

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

Estate of THRESIAMMA THOTTAM,
Deceased.

B196933

(Los Angeles County
Super. Ct. No. BP090593)

ELIZABETH THOTTAM et al.,

Petitioners and Respondents,

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

v.

PETER THOTTAM,

Objector and Appellant.

THE COURT:*

It is ordered that the opinion filed August 13, 2008, be modified as follows:

1. On page 10, at the end of the second full paragraph, add as footnote 2 the following footnote.

²*Fair v. Bakhtiari, supra*, 40 Cal.4th 189 does not require a different result. It addresses the requirement for admissibility under section 1123, subdivision (b) that the agreement provide “that it is enforceable or binding or words to that effect.” The mediation

document at issue in *Fair* was a handwritten single-page memorandum, captioned “Settlement Terms” which provided: “Any and all disputes subject to JAMS [(Judicial Arbitration and Mediation Services)] arbitration rules.” The court explained that “the writing must make clear that it reflects an agreement and is not simply a memorandum of terms for inclusion in a future agreement. The writing need not be in finished form to be admissible under section 1123(b), but it must be signed by the parties and include a direct statement to the effect that it is enforceable and binding.” (*Id.* at p. 192.) The Supreme Court held that section 1123(b) “leaves room for various formulations. However, arbitration clauses, forum selection clauses, choice of law provisions, terms contemplating remedies for breach, and similar commonly employed enforcement provisions typically negotiated in settlement discussions do not qualify an agreement for admission under section 1123(b).” (*Id.* at p. 200, fn. omitted.) Our case involves admissibility under subdivision (c), which does not contain the same requirement.

There is no change in the judgment.

Respondent’s petition for rehearing is denied.