

**SUMMONS  
(CITACION JUDICIAL)**

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

**NOTICE TO DEFENDANT:**

*an individual*

**(AVISO AL DEMANDADO):**

STEVEN T. KIRSCH, an individual; DAVID BESA, an individual; JONATHAN C. HARLOW, an individual; PHILIP BOWLES, an individual; GENE CARMEAN, an individual; DAVID M. KORPI, an individual; THOMAS B. ADLER, MARK KLEIN, an individual; MARK R. GATELEY, an individual; WAYNE RICHARD FAY, an individual; DEIRDRE COGHLAN, an individual; RICHARD M. KERBEL, an individual; STEVE LANER, an individual;

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** ERIC WILSON, an individual

LEGACY FARMS, LLC, a California Limited Liability Company and DOES 1-1000, inclusive,

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.

*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.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), 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.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
*(El nombre y dirección de la corte es):*  
Orange County Superior Court  
700 Civic Center Drive West

CASE NUMBER  
(Número del Caso) **04CC07429**

**JUDGE RANDELL L. WILKINSON  
DEPT. C19**

Santa Ana, CA 92702-1994  
Central Justice Center

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):*  
James H. Casello (714) 541-8700 (714) 541-8707  
CASELLO & LINCOLN

1551 N. Tustin Ave.  
Santa Ana, CA 92705-8636

**LYNDA WEISMAN**

DATE: **JUL - 7 2004** **ALAN SLATER** Clerk, by \_\_\_\_\_, Deputy  
*(Fecha)* *(Secretario)* *(Adjunto)*

*(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**

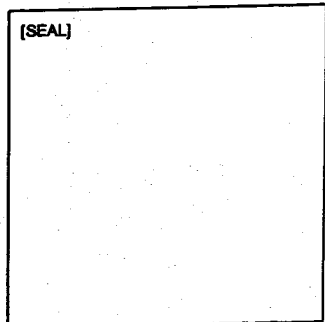
- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):

3.  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):

4.  by personal delivery on (date):



1 JAMES H. CASELLO, CBN 76021  
2 DANFORTH F. LINCOLN, CBN 131591  
3 Casello & Lincoln  
4 1551 N. Tustin Avenue, Suite 850  
5 Santa Ana, California 92705-8636  
6 Telephone: (714) 541-8700  
7 Facsimile: (714) 541-8707

8 Attorney for Plaintiff ERIC WILSON

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUL - 7 2004

ALAN SLATER, Clerk of the Court

L. WEISMAN

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF ORANGE

11 ERIC WILSON, an individual  
12 Plaintiff,

13 vs.

14 STEVEN T. KIRSCH, an individual;  
15 DAVID BESA, an individual; JONATHAN  
16 C. HARLOW, an individual; PHILIP  
17 BOWLES, an individual; GENE  
18 CARMEAN, an individual; DAVID M.  
19 KORPI, an individual; THOMAS B.  
20 ADLER, an individual; MARK KLEIN, an  
21 individual; MARK R. GATELEY, an  
22 individual; WAYNE RICHARD FAY, an  
23 individual; DEIRDRE COGLAN, an  
24 individual; RICHARD M. KERBEL, an  
25 individual; STEVE LANER, an individual;  
26 LEGACY FARMS, LLC, a California  
27 Limited Liability Company and DOES 1-  
28 1000, inclusive,

Defendants.

Case No.

**04CC07429**

COMPLAINT FOR: (1) ABUSE OF  
PROCESS and (2) UNFAIR COMPETITION

JUDGE RANDELL L. WILKINSON  
DEPT. C19

INTRODUCTORY ALLEGATIONS

1. Plaintiff Eric Wilson is an individual, and at all times mentioned herein was a resident of the State of California.

2. Defendant Steven T. Kirsch is an individual, and at all times mentioned herein was

THIS CASE HAS BEEN ASSIGNED TO CIVIL CASE MANAGEMENT. EACH PLEADING MUST INCLUDE THE ASSIGNED JUDGE AND DEPARTMENT DESIGNATION AS SHOWN UNDER THE CASE NUMBER. ALL PARTIES MUST COMPLY WITH THE ORANGE COUNTY SUPERIOR COURT RULES.

