

**CAALA LIST SERVE RULES AND
JOINT PROSECUTION/CONFIDENTIALITY AGREEMENT**

This Joint Prosecution Confidentiality Agreement is made and entered into by and between the undersigned member attorney of the Consumer Attorneys Association of Los Angeles (MEMBER) and the Consumer Attorneys Association of Los Angeles (CAALA), acting on behalf of the Other MEMBER Attorneys: who further the purpose of CAALA to: 1. represent the interests of Consumers' trial lawyers and their clients; 2. improve the quality of legal representation by educating trial lawyers and other legal professionals; 3. encourage cooperation among members; 4. promote the highest standards of ethical conduct and integrity among trial lawyers; 5. protect the rights of injured victims; 6. promote the public good through concerted efforts to secure safe products, secure a safe workplace, promote a clean environment, eliminate discrimination, and promote quality health care; 7. improve the administration of justice; and 8. preserve the constitutional right to trial by jury. MEMBER and Other CAALA MEMBER Attorneys desire to work together in a cooperative effort to assist each other and their clients in achieving a common interest, namely, to properly prepare and fairly resolve individual claims involving common issues.

WHEREAS, CAALA maintains one or more LIST SERVE which are electronic mailing lists among CAALA members described above and any archive of said exchanges whether stored in electronic, printed, or any other format. Each CAALA LIST SERVE was organized and is operated for the purpose of providing litigation support to CAALA MEMBERS handling similar claims in a context in which MEMBERS may develop and share work-product and confidential information without compromising the entitlement to work-product protection or confidential nature of the information, and;

WHEREAS, the undersigned MEMBER and each other MEMBER has a compelling need to obtain access to a collaborative mechanism in the representation of his or her clients in order to fairly and adequately prepare his or her clients' individual claim and to achieve a just resolution of his or her clients' claim;

WHEREAS, CAALA offers its members six LIST SERVES with specific purposes. CAALA-WORKPRODUCT is strictly restricted to postings with substantive work-product content, i.e. pure law topics. CAALA-NEWLAWYER, CAALA-LIFE, CAALA-WOMEN, CAALA-LEGALSTAFF allow MEMBERS to share ideas, experiences, opinions and information in a less structured, collaborative environment; and CAALA-POL allows members to express opinions about politics as related to the practice of law.

CAALA-WORKPRODUCT LIST SERVE PURPOSE

The sole purpose of the CAALA-WORKPRODUCT List Serve is for CAALA Attorney Members to confidentially exchange important work-product information and advice with each other, relating to: trial strategy, references and background of experts, judges, defense attorneys, defendants, arbitrators, and mediators; case evaluation information; recent developments in the law; court rules; pleadings; tactics; attorney referrals, legal research, legal questions and other attorney work-product information.

CAALA-LIFE LIST SERVE PURPOSE

The purpose of the CAALA-LIFE List Serve is for CAALA Attorney Members to confidentially exchange experiences, ideas and information related to their legal practice or the business of law that may not be defined as work-product. Examples include: congratulatory messages, questions and comments relating to products and services, employment opportunities, office space rentals, and messages about individual experiences related to the practice of law.

CAALA-POL LIST SERVE PURPOSE

The purpose of the CAALA-POL List Serve is for CAALA Attorney Members to confidentially exchange messages that are a civil exchange of information, ideas and opinions regarding politics (local, state, national or international) that reasonably relate to the practice of law.

CAALA-NEWLAWYER LIST SERVE PURPOSE

The purpose of the CAALA-NEWLAWYER List Serve is for Attorney members of CAALA who have been admitted to the practice of law for less than 10 years to confidentially communicate and exchange with each other information, ideas, advice, guidance, etc. as related to the practice of law.

CAALA-WOMEN LIST SERVE PURPOSE

The purpose of the CAALA-WOMEN List Serve is for female members of CAALA (attorneys, law students, legal staff and affiliate vendors) to confidentially share resources, ideas and concerns that affect women in the legal industry.

CAALA-LEGALSTAFF LIST SERVE PURPOSE

The purpose of the CAALA-LEGALSTAFF List Serve is for CAALA Legal Staff members to confidentially communicate and exchange with each other questions, experiences and ideas related to their roles within the legal industry.

