

# 998 Offers and Their Impact On FEHA Actions and Mediation



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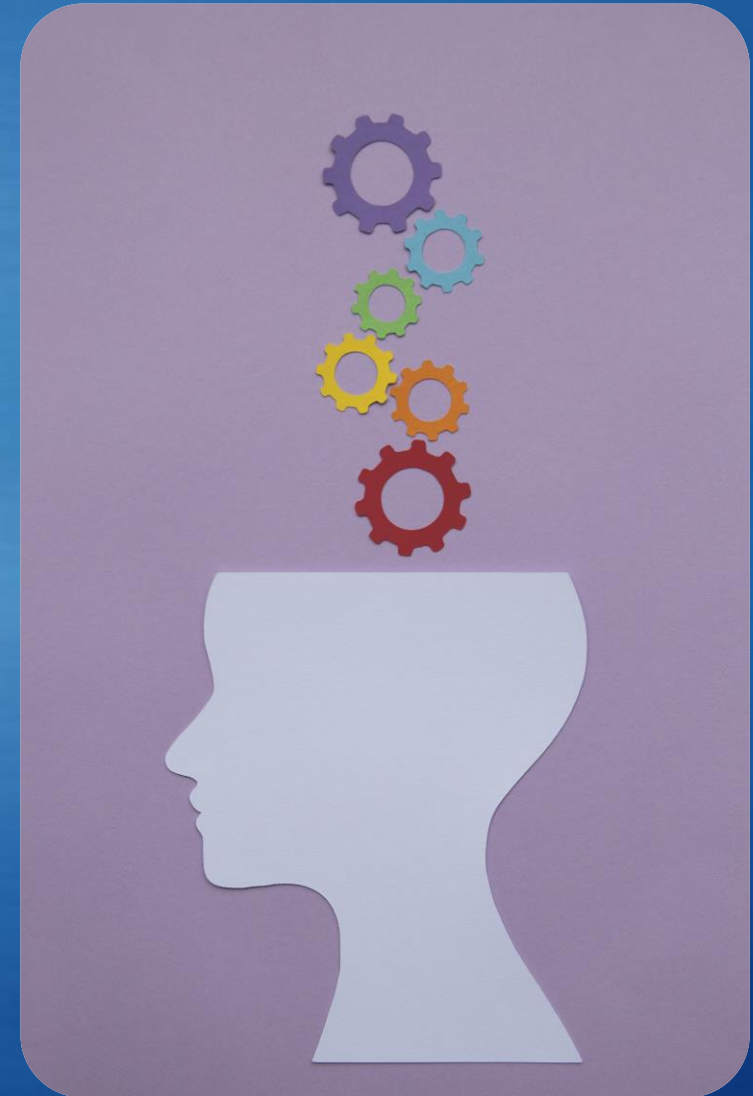
*Results Beyond Dispute<sup>SM</sup>*

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— in Private Dispute Resolution —

# Program Overview

1. Introduction and Bios
2. Overview of 998 Offers to Compromise
3. Defense Perspective: Advantages, Circumstances, and Terms
4. The Interplay Between 998s and Mediations
5. Plaintiff Perspective: Advantages, Evaluations, and Timing
6. Questions



# Civil Procedure Section 998

Generally:

- Section 998 is a cost-shifting statute that encourages settlement of actions by penalizing parties who fail to accept reasonable pretrial settlement offers.
- Section 998 allows for either withholding or augmenting costs under CCP §1032 if certain conditions are met.

# Civil Procedure Section 998

If a valid Section 998 offer is made but not accepted, and if the offeree fails to obtain a “more favorable judgment or award,” the offeree may be subject to certain adverse consequences.

These adverse consequences include cutting off the offeree’s post-offer costs and awarding the offeror post-offer costs.

CCP § 998(c)–(e)

# When A Section 998 Offer Can Be Made

A Section 998 offer may be made at any time up to 10-days before commencement of trial or arbitration. CCP §998(b).

When the offer is by mail, a Section 998 offer must be made 15-days before commencement of trial. CCP §1013.





# Section 998 Offers Must Be In “Good Faith”

Although a party may issue a Section 998 Offer at any time following the filing of the action, a Section 998 offer is valid only if it is made in “good faith.” See Licudine v. Cedars-Sinai Medical Center, 30 Cal. App. 5th 918, 924 (2019) (offer must have “some reasonable prospect of acceptance”).

A party is less likely, however, to have sufficient information upon which to evaluate a Section 998 Offer if it is received along with the complaint or shortly thereafter. See Najera v. Huerta, 191 Cal. App. 4th 872, 875 (2011) (Section 998 offer served with complaint not in “good faith” as offeree did not have enough information to evaluate the offer).

