GOLDBERG
BARRY P. GOLDBERG
A PROFESSIONAL LAW CORPORATION

November 17, 2010

[CLIENT]

Re: Legal Services Agreement Re: ABC adv. XYZ CORP.

Dear [CLIENT]:

It was indeed a pleasure meeting with you both on November 16, 2010 to discuss my possible involvement concerning your legal dispute with XYZ Corp. As you are aware, I have discussed the circumstances of the case and have viewed a handful of documents concerning the dispute. I am aware that there exists some history between you and XYZ Corp. and that there are adverse facts concerning your Westside Pavilion location.

XYZ Corp. filed suit initially on February 3, 2010 and your cross-complaint was filed on June 2, 2010. Presently, the case number 123456789 is venued in Ventura Superior Court, Simi Valley Division, and there is a trial date scheduled for May 9, 2011. I understand that preliminary written discovery has been exchanged and that oral testimony by way of depositions has not yet commenced. I think that we were in general agreement that 3 to 5 depositions would be requested by both sides, not including expert discovery. The most expensive part of the case, which you know from first-hand experience, will be the hiring and deposing of qualified experts. On top of the guaranteed costs and attorney fees going forward, you are aware that litigation, by its very nature, is unpredictable. I cannot predict the outcome of this case with any certainty. From what I have seen and from what you have explained, it appears that you have a reasonable chance to prevail in the action and that the equities favor your position over XYZ Corp.'s position. On the other hand, XYZ Corp. has a signed lease that says what it says and Ventura is a difficult venue for plaintiffs. I estimate that a jury trial would be preferable over a judge trial.

To the extent possible, I intend to vigorously defend the action against you and pursue the theories advanced in your cross-complaint and bring the case to trial. I will also attempt to position the case for maximum settlement potential. However, given some of the history in this case and other matters, it is quite possible that XYZ will never offer you anything towards settlement.

Given these uncertainties and the circumstances presented, you have asked if I would consider stepping into the case in some economic arrangement which is affordable, rewards a successful outcome, and guarantees me payment for my time. We discussed some possibilities at our meeting and you invited me to submit my proposal to you for discussion.

My customary rate for matters of this complexity, and already in litigation, is $495.00 per hour. However, given our past working relationship and my late entry into this matter, I would expect to charge you in the range of $350 per hour. Notwithstanding my custom, I propose that we abandon such hourly rates in favor of a "hybrid rate." It makes sense to me to bill you at the reduced rate of $250 per hour in addition to a 20% contingency fee on any gross recovery. Because "cash flow" is the dominant consideration at this time, I also propose that I handle the case without the safety net of a large upfront retainer fee. With this risk, I will require prompt payment of my bill upon presentation. We discussed the fact that I have no desire to provide you with a monthly trust accounting and that I am not equipped to make and follow up on collection demands like a typical business litigation firm.

In return, I will require you to acknowledge that I am entitled to withdraw as counsel at any time, including on the eve of trial, if my statement for services is not promptly paid. You must agree to sign a substitution of attorney form upon request. If I withdraw as counsel under such circumstances, you must also acknowledge that my bill to date will be adjusted retroactively upward to $350 per hour in consideration for the elimination of the upside possibility of an earned contingency fee.

My firm will advance routine costs of under $500 which will be billed along with my regular monthly statement. All costs in excess of $500 shall be billed directly to you for direct payment. I will discuss all anticipated costs above $500 with you before the costs are actually incurred. Please recall that that we anticipate significant court reporter fees and then significant expert fees. It is up to you to budget for these fees which are likely to be incurred in about January of 2011 and will escalate the closer we get to the trial date.

I think that you will find that I tend to be more conservative with my billing and expense practices than that to which you are accustomed. It is a firm rule that ***I will not charge you for routine phone calls between you and my office and my office and your staff.*** This is designed to foster frequent and meaningful attorney-client communication. The last thing I want is for you to hold back communication with me for fear of creating a bill. Good communication will make me more efficient and probably reduce your bill.

