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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

TRICIA LYNNE ROTH, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 DIVISION 1 ALL SERVICE, )  
 INC., )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

CASE NO. CIV 468850

**COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE: HONORABLE BETH LABSON FREEMAN, JUDGE  
DEPARTMENT 3

MARCH 9, 2009

A P P E A R A N C E S:

FOR THE PLAINTIFF: MARY E. ALEXANDER, ATTORNEY AT LAW

FOR THE DEFENDANTS: LEE J. DANFORTH, ATTORNEY AT LAW

FOR THE INTERVENOR: MICHELLE M. MEYERS, ATTORNEY AT LAW

REPORTED BY: CHRISTINE M. PEREZ, CSR #10945

1 P R O C E E D I N G S

2 MARCH 9, 2009

REDWOOD CITY, CALIFORNIA

3 THE COURT: GOOD MORNING. CALLING ROTH VERSUS  
4 DIVISION 1. MAY I HAVE APPEARANCES, PLEASE?

5 MS. ALEXANDER: GOOD MORNING, YOUR HONOR. MARY  
6 ALEXANDER FOR THE PLAINTIFFS, TRICIA ROTH AND KAY HUH.

7 MR. DANFORTH: AND LEE DANFORTH, YOUR HONOR, FOR THE  
8 DEFENDANTS.

9 MS. MEYERS: MICHELLE MEYERS ON BEHALF OF DOE  
10 DEFENDANTS INTERVENTION LINCOLN GENERAL INSURANCE COMPANY.

11 THE COURT: GOOD MORNING.

12 THIS IS THE TIME SET FOR TRIAL IN THIS MATTER. THE  
13 RECORD SHOULD REFLECT THAT THE COURT HAS HAD A PRETRIAL  
14 CONFERENCE IN CHAMBERS WITH COUNSEL. COUNSEL HAS ADVISED THE  
15 COURT OF THE VARIOUS ISSUES INVOLVED IN THIS MATTER. I HAVE NOT  
16 DECIDED ANY OF THE INITIAL MOTIONS, BUT WE'RE GOING TO GET  
17 STARTED ON THAT RIGHT NOW.

18 MS. MEYERS, YOU HAVE SUBMITTED TO THE COURT A MOTION  
19 TO INTERVENE ON BEHALF OF LINCOLN GENERAL INSURANCE COMPANY. I  
20 HAVE REVIEWED YOUR PAPERS. DO YOU HAVE ANYTHING TO ADD?

21 MS. MEYERS: LINCOLN GENERAL JUST WOULD LIKE TO --  
22 WE'VE SEEN THE OPPOSITION PAPERS THAT WE RECEIVED THIS MORNING  
23 THAT A SETTLEMENT HAS BEEN REACHED, I GUESS, WITH TWO OF THE  
24 FOUR DEFENDANTS, AND THAT THEY INTEND TO HAVE AN UNCONTESTED  
25 TRIAL IN THIS MATTER. LINCOLN GENERAL HAS BROUGHT THIS  
26 INTERVENTION FOR THE PURPOSE OF TRYING TO AVOID AN UNCONTESTED

1 TRIAL AND ENTER STIPULATED JUDGMENT WHICH MAY --

2 THE REPORTER: CAN YOU SLOW DOWN, PLEASE?

3 MS. MEYERS: I'M SORRY.

4 -- WHICH MAY CAUSE PREJUDICE TO LINCOLN GENERAL AND/OR  
5 DIVISION 1. THE CASE LAW DISCUSSES INTERVENTIONS. KAUFMAN AND  
6 BRODE RECENTLY CAME DOWN IN 2007, WHICH STATES THAT INSURANCE  
7 CARRIERS MUST INTERVENE IN AN ACTION IN ORDER TO PROTECT ITS  
8 INSUREDS' INTEREST AND AVOID DEFAULT JUDGMENTS AND/OR TO PROTECT  
9 ITS OWN INTEREST.

10 THE COURT: MS. ALEXANDER, YOU HAVE FILED AN  
11 OPPOSITION, WHICH I HAVE BEFORE ME. DO YOU HAVE ANYTHING TO  
12 ADD?

