

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Marc J. Cohen and Does 1 through 100

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

Beatrice Ochoa

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

ENDORSED

2006 SEP 29 AM 11:41

KIRI TORRE, CLERK
SUPERIOR COURT
SANTA CLARA CO.

BY **Sara Batrez** DEPUTY

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), 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), the California Courts Online Self-Help Center (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/), 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), en el Centro de Ayuda de las Cortes de California, (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):

Santa Clara County Superior Court
191 N. 1st Street
San Jose, CA 95113

CASE NUMBER:
(Número del Caso)

106CV072057

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):

Joseph Bochner (SBN 147911)

1259 El Camino Real, PMB 221, Menlo Park, CA 94025

Kiri Torre
Chief Executive Officer/Clerk

Clerk, by **Sara Batrez**, Deputy
(Secretario) (Adjunto)

DATE:

SEP 29 2006

(Fecha)

(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):

(SEAL)

1 Joseph M. Bochner (SBN 147911)
1259 El Camino Real, PMB 221
2 Menlo Park, CA 94025
(650) 575-6590

3 Attorney for Plaintiff
4 Beatrice Ochoa

(ENDORSED)
FILED
SEP 29 2006

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
By: Sara Batrez, DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 SANTA CLARA COUNTY

10
11 BEATRICE OCHOA, : CASE NO. **106CV072057**
12 :
Plaintiff, :
13 :
vs. : CLASS ACTION
14 :
15 MARC J. COHEN and DOES 1 THROUGH : COMPLAINT FOR DAMAGES AND
100, : INJUNCTIVE RELIEF
16 :
Defendants. :
17

18 Plaintiff Beatrice Ochoa, for herself and all others similarly situated, complains against
19 Defendants Marc J. Cohen and Does 1 through 100. Plaintiff's allegations are based upon
20 information and belief, except as to her own actions, which are based on knowledge. Plaintiff
21 alleges:

22
23 INTRODUCTION

24 1. Defendants distribute fraudulent and malicious software under various names, including
25 without limitation WinFixer, ErrorSafe, WinAntiVirus and WinAntiSpyware (collectively
26 "Fraudware"). The Fraudware is installed through downloads from dozens of different websites,
27 including winfixer.com, errorsafe.com and many others. As of 2006, most of Defendants'
28 websites resolve to Internet Protocol ("IP") addresses at 66.244.254.63 and 66.244.254.177.

1 Because IP addresses can change at any time, discovery may disclose different or additional IP
2 addresses, without affecting the substance of the allegations here.

3 2. Part and parcel of Defendants' Fraudware conspiracy is the failure to disclose accurate or
4 valid personal and business names, their falsification of such names, and the use of fictitious
5 names, all employed to foster ignorance, uncertainty and confusion about Defendants' true
6 identities and addresses. To accomplish this, Defendants conduct their fraudulent business under
7 dozens of different Internet domain names, publish false contact information when registering
8 those domains, and fail to comply with statutes mandating disclosure. The intended and practical
9 effect is to obscure and to conceal Defendants' identities and whereabouts in furtherance of their
10 fraud and conspiracy.

11 3. Defendants' Fraudware installs itself either in a "drive by" attack, of which the user may
12 be unaware, or by displaying fraudulent messages representing that the victim's computer has
13 already been "infected" with other harmful software. These representations are fraudulent (and
14 very often flatly false) in that Defendants have designed and intended the Fraudware to report
15 that the host computer is infected regardless of the truth. The Fraudware then misrepresents that
16 the victim may repair the purported problem by paying money to Defendants. Victims who
17 comply are instructed to enter credit card information and to transmit it over the Internet,
18 whereupon Defendants charge the victims from \$29.95 to \$59.95, depending on the particular
19 Fraudware title involved. Regardless of precise method or price, Defendants cause the Fraudware
20 to be downloaded and installed on the victim's computer.

21 4. Defendants' Fraudware hijacks or "redirects" the victim's computer to several websites,
22 including without limitation VipFares. VipFares sells travel services and ostensibly operates
23 legitimately, but in fact attracts customers primarily (if not exclusively) through Fraudware
24 redirects. Because of such hijacking, Plaintiff and the Class lose substantial control over their
25 computers. Correspondingly, via hijacking Defendants benefit from large amounts of Internet
26 traffic, commerce and money to which they are not otherwise entitled.

