No. S280598

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

OSCAR J. MADRIGAL and AUDREY MADRIGAL, *Plaintiffs and Respondents,* v. HYUNDAI MOTOR AMERICA *Defendant and Appellant.*	California Court of Appeal, Third District, Civil No. C090463 Appeal from Placer County Superior Court, Case No. SCV0038395 Honorable Michael Jones

HYUNDAI MOTOR AMERICA'S OPPOSITION TO MOTION FOR JUDICIAL NOTICE

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Hyundai Motor America (HMA) opposes Plaintiffs Oscar and Audrey Madrigal's (Plaintiffs) Motion for Judicial Notice. Plaintiffs move for judicial notice of certain historical legislative materials as to Code of Civil Procedure section 998.[1] Plaintiffs argue that judicial notice is appropriate because the materials are (1) judicially noticeable, and (2) relevant to the parties' dispute. (Plaintiffs' Motion for Judicial Notice (Mot.) at p. 7.)

Rather than support these contentions, however, Plaintiffs have simply attached more than 700 pages of unorganized and poorly indexed materials, with no individualized analysis as to how these documents are appropriately the subject of judicial notice or relevant to the issues on appeal. Instead, they concede that "some" of the over 700 pages "are not the proper subject of judicial notice." (Mot. at p. 10.) They nevertheless insist that "each" of their exhibits comprising the 700 pages of materials is relevant and properly noticeable, and that they "only cite or intend to rely upon legislative history materials that *are* the proper subject of judicial notice." (Mot. at p. 7, 10.) Plaintiffs do not further specifically identify the alleged judicially noticeable materials, provide specific citations to support the noticeability of

[1] All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

any of those materials, nor explain to the Court how each of those materials are supposedly relevant. Instead, they merely provide a string of citations and summarily argue that all the attached materials are relevant.

Plaintiffs cannot meet their burden to establish the elements of judicial notice by requiring the Court to cross-reference their motion with their merits brief to determine for them whether and which of the materials are appropriately considered. This alone warrants denial of their motion. But a closer review—constructed from whole cloth in lieu of any affirmative analysis from Plaintiffs—confirms that the materials on which they purport to rely should be disregarded.

The Court should deny Plaintiffs' motion.

Argument

Plaintiffs move for judicial notice of more than 700 pages of legislative materials, arguing the materials will aid this Court's interpretation of section 998 vis-à-vis the issue Plaintiffs have raised on appeal: whether section 998(c)'s cost-shifting provisions apply when a party rejects a section 998 offer and later settles for a lesser amount.

Evidence Code sections 451, 452, and 453 outline the categories of documents that may be judicially noticed. Evidence Code section 451

provides that judicial notice is mandatory for the "decisional, constitutional, and public statutory law of this state," while section 452 provides a list of delineated items which a court *may* notice. (Evid. Code § 451; *id.* § 452; *also id.* § 459 [applying judicial notice provisions to reviewing courts].) Under Evidence Code section 453, a court must take judicial notice of the items in section 452, but only if "a party requests it" in a manner that provides sufficient notice of the request *and* provides "sufficient information to enable [the court] to take judicial notice of the matter."

Finally, judicial notice is only appropriate to the extent the material to be noticed is relevant. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064 (*Mangini*), overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257.) Thus, material that is otherwise notice*able* should not be noticed if it "'has no bearing on the limited legal question at hand.'" (*Mangini*, *supra*, 7 Cal.4th at 1064 [quoting *People v. Stoll* (1989) 49 Cal.3d 1136, 1144, fn. 5].) Legislative materials are not relevant to the question of statutory interpretation unless they "reliably reflect[] the collective intent of the Legislature." (*Medical Board v. Superior Court* (2003) 111 Cal.App.4th 163, 181; see also *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 701 [holding that

legislative materials are relevant when they are "a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion."].)