13 MS. ALEXANDER: I WOULD JUST ADD, YOUR HONOR, THAT IT  
14 IS NOT, IN OUR VIEW OF THE CASE LAW, MANDATORY FOR THE COURT TO,  
15 PARTICULARLY AT THIS LATE DATE WHICH IS THE HOUR OF TRIAL, TO  
16 ALLOW INTERVENTION. THANK YOU.

17 THE COURT: ALL RIGHT.

18 BASED UPON THE PAPERS SUBMITTED TO THE COURT AND MY  
19 REVIEW OF THE KAUFMAN AND BRODE CASE IN PARTICULAR, WHICH  
20 MS. MEYERS DID PROVIDE TO THE COURT, IT APPEARS THAT ALTHOUGH IT  
21 IS NECESSARY FOR LINCOLN GENERAL TO INTERVENE IF IT WISHES TO  
22 HAVE STANDING ON ANY OF THE ISSUES, I DON'T SEE ANYTHING IN THAT  
23 CASE OR IN THE STATUTE THAT MAKES THAT INTERVENTION MANDATORY,  
24 SUCH THAT THE COURT WOULD LACK DISCRETION TO DENY IT UPON IT  
25 BEING REQUESTED.

26 BASED ON THE INFORMATION PROVIDED BY MS. ALEXANDER IN

1 HER OPPOSITION, IT DOES APPEAR THAT THE REQUEST FOR INTERVENTION  
2 IS NOT TIMELY, THAT IT WOULD BE PREJUDICIAL TO PLAINTIFFS AND  
3 THAT MOST OF THE, IF NOT ALL OF THE ISSUES THAT LINCOLN GENERAL  
4 WISHES TO PRESERVE MOSTLY RELATED TO COVERAGE ARE NOT GOING TO  
5 BE DECIDED ADVERSELY AT THIS PROCEEDING. AND, THEREFORE, BASED  
6 ON THOSE REASONS THE COURT WILL DENY THE MOTION TO INTERVENE.

7 MS. MEYERS: THANK YOU, YOUR HONOR.

8 MS. ALEXANDER: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. NOW, LET'S MOVE ON TO TRIAL IN  
10 THIS MATTER.

11 MS. ALEXANDER, I UNDERSTAND THAT THERE IS A SETTLEMENT  
12 AS TO TWO PARTIES. WHICH PARTIES ARE THEY?

13 MS. ALEXANDER: AS TO MONICA PANTOJA AND WILLIAM  
14 PANTOJA.

15 THE COURT: AND THAT'S IN WRITING?

16 MS. ALEXANDER: YES. WE ISSUED A NOTICE OF PARTIAL  
17 SETTLEMENT. I SERVED IT UPON DEFENDANT AND FILED IT, ACTUALLY,  
18 THIS MORNING FOR TRIAL.

19 THE COURT: ALL RIGHT. THEN AS TO THOSE TWO PARTIES,  
20 THE COURT -- AND I GATHER THE COURT WILL RESERVE JURISDICTION TO  
21 ENFORCE THAT SETTLEMENT?

22 MS. ALEXANDER: IF YOU WOULD, PLEASE, YOUR HONOR.

23 THE COURT: THE COURT WILL -- AND I HAVEN'T SEEN THOSE  
24 SETTLEMENTS. SHOULD I LOOK AT THEM? IS THERE ANY REASON FOR ME  
25 TO REVIEW THEM?

26 MS. ALEXANDER: I DON'T BELIEVE SO.

1 THE COURT: THAT'S FINE.

2 MS. ALEXANDER: I DO HAVE THE NOTICE OF PARTIAL  
3 SETTLEMENT COPY ENDORSED, IF YOU'D LIKE TO SEE THAT.

4 THE COURT: NO, THAT'S FINE.

5 ALL RIGHT, THEN. THE COURT RECOGNIZES THAT THAT  
6 SETTLEMENT HAS BEEN ISSUED AND IS BINDING ON THE PARTIES. THE  
7 COURT'S ONLY ROLE WILL BE TO RETAIN JURISDICTION TO ENFORCE THAT  
8 SETTLEMENT.