# Requirements For A Valid Section 998 Offer



The offer should be in writing and make explicit reference to Section 998 so the party to whom the offer is made can recognize the offer is being made formally and pursuant to that statute. See *Stell v. Jay Hales Development Co.*, 11 Cal. App. 4th 1214, 1231 (1992).

The absence of an acceptance provision renders the offer fatally defective and any judgment based on a party's acceptance of the terms is void. See *Mostafavi Law Group, APC v. Rabineau, APC*, 61 Cal. App. 5th 614, 622-624 (2021).

# Terms Of Offer Must Be Sufficiently Specific

The party extending the Section 998 offer bears the burden of assuring the offer is drafted with sufficient provision to satisfy the requirements of Section 998. See Ignacio v. Caracciolo, 2 Cal. App. 5th 81, 86 (2016).

The worth of the offer – including all nonmonetary terms – must be sufficiently certain to be capable of valuation so the court can determine whether any ultimate recovery at trial is “more favorable.”



# Revocation And Subsequent Section 998 Offers

Section 998 offers may be revoked by the offeror at any time prior to acceptance. See T.M. Cobb Co. v. Superior Court, 36 Cal. 3d 273, 278 (1984).

Subsequent Section 998 offers made before the acceptance of the prior offer has the effect of extinguishing the prior offer. See Varney Entertainment Group, Inc. v. Avon Plastics, Inc., 61 Cal. App. 5th 222, 234 (2021).

Note: There is no provision requiring that a revocation be in writing. See Brown v. Labow, 157 Cal. App. 4th 795, 817 (2007).

# Acceptance Of Section 998 Offer



Any acceptance of a Section 998 offer must:

- Be in writing and
- Must be signed by the attorney for the accepting party, or if not represented by an attorney, by the accepting party to be effective. CCP §998(b).

Note: A Section 998 offer is open for 30-days unless unequivocally rejected or formally revoked. Any acceptance must be unconditional. An acceptance that changes the terms of the offer is not a valid acceptance. See Bias v. Wright, 103 Cal. App. 4th 811, 820 (2002).

# Rejecting A Section 998 Offer

No response is required to reject a Section 998 offer as the offer will automatically be deemed withdrawn if it is not accepted prior to the commencement of trial or arbitration, or within 30-days after it was made, whichever occurs first. CCP §998(b)(2).



# Counteroffers And Negotiating After Receiving Section 998 Offers



A Section 998 offer is not revoked by a counteroffer and may be accepted by the offeree during the statutory period unless the offer has been expressly revoked by the offeror. See Berg v. Darden, 120 Cal. App. 4th 721, 731 (2004).

Neither criticism of offer as “insulting and demeaning,” nor a “request” for better terms, constitutes an unequivocal rejection of a Section 998 offer, and neither cuts off offeree’s power to accept. Guzman v. Visalia Community Bank, 71 Cal. App. 4th 1370, 1378 (1999).

# Judgement Upon Acceptance Of Section 998 Offer

If a Section 998 offer is acceptable, the offer along with the original proof of acceptance and a judgment for the court's signature should be filed with the court and judgment entered accordingly.

Section 998 offers calling for dismissal with prejudice instead of entry of judgment are valid and enforceable. See Goodstein v. Bank of San Pedro, 27 Cal. App. 4<sup>th</sup> 899, 905–906 (1994).

If a Section 998 offer fails to specify whether acceptance would result in judgment, an award, or dismissal, the offer – by virtue of default to the statutory language – is simply to be intended as one to “allow judgment” to be taken in exchange for the specified amount of the offer. See Berg v. Darden, 120 Cal. App. 4<sup>th</sup> 721, 728–730 (2004).



# The Fair Employment And Housing Act (FEHA)

FEHA contains its own provision regarding attorney's fees, costs, and expert witness fees.

Government Code Section 12965(b) provides that the trial court, "in its discretion, may award to the prevailing party . . . reasonable attorney's fees and costs, including expert witness fees . . . ."

Section 12965(b) is an express exception to the prevailing party cost provisions contained in CCP §1032(b). Thus, CCP §1032 does not apply in FEHA actions.

# Govt. Code Section 12965(b)

Even though Section 12965(b) stated that a “prevailing party” is entitled to their fees, costs, and expert witness fees, courts consistently applied that provision asymmetrically.

Accordingly:

- Prevailing plaintiffs should ordinarily receive their costs, attorney’s fees, and expert witness fees unless special circumstances would render such an award unjust; and
- Prevailing defendants should not be awarded costs, attorney’s fees, or expert witness fees unless the court finds that the action was objectively without foundation when brought, or the plaintiff continued to litigate after it clearly became so.