Preliminarily, and as HMA argues in its Answer Brief, the Court's reliance on the legislative materials is unnecessary because the statute is unambiguous, rendering the materials irrelevant for statutory interpretation and resort thereto improper. (*E.g., Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268 [quoting *Kizer v. Hanna* (1989) 48 Cal.3d 1, 8] ["If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.'"].)

Nevertheless, despite seeking judicial notice of over 700 pages of unindexed legislative history documents, Plaintiffs are unable to meet their burden to establish that the Court should notice these documents, either collectively or on an individual basis.

A. Plaintiffs cannot establish that the legislative history materials are collectively eligible for judicial notice.

Plaintiffs assert that the entire body of legislative history documents attached to their motion are collectively judicially noticeable because (1) they constitute the "decisional, constitutional, and public statutory law of this

state" under Evidence Code section 451, (2) courts routinely take judicial notice of legislative history materials assembled and compiled by the two services from which Plaintiffs obtained them, and (3) "some" unidentified documents included in the compilation are the proper subject of judicial notice (although Plaintiffs concede that some other unidentified documents are *not* properly judicially noticeable). (Mot. at p. 10.) None of these reasons provide sufficient grounds to judicially notice the materials as a whole.

First, judicial notice of legislative history materials is not mandated here, as Plaintiffs assert. (Mot. at p. 7-8.) The materials do not fall into any category of documents for which judicial notice is mandatory under Evidence Code section 451, and Plaintiffs have not furnished sufficient information to require the Court to take judicial notice of all the documents pursuant to Evidence Code section 453. Contrary to Plaintiffs' arguments, legislative history materials are not the law and do not constitute "decisional, constitutional, and public statutory law of this state" under Evidence Code section 451, as Plaintiffs argue. Legislative history, by very definition, merely comprises historical materials leading to the enactment of a law, not the law itself. (*J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1577 ["The Constitution does not elevate the bits and

pieces that make up any legislative history to the status of law—it reserves that honor only for the text of legislation that has run the gauntlet of the Legislature and the Governor's possible veto."]; *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238.)

HMA agrees that certain types of legislative history documents *may* be judicially noticeable under the permissive provisions of Evidence Code section 452, but only if they are relevant to the issues in the case. (See *Mangini*, *supra*, 7 Cal.4th at p. 1064 [granting judicial notice of legislative history materials pursuant to Evidence Code section 452(c).].) But Plaintiffs' vague and cursory motion does not make the requisite particularized showing for proper judicial notice here.

Second, the fact that the proffered materials were assembled by a particular service has no bearing on whether the materials are properly judicially noticeable. Documents are judicially noticeable if they fall within the categories delineated in Evidence Code sections 451 and 452 and are relevant to the issues in the case. (See *Mangini*, *supra*, 7 Cal.4th at p. 1063.) Their compilation by any particular service, however, does not dictate noticeability.

Third, Plaintiffs' Motion fails to explain sufficiently the grounds for

taking judicial notice of each of the documents proffered, including their individual relevance to the appeal as required by California Rules of Court Rule 8.252(a)(2). Plaintiffs attach over 700 pages of legislative materials, lumped together by amendment year, but otherwise unidentified and unindexed in any coherent manner that would allow the Court or HMA to determine the documents comprising each exhibit. Many of the documents are not titled and/or are incomplete, making it impossible to evaluate their contents or propriety for judicial notice. (See, e.g., MJN-10-13, MJN-123.) Plaintiffs provide no further clarity in their Motion, vaguely addressing all documents together as a whole, instead of providing individualized discussion of the documents, with proper authority supporting the claim for judicial notice as to each.