9 THERE ARE THEN LEFT TWO PARTIES, DIVISION 1 ALL  
10 SERVICE, INC. AND ROMAN -- HOW DO YOU PRONOUNCE THE NAME?

11 MS. ALEXANDER: "PANTOJA". ALTHOUGH IT'S BEEN VARIED  
12 IN THIS CASE, SO...

13 MR. DANFORTH: IF YOUR HONOR TOOK SPANISH LESSONS IN  
14 HIGH SCHOOL, IT'S A SILENT J. IT'S "PANTOJA".

15 THE COURT: "PANTOJA". I WAS HEARING A "V", THAT'S  
16 WHY I WAS HAVING TROUBLE WITH IT. "PANTOJA".

17 ALL RIGHT. LET'S START WITH DIVISION 1.

18 MR. DANFORTH, YOU REPRESENT DIVISION 1?

19 MR. DANFORTH: I DO, YOUR HONOR. I'M COUNSEL FOR  
20 DIVISION 1. THE COURT KNOWS THAT THEY ARE A SUSPENDED  
21 CALIFORNIA CORPORATION, SO MY ABILITY TO SPEAK FOR THEM, I  
22 THINK, IS LIMITED IN THIS COURTROOM.

23 THE COURT: I WOULD AGREE.

24 MS. ALEXANDER, DO YOU HAVE EVIDENCE OF THE SUSPENSION  
25 THAT YOU CAN SUBMIT?

26 MS. ALEXANDER: I DO, YOUR HONOR. I HAVE -- ACTUALLY,

1 IT'S IN YOUR HONOR'S HANDS. I FILED A MOTION TO STRIKE DIVISION  
2 1'S ANSWER TO COMPLAINT AND ATTACHED IT. I HAVE THE  
3 CALIFORNIA -- THIS IS EXHIBIT 3. I HAVE THE CALIFORNIA BUSINESS  
4 PORTAL OF THE STATE OF CALIFORNIA STATUS OF SUSPENSION, AND ALSO  
5 ATTACHED TO THAT IS THE CURRENT STATUS FROM -- ALSO FROM THE  
6 CALIFORNIA SECRETARY OF STATE.

7 AND I WOULD ASK THAT THE COURT NOTE THAT THE  
8 SUSPENSION, ACCORDING TO THE SECRETARY OF STATE, WAS  
9 JANUARY 8, 2008. THEY FILED THEIR ANSWER ALSO, WHICH IS  
10 ATTACHED AS EXHIBIT 2. THEY FILED THEIR ANSWER IN MAY OF 2008,  
11 AND PART OF PLAINTIFFS' ARGUMENT -- POSITION, I SHOULD SAY, IS  
12 THAT THEY DIDN'T HAVE STANDING EVEN TO ANSWER. AND SO WE ARE  
13 STRIKING THE ANSWER BECAUSE IT'S ON FILE, BUT IT ACTUALLY WAS --  
14 IS VOID.

15 THE COURT: THANK YOU.

16 MR. DANFORTH, YOU AGREE THAT DIVISION 1 IS IN THE  
17 STATUS OF SUSPENDED CORPORATION AS WE SPEAK TODAY?

18 MR. DANFORTH: I DO, YOUR HONOR. AND IT IS PROBABLY  
19 ACADEMIC NOW, BUT I SHOULD SAY THAT MY CLIENT BELIEVES AND HAS  
20 SO TESTIFIED THAT THEY BELIEVE THE SUSPENSION FIRST BECAME  
21 PUBLIC KNOWLEDGE TO THEM IN ABOUT NOVEMBER. I SAY THAT ONLY  
22 BECAUSE HAD WE KNOWN OF THEIR SUSPENDED STATUS, WE WOULDN'T  
23 HAVE, OF COURSE, FILED AN ANSWER. WE LEARNED ABOUT IT MAYBE --  
24 I DON'T KNOW, MAYBE FOUR, FIVE WEEKS AGO. BUT I DO AGREE, FOR  
25 OUR PURPOSES NOW, ALL OF MY INFORMATION IS AND MY CLIENTS  
26 CONFIRMED THAT DIVISION 1 IS A SUSPENDED CORPORATION.