I will also try not to "nickel and dime" you on my bill. I will not charge you for our initial meetings and working through this retainer agreement. I do not charge for paralegal services or routine photocopying completed internally. I do not charge for mileage, parking or meals. I do expect to be reimbursed for copy orders large enough to be sent out to a vendor, Fed Ex charges, filing fees and messenger fees. I will try to avoid messenger fees if at all possible.

I do not have pre-determined incremental billing events. For example, I will not bill you for leaving phone messages, receiving short correspondence or e-mails. In return, you acknowledge that such time will be included in reply correspondence, if necessary. I will bill you for my actual time, including travel time. Recently, I have made it a habit to utilize Court Call to save billable time if my personal appearance is not absolutely required in court.

My statements are generally rendered monthly and are due and payable upon receipt. The total of the charges in a matter depend upon a number of factors, including how the matter proceeds, the decisions you make, and the instructions you give me. However, my best estimation is that I will spend about 10 hours per month on this case from now until mid-January 2011. It appears relatively certain that the hours will increase to 15 to 20 hours in February, and then to 20 to 25 hours in March. Assuming that the case remains on track for trial, April will be the most labor-intensive month. I would estimate at least 40 hours that month. Not only will expert discovery be at its height, but there is a Mandatory Settlement Conference and all pre-trial documents will be submitted.

As we also discussed, I will be associating in highly qualified counsel located in my suite of offices to assist me whenever I require additional manpower on the case. I will bill that counsel through to you at my same rate with no "mark-up" or profit for me. That counsel will also share in my contingency fee based upon the percentage of hours billed at no additional cost to you.

As we also discussed, contingency fee agreements in business litigation matters are particularly problematic. This letter will contain lengthy warnings and explanations of your legal rights which are not required in straight billable circumstances, but are still required by law in contingency fee cases.

Should you decide to terminate our representation, which is your unequivocal right, our office will lose its upside contingency possibility. Also, should you decide to resolve the litigation for non-monetary compensation or lose interest in the case and request a "walk away" settlement, our office will lose its upside contingency possibility. In the above circumstances, you must agree that our bill to date will be adjusted retroactively upward to $350 per hour in consideration for the elimination of the upside possibility of an earned contingency fee. Such upward adjustment would be due and payable immediately.

On the other hand, if our office requests termination of our representation for any reason other than your non-payment of our bills, no retroactive adjustment shall be made. In that case, we will accept our fees billed to date at the hybrid rate as full satisfaction of our account.

In the unlikely event of termination by either you or our firm, you agree to promptly sign any substitution of attorney forms I may request authorizing my withdrawal as your counsel in this or other proceeding. My representation will terminate upon completion of the matters I am handling or termination by either you or me, whichever occurs first, unless I agree to represent you in a different engagement. Termination of representation by you or me shall have no effect on your obligation to pay my charges. In the event of completion or termination, upon request, I will furnish your files to you or to another attorney upon your payment of costs for duplicating such files for retention by me. It is the policy of this office to destroy files after a minimum of three years from the date a matter is closed unless you instruct me in writing as to a shorter or longer period.

As I have maintained, legal matters by their very nature are unpredictable. It is simply not possible to warrant a successful result or represent that a particular result can be obtained. You acknowledge that I have not made and will not make any representations, promises, warranties or guarantees either express or implied, regarding the outcome of any matter in which I may represent you.

If there is an award of attorneys' fees, those fees will go directly to this office and your bill will be credited in that amount. Sometimes awards of fees are not based on the work completed or on any logic whatsoever. Therefore, the court's attorney fee award, if any, shall not determine your bill.

Both the reduced billing rate and contingency fee agreed to herein is not set by law but is negotiable between the parties and the 20% contingent portion is based upon the contingent of an actual gross recovery. In the event that no recovery is obtained for you, then this office will not charge a contingent fee. In that case, we will accept our fees billed to date at the hybrid rate as full satisfaction of our account.

Pursuant to California law, all costs and disbursements must remain the client's obligation and are to be paid in addition to both billable and contingent attorney's fees from the net funds received by the client. Net funds mean that amount which remains from the total recovery after deduction for contingent attorney's fees.

