

Supreme Court Case No. S200944  
2<sup>nd</sup> Appellate District Civil No. B226665

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

RAYMOND MARTINEZ AND GLORIA MARTINEZ,  
*Plaintiffs and Respondents,*

SUPREME COURT  
**FILED**

vs.

MAY 30 2012

BROWNCO CONSTRUCTION COMPANY, INC.,  
*Defendant, Appellant and Petitioner.*

Frederick K. Ohirich Clerk  
\_\_\_\_\_  
Deputy

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After a decision of the Court of Appeal for the State of California  
Second Appellate District, Division One  
Case Number B226665  
On Appeal from the Superior Court of the County of Los Angeles  
The Honorable Elihu Berle, Case No. KC050128

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**MOTION TO TAKE JUDICIAL NOTICE OF LEGISLATIVE RECORDS  
RELATED TO THE ENACTMENT AND AMENDMENT OF CODE OF  
CIVIL PROCEDURE §998 AND CIVIL CODE §3291; DECLARATION OF  
LAURA H. HUNTLEY AND EXHIBITS**

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Attorneys for Defendant, Respondent and Petitioner  
BROWNCO CONSTRUCTION COMPANY, INC.

Supreme Court Case No. S200944  
2<sup>nd</sup> Appellate District Civil No. B226665

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

RAYMOND AND GLORIA MARTINEZ,  
*Plaintiffs and Respondents,*

vs.

BROWNSCO CONSTRUCTION COMPANY, INC.,  
*Defendant, Appellant and Petitioner.*

**MOTION TO TAKE JUDICIAL NOTICE OF LEGISLATIVE  
RECORDS RELATED TO THE ENACTMENT AND AMENDMENT  
OF CODE OF CIVIL PROCEDURE §998 AND CIVIL CODE §3291;  
DECLARATION OF LAURA H. HUNTLEY AND EXHIBITS**

Pursuant to California Rules of Court (“CRC”) 8.252 and  
8.520(g), Defendant, Appellant and Petitioner, Brownsco Construction  
Company, Inc. (“Brownsco”) hereby moves for an Order taking Judicial  
Notice of the following California legislative records related to the  
enactment and amendment of Code of Civil Procedure §998 and Civil Code

§3291 attached hereto as Exhibits 1-4:

Exhibit 1: Senate Committee on Judiciary bill files: James S. Reid, State Bar, Analysis and Discussion re Assembly Bill No. 1814 (1971-1972 Regular Session) and Assembly Commission on Judiciary, Report on Assembly Bill No. 1814 (1971-1972 Reg. Sess.) June 21, 1971, p. 1

Exhibit 2: Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Senate Bill 1324 (1993-1994 Reg. Sess.) May 27, 1994, p.2, at  
<[http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb\\_1301-1350/sb\\_1324\\_cfa\\_940527\\_171615\\_sen\\_floor](http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_1301-1350/sb_1324_cfa_940527_171615_sen_floor)>

Exhibit 3: 4 Assembly Journal (1981-1982 Reg. Sess.) pp. 6662, 6849, 7481

Exhibit 4: Sen. Bill No. 203, approved by Governor, April 6, 1982, Senate Final History (1981-1982 Reg. Sess.) p. 147  
Brownco submits that judicial notice may be taken of the

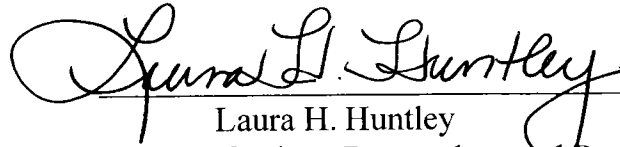
foregoing legislative records pursuant to Evidence Code §452(c) and (d), Evidence Code §459(a) and Government Code §9080.

This motion is based upon this notice, the attached Memorandum of Points and Authorities, the attached Declaration of Laura H. Huntley and Exhibits, all records and documents on file with this Court in this matter, all matters of which this Court may or shall take judicial

notice, and such oral argument as this Court may allow in connection with this matter.

Dated: May 29, 2012

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura H. Huntley". The signature is written in black ink and is positioned above a horizontal line.

Laura H. Huntley  
Counsel for Defendant, Respondent and Petitioner  
Brownco Construction Company, Inc.

**MEMORANDUM OF POINTS AND AUTHORITIES**

I. THIS COURT MAY TAKE JUDICIAL NOTICE OF THE  
LEGISLATIVE RECORDS RELATED TO THE  
ENACTMENT AND AMENDMENT OF CODE OF CIVIL  
PROCEDURE §998 AND CIVIL CODE §3291

Evidence Code §459(a) provides that, a reviewing court may take judicial notice of any matter specified in Evidence Code §452.