1 THE COURT: ALL RIGHT. AND IT'S NOT LIKELY TO HAVE  
2 THAT SUSPENSION MODIFIED AT ANY TIME IN THE IMMEDIATE FUTURE, I  
3 GATHER?

4 MR. DANFORTH: DEPENDS ON HOW WE DEFINE "IMMEDIATE".

5 THE COURT: FEW DAYS.

6 MR. DANFORTH: OH, NO.

7 THE COURT: ALL RIGHT. THANK YOU.

8 ALL RIGHT, THEN. DO YOU HAVE ANY OPPOSITION TO  
9 MS. ALEXANDER'S MOTION TO STRIKE THE ANSWER?

10 MR. DANFORTH: I WISH I DID, YOUR HONOR, BUT I DON'T.

11 THE COURT: ALL RIGHT, THEN. I WILL GRANT THE  
12 PLAINTIFFS' MOTION TO STRIKE THE ANSWER OF DIVISION 1. AND WITH  
13 THAT ANSWER STRICKEN, THE COURT WILL ENTER A DEFAULT AGAINST  
14 DIVISION 1. THAT WILL THEN ALLOW US TO GO TO TRIAL AGAINST  
15 ROMAN PANTOJA AND DIVISION 1; IS THAT CORRECT?

16 MS. ALEXANDER: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. AND, MR. DANFORTH, YOU  
18 REPRESENT ROMAN PANTOJA AT THIS JUNCTURE?

19 MR. DANFORTH: I DO, YOUR HONOR. YES.

20 THE COURT: ALL RIGHT. AND IT'S MY UNDERSTANDING THAT  
21 ROMAN PANTOJA IS NOT PRESENT; IS THAT CORRECT?

22 MR. DANFORTH: HE IS NOT PRESENT, YOUR HONOR; YES.

23 THE COURT: ALL RIGHT.

24 MS. ALEXANDER, YOU ARE PREPARED TO PROCEED TO PROVE  
25 LIABILITY AND DAMAGES AGAINST ROMAN PANTOJA AND DIVISION 1?

26 MS. ALEXANDER: I AM.

1 THE COURT: ALL RIGHT.

2 YOU ARE READY TO -- WELL, ONLY AS TO ROMAN PANTOJA,  
3 YOU'RE STATUS?

4 MR. DANFORTH: I WANT TO BE DELICATE ABOUT THIS, YOUR  
5 HONOR. MAY I HAVE A MOMENT?

6 THE COURT: OF COURSE.

7 MR. DANFORTH: I HAVE JUST HAD A SHORT CONFERENCE,  
8 YOUR HONOR, WITH MS. ALEXANDER. WHAT BRINGS US TOGETHER THIS  
9 MORNING IS DAYS, IN SOME CASES WEEKS, OF DISCUSSIONS ABOUT HOW  
10 WE MIGHT DISSOLVE THIS DISPUTE INVOLVING CATASTROPHIC INJURIES  
11 TO THE PLAINTIFF AND LIMITED ASSETS BY MY CLIENTS. SO AFTER  
12 DISCUSSING THIS BRIEFLY WITH MS. ALEXANDER, OUR UNDERSTANDING --  
13 AND I MEAN NO DISRESPECT TO THE COURT -- I WON'T BE HERE FOR THE  
14 TRIAL. MY PRESENCE ISN'T NECESSARY OR EVEN, SOME MIGHT SAY,  
15 WANTED.

16 I AM PREPARED TO SAY, HOWEVER, THOUGH, YOUR HONOR, ON  
17 THE ISSUE OF LIABILITY, MY CLIENT, ROMAN PANTOJA, HAS ADMITTED  
18 HIS FAULT FOR THE ACCIDENT. HE DID NOT SEE A LIGHT TURN FROM  
19 GREEN, TO YELLOW, TO RED, AND HE VIOLATED A RED LIGHT. SO WE  
20 CAN -- I CAN OFFER THAT AS A PROPOSED STIPULATION, THAT HE  
21 ACCEPTS RESPONSIBILITY FOR THE ACCIDENT. HE ADMITS HIS  
22 NEGLIGENCE.

