

BERMAN LAW CENTER, P.C.

COLUMBIA SQUARE BUILDING
111 SW COLUMBIA STREET., SUITE. 1010 – PORTLAND, OR 97209
TEL (503) 828-1953 – FAX (503) 200-2891
jon@bermanlawcenter.com

AGREEMENT TO MEDIATE

This is an Agreement between _____ and _____ and Jonathan Berman, hereinafter the “mediator,” to enter into mediation with the intent of resolving the following issues: _____.

The parties and the mediator understand and agree as follows:

1. *Nature of Mediation* -- The parties hereby retain Jonathan Berman as mediator to facilitate their negotiations. The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual, and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties are encouraged to secure such advice throughout the mediation process and are strongly advised to obtain independent legal review of any formal mediated agreement before signing that agreement. The parties understand that the mediator’s objective is to facilitate the parties themselves reaching their most constructive and best agreement. The parties also understand that the mediator has an obligation to work on behalf of each party equally and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the mediation.
2. *Scope of Mediation* -- The parties understand that it is for the parties, with the mediator’s concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.
3. *Mediation is Voluntary* -- All parties here state their good-faith intention to conclude their mediation with a mediated agreement. It is, however, understood that any party may withdraw from or suspend the mediation process at any time, for any reason. The parties also understand that the mediator may suspend or terminate the mediation if the mediator feels that the mediation will lead to an unjust or unreasonable result; if the mediator feels that an impasse has been reached; if the mediator feels material information has been concealed; or if the mediator determines that he or she can no longer effectively perform a facilitative role.
4. *Confidentiality* -- It is understood between the parties and the mediator that the mediation will be strictly confidential. Mediation confidentiality has several aspects. First, mediation discussions are private and may not be discussed with anyone outside the mediation except your attorney (or another privileged relationship as defined by statute).

Second, any draft resolutions, any meeting minutes, any correspondence and any unsigned mediated agreements shall not be admissible in any future court proceeding. Only a mediated agreement signed by the parties may be so admissible. An exception to this rule is that this Agreement to Mediate shall not be considered confidential.

The parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the parties and the mediator to be inadmissible settlement negotiations.

All parties understand and agree that the mediator may have private caucus meetings and discussions with any individual party. These meetings and discussions shall be confidential between the mediator and the caucusing party unless the mediator obtains permission to share some aspect of the discussion.

The mediator has certain statutorily or judicially required reporting obligations, such as reporting a reasonable belief that child abuse has taken place or to speak up to protect one party from another if substantial physical harm is a concern.

5. *Full Disclosure* -- Each party agrees to fully and honestly disclose all relevant information and writings as requested by the mediator and all information requested by any other party, if the mediator determines that the disclosure is relevant to the mediation discussions. The parties acknowledge and agree to abide by the terms of ORS 107.089 relating to the mandatory disclosure of documents. The parties may mutually agree to waive the requirements of ORS 107.089 if both of them choose to do so. A copy of ORS 107.089 will be provided upon the request of either party.
6. *Mediator Impartiality* -- The parties understand that the mediator must remain impartial throughout and after the mediation process. Thus, the mediator shall not champion the interests of any party over another in the mediation or in any court or other proceeding. The parties agree that the mediator may discuss the parties' mediation process with any attorney that a party may retain as individual counsel. Such discussions will not include any negotiations, as all mediation negotiations must involve all parties directly. The mediator will provide copies of correspondence, draft agreements, and written documentation to independent legal counsel at a party's request.
7. *Mediation Fees*

You agree to pay the mediator at a rate of \$240 per hour. Work performed by legal assistants or paralegals will be billed at the rate of \$100 per hour.

The mediator has taken time creating agreements, pleadings, and other documents. The value of these cannot be measured merely by the time it may take to adapt them to your case. For this reason and others, you agree to pay for services at not less than certain minimum rates. For example, the minimum rate for a letter is .3 hours and telephone calls are .1 hours. An e-mail transmission (sent or received) will be treated as a letter for

billing purposes. Drafting of the judgment will be billed based on the mediator's reasonable estimate of value of services provided (the typical judgment takes between 2.5 and 4.5 hours). The documents that accompany the judgment are billed at a flat rate of \$450. **Moreover, unless otherwise reflected on the statement, there is a minimum charge of .1 (one-tenth of an hour) for all services provided and all actions taken on your case.** Travel time will be billed at the above-stated rate.