Evidence Code §452 provides in pertinent part:

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

...

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

Pursuant to Evidence Code §452(c) and (d), judicial notice may be taken of the attached records of (1) the Senate Committee on Judiciary related to Bill 1814 which was enacted in 1971 as Code of Civil Procedure Section 998, (2) the Senate Rules Committee related to Senate Bill 1324 which

amended Section 998 in 1994, (3) the Assembly Journal which reflects actions taken in connection with Senate Bill 203 which was enacted in 1981 as Civil Code §3291 and (4) the Senate Final History for Senate Bill 203.

The records that Brownco requests that this Court take judicial of are records which were not judicially noticed at the trial court or appellate level because the validity of the interpretation of the long-standing construction and application of Section 998, that where successive Section 998 offers are made, the earlier offers are extinguished by service of a subsequent offer<sup>1</sup>, was not at issue. As the validity of the *Wilson* rule was not at issue, the legislative history of Section 998, its predecessor 997, and related statute Civil Code §3291 did not require analysis. Now, however, the legislative history of these statutes is highly relevant to the construction of Section 998 and whether earlier offers under that Section are extinguished by service of a subsequent offer.

As discussed in Brownco's Opening Brief on the Merits, the plain language of Section 998 is silent with respect to the effect of a subsequent offer on earlier offer to compromise under Section 998. "When an examination of statutory language in its proper context fails to resolve an ambiguity, courts turn to secondary rules of interpretation, such as maxims of construction, which serve as aids in the sense that they express familiar

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<sup>1</sup> See, *Wilson v. Wal-Mart Stores, Inc.*, 72 Cal.App.4th 382, 392 (1999); *Palmer v. Schindler Elevator Operation*, 108 Cal.App.4th 154, 157 (2003); *Distefano v. Hall*, 263 Cal.App.2d 380, 385 (1968); *One Star, Inc. v. Staar Surgical Company*, 179 Cal.App.4th 1082, 1089 (2009).

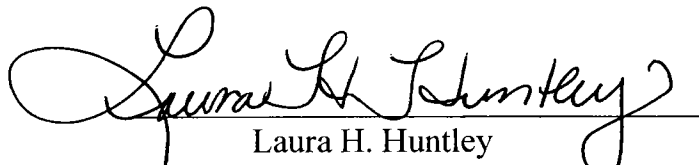
insights about conventional language usage. [Citations.] Courts also may turn to the legislative history of an enactment as an aid to its interpretation. [Citations.] ‘Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.]’” *Katz v. Los Gatos–Saratoga Joint Union High School District*, 117 Cal.App.4th 47, 55 (2004). Moreover, Government Code Section 9080 specifically provides “(a) The Legislature finds and declares that legislative records relating to bills, resolutions, or proposed constitutional amendments before the Legislature provide evidence of legislative intent that may be important in the subsequent interpretation of laws enacted in the Legislature.” The Legislative records which Brownco now asks this Court to take judicial notice of provide a strong indication as to the intent of the Legislature and the manner in which Section 998 should be applied. Consequently, Brownco asserts that this Court should take judicial notice of these important materials.

II. CONCLUSION

Based upon the foregoing, Brownco Construction Company, Inc. respectfully requests that this Court take judicial notice of the legislative records related to the enactment and amendment of Code of Civil Procedure §998 and Civil Code §3291 attached hereto as Exhibits 1-4.

Dated: May 29, 2012

Respectfully submitted,

  
\_\_\_\_\_  
Laura H. Huntley  
Counsel for Defendant, Respondent and Petitioner  
Brownco Construction Company, Inc.



DECLARATION OF LAURA H. HUNTLEY

I, Laura H. Huntley, declare:

1. I am an attorney duly licensed to practice in all courts of the State of California and a partner of the law firm Lindahl Beck LLP, attorneys of record for Defendant, Respondent and Petitioner Brownco Construction Company, Inc. in connection the proceedings before this Court. I have personal knowledge of the matters set forth in this declaration and, if called upon, could and would competently testify thereto.

