

**SUMMONS  
(CITACION JUDICIAL)**

**SUM-100**

**NOTICE TO DEFENDANT: SOTHEBY'S and DOES 1 through 10,  
(AVISO AL DEMANDADO): inclusive**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF: STEVEN BROOKS  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California  
400 McAllister Street  
San Francisco, CA 94111

CASE NUMBER:  
(Número del Caso): 050 13-529789

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Thomas J. LoSavio, SBN No.: 51023 (415)981-6630 (415) 982-1634

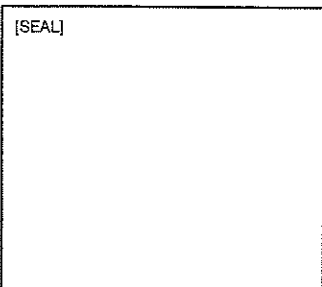
LOW BALL & LYNCH  
505 Montgomery Street, 7th Floor  
San Francisco, CA 94111

DATE: MAR 21 2013  
(Fecha) \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

CLERK OF THE COURT

DENNIS TOYAMA

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee).  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):  
 Thomas J. LoSavio, SBN No.: 51023  
 LOW BALL & LYNCH  
 505 Montgomery Street, 7th Floor  
 San Francisco, CA 94111

TELEPHONE NO.: (415)981-6630 FAX NO.: (415) 982-1634  
 ATTORNEY FOR (Name): Plaintiff, STEVEN BROOKS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco  
 STREET ADDRESS: 400 McAllister Street  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: San Francisco, CA 94111  
 BRANCH NAME: Civic Center Courthouse

CASE NAME: STEVEN BROOKS v. SOTHEYBY'S and DOES 1 through 10, inclusive

**CIVIL CASE COVER SHEET**

**Unlimited** (Amount demanded exceeds \$25,000)  **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

**FOR COURT USE ONLY**

**ENDORSED FILED**  
 San Francisco County Superior Court

MAR 21 2013

CLERK OF THE COURT  
 DENNIS TOYAMA  
 Deputy Clerk

CASE NUMBER: 13-529789

JUDGE:  
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<p><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p><b>Non-PI/PD/WD (Other) Tort</b></p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p><b>Contract</b></p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a.  Large number of separately represented parties d.  Large number of witnesses  
 b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c.  Substantial amount of documentary evidence f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 5: Violation Consumer Legal Remedies Act; Violation Unfair Competition;

5. This case  is  is not a class action suit. Unjust Enrichment; Fraudulent Concealment; Negligent Misrep

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 20, 2013  
 Thomas J. LoSavio, SBN No.: 51023  
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

1 THOMAS J. LOSAVIO, SBN 51023  
2 JAMES F. REGAN, SBN 252199  
3 LOW, BALL & LYNCH  
4 505 Montgomery Street, 7th Floor  
5 San Francisco, California 94111  
6 Telephone: (415) 981-6630  
7 Facsimile: (415) 982-1634  
8 [tlosavio@lowball.com](mailto:tlosavio@lowball.com)  
9 [jregan@lowball.com](mailto:jregan@lowball.com)

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 21 2013

CLERK OF THE COURT  
DENNIS TOYAMA  
BY: \_\_\_\_\_  
Deputy Clerk

Attorneys for Plaintiff  
STEVEN BROOKS

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY AND COUNTY OF SAN FRANCISCO

STEVEN BROOKS,

Plaintiff,

vs.

SOTHEBY'S and DOES 1 through 10,  
inclusive,

Defendants.

Case No. CGC - 13 - 529789

**COMPLAINT FOR: (1) VIOLATION OF  
THE CONSUMER LEGAL REMEDIES  
ACT; (2) VIOLATION OF THE UNFAIR  
COMPETITION LAW; (3) UNJUST  
ENRICHMENT; (4) FRAUDULENT  
CONCEALMENT; AND (5) NEGLIGENT  
MISREPRESENTATION**

Plaintiff STEVEN BROOKS ("BROOKS") as a complaint against defendants SOTHEBY'S and  
DOES 1 through 10, alleges as follows:

**BACKGROUND**

1. Plaintiff BROOKS at all relevant times alleged herein was an individual residing in the City  
and County of San Francisco, California.