27 5. Fraudware consumes valuable hardware and software resources and hinders computer
28 performance. Furthermore, Fraudware is not, by its nature, robust, and therefore its installation

1 alone is often enough to cause serious problems including loss of data and usability of the
2 machine. Nevertheless inexperienced victims may not realize that Fraudware has attacked or
3 hijacked their computers. Those who do must either spend additional money on a legitimate
4 computer protection program, or expend many hours of time troubleshooting the problem, or hire
5 a computer expert, or else simply suffer. In many instances the latter occurs because the
6 Fraudware is designed to and will reinstall itself upon deletion. With computers having become
7 useful tools in nearly every facet of personal and professional life, Class-wide economic and
8 noneconomic damages run high, deep and broad throughout the full spectrum of society.
9 Regardless how a victim responds, Defendants, through the Fraudware, consciously and
10 deliberately cause money losses, wasted human and computer resources, and untold misery to
11 millions of people, including Plaintiff and the Class.

12
13 **PARTIES**

14 6. Plaintiff Beatrice Ochoa resides in Santa Clara County, California, and purchased
15 WinFixer on the Internet for \$29.95.

16 7. Defendant Marc J. Cohen ("Cohen") resides in Florida and is the owner and operator of
17 VipFares. He, and those acting under or with him, designed, produced, control, and distribute the
18 Fraudware. Cohen personally benefits directly through Fraudware sales, as well as indirectly
19 through computer hijacking, and all at the expense of Plaintiff and the Class.

20 8. Does 1 through 100 are fictitious names of individuals or companies directly or indirectly
21 participating with Defendant Cohen in Fraudware creation, distribution, marketing, sales, credit
22 card processing, telephone response, web hosting, or other unlawful associated activities.
23 Plaintiff will amend this complaint to allege the true names of the fictitious defendants when
24 ascertained.

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1 CLASS ACTION ALLEGATIONS

2 9. Plaintiff brings this action on behalf of herself and all others similarly situated. The Class
3 consists of all persons who purchased, received or used any of Defendants' Fraudware programs,
4 including without limitation WinFixer, ErrorSafe, WinAntiVirus and WinAntiSpyware.

5 10. This Court should certify the Class because:

- 6 a. The Class is extremely numerous, consisting of hundreds of thousands (if not
7 millions) in the United States alone. Joinder is obviously impractical. The Court
8 and counsel can readily ascertain the precise number and identities of absent class
9 members with reference to information in Defendants' possession. While
10 damages per class member are relatively small, aggregate Class damages are
11 large, totaling tens of millions and perhaps more. Discovery and expert testimony
12 at trial will substantiate the amount.
- 13 b. Common questions of law and fact predominate over questions affecting only
14 individual Class members. Without limitation, the common questions include
15 whether Defendants:
- 16 i. Participated in the Fraudware scheme alleged here;
 - 17 ii. Knew (or should have known) they were harming Plaintiff and the Class;
 - 18 iii. Obtained unauthorized access to computers belonging to Plaintiff and the
19 Class through fraudulent means;
 - 20 iv. Charged the credit cards of Plaintiff and the Class, likewise through fraud;
 - 21 v. Hijacked the computers of Plaintiff and the Class; and
 - 22 vi. Damaged computers belonging to Plaintiff and the Class, causing the
23 monetary and other losses alleged here.
- 24 c. Plaintiff's claims are typical of the Class because, among other things, Defendants
25 caused the Fraudware to install, hijack and damage Plaintiff's computer, and to
26 charge Plaintiff's credit card in the bargain, and all in typical fashion.
- 27 d. Plaintiff, by and through counsel, will fairly and vigorously represent the Class.
28 Plaintiff's interests are consistent with those of absent class members to seek

1 redress for Defendants' wrongs. To that end, Plaintiff has retained counsel who is
2 zealous, competent and experienced in class and complex litigation, as well as the
3 subject matter involved.

4 For these reasons, class treatment is far superior to all other means for the fair and efficient
5 adjudication of this dispute. As a practical matter, the expense and burden of individual litigation
6 makes it impossible for members of the Class to individually redress the wrongs alleged here. On
7 the other hand, managing this case as a class action presents no unusual difficulty.