1 a resident of the State of California.

2 3. Each of the following defendants is an individual, and at all times mentioned herein  
3 was a resident of the State of California: David Besa, Jonathan C. Harlow; Philip Bowles; Gene  
4 Carmean; David M. Korpi; Thomas B. Adler; Mark Klein; Mark R. Gateley; Wayne Richard Fay;  
5 Deirdre Coghlan; Richard M. Kerbel and Steve Laner.

6 4. Defendant Legacy Farms, LCC is a California limited liability company with its  
7 principal place of business in Orange County, California.

8 5. Venue is proper in Orange County in that the acts by Defendants described below  
9 occurred in part in Orange County and several of the Defendants are individuals that reside in  
10 Orange County or are businesses with their principal place of business in Orange County.

11 6. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
12 DOES 1-1000, inclusive, and therefore sues these defendants by these fictitious names. Plaintiff  
13 will amend this Complaint to allege their true names and capacities when ascertained.

14 GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

15 7. Plaintiff Wilson is an employee of Fax.com, Inc., a Delaware corporation, with its  
16 principal place of business in Orange County, California (hereafter, "FAX.COM"). FAX.COM  
17 transmits messages via fax on behalf of its customers.

18 8. Defendant Kirsch publicly describes himself as a "crusader" who is determined to  
19 put halt the transmission of unsolicited faxes, which he calls "junk faxes." Among other things,  
20 Kirsch has: 1) created and maintained a web site dedicated to his crusade entitled "junkfax.org,"  
21 discussed more fully below; and 2) filed and pursued a class action lawsuit against FAX.COM on  
22 August 22, 2002 on behalf of himself and a putative class of fax recipients seeking damages and  
23 injunctive relief against FAX.COM.

24 9. Commencing sometime in 2004, Defendant Kirsch decided to unlawfully expand  
25 his "crusade" by launching a personal and unwarranted assault upon Plaintiff Wilson. Rather than  
26 focus his efforts on his pending class action lawsuit against FAX.COM, Defendant Kirsch  
27 engineered a scheme to excite and direct other persons and/or entities to file multitudes of  
28 frivolous small claims actions filed against Plaintiff Wilson, a FAX.COM employee, in counties

1 all over the State of California.

2 10. In pursuit of this assault on Plaintiff Wilson, Defendant Kirsch conspired with  
3 Defendants David Besa, Jonathan C. Harlow, Philip Bowles, Gene Carmean, David M. Korpi,  
4 Thomas B. Adler, Mark Klein, Mark R. Gateley, Wayne Richard Fay, Deirdre Coghlan, Richard  
5 M. Kerbel, Steve Laner and Legacy Farms, LCC. In coordination with Defendant Kirsch and with  
6 each other, each of the above-named Defendants filed small claims lawsuits against Plaintiff  
7 Wilson in counties all over the State of California asserting that Plaintiff Wilson was personally  
8 liable to each of them in the amount of \$2,500 as a result of one one-page unsolicited fax allegedly  
9 received by each Defendant from FAX.COM.

10 11. Defendants filed these small claims actions in coordination with each other with  
11 full knowledge that Plaintiff Wilson was not the proper defendant for these actions. Defendants  
12 further deliberately coordinated with each other to file the small claims actions all at once with  
13 hearing dates in close proximity in counties all over the State of California, solely for the purpose  
14 of harassing Plaintiff Wilson into the choice of having to fly all over the State of California to  
15 defend himself or have default judgments entered against him.