2. Defendant SOTHEBY'S is a corporation which at all times alleged herein and presently  
maintains a business office in the City and County of San Francisco, California. SOTHEBY'S  
represents itself to be one of the world's two largest auctioneers of authenticated fine and decorative art  
and represents itself as the employer of Art Specialists who are art scholars who publish extensively in  
their field, lecture widely, teach and curate exhibitions. SOTEHBY'S, among other services, holds

1 itself out to the general public as an expert on art provenance which it describes to the public as "an  
2 important part of the authentication process, provenance establishes the chain of ownership back to the  
3 date an item was created. Provenance can significantly impact the value of an object."

4 3. The true names and capacities, whether individual, corporate, associate, government, or  
5 otherwise, of the defendants DOES 1 through 10, inclusive, are unknown to plaintiff, who therefore  
6 sues said defendants by such fictitious names pursuant to section 474 of the California Code of Civil  
7 Procedure and prays leave of court to amend this complaint to set forth their true names and capacities  
8 when the same have been ascertained

9 4. On July 8, 2004, BROOKS, at an auction promoted, managed and controlled by  
10 SOTHEBY'S, purchased the painting known as "Allegorical portrait of a lady as Diana, wounded by  
11 Cupid" by the artist Louis-Michel van Loo ("the Painting").

12 5. At the time the Painting was purchased by BROOKS, SOTHEBY'S knew, or reasonably  
13 should have known, the following facts: (1) the Painting was at one time owned by Hermann Goering,  
14 founder of the Nazi Gestapo, commander-in-chief of the German Luftwaffe air force, Senior General  
15 and designated successor to Adolph Hitler; (2) Goering acquired the painting on August 23, 1939,  
16 through an intermediary art dealer; (3) in light of the circulation of confiscated and forcibly sold art  
17 work from Jewish collections that occurred after 1933 the conclusion that this is such a work cannot be  
18 ruled out as a possibility by reputable art dealers; (4) this question-mark over the provenance of the  
19 Painting is such that there is a cloud on the title such that no art auction house will accept the Painting  
20 for sale; and (5) full disclosure of the questionable provenance of the Painting would render the  
21 Painting valueless.

22 6. None of the facts set forth in paragraph 5 were disclosed by SOTHEBY'S to BROOKS.

23 7. BROOKS did not know, and in the exercise of reasonable care should not have known, the  
24 facts set forth in paragraph 5 because, among other things, as a lay person he did not have the  
25 knowledge or resources of SOTHEBY'S and reasonably relied on SOTHEBY'S to obtain and provide  
26 such information to him and any other interested purchaser.

27 8. BROOKS did not know, and in the exercise of reasonable care, should not have known of the  
28 harm suffered by him until a date after October of 2010, at which time he was informed by experts at

1 the auction house Christies, with whom he sought to consign the painting for sale, that questions of  
2 provenance, specifically Goering's ownership, prevented Christies from offering the painting for sale.  
3 Christies undertook to continue their research in the hope of clarifying the problematic provenance. By  
4 summer of 2011, Christies concluded that insufficient evidence could be gathered as to the  
5 circumstances of Goering's acquisition of the painting in 1939 and that they could not, therefore, assist  
6 BROOKS in its sale. BROOKS then approached SOTHEBY'S, requesting their assistance in the sale  
7 of the painting, after acquainting them with Christies' findings. SOTHEBY'S in turn agreed to research  
8 the issues of provenance in the Fall of 2011. Over the next year, SOTHEBY'S experts investigated the  
9 history of the ownership of the painting, communicating the course of their research periodically to  
10 BROOKS. On January 17, 2013, SOTHEBY'S concluded that they too were unable to clarify the  
11 painting's provenance sufficiently to offer it for sale. In declining to accept the Painting for sale,  
12 SOTHEBY'S wrote: "...we would want to establish that he [Goering] did not acquire it through the  
13 persecution of the prior owner..." At this point, BROOKS requested that SOTHEBY'S refund the  
14 purchase price he had paid for the painting, as the undisclosed provenance problems clearly rendered it  
15 unsaleable. SOTHEBY'S declined BROOKS' request for a refund.

