S293119

No. S_____

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

HOMAR MAQUEDA and GUSTAVO A. LOPEZ,

Plaintiffs and Respondents,

v.

KIA MOTORS AMERICA, INC.,

Defendant and Appellant.

After A Decision By The Court of Appeal
Fourth Appellate District, Division One, Case No. D083298

San Diego County Superior Court
Honorable Joel R. Wohlfeil
Case No. 37-2019-00070127-CU-BC-CTL

PETITION FOR REVIEW

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ISSUE PRESENTED

Exactly as in *Gorobets v. Jaguar Land Rover North America, LLC* (2024) 105 Cal.App.5th 913, review granted Jan. 15, 2025, No. S287946, and *Zavala v. Hyundai Motor America* (2024) 107 Cal.App.5th 458, review granted Mar. 19, 2025, No. S289000 (grant-and-hold pending *Gorobets*), the issue presented here is:

Under what circumstances, if any, is a statutory offer to compromise under Code of Civil Procedure section 998 that includes multiple settlement options a valid offer?[1]

[1] Unassigned statutory references are to the Code of Civil Procedure.

INTRODUCTION

Like *Zavala v. Hyundai Motor America* (2024) 107 Cal.App.5th 458—a grant-and-hold from the very same Court of Appeal that issued the decision here—this case presents the identical question now pending in *Gorobets v. Jaguar Land Rover North America, LLC* (2024) 105 Cal.App.5th 913, the lead case: under what circumstances, if any, is a Code of Civil Procedure section 998 offer valid when it provides multiple settlement options?

Here, as in *Gorobets*, the defendant made a 998 offer that required the plaintiff to choose between two options—either a lump-sum settlement amount or an amount to be determined based on the plaintiffs' evidence in support of specific categories of statutory damages under the Song-Beverly Act (with the trial court resolving any disputes regarding those damages).

Here, as in *Gorobets*, the appellate court held that the offer was valid under section 998 (albeit only partially and on the grounds set forth by the Court of Appeal's prior decision in *Zavala*, rather than the grounds in *Gorobets*).

Here, as in *Gorobets*, the opinion ("Opinion") implicates an issue of statewide concern for all civil cases, since close to 90% of civil cases end in settlement.

Here, as in *Gorobets*, the Court of Appeal's opinion fundamentally changes section 998's procedure by allowing an offeror to include *multiple options* in a single 998 offer. The Opinion's holding, although not published, further adds to the

confusion for offerees, opens the door to gamesmanship by offerors, creates more work for trial courts tasked with assessing the validity of these offers post-trial, and allows for a non-uniform application of the law, on an issue this Court has specifically said it would resolve.

This Court recently granted review in *Zavala, supra,* 107 Cal.App.5th 458, and suspended all proceedings pending this Court's decision in *Gorobets*. The Court should do the same here. Because this appeal, *Gorobets*, and *Zavala* involve the same issue, the Court should grant review and suspend all proceedings in the instant case until this Court decides *Gorobets*.

STATEMENT OF THE CASE

A. Plaintiffs purchase a lemon that Kia fails to repair.

Homar Maqueda and Gustavo Lopez ("Plaintiffs") brought suit against Kia Motors America, Inc., ("Kia") under the Song-Beverly Act for violating warranty obligations for their vehicle, which they contended was a lemon. (See Opinion 1-2.)

B. Kia makes a multi-option 998 offer.

Shortly after Plaintiffs filed suit, Kia sent a 998 offer that required them to choose from one of two options: (1) a lump-sum option to receive a payment of $25,000; or (2) a statutory option to recover certain categories of expenses and damages permitted under the Song-Beverly Act, subject to proof and with the trial court to resolve any disputed amounts. (Opinion 2.)

Plaintiffs did not accept the offer. (Opinion 2.)

C. Plaintiffs prevail at trial.

Three years later, following Plaintiffs' success at trial, the jury awarded Plaintiffs $16,470.66 plus a $1 civil penalty. (Opinion 1-2.)

D. The trial court deems Kia's multi-option 998 offer invalid.

Kia sought to recover its costs and to cut off Plaintiffs' right to recover statutory attorney fees by citing section 998's cost-shifting penalties. (Opinion 1-2.) The trial court rejected this effort, finding that the multi-option 998 offer was invalid because

it was "unclear," and thus, insufficiently specific to be a valid offer for purposes of section 998. (*Ibid.*) As a result, the trial court awarded Plaintiffs' motion to strike Kia's costs and awarded Plaintiffs just over $200,000 in attorney fees, costs, and expenses. (Opinion 2-3.)

