



# National Programs

## California Lemon Law Civil Action Mediation Program Mediation Procedures and Rules

### 1. Definitions

- A. **“BBB National Programs”** means BBB National Programs, Inc., which is the administrator of the Mediation Program.
- B. **“Manufacturer”** shall mean the auto manufacturer involved in the applicable civil action seeking restitution or replacement of motor vehicle pursuant to Part 2, Title 10, Chapter 12 (Actions for Restitution or for or Replacement of Certain Motor Vehicles) of the California Code of Civil Procedure.
- C. **“Mediation Program”** means the alternative dispute resolution services administered by BBB National Programs for the mediation of a civil action seeking restitution or replacement of a motor vehicle under Section 871.26(d) of the California Code of Civil Procedure.
- D. **“Mediator”** means the neutral and impartial individual appointed by BBB National Programs to facilitate confidential discussions between the Manufacturer and Vehicle Owner to identify issues, explore potential solutions and work toward a mutually acceptable resolution and agreement. A Mediator has no authority to impose a binding decision on the parties.
- E. **“Vehicle Owner”** shall mean any owner or lessee of the applicable motor vehicle that is the subject of a dispute under Part 2, Title 10, Chapter 12 (Actions for Restitution or for Replacement of Certain Motor Vehicles) of the California Code of Civil Procedure.

### 2. Submission of Request to Mediate

A request for mediation shall be made by the Vehicle Owner or Manufacturer by submitting such request via BBB National Programs' online platform using the following link: [CA CIVIL ACTION REQUEST](#) or by dialing 800-987-5264. After receipt of a request to mediate, BBB National Programs will contact the other party involved to notify them of the request to mediate.

### 3. Mediator Appointment and Impartiality

BBB National Programs will select and appoint a Mediator from its panel of Mediators who have experience and training with motor vehicle warranty issues including an understanding of the applicable portions of California's Song-Beverly Consumer Warranty Act, otherwise known as California's "Lemon Law."

The Mediator will be selected in a manner to ensure that the Mediator does not have a conflict of interest with either of the parties (e.g., there is no financial, competitive, professional, family or social relationship with either party). If a potential or actual conflict of interest exists with either party, it shall be revealed to the parties and the affected party may decide whether the Mediator should serve in the matter. If the Mediator believes he or she cannot facilitate the mediation in an impartial manner, then he or she will refuse to serve. If an initially appointed Mediator is declined by a party for the foregoing reasons or the Mediator otherwise declines to serve, then a replacement Mediator will be appointed by BBB National Programs. BBB National Programs reserves the right to reject a Mediator for any reason it believes will affect the credibility of the Mediation Program.

The Mediator will not provide legal advice and is not a legal representative of either party. No attorney-client relationship exists between the Mediator and either party.

#### **4. Scheduling of Mediation**

Assuming that both parties cooperate with the scheduling and are available, within **ten (10)** business days of BBB National Programs' receipt of a request to mediate, the mediation will be scheduled. Note that the parties are required by law to ensure that within ninety (90) days after filing of the answer or other responsive pleading, the mediation is scheduled to occur within one hundred fifty (150) days after filing of the answer or other responsive pleading. The mediation session will be virtual and will take place after confirming a mutually agreeable date and time. Confirmation of the mediation date and time will be confirmed through the case management portal via automated email notification the same day the mediation is scheduled. Parties will receive a reminder from BBB National Programs the day before the mediation is scheduled.

#### **5. Agreement to Mediate**

BBB National Programs will provide each party with an Agreement to Mediate. The Agreement to Mediate describes the agreement between BBB National Programs as the administrator of mediation services and the mediating parties. By signing the Agreement to Mediate, you will be agreeing to these Mediation Procedures and Rules.

#### **6. Pre-Mediation Materials and Meetings**

From the date the Mediator is appointed, each party has up to fourteen (14) days (unless the parties agree to a shorter time period given the date of the mediation) to upload all relevant evidence and documentation including any pre-mediation statements. In preparing for your mediation, be sure to provide copies of all relevant documentation and information that would be helpful for the other party and the Mediator to review. The Mediator has the right to request pre-mediation statements from the parties which will briefly outline and summarize the party's position along with the history of

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negotiations between the parties. The Mediator may conduct individual confidential meetings with each party prior to the scheduled mediation session.

### **7. Parties and Participation; Self-determination**

The authorized decision-maker for the Manufacturer and the Vehicle Owner must attend the mediation. Each party has the right to be represented by an attorney during mediation. Any third party whose presence is requested (such as a mechanic or technical expert) may attend only if all parties and the Mediator consent. The parties to the dispute determine and are responsible for the resolution of the dispute between them. While the parties may be mandated to mediate and the parties agree in good faith to mediate their dispute, the Mediator may not mandate the extent to which either party must participate in the process. Each party will conduct themselves with civility and professionalism.

The Mediator does not decide who is right or wrong and will not impose a resolution or outcome. Instead, the Mediator is responsible for conducting confidential mediation, facilitating communications, and assisting the parties in reaching a voluntary, consensual resolution.

If a mutual resolution occurs during the mediation, the parties will draft a settlement agreement. The terms of the mutual resolution may be set forth in a term sheet signed by both parties prior to the settlement agreement being completed. If a mutual resolution is not reached during the mediation session, no agreement will be entered into, and the mediation proceeding will close.

### **8. Confidentiality and Privacy of Mediation**

The mediation session, all communications, negotiations, discussions, and all evidence and documentation submitted for the mediation are confidential. The Mediator and the parties will maintain the confidentiality of the mediation session and all information and documentation received during the mediation process. The confidentiality of the mediation itself and all materials and information provided during the mediation process are governed by California law (California Evidence Code Sections 1115-1128) and applicable ethical standards.

Unless agreed by the parties or required by applicable law, no writing prepared and no evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

Other than the settlement agreement or term sheet reflecting the parties' resolution, there will be no written or other record of the mediation process.

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Neither the Mediator nor any representative of BBB National Programs will be forced to share mediation records or testify with respect to the mediation in any proceeding.

#### **9. Termination of Mediation**

The mediation will be terminated by (A) the mediator's written or verbal statement that the mediation is terminated noting whether it was with or without settlement or resolution, (B) written or verbal statement from each party that the mediation session is terminated, or (C) execution of a settlement agreement or term sheet by the parties.

#### **10. Exclusion of Liability**

Each party and their representatives agree that (A) neither the Mediator nor BBB National Programs will be liable for any error, act or omission arising out of or related to the mediation session or the entire mediation process, (B) neither the Mediator nor BBB National Programs will be subpoenaed by such party or its representative in any subsequent proceeding related to the mediation, and (C) neither the Mediator nor BBB National Programs nor any of BBB National Programs' employees, contractors or other representatives may be called as a witness in litigation or any other proceeding relating to the mediation.

#### **11. Payment of Mediation Fees**

Each party that is responsible for payment of the mediation fees must timely pay such fees to BBB National Programs. The mediation process will not proceed until the applicable fees have been received when due from each party.

#### **12. Interpretation of Mediation Procedures and Rules**

The Mediator will interpret these Mediation Procedures and Rules with respect to those that relate to a mediation session that the Mediator is conducting. All other matters within these Mediation Procedures and Rules will be interpreted and resolved by BBB National Programs. Notwithstanding the foregoing, any issue with a Mediator may be brought to the attention of BBB National Programs and addressed by BBB National Programs.

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