NOW, in consideration of the mutual promises, undertakings and obligations provided for herein, the parties hereto agree as follows:

1. **LIST SERVE DEFINED**: The phrase LIST SERVE includes and information exchanged among CAALA MEMBERS and any archive of said exchanges, whether stored in electronic, printed, or any other format. This includes, but is not limited to storage at Trialsmith.com.
2. **QUALIFICATIONS FOR PARTICIPATION**
 - a. **REPRESENTATION OF NO CONFLICT**: The Undersigned MEMBER represents that he/she is not involved in any business, professional or other relationship that would require the sharing of information from a CAALA LIST SERVE with persons who do not qualify for participation both in CAALA and CAALA LIST SERVES, [e.g., partners representing interests opposed to consumers (such as insureds), or others with whom the MEMBER has a fiduciary relationship], and will not share any LIST SERVE information with any such persons. MEMBER agrees that his/her obligation to CAALA on these restrictions takes priority over any alleged competing obligations to partners, clients, or any other person.
 - b. **NOTICE OF NON-ELIGIBILITY**: The undersigned MEMBER agrees to notify the Executive Director of CAALA in writing if at any time he/she is: 1) no longer eligible to be a CAALA member; 2) no longer eligible to be a CAALA-WORKPRODUCT, CAALA-LIFE, CAALA-POL, CAALA-NEWLAWYER, CAALA-WOMEN or CAALA-LEGALSTAFF member; or 3) no longer able to affirm compliance with this Agreement and the rules contained herein. MEMBER also agrees that he/she will at that time immediately cease all further use of or access to any CAALA LIST SERVE to which they no longer qualify until subsequently re-qualified and re-approved for access.
 - c. **NOTICE OF ADVERSE CONSUMER INTEREST**: The undersigned MEMBER agrees to notify the Executive Director of CAALA in writing if at any time he/she accepts a litigation matter representing an interest adverse to a consumer; providing the general nature of the matter, the name of the client, the name of the adverse party, and the name of the consumer's attorney along with the case name with the name of the court in the case. This information is also to be provided when signing this agreement.
 - d. **REPRESENTATION ADVERSE TO ANOTHER MEMBER**: In the event that a CAALA LIST SERVE MEMBER is or becomes engaged in a claim or lawsuit representing a party adverse to a consumer's interest, the MEMBER must immediately determine if opposing counsel is a CAALA LIST SERVE MEMBER. If opposing counsel is a CAALA LIST SERVE MEMBER, then the MEMBERS must agree in writing either: (1) not to discuss the matter on a CAALA LIST SERVE during the pendency of the claim or lawsuit; or (2) that the MEMBER opposing the consumer's interest will withdraw from the CAALA-WORKPRODUCT LIST SERVE and not access any CAALA-WORKPRODUCT archive including the TRIALSMITH database for CAALA-WORKPRODUCT during the pendency of the claim or lawsuit (the MEMBER opposing the consumer interest can continue to participate in all other CAALA LIST SERVES). A copy of the signed written agreement shall be provided to CAALA. The List Serve Committee shall have complete authority and discretion to review any decision between opposing MEMBERS, and to resolve any dispute between opposing MEMBERS regarding CAALA LIST SERVE access during the pendency of the relevant claim or action. Whatever agreement or decision is reached,

the MEMBERS agree that the confidentiality, work-product and joint prosecution nature of all posts remains full force and effect as set forth in this agreement.

