

Jeff Nelken, M.A.
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Food Safety Consulting Services
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EXPERT WITNESS AGREEMENT

The Expert Witness Agreement (“Agreement”) is entered into between Jeff Nelken (“Expert”) and _____ (“Attorney” or “you”) as of _____, 201_ in relation to the legal action entitled : _____, case no.: _____, venued in _____. The parties agree as follows:

1. Fees:

You, as the hiring attorney, are Expert’s client. Thus, you are responsible for the payment of all fees outlined below. Payment to the Expert is neither dependent upon any findings which Expert renders, on the outcome of any legal action, mediation, arbitration, the amount or terms of any settlement, or the contractual arrangement between the attorney and any other person or party. All invoices must be paid in full prior to Expert’s appearance for deposition, arbitration or trial testimony.

Schedule of Fees

- a) **Retainer: \$1,500.00** non-refundable retainer to be paid upon execution of this Agreement.
- b) **Trial/Mediation/Arbitration Testimony: \$1,500 half day** (or part thereof) **\$3,000 full day** (or part thereof).
- c) **Consulting Fees: \$350 per hour** for all legal activities. This includes review of case documents, review of depositions, literature searches, consultation time, preparation for deposition and trial testimony, oral or written reports, or any miscellaneous tasks requested by client. Consulting fees will be charged by the tenth of an hour, with a minimum charge for any discrete tasks at two-tenths of an hour.
- d) **Travel Time: \$100 per hour**, billed as “portal to portal” in increments of ten (10) minutes.
- e) **Expert Designation:** Should Expert become the designated expert on the case in question, Expert’s fee will be a **\$3,500** “tail-end” retainer which will be held for application to the last fee-for-service payment due at the conclusion of the case. You will not identify or designate Expert as either a testifying or non-testifying expert until this “tail end” fee has been paid.
- f) **Out-of-the-Area Travel:** which requires overnight stay is billed at **\$3,000** per day. If Expert must cancel an entire office day to provide any requested services, Expert’s fees are also **\$3,000**. “Out-of-area” is defined to mean more than eighty (80) miles away from Woodland Hills, CA.
- g) **Deposition Fees:** Fees for deposition shall be paid prior to the start based upon the anticipated length of the examination. Balance due, if any, shall be paid within ten (10) days of deposition. If the opposing attorney is designated to pay the deposition costs and fails to them, the Attorney will be responsible for the bill.

h) **No Contingency Fees:** After a case is closed or settled, fees are not available for retrospective negotiation and cannot be linked in any way to the outcome of the case. Contingency fees are unacceptable and unethical.

i) **Rescheduling and Cancellation:** If Expert is scheduled for a consultation, deposition, or court testimony and the case is settled or delayed, Expert's fees for the time away from Expert's services remain the same. Attorney can avoid charges for events requiring rescheduling or cancellation by notifying me at least one week in advance of the scheduled event.

2. Expenses:

- a) **Rates:** All ordinary and necessary costs are fully reimbursable, including charges for photocopying, postage, express mail, messengers, telephone, computerized research, exhibit preparation, and other similar expenses. Travel and actual expenses reasonably and necessarily incurred (such as meals, lodging, ground transportation, mileage, out of pocket expenses, etc...) will be billed to the client at cost and copies of bills will be attached to Expert's invoice.
- b) **Air travel:** Business class or first class air travel is expected on all flights over two hours in duration. Preference will be given to direct flights, if available, regardless of cost.
- c) **Auto mileage:** Travel by auto (mileage) will be billed at the IRS's prevailing rate at time of travel.
- d) **Lodging:** Hotels at best commercial rate available at a "full service" hotel (Hilton, Marriott, Hyatt, Omni, Crowne Plaza, Wyndham).

3. Payment Policy:

Attorney will be billed monthly by Expert. Payment is due upon receipt of Expert's invoice and shall be considered delinquent if unpaid for more than thirty (30) days of the date of the invoice. Accounts thirty (30) days delinquent will be charged interest of 1.5% per month on all amounts past due. Expert reserves the right to suspend all work and refuse delivery of further services or reports until outstanding balances over thirty (30) days old are paid for in full. Also, in the event that a bill remains unpaid for sixty (60) days, in addition to other rights available to Expert under this Agreement, Expert will have the unrestricted right to terminate this Agreement without any liability to Attorney. If legal or other expenses are incurred in the collection of outstanding amounts due, such expenses will be added to any outstanding balance.