2. Attached here to as Exhibits 1, 2 and 4 are true and correct copies of records my office obtained from the Los Angeles Law Library which maintains the California Senate Committee on Judiciary bill files, the California Assembly Journal and the California Senate Final History (1981-1982 Reg. Sess.) on microfiche. Specifically these records are:

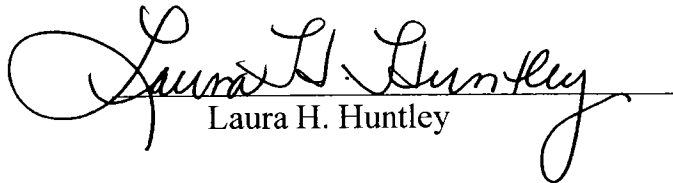
Exhibit 1: Senate Committee on Judiciary bill files: James S. Reid, State Bar, Analysis and Discussion re Assembly Bill No. 1814 (1971-1972 Regular Session) and Assembly Commission on Judiciary, Report on Assembly Bill No. 1814 (1971-1972 Reg. Sess.) June 21, 1971, p. 1

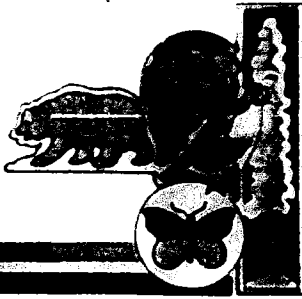
Exhibit 3: 4 Assembly Journal (1981-1982 Reg. Sess.) pp. 6662, 6849, 7481

Exhibit 4: Sen. Bill No. 203, approved by Governor, April 6, 1982, Senate Final History (1981-1982 Reg. Sess.) p. 147

3. Attached hereto as Exhibit 3 is a true and correct copy of Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Senate Bill 1324 (1993-1994 Reg. Sess.) May 27, 1994, p.2, at <[http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb\\_1301-1350/sb\\_1324\\_cfa\\_940527\\_171615\\_sen\\_floor](http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_1301-1350/sb_1324_cfa_940527_171615_sen_floor)> printed from the website maintained by the State of California Legislative Counsel which maintains electronic copies of the official Senate records.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of May, 2012, at Los Angeles, California.

  
Laura H. Huntley



# State of California

OFFICE OF THE SECRETARY OF STATE

I, MARCH FONG EU, Secretary of State of the State of California, hereby certify:

That each of the microphotographic copies of any paper document or record following in this roll of film is a full and correct copy of the original filed in my office, and that each said copies was microphotographed under my direction and control this 11 day of September 89

Authority for this microfilm reproduction is Section 1551 of the Evidence Code.

Filed by:

*Sandy Wood*

Sandy Wood  
Microfilm Tech. II  
State Archives

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this  
11 day of September 89

*March Fong Eu*

Secretary of State

**AB-1814**

STATE BAR OF CALIFORNIA  
James E. Hayes  
Assistant Legislative  
Representative

## ASSEMBLY BILL 1814

### ANALYSIS AND DISCUSSION

#### Background

Assembly Bill 1814 (Hayes) relating to offers of compromise, was approved by the Committee on the Administration of Justice on February 5, 1970, and approved by the Board for the 1971 Legislative Program. (See 1967 Conference Resolution 19 and 1969 Conference Resolution 5-21).

#### Analysis

C.C.P. 998 was added in 1969 to provide plaintiff with a right to make an offer in compromise and settlement as a counterpart of C.C.P. 997, which gives that right to the defendant.

The sections are not entirely consistent. For example, Section 997 provides that the plaintiff must pay the defendant's costs if he does not obtain a judgment more favorable to him than the settlement offer, but it does not say that the court may order plaintiff to pay the costs of defendant's experts. However, Section 998 does allow the court to make such an order in the defendant's favor.

New Section 998, as added by this bill, rewrites, clarifies and combines old Sections 997 and 998. It contains no substantive changes. The provisions for payment of court and expert witness costs remain the same as under the old sections.

AB 1814 (Hayes)

Offers of compromise - Revises settlement procedures prior to trial.

Present CCP 997 provides that a defendant before trial or judgment can make an offer to compromise, which if not accepted and the plaintiff fails to obtain a more favorable judgment, would bar the plaintiff from recovering costs and obliges him to pay the defendant's cost from the time of the offer.

Present CCP 998 provides any party to suit prior to commencement of the trial, or at a settlement conference may serve a written offer to compromise. If the offer is not accepted, and the offeree fails to obtain a more favorable judgment, he cannot recover costs and court may order him to pay offeror's costs from date of filing the complaint and cost of expert witnesses not regularly employed by party using said witnesses.

AB 1814 combines present CCP 997 and 998. Differences are:

1. New section only applies prior to commence of trial (eliminates offers at settlement conference and prior to judgment).
2. Allows court discretion to award defendant his costs from time of filing the complaint and cost of expert witnesses not employed by the defendant.

BILL ANALYSIS

SB 1324

Kopp (I), et al

5/27/94

21

FIRST  
POLICY  
COMMITTEE  
VOTE NOT  
RELEVANT:  
DEALT  
WITH  
ANOTHER  
ISSUE

SUBJECT: Civil actions

SOURCE: Author

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DIGEST: This bill provides that, for the purpose of assessing costs & sanctions under Code of Civil Procedure Section 998, the plaintiff's attorney's fees and costs shall be excluded from the plaintiff's total judgment in determining whether he or she has obtained a more favorable judgment after rejecting a defendant's settlement offer.