16 12. Defendant Kirsch coordinated and excited the above-described suits with the  
17 corrupt or malicious intent to vex and annoy Plaintiff Wilson. Upon information and belief,  
18 Defendant Kirsch either prepared and filed the small claims complaints himself or provided the  
19 small claims complaint forms to the other named Defendants and collected them for filing. After  
20 filing the small claims actions, Defendant Kirsch personally coordinated arranged for service upon  
21 Plaintiff Wilson by one process server hired by Defendant Kirsch on behalf of all Defendants.  
22 The other named defendants filed their claims against Plaintiff Wilson solely because Defendant  
23 Kirsch told them to do so and with full knowledge that Plaintiff Wilson should not have been sued.  
24 This was an improper use of the court system and was done for the specific intent of forcing  
25 Plaintiff Wilson into choosing between having a default entered against him or traveling all over  
26 the State of California to defend himself. Further, Defendant Kirsch coordinated and excited the  
27 above-described suits against Plaintiff Wilson, an employee of FAX.COM, after a stay of action  
28 was entered by Court order in Kirsch's aforementioned class action lawsuit against FAX.COM as

1 a result of judicial coordination of Kirsch's class action with other pending actions involving the  
2 same subject matter. Defendant Kirsch's decision to ignore the Court's stay order in the  
3 Kirsch/FAX.COM case and instead coordinate filing of a rash of new small claims actions against  
4 Plaintiff Wilson, an employee of FAX.COM, demonstrates an abuse of the legal process not  
5 proper in the regular conduct of the proceedings.

6 FIRST CAUSE OF ACTION

7 (FOR ABUSE OF PROCESS AGAINST ALL DEFENDANTS)

8 13. Plaintiff repeats and re-alleges each allegation contained within paragraphs 1  
9 through 12 of this Complaint as if repeated in full herein.

10 14. At the direction of and in coordination with Defendant Kirsch, Defendants David  
11 Besa, Jonathan C. Harlow, Philip Bowles, Gene Carmean, David M. Korpi, Thomas B. Adler,  
12 Mark Klein, Mark R. Gateley, Wayne Richard Fay, Deirdre Coghlan, Richard M. Kerbel, Steve  
13 Laner, Legacy Farms, LCC and DOES 1-1000 filed the small claims actions described above with  
14 an ulterior motive and as a willful act in the use of legal process not proper in the regular conduct  
15 of the proceedings.

16 15. Defendants never believed that any of the Defendants had viable claims against  
17 Plaintiff Wilson as a result of having allegedly received a one-page fax from FAX.COM, but  
18 nonetheless abused the legal process by willfully and deliberately filing small claims actions  
19 against Plaintiff Wilson personally. In further abuse of the legal process not proper in the regular  
20 conduct of the proceedings, Defendants willfully and deliberately coordinated with each other to  
21 file the small claims actions and then simultaneously serve Plaintiff Wilson so that Plaintiff  
22 Wilson would immediately face trial dates one after the other in rapid succession in counties all  
23 over California. Defendant Kirsch was at the center of this abuse of process, personally directing  
24 and coordinating the above-described wrongful activities at Plaintiff Wilson.

25 16. As a result of the abuse of process of Defendants as herein alleged, Plaintiff Wilson  
26 has been damaged in an amount not yet ascertained but in excess of \$25,000 to be determined at  
27 trial according to proof.

28 17. The conduct of Defendants as described above demonstrated malice on the part of

1 Defendants in that their conduct was deliberately intended by the Defendants to cause injury to  
2 Plaintiff Wilson, and/or was despicable conduct carried on by Defendants with willful and  
3 conscious disregard to the rights of Plaintiff Wilson. Further, the conduct of Defendants as  
4 described above was oppressive in that it was despicable conduct subjecting Plaintiff Wilson to  
5 cruel and unjust hardship in conscious disregard of Plaintiff Wilson's rights. Defendants' conduct  
6 justifies an award of punitive damages in favor of Plaintiff Wilson and against Defendants for the  
7 sake of example and in order to punish Defendants.

8 SECOND CAUSE OF ACTION

9 (FOR UNFAIR COMPETITION AGAINST DEFENDANT

10 STEVEN T. KIRSCH AND DOES 1-100)

11 18. Plaintiff repeats and re-alleges each allegation contained within paragraphs 1  
12 through 17 of this Complaint as if repeated in full herein.

13 19. California Penal Code sections 158 and 159 prohibit the practice of exciting  
14 groundless legal proceedings, particularly when doing so with a corrupt or malicious intent to vex  
15 and annoy.