# Govt. Code Section 12965(b)

In 2019, Section 12965(b) was amended and now provides:

In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, . . . reasonable attorney's fees and costs, including expert witness fees, except that, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.

Note: Section 12965(b) was renumbered in June 2022 and is now Section 12965(c)(6).

# Defense Strategies – Why Make a 998 Offer?

- Facilitate Early Settlement Discussions.
- Increase Traction Regarding Frustrated Mediation/Settlement discussions.
- Indicate You Are Serious About Your Number (i.e., Not Just Posturing).
- Helps Facilitate Client Understanding Of What Is At Stake.
- Reduce Post-Offer Trial Costs and Fees.



# Defense Strategies – Things to Consider

- Potential Liability.
- Timing Of The Offer.
  - Whether to exhaust mediation or settlement talks beforehand.
- Making The Offer Inclusive Or Exclusive Of Attorneys' Fees.
  - The amount of fees incurred to date (both sides);
  - Client's understanding of the amount of fees that could be recovered; and
  - Understanding plaintiff's counsel's rate as compared to her/his colleagues
- Entry Of Judgment Versus Compromise Of Claims.
- Necessity Of Obtaining A Signed Settlement Agreement.



# Conditioning Section 998 Offers On A Settlement Agreement



Section 998 offers conditioned on the execution of a sight-unseen written settlement agreement are too uncertain to be valid. See Sanford v. Rasnick, 246 Cal. App. 4th 1121, 1130-1132 (2016).

Section 998 offers can, however, be conditioned on the execution of a settlement agreement provided the settlement agreement is attached as an exhibit to the offer. See Auburn Woods I Homeowners Association v. State Farm General Insurance Company, 56 Cal. App. 5th 717, 727 (2020).

# Conditioning Offer On Execution Of Overbroad Release

Section 998 offers requiring execution of a release which is overbroad and encompasses claims the releasors may have against the releasees beyond those at issue in the lawsuit are invalid. See Ignacio v. Caracciolo, 2 Cal. App. 5th 81, 89 (2016).

Section 998 offers can require offerees to release all claims between the parties in the underlying litigation. See Linthicum v. Butterfield, 175 Cal. App. 4th 259, 270-273 (2009).



# Section 998 Offers and Employment Mediations



**The Interplay between 998 Offers and Mediation: Commonalities and Differences**

**Pre-Mediation and Post-Mediation 998s: Creating leverage and shifting dynamics**

**Mediator and Attorney Perspectives: Timing, Impact to Settlement, Involving Your Mediator**



# How Do Plaintiffs' Counsel Perceive 998 Offers When On The Receiving End?



- (If used properly), 998 offers can be a catalyst for settlement discussions.
- A good way to educate the other side on your view of the case and “cut to the chase” in settlement negotiations.
- Not a “last, best, and final,” but pretty close to it.
- Various consideration in evaluating whether to accept a 998 offers.

# How Do Plaintiffs' Counsel Evaluate 998 Offers?

**How strong is your case and what is the likelihood of prevailing?**

- If 998 issued in a “Bad Case”
  - Consider negotiating the 998 offer higher or accepting the offer if that is not possible.
- If 998 issued in a “Good Case”
  - Consider treating the offer like an opening offer and countering it or ignoring the offer entirely if completely off-base. (If you want to settle your case, a counter with an explanation why you do not believe the 998 is sufficient—e.g., it is not high enough to account for damages/fees—can be effective in negotiating the offer higher).



# How Do Plaintiffs' Counsel Evaluate 998 Offers?

## What are your client's damages and your attorneys' fees to date?

- If 998 issued that is close to or higher than the realistic damages
  - Consider negotiating the 998 offer higher or accepting the offer if that is not possible.
- If 998 issued that is lower than the realistic damages
  - If it's a "Bad Case," consider negotiating the 998 offer higher (and including an explanation of why you do not believe the 998 is sufficient—e.g., it is not high enough to account for damages/fees) or accepting the offer if that is not possible.
  - If it's a "Good Case," not accepting it presents little risk. The best strategy will depend on your/your client's goals.  
Consider the following:
    - Do you think the case is better settled later after more discovery? → If so, ignore it and continue litigating.
    - Does your client want to settle the case now? → If so, treat it as an opening offer and counter it.
    - Is the offer so far off from your valuation that settlement may not be possible at this stage? → If so, continue litigating or have a conversation with defense counsel.

# How Do Plaintiffs' Counsel Evaluate 998 Offers?

## Are you In Court or In Arbitration?

- If in arbitration, and following the CCP, keep in mind that damages awarded in a FEHA case, especially emotional distress and punitive damages, are likely to be much lower than in court.