3. **RULES:** The following Rules constitute binding rules of use of the LIST SERVE.
- a. **QUALIFICATION FOR PARTICIPATION:** CAALA LIST SERVES are limited to attorney members of CAALA who have properly executed this CAALA LIST SERVE Rules and Joint Prosecution/Confidentiality Agreement. By joining and/or participating in a CAALA LIST SERVE you are certifying that you are a member in good standing of the State Bar of California engaged in the practice of law as a profession, that you and your firm primarily represent plaintiffs and do not defend on an ongoing basis any insurance company(ies), manufacturer(s), governmental entity(ies), common carrier(s), corporation(s), public utility(ies) or other organization in personal injury, wrongful death, workers' compensation, employment or other consumer-related litigation. Persons who represent an insurance company against any consumer are prohibited from participating on the CAALA-WORKPRODUCT List Serve, except in subrogation cases where they agree in writing to not communicate any matter from the List Serve to anyone associated with the insurance company. You must immediately notify CAALA's Executive Director (who is currently Stuart Zanville) in writing if you no longer meet these criteria and must not use the LIST SERVE.
 - b. **PROHIBITED CONDUCT:** Offensive, obscene, racist, sexist, inflammatory, libelous, threatening, abusive, harassing, pornographic, privacy invading, and/or hateful language is prohibited. Any personal attack on another MEMBER in a message is prohibited.
 - c. **OFF-TOPIC POSTINGS:** Any posting that is without substantive attorney work product content or is unrelated to the work of consumer attorneys is not permitted on the CAALA-WORKPRODUCT LIST SERVE.
 - d. **SIGNATURE ON MESSAGES:** MEMBERS must include his or her name, telephone number, and email address within each LIST SERVE message or reply thereto.
 - e. **SHARING FILES:** MEMBERS agree that any documents posted on any CAALA LIST SERVE may be uploaded to the member-only CAALA Document Bank maintained at CAALA.org.
 - f. **THANK YOU POSTS:** A MEMBER who wishes to thank someone for a reply, shall send the response by a direct message to the other MEMBER's email or posted on the CAALA-LIFE LIST SERVE.
 - g. **ME-TOO POSTS:** If someone has offered a document or file and you wish to request a copy (also known as a "me too" response), then the request should be done by a direct message to the other MEMBER's email and not posted to any CAALA LIST SERVE.
 - h. **CONGRATULATION POSTS:** Messages which offer only congratulations should only be sent privately by direct email and are prohibited on the CAALA-WORKPRODUCT LIST SERVE. Questions and informational comments which contain or seek to elicit work product about a verdict or settlement are permitted.
 - i. **PROMOTIONAL POSTINGS:** Advertisements, solicitations, promotions or announcements of meetings, educational programs or goods or services are prohibited on all List Serves without the expressed written approval of CAALA.
 - j. **SOLICITATION OF BUSINESS:** Use of any CAALA List Serve to solicit business (other than a law practice) by an owner or agent of a company that provides products or services to attorneys is prohibited. This includes display of Company advertisements or logos, promotion of the company, discussion of the Company and its product or service, or the contacting of a List Serve member who has posted about an interest in any particular product or service.

- k. REPRESENTATION OF PROPER USE: The Undersigned MEMBER agrees that access and/or contribution to a CAALA LIST SERVE is assistance in a cooperative effort to further the interest of a claim or litigation on behalf of a consumer, and/or to promote the common interest of minimizing cost, maximizing judicial efficiency and assuring the just and speedy resolution of an Undersigned MEMBER's consumer client's individual claim.
- l. USE RESTRICTION: The Undersigned MEMBER is not permitted to access a CAALA LIST SERVE or otherwise use CAALA LIST SERVE information for the purpose of assisting anyone outside of CAALA. To use LIST SERVE information to assist someone outside of CAALA, the MEMBER must contact the author directly and obtain the information directly, not through the LIST SERVE. MEMBER is only permitted to access the LIST SERVE and use LIST SERVE information for claims and cases on behalf of a consumer client. Any access of the LIST SERVE that results in the unauthorized dissemination of LIST SERVE information is wrongful and prohibited.

4. CONFIDENTIAL COMMUNICATIONS

- a. CONFIDENTIALITY AGREEMENT: The Undersigned MEMBER agrees to maintain the confidential status of all information acquired through a CAALA LIST SERVE, (including but not limited to the contents of material contained in or selected from any CAALA LIST SERVE archive).
- b. LIMIT ON DISSEMINATION: The Undersigned MEMBER is not permitted to forward, copy or otherwise disseminate (in printed copy, electronic copy or orally) the information (including the author, subject or content) contained in a CAALA LIST SERVE email or attachment to anyone outside of the CAALA LIST SERVE (excluding the member's own staff), without prior written permission from the author. Members are specifically prohibited from communicating any information on the List Serve to any insurance company, manufacturer, governmental entity, transportation company, public utility, or persons associated with them, even if those persons or entities are a client of the member.

