

Memorandum 2016-60

Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct: Public Comment

The Commission¹ has received the following new communications relating to its study of the relationship between mediation confidentiality and attorney malpractice and other misconduct:

	<i>Exhibit p.</i>
• Robert Flack (11/10/16)	1
• Nancy Neal Yeend (11/14/16)	8
• Supplemental comments from individuals signing the online petition by Citizens Against Legalized Malpractice	10
• Updated list of online petitioners	11

These new communications and another new development are discussed briefly below.

MATERIALS FROM ROBERT FLACK

Mediator Robert Flack has submitted a package of materials labeled “ADR Community Has Already Responded Professionally and ProActively to the Challenge Posed By the dicta in *Cassel* by Encouraging Pre-Mediation Confidentiality Agreements.”² The package includes the following articles written by Caroline Vincent and republished with her permission:

- Caroline Vincent, *Enforcing Mediation Caucus Agreements After Cassel: A Primer on the Admissibility and Enforceability of Agreements Made in Caucus-Only Sessions, Especially Agreements You Make With Your Own Clients*, Advocate (Sept. 2012).³

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Exhibit pp. 1-7.
3. Exhibit pp. 2-6.

- Caroline Vincent, *3 Reasons to Sign a Pre-Mediation Confidentiality Agreement* (Aug. 26, 2015).⁴

COMMENTS OF NANCY NEAL YEEND

Mediator Nancy Yeend says it is “apparent from MM16-58 that the Commission has made progress regarding its consideration of attorney malpractice committed while representing clients during mediation.”⁵ In her view, “[t]wo indispensable items remain: mediator malpractice and the lack of professional standards for mediators.”⁶

Ms. Yeend urges the Commission to address the issue of mediator malpractice through “a simple recommendation to the legislature” that “every mediator, court, or agency providing mediation services or recommending or requiring mediation, shall provide to all potential mediation participants written notice clearly stating that mediator malpractice or misconduct is protected.”⁷ She explains:

By requiring clear and specific written notification, in advance of the mediation, provides a *simple protocol* for mediators. If individuals want to accept the fact that a mediator cannot be held responsible or liable for his/her actions, then so be it. If on the other hand future mediation participants have concerns, they can then modify the confidentiality agreement *in advance*, rather than later discovering that they entered into a process without full disclosure of the implications of confidentiality and its ultimate consequences.⁸

With regard to what Ms. Yeend calls “the very real problem of anyone being able to declare, *‘I’m a mediator!’*,”⁹ she asks the Commission to “*advocate* that the legislature adopt regulations for the mediation process and for those who hold themselves out as mediators.”¹⁰ She points specifically to Florida’s mediator regulation system as a possible model.¹¹ In closing, she notes that the Commission “has spent considerable time and energy on the topics of confidentiality and mediation malpractice, and thus it would be extremely

4. Exhibit p. 7.
5. Exhibit p. 8.
6. *Id.*
7. *Id.*
8. *Id.* (emphasis added).
9. *Id.* (emphasis in original).
10. Exhibit p. 9 (emphasis in original).
11. See *id.*

unfortunate to have so much ... effort only rectify half of the malpractice problem.”¹²

In considering Ms. Yeend’s comments, the Commission should **bear in mind the limited scope of its current legislative assignment¹³ and the prohibition on advocacy by Commissioners and staff in Government Code Section 8288.**

UPDATE ON ONLINE PETITION

Currently, the online petition by Citizens Against Legalized Malpractice¹⁴ has approximately 760 signatories. Bill Chan recently provided an updated list of the signatories and their locations. Names on the updated list that are not included in previous memoranda are shown at Exhibit pages 11-21.

A few supplemental comments from signatories are reproduced at Exhibit page 10. Change.org recently revised its website and the staff just discovered that more supplemental comments are now accessible online. We will compile these and present them in a supplement to this memorandum.

UNPUBLISHED DECISION IN *MILHOUSE*

In addition to providing an updated list of signatories, Bill Chan sent the staff a copy of the Ninth Circuit’s recent unpublished decision in *Millhouse v. Travelers Commercial Ins. Co.* (No. 13-56959, filed Feb. 23, 2016). In that appeal, the plaintiffs argued (among other things) that the district court erred when it admitted mediation communications at trial. The Ninth Circuit rejected that argument without considering its merits, because the plaintiffs failed to raise the issue at trial.

12. *Id.*

13. As explained at page 3 of Memorandum 2016-59, “careful examination of the resolution relating to this study and its legislative history ‘strongly suggests that the Legislature intended for the Commission to study and provide a recommendation on **the relationship between mediation confidentiality and alleged attorney misconduct in a professional capacity in the mediation process, including, but not limited to, legal malpractice.**” (Italics & boldface in quoted source —i.e., Memorandum 2015-34, which explains above conclusion and is reproduced at Exhibit pp. 36-48 of Memorandum 2016-59 for convenient reference).

14. The online petition is available at https://www.change.org/p/the-california-law-revision-commission-change-the-statutes-that-legalize-malpractice?response=b21b75d0be86&utm_source=target&utm_medium=email&utm_campaign=one_thousand. The text of the petition is also reproduced in Memorandum 2015-46, Exhibit pp. 210-11.

NEW MASSACHUSETTS CASE

Writer Samson Habte recently alerted the staff to a new Massachusetts case involving mediation confidentiality issues: *ZVI Construction Co., LLC v. Levy*.¹⁵ In that case, the plaintiff sued opposing counsel and his firm “claiming they had engaged in misrepresentation and other wrongdoing in connection with a mediated settlement” between plaintiff and its opponents.¹⁶ The trial court dismissed the plaintiff’s claims and that result was affirmed on appeal.

In reaching that result, the appellate court did *not* rely on the Massachusetts statute relating to mediation confidentiality,¹⁷ which applies only to communications made in the presence of the mediator.¹⁸ Instead, the court relied on a contractual confidentiality agreement between the mediating parties, explaining that the parties were sophisticated and their agreement was not subject to a fraud exception.¹⁹

Mr. Habte wrote a short article describing this case, entitled “Court Rejects ‘Fraud Exception’ to Mediation Confidentiality.”²⁰ Due to copyright considerations, we are not reproducing that article here.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

15. 90 Mass. App. Ct. 412 (2016).

16. *Id.* at 413.

17. Mass. Gen. Laws ch. 233, § 23C.

18. See *ZVI*, 90 Mass. App. Ct. at 420.

19. See *id.* at 420-22.

20. Samson Habte, *Court Rejects “Fraud Exception” to Mediation Confidentiality*, 32 Law. Man. Prof. Conduct 631 (Bloomberg BNA Nov. 2, 2016).



Advocating for ADR Principles

ADR Community Has Already Responded
Professionally and ProActively to the Challenge
Posed By the dicta in *Cassel*
by Encouraging
Pre-Mediation Confidentiality Agreements

Materials submitted by Robert Flack on 11/10/16, page 1

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2016-11-10



Caroline C. Vincent

Materials submitted by Robert Flack on 11/10/16, page 2
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Enforcing mediation caucus agreements after *Cassel*

A primer on the admissibility and enforceability of agreements made in caucus-only sessions, especially agreements you make with your own clients

In *Cassel v. Superior Court* (2011) 51 Cal.4th 113, the California Supreme Court ruled that, absent meeting specified exceptions set forth in the Evidence Code, statements made in and during the course of a mediation that occur solely between an attorney and client are not admissible in a civil action. After several appellate cases that had differently construed the Evidence Code's mediation provisions regarding the admissibility of statements, agreements and conduct between only lawyer and client, *Cassel* is now the definitive ruling on the admissibility of statements made, documents created and conduct occurring between parties on the same side of a dispute, as well as between disputants themselves.

This article addresses the need to consider whether certain agreements made throughout a mediation that are solely between an attorney and a client, or between multiple plaintiffs, lienholders or other stakeholders on one side of a dispute, ought to be made admissible, and if so, how.

(Editor's note: All unlabeled statutory references are to the Evidence Code.)

In *Cassel*, a client brought a legal-malpractice action against his attorney, alleging that the attorney pressured the client into accepting a settlement for an amount far less than what was agreed or anticipated prior to the mediation. The court ruled that all of the statements and conduct preceding and during the mediation were inadmissible, even though all of the alleged conduct and statements occurred in private communications solely between the client and his attorney. The court held that "[a]bsent an express statutory exception, all discussions

conducted in preparation for a mediation, as well as all mediation-related communications that take place during the mediation itself, are protected from disclosure." (*Cassel, supra*, at 128.) This holding was based upon an analysis of the language of Evidence Code section 1119, which broadly provides that (except as otherwise provided in the chapter), no evidence of anything said, nor any writing made for the purpose of, in the course of, or pursuant to a mediation or mediation consultation is admissible in any arbitration, civil action or administrative adjudication.

Common agreements

Consider the following situations where agreements are frequently made in plaintiff-side caucuses:

- Agreements to amend the written retainer agreement, including reducing the percentage of attorney fees, guaranteeing the client a base amount of recovery, guaranteeing or reducing the costs or liens;
- Agreements made on the telephone with a medical lienholder to reduce the amount of a lien;
- Agreements between multiple plaintiffs represented by the same lawyer (or by co-counsel) to take less than an equal percentage of the proceeds, for a variety of reasons (one plaintiff has greater medical specials or loss of earnings component; one plaintiff owes another money and agrees to offset it through an amended settlement proceeds distribution, one plaintiff has advanced costs and will receive a reimbursement of costs);
- Pro forma distribution statements made at the mediation.