16 20. As alleged more fully above, Defendant Steven T. Kirsch and Does 1-1000 have  
17 and are urging others to file groundless small claims actions against Plaintiff Wilson all over the  
18 State of California with corrupt and/or malicious intent to vex and annoy Plaintiff Wilson in  
19 violation of California Penal Code sections 158 and 159.

20 21. California Business & Professions Code section 6126 prohibits a person from  
21 practicing law who is not an active member of the State Bar of California, or otherwise authorized  
22 pursuant to statute or court rule to practice law in the state of California at the time of doing so.  
23 Defendant Steven T. Kirsch lacks any such qualifications.

24 22. Through the use of the website "junkfax.org" and through other means, Defendant  
25 Steven T. Kirsch has engaged in the unauthorized practice of law in California by, among other  
26 things: 1) holding himself out as a legal expert on the federal Telephone Consumer Protection Act  
27 of 1991 (the "TCPA"); 2) counseling others to file small claims actions against Plaintiff Wilson  
28 for violations of the TCPA; 3) providing small claims complaint forms to others with instructions

1 how to sue Plaintiff Wilson and, in many instances, drafting the complaints directly; 4) collecting  
2 the filed small claims actions and engaging a process server to act serve Plaintiff Wilson upon the  
3 order of Defendant Kirsch; 5) providing oral and written advice to the small claims plaintiffs on  
4 how to pursue and try their claims against Plaintiff Wilson and how to collect on any default  
5 judgment that might result if Plaintiff Wilson is unable to travel to defend himself.

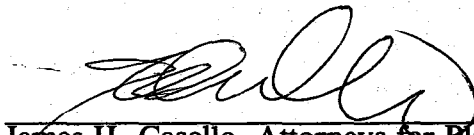
6 23. By engaging in the above-described conduct, Defendant Steven T. Kirsch and  
7 DOES 1-1000 have engaged in unfair competition as defined in California Business & Professions  
8 Code section 17200. Pursuant to California Business & Professions Code section 17203, the  
9 Court may enjoin Defendant Steven T. Kirsch and DOES 1-1000 from further engaging in such  
10 conduct and may make such orders or judgments as may be necessary to prevent the use or  
11 employment by Defendants Steven T. Kirsch and Does 1-1000 from any practice which constitutes  
12 unfair competition.

13 WHEREFORE, Plaintiff Eric Wilson prays for judgment against Defendants as follows:

- 14 1. For general damages within the jurisdiction of this Court;
- 15 2. For punitive damages as allowed by law;
- 16 3. For interest as allowed by law;
- 17 4. For costs of suit incurred;
- 18 5. For equitable relief as deemed appropriate by this Court, including injunctive relief;
- 19 6. Pursuant to California Business & Professions Code section 17203, for an order  
20 permanently restraining and enjoining Defendants from engaging in any acts of  
21 unfair competition as set forth in paragraphs 18-24 of this Complaint and for any  
22 other orders or judgments as may be necessary to prevent the use or employment by  
23 Defendants from practices which constitute unfair competition; and  
24 7. For such other and further relief as the Court may deem proper.