E. Kia appeals, arguing that multi-option offers can be valid, and the trial court was required to consider the validity of each option independently.

Kia appealed the trial court's costs/fees order. Kia argued that under *Zavala v. Hyundai Motor America* (2024) 107 Cal.App.5th 458—an opinion from the same appellate court that is now under review by this Court—the trial court was required to consider the validity of each option independently. (Opinion 3.)

Plaintiffs, in turn, argued that section 998 does not allow multi-option offers. (Opinion 3.)

F. The Court of Appeal reverses, holding that multi-option offers *can* be valid under section 998, and that the trial court must review each option independently.

The Court of Appeal reversed. Following its reasoning in *Zavala*, the appellate court held that multi-option 998 offers could be valid, and that a trial court must review each offer independently. (Opinion 3, 7-8 ["Plaintiffs have not persuaded us

to deviate from *Zavala*'s holding that section 998 permits simultaneous offers"].)

The Opinion notes that *Zavala* and *Gorobets* addressed the same issue and diverged on whether "simultaneous section 998 offers render both options invalid," but the Opinion holds that *Zavala* has the better view. (Opinion 4, fn. 1 ["We acknowledge *Gorobets v. Jaguar Land Rover North America, LLC* (2024) 105 Cal.App.5th 913, 920, review granted January 15, 2025, S287946, came out the other way in holding that simultaneous section 998 offers render both options invalid. For the reasons outlined in *Zavala*, we respectfully disagree"].)

The Opinion then considers each of the multiple options in the 998 offer separately and concludes that the $25,000 is independently sufficiently specific to constitute a valid 998 offer. (Opinion 7.) And because Plaintiffs' verdict of $16,471.66 was less than the $25,000 "offer," cost-shifting under section 998 was triggered, and thus, Plaintiffs were not entitled to recover post-offer costs and were instead required to pay Kia's post-offer costs. (*Ibid*.) Because the Opinion found that reversal was warranted on the lump-sum option alone, the Opinion did not consider the validity of the second statutory option. (*Ibid*.)

REASONS FOR GRANTING REVIEW

I. This Case Turns On The Same Issue That Is Currently Pending Before This Court In *Gorobets* and *Zavala*.

The Court should grant review and suspend further proceedings, pending its decision in *Gorobets*, because the instant appeal implicates the exact same issue as *Gorobets*: Whether a section 998 offer with multiple options can be valid, and if so, under what circumstances.

Indeed, the Opinion "reverse[d] the orders that relied on the court's conclusion that Kia's section 998 offer was invalid." (Opinion 7-8.) As the Opinion says, "[t]he crux of this appeal is whether section 998 allows simultaneous offers," (Opinion 4)—if multi-option offers are prohibited, then Kia's offer is invalid.

That is the identical issue already pending before this Court in *Gorobets*: "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?" (Docket, "Case Summary," Supreme Court Case No. S287946, *Gorobets v. Jaguar Land Rover North America, LLC*.)

There can be no doubt that this case and *Gorobets* present the same issue. And this Court has already found *Zavala*—an earlier case in the same appellate district as the Opinion, and one on which the Opinion heavily relies—to concern the same issue

and granted the petition for review in that case. (Docket, "Case Summary," Supreme Court Case No. S289000, *Zavala v. Hyundai Motor America* [grant-and-hold pending *Gorobets*].)

Plus, the parties expressly acknowledged that both *Gorobets* and *Zavala* present the same issue as the instant case, and that the former was pending review and the latter had sought a grant-and-hold. (See RB 8; ARB 5-6.)

And the Opinion itself acknowledges that it addresses the same issue as *Gorobets*. It describes *Gorobets* as having "c[o]me out the other way in holding that simultaneous section 998 offers render both options invalid." (Opinion 4, fn. 1.) Ultimately, the Opinion expressly disagrees with *Gorobets*'s conclusion that simultaneous offers are generally invalid. (*Ibid.*)

Gorobets, *Zavala*, and the Opinion all concern the exact same issue. While there are some differences in the opinions' analyses, they all stem from functionally identical facts and address the identical issue. The Court should grant review so that the Opinion does not cause further confusion by promulgating differing applications in an unsettled area of law. This Court should be the one to speak as to whether and when multi-option 998 offers are valid. As with *Zavala*, the Court should grant review of the Opinion and suspend all proceedings in the instant case pending the Court's decision in *Gorobets*.

II. A Grant-And-Hold Is Necessary To Secure Uniformity of Decision.

Because the instant case turns on the same issue as *Gorobets*, the Court should grant review and defer briefing pending its resolution of *Gorobets*. (Cal. Rules of Court, rule 8.512(d)(2).) After all, to do otherwise would fail to secure uniformity in the law, as *Gorobets* and *Zavala* both turn on identical issues.