In other words, if you make a side deal, or prepare a diagram or a set of figures that is useful for your clients, is that admissible? *Cassel* suggests that lawyers put on their confidentiality "antennae" upon contemplating, preparing for and engaging in mediations. Over a decade has passed since the legislation which clearly specifies the general presumption that communications in California mediations are inadmissible, with several specific exemptions provided for in the legislation allowing admissibility of evidence. Meeting the technical hurdles requires forethought and precision.

It has become commonplace for lawyers and mediators to either sign standard confidentiality agreements acknowledging the inadmissibility of statements made in mediation, or if they do not sign such agreements, to understand that everything discussed in mediation is inadmissible. It is also widely understood that written settlement agreements are admissible, provided they meet one of the requirements set forth in Evidence Code section 1123 (i.e., that the agreement states that it is enforceable or binding or words to that effect; that it is admissible or subject to disclosure or words to that effect; or that all parties to the agreement expressly agree in writing to its disclosure). What is not widely held in the consciousness of mediators and lawyers alike is that these and other special technical requirements in the Evidence Code, are necessary to admit into evidence agreements made with less than all of the usual settling parties.

This article suggests that lawyers and mediators ought to turn on their

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Materials submitted by Robert Flack on 11/10/16, page 3
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admissibility antennae and notice situations where side agreements or caucus agreements are made, and consider whether any special steps should be taken to ensure that they are admissible and consequently enforceable in the event of a subsequent dispute.

Agreements made with plaintiff

A common conversation between mediator, plaintiff and plaintiff's counsel occurs toward the end of the negotiations, when the client is being asked to consider accepting a particular offer. The conversation focuses on the net proceeds the client can expect to receive based upon accepting that offer. This net number is not always easy to determine because liens have not been negotiated and the exact costs advanced on the matter may not be readily available.

Counsel sometimes will advise the client that he can expect to receive a minimum of a certain dollar figure or "something in that range." Some attorneys offer to reduce their fees and/or costs so that the client can expect to receive a certain sum. When the liens cannot be negotiated as expected and misunderstandings between lawyer and client ensue, *Cassel* dictates that to the extent that such agreements are made during or in the course of the mediation, they must meet technical statutory exceptions in order to be admissible (only the written exceptions under Evidence Code sections 1122 and 1123 are covered in this article; *see also* exceptions in sections 1118 and 1124 for admissibility of oral agreements made in mediation, which are generally impracticable and rarely used).

In the examples given, this would mean that the client would be unable to enforce an agreement more favorable to the client than the retainer agreement unless it met the technical admissibility provisions of the Evidence Code, but it would not prevent a client from initiating a complaint with the State Bar (the admissibility of such evidence in a disciplinary setting is unclear). If an oral agreement made at the mediation was more favorable to the attorney than what the client understood was agreed, the

lawyer will be unable to enforce the more favorable agreement. It is always good business practice to make certain that any agreements made between lawyer and client are clear and in writing. But is a scribbled note with you and your client's signature enough? The answers are probably not, and maybe.

Agreements with lienholders

During mediation, you, the plaintiff counsel, phone the primary doctor and negotiate the doctor's lien. Later, the doctor reneges on the agreement. Unless the attorney takes the time to create a writing that meets the technical statutory requirements of the mediation provisions of the Evidence Code, the agreement is not enforceable because it is not admissible. The same would hold true for a lien negotiation made on the way to mediation. How can you make sure this is binding on the medical provider?

Agreements with multiple plaintiffs

When you, or you and your co-counsel, represent more than one plaintiff, there are sometimes different amounts of money that each plaintiff will be offered and/or will accept. Usually these separate amounts will be set forth next to each plaintiff's name in a global settlement agreement presented at the end of the mediation. But consider these not uncommon occurrences:

- A mediator's proposal is needed to settle the case, and the plaintiffs will agree among themselves to their proportionate shares if the proposal is accepted.
- Your clients, on their own, determine to shift the allocations.
- The clients wish to adjust the allocations through a reallocation of the respective charge of attorney fees or costs set forth in the retainer agreement (thereby amending the retainer agreement).
- One of the clients, Client A, does not want to settle the case unless he receives \$20,000, but only \$17,000 is offered to him. The other three of your four clients is each willing to give \$1,000 of their monies to Client A, but the defendant is unwilling to change its allocation as offered in the negotiations or in any final settlement agreement.

In these situations, the attorney should be focusing on making sure that the agreements between the clients are enforceable, as buyer's remorse and next day jitters are common occurrences for plaintiffs. Does an agreement they sign at the mediation among themselves work? Yes, but only if the technical requirements allowing its admissibility pursuant to sections 1122 and/or 1123 are met.

Agreements in the above circumstances that are made in advance of the mediation session will likewise necessitate satisfaction of the statutory requirements to be admissible if they are made or prepared "for the purpose of, in the course of, or pursuant to" a mediation. (Evid. Code, § 1119(a) & (b); *Cassel, supra*, at 128.)

Admissible settlement agreements

Pursuant to section 1123 a written settlement agreement meeting certain technical requirements is one of the statutory exceptions to the rule prohibiting admissions of statements and conduct in mediations. Attorneys participating in mediations should be well versed in these requirements, as these clearly apply to the primary disputants in any mediation, plaintiff(s) and defendant(s).

A written settlement agreement is admissible pursuant to section 1123 if signed by the settling parties and if one of these three conditions is met:

- The agreement provides that it is admissible or subject to disclosure, or words to that effect (Evid. Code, §1123(a);
- The agreement provides that it is binding or enforceable, or words to that effect (Evid. Code, § 1123(b); or
- The parties to the agreement expressly agree in writing, or orally in accordance with section 1118, to its disclosure (Evid. Code, § 1123(c).

A typical Stipulation for Settlement form that is customarily provided by the mediator or an ADR provider, for signature by plaintiff(s), defendant(s) and their respective counsel, is likely to contain something like the following:

The parties agree that they have reached a full and final settlement of all claims arising from the events described in the complaint. This

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agreement is binding and it contains the material terms of the agreement between the parties. Pursuant to Section 1123 the parties agree that this agreement is exempt from the confidentiality provisions of Evidence Code Sections 1119, *et seq.*, and is admissible in evidence to enforce the settlement.

This settlement language meets all three of the enumerated requirements of section 1123, only one of which must be met, in order for a written settlement agreement to be admissible (Evid. Code, § 1123(a), (b) and (c)). Note, however, that the settling parties must sign the agreement. (Evid. Code, § 1123).

The author is a proponent of including admissibility language in a standard confidentiality agreement, signed by all participants and the mediator at the commencement of a mediation. The provision in the author's confidentiality agreement is as follows:

The undersigned agree that this confidentiality agreement and any written settlement agreement resulting from this mediation are binding, enforceable and admissible in any subsequent proceeding to enforce those agreements.

The purpose of this "umbrella" provision is to safeguard against the failure to specifically state in the settlement agreement itself (usually drafted after everyone is exhausted) that it is either "admissible or subject to disclosure" or that it is "binding or enforceable" or words to that effect. Thus, by agreeing that a settlement agreement to be created in the future is admissible, the parties are protected in the event a deal memo is written and signed without the magic words contained in section 1123 (a) or (b). This would permit a barebones initialed deal point memo between the primary disputants in a mediation to be admitted. Note that this provision meets the exceptions of either section 1123(c) or 1122(a)(1), depending upon who signs it.

Admissible agreements signed only by participants in the plaintiff caucus

There are four suggestions for the admission of agreements signed only by participants in the plaintiff caucus:

• Written settlement agreements signed by the caucus participants

As discussed above, Evidence Code section 1123 provides an exception to the inadmissibility of agreements that are signed by the settling parties and that meet one of three technical requirements. It is probable that a side agreement between attorney and client, or attorney and lienholder would be considered a settlement agreement and therefore admissible if one of the requirements in section 1123 (a), (b) or (c) is met. After all, the participants in a caucus are resolving (settling) an issue between them by coming to an agreement about the issue (part of the *Cassel* holding is that attorney and client are distinct participants for purposes of the mediation confidentiality statute). It is suggested that somewhere the document they sign be referred to as a "settlement agreement."

There are a couple of caveats to the success of using a settlement agreement under section 1123 for caucus-only settlements. Section 1122(a)(2) provides that an admissible writing prepared by or on behalf of *less than all* the mediation participants may not disclose anything said or done or any admission made in the course of the mediation (Evid. Code, § 1122(a)(2); emphasis added). The California Law Revision Comments to section 1122(a)(2) state that the subsection facilitates the admission of unilaterally prepared materials if they reveal nothing about the mediation discussion. (Cal. Law Revision Com. com., 29B pt. 3B West's Ann. Evid. Code, § 1122(a)(2).) The comments to section 1122 further note that section 1123 (written settlement agreements) is an exception to section 1122. And the Law Revision comments to section 1123 refer to section 1122. What this means exactly is unclear, although taken together, the likely conclusion is that a settlement agreement signed by any of the participants in a mediation is admissible, including plaintiff caucus participants, if it meets one of the enumerated exceptions of section 1123.