25 Dated: July 7, 2004

CASELLO & LINCOLN

26  
27   
28 James H. Casello, Attorneys for Plaintiff,  
ERIC WILSON

Superior Court of California  
County of Orange

**HONORABLE RANDELL L. WILKINSON / DEPARTMENT C19**

**CENTRAL JUSTICE CENTER**  
**P.O. Box 838**  
**Santa Ana, Ca 92702-0838**  
**(714) 834-2200**  
**www.occourts.org**

**EX PARTE POLICIES AND PROCEDURES**

- |     |   |
|-----|---|
| 1.  | Phone (714) 834-2200 for fee or filing information. Phone (714) 834-3766 re: scheduling noticed motions or confirming hearing dates (ex-parte excepted).  |
| 2.  | Ex-Parte Applications are heard Monday, Tuesday and Thursday, Promptly at 4:00 pm, Wednesday at 3:30 pm and Friday at 11:30 am. Except as modified herein, all local Court rules and policies shall apply to ex-parte applications (See OCSCR 501). |
| 3.  | Moving party shall notify the bailiff in Department C19 (714) 834-3720, no later than 4:00 pm the day before the matter is to be heard and supply whatever information may be requested.  |
| 4.  | Ex-Parte Application shall be presented in Department C19 no later than 9:30 am on the day of the ex-parte hearing.   |
| 5.  | The moving party shall submit on the moving papers, <u>unless the Court invites oral argument</u> (i.e. If it isn't in the declaration, it won't be considered).  |
| 6.  | The <b>first paragraph</b> of the Ex Parte Application shall state the irreparable harm that will occur if the relief requested is not granted until after a formally noticed hearing.  |
| 7.  | Most Ex-Parte matters are ruled on without oral argument.   |
| 8.  | The hearing of Ex-Parte matters shall not interfere with or delay the trial in progress; counsel may have to wait.  |
| 9.  | The fee required for each Ex-Parte Application must be paid in the Clerk's office (Central Justice Center, Room D110, First Floor) prior to presenting documents to Dept. C19.  |
| 10. | The correct mailing address for all documents in cases assigned to Judge Wilkinson is:<br><b>Superior Court of California, Clerk of the Court</b><br><b>P.O. Box 838, Santa Ana, CA</b><br><b>92702-0838.</b>                                       |



**Superior Court of California  
County of Orange, Central Justice Center**

DEPT	CIVIL JUDGES	*NOTICED MOTIONS HEARD	EX PARTES HEARD:	TELEPHONIC NOTICE TO COURTROOM NO LATER THAN:	**EX PARTE APPLICATION PRESENTED IN COURTROOM NO LATER THAN:
<b>CIVIL CASE MANAGEMENT PANEL, JUDGE BRENNER SUPERVISING</b>					
C4	ANDLER 834-4495	FRI. 10:00 A.M. Rulings posted on the Internet.	M -Fri. 9:00 a.m.	NOON DAY BEFORE HEARING	3:00 P.M. DAY BEFORE EX PARTE HEARING
C6	BANKS, 834-3710	Fri., 10:00 a.m. Rulings posted on Internet <b>NOTE: DEPT. REQUIRES MOTIONS BE RESERVED WITH C6 PRIOR TO FILING BY CALLING (714) 834-3710</b>	Promptly at 8:45 AM	NOON, DAY BEFORE HEARING	3:00 PM, DAY BEFORE EX PARTE HEARING
C20	BRENNER, 834-5135	Tues., 1:30 PM Rulings on Internet until Noon on Tuesday	T,W,Th,F, 9:00 AM	9:00 AM, DAY BEFORE EX PARTE HEARING	3:00 PM, DAY BEFORE EX PARTE HEARING
C12	BROOKS 834-3750	Wed., 3:00 P.M. Rulings posted on Internet	T - F, 8:30 AM	NOON, DAY BEFORE EX PARTE HEARING	4:00 P. M., DAY BEFORE EX PARTE HEARING
C25	CHAFFEE 834-5005	Tues., 2:00 PM	M, W, TH, F 1:30 PM	4:00 PM, DAY BEFORE EX PARTE HEARING	10:30 AM, DAY OF EX PARTE HEARING
C21	CHOATE 834-4732	Thurs. 1:30 PM Rulings posted on Internet	M - F 9:00 AM	NOT REQUIRED; RECEIPT OF EX PARTE PAPERS SHALL CONSTITUTE NOTICE TO THE COURT.	NO LATER THAN NOON, DAY BEFORE EX PARTE HEARING
W12 ***	COLAW, 896-7842	Fri., 10:00 AM Rulings on Internet by 3:00 p.m. on Thursday.	M, Tu, W, F 1:30 PM	NOON, DAY BEFORE EX PARTE HEARING	10:30 AM, DAY OF EX PARTE HEARING
C8	CRAMIN 834-3700	Fri, 10:00 AM	M - F 9:00 A.M.	NOT REQUIRED.	NO LATER THAN 12:00 P.M., THE DAY BEFORE EX PARTE HEARING
W11 ***	ERICKSON 896-7176	Thurs., 1:30 P. M.	M, Tu, W, F 1:30 P. M.	NOON, DAY BEFORE EX PARTE HEARING	10:30 AM, DAY OF EX PARTE HEARING
C18	FRAZEE 834-4606	Fri., 10:00 A.M.	M - F, 8:30 AM No oral argument.	NO TELEPHONIC NOTICE TO DEPARTMENT IS REQUIRED	NOON, DAY BEFORE EX PARTE HEARING
C28	GALLIVAN, 834-2273	Thurs., 2:30 PM Rulings on Internet by 10:00 A. M. day of scheduled motion	M -Th 8:30 AM	10:00 AM DAY BEFORE EX PARTE HEARING	3:00 PM, DAY BEFORE EX PARTE HEARING
C24	HAYES, 834-5092	FRI., 9:00 AM Rulings on Internet by 3:00 PM on Thursday	M,T,W,TH 9:00 AM	9:00 AM, DAY BEFORE EX PARTE HEARING	3:00 PM, DAY BEFORE EX PARTE HEARING
C7	JOHNSON, 834-4656	Tues., 1:45 P.M. - Rulings posted outside courtroom doors during the noon hour. <b>NOTE: DEPT. REQUIRES MOTIONS BE RESERVED WITH C7 PRIOR TO FILING BY CALLING - (714) 834 - 4656</b>	M, W - F 1:30 PM	NOON, DAY BEFORE EX PARTE HEARING	10:00 A.M. DAY OF EX PARTE HEARING
C29	JOHNSTON, 834-2199	Fridays at 9:00 a.m. (Rulings on Internet by 4:30 p.m. day prior to motion date). <b>NOTE: DEPT. REQUIRES MOTIONS BE RESERVED WITH C29 PRIOR TO FILING BY CALLING (714) 834-2199.</b>	M - TH 8:30 AM	NOON, DAY BEFORE EX PARTE HEARING	2:00 P.M., DAY BEFORE EX PARTE HEARING