## Is there a Viable Argument for High Emotional Distress Damages or Punitive Damages?

- These damages can be hard to put a number on. There often is a huge disparity between how Plaintiffs' Counsel and Defense Counsel view emotional distress and punitive damages.
- Mediation can be helpful to bridge the gap.



# How Do Plaintiffs' Counsel Evaluate 998 Offers?

## Is the Offer Inclusive or Exclusive of Attorneys' Fees?

- If the 998 includes attorneys' fees → Perform analysis described above after calculating the total damages and attorneys' fees.
- If the 998 excludes attorneys' fees or states that fees can be recovered upon motion → Consider acceptance if 998 is at or greater than realistic damages, then negotiating attorneys' fees as part of a general release or filing a fee motion after acceptance.
  - *Research your judge or arbitrator and look at prior decisions on fee motions to determine whether you are better off filing a fee motion or negotiating fees directly with counsel.*

# Plaintiffs' Counsel Considerations In Accepting Or Rejecting a 998 Offer



- If a 998 offer is not too far off for a number your client may be willing to accept → Negotiate it up and/or Negotiate Terms!
  - Reach out early on to allow time for discussions before the offer expires.
  - If you can provide a legitimate justification for why you think defense counsel undervalued your case, that can be effect tool to bridge the gap.
  
- If a 998 offer is way off base (very far from a number that the Plaintiff would consider accepting) → Ignore it or counter with a 998 of your own!



# Any Questions?

## Thank you for joining us!



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*— in Private Dispute Resolution —*





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Chantal Payton is the founding attorney and Principal Managing Partner of Payton Employment Law, PC, a growing six-attorney Plaintiff's-side employment law firm based in Los Angeles County.

Throughout her career, Chantal has represented employees in single-plaintiff, multi-plaintiff, and class action and Private Attorneys General Act ("PAGA") matters. She truly enjoys advocating for employees and has litigated numerous FEHA, retaliation, wrongful termination, and wage and hour matters for employees in various professions and industries.

Chantal was selected to the Southern California Super Lawyers Rising Stars each year for the past four years (from 2019 to 2022). In 2022, she was also named to the Southern California Super Lawyers Rising Stars Up-and-Coming 50 Women list and Up-and-Coming 100 list.

Prior to founding her firm in 2018, Chantal was a managing partner and attorney of Knight Employment Law where she managed the firm and represented employees in various professions who had been subjected to unlawful conduct in the workplace. Before that, Chantal was an attorney at a boutique employment law firm in Los Angeles, where she also represented employees.

Chantal is a graduate of the University of San Diego School of Law.



## Laura Reathaford

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### PRACTICE AREAS

Appellate Practice  
Employment & Labor  
Investigations, Counseling &  
Policy Development  
Employment Litigation  
Class, Collective & PAGA  
Representative Actions

### INDUSTRIES

Manufacturing  
Media & Entertainment  
Wholesale & Retail Distribution

### COURT MEMBERSHIPS

- California
- Supreme Court of California
- United States Court of Appeals  
for the Ninth Circuit
- U.S. District Court - Central  
District of California

Laura Reathaford leads the firm's California Employment practice from its Los Angeles offices, providing labor and employment legal services to the firm's California-based clients and clients with California-based employees. She focuses her practice on wage and hour class and collective actions with a particular emphasis on representative actions under California's Private Attorneys General Act ("PAGA").

Laura is an experienced trial attorney and has received favorable judgments in FLSA and PAGA actions, as well as in single plaintiff harassment and wrongful termination matters. She represents the management of both public and private businesses across the country in the banking, grocery, fashion retail, manufacturing, healthcare, and telecommunications industries. She regularly defends and advises clients on employment issues, including terminating employees, drafting employee handbooks and complying with leave and disability rules as well as state and federal wage and hour laws.

Laura's successes include defeating class certification in various wage and hour class actions, narrowing the scope of PAGA representative actions during discovery and at trial, obtaining summary judgment, representing management against union grievances and litigating a variety of other employment disputes, including claims for wrongful termination, sexual harassment, whistleblower retaliation and discrimination.

### Events

- Employment & Labor Law Seminar - Minneapolis Area  
May 4, 2022

- U.S. District Court - Eastern District of California
- U.S. District Court - Northern District of California
- U.S. District Court - Southern District of California

## EDUCATION

- Schulich School of Law at Dalhousie University, J.D.
- University of Alberta, BCom.