This bill overrides the right of a prevailing plaintiff to be awarded his or her attorney's fees as part of the contract damages when his or her trial judgment, exclusive of attorney's fees and costs, is not higher than the defendant's offer.

ANALYSIS: Code of Civil Procedure Section 998 provides that if a defendant's settlement offer is not accepted and the plaintiff fails to obtain a more favorable judgment, the plaintiff may not recover his costs & must pay the defendant's costs from the time of the offer.

In *Encinitas Plaza Real v Knight* (1989) 209 Cal.App.3d 996, petition for review denied, the court held that attorney's fees awarded to a prevailing party pursuant to a contract provision were not costs for purposes of Section 998, but were damages to which the prevailing party was entitled under the contract. Thus, although the plaintiff rejected the defendant's offer of \$10,000 and received only a \$5,000 judgment at trial, the \$38,000 attorney's fees awarded as contract damages when added to the \$5,000 judgment resulted in a total damages award which exceeded the

defendant's \$10,000 offer. Therefore, the defendant could not avoid paying the attorney's fees award by use of Section 998.

This bill would abrogate *Encinitas Plaza*, and would provide that a plaintiff in a cause of action not based on tort would not be deemed to have obtained a more favorable judgment unless the plaintiff's judgment, exclusive of attorney's fees and costs, exceeds the defendant's settlement offer.

The purpose of this bill is to abrogate *Encinitas Plaza* and to relieve a defendant from having to pay a prevailing plaintiff's attorney's fees pursuant to a contract provision when the plaintiff fails to obtain a better judgment, exclusive of any attorney's fees award, than the defendant's rejected offer.

Background

In *Encinitas Plaza*, the parties were involved in commercial lease dispute. The lease contained a clause awarding attorney's fees to the prevailing party.

A dispute arose and *Encinitas Plaza* (lessor) sued *Knight* (lessee) for non-payment of rents, late charges, and taxes. The complaint sought money damages and attorney's fees. *Knight* offered to settle the claim for \$12,000 plus certain costs for a total offer of \$21,000. The lessor did not respond and the case was subsequently tried.

*Plaza* obtained a money damages award of \$5,800. *Plaza* also received an attorney's fee award of \$37,260 pursuant to the contract terms. *Knight* contested the attorney's fee award, contending that it should be disallowed under Section 998 (recovery of costs barred if a rejected offer is not better) because *Plaza's* \$5,000 judgment was less than *Knight's* offer.

The trial court and the court of appeal both rejected *Knight's* claim. Said the appellate court: "The key issue is whether the attorney's fees awarded here should be considered an item of costs in the context of Section 998. *Knight's* appeal is premised on the notion that attorney's fees are an element of costs. We disagree." (Id., at p.1001.)

In *Cirimele v Shirley* (1954) 124 Cal.App.2d 46, the court held that attorney's fees were not "costs" within the meaning of Section 997 (the predecessor to Section 998). In *Distefano v Hall* (1968) 263 Cal.App.2d 380, that court noted: "Where a contract provides for attorney's fees, the

§ fees are technically not regarded as part of the costs, but as special  
§ damages expressly authorized by the contract. (Id., at p.385, fn.4.)

In the Plaza case, the contract between the parties clearly provided for  
§ the recovery of reasonable attorney's fees by the prevailing party. Citing  
§ the above noted cases, the appellate court held: "Plaza has the right to  
§ recover them  
§ attorney's fees! as damages under the contract, rather than  
§ costs." (Encinitas Plaz, supra, at pp.1001-1002.)

This bill would exclude attorney's fees awarded as damages pursuant to a  
§ contract provision from the total judgment award for purposes of  
§

CONTINUED

SB 1324  
Page 3

determining assessing costs under a Section 998 motion. The author's  
§ office argues that "defendant's could not have anticipated attorney's fees  
§ in transmitting the offer under Section 998" and therefore should not lose  
§ the benefits of that section.