23 THAT MIGHT DISPENSE WITH SOME OF THE TAKING OF  
24 EVIDENCE ON THAT ISSUE. I HAVE NO WITNESSES TO CALL. I HAVE NO  
25 INTENTION OF CROSS-EXAMINING WITNESSES ON THE ISSUE OF DAMAGES.  
26 UNLESS THE COURT WANTS ME HERE, I PROBABLY COULD LEAVE THE

1 COURTROOM AND ALLOW MS. ALEXANDER TO PROVE HER DAMAGES WITHOUT  
2 MY INVOLVEMENT.

3 THE COURT: ALL RIGHT. THANK YOU FOR THAT.

4 MS. ALEXANDER, IS THE ORAL STIPULATION TO LIABILITY  
5 SUFFICIENT? I AM ONLY A LITTLE NERVOUS THAT MR. PANTOJA IS NOT  
6 PRESENT TO STIPULATE -- THAT HE IS PREPARED TO OFFER THAT  
7 STIPULATION AS TO HIS OWN LIABILITY.

8 MS. ALEXANDER: YES, I UNDERSTAND, YOUR HONOR. AND I  
9 WILL -- OF COURSE, I AM ACCEPTING OF THIS OFFER, BUT I WILL GO  
10 AHEAD AND PROVIDE PROOF TO YOUR HONOR AS TO THE CLEAR LIABILITY  
11 OF ROMAN PANTOJA.

12 THE COURT: OKAY. I THINK THAT MAKES SENSE. AND DO  
13 YOU HAVE ANY OBJECTION TO MR. DANFORTH EXCUSING HIMSELF AT THIS  
14 POINT?

15 MS. ALEXANDER: NO, YOUR HONOR. OTHER THAN IT'S  
16 ALWAYS NICE TO HAVE HIM AROUND IN THESE MATTERS.

17 MR. DANFORTH: SHE'S BEING VERY KIND. THANK YOU, YOUR  
18 HONOR.

19 THE COURT: ALL RIGHT.

20 MR. DANFORTH: YOUR HONOR, IT MIGHT GIVE THE COURT  
21 SOME COMFORT TO KNOW -- AND I APPRECIATE THE COURT BEING  
22 SENSITIVE TO MR. PANTOJA AND HIS LIABILITY. IF THE COURT KNEW  
23 THAT THERE IS, CONSISTENT WITH OUR SETTLEMENT DISCUSSIONS, WHILE  
24 THERE WILL BE A JUDGMENT ENTERED CERTAINLY AGAINST ROMAN PANTOJA  
25 AS A RESULT OF THESE PROCEEDINGS, THERE IS A COVENANT NOT TO  
26 EXECUTE AGAINST HIM SO HIS PERSONAL ASSETS, AS LIMITED AS THEY

1 ARE, AREN'T IN JEOPARDY HERE.

2 THAT'S WHY I FEEL COMFORTABLE WITH THIS STIPULATION  
3 AND WITHOUT HIM PRESENT. IF THE COURT FELT IT WAS REALLY  
4 IMPORTANT TO HAVE HIM HERE, HE'S ON TELEPHONE STAND-BY. BUT I  
5 HOPE THE COURT -- HE'S NOT IN GOOD HEALTH, AND I HOPE THE COURT  
6 CAN FORGIVE HIS ABSENCE.

7 THE COURT: ALL RIGHT. WELL, BASED UPON THE  
8 REPRESENTATIONS THAT YOU HAVE MADE, MR. DANFORTH, I DO NOT  
9 REQUIRE MR. PANTOJA TO BE PERSONALLY PRESENT. HE CERTAINLY MAY,  
10 THROUGH YOU AS HIS ATTORNEY, DO WHAT YOU HAVE DONE, AND THAT IS  
11 TO AGREE THAT YOU HAVE NO INTENTION TO CROSS-EXAMINE WITNESSES  
12 OR TO CALL ANY WITNESSES ON HIS BEHALF.

