

Expert Witness Retention Contract
Fred Moss, M.D.

1. **Parties.** This contract is made between Fred Moss, M.D. (Expert”) and the Law Firm of _____ (“Client”) regarding the underlying legal matter of _____ .
2. **Retention.** The parties agree that Expert will only become retained by Client once this contract has been mutually executed and Client has paid the initial non- refundable retention retainer specified in paragraph 4.b. Expert has no duties to Client until such time.
3. **Expert’s Fees and Expenses.** The parties agree that the fee for all time Expert spends on the case will be compensated at a rate of \$450.00/hour. It is agreed that this specifically includes (but is not limited to) research, conferences, consultations with Client, reviewing documents, organizing documents, analysis, testing, responding to discovery requests, report writing, deposition testifying, investigating, reading and signing deposition transcripts, local portal-to-portal travel, waiting time, preparing exhibits, preparing demonstrative aids, and preparation time for testifying at deposition, trial, hearing, arbitration or other venues. Expert’s time will be tracked and invoiced to the nearest .1 of an hour. In lieu of the above hourly rate, all trial/arbitration testimony, as well as any duties that reasonably require overnight travel will be billed at the flat rate of \$10,000.00/day on site, provided that trial/arbitration testimony events conducted remotely, e.g., via Zoom, will be billed at a flat rate of \$5,000.00/day. In any and all events, Client will be responsible for all reasonable out of pocket expenses including, but not limited to travel, testing, research, copying, storage of evidence or documents, etc.
4. **Payment Terms.**
- a. All payments are to be made to:
- Fred R. Moss, MD
121 Stanford Court
Grass Valley, CA 95945
Expert’s Taxpayer ID# (if applicable) is: 31-1388651.
- | | |
|--|----------------|
| Expert Consulting (Including Travel Time): | \$450 / hr |
| Paralegal Case Management, Report Assistance: | \$120 / hr |
| Literature Research/Assistance: | \$150 / hr |
| Deposition Testimony Flat-Fee (up to seven hours): | \$4,000 / day |
| Trial/Arbitration Testimony (Any portion of day): | \$10,000 / day |
| Remote Trial/Arbitration Testimony (Any portion of day): | \$5,000 / day |
- b. The non-refundable retainer amount is \$3,600.00 (8.0 hours) and will be credited towards monthly invoices. This non-refundable retainer amount is the minimum fee due to begin work with the Expert and is earned upon receipt. Should more than 8.0 hours of Expert time be later required, receipt of additional funds must be attained prior to continuation of Expert services.

- c. Expert agrees to invoice client no less frequently than monthly.
- d. All invoices will be paid within 30 days – or sooner if so specified in this Contract.
- e. Overdue invoices will accrue interest at a rate of 1.5% per month.
- f. Dr. Moss requires that testimonial services be paid in advance through payment of appropriate fee amount, as identified herein. Payment must be received per Payment Terms (7) at least (10) days prior to the scheduled testimonial event. Client agrees that Dr. Moss will be under no contractual obligation to reserve attendance time or appear to testify unless Dr. Moss has received such payment with said timeframe. Client further acknowledges that should payment not be received at least ten (10) days prior to the scheduled testimonial event, Dr. Moss has the express right to postpone Expert’s testimony until at least ten (10) days after payment has been received.

For any scheduled testimonial event that is cancelled within (5) business days of the event, any pre-paid testimonial fees will be held by Dr. Moss until such time as the testimonial event is completed, at which time the fees will be considered earned fees. If a scheduled testimonial event is cancelled and is not thereafter completed, Dr. Moss will retain fifty percent (50%) of the pre-paid testimonial fee, and the balance will be returned to Client within thirty (30) days.