However, as noted above, there is a consistent line of cases dating back to  
§ 1968 and 1954 which hold that these attorney's fees awards were not costs  
§ but were contract damages.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

RJG:ctl 5/31/94 Senate Floor Analyses

CONTINUED



ADOPTED ASSEMBLY AUG 17 1981  
PAGE NO. 1  
RECORD # 81229 8:14  
NO BP: AUG 17 1981  
SUBSTITUTIVE  
AMENDMENTS TO SENATE BILL NO. 203  
AS AMENDED IN ASSEMBLY AUGUST 10, 1981

*[Handwritten signature]*

On page 3, line 27, of the printed bill as amended in Assembly August 10, 1981, strike out "if interest is so claimed," strike out lines 28 to 34, inclusive, and insert:  
  
If the plaintiff makes an offer pursuant to Section 998 of the Code of Civil Procedure which is not accepted within 30 days by the defendant and the plaintiff obtains a more favorable judgment, the court shall, in entering judgment for the plaintiff in the action, add to the amount of damages assessed by the verdict of the jury or found by the court, interest on the amount calculated at the rate of 10 percent per annum and calculated from the date of the service of process to the date of satisfaction of the judgment, and include the interest in the judgment as a part thereof.

- 0 -

ADOPTED ASSEMBLY AUG 14 1981  
PAGE NO. 1  
RECORD # 81226 17:37  
NO BP: AUG 14 1981  
SUBSTITUTIVE  
AMENDMENTS TO SENATE BILL NO. 415  
AS AMENDED IN ASSEMBLY MAY 28, 1981

On page 3 of the printed bill, as amended in Assembly May 28, 1981, between lines 8 and 9, insert:  
  
Notwithstanding any other provisions of law, the 180-minute minibus school day prescribed by this section shall, for the purposes of article 6111 by this section computed and reported as attendance for three-quarters of the full 240-minute minibus school day prescribed by Section 46114.

- 0 -

ADOPTED ASSEMBLY AUG 13 1981  
PAGE NO. 1  
RECORD # 81226 17:37  
NO BP: AUG 13 1981  
SUBSTITUTIVE  
AMENDMENTS TO SENATE BILL NO. 415  
AS AMENDED IN ASSEMBLY JUNE 30, 1981

*John Foran*

In line 1 of the title of the printed bill, as amended in Assembly June 30, 1981, strike out "Section 1452J" and insert:  
  
Sections 1452J and 6508Z  
  
In line 2 of the title, after the first "to" insert a comma  
  
In lines 2 and 3 of the title, strike out "to amend Section 99401 of, and"  
  
In line 3 of the title, strike out the second comma  
  
In line 12 of the title, strike out "4004,"

ADOPTED ASSEMBLY AUG 17 1981  
PAGE NO. 1  
RECORD # 81226 17:37  
NO BP: AUG 17 1981  
SUBSTITUTIVE  
AMENDMENTS TO SENATE BILL NO. 203  
AS AMENDED IN ASSEMBLY AUGUST 10, 1981

updated pursuant to Sections 65080 and 65080.5 to include:  
  
(a) Projects proposed to be funded, in whole or part, from the State Highway Account in the State Transportation Fund during the succeeding five years with the following additional improvements: (1) new facilities, (2) operational improvements, and (3) local assistance. Major projects shall be listed by relative priority.  
  
(b) Projects and programs proposed to be funded, in whole or part, by funds subject to allocation by the California Transportation Commission during the succeeding five years other than funds in the State Highway Account shall be consistent with guidelines established by the Commission pursuant to Section 14532 and may proceed, for local assistance projects, by more than 25 percent, the estimate of funds for such large projects provided by the commission pursuant to Section 14525, except as provided in Section 14527. The regional transportation improvement program may be used to meet federal planning requirements where appropriate.  
  
SECTION 5.

... purposes of redevelopment, ... exchange, subdivide, lease, ...  
 for purposes of redemption, ... exchange, subdivide, lease, ...  
 to extend 52 years, by mortgage, deed of trust, or ...  
 and to pledge, encumber, dispose of any real or personal ...  
 otherwise, or otherwise in property.  
 property or any interest in property.  
 (b) Any interest acquired by an agency in ...  
 property described in Section 33032.1 shall be used only ...  
 for public purposes. Section 33750 of the Health and ...  
 Safety

- 0 -

ADOPTED AUG 20 1981  
 ASSEMBLY JOURNAL  
 AUGUST 20, 1981  
 PAGE NO. 1  
 SUBSECTION 17

AMENDMENTS TO SENATE BILL NO. 351  
 AS AMENDED IN ASSEMBLY AUGUST 10, 1981

Amendment 1  
 In lines 2 and 3 of the title of the printed bill, as amended in Assembly August 10, 1981, strike out "and to add Section 322 to the Public Utilities Code,"

Amendment 2  
 On page 3, between lines 17 and 18, insert:

The standards for each system shall be cost effective when amortized over the economic life of the structure and compared with the conditioning, lighting, and service water heating system standards in effect for new construction at the time the new standards are adopted.