TRUST RETAINER DEPOSIT

The parties agree to pay Berman Law Center (hereinafter "Firm") a retainer in the amount of \$_____. This amount is a retainer which Firm will deposit into the Berman Law Center, P.C. Lawyer Trust Account. Firm has the right to reserve a reasonable amount of the retainer to apply to future fees, costs and expenses. The remaining funds held in trust shall be a retainer from which Firm will be paid. **You understand that Firm has not accepted your case and will not act as your mediator until you have signed this Agreement and paid the retainer.** Any unearned portion of the retainer will be returned to you at the end of your case, even though the retainer may have been paid on your behalf by a third party.

The parties understand that fees and costs will be billed monthly, and that any balance owing is due and payable ten (10) days from the date of receipt of the monthly statement. Firm may cease to provide further legal services if the parties fail to pay all charges in full each month. Firm may withdraw and apply your retainer and any other sums in your trust account to your bill at any time unless you give Firm specific written instructions to the contrary.

The parties further agree to place a credit card on file with Firm for the purpose of paying costs and fees in the event that the initial retainer is depleted. The credit card billing procedure is described in the attached Credit Card Authorization Form which must be signed as well. .

Any statement of predicted fees is an estimate only and should not be relied upon by the parties. The parties shall be jointly and severally liable for the mediator's fees and expenses. As between the parties only, responsibility for mediation fees and expenses shall be: _____.

Should payment not be timely made, the mediator may, in his sole discretion, stop all work on behalf of the parties, including the drafting and/or distribution of the parties' agreement, and withdraw from the mediation. If collection or court action is taken by the mediator to collect fees and/or expenses under this agreement, the prevailing party in any such action and upon any appeal therefrom shall be entitled to attorney fees and costs therein incurred.

8. *Preservation of Status Quo* -- By signing this agreement the parties are agreeing to be bound by the terms of ORS 107.093 during the pendency of their divorce. This means that the parties shall refrain from:

Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance, homeowner or renter insurance or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.

Changing beneficiaries or covered parties under any policy of health insurance, homeowner or renter insurance or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy. Transferring, encumbering, concealing or disposing of property in which the other party has an interest, in any manner, without written consent of the other party or an order of the court, except in the usual course of business or for necessities of life. This paragraph does not apply to payment by either party of:

- (A) Attorney fees in the existing action;
- (B) Real estate and income taxes;
- (C) Mental health therapy expenses for either party or a minor child of the parties; or
- (D) Expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

Making extraordinary expenditures without providing written notice and an accounting of the extraordinary expenditures to the other party. This paragraph does not apply to payment by either party of expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

Violation of this paragraph shall be grounds for terminating the mediation. A copy of ORS 107.093 will be provided upon the request of either party.

DATED this ___ day of _____, 2014.

Client

Client

Jonathan Berman

CREDIT CARD AUTHORIZATION

Card Number: _____ Expiration Date: _____

Name on Card: _____ CCV #: _____

Complete Billing Address (including zip code) for card:

This card is responsible for all outstanding charges over and above the parties' initial retainer amount which was paid by credit card / check / cash / other.

Email Address to Receive Charge Notifications: _____

By signing below, I authorize Berman Law Center, P.C. to charge to the above credit card any balance owing on the parties' account in excess of the parties' initial retainer amount of \$_____.

Should the initial retainer amount be depleted, Berman Law Center, P.C. shall charge the above card, and is hereby authorized to do so, at the same time that Berman Law Center, P.C. processes a bill on the parties' account and without prior authorization from me.

I understand that Berman Law Center, P.C. generally bills once a month. If a balance is owing, or if the parties' retainer has been fully depleted, said balance shall be charged.

I understand that this authorization shall terminate when Berman Law Center, P.C. closes the parties' file or when I give written notice via U.S. Mail to Berman Law Center, P.C. to terminate this authorization.

I understand that Berman Law Center, P.C. will send a bill to me by email / to _____ and me at our respective email addresses, along with any indication of the amount charged to my card. If I would like my bill mailed to me by United States Postal Service, I need to notify Berman Law Center, P.C. in writing.

I agree that if I have insufficient funds in my account, I will reimburse Berman Law Center, P.C. any bank charges incurred by Berman Law Center, P.C. and I shall provide Berman Law Center, P.C. with an alternate card to charge, or with immediate payment by other means, and that Berman Law Center, P.C. and I understand that Berman Law Center, P.C. may cease all work on the parties' case.

Signature: _____

Print Name: _____

Date: _____