5. PROTECTION OF CONFIDENTIAL COMMUNICATIONS:

- a. EFFORTS TO PROTECT CONFIDENTIAL COMMUNICATIONS: The Undersigned MEMBER agrees to cooperate with CAALA and its efforts to protect CAALA LIST SERVE information. Member shall take any and all actions CAALA deems necessary and appropriate to preserve both the work-product status and confidentiality of all emails, information and attachments shared on the LIST SERVES, which includes both CAALA enforcement efforts and legal action.
- b. RESPONSE TO DISCOVERY: Any time that a MEMBER is notified that anyone seeks discovery of CAALA LIST SERVE information (whether or not the requestor specifically names CAALA or a CAALA LIST SERVE), the MEMBER is obligated to: (1) immediately notify CAALA's Executive Director, who is currently Stuart Zanville, and at the discretion of CAALA, the MEMBER may be required to return any such CAALA information deemed confidential by this organization; and (2) object and seek a protective order preventing discovery of the information.
- c. RESPONSE TO MOTION TO COMPEL: In the event that a MEMBER is subject to any motion seeking to compel disclosure of CAALA LIST SERVE confidential information, the MEMBER must immediately move to seal the records and seek a protective order to: (1) preclude anyone from disseminating the data to anyone (attorneys or non-attorneys) outside the confines of the subject case; (2) restrict the use of these materials to the subject case; and (3) require the return of the original and any copies of these materials at the completion of the case.
- d. IRREPARABLE DAMAGE IF NOT SEALED: MEMBER agrees and stipulates that: I) overriding work product and joint prosecution interests exist that overcome any right of public access to CAALA LIST SERVE confidential information; ii) the overriding interests support sealing the records; iii) a substantial probability exists that the overriding interests will be prejudiced if the record is not sealed; iv) the

proposed sealing is narrowly tailored; and v) no less restrictive means exist to achieve the overriding interest.

- e. **PROTECTING CONFIDENTIALITY UPON BREACH:** In the event a MEMBER fails to comply with or violates any provision set forth above, the MEMBER:
 - i. consents (should CAALA deem appropriate) to the issuance of a protective order, restraining order and/or injunction against MEMBER, to protect the confidential information and/or work-product information on the CAALA LIST SERVE on the grounds that CAALA and/or its other MEMBERS would suffer imminent irreparable harm and lack an adequate legal remedy absent the injunctive relief;
 - ii. will indemnify CAALA and/or TRIALSMITH for any attorneys' fees, costs or expenses incurred by CAALA and/or TRIALSMITH to protect the confidentiality of any information and/or work-product information on the LIST SERVE where the need for indemnity arises from that MEMBER'S knowing, willful, or deliberate breach of this agreement;
- f. **NO AUTHORITY TO WAIVE PRIVILEGE:** To the extent that the Undersigned MEMBER intentionally or unintentionally discloses, uses or disseminates information in violation of this Agreement or otherwise attempts to waive the confidentiality of any CAALA LIST SERVE communication, (including but not limited to entitlement to protection under the work-product doctrine), such waiver shall not extend to Other MEMBERS or to CAALA acting on Behalf of Other MEMBERS.

6. INDEMNITY AND HOLD HARMLESS:

- a. The Undersigned MEMBER agrees to accept full personal responsibility (and to defend, indemnify and hold CAALA and TRIALSMITH harmless) for any actions performed or messages sent using his or her e-mail address and/or password, including any copyright infringement or any other legal actions which may be brought against CAALA as a result of information posted by the author;
- b. As an attorney and MEMBER, you agree to analyze and evaluate the legal implications of each posting you make.
- c. CAALA is not responsible for the consequences of any posting, including breaches or losses of confidentiality. CAALA cannot and does not act as a guarantor of such confidentiality; each MEMBER must act to preserve confidentiality.