- Employment & Labor Law Seminar - Kansas City Area April 12, 2022
- Lathrop GPM Employment and Labor Law Update November 2, 2021

## Presentations

- Presenter, "998 Offers and FEHA Actions: How They Work, When to Use Them, and Their Impact on Settlement," Los Angeles County Bar Association, September 29, 2022
- Presenter, "Private Attorneys' General Act (PAGA) Update: The Future of PAGA After Viking River Cruises," Alameda County Bar Association, July 27, 2022
- Co-presenter, "FLSA Freshen Up and Brush Up: Recent and Problematic Wage and Hour Issues," Lathrop GPM 2022 Employment & Labor Law Seminar, April 12, 2022 (Kansas City); May 4, 2022 (Minneapolis)
- Presenter, "California Osmosis: Lessons Learned," Lathrop GPM 2022 Employment & Labor Law Seminar, April 12, 2022 (Kansas City); May 4, 2022 (Minneapolis)
- Featured, "Attorney of the Month Profile," Attorney at Law Magazine, April 13, 2021
- Presenter, "Dealing with Unconscious Bias & Discrimination," Women, Diversity & Change Summit, November 7, 2018
- Presenter, "PAGA Trials," Bridgeport PAGA Workshop, Los Angeles, March 24, 2017
- "'Rest' Means Rest," Daily Journal Podcast, January 13, 2017
- "The Spread of 'Ban-the-Box' Laws," Bloomberg Radio, August 11, 2014
- "Employee Expense Reimbursements: A Potential Wage and Hour Hotbed?," BLR, November 2013
- "Donning and Doffing & Walking Time Allegations, and the Latest Claims Arising from Meal and Rest Breaks," American Conference International, May 29-30, 2014

## Publications

- Author, "The status of plaintiffs' post-offer costs when a 998 offer is rejected," *Los Angeles Daily Journal*, October 27, 2022
- Author, "Killing employee jobs, one break premium at a time," *Los Angeles Daily Journal*, July 26, 2021

- Author, "The Ninth Circuit Delivers Commonsense Win to Employers Under PAGA," *Attorney At Law Magazine*, July 26, 2021
- Author, "Why can't employees agree to arbitrate individual PAGA claims?," *Westlaw Today*, June 27, 2022
- Co-Author, "Punitive damages: hypothetical or hyper-technical?" *Los Angeles Daily Journal*, April 26, 2021
- Co-Author, "Insurance Tips for Employers," *Attorney At Law Magazine*, April 13, 2021
- Co-Author, "How Strong Corporate Guidance Can Prevent Seven-Figure Liability in Employment Cases," *Attorney At Law Magazine*, July 1, 2020
- Author, "SB 806 and the Proposed New Test for Independent Contractor Misclassification," *Attorney At Law Magazine*, April 29, 2020
- Author, "Employer's Perspective: PAGA 15 Years Later," California Lawyers Association, July 2019
- Author, "Ignoring Compelling Legislative History Opens PAGA Floodgates," *Daily Journal*, June 4, 2018
- Author, "Avoiding Labor Entanglements for Commission-Earning Employees in a Changing Legal Landscape," *The State Bar of California Business Law News*, 2017
- Author, "PAGA Performance," *Los Angeles Lawyer*, June 2016
- Author, "He said, she said: Employment litigators debate California's Private Attorney General Act," *Westlaw Journal Employment*, June 7, 2016
- Author, "Advising Clients On The Best Way to Navigate Whistleblower Issues," *Verdict Magazine*, Summer 2015
- Author, "Has PAGA Really Made a Difference," *Los Angeles Daily Journal*, June 2, 2015
- Author, "San Francisco Handcuffs Employers to Give Ex-Cons a Break," *Wall Street Journal*, August 11, 2014
- Author, "Responding the Right Way to PAGA Employment Litigation," *The Recorder*, July 23, 2014
- Author, "California Courts May No Longer Be Able to Certify a Ham Sandwich," *Corporate Counsel*, June 26, 2014
- Author, "Guidance on Statistics in Class Actions," *Los Angeles Daily Journal*, June 4, 2014
- Author, "Appellate Courts Shift Course on Certification," *Los Angeles Daily Journal*, January 9, 2014

- Author, "Calif.: New Law Expands Protections for Whistleblowers," *Society for Human Resource Management*, December 16, 2013
- Author, "How to Defend Regional Class Actions," *Los Angeles Daily Journal*, August 23, 2013
- Author, "Plaintiffs look to PAGA as Class Certifications Get Tougher," *Los Angeles Daily Journal*, May 1, 2013

#### Quoted

- Quoted, "Uber Case Lawyers Face Tall Order to Produce More Info," *Los Angeles Daily Journal*, July 5, 2016
- Quoted, "Case of allegedly negligent plaintiffs' lawyer shows murkiness of PAGA," *Los Angeles Daily Journal*, May 6, 2016
- Quoted, "Lawyers Balking at Governor's PAGA Reforms," *Los Angeles Daily Journal*, February 24, 2016
- Quoted, "In 2015, Arbitration, Misclassification Disputes Dominated Employment Law," *Los Angeles Daily Journal*, December 30, 2015
- Quoted, "Cases, Manageability Issues Persist," *Los Angeles Daily Journal*, May 2015