13 I WILL ASK MS. ALEXANDER TO MAKE THE BRIEFEST OFFER OF  
14 PROOF ON LIABILITY, AND I THINK WE CAN DO THAT THROUGH AN OFFER  
15 OF PROOF. IT'S NOT A DEFAULT HEARING AS TO MR. PANTOJA; THIS IS  
16 ACTUALLY THE TRIAL. BUT THERE BEING NO OBJECTION TO AN OFFER OF  
17 PROOF, THE COURT IS PREPARED TO ALLOW EVIDENCE TO COME IN IN  
18 THAT MANNER.

19 WITH YOUR REPRESENTATION TO THE COURT THAT YOU WOULD  
20 HAVE NO ROLE IN OBJECTING TO ANY OF THAT EVIDENCE, I WILL EXCEED  
21 TO YOUR WISH TO BE EXCUSED. I DON'T KNOW OF ANY PURPOSE YOU  
22 WOULD SERVE EXCEPT WARMING THAT CHAIR. WE DON'T NEED YOU TO BE  
23 DOING THAT. THAT'S BETWEEN YOU AND YOUR CLIENT, AND YOU ARE  
24 CERTAINLY ENTITLED TO MAKE THAT DETERMINATION, SO I WILL EXCUSE  
25 YOU. THANK YOU FOR BEING HERE THIS MORNING. AND MS. ALEXANDER  
26 CAN PROCEED WITH THE PROOF THAT SHE NEEDS FOR HER CASE IN CHIEF.

1 MR. DANFORTH: THANK YOU, YOUR HONOR. THANKS FOR YOUR  
2 HOSPITALITY.

3 MS. ALEXANDER: FIRST OF ALL, YOUR HONOR -- IF I MAY?

4 THE COURT: YES.

5 MS. ALEXANDER: I DO -- WITH REGARD TO THE DEFAULT  
6 JUDGMENT, I DO HAVE A COPY OF THE STATEMENT OF DAMAGES THAT WAS  
7 SERVED UPON DEFENDANT AND -- DEFENDANTS. AND WOULD YOUR HONOR  
8 LIKE TO HAVE A COPY OF THAT?

9 THE COURT: YES, PLEASE.

10 MS. ALEXANDER: AND THEY ARE NOT STAPLED OR  
11 HOLE-PUNCHED. I APOLOGIZE.

12 THE COURT: AND ARE WE GOING TO FILE IT NOW?

13 MS. ALEXANDER: I HAVE MORE.

14 THE CLERK: IT DOESN'T LOOK LIKE THE ORIGINAL, YOUR  
15 HONOR.

16 THE COURT: DO WE HAVE THE ORIGINAL?

17 MS. ALEXANDER: I DON'T HAVE THE ORIGINAL WITH ME.

18 THE COURT: IS IT YOUR --

19 MS. ALEXANDER: I DON'T HAVE THE ORIGINAL WITH ME. I  
20 REALIZED THAT I HAD LEFT MY OFFICE WITHOUT THE ORIGINAL AND  
21 SO --

22 THE COURT: LET'S MARK A COPY AS AN EXHIBIT.

23 MS. ALEXANDER: YES.

24 THE COURT: AND THEN YOU CAN FILE THE ORIGINAL LATER.  
25 IS THAT ACCEPTABLE?

26 MS. ALEXANDER: YES. THANK YOU.

1 (PLAINTIFFS' EXHIBIT NO. 1 WAS MARKED FOR  
2 IDENTIFICATION.)

3 MS. ALEXANDER: I ALSO HAVE, YOUR HONOR -- I WOULD  
4 LIKE TO PRESENT TO THE COURT A TRIAL BRIEF AND EXHIBITS. THESE  
5 -- I WILL HASTEN TO ADD -- ARE NOT ALL THE EXHIBITS THAT I MAY  
6 PRESENT HERE TODAY OR THAT I WILL MAKE AN OFFER OF PROOF  
7 REGARDING, BUT THAT THIS SHOULD BE OF ASSISTANCE TO THE COURT.

