



Shirish Gupta

Case Manager

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Shirish Gupta is available to conduct cases virtually. JAMS is equipped to provide virtual ADR services on a variety of online platforms, including Zoom, Microsoft Teams, WebEx, and more.

Biography

Shirish Gupta is an award-winning neutral known for his legal acumen and economic prowess, which makes him particularly adept at diving into complex financial/technical disputes, including IP, securities and accounting, and class actions. Shirish is sought out by Silicon Valley startups, as well as Fortune 500 companies. In 2014, *The Recorder* conducted an extensive survey of Bay Area attorneys and named Shirish the Best Independent Mediator.

Shirish is an active, hands-on mediator who works with the parties until the matter is fully resolved. For example, he once mediated a global settlement of all 36 pending and contemplated actions.

Prior to joining JAMS, Shirish practiced law with Mayer Brown, Howard Rice and Flashpoint Law. His practice focused on the areas he specializes in as a neutral – commercial, securities, class actions, IP, founder disputes and employment.

In 2013, Shirish's mediation skills were recognized when he was recruited to mediate Superstorm Sandy insurance coverage claims in New York. At the peak, he was mediating and resolving 4 claims per day. In 2016-2018, Shirish recognized the ongoing harm caused by Sandy and helped resolve homeowner flood insurance claims in New York and New Jersey, taking the time to learn the homeowner's concerns and helping explain the intricacies of FEMA's flood insurance policies.

Shirish serves as a Lecturer at UC Berkeley Law School and an Adjunct Professor at UC Hastings. He is sought out by law firms and in-house departments for mediation and negotiation trainings.

Shirish has been a leader in the majority and diverse bar associations. Shirish served as Co-Chair of the California State Bar Council of Sections, President of the South Asian Bar of Northern California and Alternate Regional Governor of National Asian Pacific American Bar Association. He currently serves in the Intellectual Property Section of Asian Pacific American Bar Association of Silicon Valley.

When not mediating, Shirish can usually be found on a soccer pitch refereeing.

ADR Experience and Qualifications

- Active ADR practice since 2010
- *Recorder's* Best Independent Mediator for 2014
- Lecturer at UC Berkeley School of Law
- Adjunct Professor of Law at UC Hastings

Representative Matters

Mr. Gupta has mediated or arbitrated disputes over the following issues:

- **Banking**
 - Identity theft victim claiming that the issuer illegally did a hard pull to verify a fraudulent credit application
 - Debtor claiming that collection agency illegally disclosed collection efforts to a third party
 - Whether CRAs and creditors adequately and timely reported the notices of bankruptcy
 - Homeowner claiming that he was not given adequate notice of foreclosure sale
 - Multiple homeowners claiming that they were given mortgages they could not afford and should not have qualified for
 - Multiple homeowners claiming that the banks were not processing their HAMP properly
- **Business/Commercial**
 - **Tech**
 - Contract dispute between Fortune 50 companies over mutual obligations under a Master SLA and numerous amendments
 - SAAS provider non-payment claim against cryptocurrency client
 - University alleging that software developer failed to meet milestones and deliver working software
 - International dispute between European software developer and US platform over software license payments and automatic renewals
 - Dispute between a software developer and a Fortune 100 virtual cloud provider alleging breach of software licensing agreement
 - Outside sales company claiming failure to pay over \$300k in commissions for sales of startup company's software
 - Contract dispute between software developer/IT services provider and hardware company claiming \$1.5M breach of payment terms
 - Asset purchaser claiming engineering staffing company misrepresented the value of its service contracts
 - Dispute between a smartphone company and an IT services provider claiming nonperformance.
 - Payment dispute between a Russian software developer and a Bay Area startup