It makes no difference that the Opinion is unpublished. For the Opinion to avoid review would allow for dispositions at odds with whatever this Court is soon to decide in *Gorobets*. Uniformity requires that there be no appellate dispositions that become final before this Court has had a chance to weigh in. Indeed, at least one other appellate case, *Assatourian v. Hyundai Motor America*, Second Appellate District, Case No. B338150, featuring a similar multi-option offer, is currently pending before the Court of Appeal. The issue of the validity of multi-option offers is clearly important, clearly recurrent, and this Court must be the one to decide what the rule governing such offers will be.

To secure uniformity of law and fair application of the law to all litigants, the Court should grant review of the Opinion and suspend further proceedings pending a decision from this Court in *Gorobets*.

CONCLUSION

Because the Opinion involves the same issue as *Gorobets*, the Court should grant review and defer briefing in this case, pending this Court's decision in *Gorobets*.

September 23, 2025

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), (c)(4), I certify that this **PETITION FOR REVIEW** contains 1,668 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Dated: September 23, 2025 *Katarina E. Rusinas*
Katarina Rusinas

APPENDIX

[OPINION]

Filed 8/14/25

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

HOMAR MAQUEDA et al., Plaintiffs and Respondents, v. KIA MOTORS AMERICA, INC., Defendant and Appellant.	D083298 (Super. Ct. No. 37-2019-00070127-CU-BC-CTL)

APPEAL from orders of the Superior Court of San Diego County, Joel R. Wohlfeil, Judge. Reversed and remanded.

Bowman and Brooke, Brian Takahashi, Richard L. Stuhlbarg, and Amanda Heitz for Defendant and Appellant.

Knight Law Group, Steve Mikhov, Amy-Lyn Morse, and Roger Kirnos; Greines, Martin, Stein & Richland, Cynthia E. Tobisman, Joseph V. Bui, and Kent W. Toland for Plaintiffs and Respondents.

This case involves an offer to compromise under Code of Civil Procedure section 998 that contained two separate, independent offers. After Plaintiffs Homar Maqueda and Gustavo Lopez prevailed at trial against Kia Motors America, Inc., Kia sought to curb Plaintiffs' recovery of attorney fees

and costs and recover its own costs because the jury's award of $16,470.66 plus a $1 penalty fell short of the lump-sum option of $25,000 in Kia's section 998 offer. The court, however, deemed the entire section 998 offer invalid because the statutory option Kia offered at the same time as the lump-sum option was insufficiently specific.

We conclude, as we did in *Zavala v. Hyundai Motor America* (2024) 107 Cal.App.5th 458, 463, review granted March 19, 2025, S289000, that section 998 offers may include simultaneous, independent options for the offeree to select from. As a result, here the court should have separately considered the validity of Kia's lump-sum option even if the statutory option were invalid. Accordingly, we reverse the court's orders ruling on Plaintiffs' motion for attorney fees and the parties' competing motions to strike or tax costs and remand for further proceedings consistent with this opinion.

I.

Shortly after Plaintiffs sued Kia for allegedly violating its warranty obligations for their car, Kia extended an offer to compromise under section 998. As relevant here, the section 998 offer contained two separate, independent offers that permitted Plaintiffs to select either (1) a lump-sum option of $25,000 or (2) a statutory option to recover certain categories of expenses and damages permitted under the Civil Code "subject to proof," with the court to resolve disputed amounts. Plaintiffs could choose to accept one option only, not both.

Plaintiffs did not accept either option. Instead, they litigated the case for three more years, only for the jury to award them a total of $16,471.66.

After trial, the court ruled Kia's section 998 offer was invalid because the statutory option was "unclear." As a result, it granted Plaintiffs' motion

to strike Kia's costs and awarded Plaintiffs just over $200,000 in attorney fees, costs, and expenses.

II.

Kia contends *Zavala*'s "bright-line approach" permitting section 998 offers containing simultaneous options and requiring the trial court to separately consider the validity of each option "is on point" here and requires reversal. (Bolding omitted.) Plaintiffs argue we should "part company" with *Zavala* despite the similar facts because, in their view, "section 998 does not allow multi-option offers." (Bolding omitted.) Kia has the better argument.

A.

