

# Statutory Offer To Compromise Void Without Express Acceptance Provision

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***Mostafavi Law Group, APC v. Larry Rabineau, APC, et al.***, 2021 WL 803685 (March 3, 2021); Second Appellate District Court of Appeal, Division Four, Case No. B302344 (March 3, 2021).

California Code of Civil Procedure section 998 Offers to Compromise are an effective and widely-used settlement tool in litigation. The main objective of a Section 998 Offer “is to encourage settlement by providing a strong financial disincentive to a party – whether it be a plaintiff or a defendant – who fails to achieve a better result than the party could have achieved by accepting his or her opponent’s settlement offer.” *Bank of San Pedro v. Sup. Ct.*, 3 Cal.4th 797, 804 (1992). In the event an offeree rejects a Section 998 Offer and fails to achieve a better result at trial, Section 998 shifts certain costs to the offeree, including the offeror’s reasonable expert costs. This case answers whether acceptance of a Section 998 Offer, served without a required acceptance provision, gives rise to a valid judgment. It does not.

Plaintiff Amir Mostafavi (“Mostafavi”) and his law firm, Mostafavi Law Group (“MLG”), sued defendants Larry Rabineau (“Rabineau”) and Larry Rabineau, APC (“LR”; collectively, “Defendants”) for defamation, among other claims. Following an unsuccessful mediation, Defendants served a Section 998 Offer to MLG for \$25,001. The Offer, however, did not contain an acceptance provision.

MLG tried to accept the Offer. It responded to the Offer by handwriting its acceptance onto the Offer, and filed a Notice of Acceptance with the trial court. Rabineau initially told MLG that, prior to remitting payment, he would prepare a settlement agreement under which each party would bear their own attorneys’ fees and costs. In the meantime, the trial court entered judgment on the Offer in favor of MLG. Thereafter, the parties disputed the enforceability of the judgment.

Rabineau filed a motion to set aside the judgment on the basis that the Section 998 Offer was void in the absence of an acceptance provision. The court agreed and granted the motion.

On appeal, MLG argued that the judgment was valid because the Offer was unambiguous, and MLG accepted the Offer in writing. According to MLG, requiring an express acceptance provision in order to enforce an otherwise accepted 998 Offer would be inconsistent with the statute’s goal of

“encouraging settlement.” MLG also argued that prior case law did not control, because those cases did not decide whether a judgment following acceptance of a Section 998 offer, despite the absence of an express acceptance provision, was void.

*Puerta v. Torres* 195 Cal.App.4th 1267 (2011) and its progeny previously addressed the validity of a Section 998 Offer without an acceptance provision for purposes of triggering the statute’s cost-shifting provisions. *Puerta* held that Section 998(b) requires a statutory offer: (1) to be written; and (2) to contain a provision for acceptance. Thus, a Section 998 Offer lacking an acceptance provision is invalid, and an offeree’s failure to accept it does not trigger Section 998’s cost-shifting provisions. Applying *Puerta*’s reasoning, the Court of Appeal determined that, if the failure to accept an offer lacking an acceptance provision does not trigger Section 998(c)-(e)’s cost-shifting consequences, then acceptance of such a defective offer likewise should not give rise to an enforceable judgment.

The Court also disagreed with MLG’s contention that a rule requiring Section 998 Offers to include an acceptance provision defeats the statute’s goals of “eliminating uncertainty” and “encouraging settlement.” On the contrary, adopting a bright-line rule adds consistency and predictability to Section 998’s operation, thereby promoting settlement.

Finally, the Court rejected MLG’s arguments based in principles of contract and equity. First, contract principles should not apply where they conflict with the requirements of Section 998. Second, principles of equity did not support enforcement of the judgment. Although Rabineau made several drafting errors, including failing to include an acceptance provision and failing to direct the offer to both plaintiffs, the judgment should not be enforced simply because Rabineau, as the offeror, was responsible for those errors.

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