8 11. In addition, the Class should be certified because:

- 9 a. Separate actions by the individual members of the Class would create a risk of
10 inconsistent adjudication;
- 11 b. Separate actions by individual Class members would create a risk of precedential
12 effect which would substantially impair or impede other Class members' ability to
13 protect their interests in any separate litigation; and
- 14 c. Defendants, through the Fraudware, have acted on grounds generally applicable to
15 the Class, under circumstances that render class-wide damages and injunctive
16 relief particularly appropriate.

17

18 FIRST CAUSE OF ACTION

19 (Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*)

20 12. Plaintiff incorporates by reference the previous allegations.

21 13. Defendants' Fraudware violates the Computer Fraud and Abuse Act, section 1030 of title
22 18, United States Code, which generally proscribes the knowing or reckless transmission of
23 damaging software, information, code or commands to a protected computer.

24 14. The computers of Plaintiff and the Class are "protected computers" because they are used
25 in interstate commerce (i.e. the Internet).

26 15. As a result of Defendants' unlawful conduct, Plaintiff and the Class have been damaged
27 according to proof at trial.

28

1 16. During the last year, the aggregate harm caused to Plaintiff and the Class far exceeds
2 \$5,000.

3
4 SECOND CAUSE OF ACTION

5 (Common Law Fraud)

6 17. Plaintiff incorporates by reference the previous allegations.

7 18. Defendants have knowingly or recklessly engaged in the fraud and deception alleged
8 above in order to install the Fraudware on computers without their owners' knowledge or lawful
9 consent, to fraudulently induce Plaintiff and the Class to pay for the Fraudware, and to hijack
10 their computers.

11 19. Plaintiff and the Class had no knowledge of the falsity and/or incompleteness of
12 Defendants' misrepresentations or other fraudulent conduct, and therefore reasonably relied to
13 their detriment as alleged above.

14 20. As a result of Defendants' unlawful conduct, Plaintiff and the Class have been damaged
15 according to proof at trial.

16 21. Defendants' conduct in perpetuating the fraud and deceptive practices described above is
17 malicious, willful, wanton and oppressive, or in reckless disregard of the rights of Plaintiff and
18 the Class, thereby warranting the imposition of punitive damages.

19
20 THIRD CAUSE OF ACTION

21 (Trespass)

22 22. Plaintiff incorporates by reference the previous allegations.

23 23. By engaging in the acts described above without the authorization of Plaintiff and the
24 Class, Defendants seized control over the operation of the computers of Plaintiff and the Class,
25 dispossessing Plaintiff and the Class from use of, access to or control over their computers, and
26 impairing such computers' use, value, and quality.

27 24. Defendants' acts constitute an intentional interference with the use and enjoyment of the
28 computers belonging to Plaintiff and the Class.

1 25. As a result of Defendants' unlawful conduct, Plaintiff and the Class have been damaged
2 according to proof at trial.

3 26. Defendants' trespass was and is malicious, willful, wanton and oppressive, or in reckless
4 disregard of Plaintiff's rights, thereby warranting the imposition of punitive damages.

5
6 FOURTH CAUSE OF ACTION

7 (RICO, 18 U.S.C. 1962 *et seq.*)

8 27. Plaintiff incorporates by reference the previous allegations.

9 28. Defendants' participation together in the creation, distribution, marketing, sales, credit
10 card processing, telephone response and web hosting of Fraudware constitutes a criminal
11 enterprise in which each participant plays a substantial role. There is probable cause to believe
12 that Defendant Marc J. Cohen orchestrates and is the principal beneficiary of this conspiracy.

13 29. Fraudware distribution involves the crime of Wire Fraud under section 1343 of title 18,
14 United States Code, in that Defendants commit their fraud using the Internet as their primary
15 instrumentality of misinformation, fraud, distribution, sales, hijacking and other unlawful
16 activities. Defendants' repeated and ongoing wrongful acts comprise a definite and ongoing
17 pattern of racketeering. Defendants' racketeering unlawfully benefits VipFares and other
18 websites to which the Fraudware redirects traffic, at the expense of Plaintiff and the Class.

