

AIKEN THOMASON

MEDIATION | ARBITRATION

June 16, 2025

Re: *

Dear Counsel:

You have asked me to serve as mediator. Thank you for asking me to resolve your clients' dispute.

1. The mediation session will be held via Zoom:

Mediation Session via Zoom: *, 2025 at 8:30 a.m.

Zoom Link:

Meeting ID:

Password:

An outlook calendar entry with instructions will also be sent. I can be reached at 480-861-9530 should you run into issues connecting to Zoom.

2. To manage this case, we will use Case Anywhere—the leading case management platform in the country. Please take a moment to visit the Case Anywhere website (<https://www.caseanywhere.com/>) or perhaps call Rani Bijlani, Director of Operations, or Wayne Nitti, CEO and founder. They would look forward to the opportunity to walk you through the system, if needed. Since 2012, Case Anywhere has powered the case management platform at JAMS, where Rani once worked, so they are used to running arbitration, litigation, and mediation cases both large and small. I will of course manage the case just as I always do. Case Anywhere will serve as the platform for uploading your mediation memoranda, documents, exhibits, and sharing messages. DeAnn Buchmeier, my assistant, will also answer any questions about using the system. She will prepare a Case Intake form with contact information for both sides and look to you for any corrections or additions. Once Case Anywhere opens this mediation on their platform, you will each receive a welcome email with instructions on how to login to the system. Case Anywhere charges a fee for use of its platform.
3. Please upload to Case Anywhere for distribution to all parties no later than *, 2025, a mediation memorandum of no more than 15 pages that covers at least the following topics:
 - a. A short description of the dispute and the parties' positions on the issues.
 - b. The key facts and your discussion of the legal issues with relevant authorities. Please give me copies of the important cases and other sources that you want me to read before the mediation.
 - c. A description of the settlement discussions to date.
 - d. Other matters you think relevant.

Attach or upload whatever pleadings, deposition excerpts, documents, or other materials that you think I should see. Please try to give me only what I really need. For example, if there is a key contract provision, I do not need the entire 300-page contract. Similarly, if there are two key deposition passages,

OFFICE ADDRESS: 5090 N. 40th St., Suite 207 • Phoenix, AZ 85018

MAILING ADDRESS: 1909 E. Ray Rd., Suite 9-304 • Chandler, AZ 85225

602.718.3340 • www.aiken-thomason.com

I do not need the entire transcript. I welcome your submission sooner, if you are able to do so (and if you believe that the memo would remain current for the mediation).

4. I also welcome your confidential memorandum uploaded for submission only to me (not all Case Anywhere users) that covers the following topics:
 - a. The outcome you think is most likely if the matter were to be tried and why.
 - b. Your settlement position in the mediation, especially any settlement structures that you believe merit consideration.
 - c. Weaknesses in your case and other problems you may have in going to trial.
 - d. Other matters you think relevant.

I will not share anything contained in the confidential mediation memorandum unless you authorize me to do so. Case Anywhere allows for the submission of these confidential memoranda.

5. Please let me know whether we should speak or meet before the session. I always welcome the chance to plan for the session, including discussion of the basis for the opening offer, discussion of trial assessment, strength and weaknesses, non-monetary terms, or other relevant topics. We aim to sign a term sheet at the end of the day; with more preparation, we improve the odds of doing so.
6. Each party must have client representatives, and insurance representatives, at the mediation who have full settlement authority or who have ready access to those who have such authority. While I do not always do so, I often find it useful to speak separately to the clients or client representatives. Please bring decision-makers, with discretion, to the session. Also, before the session, please consider an exchange of draft terms—form of release, for example, and other non-monetary provisions (tax treatment, termination (or not) of existing agreements)—because, as I say, before the conclusion of the session, we will turn to the preparation of a term sheet for signature by all parties.
7. The mediation will not be recorded. You and every other participant in the mediation, and their counsel or other advisors, agree not to record the mediation other than to keep written notes, which notes are and will remain subject to the confidentiality obligations applicable to the mediation, including those under Arizona's mediation confidentiality statute. In addition, the parties and counsel agree that the mediation shall be treated as confidential, including documents exchanged during the session, unless the parties agree otherwise.
8. Each participant in each mediation session must inform me in advance of all persons attending or otherwise able to hear or see the mediation proceedings, and each participant agrees that no persons will attend, participate in or otherwise hear or see the mediation proceedings without the prior consent of me and the other participants in the mediation.
9. Each participant's participation in any mediation session conducted using a video conferencing platform such as Zoom will be deemed to have determined for themselves that such video conferencing platform is suitable and adequate for purposes of the mediation proceeding, including any risks related to the security, privacy, or confidentiality of such video conferencing platform.
10. Each participant consents to my having ex parte communications with other participants in the mediation.

11. Each participant agrees that I will be able to share information that is provided to me during the session with the other parties, unless I am requested to not share the information. I will honor such requests.
12. If a settlement agreement is reached, a binding term sheet will be signed by all of the parties. A sample term sheet is on the Aiken Thomason web site. The lawyers are encouraged to work on the term sheet during the mediation. The sheet will be sent for electronic signatures.
13. Even though some or all participants may appear via Zoom, the parties agree that the seat of the mediation is Phoenix, Arizona.
14. I will bill my time at the hourly rate of \$570 per hour including time spent preparing for the mediation. The parties will share my fees and expenses equally. No later than ***, 2025**, each party must transmit a deposit made payable to Tim Thomason, PLLC (we accept credit cards (LawPay link: [Pay Invoice Here](#)), wire transfers (call for instructions), or checks mailed to: 1909 East Ray Road, Suite 9-304, Chandler, AZ 85225), in the amount of \$3,420 (which represents one-half of the fee for one full day (8 hours) and four hours of preparation (review of materials and phone calls with counsel)).¹ If the parties expect that the session will last longer than one day, I may request an additional deposit. Any additional time spent will be billed. For example, if the mediation is not successful, I will often have follow-up conversations or emails to see if a settlement can still be reached. Any remaining balance is due within one month after the date of the bill. If deposits are not received by ***, 2025**, the mediation may be postponed until funds are received. Any funds that have not been used at the conclusion of the mediation session(s) will be refunded. Depending upon the circumstances, and at my discretion, if the mediation is cancelled or postponed within ten calendar days of when it is scheduled, both sides may be charged for five hours of time (\$2,850.00 each).
15. Over the years, parties have had success concluding an otherwise unsuccessful session with an agreement calling for me to select one of the parties' final numbers as a binding resolution (final offer or baseball arbitration). On the Aiken Thomason website, you will find articles discussing various suggestions. We can discuss these and other alternatives as necessary during the session, including the following:
 - Med/Arb (mediator closes the session with a brief arbitration session);
 - Non-binding or binding mediator's number (mediator offers final proposal for consideration by parties);
 - Confidential offers; and,
 - Conditional offers.

Finally, I am not precluded from acting for or against either party in the future, nor is any other lawyer from my firm precluded from acting for or against either party on other matters, provided that the issues do not arise out of or relate in any way to those raised in the mediation.

This agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule.

Thank you for selecting me as your mediator. I will make every effort to bring the parties together.

¹ Tim Thomason, PLLC Tax ID No. 92-2738503

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I look forward to reading your memoranda and seeing you via Zoom on *, 2025.

Sincerely,

TIM THOMASON, PLLC

Timothy J. Thomason