Amendment 2.5  
 On page 3, strike out lines 29 to 40, inclusive, and on page 4, strike out lines 1 to 3, inclusive.

Amendment 3  
 On page 4, line 26, after "Commission" insert: , but may also include devices, systems, and techniques required to conserve energy

Amendment 4  
 On page 5, line 31, after "of" insert:  
 new residential

Amendment 5  
 On page 5, line 34, strike the second "the" and insert:  
 new residential

Amendment 6  
 On page 5, line 36, strike out "the" and insert:  
 new residential

Amendment 7  
 On page 6, line 2, strike out "do all of" and insert:

Amendment 1  
 On page 2, line 10, of the printed bill, as amended in Assembly August 10, 1981, strike out "from" on page 3, strike out line 1, and insert:

as provided in this section.

Amendment 2  
 On page 3, line 10, strike out "is not accepted" and insert:  
 the defendant does not accept prior to trial or

Amendment 3  
 On page 3, line 11, strike out "by the defendant" and insert:  
 , whichever occurs first.

Amendment 4  
 On page 3, line 12, strike out "the court shall, in entering"; strike out lines 13 to 19, and insert:  
 the judgment shall bear interest at the legal rate of 10 percent per annum calculated from the date of the initial offer pursuant to Section 998 of the Code of Civil Procedure, and interest shall accrue until the satisfaction of judgment.

- 0 -

may not be carried over and applied to the "net tax" in succeeding taxable years.

Amendment 3  
On page J, line 3, strike out "this" and insert:  
(g) This

Amendment 4  
On page 3, between lines 37 and 38, insert:  
(e) That portion of credit under this section which exceeds the taxes imposed by this part (except the sales franchise tax and the tax on preference income) for the income year may not be carried over and applied to those taxes in succeeding income years.

Amendment 5  
Insert: On page J, line 38, strike out "this" and

(c) This  
On page J, between lines 1 and 2, insert:

81246 13:15 RECORDED & INDEXED  
ADOPTED ASSEMBLY SEP 3 1981  
SENATE BILL NO. 203  
AS AMENDED IN ASSEMBLY AUGUST 24, 1981  
FLOOR

ORIGINAL COPY  
SEP 3 1981  
PAGE NO. 1  
SEN 81 019071

*Handwritten signature*

Amendment 1  
On page J, line 15, of the printed bill as amended in Assembly August 24, 1981, strike out "initial" and insert:  
Plaintiff's first

Amendment 2  
On page J, line 16, after "procedure" insert:  
which is exceeded by the judgment

81244 17:44 RECORDED & INDEXED  
ADOPTED ASSEMBLY SEP 1 1981  
SENATE BILL NO. 270  
AS AMENDED IN ASSEMBLY AUGUST 27, 1981  
FLOOR

ORIGINAL COPY  
PAGE NO. 1  
SEN 81 018840  
Substantive

*Handwritten signature*

Amendment 1  
On page 8, line 15, of the printed bill, as amended in Assembly August 27, 1981, strike out "Superior Court Clerk" and insert:  
Municipal Courtroom Clerk

Amendment 2  
On page 15, line 4, strike out "seventy-five dollars (\$75)" and insert:  
ninety dollars (\$90)

81251 18:17  
RECORDED # 40 SEP 9 1981  
FLOOR  
ADOPTED ASSEMBLY SEP 9 1981  
ORIGINAL COPY  
PAGE NO. 1  
RM 81 019288 Substantive  
SENATE BILL NO. 203  
ASSEMBLY SEPTEMBER 4, 1981  
AS AMENDED IN ASSEMBLY  
SEN. No. 3 (A/colan)

ADOPTED ASSEMBLY SEP 9 1981  
ORIGINAL COPY  
PAGE NO. 1  
RM 81 019425  
SEN. No. 3 (A/colan)  
SENATE BILL NO. 203  
ASSEMBLY SEPTEMBER 4, 1981  
AS AMENDED IN ASSEMBLY  
SEN. No. 3 (A/colan)

On page 3 of the printed bill, as amended in Assembly September 4, 1981, strike out lines 2 to 16, inclusive, and insert:

Not less than 30 days prior to commencement of the trial as defined in subdivision 1 of Section 581 of the Code of Civil Procedure, the plaintiff may serve an offer in writing upon the defendant in the action and the defendant may serve an offer in writing upon the plaintiff in the complaint to allow judgment to be taken in accordance with the terms and conditions stated at that time. If either offer is accepted the accepted offer with proof of acceptance shall be filed, and the clerk or the judge shall enter judgment accordingly. If neither offer is accepted prior to trial, both shall be deemed withdrawn and cannot be given in evidence upon the trial.

