



**Association of Defense
Counsel of Northern
California and Nevada**

ASCDC

**ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL**

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December 9, 2015

COURT OF APPEAL - SECOND DIST.

FILED

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ELECTRONICALLY FILED

Acting Presiding Justice Laurence D. Rubin
Associate Justice Madeleine Flier
Hon. Judge Sam Ohta, Justice Pro Tem.
California Court of Appeal
Second Appellate District, Division Eight
300 South Spring Street
Los Angeles, California 90013

JOSEPH A. LANE Clerk

Deputy Clerk

**Re: Garcia v. Jukes, 2d Civ. No. B258349
Letter Requesting Publication**

Dear Honorable Court:

Pursuant to rule 8.1120(a) of the California Rules of Court, *amici curiae* Association of Southern California Defense Counsel and Association of Defense Counsel of Northern California and Nevada, collectively "Associations," write to request that this Court order publication of its opinion in *Garcia v. Jukes*, 2d Civ. No. B258349, filed on November 19, 2015.

The Associations are the nation's largest and preeminent regional organizations of lawyers who routinely defend civil actions, comprised of nearly 2,000 leading civil defense bar attorneys in California. They are active in assisting courts on issues of interest to their members and have appeared as *amici curiae* in numerous cases. Associations also provide their members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multi-faceted support, including a forum for the exchange of information and ideas.



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No party or their counsel has paid for or drafted this letter in support of publication.

As the Court will recall, *Garcia v. Jukes* concerns the enforcement of remedies specified in Code of Civil Procedure section 998, specifically when a civil plaintiff declines to accept a settlement offer that is more favorable than what the plaintiff recovers at trial. This Court affirmed the trial court’s order awarding defendants their post-offer costs, including expert fees. In so doing, the Court considered and rejected the contention by plaintiff that two conditions of the section 998 settlement offer it rendered it “vague and ambiguous.” (Opn., p. 4.)

As defense practitioners, Associations members routinely issue section 998 offers, which at times can be challenging to draft. The *Garcia* opinion can provide valuable guidance, both for civil defendants who draft section 998 offers, and for Superior Courts who are called to enforce them following a trial. More precisely, the opinion meets the standards for publication set forth in California Rules of Court, rule 8.1105(c) based on its treatment of the two conditions challenged by plaintiff, both of which are commonly-stated in section 998 offers.

We briefly address each condition, and why the Associations believe publication is warranted.

The first condition of settlement was that plaintiff execute a full release, characterized in the section 998 settlement offer as “a full release *of all claims related to the events described in the complaint.*” (Opn., p. 2, emphasis in original.) In our experience, the particular language employed by defense counsel is not uncommon. It was obviously intended to make sure the settlement completely foreclosed further liability for the car accident at issue. The plaintiff, however, contended that the offer was not sufficiently clear as to what claims would be released. (Opn., p. 4.)

This Court discussed and ultimately harmonized six (6) prior cases, three of which found section 998 offers to be valid, and three of which found section 998 offers to be invalid. (Opn, pp. 5-9.) Most significantly, the Court discerned the following easily-understood and readily-followable principle:

“We discern from the cases that the principle that a section 998 offer which meets the following criteria satisfies the statute’s specificity requirement:

- It cannot reasonably be interpreted to be conditioned on release of anyone other than the parties to the litigation; and
- It cannot reasonably be interpreted to release claims outside the scope of the litigation.”

(Opn., p. 9.)

Garcia is publication-worthy because this principle can be applied to innumerable cases where similar language is used in section 998 offers in order to accomplish a full release. More precisely, the opinion meets the criteria for publication specified in rule 8.1105(c)(3) in that it “explains, with reasons given, an existing rule of law.” In discerning the stated principle from other published decisions, the opinion “makes a significant contribution to the legal literature by reviewing either the development of a common law rule or the legislative ... history of a provision of a ... statute, or other written law” (Rule 8.1105(c)(7).) And further, given the prevalent use of section 998 offers, and their vital importance to our court system, the opinion “involves a legal issue of continuing public interest.” (Rule 8.1105 (c)(6).)

The second condition challenged by the plaintiff was that the offer “includes all lien claims.” (Opn, pp. 2, 10.) This Court noted that, in the absence of evidence that *Garcia* had direct lien claims against *Jukes*, the condition “is intended to release *Jukes* from liability for all lien claims asserted *against any recovery Garcia* may obtain in the lawsuit (e.g., an attorney lien for costs of litigation, medical liens for treatment of the plaintiff’s injuries sustained in the care accident, etc.).” (Opn., p. 10, emphasis added.) Here, too, the opinion contains invaluable guidance for litigants and the lower courts. In seeking to achieve complete peace and resolution, civil defendants frequently include specific reference to liens. The opinion provides insight as to proper interpretation of such as applying to liens *against recovery*, at least in the absence of evidence of evidence of direct lien claims being at issue. In this regard, too, the opinion meets the same rule 8.1105(c) criteria for publication quoted above.

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For the foregoing reasons, Associations respectfully request that this Court order the publication of its opinion in *Garcia v. Jukes*, 2d Civ. No. B258349.¹

Respectfully submitted,

GORDON & REES LLP

COLE PEDROZA LLP



By: _____
Don Willenburg (SBN 116377)
Attorneys for Amicus Curiae
Association of Defense Counsel
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By: _____
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Attorneys for Amicus Curiae
Association of Southern California
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¹ We note a minor error in the opinion. At the bottom-most paragraph of page 5, delete the *second* reference to “*Chen, supra*, 164 Cal.App.4th 117”.

PROOF OF SERVICE

Garcia v. Jukes, 2d Civ. No. B258349

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Cole Pedroza LLP, 2670 Mission Street, San Marino, California 91108. On December 9, 2015, I served the within documents: **Letter of *Amici Curiae* Association of Southern California Defense Counsel and Association of Defense Counsel of Northern California and Nevada Requesting Publication Of Opinion**, upon

Ramon Charles Garcia : Plaintiff and
Appellant

Eric B. Seuthe
Law Offices of Eric Bryan Seuthe &
Associates
445 South Beverly Drive, 2nd Floor
Beverly Hills, CA 90212

Terrence Irvin Swinson
Law Offices Eric Bryan Seuthe &
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509 S. Beverly Drive
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Lori Jukes : Defendant and Respondent

Chad Michael Slack
Slack & Associates
4195 E. Thousand Oaks Blvd.
Suite 201
Thousand Oaks, CA 91362

Via U.S. Mail: By placing the document(s) listed above in a sealed envelope, with postage thereon fully prepaid, in United States mail in the State of California at San Marino, addressed as set forth in the attached service list. I am readily familiar with the firms practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 9, 2015 at San Marino, California.

Sara Mazzeo