DEPT	CIVIL JUDGES	*NOTICED MOTIONS HEARD	EX PARTES HEARD:	TELEPHONIC NOTICE TO COURTROOM NO LATER THAN:	**EX PARTE APPLICATION PRESENTED IN COURTROOM NO LATER THAN:
C22	LEWIS, 834-4506	Mon. 10:30 AM (Rulings posted on Internet 12:00, Friday prior to Monday hearing date)	T - F, 8:30 AM	10:00 A.M. DAY BEFORE EX PARTE HEARING	2:00 PM THE DAY BEFORE EX PARTE HEARING
C14	MARGINES, 834-4526	Wed. 1:30 PM	M - F 1:30 PM	NOON, DAY BEFORE EX PARTE HEARING	10:30 AM, DAY OF EX PARTE HEARING
C16	MCEACHEN, 834-4680	Tues., 1:30 P. M.	M - Th, 9:00 A.M.	NOON, DAY BEFORE EX PARTE HEARING	3:00 P. M., DAY BEFORE EX PARTE HEARING
C13	MONROE 834-4592	Tue., 2:30 p.m. ## (Tentative Rulings posted on internet by 4:00, day prior to motion date.)	M, Wed, Thurs 8:30 AM	NOON, DAY BEFORE HEARING	4:00 PM, DAY BEFORE HEARING
C56	MUNOZ 834-4752	Wed., 2:00p.m. Rulings posted on the Internet.	M - Th 8:30 AM	10:00 A.M., DAY BEFORE EX PARTE HEARING	NOON, DAY BEFORE EX PARTE HEARING
C10	M Y E R S , COMM 834-4660	Thurs., 9:00 AM	M Th, 1:30PM Fri, 11:00 AM	4:00, DAY BEFORE EX PARTE HEARING	M - Th, 10:00 AM, DAY OF EX PARTE HEARING Fri, 9:00 AM, DAY OF EX PARTE
C9	NAKAMURA 834-3755	Thurs., 2:00 PM. <b>COUNSEL MUST RESERVE MOTION DATE PRIOR TO FILING BY CALLING (714) 834-3755</b>	M - F 1:30 PM	NOON, DAY BEFORE EX PARTE HEARING	11:00 AM, DAY OF EX PARTE HEARING
C62	PALK, COMM 834-4395	Tue., 2:00 PM ##	M - F 1:30 PM	10:00 AM, DAY BEFORE EX PARTE HEARING	10:00 AM, DAY OF EX PARTE HEARING
C27	PERK 834-2287	Fri., 11:00 AM Rulings on Internet by 3:00 prior to the scheduled hearing	M - TH, 9:00 AM	NOON, DAY BEFORE EX PARTE HEARING	BY 3:00 P.M. DAY BEFORE EX PARTE HEARING
C26	POLOS, 834-5532	Wed., 2:00 PM Rulings posted on Internet	M - F, 9:00 AM	10:00 AM DAY BEFORE EX PARTE HEARING	3:00 PM, DAY BEFORE EX PARTE HEARING
C17	SMITH, 834-4355	Fri., 10:00 AM Tentative Rulings posted on Internet by 3:00 P.M. day prior to hearing	M - Th 1:30PM	10:00 AM, DAY BEFORE EX PARTE HEARING	3:00 PM, DAY BEFORE EX PARTE HEARING
C23	THOMPSON 834-5002	Fri., 9:30 A.M. Rulings posted on internet	M - F 1:30 PM	NONE	NOON DAY BEFORE EX PARTE HEARING
C11	THRASHER, 834-4694	Thurs., 11:00 AM ##	M - F 9:00 AM	NOON, DAY BEFORE EX PARTE HEARING	3:00 PM DAY PRIOR TO THE EX PARTE HEARING
C15	WATSON, 834-4685	Mon., 10:30 a.m. Internet Rulings posted by 1:30pm Friday prior to Monday hearing	M - F 8:30 AM	9:00 AM, DAY BEFORE EX PARTE HEARING	4:00 PM, DAY BEFORE EX PARTE HEARING
C19	WILKINSON, 834-3720	Wed., 1:30 PM #	M, T, Th 4:00 W, 3:30 F, 11:30 AM	4:00, DAY BEFORE EX PARTE HEARING	9:30 AM, DAY OF EX PARTE HEARING