Even more confusing, Plaintiffs concede that "some" documents *may not* be the proper subject of judicial notice (Mot. 10), but they never identify which ones fall into this category. Instead, they leave this to the Court and HMA to attempt to determine. Despite their admission that some of the documents are not judicially noticeable, Plaintiffs nevertheless ask the Court to grant judicial notice for them anyway, rationalizing that they "only cite or intend to rely upon legislative history materials that *are* the proper subject of

judicial notice," again, without any identification of or specific discussion supporting those materials. (*Id.*) In other words, rather than developing their argument and supporting their motion, Plaintiffs have asked this Court to do so for them. Plaintiffs' failure to identify the specific grounds for judicial notice for each of the documents requested fails to satisfy their burden on their motion to show the propriety of taking judicial notice of the legislative history materials as a whole. (Cf., e.g., *Mansell v. Bd. of Admin. of the Pub. Employees' Retirement System* (1994) 30 Cal.App.4th 539, 545-546 ["We are not required to search the record to ascertain whether it contains support for [Appellant's] contentions."].) It is not the Court's function to serve as "backup appellate counsel," (*id.*), and "[j]udges are not like pigs, hunting for truffles buried in briefs." (*United States v. Dunkel* (7th Cir. 1991) 927 F.2d 955, 956.)

On this basis alone, Plaintiffs' motion should be denied.

B. The few documents actually cited in the Opening Brief are ineligible for judicial notice.

Out of the hundreds of pages attached to their motion, Plaintiffs actually cite to or rely on only fourteen individual documents in their Opening Brief. Plaintiffs have not identified these materials for the Court beyond a vague reference to their brief, and provide no specific analysis

supporting judicial notice for each document. Nonetheless, a closer look at each document shows their ineligibility for judicial notice.

1967 Amendment (MJN-10-13, 40, 44; Op. Br. at p. 34, 35). Despite attaching to their Motion over one hundred pages of legislative materials related to the 1967 Amendment to section 998's predecessor, section 997, Plaintiffs rely on only five of these pages in their Opening Brief. (Op. Br. at p. 34, 35.) These consist of (1) a letter from the State Bar Legislative Representative to Governor Reagan asking him to sign the bill after passage (MJN-44), (2) the Bill Memorandum forwarding Senate Bill No. 55 to the governor for signing after passage (MJN-40), and (3) three single pages of various versions of Senate Bill No. 55 (MJN-10-13). None of these are properly eligible for judicial notice.

Plaintiffs first cite to the State Bar's letter to Governor Reagan, which post-dates the passage of the Amendment in the Legislature. (Op. Br. at p. 34; MJN-44.) This Court, along with a number of lower courts, have consistently followed the general rule that letters to the governor urging the signing of a bill are not judicially noticeable for the purpose of determining legislative intent, as there is no evidence those views were disseminated to either house of the Legislature for consideration in passing the bill. (*Lungren*

v. Deukmejian (1988) 45 Cal.3d 727, 743; *California Teachers Assn.*, *supra*, 28 Cal.3d at p. 701; *McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1161, fn 3.)

More importantly, this letter, along with the other documents cited from the 1967 Amendment's legislative history, is irrelevant to the issue at hand, whether the current section 998 applies to cases that settle. (*Mangini*, *supra*, 7 Cal.4th at p. 1063 [holding that although a court may judicially notice a variety of matters (Evid. Code, § 450 et seq.), only relevant material may properly be noticed.].) As Plaintiffs acknowledge, the 1967 Amendment clarified that a judgment arising from a party's acceptance of a section 998 offer should not be given preclusive effect under the principles of collateral estoppel. However, Plaintiffs then go on to infer from this language that the Legislature intended that "settlements" should not be construed as "judgments" in *any* context. (Op. Br. at p. 34.) This urging goes far beyond anything actually contained in the materials, and is instead merely Plaintiffs' attempt to read into the history their desired outcome.

For example, Plaintiffs cite to a sentence in the Bill Memorandum forwarding the bill to the governor, which states "[t]he bill adds clarifying language to assure that compromise settlements which are encouraged by

statute are not misused through misinterpretation of the statute." (Op. Br. at p. 34-35; MJN-40.) Plaintiffs argue this statement shows the Legislature was intending to reject "any context" in which a settlement could result in a judgment. But nothing in this document, nor in the prior bill versions showing that the Senate had initially proposed alternate language in place of the term "compromise settlements," indicates or supports that the Legislature contemplated classification of post-998 settlements (as in, settlements *after* a 998 offer has been rejected or expired) like the one at issue here. To the contrary, these materials solely address how settlements pursuant to section 998—in other words, settlements resulting from acceptance of a section 998 offer—should be classified for purposes of collateral estoppel.