- Dispute between a retail PoS integrator and Southern California retail chain over payment and performance
- Dispute between a mobile app developer and a startup customer alleging \$400k in unpaid development fees with customer counter-claiming for a refund due to allegedly defective apps
- Dispute between EMEA-based reseller and a US corporation alleging non-payment of \$300k in reseller fees
- Dispute between co-founders and software engineers over founders shares
- \$500k online advertising commission dispute between website and advertiser
- **Non-Tech**
 - Omnibus mediation of 43 filed + four yet to be filed cases involving in a series of multi-party Fair Credit Reporting Act disputes
 - Distribution and royalty dispute between US smart-toy manufacturer and European distributor
 - International dispute over whether an aluminum brick machine is defective
 - Brazilian purchaser of a medical device attempting to rescind a non-refundable multi-million dollar purchase
 - Dispute between large Indian grocery wholesaler and an Indian retail chain claiming \$450k non-payment
 - Royalty dispute between educator and publisher
 - Shareholder dispute involving a cash-poor closely held corporation with illiquid assets
 - Dispute between third-party litigation funder and the attorney over the adequacy and value of legal services
 - Dispute between the star of a series of dog training instructional videos and the production company over IP rights
 - Breach of patent license and manufacturing agreement dispute between a China-based patent-owner and a white label manufacturer in North America
 - Dispute between US reseller and a China-based supplier over alleged defective products
 - Dispute under the Fair Credit Reporting Act brought by an employee against one of the largest background check providers alleging rejection of employment based on false information in the credit report
 - Dispute between software engineering staffing agencies over commissions and enforcement of non-compete provisions
 - Payment dispute between incubator and startup tenant
 - Cases involving California Unfair Competition Law (B&P Code 17200) claims between competitors and suppliers
 - Arbitration of attorneys' fees portion of case post-settlement of a wage & hour action
- **Civil Rights**
 - Parent of elementary school student complaining over use of yoga, meditation and new age music containing religious lyrics in classroom
 - Latina women alleging that a police officer racially profiled and planted evidence on her
 - Veteran who lost his eye when tased by a police officer
 - Undergraduate claiming that University's failure to provide notetaking accommodations caused student to get incomplete and thus lose financial aid
 - Undergraduate claiming that University's failure to record and transcribe lectures to accommodate student's auditory disability caused student to fail classes
 - Visually impaired customer contending that national retailer's website was inaccessible
 - Access in retail stores (changing stalls, checkout counters, bathrooms, aisles, entryways, parking lots), public parks, and county jails
 - Claim that hotel bathroom and parking lot were inaccessible
 - Personal injuries suffered by disabled inmate while incarcerated
 - Claim of inaccessibility against the private landlord of a historically-registered building that housed a federal court because it lacked a wheelchair ramp
 - Wheelchair bound parolee claiming that state-licensed facility was not programmatically or architecturally complaint
 - Municipalities/counties sued for non-inaccessible facilities/amenities
 - Apportionment of liability between landlord and tenant for access violations

- **Construction**

- Retirement community claiming that carpeting was defective and installed improperly
- Landlord claiming defective construction of a commercial laundromat
- Landlord claiming that general contractor abandoned commercial renovation project with contractor claiming performance was excused because landlord breached its payment obligations
- Claim that licensed contractor rented out its license to an out-of-state contractor

- **Employment**

- Age discrimination and defamation claims brought by a terminated older software engineer against a Silicon Valley company
- Age discrimination claim by janitor denied promotion at a startup
- Age discrimination claim against growing startup with a young workforce and young customers
- Pre-suit age discrimination claim by deli manager against a prominent supermarket chain
- Pre-suit age discrimination claim by cashier against a local supermarket
- Trade secret misappropriation claim against sales reps who joined competitor
- Wrongful termination claim by unionized employee who was terminated for making nooses at work but then reinstated by an arbitrator
- Wrongful termination claim by teacher who complained about the curriculum for her special needs students
- Misclassification claims by drivers for app based transportation network company
- Wage and overtime claims by roofer who was paid in part in cash
- Wage claims by terminated CEO of a startup medical device company suffering a cash crunch
- Wrongful termination claim for refusing to smoke marijuana (pre-legalization) with co-workers
- Wrongful termination claim by workers who were allegedly required to remove mold from food so it could be sold to the public
- PAGA claims and putative meal/rest break class arbitration involving national transportation and logistics company
- PAGA claims by clerical assistant, temporary office worker and front desk coordinator against a national staffing agency and its local franchisee
- PAGA claim by counter sales clerk against national tool rental company
- Wrongful termination claim by neonatologist who claimed that she was terminated for complaining of supervisor's alleged anti-religious bias
- Wrongful termination dispute between Master craftsman and an artisanal furniture company
- Wrongful termination action by employee terminated for making racial slurs at work
- Wage & hour dispute brought by employees of a startup against their dissolved employer and its alleged successor-in-interest
- Retaliation case involving a retail sales clerk alleging termination as retaliation for reporting wage/hour violations
- Dispute between employees and a retail startup over ownership interest
- Fair Credit Reporting Act (FCRA) case brought by prospective employee against employer for rescinding offer based on an alleged false credit report
- Wage & hour case involving a retail sales clerk claiming missed meal/rest breaks over a two month period
- Disability discrimination case over a hospital housekeeping supervisor seeking time off to recover from back injury
- Disability discrimination matter involving a public entity clerk and claims of nearly \$1M in emotional distress damages
- Wrongful termination dispute between a supermarket employee and a national chain
- HR recruiters claiming that they were not compensated for all meal/rest breaks missed
- Claims against a staffing agency for failure to pay missed meal/rest breaks
- Heavy equipment driver claiming that he was not paid a prevailing wage for the portion of time worked on a government contract
- Racial discrimination case between an Army Lieutenant and his superior officer
- Racial discrimination claim against a prominent doctor's group by a female African-American medical technician
- Unionized delivery driver alleging sexual harassment and disability discrimination
- Driver fired for gross insubordination for taking pictures on company property claiming retaliation