- g. Client is responsible for collecting any and all deposition fees owed by other lawyers or parties. In the event Expert’s deposition fees are reduced by court order, Client shall still pay Expert Expert’s full fee schedule in paragraph 3.
- h. Expert will invoice Client upon completion of Expert’s report(s). No report shall be released and no testimony shall be given unless all accounts have a zero balance. In any dispute arising out of this agreement, the winning party shall be entitled to collect their reasonable attorneys’ fees from the losing party. Unpaid moneys under this agreement shall be subject to interest of 1.5% per month. Retaining counsel shall be responsible for paying the expert for a time spent on a case, including depositions called by other parties, preparation time, reviewing depositions, travel time, etc.
- i. Expert will invoice Client before scheduled testimony for any outstanding fees and expenses for work performed to date. All such fees must be paid in full before Expert testifies. Expert is under no contractual duty to appear to testify and provide opinions until Expert has been paid in full for all outstanding services performed and expenses incurred on behalf of Client.

5. Fees for Late Notice Cancellation or Rescheduling of Testimony.

- a. Client understands that Expert will suffer damages from late notice cancellation or rescheduling of Expert’s testimony and that since the precise amount of these damages would be difficult to determine, Expert shall instead be entitled to the cancellation and rescheduling fees specified in paragraphs 5.c. and 5.d.

- b. The fees specified in paragraph 4.f. are 100% refundable to Client in the event Expert's scheduled testimony is cancelled or rescheduled with notice to Expert of 3 (three) or more business days.
 - c. In the event Expert's scheduled testimony is cancelled or rescheduled with 1 (one) or 2 (two) business days' notice, Expert may retain a cancellation fee of 50% the amount from paragraph 4.f. The remaining amount will at Client's option be applied to future testimony or refunded to Client.
 - d. In the event of same day cancellation or rescheduling of Expert's Testimony or if Expert's testimony is completed in less time than was reserved pursuant to Paragraph 4.f., Expert may retain 100% of the amount specified in paragraph 4.f.
 - e. In the event of any cancellation or rescheduling of testimony, Client shall be responsible for all non-refundable out of pocket travel expenses incurred by Expert such as airline tickets and hotel rooms.
6. **Duties of Client.** The Client's duties specifically include, but are not limited to:
- a. Abiding by the applicable rules of professional conduct for attorneys.
 - b. Making all payments as specified in Paragraphs 4 and 5 under the terms as specified in Paragraphs 4 and 5.
 - c. Providing Expert with copies of or access to all non-privileged, arguably relevant documents, evidence and other materials in the underlying legal matter.
 - d. Notifying Expert of all parties and attorneys in the case so that Expert can check for conflicts of interest.
 - e. Where circumstances reasonably allow, providing Expert with prompt notice of any *Daubert* motions, *Frye* motions, motions in limine, or other pre-trial motions made by other parties or persons to restrict, exclude or in any way limit Expert's testimony or Expert's participation in the underlying legal matter.
 - f. Obtaining Expert's advance approval (for accuracy) of the relevant portions of any and all answers to interrogatories, motions, expert designations or other documents which summarize Expert's qualifications, methodology, opinion(s) and/or anticipated testimony.
 - g. Being available as reasonably requested to meet with Expert prior to anticipated testimony.
 - h. Promptly notifying Expert of when and where Expert may be requested to appear to testify.
 - i. Promptly notifying Expert of any issues related to paragraph 8.b. to which Client is or becomes aware of.
 - j. Promptly notifying Expert of the settlement or final adjudication of the underlying legal matter.