Section 998's "clear purpose" is "to encourage settlement of lawsuits prior to trial." (*T. M. Cobb Co. v. Superior Court* (1984) 36 Cal.3d 273, 280.) It achieves that aim by establishing "a procedure for shifting the costs upon a party's refusal to settle." (*Barella v. Exchange Bank* (2000) 84 Cal.App.4th 793, 798.) "If the party who prevailed at trial obtained a judgment less favorable than a pretrial settlement offer submitted by the other party, then the prevailing party may not recover its own postoffer costs and, moreover, must pay its opponent's postoffer costs." (*Ibid.*) But an invalid section 998 offer "will not operate to cut off a plaintiff's costs." (*Etcheson v. FCA US LLC* (2018) 30 Cal.App.5th 831, 852.)

To be valid, a section 998 offer "must be clear and specific, both from the perspective of the offeree and the perspective of the trial court." (*Zavala*, 107 Cal.App.5th at p. 468 [cleaned up].) It must also be reasonable and made in good faith. (*Id.* at p. 467, fn. 7.)

"We independently review whether a section 998 settlement offer was valid." (*Ignacio v. Caracciolo* (2016) 2 Cal.App.5th 81, 86.) We review de

novo questions of statutory interpretation. (*Madrigal v. Hyundai Motor America* (2025) 17 Cal.5th 592, 602.)

B.

The crux of this appeal is whether section 998 allows simultaneous offers. We recently concluded it does.[1] (*Zavala*, 107 Cal.App.5th at p. 476.) Section 998 "says nothing about a prohibition on multiple simultaneous offers," and general contract law principles permit an offer to contain alternative choices from which the offeree can select. (*Ibid.*) "When faced with two simultaneous offers, a trial court can simply look at each offer *separately* to determine whether *either* of them exceeded the amount of the verdict." (*Id.* at pp. 477-478.) This approach "is consistent with the purpose of section 998" because "it will encourage parties to put all possible approaches to settlement on the table *early* in the litigation." (*Id.* at p. 478.)

Plaintiffs' arguments to the contrary are unpersuasive.

First, Plaintiffs contend the "plain language" of section 998 bars simultaneous offers because it uses the singular term "offer." Yet no significance attaches to that singular term because a singular word in the Code of Civil Procedure expressly "includes the plural." (§ 17(a).)

Second, Plaintiffs argue simultaneous offers "undercut the offeree's statutory time period" to consider a section 998 offer. A section 998 offer is deemed withdrawn if not accepted before "trial or arbitration or within 30 days after it is made, whichever occurs first." (§ 998(b)(2).) At a minimum, an offeree will have 10 days to consider the offer, as a section 998

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1 We acknowledge *Gorobets v. Jaguar Land Rover North America, LLC* (2024) 105 Cal.App.5th 913, 920, review granted January 15, 2025, S287946, came out the other way in holding that simultaneous section 998 offers render both options invalid. For the reasons outlined in *Zavala*, we respectfully disagree. (See *Zavala*, 107 Cal.App.5th at pp. 477-479.)

offer cannot be made fewer than 10 days before trial or arbitration. (§ 998(b).) Plaintiffs complain it is "not fair" for an offeree to have to evaluate multiple offers during that time, and it "creates all kinds of opportunities for gamesmanship" by offerors who seek only to distract their opponent from preparing for trial. But "[i]f a situation ever arises in which a party makes multiple simultaneous offers for the principal purpose of overwhelming an opponent or in an effort at gamesmanship, rather than in a genuine attempt to reach a settlement, that party will risk running afoul of the rule that a section 998 offer made in bad faith is not valid to shift costs." (*Zavala*, 107 Cal.App.5th at p. 479.) Though Plaintiffs protest "the harm is already done" by then, we disagree. An offeree can ignore a disingenuous set of simultaneous section 998 offers knowing that the trial court could invalidate it as either unreasonable or made in bad faith. Besides, "any downsides are outweighed by the benefit of promoting early settlement." (*Ibid.*)

Third, Plaintiffs fault simultaneous offers for "creat[ing] enormous complexity on the front end as well as [on] the back end." Even if we were to agree with that premise, Plaintiffs cite no authority that precludes complex section 998 offers. They cite only to *Martinez v. Brownco Construction Co.* (2013) 56 Cal.4th 1014, 1021, and its observation that "court have adopted bright-line rules . . . to avoid confusion." "Requiring a court to *separately* evaluate the validity of alternative settlement offers made in the same settlement communication is a useful bright-line rule" that reduces confusion by guiding trial courts on how to assess simultaneous section 998 offers. (*Zavala*, 107 Cal.App.5th at p. 478.) As we explained in *Zavala*, a trial court can cut through potential complexity by examining each offer separately to determine if any exceeded the amount of the verdict. (*Id.* at pp. 477-478.)