(a) If the plaintiff's offer is not accepted and the plaintiff obtains a judgment more favorable than his or her last offer made pursuant to this section, the amount of the judgment shall bear interest at 10 percent per annum from the date of the plaintiff's last offer. This subdivision shall be effective only if the offer remains open for the trial.

(b) If the defendant's offer is not accepted and the plaintiff obtains a judgment for an amount which is less than the last offer made by the defendant pursuant to this section, the amount of the judgment shall be reduced by an amount equal to 10 percent per annum from the date of the defendant's last offer. This subdivision shall be effective only if the offer remains open for the trial.

If interest is added to a judgment pursuant to this section the fee paid to an attorney shall be no higher than if no interest had been applied to the judgment.

41252 14:11  
RECORDED # 40 SEP 9 1981  
FLOOR  
ADOPTED ASSEMBLY SEP 9 1981  
ORIGINAL COPY  
PAGE NO. 1  
RM 81 019425  
SEN. No. 3 (A/colan)  
SENATE BILL NO. 203  
ASSEMBLY SEPTEMBER 4, 1981  
AS AMENDED IN ASSEMBLY  
SEN. No. 3 (A/colan)

On page 3 of the printed bill, as amended in Assembly September 4, 1981, between lines 11 and 12, insert:

If the defendant makes an offer pursuant to Section 581 of the Code of Civil Procedure which the plaintiff does not accept prior to trial or within 30 days, whichever occurs first, and the plaintiff does not obtain a more favorable judgment the plaintiff shall pay all of the defendant's attorney's fees incurred after the date of the initial offer.

SENATE FINAL HISTORY

on.  
tion 13510 of, and to add Section 13524 to, the Penal Code  
officers, and making an appropriation therefor.

d. Read first time. To Com. on RLS. for assignment

nt. May be acted upon on or after March 5, 1981.  
on JUD.

earing March 10, 1981.  
earing. Hearing canceled at the request of author. Set  
March 17, 1981.

mmittee: Do pass, but first be re-referred to Com. on RLS.  
mmendation: to Consent Calendar. (Ayes 7. Noes 0. Page  
referred to Com. on FIN.

earing June 3, 1981.  
e 62.6 suspended.  
mmittee: Do pass. (Ayes 9. Noes 0. Page 2999.)

ond time. To third reading.  
al Consent Calendar.  
rd time. Passed. (Ayes 35. Noes 0. Page 3203.) To Assembly

ably. Read first time. Held at desk.  
on CRIM.J.

mmittee: Do pass, but first be re-referred to Com. on RLS.  
recommendation: To Consent Calendar. (Ayes 14. Noes  
red tyo Com. on W. & M.

mmittee: Do pass as amended. To Consent Calendar.  
cond time. Amended. To second reading.

cond time. To Consent Calendar.  
ird time. Passed. (Ayes 74. Noes 0. Page 7899.) To Senate

te. To unfinished business.  
ial Consent Calendar.  
concur in Assembly amendments. (Ayes 36. Noes 0. Page  
to enrollment.

1. To Governor at 4 p.m.  
ed by Governor.  
red by Secretary of State. Chapter 710, Statutes of 1982

ection 27282 of the Government Code, relating to state  
ring the urgency thereof, to take effect immediately

iced. Read first time. To Com. on RLS. for assignment

rint. May be acted upon on or after March 5, 1981.  
n. on JUD.

earing March 10, 1981.  
mmittee: Do pass as amended. To Consent Calendar.  
; 0. Page 612.)

cond time. Amended. To Consent Calendar.  
hird time. Urgency clause adopted. Passed. (Ayes 33. Noes  
47.) To Assembly.

mbly. Read first time. Held at desk.  
n. on JUD.

st hearing. Hearing canceled at the request of author.  
committee: Do pass. To Consent Calendar.

cond time. To Consent Calendar.  
hird time. Urgency clause adopted. Passed. (Ayes 76. Noes  
716.) To Senate.

ate. To enrollment.  
ed. To Governor at 10:30 a.m.  
ved by Governor.  
ered by Secretary of State. Chapter 217, Statutes of 1982

No. 203—Rains.

An act to add Section 3291 to the Civil Code and to amend Sections 682.1,  
1710.15, and 1710.25 of, and to add Section 685.010 to, the Code of Civil  
Procedure, relating to the rate of interest on a judgment.

1981  
Feb. 2—Introduced. Read first time. To Com. on RLS. for assignment. To  
print.

Feb. 3—From print. May be acted upon on or after March 5, 1981.  
Feb. 4—To Com. on JUD.

Feb. 9—Set for hearing March 10, 1981.  
Mar. 11—From committee: Do pass. (Ayes 6. Noes 0. Page 612.)