7. **Duties of Expert.** Expert's duties are:
- a. To truthfully represent Expert's credentials.
 - b. To formulate with honesty and due care and truthfully express Expert's opinion(s) in those areas (and only those areas) where Expert feels qualified to render an opinion and where Client has requested an opinion. Client agrees that Expert's opinion(s) are not preordained, might be contrary to Client's position, and are subject to modification as a result of new or additional information.
 - c. To cease work on the underlying legal matter and promptly inform Client whenever Expert has accrued unpaid fees and expenses totaling more than \$5,000.00. In this event, Expert shall not perform further work on the Underlying legal matter until approval is given by Client.
 - d. Expert is under no duty to provide and express opinions if Expert is given time deadlines or cost-based or other restrictions by Client that would not reasonably allow Expert to in good faith formulate and express his opinions with reasonable care.
 - e. Subject to paragraph 7.d., to prepare a written report if Client requests one.
 - f. Subject to paragraph 7.d. and to circumstances beyond Expert's control, to meet all reasonable deadlines requested by Client.
 - g. To retain and preserve (during this engagement) all evidence provided to Expert from the underlying legal matter unless Client gives written permission for destructive testing or the like.
 - h. To be available on reasonable notice to testify.
 - i. To be available on reasonable notice to consult with Client. Expert's cellular number is **916-671-0007**.
 - j. To work exclusively with Client in the underlying legal matter unless the parties mutually agree in writing otherwise.
 - k. Upon receipt from Client of the list of attorneys and parties specified in paragraph 6.d., to within 30 (thirty) days check for conflicts of interest with due care and within the same 30 (thirty) day period to notify Client of any conflicts of interest discovered that preclude Expert's further involvement in the underlying legal matter.
8. **Expert's Right of Withdrawal from Case.** Expert shall have the absolute right to withdraw, without any liability, from the case if Client violates any of the duties specified in paragraph 6 above or if:
- a. Expert discovers a conflict of interest which precludes Expert's further involvement in the underlying legal matter.

- b. Expert discovers that because of legal restrictions Expert's involvement or testimony in the case could reasonably be deemed to be practicing Expert's profession without a license.
9. **Withdrawal.** Notice of withdrawal under Paragraph 8 shall be in writing from Expert to Client. In the event of withdrawal, the parties agree that Client remains fully liable for all accrued but unpaid fees, expenses, and interest.
10. **Termination.** This contract shall be terminated upon written notice to Expert from Client at any time, by Expert's withdrawal pursuant to paragraph 8, at such time as Client is no longer involved in the underlying legal matter, or upon the settlement or final adjudication of the underlying legal matter. In the event of termination Client is still responsible for all sums owed Expert.
11. **Document/Evidence Retention.** Expert shall have no duty to retain any documents, reports, evidence, transcripts, exhibits, e-mails, electronic files or other materials from the underlying legal matter for more than 30 (thirty) days following the termination of this agreement. Expert shall return (at Client's expense) all records and evidence in the underlying legal matter to Client if a written request to do so is received by Expert within the 30 (thirty) days following the termination of this agreement. **Airline Flights.** All airline flights taken by Expert shall be direct, non-stop, coach Class where possible.
12. **Disputes.** Any controversy, claim or dispute arising out of or relating to this Contract, shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association in the State in which the Expert is domiciled. The law of the State in which the Expert is domiciled will be the governing law. The arbitration award will be enforceable in any state or federal court. In any arbitration or court proceeding, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. In addition, Client shall be responsible for payment of attorneys' fees and expenses associated with Expert's efforts to collect monies owed under the terms of this Contract.
13. **Miscellaneous.** Each party agrees that it may not assign its interest, rights or duties under this Contract to any other person or entity without the other party's prior approval. (Expert is under no duty to work for successor law firms on the underlying legal matter.) The performance of this contract by either party is subject to acts of God, death, disability, government authority, disaster or other emergencies, any of which make it illegal or impossible to carry out the agreement. It is provided that this contract may be terminated for any one or more of such reasons by written notice from one party to the other without liability. If either party agrees to waive its right to enforce any term of this contract, it does not waive its right to enforce any other terms of this contract. This written contract represents the entire understanding between Expert and Client. The individual signing this contract on behalf of Client represents and warrants that he/she is duly authorized to bind Client.

14. **Expert Unavailable.** Notwithstanding Paragraph 7 Expert is unavailable to perform obligations under this contract during the following time frame(s):

EXPERT, by CLIENT, by

Signature

Signature

Print Name

Print Name

Date

Law Firm

Date