Although bill memoranda and prior versions of bills are legislative materials that have previously been considered judicially noticeable by this Court, the lack of relevance to the issues here—whether settlements after a party fails to accept a section 998 offer can trigger section 998(c) and (d)'s cost-shifting mechanisms—mandates denial of Plaintiffs' motion.

1969 Amendment (MJN-122, 131; Op. Br. at p. 35-36). Plaintiffs only rely on two documents related to the 1969 Amendment: (1) a single page of what Plaintiffs endorse as the Assembly Policy Committee Analysis, and

(2) a July 11, 1969 letter from Assemblyman Hayes (the bill's author), to Governor Reagan after passage in the Legislature.

As to the first citation, there is nothing on the document itself establishing that it is part of the Assembly Policy Committee Analysis as Plaintiffs assert, nor are any of the materials attached to Plaintiffs' motion individually indexed to enable the Court to identify this document. Indeed, this document falls two pages after the cover page for the Assembly Final History, indicating it is not, as Plaintiffs assert, part of the Assembly Policy Committee Analysis. (MJN-120-123.) As Plaintiffs have not provided sufficient information to establish what this document is and why it may be judicially noticeable, Plaintiffs' motion should be denied as to this document.

Regarding the Hayes letter, as HMA established above in connection to the 1967 Amendment, letters to the governor, even when coming from the bill's author, are not properly the subject of judicial notice. (*California Teachers Assn., supra*, 28 Cal.3d at pp. 700-701.) Notably, the Court of Appeal rejected Plaintiffs' request for judicial notice of the same document in the case below on the same basis, noting that courts may only consider a legislator's opinions regarding the purpose or meaning of legislation when those opinions were expressed in testimony or argument to either a house of

the Legislature or one of its committees, and letters by a bill's author to the governor are not properly considered. (*Madrigal v. Hyundai Motor Am.* (2023) 90 Cal.App.5th 385, 393, fn. 3 (*Madrigal*) [citing *South Bay Creditors Trust v. General Motors Acceptance Corp.* (1999) 69 Cal.App.4th 1068, 1079 and *McDowell*, *supra*, 59 Cal.App.4th at p. 1161, fn. 3].) This Court's historical jurisprudence has followed the same rationale, declining to determine legislative intent from comments by a bill's author because they reflect only the views of a single legislator instead of those of the Legislature as a whole. (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 492, fn. 11; *Myers v. Philip Morris Cos.* (2002) 28 Cal.4th 828, 845; *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062.) Plaintiffs provide no reason to stray from this rationale, and the denial of judicial notice should be upheld here.[2]

1971 Amendment (MJN-189, 217, 226; Op. Br. at p. 36-38). Plaintiffs rely on three documents in the 1971 Amendment materials: (1) another letter from Assemblyman Hayes to Governor Reagan, (2) a

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[2] Moreover, as shown in HMA's merits answer brief, the material is further irrelevant because it does not—nor does it purport—to speak to the issue at hand.

resolution from the Santa Clara County Bar Association recommending that the State Bar sponsor the Amendment, and (3) materials prepared by the State Bar staff as part of the resolution to sponsor the Amendment. (MJN-189, 217, 226.) Two of these documents, the 1971 Hayes letter and the State Bar materials, were rejected by the Court of Appeal in ruling on Plaintiffs' Request for Judicial Notice below for the same reasons as the 1969 Hayes letter. (*Madrigal*, 90 Cal.App.5th at p. 393, fn. 3.) Plaintiffs provide no explanation why this Court should come to a different conclusion. Judicial notice should likewise be denied here based on the same grounds.

