Offers to Settle Case in California (§ 998 Offers)

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There may be some new considerations to take into account for a party that intends to make a California Code of Civil Procedure (CCP) § 998 offer to settle a case. The California Fourth District Court of Appeals held in *K.M. v. Grossmont Union High School District* that defendants' Section 998 offers to plaintiffs were invalid because the defendants failed to attach any settlement agreement or release agreement to such offers.[1]

CCP § 998, allows a plaintiff or a defendant to make a good faith financial offer in writing (and signed by counsel or the party) to settle with the other party no less than 10 days before a trial or arbitration takes place. Accepting a CCP § 998 offer allows parties in a lawsuit to reach an agreeable settlement before trial or arbitration would have taken place. Though a party has the option to reject a CCP § 998 offer, not accepting such an offer could result in paying the original offering party's costs after trial. Further, if a jury awards the winning party less than the other party had offered in their CCP § 998 offer, the winning party must pay the other party's costs. Therefore, when a CCP § 998 offer is made, it is essential that both parties understand what the offer means, and the requirements pursuant to CCP § 998 to ensure that the offer is valid and will be accepted by the court.

The Fourth District Court of Appeal's recent decision explains that if the offering party does not attach the settlement agreement and release agreement to the CCP § 998 offer, the court may determine that such offers are invalid. In *K.M. v. Grossmont Union High School District*, defendants in a sexual harassment lawsuit made CCP § 998 offers to the plaintiff victims. After the plaintiffs declined the offers, the parties went to trial and the jury awarded plaintiffs less than the amount the defendants had offered in the CCP § 998 offers. However, because the defendants required the plaintiffs to execute a settlement agreement and release agreement, based on the terms of their offers, but did not attach a written agreement or explain the terms in detail, the court held the offers were invalid. Accordingly, it is essential that any party making a CCP § 998 offer, attach a settlement and release agreement to the offer.

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[1] *K.M. v. Grossmont Union High Sch. Dist.*, 84 Cal. App. 5th 717, 300 Cal. Rptr. 3d 598 (2022), *review withdrawn* (Feb. 15, 2023).

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