A strong suggestion is to make sure that the settlement agreement between

attorney and client, or attorney and lienholder, or between multiple clients keeps the recitals and agreements to a minimum and avoids discussing issues that pertain to communications, documents and writings with other participants at the mediation. About one thing we can be certain – this issue will be litigated, eventually.

An attorney might get into the practice of having a confidentiality agreement signed at the beginning of the mediation (by all participants per Evidence Code section 1122(a)(1)), that provides that any settlement or other agreements, including those between other than the primary disputants, are admissible settlement agreements pursuant to section 1123(c). That way, the legal pad scribbles evidencing the allocations of settlement dollars would be admitted.

• Written agreements to disclose communications that are not settlement agreements

Evidence Code section 1122 (a) provides for two other ways for written agreements in mediations to be admissible, if either of the following conditions is satisfied:

1122(a)(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing; or

1122(a)(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation. (Evid. Code, § 1122(a)(1) and (a)(2).)

• Written agreements to disclose communications signed by the mediator and all participants

Section 1122(a)(1) allows the mediator and all participants to expressly agree in writing to a disclosure of the communication or document. Providing a

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provision in the primary settlement agreement that any writings by and between an attorney and a client are admissible between them is one possible approach, provided the mediator and all participants are signatories. Another option is to sign a pre-mediation confidentiality agreement providing for admissibility of caucus-only agreements, where the mediator and all participants are normally present and signing.

• **Written agreements to disclose communications signed by fewer than all participants.**

Section 1122(a)(2) is the more likely provision to be used. A writing prepared on the attorney's legal pad that is signed by the client and the attorney and says that it is subject to disclosure, and has nothing more than the percentage or monetary allocations agreed to be distributed from settlement monies ought to be admissible under this section. While you are at it, however, make it a settlement agreement by calling it a settlement agreement, and state that it is binding or enforceable, as well as admissible and subject to disclosure. And make sure that all parties to the settlement agreement sign it. As discussed above, it is highly suggested that you include the magic language "provided that this agreement does not disclose anything said or done or any admission made in the course of the mediation." This avoids the potential conflict between sections 1123 and 1122(a)(2) discussed above.

For lienholders, ask them to sign such an agreement that can be faxed, or ask if you may obtain their email signature in order to bind them to their commitments. This provision is also clearly intended to allow the admission of documents you and your client create in preparation for litigation, that just happen to be created while you are sitting around for hours at the mediation. Care should be taken that no mediation discussions regarding the larger mediation dispute are included in the writing.

• **Retainer agreements**

The lawyer's initial retainer agreement with a client is the best place to fashion agreements with clients about

disclosure of any communications or agreements made in preparation of and during the course of the mediation. By agreeing to disclose documents you and your client create, reciting the statutory exception language of Evidence Code section 1122(a)(2), your legal pad scratch notes of the final allocations are admissible into evidence and expectations that clients and attorneys can air their disputes without the shield of mediation confidentiality will be honored.

• **Final thoughts**

As a mediation proceeds, lawyers ought to have heightened antennae regarding whether or not it is wise to take certain affirmative steps to make sure agreements between their clients and themselves and/or lienholders, spouses, and others are admissible and enforceable. Remember Evidence Code sections 1122 and 1123, and carry their provisions with you. Be mindful that there are technical requirements and take the time to study and implement them.

Also consider whether there are there other things besides an agreement you wish to have admissible and subject to disclosure. Is your client relying on a representation by the other side that ought to be a recital in a settlement agreement? Or might a particular document or set of communications be useful for enforcement or interpretation of an agreement? Sections 1122 and 1123 cover these situations.

Plaintiffs' lawyers will clearly sail through settlement to closed files with happy, referring clients, when they learn and implement the exceptions to the mediation confidentiality rules so that the agreements they make with mediation participants are kept — by being admissible and enforceable.

Suggested clauses

All suggested clauses are for discussion purposes only, are not to be considered legal advice and may not be suitable or legally enforceable for any particular mediation situation. Anyone using a suggested clause is advised to review the Evidence Code and applicable case law and/or obtain the advice of legal counsel.

• **Pre-mediation or confidentiality agreement clauses (signed by the mediator and all participants)**

The undersigned agree that this confidentiality agreement and any written settlement agreement resulting from this mediation are binding, enforceable and admissible in any subsequent proceeding to enforce those agreements (Evid. Code, § 1122(a)(1)).

[Optional addition to the above]: A written settlement agreement for purposes of this paragraph includes any written agreement signed by less than all of the mediation participants to resolve, clarify or establish the outcome of any issue that arises solely between them during the course of the mediation (Evid. Code, § 1122(a)(1)).

[Optional addition to the above]: In addition, other writings, statements or admissions made during the course of the mediation are admissible solely for the purpose of interpreting and enforcing the terms and provisions of any resultant written settlement agreement. (Evid. Code, § 1122(a)(1)).

[Optional addition to the above]: In addition, any communications, documents or writings transmitted or prepared solely between a party and its respective counsel, is admissible and may be disclosed in any proceeding between the party and its respective counsel. (Evid. Code, § 1122(a)(1)).

• **Agreement that side agreement or other statements in the mediation may be admissible (signed by the mediator and all participants)**

The parties agree, pursuant to Evidence Code section 1122(a)(1), that all statements, writings, communications, documents and conversations created and exchanged among and between them during, and as a result of the facilitated meetings with the mediator may be disclosed in any subsequent legal proceeding and are admissible as evidence.

All participants to the mediation agree that any side agreement, writings, or communications by and between one set of parties and/or their respective counsel is admissible in any subsequent proceeding, provided that the only

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parties competent to testify regarding the side agreement, writings or communications, are the parties who signed the side agreement or created the writings or made the communications, and that the other participants to the mediation, including the mediator, cannot be compelled to testify (Evid. Code, §§ 1122(a)(1), (a)(2)).

• **Caucus or side agreement clause to disclose written agreements (signed by less than all mediation participants)**

The undersigned agree that this agreement shall constitute a settlement agreement between them regarding the issues therein, and that this agreement is binding, enforceable and admissible in any subsequent proceeding to enforce this agreement (Evid. Code, § 1122(a)(2); probably admissible under Evid. Code, § 1123, if signed by all of the settling parties).

The parties agree, pursuant to Evidence Code Section 1122(a)(2), that this settlement agreement, prepared solely between the signing parties, is binding and enforceable between them, and is admissible and may be disclosed in any subsequent proceeding between them, provided that, the communications, documents or writings do not and may not disclose anything said or done or any admission made in the course of the mediation between the main mediation disputants (Evid. Code, § 1122(a)(2); probably admissible under Evid. Code, § 1123, if signed by all of the settling parties).

• **Retainer Agreement Clause (signed by the lawyer and client prior to the mediation)**

Attorney and client agree that, pursuant to California Evidence Code

section 1122(a)(2), any communications, documents or writings that are prepared, transmitted and communicated between them are subject to disclosure in any subsequent proceeding between them, provided that the communications, documents or writing do not disclose anything said or done or any admission made in the course of the mediation (Evid. Code, § 1122(a)(2)).

Caroline C. Vincent is an attorney mediator, neutral evaluator and arbitrator with ADR Services, Inc., in Los Angeles and Orange County. She specializes in employment, personal injury, probate/elder abuse, insurance, professional liability and complex business and real estate disputes, including class and mass actions. She is a 1978 graduate of the USC Gould School of Law where she served on Law Review.

3 Reasons to Sign a Pre-Mediation Confidentiality Agreement

Published on August 26, 2015



Caroline Vincent

Mediator/Arbitrator, ADR Services Inc. and Lecturer in L...



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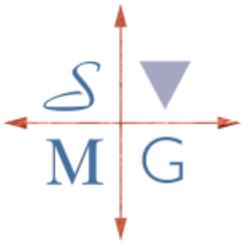


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At the beginning of a mediation, many mediators routinely ask all participants in the mediation to sign a form of pre-mediation confidentiality agreement (PMCA). A PMCA serves to inform the participants about the key provisions of the California Evidence Code regarding mediation confidentiality (EC). There are three good reasons to adopt this best practice, whether you are serving as neutral, attorney advocate or participant:

1. Alert participants to the statutory presumption that no evidence of anything said or any admission made, and no writing or document prepared, in the course of, or pursuant to, a mediation is admissible or subject to discovery, and disclosure of the evidence cannot be compelled, in a civil adjudicatory proceeding, EC Section 1119.
2. Clarify that the mediator is generally immune from providing testimony about statements made and conduct that occurs in a mediation in any subsequent civil proceeding, EC Section 703.5.
3. Include a provision that any settlement agreement signed by the settling parties at the end of the mediation will be admissible pursuant to EC Sections 1122(a)(1). This is the most important reason I ask participants to sign a PMCA. This creates a fall back provision to enforce a written settlement agreement, that might otherwise fail to comply with the technical requirements of EC Section 1123. A surprising number of attorneys are not consistently thinking of the technical requirements that must be met in order for a written settlement agreement prepared in the course of a mediation to be admissible. This oversight occurs due to fatigue, when attorneys and institutional clients use standard releases and settlement agreements not drafted with California mediation in mind, or when settlement documents are drafted soon after the session without the mediator there to remind them to add the magic words required by EC 1123 to create an admissible agreement. Thus, having all participants sign a PMCA drafted to anticipate admitting a settlement agreement, is a way to create a double check system to ensure that your settlement agreement is admissible.