The third document, a resolution from the Santa Clara County Bar Association, is even further removed from any legislative intent, as there is no evidence this document was ever presented to any member of either house of the Legislature. (See *People v. Garcia* (2002) 28 Cal.4th 1166, 1176, fn. 5 [citing *Quintano, supra*, 11 Cal.4th at p. 1062, fn. 5].) Moreover, documents regarding a bar association's views on proposed legislation are not indicative of legislative intent and are therefore not judicially noticeable. (See *Lungren, supra*, 45 Cal.3d at p. 742; *California Teachers Assn., supra*, 28 Cal.3d at 692; *Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App.4th 1809, 1820 ["We note that the State Bar's view of the meaning of proposed legislation,

even if it authored that legislation, is not an index of legislative intent."].) Plaintiffs cite no authority to the contrary.

1997 Amendment (MJN-292, 309; Op. Br. at p. 38). Plaintiffs rely on only three of the 319 pages of the 1997 Amendment Legislative materials attached to their motion. (Op. Br. at p. 38.) Each of the cited documents explains that the purpose of adding the arbitration-specific language was to ensure that section 998 and its cost-shifting provisions would apply to arbitrations (specifically medical and contractual arbitrations), not just judicial proceedings. (*Generally*, MJN-292, 309.) None address the definition or interpretation of the phrase "fails to obtain a more favorable judgment," nor whether section 998's cost-shifting provisions apply in cases like these, where the merits of the claims are resolved by settlement but the costs and fees are left to motions practice. As such, the materials do not meet the standard for judicial notice because they are not relevant to any material issue. (See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422 fn. 2 ["There is, however, a precondition to the taking of judicial notice in either its mandatory or permissive form—any matter to be judicially noticed must be relevant to a material issue."].)

First, Plaintiffs cite to a Legislative Counsel's Digest mark-up of

Senate Bill 73, the bill that amended section 998 in 1997. (MJN-292; Op. Br. at p. 38). This document indeed shows that section 998 was amended in 1997 to apply to arbitration proceedings. Language throughout the section was amended or revised to include arbitration-specific language—e.g., "prior to commencement of trial *or arbitration*." (MJN-290 (italics indicate amended language).)

They relatedly cite to a Senate Judiciary Committee Analysis of the 1997 bill, which again states that bill would revise section 998 to apply to arbitrations, specifically contractual and medical malpractice arbitrations. (MJN 309; Op. Br. at p. 38):

> Existing law, Code of Civil Procedure Section 998, provides that if a settlement offer made by a defendant is not accepted and the plaintiffs fails to obtain a more favorable judgment, the plaintiffs shall not recover his or her costs and shall pay the defendant's costs from the time of the offer. For purposes of determining whether an award is more favorable, a plaintiff in a non-tort action is deemed to have obtained a more favorable judgment if the judgment obtained by the plaintiff, exclusive of attorney's fees and costs, exceeds the settlement offer made by the defendant.
>
> This bill would revise Section 998: a) to apply the rule to contractual and medical malpractice arbitrations; b) to exclude postoffer costs in determining whether the plaintiff shall not receive postoffer costs but may still recover preoffer costs, and to provide that plaintiffs are liable for the defendant's costs from the time of its rejected offer to the judgment or award,

> that sum being deducted from any damages award to the plaintiff; and. [*sic*] d) to repeal language providing the court with discretion to require the defendant to pay the plaintiff's costs in cases where the defendant fails to obtain a more favorable judgment after not accepting the plaintiff's offer.