Mar. 12—Read second time. To third reading.  
Mar. 19—Read third time. Passed. (Ayes 31. Noes 2. Page 737.) To Assembly.  
Mar. 19—In Assembly. Read first time. Held at Desk.

Mar. 31—To Com. on JUD.  
June 3—Set, first hearing. Hearing canceled at the request of author.  
June 24—Set, second hearing. Further hearing to be set.

June 25—From committee with author's amendments. Read second time.  
Amended. Re-referred to committee.  
Aug. 10—From committee with author's amendments. Read second time.  
Amended. Re-referred to committee.

Aug. 12—Hearing postponed by committee.  
Aug. 18—From committee with author's amendments. Read second time.  
Amended. Re-referred to committee.

Aug. 20—From committee: Do pass as amended. (Ayes 9. Noes 4.)  
Aug. 24—Read second time. Amended. To second reading.  
Aug. 25—Read second time. To third reading.

Sept. 4—Read third time. Amended. To third reading.  
Sept. 9—Motion to table Nolan amendments set No. 1 adopted. (Ayes 30.  
Noes 28. Page 7632.) Motion to table Nolan amendments set No. 2

adopted. (Ayes 29. Noes 28. Page 7633.) Motion to table Nolan  
amendments set No. 3 adopted. (Ayes 37. Noes 34. Page 7636.)  
Motion to table McAlister amendments set No. 1 adopted. (Ayes 38.  
Noes 37. Page 7640.) Motion to table McAlister amendments set No.

2 refused adoption. (Ayes 37. Noes 37. Page 7644.) Motion to  
reconsider on next legislative day made by Mr. Robinson whereby  
motion to table was refused adoption.

Sept. 10—Reconsideration waived. Amendment set No. 2 refused adoption.  
(Ayes 34. Noes 35. Page 7734.) Motion to table McAlister  
amendment set No. 3 adopted. (Ayes 30. Noes 8. Page 7736.) Motion

to reconsider made by Mr. Leonard. Reconsideration waived.  
Motion to re-refer to Com. on RLS. refused adoption. (Ayes 32. Noes  
25. Page 7739.) Read third time. Passed. (Ayes 41. Noes 36. Page  
7746.) Motion to reconsider on next legislative day made by Mr.

Nolan.  
Sept. 11—Reconsideration waived. To Senate.  
Sept. 13—In Senate. To unfinished business.

Sept. 14—Re-referred to Com. on JUD. Withdrawn from committee. Ordered  
placed on file.

1982  
Mar. 22—Made Special Order for Thursday, March 25, 1982, at 10 a.m.  
Mar. 25—Senate concurs in Assembly amendments. (Ayes 21. Noes 12. Page  
8195/Page 8196.) Motion to reconsider made by Senator Maddy.  
Reconsideration refused. (Ayes 10. Noes 15.) to enrollment.

Mar. 26—Enrolled. To Governor at 4 p.m.  
April 6—Approved by Governor.

April 6—Chaptered by Secretary of State. Chapter 150, Statutes of 1982.

June 17—Senate Journal pp. 11020-11023. Legislative  
Counsel Opinion.

June 20—Senate Journal pp. 107-111. Legislative  
Counsel Opinion.

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 660 South Figueroa Street, Suite 1500, Los Angeles, California 90017-3457.

On May 29, 2012, I served the foregoing document described as MOTION TO TAKE JUDICIAL NOTICE OF LEGISLATIVE RECORDS RELATED TO THE ENACTMENT AND AMENDMENT OF CODE OF CIVIL PROCEDURE §998 AND CIVIL CODE §3291; DECLARATION OF LAURA H. HUNTLEY AND EXHIBITS on all interested parties by placing the true copies thereof enclosed in sealed envelopes addressed as indicated below:

Albro L. Lundy, III, Esq. Norman Coe, Esq. Baker, Burton & Lundy 515 Pier Avenue Hermosa Beach, CA 90254 Tel: (310) 376.9893 Fax: (310) 376.7483	Los Angeles Superior Court Central Civil West Courthouse Clerk of the Court for The Honorable Elihu M. Berle 600 South Commonwealth Avenue Los Angeles, CA 90005 [1 copy]
Victor George, Esq. 20355 Hawthorne Blvd., Second Floor Torrance, CA 90503 Tel: (310) 856-5410 Fax: (310) 856-5420  Attorneys for Plaintiffs Raymond Martinez and Gloria Martinez	Court of Appeal Clerk of the Court Second Appellate District, Division 1 300 South Spring Street, Suite 2217 Los Angeles, CA 90013 [1 copy]

X BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

Executed on May 29, 2012, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