4. Attorney's Representations and Warranties:

- a) Attorney has had the opportunity to investigate and verify Expert's credentials and agrees that Expert is qualified to perform the services described herein.
- b) Attorney will provide Expert with all relevant non-privileged documents related to the Expert's services. If not provided with these documents, Expert cannot and will not render an opinion.
- c) Attorney will be truthful and forthright in all his or her dealings with Expert.
- d) Attorney will immediately notify Expert of all "*Daubert*" or other similar admissibility challenges.
- e) Attorney will adequately prepare Expert prior to any testimony. This means Attorney will meet with Expert at a mutually convenient time and place to prepare Expert no less than twenty-four hours before Expert's testimony is to be given. If

necessary, Expert's preparation can occur telephonically. If Attorney does not adequately prepare Expert, Expert can withdraw without any liability to Attorney.

f) Attorney will notify Expert no less than two (2) business days after a case settles. If not so notified, Attorney will remain responsible for all fees rendered.

g) Attorney will provide ample notice to Expert of all days and times where Expert's services will be required so as to avoid any scheduling conflicts. This means that the Attorney will contact Expert beforehand to schedule any depositions or arbitrations, and will notify Expert of any trial dates where Expert's testimony will be required as soon as set by the court.

h) Attorney will secure Expert's advance approval and input regarding any discovery responses (i.e., interrogatories, requests for admissions, etc...) pertaining or related to Expert's opinion.

i) Attorney will abide by any and all codes of ethics applicable to his or her practice. If Attorney is charged with any ethics violations, the expert can withdraw his services without further liability to Attorney.

5. No Warranties by Expert:

IT IS IMPOSSIBLE TO PROVIDE ANY PROMISE OR GUARANTEE ABOUT THE OUTCOME OF THE LEGAL ACTION FOR WHICH EXPERT IS BEING RETAINED. THUS, NOTHING IN THIS AGREEMENT, OR ANY STATEMENTS MADE BY EXPERT, CONSTITUTES A PROMISE OR GUARANTEE OF ANY PARTICULAR RESULT OR OUTCOME.

6. Termination of Services:

a) If Attorney fails to meet any of Attorney's obligations, representations or warranties under this Agreement, Expert shall have the right to terminate this Agreement, and Attorney shall take all steps necessary to free Expert of any further obligations, including without limitation and execution of any documents necessary to complete Expert's discharge or withdrawal.

b) Attorney shall have the right at any time to terminate Expert's service without cause upon written notice to the Expert, and Expert shall immediately after receiving such notice cease to render additional services. Such termination shall not however, relieve Attorney of the obligation to pay the fees due for services rendered and costs incurred prior to such termination.

7. Additional Terms:

a) **Integration:** This Agreement constitutes the complete, exclusive, and final agreement between the parties with respect to the subject matter herein.

b) **Counterparts:** This Agreement may be executed in any number of counterparts and, notwithstanding that all parties may not execute the same counterpart simultaneously, at the same time or place, each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts shall constitute one and the same agreement.

c) **Governing Law/Forum:** This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to this state's conflicts of law principles, including without limitation its validity, interpretation, construction, performance, enforcement, and all other matters arising out of or in relation to this Agreement, and all the transactions it contemplates, with venue

hereby agreed to in the federal and state courts of proper jurisdiction in Los Angeles County, CA.

d) **Limitation on Liability:** Expert is not liable to Attorney for any special, incidental, consequential, "business loss," or punitive damages, nor for any amount greater than the fees paid to Expert pursuant to this Agreement.

e) **Headings:** The headings used in this Agreement are intended principally for convenience of the parties only, and the parties agree that the headings will not be used by themselves in construing the meaning or effect of any provision of this Agreement.

f) **Independent Contractor Relationship:** The relationship between the parties will be that of independent contractors. Nothing herein will be construed as creating or constituting a relationship of employer/employee, franchiser/franchisee, principal/agent, partnership, or joint venture, between the parties.

g) **Modification:** This Agreement may only be modified by written instrument signed by the party against which enforcement is sought.

h) **Authority to Sign:** The parties each represent that the person executing this Agreement on behalf of such party has the power and authority to enter into this Agreement and such entity has the authority to consummate the transactions herein contemplated.

The parties are signing this Agreement on the date stated in the introductory clause.

Jeff Nelken

Attorney:

Signature

Signature