for opposing harassment

- Undocumented immigrant working as a dishwasher/cook claiming unpaid overtime, meal/rest breaks
- Pre-suit pregnancy discrimination claim alleging that a new mother was instructed to pump in a toilet stall
- Pre-suit sexual orientation discrimination claim by a gay assistant harbormaster
- Restaurant workers alleging that they were not given meal/rest breaks
- Sous chef claiming that he was misclassified as exempt and should have qualified for overtime
- Delivery drivers and stock-room workers alleging failure to pay overtime or give meal/rest breaks
- Developmentally disabled dishwasher claiming he was wrongly terminated and inadequately supervised
- Female corrections officers claiming that they were being subjected to gender harassment and pornography at work
- Minority police officers claiming that the police chief refused to promote or terminated them based on their race
- Claim that a former employer is refusing to honor the terms of a severance agreement
- Undocumented immigrant working as a nursing home orderly claiming failure to pay minimum wage and overtime or provide meal/rest breaks
- Government agency claiming that former senior officer converted over \$100k of equipment for personal use

• **Founder Disputes**

- Buyout of minority shareholder of a brewery
- Buyout of minority shareholder of a political advertising company
- Buyout of minority shareholder of virtual currency startup
- Buyout of 50% owner in real estate
- Buyout of co-founder's shares in startup aimed at reducing food waste
- Failure of solar panel startup co-founder to respond to a capital call
- Failure of paint startup limited partner to respond to a capital call
- Shareholder dispute at an employee-owned closely held company

• **Health Care**

- Wrongful termination and retaliation claims from in-house medical biller against the employer medical health care group
- Employment claim between Bay Area medical group and of its back office health care staff, when it was outsourcing its administrative roles
- Meal and rest break claim by hospital security guard
- Failure to pay overtime to office manager of health care company
- Workplace safety claim by caregiver sexually assaulted by special needs adult patient
- Race and national origin harassment and discrimination claims by hospice facility office manager
- Physical and mental disability/failure to engage in interactive process claim against employer health care provider
- Disability discrimination/failure to engage in interactive process claim by licensed vocational nurse against medical center
- Marital status/single mom harassment claim against employer health care provider
- Wrongful termination and retaliation for whistleblowing claims against hospice
- Retaliation and wrongful termination claims by terminated technician who reported assault to hospital's HR department
- Family medical leave act (FMLA) claim against health care provider
- Disability discrimination claim by terminated physician against medical group
- Sexual harassment and sexual assault claims against hospital for supervisor's actions
- Breach of trademark assignment claim by seller against cannabis consulting company
- Dispute over put options in a cannabis merger
- Wrongful termination and religious discrimination claim by terminated physician against county hospital
- Gender discrimination and disability discrimination claims by physician terminated by medical group
- Whistleblower retaliation claim regarding dosing by terminated physician
- Racial discrimination claim by nurse against employer doctor's group
- Former CEO of medical device startup claiming unpaid wages
- Retaliation and wrongful termination claim by security guard against the VA