8 THE COURT: THANK YOU. AS TO THE EXHIBITS, PLEASE  
9 SUBMIT WHAT YOU THINK IS NECESSARY TO SUPPORT THE CLAIMS, AND WE  
10 WILL GET ALL OF THOSE ADMITTED INTO EVIDENCE SO THAT THE RECORD  
11 ITSELF IS COMPLETE.

12 MS. ALEXANDER: ALL RIGHT. THANK YOU. MAY I PROCEED?

13 THE COURT: YES, PLEASE.

14 MS. ALEXANDER: IT WAS A MONDAY, SEPTEMBER 11, 2006.  
15 ROMAN PANTOJA, WHO WAS 72 AT THE TIME, WAS IN BURLINGAME DRIVING  
16 DOWN EAST HILLSDALE BOULEVARD.

17 THE COURT: THAT WOULD HAVE BEEN IN SAN MATEO.

18 MS. ALEXANDER: SAN MATEO. THANK YOU.

19 THE COURT: YOU'RE WELCOME.

20 MS. ALEXANDER: AND HE WAS IN A RED CHEVY PICKUP  
21 HEADING TOWARD HIGHWAY 101. HE APPROACHED THE INTERSECTION WITH  
22 FRANKLIN PARKWAY. HE APPROACHED THE INTERSECTION. EVEN THOUGH  
23 OTHER CARS WERE STOPPED IN BOTH DIRECTIONS, HE PROCEEDED THROUGH  
24 THE INTERSECTION AGAINST A RED LIGHT AND CRASHED INTO TRICIA  
25 ROTH, WHO WAS DRIVING A VOLVO HEADING FROM FRANKLIN PARKWAY ONTO  
26 HIGHWAY 101 SOUTH, THE ONRAMP TO HIGHWAY 101 SOUTH.

1 MR. PANTOJA, I WILL MAKE AN OFFER OF PROOF TO THE  
2 COURT, ADMITTED IN HIS DEPOSITION THAT THE LIGHT WAS RED WHEN HE  
3 ENTERED IT. HE WAS DISTRACTED BY ANOTHER VEHICLE, PG&E TRUCK,  
4 AND THAT AS HE ENTERED THE INTERSECTION THE LIGHT WAS RED. HE  
5 CRASHED INTO TRICIA ROTH'S VOLVO, HITTING THE VOLVO ON THE LEFT,  
6 RIGHT FRONT. THERE WAS A SECOND IMPACT AS THE TWO CARS SLAPPED  
7 AGAINST EACH OTHER, AND HER CAR SPUN AWAY AND MR. PANTOJA'S  
8 CAR -- PICKUP TRUCK SPUN OFF IN ANOTHER DIRECTION.

9 AND WHEN THE CARS CAME TO REST, TRICIA ROTH COULD NOT  
10 MOVE HER LEGS, HAD PAIN IN HER NECK, COULD NOT MOVE HER ARMS.  
11 SHE WAS RENDERED A QUADRIPLLEGIC. HER NECK WAS BROKEN AT THE C6,  
12 C7. SHE IS TO THIS DAY QUADRIPLLEGIC, REQUIRING ROUND-THE-CLOCK  
13 ATTENDANT CARE.

14 THERE WAS AN EYE WITNESS TO THE ACCIDENT, A FRANCISCO  
15 MORENO, AND WE HAVE ATTACHED HIS SWORN STATEMENT. WE ALSO WOULD  
16 OFFER HIS DEPOSITION TESTIMONY. MR. MORENO WAS STOPPED IN THE  
17 OPPOSITE DIRECTION, GOING WESTBOUND. MR. PANTOJA HAD BEEN GOING  
18 EASTBOUND ON EAST HILLSDALE BOULEVARD, BUT MR. MORENO WAS IN A  
19 PETER BUILT SEMI-TRUCK, SO HE WAS VERY HIGH UP, COULD SEE THE  
20 ENTIRE INTERSECTION AND WHAT WAS HAPPENING TO THE VEHICLES IN  
21 THE INTERSECTION.