#### Client Alerts And Blog Posts

- The DOL "Unshackles" Employers in Retail and Services Industries  
May 26, 2020
- Litigation Pitfalls for Employers in a COVID-19 World  
April 14, 2020

#### In The News

- Law360 Features New D.C. and Los Angeles Partners In Charge  
Frank Sciremammano, Laura Reathafor  
January 10, 2023
- Twitter In Disarray: Los Angeles Times Quotes Partner Laura Reathafor on Elon Musk's Ultimatum to Employees  
November 18, 2022
- Amid Mass Layoffs at Twitter, Los Angeles Times Quotes Partner Laura Reathafor on Employer Protections Under WARN Act Regulations  
November 3, 2022
- Newsbreak Quotes Partner Laura Reathafor on Elon Musk's Ultimatum for Employees  
November 3, 2022



- Bloomberg Law Quotes Laura Reathafor on Protections for Pregnant Employees  
October 26, 2022
- CBS News Quotes Partner Laura Reathafor On Rights to Severance When Getting Laid Off  
October 7, 2022
- HR Dive Quotes Laura Reathafor on Recent SCOTUS Arbitration Rulings  
July 11, 2022
- Society for Human Resource Management Quotes Laura Reathafor on California Bill Requiring Pay Range in Job Ads  
June 15, 2022
- "Conversation With The Experts: Labor & Employment," LA Times  
May 9, 2022
- The Washington Post Quotes Laura Reathafor on Return to Office Policies  
April 8, 2022
- FOX26 News Features Laura Reathafor on Labor Shortage  
February 7, 2022
- FOX26 News Interviews Laura Reathafor on Omicron's Impact on the Workplaces  
January 26, 2022
- Cheddar News Interviews Laura Reathafor on the Employment Impact of Omicron  
January 3, 2022
- Attorney At Law Features Article by Laura Reathafor on Private Attorneys General Act  
July 26, 2021
- Attorneys at Law Magazine Features Article by Laura Reathafor and Caroline Sayers  
June 30, 2020
- Attorney at Law Features Article by Laura Reathafor on Proposed Bill to Address Contractor Misclassification  
April 29, 2020
- Laura Reathafor Interviewed by the Northern California Record on PAGA Litigation  
March 19, 2020
- Law360 Quotes Laura Reathafor on California Supreme Court Ruling  
February 14, 2020

- Los Angeles Daily Times quotes Laura Reathafor in "Uber Case Lawyers Face Tall Order to Produce More Info"  
July 5, 2016
- Law360 Quotes Laura Reathafor On SCOTUS Auto Service Rulings  
June 20, 2016
- Los Angeles Daily Journal quotes Laura Reathafor on "Case of Allegedly Negligent Plaintiffs' Lawyer Shows Murkiness of PAGA"  
May 6, 2016
- Bloomberg Law Quotes Laura Reathafor on California SC Suitable Seating Ruling  
April 4, 2016
- Los Angeles Daily Journal quotes Laura Reathafor on "Lawyers Balking at Governor's PAGA Reforms"  
February 24, 2016
- Los Angeles Daily Times quotes Laura Reathafor on "In 2015, Arbitration, Misclassification Disputes Dominated by Employment Law"  
December 30, 2015
- Los Angeles Daily Journal quotes Laura Reathafor on "Cases, Manageability, Issues Persist"  
May 2015

## News Releases

- L&E Partner Laura Reathafor Named Partner in Charge of Lathrop GPM Los Angeles Office  
January 10, 2023
- Lathrop GPM, Insurance Recovery Practice, Labor & Employment Practice and Eight Attorneys Recognized by Benchmark Litigation  
September 28, 2022
- Lathrop GPM Insurance Recovery Practice Receives National Benchmark Litigation Honors; Nine Attorneys Named Benchmark Litigation Stars  
November 6, 2020
- Laura Reathafor Named a Top Woman Attorney in Los Angeles  
April 27, 2020
- Lathrop GPM Develops COVID-19 Client Response Team  
March 18, 2020
- Seven Lathrop Gage Attorneys Named Benchmark Litigation Stars  
October 8, 2019

- Formidable West Coast Attorney Laura Reathafor Join Lathrop Gage's Los Angeles Office  
October 1, 2019