- Medical device patent infringement claims involving stents used by health care providers
 - Medical device patent infringement claims involving wearable wireless technologies for cardiac disease
 - Breach of contract claim by medical product development company against medical diagnostics technology company
 - Medical malpractice claims against county health systems and the VA
 - Wrongful death claim against regional medical center for death of mother soon after childbirth
 - Class action fair debt collection practices act (FDCPA) claim against a dental practice which used an auto dialer
- **Insurance Coverage**
 - Loss of use claim for a Boeing 777 struck and damaged by a catering truck while parked at the gate
 - Apportionment claim between insurers of a staffing company, property manager and facility over a worker's traumatic brain injury
 - Mass disaster property damage coverage claims (Superstorm Sandy)
 - Million dollar business interruption coverage claims for Manhattan law firms (Superstorm Sandy)
 - Business damage claims by supermarkets and retailers whose stores had been flooded and corroded by seawater
 - Disputes involving public entities that are both self-insured and part of government insurance pools
 - Whether excess coverage policy was adequately rescinded based on insured's alleged failure to disclose facts that led to a recall of its product
 - Whether the facts causing a food supplier's product to be contaminated with salmonella was a single occurrence
- **Intellectual Property**
 - **Copyright**
 - Copyright, trademark and design patent claims against paint sprayer distributor
 - Royalty dispute between musicians
 - Public broadcast of copyrighted boxing match without permission
 - Publisher claiming that the author of copyrighted work was selling an unauthorized new version of the work
 - Use of copyrighted videos/photos beyond the terms of the license
 - Display of copyrighted photos on a commercial website without a license
 - Claims that an imported textiles' design and patterns infringed a copyrighted design
 - Ex-co-founder alleging joint ownership of code that he had helped develop
 - **Trademark and False Advertising**
 - Estate of famous jazz musician contending that brewery was using the name and likeness outside the scope of the license
 - ACPA claim by Midwest company against alleged cybersquatter of a three letter .com mark
 - Consumer-facing security software company claiming that home security hardware and software service with nearly identical name infringed its mark
 - Dispute between Italian and American jewelry designs
 - National packaged food company alleging that a regional food provider with nearly identical name was infringing registered trademark
 - Mortgage finance companies with similar names
 - Use of famous person's name, image, and likeness in videos and on the web allegedly without permission
 - Use of a franchised gym's trademarks after the franchise agreement had allegedly been breached
 - Importation of footwear infringing trademarked design and marks
 - Cellphone cases/peripherals
 - **Patent**
 - HDD arm patent claim against Japanese manufacturer
 - DVD software patent claim by non-practicing entity against Fortune 500 OEM
 - Multiple actions brought by a Chapter 11 non-practicing entity against OEMs over Flash memory patents
 - Signal processing method patent by widely licensed non-practicing entity against OEM
 - USB interface hardware patent claim by non-practicing entity against multiple Fortune 500

- OEMs
 - Arterial stent patent claim by non-practicing entity against medical device maker
 - Semiconductor method patent claim by non-practicing entity
 - Network security method patents by non-practicing entity against network device manufacturer
 - Self-defense patent claim by non-practicing entity against cardiac monitoring device manufacturer
 - Salmon fishing flasher's design patent claim against competitor
 - Gift card security method patent claim against competitor
 - Shower fixture manufacturer asserting an assembly patent against its former customer
 - Cellphone case patent claim by non-practicing entity against case and peripherals distributor
 - Network security patent claim by non-practicing entity against mid-size company
 - Post-license sales of a product using a patented claim
 - Whether an upstream patent license covered a downstream OEM
- **Other**
 - Class action alleging TPCA and Rosenthal violations for using an autodialer to collect medical debt
- **Personal Injury**
 - Customer who tripped and fell over a clothing rack in a department store
 - Personal injuries suffered when a paraplegic's wheelchair tipped over on a public park trail that lacked a guardrail
 - Alleged sexual assault by taxi-cab driver against female paraplegic passenger
 - Complications from surgery resulting in permanent loss of bladder control
 - Death of young mother of three after delivery
- **Professional Liability**
 - Medical malpractice claims against county health systems and the VA
 - \$1.5M contingency fee award dispute between an attorney and client
 - \$150k contingency fee award dispute resulting from successful real estate action during the Great Recession
 - Dozens of attorney fee arbitrations and mediations
- **Real Estate and Foreclosure**
 - Downhill homeowner claiming that uphill property was improperly channeling its rainwater and causing mudslides
 - Condo seller allegedly failing to disclose thin-ness of the walls and lack of privacy from neighbors
 - Landlord complaining that commercial tenant abandoned a half-completed remodeling project during Great Recession
 - Homeowner association-member disputes over use of common space and payment of dues
 - Commercial landlord-tenant disputes
- **Warranty**
 - Claim that automobile navigation and entertainment system were defective and instructed the driver to drive into a lake

Representative Legal Experience

Prior to becoming a full-time neutral, Mr. Gupta handled the following representative matters:

- First chair construction defect and commercial landlord-tenant trial
- First chair employment arbitration concerning the vesting of stock options
- Represented a sexual harassment claimant before the DFEH
- Defended an employer in a matter before the Department of Industrial Relations
- Defended patent infringement cases involving tooth whitening, dental pouches and laminate flooring

- Defended a trademark infringement action involving the "DOSAs" mark
- Resolved, pre-litigation, a copyright claim over the use and public performance of a musical composition
- Defended several securities fraud and related derivative actions
- Filed consumer class actions against Apple (iPhone), Kashi (all natural), Naked Juice (all natural)
- Defended consumer class actions over car batteries, anti-virus software and PC optimization software
- Internal investigations which resulted in the resignation of the CFO and Chief Accounting Officer
- Founder disputes
- Supervising counsel for employment actions filed in New York and Massachusetts
- Breach of contract over website development and sales
- Dissolution of joint ventures
- Investor counsel on a Series A financing
- Advisor to entrepreneurs and pre-Series A companies
- Acquirer counsel on a corporate acquisition
- Negotiated several commercial leases

Honors, Memberships, and Professional Activities

Completed Virtual ADR training conducted by the JAMS Institute, the training arm of JAMS.