In relying on these materials, Plaintiffs acknowledge what the clear intent of the legislature was when amending section 998 to include arbitration-specific language, explaining that to "ensure that 998's penalties applied to arbitrations, the Legislature revised section 998's cost-shifting provisions to apply upon the 'fail[ure] to obtain a more favorable judgment *or award,'* and not just the failure to obtain a more favorable judgment." But Plaintiffs then extrapolate from there that the Legislature would not have added the word "award" if "'judgment' in section (c)(1) wasn't intended to include every case-ending result, but rather was intended to mean only an adjudication after a trial." (Op. Br. at p. 38.) However, adding the word "award" to section 998, subdivision (c)(1) does not limit the definition of "judgment" (or "award") to "judgments" (or "awards") obtained only after trial. Nor was that the Legislative Purpose of adding that language. All the language does is confirm the Legislature's intent that parties have section 998 at their disposal in proceedings to which the provision did not previously clearly apply.

The subsequently cited materials confirm this. Continuing to rely on the 1997 amendment materials, Plaintiffs next cite to a Senate Rules Committee Bills Analysis of the 1997 bill, which stated:

> Digest: This bill makes changes in the law concerning protecting professional liability carriers from lawsuits, cross examination of expert witnesses, hospital lien rights, limited liability companies and extension of time to complete service of process as follows: . . . It would revise the law awarding costs against a party who rejects a '998' settlement offer and fails to do better at trial by excluding 'postoffer' costs from the calculation of whether the party does better, by specifying that a plaintiff who rejects a settlement offer and fails to do better at trial must pay the defendant's costs from the time of rejection to the trial, and by making the provision applicable to contractual and medical malpractice arbitrations.

Here again, Plaintiffs acknowledge the stated purpose underlying this provision of the 1997 amendment, explaining that the amendment would eliminate consideration of post-offer costs in determining whether the offeree had obtained a "more favorable judgment" such that section 998 cost-shifting provisions apply. (*See* Op. Br. at p. 38 ("The 1997 Amendment also clarified that courts cannot consider any post-offer costs in determining whether section 998's penalties apply.").

Another portion of the 1997 Amendment materials explains this more clearly. A 1996 Legislative Counsel's Digest for the 1997 Amendment stated:

> Existing law provides that if a settlement offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the plaintiff shall not recover his or her costs and shall pay the defendant's costs from the time of the offer. . . . and for these purposes, a plaintiff in a cause of action not based on tort is not deemed to have obtained a more favorable judgment unless the judgment obtained by the plaintiff, exclusive of attorney's fees and costs, exceeds the settlement offer made by the defendant.
>
> This bill would, among other things, eliminate the latter provision described above relating to causes of action not based on tort and would exclude postoffer costs from the calculation of whether a plaintiff obtains a more favorable judgment.

(MJN-374.) In other words, the purpose of the bill vis-à-vis postoffer costs was, as acknowledged by Plaintiffs, nothing more than to exclude postoffer costs uniformly from a trial court's consideration when determining whether, under section 998, the plaintiff had obtained a judgment more favorable than a rejected section 998 offer.

But postoffer costs are not at issue in this appeal. Plaintiffs focus on the digest author's use of the words "at trial," arguing that this language demonstrates "its understanding that section 998 applies only after a trial or other adjudication." (*E.g.*, Op. Br. at p. 38.) However, as discussed in HMA's Answering Brief, "stray remarks" in legislative materials that are "unrelated to the question" before the Court cannot create legislative intent where none

otherwise exists. (*Madrigal, supra,* 90 Cal.App.5th at p. 401, fn. 11.) Nothing in the 1997 Amendment materials for which Plaintiffs seek judicial notice indicates that the Legislature discussed or even considered whether section 998's cost-shifting provisions apply when a case ends in a non-statutory settlement on the merits of the claims.

A pattern emerges—in each subsequent citation to section 998's legislative history, Plaintiffs sometimes recite and sometimes ignore the stated purpose of the amendment, but they consistently disregard the foundational principle that legislative history is only relevant—and thus eligible for judicial notice–insofar as it provides those clear statements of intent, urging the Court instead to rely on the passing use of the isolated phrase "at trial" in the materials when that language and its import was never explicitly addressed by the Legislature.

