

Meehan v. Aguirre et al.

2026 DJDAR 8245

Where a plaintiff makes multiple valid and unrevoked section 998 offers, and their award is less favorable than their final offer, the last offer controls for purposes of determining any entitlement to section 998 benefits.

FACTS/PROCEDURE

In 2017, Plaintiff Margaret Meehan (“Plaintiff”) was riding her bicycle in the bike lane in Lakewood, California, when she collided with a semi-trailer operated by Jamie Aguirre and owned by Aguirre’s employer, R & Y. Plaintiff sued both Aguirre and R & Y (“Defendants”) for motor vehicle negligence, seeking damages related to the incident, including for an alleged traumatic brain injury.

During litigation, Plaintiff served four settlement offers pursuant to Code of Civil Procedure section 998 on Defendants. The first three section 998 offers were all for \$1,000,000, and made on August 26, 2021, March 4, 2022, and March 6, 2023. Defendants allowed all three offers to expire. Plaintiff’s fourth and final section 998 offer was made on April 27, 2023, for \$2,000,000. Defendants did not accept this offer either.

Following a six-week bench trial beginning in November 2023 in Los Angeles County Superior Court, the trial court found Defendants 85 percent negligent and Plaintiff 15 percent comparatively negligent. The trial court awarded Plaintiff \$1,250,000 in damages, which was reduced to \$1,062,500 after accounting for her 15 percent comparative negligence. After trial, Plaintiff filed a memorandum of costs, seeking expert witness costs and prejudgment interest from the date of her first section 998 offer. Defendants filed a motion to tax or strike costs, arguing that Plaintiff was not entitled to expert fees or prejudgment interest because her recovery did not exceed her final section 998 offer for \$2,000,000. The trial court agreed with Defendants and struck Plaintiff’s request for expert fees and prejudgment interest in its entirety, on the grounds that Plaintiff’s recovery did not exceed her final pretrial section 998 offer. Plaintiff timely appealed.

HOLDING/DISCUSSION

The California Court of Appeal for the Second Appellate District affirmed, holding that where a plaintiff makes multiple valid and unrevoked section 998 offers, and their award is less favorable than their final offer, the last offer controls for purposes of determining any entitlement to section 998 benefits.

Under Code of Civil Procedure section 998, a trial court may award a plaintiff their expert costs incurred after the date of their section 998 offer where the plaintiff satisfies section 998’s statutory requirements and the defendant fails to obtain a more favorable judgment at trial. The policy goal behind section 998 is to encourage settlement before trial by providing a strong financial disincentive to a party who fails to achieve a better result than it could have achieved had the party accepted the opposing party’s settlement offer. (*Madrigal v. Hyundai Motor America* (2025) 17 Cal.5th 592, 603.) Where the language of section 998 does not provide a definitive answer for a particular application of the statute’s terms, courts apply general contract law principles, which are generally controlling where the underlying policy of encouraging settlements is best promoted by such application. (*Martinez v. Brownco Construction Co.* (2013) 56 Cal.4th 1014, 1020.)

In its discussion of how California courts treat successive section 998 offers when not all offers are exceeded by the judgment-- a question, the Court noted, not answered by the plain language of the statute-- the Court recognized courts’ long-standing acceptance and application of the brightline “last offer rule.” Under the “last offer rule,” when a party makes successive unrevoked and unaccepted section 998 offers and not all offers

exceeded the judgment, the last offer is the only operative offer with respect to the statutory benefits and burdens provided under section 998. (*Martinez v. Brownco Construction Co.* (2013) 56 Cal.4th 1014, 1023.)

The Court discussed the Third Appellate District's opinion in *Wilson v. Wal-Mart Stores, Inc.* at length. There, the court considered whether a plaintiff was entitled to the benefits of section 998 where she made two offers that were not accepted by the defendant and she received a judgment at trial that exceeded her first offer but was less than her second. Although the plaintiff argued that she was entitled to reimbursement of expert costs under section 998 because her recovery exceeded her first offer, the court disagreed, reasoning that "the legislative purpose of section 998 is generally better served by a bright line rule in which the parties know that any judgment will be measured against a single valid statutory offer—i.e., the statutory offer most recently rejected—regardless of offers made earlier in the litigation." (*Wilson v. Wal-Mart Stores, Inc.* (1999) 72 Cal.App.4th 382, 391.)

In the case at bar, Plaintiff submitted multiple section 998 offers and none were accepted by Defendants. Plaintiff's final recovery exceeded her first three offers but did not exceed her final section 998 offer, which was double the first three. The Court recognized that the present circumstances were "precisely the scenario contemplated by the court in *Wilson*" when it reasoned that the "last offer rule would limit mischief and encourage settlement by avoiding a situation where a plaintiff might be encouraged to maintain a higher settlement demand on the eve of trial and refuse to settle a case that should otherwise be settled if the plaintiff finds comfort in the knowledge that, even if [she] receives an award less than [her] last demand, plaintiff might still enjoy the cost reimbursement benefits of section 998 so long as the award exceeded a lower demand made by the plaintiff sometime during the course of the litigation." (*Meehan v. Aguirre* (2026) DJDAR 8245, 8248.) Just as in *Wilson*, here, even on the eve of trial, Plaintiff refused to settle for less than \$2,000,000 but still sought reimbursement "as though she had been willing to settle for \$1,000,000." The Court noted, "Like the *Wilson* court, we are similarly reluctant to endorse such a fiction." (*Ibid.*)

Finding that as the present case fell "squarely within the facts presented by *Wilson*," the Court concluded there was no cause to deviate, compelling the same outcome. Therefore, the trial court properly applied the "last offer rule," which required Plaintiff's entitlement to section 998 benefits be considered with reference to her final \$2,000,000 offer. Plaintiff's total damages award plus her allowable costs did not exceed \$2,000,000 and Defendants therefore did not fail to obtain a more favorable judgment at trial. Thus, Plaintiff was not entitled to expert witness fees under section 998, subdivision (d).