7. RIGHT TO ENFORCE AGREEMENT ON MEMBER'S BEHALF: The Undersigned MEMBER authorizes and designates CAALA to act on his or her behalf in his or her capacity as an "Other Member Attorney" of CAALA and the CAALA LIST SERVE for the purpose of entering into and enforcing the mutual obligations of this Agreement.

8. SANCTIONS FOR VIOLATION OF AGREEMENT: MEMBER agrees that as a Member of the State Bar of California, CAALA, and the CAALA LIST SERVE he/she is obligated to protect the attorney client, work-product, and confidential nature of CAALA LIST SERVE communications. Breach of that obligation is a violation of applicable state and federal laws, and will subject MEMBER to criminal penalties, civil penalties, State Bar of California Penalties, and CAALA sanctions.

- a. **CRIMINAL PENALTIES:** MEMBER stipulates and acknowledges that violation of this agreement and unauthorized dissemination of LIST SERVE content constitutes a violation of California and Federal criminal law including, but not limited to California Penal Code section 502 and the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and 2701-2709, which will subject MEMBER to criminal action and penalties.

- b. **CIVIL PENALTIES:** MEMBER stipulates and acknowledges that violation of this agreement will cause irreparable harm to CAALA. Every MEMBER has a duty to notify the CAALA Executive Director of any known or reasonably suspected violation of this agreement by anyone. In addition to the indemnification provisions contained above, because of the difficulty in measuring or ascertaining actual damages which would result from a breach of this agreement, each MEMBER agrees that \$25,000 represents a reasonable sum as liquidated damages for violation of this agreement and unauthorized dissemination of LIST SERVE content.
 - c. **STATE BAR OF CALIFORNIA PENALTIES:** MEMBER stipulates and acknowledges that violation of this agreement and unauthorized dissemination of LIST SERVE content constitutes unprofessional conduct which violates the California Rules of Professional Conduct subjecting MEMBER to California State Bar Discipline.
 - d. **CAALA SANCTIONS**
 - i. **TEMPORARY SUSPENSION FOR VIOLATION:** If the CAALA Executive Director, in his or her unlimited discretion, determines that a MEMBER has failed to comply with or has violated any provision set forth above, the MEMBER consents that the MEMBER shall be immediately and without warning, suspended from the CAALA LIST SERVE for a period of time as determined appropriate by the Executive Director, but in no event to exceed the date of the second scheduled meeting of the Board of Governors.
 - ii. **REVIEW OF SUSPENSION:** If the CAALA Executive Director has determined that a MEMBER has failed to comply with or has violated any provision set forth above, the Executive Committee shall review that determination at the next meeting of the Executive Committee. The Executive Committee shall have unlimited discretion to determine whether a CAALA LIST SERVE MEMBER's suspension should be rescinded, should be extended, or whether to add additional sanctions. The MEMBER has a right to petition the Executive Committee and the BOG for review of any sanctions which shall be decided by a majority vote.
9. **NO DUTY OF CARE:** MEMBERS posting to any CAALA LIST SERVE assume no responsibility for the reliance upon information posted. Information posted is for discussion purposes only and each MEMBER is solely responsible for verifying applicable laws and interpretation of those laws. Posting of information on a LIST SERVE does not create a co-counsel relationship. CAALA and TrialSmith assume no responsibility for any damages resulting from reliance on LIST SERVE content.
10. **CONTINUING OBLIGATION:** ALL MEMBERS are bound by the Terms of this Agreement throughout the life of their membership in CAALA and the CAALA LIST SERVES. Termination of either membership does not relieve the MEMBER of the obligations described herein, whether such membership is terminated by the MEMBER or by action of CAALA.
11. **NON-WAIVER:** Any instance of not enforcing any clause of this Agreement shall not be deemed a waiver.
12. **HEADINGS:** Headings are for convenience only and shall not be used to interpret this Agreement.
13. **CHOICE OF LAW:** This Agreement is executed in and intended to be performed in the State of California, and the laws of that state (other than as to choice of laws) shall govern its interpretation and effect. Any action to enforce this agreement shall be filed in the California Superior Court for the State of California, Los Angeles County, Central District.
14. **SEVERABILITY:** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.