### Professional Affiliations

- American Bar Association
- Association of Southern California Defense Counsel, Amicus Committee
- Law Society of Upper Canada
- Los Angeles County Bar Association
- The State Bar of California

### Honors

- Top Women Attorneys, *Los Angeles Business Journal*, 2020
- *Benchmark Litigation, the Guide to America's Leading Litigation Firms and Attorneys*, "Labor & Employment Star," 2019 - 2022
- Top 100 Women Lawyers in California, *Daily Journal*, 2018
- Finalist, Leaders in Law, *Los Angeles Business Journal*, 2018
- Woman of Promise, Comerica Bank and Los Angeles Lakers' Women's Business Awards, 2018
- Southern California Rising Star, *Super Lawyers*, 2013-2018



## KRISTIN RIZZO, ESQ.

Kristin Rizzo is a full-time neutral who believes that parties seeking to resolve a dispute through mediation deserve a partner in resolution – a mediator who is dedicated to the needs and goals of the parties and has a command of the details of the case and the underlying laws involved. Passionate about dispute resolution, Kristin uses her strong work ethic, empathy, and tenacity to help parties resolve their disputes in creative and meaningful ways.

Kristin mediates a variety of civil claims, specializing in employment mediation, from pre-litigated and post-investigative disputes to single-plaintiff, complex multi-party, and representative litigated matters. She also mediates business, contract, housing discrimination, ADA access, personal injury, medical malpractice, and emotionally charged/high-impact matters.

As a mediator, Kristin combines her varied legal background with her extensive leadership and organizational knowledge to bring a multi-faceted approach to every mediation. Kristin's prior legal experience includes representing individuals, employees, and organizations in a wide range of civil and employment law matters, including giving high-level strategic advice and counsel and performing neutral workplace investigations. Her extensive leadership background includes high-level positions in both the San Diego legal community and the community at large, working collaboratively with boards and professionals of numerous disciplines. Honored multiple times as a San Diego Super Lawyer in Alternative Dispute Resolution, Kristin recognizes that a knowledgeable and collaborative presence can assist the parties in building consensus and feel confident that the correct resolution has been reached.

### LEGAL CAREER & PRIOR EXPERIENCE

- Full-time Neutral, Judicate West (2022-Present)
- Mediator, West Coast Resolution Group (2019-2022)
- Mediator and Workplace Investigator, Rizzo Resolution (2019-2022)
- Founding Attorney, Rizzo Law; representing individuals and companies in harassment, discrimination, wrongful termination, wage and hour, PAGA and class action, separation, severance, and contract matters (2011-2018)
- Mediator, Civil Court Mediator Panel for the San Diego Superior Court (2019-2021)
- Mediator, Small Claims Mediator Panel for the San Diego Superior Court (2018-2019)
- Mediator, Paid and Pro Bono Panel for the State of California, Department of Fair Employment and Housing, San Diego and Los Angeles (2018-2022)
- Mediator, Pro Bono Panel for the Equal Employment Opportunity Commission, San Diego (2018-2019)
- Litigation Attorney, Higgs, Fletcher & Mack; Specializing in General Civil Litigation with an emphasis on Personal Injury, Medical Negligence, and Employment Defense (2008-2011)
- Litigation Attorney, Hosey & Bahrambeygui; Specializing in General Civil Litigation with an emphasis on Plaintiff Personal Injury and Employment (2006-2008)

### EDUCATION & PROFESSIONAL AFFILIATIONS

- J.D., University of San Diego, School of Law (2006)
- B.A., University of California, San Diego; Political Science and Spanish Literature, Cum Laude (2001)
- Pepperdine University School of Law, Straus Institute for Dispute Resolution, Mediating the Litigated Case and Advanced Mediation Training (2017; 2021)
- National Conflict Resolution Center, Mediation Skills Training (2012)
- University of San Diego School of Law, Part-time Adjunct Professor (2022-Present)
- City of San Diego Human Relations Commission, Commissioner and Chair (2020-Present)
- Lawyers Club of San Diego, Mediator Taskforce Co-Chair (2020-Present)
- San Diego County Bar Association; President (2018); Treasurer (2015), Labor & Employment Section Chair (2012), New Lawyer Division President (2010)
- University of San Diego, School of Law, Board of Visitors Trustee, Past Alumni Board Director, and Executive Committee Member (2012-Present)

### ADR EXPERIENCE & SPECIALTIES

All types of Employment disputes including Labor Law, PAGA, and Wage and Hour Class Action, Business Litigation, Fair Housing and Statutory claims, Healthcare, Medical Negligence, and Personal Injury including Sexual Assault