For more information on admitting mediation agreements and documents, and a sample clause for your PMCA, see the author's article *Enforcing Mediation Caucus Agreements after Cassel*, Advocate Sept. 2012.



SILICON VALLEY MEDIATION GROUP

November 14, 2016

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Relationship Between Mediation Confidentiality and Attorney Malpractice (Study K-402)

Dear Commissioners:

It is apparent from MM16-58 that the Commission has made progress regarding its consideration of attorney malpractice committed while representing clients during mediation. Two indispensable items remain: mediator malpractice and the lack of professional standards for mediators. Not addressing these critical components means that half the malpractice problem remains.

The issue of mediator malpractice can be addressed so easily: a simple recommendation to the legislature requiring every mediator, court, or agency providing mediation services or recommending or requiring mediation, shall provide to all potential mediation participants written notice clearly stating that mediator malpractice or misconduct is protected. Again, without proper notice, there is the very real and significant issue of *informed consent*.

Gregory Herring's November 2nd letter, MM16-50s2, outlines more examples of mediator abuse. His letter vividly demonstrates the urgent need for requiring disclosure. He makes some very significant points not only about mediator conduct, but also about the very real problem of anyone being able to declare, "*I'm a mediator!*" This is not a new topic—addressing the issue is long over due.

When mediators are untrained, they are not only statistically more likely to unilaterally change their role from a neutral and impartial process manager, but also to anoint themselves as the decision-maker. Some even take on the role of advocate, while in extreme cases to one who coerces! The euphemistic phrase "*mediator's proposal*" has developed, in an effort to legitimize the practice of some mediators, who not only change their statutorily defined role as a neutral to judge and jury, but also the entire process. Some so-called "*mediations*" are actually *settlement conferences*, *arbitrations*, *neutral evaluations* and in extreme situations *private judging*. All are very different processes, and are based on different statutes and presumptions. Without adding disclosure requirements, the exploitation of mediation participants will continue. Having served as faculty at law schools in California, New Hampshire and Florida, and a judicial college, this national perspective has convinced me that not addressing mediator competency will have long term and extremely damaging consequences.

By requiring clear and specific written notification, in advance of the mediation, provides a *simple protocol* for mediators. If individuals want to accept the fact that a mediator cannot be held responsible or liable for his/her actions, then so be it. If on the other hand future mediation participants have concerns, they can then modify the confidentiality agreement *in advance*, rather than later discovering that they entered into a process without full disclosure of the implications of confidentiality and its ultimate consequences.

Recently, some individuals have learned that for years the State Bar has not addressed this issue, and are shocked. Others find it interesting that the Judicial Council has not required courts with mediation

programs to provide or require mediators on their panels to make such disclosures. The essence of the comments can be summed up with, "*I thought the Bar and courts were protecting the public, not protecting those who commit malpractice.*"

Without a requirement for disclosing that mediator malpractice is protected, and without training and experience requirements for mediators in private practice or who are on court rosters, public confidence in the mediation process and the courts will continue to erode. As the Commission is well aware, nearly 30 years ago California established *requirements* for *volunteer* mediators. What is the rationale for not creating minimum training and ethical standards for those who hold themselves out to be "*professional*" mediators?

I encourage the Commission to recommend *mandatory, written disclosure* regarding the existing confidentiality protection of mediator malpractice and misconduct, and to *advocate* that the legislature adopt regulations for the mediation process and for those who hold themselves out as mediators.

A significant part of mediator malpractice is directly tied to qualifications. The Commission could *save* a significant amount of time and energy by recommending Florida's mediator credentialing model. One must not forget that it is a mandatory mediation state, so tens of thousands of cases are *professionally* mediated every year. Its mediator qualifications and credentialing process includes stringent *training*, hands-on mediation *experience*, and *continuing education* requirements. It also has a *Code of Ethics* for all classifications of mediators: civil, family, appellate, dependency, etc. In addition, its program includes *decertifying* those mediators who commit malpractice. Florida's Supreme Court also credentials all *mediation trainers*. One should not miss the fact that Florida has over 6000 trained and Supreme Court certified mediators, and the entire program is *self-funded*!

Adopting *competency standards for mediators* would provide the public with far more protections than presently exist in California. For example, some mediators, to give the appearance of being qualified, use the phrase, "*certified*" mediator, in their marketing! A *certificate of completion* is a far cry from a true professional designation. One has to ask, if these mediators are willing to mislead potential clients, what might they be willing to do during mediation?

Eliminating malpractice protections for mediators, coupled with competency standards, and combined with removing attorney malpractice protections would finally provide the safeguards that Californians deserve. The Commission has spent considerable time and energy on the topics of confidentiality and mediation malpractice, and thus it would be extremely unfortunate to have so much of your effort only rectify half of the malpractice problem.

Sincerely,

Nancy

Nancy Neal Yeend

Dispute Management Strategist & Mediator

**SUPPLEMENTAL COMMENTS OF PETITIONER BRYAN EGELHOFF
(SEATTLE, WA — 10/18/16)**

This lack of loyalty and Feduciary responsibility to the cliant is a travisty of justice.

**SUPPLEMENTAL COMMENTS OF PETITIONER BILL BRACHA
(LEWISTOWN, MT — 10/19/16)**

I believe family Court is corrupt and miss uses their power to steel our children and break familys apart for profit. This is sick and morally wrong.

**SUPPLEMENTAL COMMENTS OF PETITIONER WILDA BEZET
(BOGUE CHITTO, MS — 10/20/16)**

Corruption in government must be fought. If allowed to continue, it will be the end of freedom and the greatest country on earth! For the sake of our children, we must fight!

**SUPPLEMENTAL COMMENTS OF PETITIONER JOHN MOORE
(MAYER, AZ — 10/21/16)**

This unConstitutional evil needs to stop right now!

**SUPPLEMENTAL COMMENTS OF PETITIONER JOHNNY NEWELL
(CHICAGO, IL — 10/21/16)**

Because of corruption in court's law enforcement and any other state officials They should be jailed with same people these corrupt bastards have swindled

Patty Knight	Oklahoma City	Oklahoma	73147 United States	2016-01-29
Leann Wilson	Ceres	California	95307 United States	2016-01-30
Jay Marose	Los Angeles	California	90046 United States	2016-01-31
Matthew Glosser	Chandler	Arizona	85249 United States	2016-01-31
Julie Rodenhuis	Arroyo Grande	California	93420 United States	2016-02-01
Carey UniteWomen.org	Wellington	Florida	33414 United States	2016-02-01
Sara Hoffman	Greer	South Carolina	29651 United States	2016-02-02
Kimberly DuPont	Saint Paul	Minnesota	55107 United States	2016-02-02
amy Large	High Peak		Sk23 7RS United Kingdom	2016-02-02
Stephen Girard			7467 Australia	2016-02-02
Dawn DeLucia	Clarence Center	New York	14032 United States	2016-02-05
Christy Ozuna	Huntington Beach	California	92615 United States	2016-02-06
Kathlyn Umechukwu	Gosford nsw		2250 Australia	2016-02-06
Kevin Allan	McMinnville	Oregon	40161 United States	2016-02-06
Christian Sweeney	Jasper	Texas	75951 United States	2016-02-07
Joe Q. Public	Santa Clara	California	95126 United States	2016-02-07
Becky Blanton	Palmyra	Virginia	22963 United States	2016-02-08
hayley marley duncan	Gawler South		5118 Australia	2016-02-08
steve holmes	sacramento	California	96817 United States	2016-02-08
Alan Davis	Micheldever		so21 3bh United Kingdom	2016-02-08
idell burnett	Albuquerque	New Mexico	87194 United States	2016-02-09
BARBARA RICHARDS	STAFFORDSHIRE		ST15 8LF United Kingdom	2016-02-09
Angelo Zeppieri	Port Hope		l1a 0c8 Canada	2016-02-09
Michelle Connell	Devon		Ex135sq United Kingdom	2016-02-09
N O'Dwyer	Dublin		Ireland	2016-02-09
Pól Ó Duibhir	dublin		Ireland	2016-02-09
Graciela Narten	morganton	North Carolina	28655 United States	2016-02-10
Mia Jane	Los Angeles	California	90046 United States	2016-02-11
Jacqueline Casper	Vista	California	92084 United States	2016-02-12
Ruth Nichols	Orange	California	92869 United States	2016-02-12
Lesley pearse			3478 Australia	2016-02-12
Debbie Brookes			2147 Australia	2016-02-12
Danielle Smith			2460 Australia	2016-02-13
Melanie Nicholson	Kannapolis	North Carolina	28083 United States	2016-02-13
Loren Gibson	Dayboro		4521 Australia	2016-02-14
Sean Lyon	Valrico	Florida	33596 United States	2016-02-15
Trina Sisk	North Highlands	California	95660 United States	2016-02-16
Annette Price	Northamptonshire		Nn109ld United Kingdom	2016-02-16
Ruby Dillon	Newport Beach	California	92660-6335 United States	2016-02-16
Mark Halburn	Hurricane	West Virginia	25526 United States	2016-02-18
Brian Galpin	Colorado Springs	Colorado	80909 United States	2016-02-18
Shunna Williams	Galesburg	Illinois	61401 United States	2016-02-18
Nathaniel Shafto	Highland Township	Michigan	48356 United States	2016-02-18
Deanne Upson	Washington	District of Columbia	20013 United States	2016-02-19
Melissa Karabela	Clinton Township	Michigan	48036 United States	2016-02-19
Roisin Ni Chasaide	burlingame	California	94010 United States	2016-02-19
Betty Wood	Atwater	California	95301 United States	2016-02-20
Jade Taylor	Gallup	New Mexico	87301 United States	2016-02-21
Rose Richmond	Fort Worth	Texas	76112 United States	2016-02-21
Martha Peters	Sun City	California	92586 United States	2016-02-22
Simon Limeburner			2324 Australia	2016-02-22