Fourth, Plaintiffs contend simultaneous section 998 offers conflict with a "line of cases" holding the last offer controls when presented with successive section 998 offers. But as Plaintiffs note, those cases involved successive—not simultaneous—offers. Because "cases are not authority for propositions not considered," those cases and the last-offer rule have no bearing here. (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1160 [cleaned up].)

Fifth, we disagree with Plaintiffs that applying the general contract principle that allows an offer to contain multiple options conflicts with or defeats section 998's purpose. Because "section 998 involves the process of settlement and compromise and [because] this process is a contractual one, it is appropriate for contract law principles to govern the offer and acceptance process under section 998." (*T. M. Cobb*, 36 Cal.3d at p. 280.) As our Supreme Court has explained, "[t]he more offers that are made, the more likely the chance for settlement." (*Id.* at p. 281.) Permitting simultaneous section 998 offers encourages parties to make more offers earlier, thus advancing section 998's main purpose. (*Zavala*, 107 Cal.App.5th at p. 478.)

Sixth, Plaintiffs assert Kia's offer here is "functionally indistinguishable" from the one we invalidated in *Duff v. Jaguar Land Rover North America, LLC* (2022) 74 Cal.App.5th 491. Yet Plaintiffs' "reliance on *Duff* is not persuasive because the settlement communication in *Duff* contained only a *single* offer, not separate simultaneous offers" like we have here. (*Zavala*, 107 Cal.App.5th at p. 476.)

Seventh, Plaintiffs argue a court cannot sever an invalid term to "rescue" a section 998 offer. But as Kia points out, the cases on which Plaintiffs rely involved a single offer containing an invalid term. For example, one case invalidated a section 998 offer because an "imponderable"

term made the offer "impractical if not impossible to accurately and fairly evaluate." (*Valentino v. Elliott Sav-On Gas, Inc.* (1988) 201 Cal.App.3d 692, 699-701.) Such cases are inapposite here, however, because *Zavala* tasks trial courts with assessing the validity of each option separately; it does not involve severing any invalid term in a single option. (*Zavala*, 107 Cal.App.5th at pp. 477-478.)

In sum, Plaintiffs have not persuaded us to deviate from *Zavala*'s holding that section 998 permits simultaneous offers. (See *Estate of Sapp* (2019) 36 Cal.App.5th 86, 109, fn. 9.)

C.

Having confirmed section 998 permits simultaneous offers, we turn back to Kia's offer here. Plaintiffs assert Kia's offer suffers from "uncertainty" by viewing the two simultaneous options *together*, not separately as *Zavala* requires. When viewed separately, however, the $25,000 lump-sum option is sufficiently specific both for Plaintiffs to meaningfully evaluate it when they received the offer and for the trial court to compare the lump-sum option against the judgment obtained at trial. As a result, the lump-sum option is valid to trigger cost-shifting under section 998. And because the $25,000 lump-sum option is greater than Plaintiffs' trial verdict totaling $16,471.66, that option alone warrants reversal and makes it unnecessary for us to decide the validity of the statutory option.

Because Plaintiffs failed to obtain a trial recovery more favorable than the lump-sum option, the trial court—which did not have the benefit of *Zavala*'s guidance at the time of its original ruling—should have concluded Plaintiffs were not entitled to recover their postoffer costs and were required to pay Kia's costs from the time of the offer. (§ 998(c)(1).) We therefore reverse the orders that relied on the court's conclusion that Kia's section 998

offer was invalid and remand for further proceedings consistent with this opinion.

III.

We reverse the trial court's orders (1) granting in part Plaintiffs' motion for attorney fees, costs, and expenses; (2) granting Plaintiffs' motion to strike Kia's costs; and (3) granting in part Kia's motion to tax Plaintiffs' costs. We remand the matter for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal.

CASTILLO, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.

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 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048, and my email address is *mstockard@gmsr.com*.

On the date stated below, I hereby certify that I electronically served the foregoing **PETITION FOR REVIEW** through the Court's electronic filing system operated by ImageSoft TrueFiling. I certify that participants in the case who are registered TrueFiling users and appear on its electronic service list will be served pursuant to California Rules of Court, rule 8.70. The filing of this document through e-Filing will also satisfy the requirements for service on the California Court of Appeal under rule 8.212(c)(2):

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I further certify that participants in this case who are not registered TrueFiling users are served by mailing the foregoing document by First-Class Mail, postage prepaid, to the following non-TrueFiling participant(s):

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

Executed on September 23, 2025 at Los Angeles, California.

Marsha Stockard
Marsha Stockard