Phone (714) 834-2200 for Fee or Filing Information  
\*Phone (714) 834-3766 re Scheduling Noticed Motions or Confirming Hearing Dates  
Civil Forms: see forms list on the Internet: [www.occourts.org](http://www.occourts.org) (Click on Gen.Info category and navigate to Forms menu)

\*\*\*located at WEST JUSTICE CENTER, 8141 13<sup>th</sup> Street, Westminster, CA 92683

# = No L&M Tentative Rulings  
## = L&M Tentative Rulings are issued

\*\*Refer to Rule 379, California Rules of Court et seq. and the Specific Courtroom Ex Parte Policies for Individual Courtrooms

REVISED:7/06/04

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

## **ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

### **NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):**

**Rule 1590.1 of the California Rules of Court require you to serve a copy of the ADR information package along with the complaint and/or cross-complaint.**

#### **California Rules of Court - Rule 1590.1 Information about ADR**

- (a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR information package that includes, at a minimum, all of the following:
- (1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.
  - (2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.
  - (3) In counties that are participating in the Dispute Resolution Programs Act (DRPA), information about the availability of local dispute resolution programs funded under the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.
  - (4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.
- (b) The plaintiff shall serve a copy of the ADR information package on each defendant along with the complaint. Cross-complainants shall serve a copy of the ADR information package on any new parties to the action along with the cross-complaint.

# Did you know that most civil lawsuits settle without a trial?

## Introduction

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolution (ADR). The most common forms of ADR are mediation, arbitration, and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities, through dispute resolution programs and private neutrals.

## Advantages of ADR

ADR can have a number of advantages over a lawsuit.

ADR can be speedier. 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. Court costs, attorneys fees, and expert fees can be saved. ADR can permit more participation. The parties may have more chances to tell their side of the story than in court and may have more control over the outcome. ADR can be flexible. The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.

ADR can be cooperative. This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other. ADR can reduce stress. There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.

ADR can be more satisfying. For all the above reasons, many people have reported a high degree of satisfaction with ADR. Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

## Disadvantages of ADR

ADR may not be suitable for every dispute.

If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

## Three Common Types of ADR

This pamphlet describes the forms of ADR most often found in the California state courts and discusses when each may be right for a dispute.