• Honors

- ALM Media and Martindale-Hubbell, Northern California Top Rated Lawyer, 2019
- Best Independent Mediator, *The Recorder*, 2014
- Northern California *Super Lawyer*, 2013-Present
- South Asian Bar Association of North America's Cornerstone Award, 2015
- Coach of the Year – Foster City AYSO, 2014
- Southern California's Top Rated Lawyers, 2012-2013
- *Super Lawyers* Bay Area Rising Star in ADR, 2010-2012
- National Asian Pacific American Bar Assoc.'s (NAPABA) Best Under 40 Award, 2007

• Memberships/Professional Activities

- State Bar of California: Council of Sections Co-Chair (2015-2016); Solo and Small Firm Section Chair (2013-2014)
- South Asian Bar Association of Northern California President, 2006-2008
- San Francisco Bay Area Intellectual Property Inn of Court Barrister, 2003-Present
- California Minority Corporate Counsel Program Member, 2009-Present
- National Asian Pacific American Bar Association, Alternate Regional Governor, 2008-2010
- American Association of Physicians of Indian Origin Ethics and Grievances Committee Advisor, 2010-2011
- South Asian Bar Association of North America: Board Member (2006-2007); National Convention Co-chair (2007: San Francisco)
- U.S. Courts of Appeals for the Ninth Circuit and the Federal Circuit
- U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California

• Authored Articles

- "Expedite your Settlement Using Bracketing," Law.com, January 13, 2017; "Mediations Need A Plan of Action," *Daily Journal*, October 16, 2015; "Common Negotiating Mistakes," Flashpoint Mediation, February 2015; "Common Attorney Fee Disputes & Solutions," Flashpoint Mediation, January 2015; "Crafting a Solid Attorney-Client Fee Agreement," Flashpoint Mediation, Jan 2015; and "Mediation Statements," Flashpoint Mediation, June 2014

• Speaking Engagements

- Northern District Practice Program: Mediation, Settlement Conference, and Case Management (2018: San Jose); PLI Negotiation Skills (2016-2019: San Francisco); Ten Ways to Win for Your Client at Mediation (2018: Oakland); Negotiating via Text (2018: San Francisco); Learning from Experience: Making Arbitration Work (2018: San Francisco); Effective Negotiation and Settlement Strategies (2015: San Francisco); Anatomy of an Arbitration (2015: San Diego); Ethics in Arbitration Agreements, Fee Agreements, Joint and Successive Representation (2015: San Mateo); Carden Academy Commencement Keynote Address (2014: San Jose); Arbitrating a FRAND License for a Standards Essential Patent (2014: Redwood City); To Post or Not: The Social Media Ethical Dilemma (2014: Oakland, Riverside); ADA and Accessibility Risk Management for Law Firms (2013: Long Beach); Thinking on Your Feet at a Mediation (2012: Long Beach, Philadelphia, Ventura); Mock Mediation: A Behind the Scenes Look at a Mediation (2011: Long Beach); NASABA

Idol - Interactive Workshop Focusing on Negotiation Strategies in Mediation (2010: Boston); New Initiatives in ADR in India (2006: Menlo Park); Mediation in Intellectual Property Matters in the U.S. (2005: New Delhi); Hot Topics in Trademark Law (2012: Monterey); Implications of Recent Patent Case Law (2012: San Jose)

- **ADR Profile**

- "The Next Generation of Neutrals," ADR Profile, *Bloomberg BNA*, August 13, 2016
- "Teaching Talent," ADR Profile, *Daily Journal*, July 8, 2016

Background and Education

- Principal, Flashpoint Mediation (San Mateo, Sacramento, and Irvine, CA), 2010-2015
- Principal, Flashpoint Law (San Mateo and Irvine, CA), 2008-2015
- Senior Litigation Associate, Mayer Brown (Palo Alto, CA), 2002-2008
- Litigation Associate, Howard Rice Nemerovski Canady Falk & Rabkin (now Arnold & Porter) (San Francisco, CA), 1999-2001
- J.D., University of Chicago Law School
- B.A., *magna cum laude*, Double Major: Economics and Legal Studies, UC Berkeley

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