1999 Amendment (MJN-580; Op. Br. 39.). Plaintiffs cite to a February 1999 Legislative Counsel's Digest to support the contention that "[e]xisting law provides that if the offer is rejected and the offering party obtains a more favorable *result at trial or arbitration,* the court or arbitrator in its discretion, may require the other party to pay the offering party's costs of the services of expert witnesses." (Op. Br. at p. 39 (emphasis original)

[citing MJN-580].) Here, Plaintiffs do not even recite the actual purpose of the 1999 Amendment, which was simply to undo an inadvertent repeal of a trial court's discretion to award expert witness costs incurred at trial:

> Prior to 1998, Code of Civil Procedure section 998 . . . authorized a court to require the party rejecting a "998" settlement offer to pay the offering a party's expert witness costs actually and reasonably incurred by the offering party in "either, or both, the preparation or trial of the case."
>
> In 1997, Senator Kopp introduced SB 73 to extend those provisions to arbitration proceedings as well. As prepared by the Legislative Counsel's office, the proposed change dropped the "or" and provided for the award of costs actually incurred and reasonably necessary 'in preparation for trial or arbitration.
>
> The effect of Legislative Counsel's "or" to "for" change was to repeal the court's authority to award expert witness costs which were incurred during trial, with the effect of undermining the statute. . . . This bill would restore the former law . . . .

(MJN-584 (Senate Judiciary Committee Bill Analysis).) Nothing in these materials supplies a clear statement of intent that could be relevant to interpretation of section 998 vis-à-vis the issues Plaintiffs' raise in this appeal, and therefore the materials are not properly the subject of judicial notice.

2001 Amendment (MJN 618–19; Op. Br. at p. 39-40). Plaintiffs next cite to statements in the 2001 Amendment, acknowledging that the stated

purpose of this amendment was to "exempt[] prosecutors in civil enforcement actions from" from section 998's cost-shifting provisions. (Op. Br. at p. 39 [quoting MJN-618].) Sidestepping this, Plaintiffs again point to language used in the materials in an attempt to imbue the section with some sort of unstated "trial" limitation, arguing "[t]he Los Angeles District Attorney's Office, a co-sponsor of the amendment, explained that section 998 had been enacted 'to address the problem of unreasonably private litigants *burdening the courts with trials* in tort and contract lawsuits' that could have been settled." (Op. Br. at p. 39.) Plaintiffs provide the emphasis, and their decision to highlight the term "trials" while ignoring the material pertinent to the amendment's actual purpose—that section 998 was only intended to be directed toward *private litigants* whose *tort and contract lawsuits* could have been settled, not prosecutors of civil enforcement actions who are unable bring actions for damages—exemplifies their misuse of the Legislative history.

As the materials themselves explain, the 2001 amendment explicitly added language excluding public enforcement actions from section 998's reach to ensure that taxpayers would not be forced to pay for costs ordered against public prosecutors under section 998, and to ensure that public

prosecutors would be able to pursue the public's best interests without a defending party using section 998 to compromise the public prosecutor's objectives. (MJN-619-620 (Senate Judiciary Committee Bill Analysis).)

Continuing to construe the legislative materials out of context, Plaintiffs extrapolate from this that the Legislature's exclusion of civil enforcement actions means "section 998 wasn't intended to apply to cases that settle, too—where the plaintiff has settled for negotiated terms and foreclosed the need for a burdensome trial in which 'damages' might be awarded." (Op. Br. at p. 40.) Again, this urging goes far beyond anything actually contained in the materials. Just as before, they cannot point to any clear statement of intent that is relevant to the issue and arguments they have brought before this court on this appeal. Rather, Plaintiffs' use of the material is merely an attempt to read into the history their desired outcome. (Cf., e.g., Op. Br. at pp. 30-40 [arguing that the Legislature's reference to "damages" in section 998(e) indicates the Legislature intended section 998(c)'s cost-shifting provision to apply only to "*adjudicatory*" results].)