Darryl Stoler	Pompano Beach	Florida	33067	United States	2016-02-24
William Cormier	Lawrenceville	Georgia	30043	United States	2016-02-24
Marilyn Villani	Saint George	Utah	84790	United States	2016-02-24
Manny Perez	McDonough	Georgia	30253	United States	2016-02-27
LeahAnn Simone	Gorham	New Hampshire	3581	United States	2016-02-27
Joy Bautista	Manila	Philippines			2016-02-29
Tina Puls	Riverside	California	92506	United States	2016-02-29
Gilberto Gonzalez	San Francisco	California	94114	United States	2016-02-29
Amanda Bian	Piedmont	South Carolina	29673	United States	2016-03-01
Daniel Heins	Albany	New York	12208	United States	2016-03-01
Pamela Houghton	Eglin Air Force Base	Florida	32542	United States	2016-03-01
Natisha Street	Milwaukee	Wisconsin	53208	United States	2016-03-03
Michelle Rigney	Bonaire	Georgia	31005	United States	2016-03-04
Randall collier	Center Harbor	New Hampshire	3226	United States	2016-03-04
joy jet	Las Vegas	Nevada	89109	United States	2016-03-04
Julie Von Berckefeldt	Hilmar	California	95324	United States	2016-03-04
Barbara Lilley	San Francisco	California	94107	United States	2016-03-05
Mary Long	Hillsdale	Michigan	49242	United States	2016-03-05
Mark Holtz	Royal Palm Beach	Florida	33411	United States	2016-03-06
yuliana raghavendra	Levittown	New York	11756	United States	2016-03-07
Melody Rodgers	Los Angeles	California	90012	United States	2016-03-07
M Simp			2132ZV	Netherlands	2016-03-07
Jackie Wong	Fresno	California	93720	United States	2016-03-08
Bel Walsh	Windmill Hill		WA7 6LA	United Kingdom	2016-03-10
Deborah Ueltzen	Saint Charles	Missouri	63303	United States	2016-03-11
Justice For All	Memphis	Tennessee	38108	United States	2016-03-11
Andrea Combs	Citrus Heights	California	95621	United States	2016-03-11
Melissa Strong	Angola	Indiana	46703	United States	2016-03-12
gwenivere kelley	hudsonfalls	New York	12826	United States	2016-03-13
Samantha Brown	Pearland	Texas	77584	United States	2016-03-14
Carol B	Yucaipa	California	92399	United States	2016-03-15
Mark Sullivan	Salida	Colorado	81201	United States	2016-03-15
Alicia Etlar	Hendersonville	North Carolina	28739	United States	2016-03-16
Ron Rich	Fort Walton Beach	Florida	32548	United States	2016-03-16
Lana Kitchel	Los Molinos	California	96055	United States	2016-03-16
Gil Freeman	Austell	Georgia	30168	United States	2016-03-17
Tina Po	levittown	Pennsylvania	19057	United States	2016-03-17
Christie Zelenski	Ravenna	Ohio	44266	United States	2016-03-21
seth nasi	oshkosh	Wisconsin	54902	United States	2016-03-21
KT Buchholz	Grapevine	Texas	76051	United States	2016-03-21
Keith Siniard	athens	Alabama	35611	United States	2016-03-21
Laurie Jones	Fuquay Varina	North Carolina	27526	United States	2016-03-22
zay xoss	South Pasadena	California	91030	United States	2016-03-22
Kathryn Benson	Houston	Texas	77089	United States	2016-03-22
Vanessa Flores	Ralls	Texas	79357	United States	2016-03-22
Spencer M Jimerson Jr	Salamanca	New York	14779	United States	2016-03-22
Scott Varner	Union	South Carolina	29379	United States	2016-03-24
Garry Berkey	Keysville	Virginia	23947	United States	2016-03-24
patrick springer	Phoenix	Arizona	85038	United States	2016-03-24
Emily Brandt	Fresno	California	93722	United States	2016-03-24
Doug Dante	Detroit	Michigan	48201	United States	2016-03-25

Tanya Jones	Wichita	Kansas	67212 United States	2016-03-26
KATHRINE LESTER	Salinas	California	93906 United States	2016-03-27
Annie Prochera	Carlsbad	California	92011 United States	2016-03-27
Donald Hess	Panama City Beach	Florida	32407 United States	2016-03-27
Christie Clancy	Beverly Hills	California	90210 United States	2016-03-28
Erica Smith	San Jose	California	95112 United States	2016-03-28
jim edwards	Bakersfield	California	93304 United States	2016-03-30
huma aslam	Mountain View	California	94043 United States	2016-03-30
Daniel Rose			800 Australia	2016-03-30
Alecia Conrad	Los Angeles	California	90004 United States	2016-03-30
Kenneth T.	Burlingame	California	94010 United States	2016-03-30
Yvonne Neyland	New Orleans	Louisiana	70116 United States	2016-03-30
Dama Foege	Naples	Florida	34110 United States	2016-03-31
Elizabeth Steele	Victorville	California	92392 United States	2016-04-01
catrina York	Reno	Nevada	89502 United States	2016-04-01
Karen Padavan	Wilkes Barre	Pennsylvania	18702 United States	2016-04-01
Cindy Calkins	Descanso	California	91916 United States	2016-04-01
P. Lopez	Chula Vista	California	91910 United States	2016-04-01
Douglas Waldroop	Landover	Maryland	20785 United States	2016-04-01
Jessica Brown	Portland	Maine	4101 United States	2016-04-02
djuan collins	New York	New York	10453 United States	2016-04-03
Barbara Rodak	valley grove	West Virginia	26060 United States	2016-04-03
Susan Estilow	West Des Moines	Iowa	50265 United States	2016-04-03
mia madsen	Cygnat Tasmania		7109 Australia	2016-04-03
tabatha potts	reynoldsburg	Ohio	43068 United States	2016-04-04
Amy Rosier	Holley	New York	14470 United States	2016-04-04
jessica O'Donnell	Wildomar	California	92595 United States	2016-04-05
Sharon Proudfoot	Carrollton	Ohio	44615 United States	2016-04-06
nancy friesner	Lima	Ohio	45801 United States	2016-04-06
Gail Schuler	Melbourne	Florida	32901-4469 United States	2016-04-06
andrew bonney			3324 Australia	2016-04-07
Mike Daskaluk	Las Vegas	Nevada	89183 United States	2016-04-07
Alvin Schlangen	Freeport	Minnesota	56331 United States	2016-04-07
Dorene Schutz	Wilkes-Barre	Pennsylvania	18702 United States	2016-04-09
Jenny James	Penn Valley	California	95946 United States	2016-04-10
Courtney Amos	Reva	Virginia	22735 United States	2016-04-11
sylvia king	Salt Lake City	Utah	84104 United States	2016-04-11
James Riley	Bar Harbor	Maine	4609 United States	2016-04-12
Sandra Robinson	Troy	Maine	4987 United States	2016-04-12
Phillipa Cunningham	Auckland		New Zealand	2016-04-13
Charles Norris	Denver	North Carolina	28037 United States	2016-04-14
eddy anthony	Barwell		le9 8nl United Kingdom	2016-04-14
Paige Bluhdorn	South Salem	New York	10590 United States	2016-04-15
Alma Love	Richland	Washington	99354 United States	2016-04-15
Doreen Ellis	Mount Kisco	New York	10549 United States	2016-04-15
Lori Callies	vista	California	92084 United States	2016-04-15
Natalie Winston	Hopewell Junction	New York	12533 United States	2016-04-16
Dwin Dykema	Rockford	Michigan	49525 United States	2016-04-16
Mark E. Smith	San Diego	California	92101 United States	2016-04-16
Christine Wesner	Dorchester	Massachusetts	2124 United States	2016-04-17
Dawn Beckman	Inglewood	California	90302 United States	2016-04-17