16 9. By reason of the fraudulent and deceptive conduct of the defendants, including but not  
17 limited to the fraudulent concealment by defendants of the plaintiff's cause of action, the statute of  
18 limitations that would otherwise be applicable has been tolled.

19 10. As a direct result of the conduct of defendants, BROOKS has been damaged in an amount  
20 not yet fully known but in excess of \$96,768.00, the exact amount of which will be proven at time of  
21 trial.

22 11. The acts, omissions and misrepresentations alleged herein were done oppressively,  
23 maliciously and fraudulently such that Defendants should pay exemplary damages to Plaintiff, for the  
24 sake of example and by way of punishing the Defendants, in an amount in accordance with their ability  
25 to pay and according to proof at time of trial.

26 **FIRST CAUSE OF ACTION – CONSUMER LEGAL REMEDIES ACT**

27 12. The allegations of paragraphs 1 through 11, inclusive, are incorporated by this reference as  
28 though fully set forth herein.

1 13. The California Consumers Legal Remedies Act, Cal. Civ. Code §1750 et seq. (“CLRA”)  
2 provides protection for California consumers against unfair, deceptive and unlawful practices and  
3 unconscionable commercial practices in connection with the sale of any goods or services.

4 14. BROOKS is a “consumer” as defined by CLRA §1761(d). The Painting constitutes “goods”  
5 and the conduct of the auction at which BROOKS bought the Painting constitutes “services” as defined  
6 by CLRA §1761(a) and (b).

7 15. Defendants’ failure to disclose the facts set forth in paragraph 5 violated CLRA §1770(a)(2)  
8 in that they misrepresented the provenance and source of the Painting.

9 16. By reason of the foregoing, plaintiff has been harmed, as set forth above, entitling him to  
10 disgorgement, restitution, and damages.

11 17. Thirty days or more prior to the commencement of this action, pursuant to CLRA §1782,  
12 BROOKS notified SOTHEBY’S, in writing, of the particular violation of §1770 of the CLRA,  
13 demanded that it rectify the actions described above by providing complete monetary restitution.  
14 Plaintiff sent this notice by certified mail, return receipt requested, to SOTHEBY’S’ principal place of  
15 business. By letter dated March 20, 2013, SOTHEBY’S has refused to make plaintiff whole and has  
16 contended that the CLRA is irrelevant.

17 Wherefore, plaintiff prays judgment against defendants as set forth below.

18 **SECOND CAUSE OF ACTION – UNFAIR COMPETITION**

19 18. The allegations of paragraphs 1 through 11, inclusive, are incorporated by this reference as  
20 though fully set forth herein.

21 19. Section 17200 of the California Business and Professions Code, the Unfair Competition  
22 Law, (“UCL”) prohibits any “unlawful”, “unfair” and “fraudulent” business practice.

23 20. Section 17200 specifically prohibits any “**unlawful**...business act or practice.” Defendants  
24 have violated §17200 by, among other things the false and misleading statements set forth herein.

25 21. As a direct and proximate result of defendants’ unlawful acts and conduct, plaintiff was  
26 deprived of the use of the money paid for the Painting.

27 22. Plaintiff seeks an award of actual and statutory damages to be determined by the court as  
28 well as reasonable attorneys’ fees and costs.

1           Wherefore, plaintiff prays judgment against defendants as set forth below.

2                                   **THIRD CAUSE OF ACTION – UNJUST ENRICHMENT**

3           23. The allegations of paragraphs 1 through 11, inclusive, are incorporated by this reference as  
4 though fully set forth herein.

5           24. Defendants have received a benefit at the expense of Plaintiff.

6           25. Defendants knowing and/or recklessly sold the Painting to Plaintiff without full disclosure  
7 of all material facts.

8           26. As a direct and proximate result of Defendants' unlawful acts and conduct, Plaintiff was  
9 deprived of the use of his money and is therefore entitled to reimbursement of all money unjustly paid  
10 by him in connection with his purchase of the Painting.

11           Wherefore, plaintiff prays judgment against defendants as set forth below.

12                                   **FOURTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT**

13           27. The allegations of paragraphs 1 through 11, inclusive, are incorporated by this reference as  
14 though fully set forth herein.