Fundamentally, the cited materials contain no clear statement of Legislative intent addressed to the issue Plaintiffs' raise on appeal, and they are therefore irrelevant and not appropriate for judicial notice.

2015 Amendments (MJN-661-662, 664; Op. Br. at p. 40-41). Finally, Plaintiffs rely on snippets of legislative materials from the 2015 amendment. But here again, they only briefly acknowledge the stated purpose of the amendment—to correct an inadvertent revision to the section that removed a trial court's discretion to award a plaintiff postoffer costs if the defendant rejected the plaintiff's section 998 offer and failed to obtain a more favorable judgment:

> It appears that in a 2005 non-controversial omnibus bill by this committee, the word 'postoffer' was inserted into subdivision (d) of section 998 of the Code of Civil Procedure. This amendment created what appears to be an unintended inequity between defendants and plaintiffs relating to the discretionary authroity of a trial court to award expert witness costs after one party's rejection of a 998 settlement offer. Currently, if the plaintiff rejects a 998 settlement offer made by the defendant and fails to receive a better award at trial, the plaintiff may, at the court's discretion, be required to pay the defendant's pre and post-offer expert witness costs. However, if the defendant rejects the plaintiff's 998 settlement offer and fails to receive a more favorable judgment or award at trial, the court only has the discretion to order the defendant to pay the plaintiff's post-offer expert witness costs. By removing the word 'postoffer' from section 998 (d) of the Code of Civil Procedure this bill allows both a plaintiff and a defendant to recover pre and post expert witness costs . . . .

(MJN-661 (Assembly Judiciary Committee Bill Analysis).)

Plaintiffs nevertheless continue to ignore that stated purpose in their attempt to associate section 998's cost-shifting provisions with language not

included in that provision—"at trial." (Op. Br. at p. 40-41.) The 2015 Amendment, like the previous amendments, contains no clear statement of intent supporting Plaintiffs' arguments. In other words, the amendments are irrelevant and not judicially noticeable.

Remaining Uncited Materials. Other than the fourteen documents discussed above, the remaining 700 or so pages attached to Plaintiffs' motion are not referenced, discussed, or relied on anywhere in their opening brief. As Plaintiffs have not relied on these materials in supporting their arguments, the materials are not relevant to the issues and therefore do not meet the criteria for judicial notice. Plaintiffs' motion should be denied as to these remaining materials.

Conclusion

Plaintiffs fail to establish that the various documents attached to their motion and cited in their Opening Brief are judicially noticeable under the Evidence Code, and likewise fail to show that the materials are relevant to the issues in this appeal. The Court should deny their motion and decline to take notice of any of the materials.

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/ / /

Respectfully submitted,

Dated: April 8, 2024

By: */s/ Jennifer T. Persky*
Jennifer T. Persky
Attorney for
HYUNDAI MOTOR AMERICA

PROOF OF SERVICE

I declare:

At the time of service I was at least 18 years of age and not a party to this legal action. My business address is 19191 South Vermont Avenue, Suite 900, Torrance, CA 90502. I served document(s) described as ***HYUNDAI MOTOR AMERICA'S OPPOSITION TO MOTION FOR JUDICIAL NOTICE*** as follows:

By email:

On April 8, 2024 I served by E-Service Via TrueFiling: All participants in this case who are registered TrueFiling users will be served by the TrueFiling System.

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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.

Dated: April 8, 2024 By: /s/ Elizabeth Velasquez

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MADRIGAL v. HYUNDAI MOTOR AMERICA**
Case Number: **S280598**
Lower Court Case Number: **C090463**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **jennifer.persky@nelsonmullins.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	MADRIGAL - HMA's Response Brief on Merits
OPPOSITION	MADRIGAL - HMA's Opposition to MJN

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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.

4/8/2024

Date

/s/ELIZABETH Velasquez

Signature

Persky, Jennifer (274804)

Last Name, First Name (PNum)

Nelson Mullins Riley & Scarborough LLP

Law Firm