Nancy Jones	Scottsdale	Arizona	85255	United States	2016-04-17
Kathryn Acosta	Eatonville	Washington	98328	United States	2016-04-18
Terrie Henderson	Ozark	Alabama	36360	United States	2016-04-19
Scott O'Keefe	Dublin			Ireland	2016-04-20
Jennifer Parkhurst	Minneapolis	Minnesota	55406	United States	2016-04-21
Eric Carlson	Onoway		TOE 1V0	Canada	2016-04-21
Darren Wall	Poulsbo	Washington	98370	United States	2016-04-21
Anthony Fontana	New York	New York	10012	United States	2016-04-21
Efi Goder-Marsh	Harlow		CM17 9ES	United Kingdom	2016-04-22
Maura Tiso	San Diego	California	92105	United States	2016-04-23
Donna Dionne	Haverhill	Massachusetts	1830	United States	2016-04-25
michelle anderson	Davenport	Iowa	52804	United States	2016-04-27
Craig Browning	Alameda	California	94501	United States	2016-04-28
chris Heuckeroth	Chico	California	95973	United States	2016-04-29
Thomas Curtis	Lincoln	California	95648	United States	2016-04-29
Nancy Abler	Largo	Florida	33773	United States	2016-04-29
Caryl Tippens	Burbank	California	91506	United States	2016-04-29
George Watson	Kennesaw	Georgia	30152	United States	2016-04-29
Robin Rouleau	Austin	Texas	78744	United States	2016-04-30
< 8 B @ 8 9 ! 5 @ > 2	= 5 ? @ > ? 5 B @ > 2 A :			Ukraine	2016-04-30
Meeche Miller	Mpls	Minnesota	55433	United States	2016-05-01
MELISSA PAGAN	BROOKLYN	New York	11235	United States	2016-05-01
Phillipa Cunningham	Auckland		600	New Zealand	2016-05-01
R Dratsch	Fairport	New York	14450	United States	2016-05-02
Cynthia Leach	Raleigh	North Carolina	27615	United States	2016-05-02
Michael Wautier	Tucson	Arizona	85719	United States	2016-05-02
David Lee	Columbia	Tennessee	38401	United States	2016-05-02
tina morse	los angeles	California	90077	United States	2016-05-02
Kim Peralta	Brooksville	Maine	4617	United States	2016-05-03
Brandon Lerda	Ashland	Oregon	97520	United States	2016-05-03
Pamela Hagedorn	Carroll	Iowa	51401	United States	2016-05-03
Christina Amdahl	Ankeny	Iowa	50023	United States	2016-05-03
James Gonzalez	Westfield	Massachusetts	1085	United States	2016-05-03
legal legal terrorism			510010	India	2016-05-04
Jerry Bierens	Milford	Michigan	48381	United States	2016-05-04
Dora Castro	Long Beach	California	90807	United States	2016-05-05
sanjay peters	Brooklyn	New York	11230	United States	2016-05-05
john nicksic	san diego	California	92109	United States	2016-05-05
Kenneth Mortimer	Dunedin	Florida	34698	United States	2016-05-05
Josh O'Bryant	Arlington	Washington	98223	United States	2016-05-08
crystal dahl	shady cove	Oregon	97539	United States	2016-05-08
michael katz	White Plains	New York	10605	United States	2016-05-09
David James	CANANDAIGUA	New York	14424	United States	2016-05-11
Donna Routt	Abilene	Texas	79606	United States	2016-05-12
Mary Oney	Cleveland	Ohio	44102	United States	2016-05-12
Paula Parfitt	Fort Frances		P9A 3M2	Canada	2016-05-12
Keith Hill	Halewood		L26 0UA	United Kingdom	2016-05-13
Nadia Palomino	Tampa	Florida	33612	United States	2016-05-13
Patricia leiper	Vidor	Texas	77662	United States	2016-05-14
Erin Eddy	Miami	Florida	33178	United States	2016-05-14
Marcia Boisclair	Hopkins	Minnesota	55305	United States	2016-05-15

Kerin Kay	Sacramento	California	95819 United States	2016-05-15
Elijah Lanfon	Owensboro	Kentucky	42303 United States	2016-05-16
wendi bear	Long Beach	California	90815 United States	2016-05-17
Emily horn	Sumter	South Carolina	29150 United States	2016-05-17
Nikki Fuller	Stockton	California	95213 United States	2016-05-17
Oliver Lawrence	Wheaton	Illinois	60189 United States	2016-05-18
Joseph Cowart	Austin	Texas	78747 United States	2016-05-19
Gregory Parsons	Santa Barbara	California	93105 United States	2016-05-19
Gene Michael	East Meadow	New York	11554 United States	2016-05-19
Chris Kelly	Brandon	Mississippi	39047 United States	2016-05-22
Alison Whitehurst	Worcestershire	B61,7DQ	United Kingdom	2016-05-23
F Keller	Mount Laurel	New Jersey	8054 United States	2016-05-23
Elizabeth Richter	Canton	Connecticut	6019 United States	2016-05-24
Michael Stogner	San Carlos	California	94070 United States	2016-05-24
charles braga	Portsmouth	Rhode Island	2871 United States	2016-05-25
Latahra Smith	Kansas City	Missouri	64133 United States	2016-05-26
Stephen Zimmermann	Phnom Penh		Cambodia	2016-05-28
Holly Kilroy	Blackpool	FY13RF	United Kingdom	2016-05-28
ed chiburis	new london	Connecticut	6320 United States	2016-05-28
Nicola Herring	Olympia	Washington	98512 United States	2016-05-28
Carrie Blake	Bonney Lake	Washington	98391 United States	2016-05-28
denise derusha	Ash Fork		83620 United States	2016-05-29
Fatima Katumbusi	Rancho Cordova	California	95741 United States	2016-05-31
Gloria H	Coral Springs	Florida	33067 United States	2016-05-31
Jamieson Cotton-Garcia	Worcester	Massachusetts	1606 United States	2016-05-31
Gwendolyn Mugnier-Langumier	ballincollig		Ireland	2016-06-01
Kathleen Kavanagh	New York	New York	10036 United States	2016-06-03
Jessica Whitaker	Stokes	North Carolina	27884 United States	2016-06-03
Shawn Casey	Sacramento	California	95832 United States	2016-06-05
Karen Neaton			4053 Australia	2016-06-05
Roberta Fitzpatrick	San Jose	California	95128 United States	2016-06-07
MARIA DAZA BONACHELA	Granada		18012 Spain	2016-06-08
Dane Hendricksen	SEATTLE	Washington	98117 United States	2016-06-10
Theresa Garvey	Conway	New Hampshire	3818 United States	2016-06-11
Rory Dubois	Seattle	Washington	98199 United States	2016-06-13
Shelley Metchant	Benbrook	Texas	77126 United States	2016-06-13
Michelle Gazave	San Jose	California	95123 United States	2016-06-13
Jodi Mueller	Fort Worth	Texas	76177 United States	2016-06-14
Ryan Howard	Pittsburgh	Pennsylvania	15232 United States	2016-06-15
Erik Soderman	Orange	California	92867 United States	2016-06-18
John Corsbie	Indialantic	Florida	32903 United States	2016-06-18
Prakash Manoharan	West Sacramento	California	95691 United States	2016-06-19
Mike Ahn	San Bernardino	California	92407 United States	2016-06-19
Wendi Scovell	Pinetop	Arizona	85937 United States	2016-06-19
Catherine Rondinelli	West Springfield	Massachusetts	1089 United States	2016-06-19
Michael Chormicle	Cathedral City	California	92234 United States	2016-06-19
Danita Williams	Harlingen	Texas	78552 United States	2016-06-19
Dominick Tomasello	Chicago	Illinois	Chicago	2016-06-20
joe blansit	Ringgold	Georgia	30736 United States	2016-06-20
Mastora Hashimi	Lathrop	California	95330 United States	2016-06-20
sherry Best	Oneonta	Alabama	35121 United States	2016-06-21

John McGrath	Minneapolis	Minnesota	55405	United States	2016-06-21
Holden Mahorn	London		SL12 7AR	United Kingdom	2016-06-21
Mary Nicolaou	Minneapolis	Minnesota	55444	United States	2016-06-23
Mary Walsh			5694TE	Netherlands	2016-06-23
Guy Babineau	Toronto		M4C 4X2	Canada	2016-06-23
Allene Robinson	Clemmons	North Carolina	27012	United States	2016-06-24
Suzanne Hunter	Nipomo	California	93444	United States	2016-06-24
carmelita sandr	Irwin	Pennsylvania	15642	United States	2016-06-25
Mary Hixson	east ridge	Tennessee	37412	United States	2016-06-25
Melissa Ridge	Hanover	Pennsylvania	17331	United States	2016-06-26
Steve Ridge	Hanover	Pennsylvania	17331	United States	2016-06-26
Concerned Citizen	Revere	Massachusetts	2151	United States	2016-06-26
Rajwinder Singh	Pleasanton	California	94588	United States	2016-06-26
Mary Beckham	Roswell	New Mexico	88201	United States	2016-06-27
Joe Winters	Cave Junction	Oregon	97523	United States	2016-06-27
Jura Avizienis	Portland	Maine	4102	United States	2016-06-28
Perry Thomas	Bloomfield	Indiana	47424	United States	2016-06-28
susan ghaemi			2027	Australia	2016-06-28
Ralph Chastain	Seymour	Indiana	47274	United States	2016-06-29
David Ludy	Philadelphia	Pennsylvania	19148	United States	2016-06-29
Patrick Horvath	Alameda	California	94501	United States	2016-06-30
Anne Field	Chico	California	95926	United States	2016-07-01
Flor Maria Ponce	Orlando	Florida	32837	United States	2016-07-02
Kare Crofton	City		V1V 1V1	Canada	2016-07-02
Vicki McC	Acme		TOM 0A0	Canada	2016-07-04
Natalie Glines	Bullhead City	Arizona	86442	United States	2016-07-06
ciara preston	san carlos	California	94077	United States	2016-07-06
Mary Barnes	Easton	Pennsylvania	18045	United States	2016-07-07
Paris Carr	Wilmington	Delaware	19809	United States	2016-07-08
Anthony Shafer	saint johnsbury	Vermont	5819	United States	2016-07-09
Nnamdi Obi	Abuja			Nigeria	2016-07-09
Rachel Wynter	Solvang	California	93463	United States	2016-07-09
jennifer young	Graham	Washington	98338	United States	2016-07-10
Laura Kratzer	Lake Zurich	Illinois	60047	United States	2016-07-12
Terry Wurr	Tipton	Iowa	52772	United States	2016-07-12
Ian Shulman	Miami Beach	Florida	33154	United States	2016-07-13
Nicole Alvarado	Houston	Texas	77041	United States	2016-07-14
Ahmed Ahmed	Torrance	California	90505	United States	2016-07-14
Teresa Brewer	Crane	Missouri	65633	United States	2016-07-16
John Sullivan	Garden City	New York	11531	United States	2016-07-16
Mickey jean Gresham	San Jose	California	95113	United States	2016-07-16
alejandra lemes boniilla	Maldonado			Uruguay	2016-07-16
Andrew Wash	Colorado Springs	Colorado	80910	United States	2016-07-17
Angel Diaz	Lowell	Massachusetts	1852	United States	2016-07-17
Gareth Turner	Lancashire		Bb7	United Kingdom	2016-07-19
Holly Wood	Trona	California	93562	United States	2016-07-19
Heather Hanna	Trona	California	93562	United States	2016-07-19
Kathleen Johnson	Portland	Maine	4103	United States	2016-07-20
J L	Los Angeles	California	90077	United States	2016-07-20
Jessy Melowicz	Rancho Palos Verdes	California	90275	United States	2016-07-20
rob casey souza	Merced	California	95348	United States	2016-07-21