### MEDIATION

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do.

Mediation is a cooperative process, in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other, where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Mediation also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how each other sees things.

Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or cannot have enough bargaining power in the mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

## **ARBITRATION**

In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation, where the mediator helps the parties reach their own resolution. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Because of the large number of cases awaiting trial in many courts, a dispute normally can be heard much more quickly by an arbitrator than by a judge.

Often a case that may take a week to try in court can be heard by an arbitrator in a matter of hours, because evidence can be submitted by documents (like medical reports and bills and business records), rather than by testimony.

There are two kinds of arbitration in California. Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and, normally, is binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an appeal of that decision. By contrast, a decision by an arbitrator in a case referred by the courts, known as "judicial arbitration," is not binding, unless the parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute.

Arbitration may not be a good idea when the parties want to resolve their dispute by themselves, or with the aid of a neutral.

## **CASE EVALUATION**

In case evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments, and makes an evaluation of the case. Each party gets a chance to present the case and hear the other side. This may lead to a settlement, or at least help the parties prepare to resolve the dispute later on.

Case evaluation, like mediation, can come early in the dispute and save time and money.

Case evaluation is most effective when someone has an unrealistic view of the dispute or when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

Case evaluation may not be a good idea when it is too soon to tell what the case is worth or when the dispute is about something besides money, like a neighbor playing loud music late at night.

## **Additional Information**

There are several other types of ADR beside mediation, arbitration, and case evaluation. Some of these are conciliation, settlement conferences, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are considering. Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts that can be enforced by a judge. You may wish to seek the advice of an attorney as to your legal rights and other matters relating to the dispute.

## **Whom Do You Call?**

To locate a dispute resolution program or neutral in your community:

Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-952-5210, or contact the local bar association, or look in the Yellow Pages under "Arbitrators" or "Mediators."

For more information on local Arbitration Programs, please phone 714/834-3774 or refer to Superior Court of California, County of Orange, Local Rules 360 and 446.

The Superior Court, in accordance with the Orange County Bar Association provides a court affiliated Civil Mediation Program. For more information on this program, phone 949/440-6700 Ext. 155.

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, phone: Institute for Conflict Management (714) 288-5600; Community Service Programs, Inc. (949) 851-3168; Orange County Human Relations (714) 834-7198; or Fair Housing Council of Orange County (714) 569-0827.

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, Address, Telephone No.</i> )   ATTORNEY FOR ( <i>Name</i> ): _____ Bar No: _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE</b> JUSTICE CENTER: <input checked="" type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701 <input type="checkbox"/> Harbor-Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 <input type="checkbox"/> Harbor-Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653 <input type="checkbox"/> Lamoreaux - 341 The City Drive, Orange, CA 92868 <input type="checkbox"/> North - 1275 N. Berkeley Ave., Fullerton, CA 92835 <input type="checkbox"/> West - 8141 13 <sup>th</sup> Street, Westminster, CA 92683	
PLAINTIFF / PETITIONER:  _____	
DEFENDANT / RESPONDENT:  _____	
<b>ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION</b> <input type="checkbox"/> Limited Civil <input type="checkbox"/> Unlimited Civil	ASSIGNED FOR ALL PURPOSES TO JUDGE: DEPARTMENT: CASE NUMBER:

Plaintiff(s), \_\_\_\_\_ and  
 defendant(s), \_\_\_\_\_  
 agree to the following dispute resolution process:

- Mediation
- Arbitration (must specify code)
  - Under Section 1141.11 of the Code of Civil Procedure
  - Under Section 1280 of the Code of Civil Procedure
- Neutral Case Evaluation
- Other (specify): \_\_\_\_\_
- Plaintiff(s) and Defendant(s) further agree as follows:  
 \_\_\_\_\_

We understand that there may be a charge for services provided by private arbitrators and mediators.

Date: \_\_\_\_\_

*PLAINTIFF* *ATTORNEY FOR PLAINTIFF*

Date: \_\_\_\_\_

*DEFENDANT* *ATTORNEY FOR DEFENDANT*

(Attach additional page for signatures of all parties AND attorneys if necessary)

**ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION**