having a third-party payor, including that the third-party payor may attempt to interfere with the attorney-client relationship, attempt to interfere with the attorney's exercise of independent professional judgment on behalf of the client or seek access to client confidential information or secrets contrary to the wishes of the client. Likewise, there is a risk that an attorney may tailor his/her representation to please the third-party payor rather than the client. To safeguard against these risks, the attorney/client relationship will exist only between Attorney and Client throughout our representation and no other person, regardless of any payment made on behalf of Client. Further,

any third-party payor will not have a right to information regarding the representation of Client by Attorney nor shall any such person have any right to control or direct the Attorney in providing the services under this Agreement, unless specifically approved by Client.

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

12. DISCHARGE AND WITHDRAWAL. Client may discharge Attorney at any time. Attorney may withdraw with Client's consent, for good cause or as otherwise permitted under the Professional Rules of Conduct or other applicable law. Good cause includes, but is not limited to, Client's breach of this Agreement, failure to pay legal fees and costs when due, refusal to cooperate or to follow Attorney's advice on a material matter, conduct which renders it unreasonably difficult for the Attorney to carry out the employment effectively or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable.

13. CLIENT'S FILE. Client may have access to Client's case file at any reasonable time and agrees this may be fulfilled by Attorney providing electronic access to Client's file. 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 written directions, Attorney will retain the case file for a period of one year 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 one year 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.

14. NO PROMISE, GUARANTEE OR ASSURANCES. While Attorney will use its best efforts to advise you, please understand that no attorney can guarantee or assure the outcome or the legal expense of a lawsuit or the making of a legal claim. Nothing in this Agreement and nothing in any statements to Client by any lawyer of Attorney will be construed as a promise, guarantee or assurance about the outcome or the legal expense of Client's matter. Attorney makes no such promises, guarantees or assurances. Any comments about the outcome or the legal expense of Client's matter are best estimates and guesses only, and Client understands that civil litigation results and expenses are unpredictable.

15. ARBITRATION OF ALL DISPUTES, INCLUDING CLAIMS OF MALPRACTICE

(a) Any controversy between the parties regarding the performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, shall be submitted to binding arbitration upon the written request of either party after the service of that request on the other party. The parties agree that service of any papers in any arbitration

or court proceeding, including initial filings, may be served by electronic service to the primary email address used by the parties to communicate in connection with the matter.

(b) The parties shall arbitrate any dispute using ADR Services, Inc. The selection of the arbitrator and the arbitration shall be conducted pursuant to ADR Services, Inc.'s rules, subject to the following limitations: (i) the arbitration and any related motions shall be decided by a single arbitrator, (ii) each side shall be limited to a maximum of two (2) depositions limited to four (4) hours each; (iii) each side shall be limited to no more than ten (10) requests for production, (iv) each side shall be limited to no more than ten (10) interrogatories, (v) discovery not specially enumerated in this paragraph is not permitted, (vi) the arbitration hearing (i.e., the "trial") shall not exceed three (3) days with the time to be split evenly among the sides, (vii) these limitations may be expanded only upon the mutual consent of all parties, and (viii) the arbitrator shall apply the provisions of this agreement and shall not have the power to add to, modify, or change any provision hereof. The cost of the arbitration, excluding legal fees and costs, shall be borne equally by both parties or in such proportion as the arbitrator shall decide. The Parties agree that in any arbitration or other legal proceeding to enforce the terms of this Agreement or based on a breach thereof, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs of litigation. The parties shall bear their own legal fees and costs as to any other disputes between them.

(c) The Parties agree that this Agreement shall be governed by, construed under, and enforced in accordance with ADR Services, Inc.'s rules as well as the laws of the State of California. The sole and exclusive venue for the arbitration and or any legal dispute shall be ADR Services, Inc., San Diego County, California.

(d) The arbitrator shall prepare in writing and provide to the parties an award including factual findings and the reasons on which their decision is based. The arbitrator shall not have the power to commit errors of law or legal reasoning. The award is subject to review for legal error, confirmation, correction or vacatur in any California Superior Court with jurisdiction. Additionally, the parties shall have the right to appeal to the appellate courts thereafter any error of law or legal reasoning committed by the arbitrator or Superior Court judge.

(e) Notwithstanding the foregoing paragraphs, 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 nonbinding 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.

* * *

Because each party is giving up a right, Client is encouraged to have an independent lawyer of Client's choice review these arbitration provisions before agreeing to them. By initialing below, Client and Attorney confirm that they have read and understand the foregoing paragraphs, and voluntarily agree to binding arbitration with ADR Services, Inc. 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 is advised that Client has the right to have an independent lawyer of Client's choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

_____/_____(Client initial here) _____(Attorney initial here)

16. CONFLICTS OF INTEREST [if applicable]. Attorney agrees to represent the interests of the Client in this matter. Attorney has been advised by Client that _____, _____, and _____ are all in accord with the handling of the claims by _____. Client is nonetheless hereby informed that while no present conflicts of interest exists, Attorney's joint representation of _____, _____, and _____ presents potential conflicts of interest in the form of competing demands on Attorney's time and other divided loyalties. Similarly, other conflicts may exist or may arise as the representation progresses.

Risks of Multiple Representation

Attorney's representation of multiple interests have significant implications which Client, and each one, should consider. For example, rather than Attorney vigorously asserting a single client's interest on an issue, there likely will be a balancing of interests between the parties represented. Because parties may have different legal positions and economic objectives, aggressive advocacy for just one party by separate counsel could result in more favorable treatment for that party as compared with the more even-handed approach Attorney may follow in light of our joint representation of three individuals.

Attorney's representation may also result in the loss of the attorney-client privilege for communications between each of the Client members. In the event of a dispute between or among the clients, Attorney will be precluded from representing one against the others without first obtaining an additional written consent of all concerned.

Rules of Professional Conduct

As attorneys licensed to practice in the State of California, this firm is governed by specific rules relating to our representation of clients when present or potential conflicts of interest exist. Rule 3-310 of the Rules of Professional Conduct of the State Bar of California provides in pertinent part as follows:

Rule 3-310. Avoiding the Representation of Adverse Interests.

(A) For purposes of this rule:

(1) “Disclosure” means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or formal client;

(2) “Informed written consent” means the client’s or former client’s written agreement to the representation following written disclosure;

(3) “Written” means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(2) The member knows or reasonably should know that:

(a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member’s representation; or

(3) The member has or had a legal business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in the matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Acknowledgement and Waiver of Conflict

Accordingly, prior to the commencement of this engagement, Attorney requests that each Client sign and return to Attorney a copy of this agreement which acknowledges that:

- (1) Each of you have been advised of Rule 3-310 and of the conflicts associated with the respective interests; and,
- (2) Each of you have been advised of Attorney's past, present and continuing relationship with any of the clients, if any; and,
- (3) Each of you nevertheless consents to Attorney's representation of _____, _____, and _____ jointly in the legal matter identified in Paragraph 2 above.

ATTORNEY wishes to stress that Client, and each of you, may independently elect to refuse to sign this letter. Moreover, if all clients sign this letter, any of you still remain completely free to seek independent counsel at any time in the future. If an actual dispute between _____, _____, and _____ should arise with respect to the subject matter of Attorney's representation herein, Attorney cannot represent you against any of the others unless each consents to such representation in writing at the time any such actual conflict arises.

17. PRINCIPAL CONTACT [if applicable]. Attorney understands that _____ and _____ have authorized _____, to be the main point of contact for Client and have authorized Attorney to direct all communications regarding legal matter(s) identified in Paragraph 2 above to _____. Additionally, _____ and _____ hereby confirm their authorization for _____, to make decisions regarding legal matter(s) identified in Paragraph 2 above on behalf of Client including, without limitation, decisions regarding settlement and resolution of the above matter. At any point during the representation this authorization may be withdrawn, revoked or revised.

18. CONSENT TO USE OF EMAIL AND CLOUD SERVICES. In order to provide Client with efficient and convenient legal services, Attorney will frequently communicate and transmit documents using email. Because email 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 the use of email transmissions with Client and Client's representatives and agents and agrees to accept service thereby. In addition, Attorneys uses a cloud computing service 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.

19. WAIVER/ESTOPPEL. At the discretion of Attorney, Attorney may continue to represent Client following a default or breach of this Agreement. In no event, however, shall Attorney's election to do so constitute a waiver or estoppel of Attorney's right to seek any remedy for said default or breach. A waiver of a default or breach by Client shall only be effective if contained in a writing signed by Attorney. Likewise, no waiver by Attorney of a default or breach of any term or condition by Client shall be deemed a waiver of any other term

or condition hereof, or of any subsequent default or breach by Client of the same or of any other term or condition hereof. Attorney's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Attorney's consent to, or approval of, any subsequent or similar act by Client, or be construed as the basis of an estoppel to enforce the provision or provisions of this Agreement.

20. 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.

21. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by the Client and Attorney.

22. 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.

23. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made regarding the subject matter of this agreement will be binding on the parties, unless modified as provided in paragraph 21 above.

CLIENT HAS READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREES 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.

DATED: _____

[Client Name(s)]

DATED: _____

_____, P.C.

By: _____

CLIENT CONTACT INFORMATION

The following information is required for our file and administration of your matter and our services. All information provided shall be kept strictly confidential. Do not leave any information blank; if anything is not applicable, please so indicate.

Full Legal Name: _____

Work Address: _____

Home Address: _____

Work Phone: _____

Home Phone: _____

Cell Phone: _____

Email: _____

Birthday: _____

Emergency Contact (name and phone number): _____

GUARANTEE OF PAYMENT OF FEES

I, [Guarantor Name], on this [Date] day of [Month], [Year], in consideration of the above-defined Attorney's representation of above-defined Client, pursuant to the above and foregoing written Agreement, do hereby guarantee to Attorney that all fees to be paid to Attorney pursuant to said Agreement not paid by Client will be paid by the undersigned in the same manner and amount as required of Client in said Agreement. Undersigned acknowledges receipt of a copy of the Agreement with Client and of this guarantee. Undersigned agrees to be bound by the dispute process set forth in paragraph 15.

THE UNDERSIGNED FURTHER ACKNOWLEDGES THAT ATTORNEY IS ENGAGED IN REPRESENTING CLIENT, NOT THE GUARANTOR, AND THAT ITS FIRST AND SOLE RESPONSIBILITY IS TO REPRESENT THE INTEREST OF CLIENT.

[Guarantor]