STEPHAN SCHURMANN	Destin	Florida	32541 United States	2016-07-21
Bernadette Glenn	OXNARD	California	93030 United States	2016-07-21
Candance Camper	Wpb	Florida	33411 United States	2016-07-21
Rebecca Roberts	Naval Air Station Point Mugu	California	93042 United States	2016-07-21
Charles Overy	Missoula	Montana	59806 United States	2016-07-21
Brandy Bonner	Emerson	Georgia	30137 United States	2016-07-22
John Smith	Chicago	Illinois	60640 United States	2016-07-24
Theresa P Giffen	Sarasota	Florida	34236 United States	2016-07-24
dayra olivares	Pittsburg	California	94565 United States	2016-07-24
Tanya Kennedy	Orange	California	92866 United States	2016-07-25
Jessica Wilson	Sarasota	Florida	34232 United States	2016-07-25
WALTER DAVIS	Lake Elsinore	California	92532 United States	2016-07-26
Francis Dean	Kitchener		N2H2x1 Canada	2016-07-27
Diana Guest	Carmichael	California	95608 United States	2016-07-27
H. R. Torres	Lakeshore	Florida	33854 United States	2016-07-27
Christopher Brown	Roanoke	Virginia	24017 United States	2016-07-27
Joyce Jeffries	Bedford	Indiana	47421 United States	2016-07-28
frances ward	Lincoln		DN185dp United Kingdom	2016-07-28
David Dickinson	Las Cruces	New Mexico	88001 United States	2016-07-29
Deborah Martinez	San Antonio	Texas	78238 United States	2016-07-29
Heather Tanner	Huntsville	Alabama	35803 United States	2016-07-30
Elaine Mayo	Luling	Louisiana	70070 United States	2016-07-30
lauren himme	Warrington		wa5 1ta United Kingdom	2016-07-31
Jennifer Redwine	Richmond	California	94804 United States	2016-08-01
kris karkanen	Concord	California	94518 United States	2016-08-01
Ian Cranmer	Scottsdale	Arizona	85254 United States	2016-08-01
Kym Crocker	Jackson	Tennessee	38305 United States	2016-08-02
Sid Hingerty	Stafford		ST17 9RS United Kingdom	2016-08-02
Jessica Gevedon	Clinton Township	Michigan	48035 United States	2016-08-05
Lester Vanzant	Chicago	Illinois	60630 United States	2016-08-05
Toby Jones	New york	New York	10027 United States	2016-08-07
Kimberly Price	Moncks Corner	South Carolina	29461 United States	2016-08-08
Patrice Jackson	Grand Rapids	Michigan	49546 United States	2016-08-08
Robin Adair	Glendale	California	91202 United States	2016-08-08
Andrew Staszak			6163 Australia	2016-08-09
Ivan Vasquez	San Antonio	Texas	78201 United States	2016-08-09
Connie Ross	Chardon	Ohio	44024 United States	2016-08-09
Denise Bedio	Berwick	Pennsylvania	18603 United States	2016-08-10
Jim Wilson	Cameron	Missouri	64429 United States	2016-08-11
Nathan Morton	Penngrove	California	94951 United States	2016-08-11
Thomas Hix	Sunnyvale	California	94087 United States	2016-08-11
ROCHELLE BROOKS	Syracuse	New York	13208 United States	2016-08-11
Mark Hexum	Dunlap	Illinois	61525 United States	2016-08-12
Ryan Weeks	Tempe	Arizona	85282 United States	2016-08-12
Theodore Palmer	Germansntown	Maryland	20874 United States	2016-08-13
Daniel Benson	Cranbourne		3977 Australia	2016-08-13
Andrea Silas	Altamonte Springs	Florida	32714 United States	2016-08-15
Robin Johnson	Thousand Oaks	California	91360 United States	2016-08-15
Roger Rattie	Woonsocket	Rhode Island	2895 United States	2016-08-15
George Garcia	Lancaster	California	93535 United States	2016-08-16
Jim Hall	Monticello	Arkansas	71655 United States	2016-08-16

Cha King	fishkill	New York	12524	United States	2016-08-17
Karen Brannan	Prarieville	Louisiana	70769	United States	2016-08-18
Michael Williams	Compton	California	90220	United States	2016-08-18
Dalia Schlegel	Chesapeake Beach	Maryland	20732	United States	2016-08-18
K Butler	Tacoma	Washington	98444	United States	2016-08-18
philip Frederick Shupe	Kamloops		V2H 1J4	Canada	2016-08-20
Mamie Johnson	Baltimore	Maryland	21215	United States	2016-08-20
Billie Jo Rivera	Mesa	Arizona	85213	United States	2016-08-20
Robert Garcia	Mesa	Arizona	85213	United States	2016-08-20
Jan Murphy	Onancock	Virginia	23417	United States	2016-08-21
Carol Streeter	Buena Vista	Georgia	31803	United States	2016-08-22
Jodi Mueller	North Richland Hills	Texas	76182	United States	2016-08-22
diane miller	Burlington		n2p1k3	Canada	2016-08-23
Mechthild Nagel	Cortland	New York	13045	United States	2016-08-23
BRUCE OSHABEN	Ann Arbor	Michigan	48103-2630	United States	2016-08-24
Ronald Pierce	Squaw Valley	California	93675	United States	2016-08-24
Anita Shelton	Hedgesville	West Virginia	25427	United States	2016-08-24
carlaw Farrell	Fort Worth	Texas	76126	United States	2016-08-25
Dan Petry	Lompoc	California	93436	United States	2016-08-25
Denica De Foy	Prunedale	California	93907	United States	2016-08-25
Robin Spence	Kokomo	Indiana	46901	United States	2016-08-26
Felicita Luna	Florida	Florida	34606	United States	2016-08-27
Heather Rowe	Limington	Maine	4049	United States	2016-08-27
Christopher Julian	Ararat	Virginia	24053	United States	2016-08-28
Frances Amato-Banfield	Highland	New York	12528	United States	2016-08-30
Nicole Lalonde	cORNWALL		K6H 5R5	Canada	2016-08-30
Dianna Johnson	Poughkeepsie	New York	12601	United States	2016-08-30
Andrea Olivier	Rochester	New York	14620	United States	2016-08-30
Kjirsti Gomez	Santa Rosa	California	95407	United States	2016-08-30
Don Holloway	Knoxville	Tennessee	37921	United States	2016-08-31
Don Saxton	Alhambra	California	91801	United States	2016-08-31
Cruz Gomez	Whittier	California	90601	United States	2016-09-01
Kate Gutierrez	Poughkeepsie	New York	12601	United States	2016-09-01
Sylvia Hahn	San Diego	California	92129	United States	2016-09-02
Nicole Tozier	Queen Creek	Arizona	85142	United States	2016-09-03
sandra Phillips	Irving	Texas	75061	United States	2016-09-05
Yuri Dubrovsky			2261	Australia	2016-09-05
Brett Humpert	Wichita Falls	Texas	76310-2501	United States	2016-09-06
stephanie rand	MCALLEN	Texas	78504	United States	2016-09-07
Cheryl McElveen	Madison	Alabama	35758	United States	2016-09-08
Jose Rodriguez	Providence	Rhode Island	2904	United States	2016-09-10
Brenda Cobian	Reno	Nevada	89502	United States	2016-09-11
Julie Law	Isle of Palms	South Carolina	29464	United States	2016-09-11
Tricia Kelsey	North Highlands	California	95660	United States	2016-09-12
leslie gage	Erie	Kansas	66733	United States	2016-09-14
Nate Bowers	Clearwater	Florida	33755	United States	2016-09-14
Steven McGinley	Cary	Illinois	60013-1887	United States	2016-09-15
Arlene Simons	Garden Valley	California	95633	United States	2016-09-15
Renee Tulliani	Scottsdale	Arizona	85255	United States	2016-09-15
Ann Mallaby	Edinburgh		EH12 6PG	United Kingdom	2016-09-17
Traci Rose	Riverside	California	92505	United States	2016-09-18