## ACHIEVEMENTS & AWARDS

- Author, speaker, and presenter on a variety of topics, including mediation techniques, online dispute resolution, employment law, and current legal issues
- Super Lawyers, Alternative Dispute Resolution, San Diego (2020, 2021, 2022)
- Super Lawyers, Employment Attorney, San Diego (2019)
- San Diego Metro, 40 Under 40 (2018)
- San Diego County Bar Foundation, Service Award (2018)
- Super Lawyers, Employment Attorney Rising Star, San Diego (2015 – 2018)
- Daily Transcript, Top Employment Law Attorney, San Diego (2013)
- Red Boudreau Trial Lawyers Judge David R. Thompson Recognition (2012)
- University of San Diego, School of Law, Distinguished Recent Alumni (2011)
- Daily Transcript, Top Employment Law Young Attorney, San Diego (2009, 2011)
- Avvo, Super Rated Attorney, Highest Rating, 10.0

## HOBBIES & INTERESTS

Kristin is a native of San Diego and lives in Poway with her husband, two daughters, and two dogs. She enjoys spending time with her family and friends, paddle boarding and boating at their lake house, coaching youth soccer, and snowboarding. Kristin has lived abroad in Madrid, Spain, and has traveled extensively throughout Europe.

## LOCATIONS

All of California



*Results Beyond Dispute™*





## DANIEL TURNER, ESQ.

During Dan's career as a lawyer, he has represented both employees and employers in single-plaintiff cases, class actions, and representative actions. He has experienced, for both sides, that the benefits of the resolution process far exceed the costs and struggles of litigation, not only from a financial standpoint but also from an emotional and business perspective.

As a dedicated employment neutral, Dan believes that each case comes with its own unique facts and challenges. He understands the key to resolution is to build trust with each party. Dan works to develop this trust by being well-prepared, understanding the facts, legal arguments and ultimate goals each party seeks to achieve. Prior to meeting with the parties, Dan dedicates an extensive amount of time analyzing the briefs to familiarize himself with the evidence and arguments and also connecting with the lawyers before the mediation. Dan says, "I am passionate about preparing for each case as if it were my own. This allows me to build trust and establish credibility as their mediator. I want to make sure everyone feels heard and respected. We talk about facts, feelings and the law, it is not just about shuttling numbers."

### LEGAL CAREER & PRIOR EXPERIENCE

- Full-time Neutral, Judicate West (2022-Present)
- Private Mediator, Daniel Turner Mediation (2018-2022)
- Partner, Van Vleck & Turner LLP (2016-2022)
- Partner, Van Vleck, Turner & Zaller LLP (2007-2016)
- Senior Associate, Carlton, Disante & Freudenberger LLP (2003-2007)
- Associate, Trial Department, McDermott, Will & Emery LLP (2001-2003)
- Litigation Associate, Dewey Ballantine LLP (1999-2001)

### EDUCATION & PROFESSIONAL AFFILIATIONS

- J.D., University of Michigan Law School (1999)
- B.A., University of California, Los Angeles; Political Science, Summa Cum Laude (1996)
- Mediating the Litigated Case – Straus Institute for Dispute Resolution (2018)
- STAR: A Systematic Approach to Mediation Strategies, (2017)
- United States District Court, Central District, Appointed Panel Member (2018-Present)
- Equal Employment Opportunity Commission, Appointed Panel Member (2018-Present)
- Southern California Mediation Association (2018-Present)
- California Lawyers Association, Labor and Employment Section (2015 – Present)

### ADR EXPERIENCE & SPECIALTIES

Employment, Class Action, Civil Rights, Collective Actions, Disability, Labor Law, PAGA

### ACHIEVEMENTS & AWARDS

Representative Speaking Engagements Include:

- "998 Offers and FEHA Actions: How They Work, When to Use Them, and Their Impact on Settlement," Los Angeles County Bar Association (2022)
- "Recent Developments in the Law Regarding the Arbitrability of Claims Under the UCL, FAL, CLRA, and a Favorite of the Plaintiff's Employment Bar, California's Private Attorney General Act," California Unfair Competition Podcast, Episode 9 (2022)
- "Who has the burden? A discussion of the California Supreme Court's recent decision in Lawson v. PPG Architectural Finishes, Inc." (2022)
- "2015 year in Review," California Restaurant Association Los Angeles Chapter (2015)
- "Understanding California's New Paid Sick Leave Law," California Restaurant Association Los Angeles Chapter (2015)
- "The Affordable Care Act and What It Means For Small Business," Galardi Group, Inc. (2013)

### HOBBIES & INTERESTS

Dan is an avid reader of American History and the Civil War. He coached youth baseball for many years and is involved with the Wilshire Warriors PONY baseball. He is a Chicago native and now lives with his family in Los Angeles, CA.

### LOCATIONS

All of California



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