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## **The Tale of Conditional Acceptance**

When does acceptance of a Code of Civil Procedure section 998 offer not constitute acceptance? When the acceptance is conditional with additional terms, as set forth in *Siri v. Sutter Home Winery, Inc.* (2022) 82 Cal.App.5th 685.

Siri sued her employer for alleged wrongful termination. The employer served Siri with an offer to compromise pursuant to section 998, offering to pay Siri \$500,000 in exchange for a dismissal of all claims with prejudice. During the 30-day acceptance period, the parties debated whether Siri's potential acceptance of the \$500,000 offer would trigger the cost-shifting provisions of section 998, giving Siri a right to prejudgment interest pursuant to her expired section 998 offer previously served upon her employer for \$499,999.

Siri eventually served a "Notice of Conditional Acceptance of [Employer's] 998 Offer" which stated in part that her "conditional acceptance" of the \$500,000 offer was "[s]ubject to clarification by the court" on whether Siri was entitled to prejudgment interest (because the employer's offer was less favorable than Siri's prior offer to accept \$499,999.) In response, the employer filed a "Notice of Plaintiff's Acceptance of [Section] 998 Offer."

The employer then filed a motion pursuant to section 998 to enforce the purported settlement agreement, supported by a declaration from its lawyer describing her negotiations with Siri's lawyer. The trial court granted the motion, finding that Siri's service of her conditional acceptance and the employer's notice of acceptance created a binding settlement. The court held that despite its title, Siri's "conditional acceptance" was absolute.

The Court of Appeal reversed. Siri's "conditional acceptance" was an "acceptance" conditioned on the addition of new terms to the bargain proposed in the section 998 offer. Although those terms involved only the right to have the court consider certain arguments that the court ultimately rejected, they still were additional terms that made the conditional acceptance conditional. Siri's conditional acceptance did not create an agreement enforceable under section 998.

The court noted that the employer's offer was to pay \$500,000, and effectively required Siri to abandon any prejudgment interest request. Siri's conditional acceptance effectively rejected that element of the offer with a counteroffer that would enable her to request prejudgment interest. Treating Siri's conditional acceptance as a counteroffer that the employer accepted by agreeing to have the court rule on Siri's motion for an award of interest, the trial court might find that an

enforceable settlement agreement had been reached (utilizing procedures other than section 998). But that is an issue to be determined on remand.