charity stetson	greenfield	Maine	4418 United States	2016-09-20
Kevin Potempa	Scottsdale	Arizona	85259 United States	2016-09-20
Francisco Alvarez	Fresno	California	93706 United States	2016-09-20
Jeffrey Creech	Burlington	New Jersey	8016 United States	2016-09-21
Joe Manzo	Peabody	Massachusetts	1960 United States	2016-09-21
Troy Barnes	Federal Way	Washington	98023 United States	2016-09-21
Jennah Wheeler	Ceres	California	95307 United States	2016-09-22
Rita Lawrence	Overland Park	Kansas	66212 United States	2016-09-22
Chris Garrou	Portland	Maine	4102 United States	2016-09-23
Freda Johnson	Mount Airy	North Carolina	27030 United States	2016-09-23
Rev. Honey Buhlman	Flint	Michigan	48503 United States	2016-09-25
Mark Lord	Ashburton		Tq137qs United Kingdom	2016-09-26
SHAR SCHWINDT	BROOKSVILLE	Florida	34601 United States	2016-09-26
Stacy Brewer	Northfield	Ohio	44067 United States	2016-09-26
Kadee Callister	Idaho Falls	Idaho	83404 United States	2016-09-26
anna lambert	doniphan	Missouri	63935 United States	2016-09-27
Nancy Augustine	Garden Grove	California	92840 United States	2016-09-27
Randy Hamilton	Pleasanton	California	94588 United States	2016-09-29
Ken Slagle	Cambridge	Minnesota	55008 United States	2016-10-02
Jomo Eastman	London		SW18 2JW United Kingdom	2016-10-02
R Dratsch	Fairport	New York	14450 United States	2016-10-03
Terry Filson	Placerville	California	95667 United States	2016-10-03
Mary Jane Pederson	Costa Mesa	California	92627 United States	2016-10-03
Trisha Holmeide	Olympia	Washington	98513 United States	2016-10-04
Louann Bowersox	Wonder Lake	Illinois	60097 United States	2016-10-04
Abby Greer	Lexington	Kentucky	40503 United States	2016-10-04
Jane Gallagher	Brookfield	Connecticut	6804 United States	2016-10-04
Charlise Lyons	Dallas	Texas	75219 United States	2016-10-05
Luanne Fleming	Aurora	Colorado	80017 United States	2016-10-05
mac Trench	Dillon	Colorado	80435 United States	2016-10-05
Cindy Skon	Tampa	Florida	33612 United States	2016-10-05
Richard knisely	Moneta	Virginia	24121 United States	2016-10-06
Douglas Mills	Eagle	Colorado	81631 United States	2016-10-06
Marney Poland-Morris	Budgewoi		870 Australia	2016-10-06
Nancy Ahrens	Lake Geneva	Wisconsin	53147 United States	2016-10-07
Leslie B	Shak	Minnesota	55379 United States	2016-10-07
Tracy Worden	Wasilla	Alaska	99654 United States	2016-10-07
Dawn Parent	Carver	Massachusetts	2330 United States	2016-10-08
jules williams	Missouri City	Texas	77459 United States	2016-10-08
Sarah O'Rourke	Santa Monica	California	90404 United States	2016-10-08
Judy Walls	Rio Vista	Texas	76093 United States	2016-10-08
Helen Disberry	Tiverton		Ex16 4Pt United Kingdom	2016-10-08
Kate Scott	Dereel		3352 Australia	2016-10-10
Deb Metcalf			2257 Australia	2016-10-11
Kathryn Irby	Gulfport	Mississippi	39507 United States	2016-10-11
Ryszard-Richard Kaczmarczyk	Wasaga Beach		L9Z2W9 Canada	2016-10-13
Ryszard Kaczmarczyk	Toronto		M6J2M5 Canada	2016-10-13
Annelise Barron	Palo Alto	California	94301 United States	2016-10-13
Cynthia Warwick	Broomfield	Colorado	80021 United States	2016-10-13
Renée Andrews	Kansas City	Kansas	66104 United States	2016-10-16
Carl Garnham	Sheffield		S2 4SU United Kingdom	2016-10-18

Beatrice Dennis	Wilkes-Barre	Pennsylvania	18706	United States	2016-10-18
Bryan Egelhoff	Seattle	Washington	98133	United States	2016-10-18
Bill Bracha	Lewistown	Montana	59457	United States	2016-10-19
Wilda Bezet	Bogue Chitto	Mississippi	39629	United States	2016-10-20
Anna Grubb	keeseville	New York	12944	United States	2016-10-20
Billie Borosh	Sterling	Virginia	20164	United States	2016-10-20
David Johnson	Derry	New Hampshire	3038	United States	2016-10-20
Duane Linn	Stevens Point	Wisconsin	54481	United States	2016-10-21
John Moore	Mayer	Arizona	86333	United States	2016-10-21
Johnny newell	Chicago	Illinois	60640	United States	2016-10-21
Heather Jordan	Laguna Niguel	California	92677	United States	2016-10-22
KATHRINE LESTER	SALINAS	California	93906	United States	2016-10-22
Yvonne Perkins	Providence Village	Texas	76227	United States	2016-10-23
Artur Terabelian	Las Vegas	Nevada	89131	United States	2016-10-24
Denise Futhey	Mankato	Minnesota	56001	United States	2016-10-25
Carol Lott	Ravenna	Ohio	44266	United States	2016-10-25
marcus hug	Council Bluffs	Iowa	51501	United States	2016-10-26
Jimmy Ayala	Circleville	New York	10919	United States	2016-10-26
kim hillstrom	Tarpon Springs	Florida	34689	United States	2016-10-27
disgusted truly	Alamo	California	94507	United States	2016-10-28
Lydia Hubbell	Antioch	Tennessee	37013	United States	2016-10-28
Mary Le Compte	Davis	California	95616	United States	2016-10-28
Erika Munoz	Riverside	California	92503	United States	2016-10-30
Loretta Lee	Barwell	LE9 8LJ		United Kingdom	2016-10-30
Allyson Saad	San Antonio	Texas	78258	United States	2016-10-30
William Matheson	Stockton	California	95219	United States	2016-10-30
toby johnson			3126	Australia	2016-11-01
p walsh			3950	Australia	2016-11-01
Nathaniel Rudd	TWENTYNINE PALMS	California	92277	United States	2016-11-02
Trena Thompson	sarnia	N7S 4t6		Canada	2016-11-03
Marina Boyd	Los Angeles	California	90064	United States	2016-11-03
william headley	spartanburg	South Carolina	29301	United States	2016-11-04
Issis Arias	New Orleans,	Louisiana	70115	United States	2016-11-05
Janet Adkins	Hartland	Michigan	48353	United States	2016-11-05
Norma Gilbert	Dawson	Alabama	35963	United States	2016-11-06
Jennifer Skrocki	Nevada City	California	95959	United States	2016-11-06
cindy sutton	belton	South Carolina	29627	United States	2016-11-06
Gilbert Martinez	Reading		19606	United States	2016-11-07
Heyam Farrell	Southgate	Michigan	48195	United States	2016-11-08
lisa taylor	Pomona	California	91768	United States	2016-11-09
Renee Harrington	Brookeland	Texas	75931	United States	2016-11-10
Joshua Ensor	Omaha	Nebraska	68105	United States	2016-11-10
Sherlivia Thomas-Murchison	Brooklyn	New York	11216	United States	2016-11-11
Sid Pawar	Arlington	Virginia	22204	United States	2016-11-13
Debra Ashby	Queen Creek	Arizona	85142	United States	2016-11-13
David Romportl	St Louis Park	Minnesota	55426	United States	2016-11-13
Janet Pytynia	Kissimmee	Florida	34759	United States	2016-11-13
Kathy Moore	Reno	Nevada	89509	United States	2016-11-17
Mary Bagnaschi	Torrington	Connecticut	6790	United States	2016-11-17
Spencer McCall	San Luis Obispo	California	93405	United States	2016-11-19
Jarrett Smith	Farmington	Michigan	48336	United States	2016-11-19

Jeremiah Mullens	El Dorado Hills	California	95762	United States	2016-11-20
Camille Yvonne	Aurora	Colorado	80010	United States	2016-11-20
Vanessa Barrientos	Kissimmee	Florida	34741	United States	2016-11-20
patricia wahr	Amsterdam	Noord-Holland	1093ca	Netherlands	2016-11-21
Zorabelle Casas		85711 Arizona	85711	United States	2016-11-21
Dulce Jimenez	Dinuba	California	93618	United States	2016-11-21
Candida Jimenez	Dinuba	California	93618	United States	2016-11-21
Boris Bermes	Citrus Springs	Florida	34434	United States	2016-11-22
dan cappello	lawrence	Pennsylvania	15055	United States	2016-11-22
Kelly L. Baurle	Gloversville	New York	12078	United States	2016-11-22
Amber Hungerford	East Hampton	Connecticut	6424	United States	2016-11-22
Sarah Petersen	Mound	Minnesota	55364	United States	2016-11-23
Cameron Couey	Petaluma	California	94954	United States	2016-11-24
Laura Hernandez	Delano	California	93215	United States	2016-11-24
Kimberly Wells	Whittier	California	90605	United States	2016-11-24
ANTHONY ANZALDUA	TEXAS CITY	Texas	77590	United States	2016-11-24
Evelyn Castro	REGO PARK	New York	11374	United States	2016-11-25