In the event that the amounts received, whether by settlement, judgment or award, consist of or include periodic payments, then the client agrees that the attorney's percentage, will be based on the present cash value of the entire settlement, judgment or award. Attorney's fees will be paid in their entirety out of any cash sum paid prior to payment of any periodic payments due.

If I perform any services not otherwise covered by this agreement, no additional charge will be made for such services, unless a separate written contract is entered into and signed by you in connection with such additional services. This agreement does not cover or include services relating to other disputes, including a dispute you have with XYZ Corp. concerning the lease at the Westside Pavilion. You are instructed to promptly obtain separate counsel to pursue any such dispute if you have not done so already.

My office shall have a lien upon the documents and claim, and all sums recovered by settlement or judgment for attorney's fees and costs advanced. You hereby grant my office a lien on any and all claims or causes of action that are the subject of my representation under this agreement. My attorney's lien will be for any sums owing to me for any unpaid costs, or attorneys' fees, at the conclusion of my services. The lien will attach to any recovery you may obtain, whether by arbitration award, judgment, settlement or otherwise. The effect of such a lien is that my office may be able to compel payment of fees and costs for any such funds recovered on behalf of you even if my office has been discharged before the end of the case. Because a lien may affect your property rights, you may seek the advice of an independent lawyer of your own choice before agreeing to such a lien. By initialing this paragraph, you represent and agree that you have had a reasonable opportunity to consult such an independent lawyer and – whether or not you have chosen to consult such an independent lawyer – you agree that this office will have a lien as specified above.

_____ (Client Initial Here) _____ (Attorney initial here)

The 20% contingent fee becomes fixed, and my office may withdraw funds on deposit in my Client Trust Account, at the earlier of (a) your signing acceptance of an accounting showing the amount of any settlement, judgment or award payable to you and the amount payable to this office, or (b) ten days after presentation of accounting to you unless, within that ten day period, you have provided this office with a writing disputing the amount payable to this office.

No dismissal, release, settlement, appeal or retrial will be made without the consent of the client.

Any dispute arising under this agreement or in connection with attorney's services hereunder, including any claim for malpractice, shall be resolved by binding arbitration in accordance with the rules of California Business and Professions Code Sec. 1280, et seq., and in accordance with the following provisions:

The arbitrator shall be empowered to order the losing party in the arbitration to reimburse the prevailing party for all expenses incurred in connection with the arbitration, including without limitation the arbitrator's fees and reasonable attorney fees and costs.

Attorney has explained to Client regarding such arbitration that:

- the parties are waiving their right to a jury trial and to seek remedies available in court proceedings;
- pre-arbitration discovery is generally more limited than and different from court proceedings;
- the arbitrator's award is not required to include factual findings or legal reasoning;
- any party's right to appeal or to seek modification for the award is strictly limited and that the award is final and binding on the parties.

YOUR INITIALS BELOW SIGNIFY ACKNOWLEDGMENT OF THIS EXPLANATION

You acknowledge that we have explained to you that such binding arbitration may deprive you of various rights that you otherwise might have in a legal action, including without limitation the right to a jury trial, the right to appeal, and full discovery rights.

_____
CLIENT INITIALS

_____
ATTORNEY'S INITIALS

If the foregoing is an agreeable basis for engagement of my office, please (1) sign this Retainer Letter, and (2) return it to my office. If you have any questions or concerns about any of the contents of this letter, kindly contract my office for clarification.

Once again, thank you for considering my office for representation, and I look forward to our ongoing professional relationship.

Very truly yours,

BARRY P. GOLDBERG
A PROFESSIONAL LAW CORPORATION

Barry P. Goldberg

BPJ:so

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ACKNOWLEDGEMENT AND AGREEMENT

I have read, understand, and agree to the terms and matters above and I have the authority to contract on behalf of [CLIENT]. I have read, understand, acknowledge and agree to the terms and matters above.

By: ____
[CLIENT]

Dated:

In conformity with California Business and Professions Code, Section 6147, you are entitled to receive a duplicate copy of this contract, signed by both the Attorney and the Client, at the time this Agreement is entered into by you.