15           28. Defendants failed to disclose and actively concealed important facts that were known only to  
16 them and that Plaintiff could not have reasonably discovered.

17           29. Plaintiff did not know the non-disclosed and concealed facts.

18           30. Defendants intended to deceive Plaintiff by not disclosing and concealing important facts.

19           31. Plaintiff reasonably relied on Defendants' deception.

20           32. Plaintiff was harmed and the Defendants' deception was a substantial factor in causing  
21 Plaintiff's harm.

22           Wherefore, plaintiff prays judgment against defendants as set forth below.

23                                   **FIFTH CAUSE OF ACTION - NEGLIGENT MISREPRESENTATION**

24           33. The allegations of paragraphs 1 through 11, inclusive, are incorporated by this reference as  
25 though fully set forth herein.

26           34. In doing the acts and making the representations and omissions alleged herein, Defendants  
27 represented and implied to Plaintiff that important facts were true, including but not limited to the fact  
28 that the Painting had the value ascribed to it by them, that the Painting had a clear legal title that

1 permitted it to be lawfully sold by them, that the provenance of the Painting was known to them and  
2 nothing therein created any question or cloud with respect to the title that would hinder its future  
3 marketability.

4 35. The representations and implications made to Plaintiff by Defendants were not true.

5 36. Defendants had no reasonable grounds for believing that the representations and  
6 implications made to Plaintiff were true when they made them.

7 37. Defendants intended Plaintiff to rely on the representations and implications made by them.

8 38. Plaintiff reasonably relied on the representations and implications made by Defendants.

9 39. Plaintiff was harmed and Plaintiff's reliance on the representations and implications of  
10 Defendants was a substantial factor in causing his harm.

11 WHEREFORE, plaintiff prays judgment against defendants for:

12 A. Restitution according to proof at time of trial in an amount in excess of \$96,768.00;

13 B. Compensatory damages according to proof at time of trial in an amount in excess of  
14 \$96,768.00;

15 C. Punitive damages in accordance with defendants' ability to pay and proof at time of trial;

16 D. Pre-judgment interest at the legal rate from July 8, 2004, on the restitution and/or  
17 compensatory sum awarded;

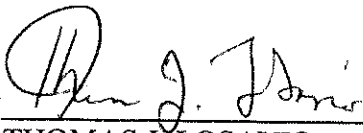
18 E. Attorneys' fees according to proof;

19 F. Costs of suit; and

20 G. Such other and further relief as the court may deem proper.

21  
22 Dated: March 2<sup>o</sup>, 2013

23 LOW, BALL & LYNCH

24  
25 By   
26 THOMAS J. LOSAVIO  
27 JAMES F. REGAN  
28 Attorneys for Plaintiff  
STEVEN BROOKS



**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE: AUG-21-2013**

**TIME: 10:30AM**

**PLACE: Department 610  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.  
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

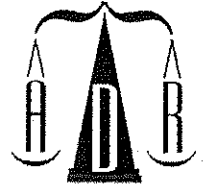
Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



# Superior Court of California, County of San Francisco

## Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

### WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

### WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

### HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-982-1600 or [www.sfbar.org/adr](http://www.sfbar.org/adr) for more information.

**For more information about ADR programs or dispute resolution alternatives, contact:**

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
415-551-3876

*Or, visit the court ADR website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)*

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

## 1) EARLY SETTLEMENT CONFERENCES

The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute.

**(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP):** This program, provided in conjunction with the court, pairs parties with a two-member volunteer attorney panel. The panels are comprised of one plaintiff and one defense attorney, each with at least 10 years of trial experience. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist.

**Operation:** The settlement conference typically occurs 2 to 3 months prior to the trial date. BASF informs the participants of the conference date well in advance and provides the names of the panelists and location of the conference approximately 2 weeks prior to the conference. Panelists provide at **no cost** up to 2 hours of their time at each conference, and many panelists provide additional time at no cost if a settlement is imminent. A conference typically begins with a brief meeting with all parties and their attorneys during which each side presents an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of their cases, utilizing private meetings as appropriate. If a case does not settle during the first two hours, parties have the option to hire the panelists to continue the conference.

