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Appellate & Constitutional Law Update

August 6, 2026

California Supreme Court Holds That Section 998 Offers May Present Alternative Options For Settlement

Gorobets v. Jaguar Land Rover North America, LLC, S287946 –
Decided August 6, 2026

The California Supreme Court held today that a settlement offer under Code of Civil Procedure section 998 may present a choice between alternative sets of terms, so long as the offer clearly presents the alternatives and at least one alternative is sufficiently certain to permit an accurate valuation at the time the offer is made.

“There is nothing inherently uncertain about asking an offeree to evaluate alternative sets of settlement terms before deciding whether to accept either or neither of them.”

JUSTICE CORRIGAN, WRITING FOR THE COURT

Background:

Code of Civil Procedure section 998 encourages settlement by incentivizing parties to make reasonable offers and penalizing parties that reject them. If a plaintiff does not accept a defendant's valid settlement offer and then fails to obtain a more favorable judgment, it cannot recover its postoffer costs and must pay the defendant's postoffer costs. To be valid under section 998, the offer's terms must be sufficiently certain or specific.

Vadim Gorobets leased a Land Rover LR4 and later sued Land Rover, claiming the car was a lemon. Land Rover made a section 998 offer proposing two alternative sets of terms for the plaintiff to choose from: (1) a lump-sum payment of \$85,000 or (2) reimbursement of a few categories of costs. Gorobets did not elect either. The case proceeded to trial, and the jury awarded Gorobets \$76,000 in damages. The trial court ruled that Land Rover's section 998 offer was valid and thus awarded Land Rover postoffer costs. It denied Gorobets's bid for postoffer attorneys' fees, which had climbed to over half a million dollars.

The Court of Appeal affirmed. The court held that section 998 prohibits what the court characterized as two simultaneous offers, but it concluded that Gorobets had made only one valid offer—the lump-sum offer—because the category-based offer was insufficiently certain. The California Supreme Court then granted review.

Issue Presented:

Is a settlement offer under Code of Civil Procedure section 998 that contains two options inherently invalid, presumptively invalid, or invalid or partially or entirely valid depending on a separate and independent evaluation of each option?

Court's Holdings:

A section 998 offer that presents two alternative sets of terms and gives the offeree the right to choose between them can be valid so long as (1) the offer is structured so that it clearly presents the available alternatives and (2) at least one of the alternatives is sufficiently certain to permit an accurate valuation at the time the offer is made.

What It Means:

- The decision reinforces section 998's policy of encouraging early settlement through financial incentives. Permitting alternative-choice offers promotes this policy, the Court explained, by providing the parties with the flexibility to explore multiple avenues toward resolution.
- The decision lets offerors fashion alternative settlement terms that are best suited to the circumstances of their cases. It also means offerees must carefully evaluate each alternative before deciding whether to accept or reject the offer.
- The decision emphasizes that an offeror still bears the burden of showing the validity of its offer. An offer should clearly delineate the specific terms attributable to each choice, specify that the alternatives are mutually exclusive so that only one may be selected, and clearly communicate how the offeree's acceptance is to be conveyed. And to be valid, an offer's terms also must be independently capable of an accurate valuation, both at the time it is made and by the trial court in hindsight.

- Because cost-shifting is measured against the highest-value valid alternative, defendants making section 998 offers have a strong incentive to pair a complex alternative with a clean, easily valued lump sum. Plaintiffs, for their part, must measure any expected recovery against the most valuable valid alternative.

Gibson Dunn Appellate Honors

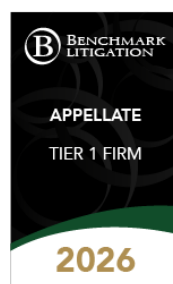


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The Court's opinion is available [here](#).

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