19 30. As a result of Defendants' unlawful conduct, Plaintiff and the Class have been damaged
20 according to proof at trial.

21
22 FIFTH CAUSE OF ACTION

23 (Violation of Section 17200 *et seq.* of the California Business & Professions Code)

24 31. Plaintiff incorporates by reference the previous allegations.

25 32. Defendants' Fraudware-related conduct constitutes unfair competition: such conduct
26 violates numerous state and federal statutes and common law doctrines as alleged above.
27 Fraudware constitutes an ongoing affront to the conduct of lawful business.

28 33. Defendants' unfair competition will continue unless and until enjoined by this Court.

1 34. As a result of Defendants' unlawful conduct, Plaintiff and the Class have been damaged
2 according to proof at trial.

3 35. As a direct and proximate result of their unfair competition, Defendants have and will
4 continue to wrongfully reap profits from Plaintiff and the Class, in an amount to be proved at
5 trial.

6
7 SIXTH CAUSE OF ACTION

8 (Violation of California Business & Professions Code § 17538)

9 36. Plaintiff incorporates by reference the previous allegations.

10 37. Defendants' commerce via the Internet violates section 17538(d) ("section 17538") of the
11 California Business & Professions Code, in that Defendants fail to provide (1) a return and
12 refund policy; (2) their legal names; and (3) the addresses from which they conduct business.

13 38. As a result of Defendants' unlawful conduct, Plaintiff and the Class have been damaged
14 according to proof at trial.

15
16 SEVENTH CAUSE OF ACTION

17 (Common Count—Unjust Enrichment)

18 39. Plaintiff incorporates by reference the previous allegations.

19 40. Defendants had and received monies from Plaintiff and the Class that were intended for
20 their benefit and use.

21 41. By reason of the acts alleged above, Defendants have been unjustly enriched at the
22 expense of Plaintiff and the Class.

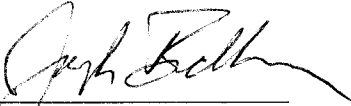
23 42. Plaintiff and the Class have no adequate remedy at law.
24

25 PRAYER FOR RELIEF

26 WHEREFORE, Plaintiff prays that this Court enter judgment and orders in favor of herself
27 and the Class and against Defendants as follows:
28

- 1 A. Certifying the Class, directing that this case proceed as a class action, and appointing
2 Plaintiff as Class Representative and her undersigned attorney as Class Counsel;
- 3 B. Awarding Judgment in favor of Plaintiff and the Class for compensatory damages and/or
4 restitution according to proof at trial;
- 5 C. Imposing punitive damages to make an example of and to punish Defendants;
- 6 D. Awarding treble damages under RICO;
- 7 E. Enjoining Defendants from designing, using or distributing Fraudware;
- 8 F. Divesting Defendants of any ownership in any enterprise that at any time benefited from
9 the use of the Fraudware, including without limitation VipFares;
- 10 G. Imposing a constructive trust upon any funds or other assets unlawfully obtained through
11 Defendants' unlawful conduct;
- 12 H. Providing for a substantial incentive award to Plaintiff for her service as Class
13 Representative;
- 14 I. Awarding reasonable attorney fees and costs, as well as pre- and post-judgment interest at
15 the legal rate; and
- 16 J. Such other and further relief as this Court deems proper.

17 Dated: September 29, 2006

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19 
20 _____
Joseph Bochner

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CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: **106CV072057**

READ THIS ENTIRE FORM

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (the person(s) being sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the Complaint, in the clerk's office of the Court, within **30 days** of the date the *Summons and Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: www.sccsuperiorcourt.org/civil/rule1toc.htm
- Rose Printing, 39 N. First St., San Jose (408-293-8177)

For other local information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC. You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable Joseph Huber DEPT: 8

The first CMC is scheduled as follows: (Completed by Clerk of Court)
Date: 2-6-07 Time: 1:30 PM Dept.: 8

The next CMC is scheduled as follows: (Completed by party if the first CMC was continued or has passed)
Date: _____ Time: _____ Dept.: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorneys fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
 - < The parties want a nonadversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is an emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief

- < **Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.**

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, is desired
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

- < **Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.**

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

- < **Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.**

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

- < **Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.**

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; divorce, custody, and other family matters; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

Revised 12/9/02