**Cost:** BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's ESP Coordinator at 415-782-9000 ext. 8717 or visit [www.sfbar.org/esp](http://www.sfbar.org/esp).

**(B) COURT SETTLEMENT CONFERENCE:** Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

## 2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement, before incurring the expense of going to court, that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law. A mediator strives to bring the parties to a mutually beneficial settlement of the dispute.

**(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO,** in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.



**Operation:** A mediator provides at **no cost** one hour of preparation time and two hours of mediation time. After those three hours, if the case is not resolved, parties have the option to continue the process and pay the mediator at his or her regular hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties may select a specific mediator or BASF will help the parties make a selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process.

**Cost:** BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's Mediation Coordinator at 415-782-9000 ext. 8787 or visit [www.sfbar.org/mediation](http://www.sfbar.org/mediation).

**(B) PRIVATE MEDIATION:** Although not currently a part of the court's ADR program, civil disputes may also be resolved through private mediation. Parties may elect any private mediator or mediation organization of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

### 3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

**(A) JUDICIAL ARBITRATION:** When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

**Operation:** Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the court's Arbitration Panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 30 days after the arbitrator's award has been filed.

Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

**Cost:** There is no cost to the parties for judicial arbitration.

**(B) PRIVATE ARBITRATION:** Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)	<b>FOR COURT USE ONLY</b>
TELEPHONE NO.:	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	CASE NUMBER:
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	DEPARTMENT 610

**1) The parties hereby stipulate that this action shall be submitted to the following ADR process:**

- Early Settlement Program of the Bar Association of San Francisco (BASF)** - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$250 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. [www.sfbar.org/esp](http://www.sfbar.org/esp)
- Mediation Services of BASF** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$250 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. [www.sfbar.org/mediation](http://www.sfbar.org/mediation)
- Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)
- Other ADR process (describe)** \_\_\_\_\_

**2) The parties agree that the ADR Process shall be completed by (date):** \_\_\_\_\_

**3) Plaintiff(s) and Defendant(s) further agree as follows:**

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Name of Party Stipulating

\_\_\_\_\_  
 Name of Party Stipulating

\_\_\_\_\_  
 Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
 Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
 Signature of Party or Attorney

\_\_\_\_\_  
 Signature of Party or Attorney

Plaintiff  Defendant  Cross-defendant

Plaintiff  Defendant  Cross-defendant

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

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

**Additional signature(s) attached**



PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

*(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request  a jury trial  a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a.  The trial has been set for *(date)*:

b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a.  days *(specify number)*:

b.  hours (short causes) *(specify)*:

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel  has  has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party  has  has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

(1)  This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2)  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3)  This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form <b>are willing</b> to participate in the following ADR processes ( <i>check all that apply</i> ):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete mediation by ( <i>date</i> ): <input type="checkbox"/> Mediation completed on ( <i>date</i> ):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete settlement conference by ( <i>date</i> ): <input type="checkbox"/> Settlement conference completed on ( <i>date</i> ):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete neutral evaluation by ( <i>date</i> ): <input type="checkbox"/> Neutral evaluation completed on ( <i>date</i> ):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete judicial arbitration by ( <i>date</i> ): <input type="checkbox"/> Judicial arbitration completed on ( <i>date</i> ):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete private arbitration by ( <i>date</i> ): <input type="checkbox"/> Private arbitration completed on ( <i>date</i> ):
(6) Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete ADR session by ( <i>date</i> ): <input type="checkbox"/> ADR completed on ( <i>date</i> ):



PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
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**11. Insurance**

- a.  Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (*explain*):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy  Other (*specify*):

Status:

**13. Related cases, consolidation, and coordination**

- a.  There are companion, underlying, or related cases.
  - (1) Name of case:
  - (2) Name of court:
  - (3) Case number:
  - (4) Status:
- Additional cases are described in Attachment 13a.
- b.  A motion to  consolidate  coordinate will be filed by (*name party*):

**14. Bifurcation**

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

**15. Other motions**

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

**16. Discovery**

- a.  The party or parties have completed all discovery.
  - b.  The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c.  The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: _____	CASE NUMBER: _____
DEFENDANT/RESPONDENT: _____	

17. Economic litigation

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

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

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

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

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.