22 HE TESTIFIED THAT THE LIGHT FOR HIM WAS RED. OTHER  
23 CARS WERE STOPPED, BOTH ON HIS SIDE OF THE INTERSECTION AND THE  
24 CARS ON THE OTHER SIDE OF THE INTERSECTION WERE STOPPED, EXCEPT  
25 FOR THE LANE WHERE MR. PANTOJA WAS. AND HE SAW THE RED CHEVY  
26 PICKUP TRUCK RUN THE RED LIGHT. AND HE SAW TRICIA ROTH'S WHITE

1 VOLVO ENTER THE LIGHT ON GREEN AND SAW THE CRASH.

2 MR. MORENO PULLED HIS TRUCK OVER TO THE SIDE, GOT OUT  
3 AND WENT TO SEE IF HE COULD ASSIST TRICIA ROTH. SHE WAS SLUMPED  
4 OVER SLIGHTLY IN HER SEAT AND WAS WEARING HER SEATBELT.

5 MR. MORENO TESTIFIED THAT MR. PANTOJA CAME TO MRS. ROTH'S CAR  
6 BUT NEVER GOT MORE THAN SIX OR SEVEN FEET CLOSE TO THE CAR.

7 MR. MORENO CALLED 911, AND THE PARAMEDICS AND FIRE CAME AND  
8 TRICIA ROTH WAS TAKEN TO STANFORD UNIVERSITY HOSPITAL.

9 BOTH MS. ROTH'S CAR AND THE PICKUP TRUCK WERE TOTALED.  
10 THE IMPACT OF THIS CRASH WAS SO VIOLENT THAT BOTH CARS WERE NOT  
11 ONLY TOTALED, BUT THE AIRBAGS DEPLOYED IN MS. ROTH'S VEHICLE.  
12 AND THE EVIDENCE IS THAT MORE THAN LIKELY IT WAS THE ANGLE AT  
13 WHICH SHE WENT OFF TOWARD THE RIGHT -- BECAUSE OF THE ANGLE OF  
14 THE IMPACT AND THAT HER HEAD STRUCK THE EXPLODING AIRBAG ON THE  
15 PASSENGER SIDE, WHICH CREATED SUCH FORCE THAT IT BROKE HER NECK.

16 IN THE DEPOSITION OF MR. PANTOJA, HE ADMITTED THAT HE  
17 WAS GOING AT LEAST 35 TO 40 MILES AN HOUR. AND WE SUBMIT, YOUR  
18 HONOR, THE TESTIMONY OF OUR EXPERT -- AND I HAVE SOME  
19 HANDWRITTEN NOTES FROM HIS DEPOSITION, WHICH ARE ATTACHED AS  
20 EXHIBIT 4 -- I MEAN, 7 TO OUR BRIEF.

21 THE SPEED OF THE PICKUP TRUCK, BASED ON ACCIDENT  
22 RECONSTRUCTION OF CRUSH TO THE VEHICLES, IS 38 TO 42 MILES PER  
23 HOUR, SO THAT MR. PANTOJA WAS SPEEDING GIVEN THAT THE SPEED  
24 LIMIT THERE IS 35 MILES PER HOUR. AND THE VOLVO WAS GOING 32 TO  
25 36. AND THOUGH THE SPEED LIMIT ON FRANKLIN WOULD BE LOWER THAN  
26 THAT, SHE IS ACTUALLY ENTERING THIS ONRAMP TO SOUTH 101, AND SO

1 SHE'S GAINING SPEED AS SHE'S ENTERING THE ONRAMP.

2 BUT THE CHANGE IN VELOCITY IS BETWEEN 21 TO 23 MILES  
3 PER HOUR FOR THE VOLVO, WHICH IS WHY IT WAS SUCH A SUBSTANTIAL  
4 IMPACT. AND THERE IS A SECOND SLAP AS THE TWO CARS -- THE REARS  
5 OF THE TWO CARS SLAMMED INTO EACH OTHER AS WELL. AND THE  
6 ACCIDENT RESULTED IN THE CARS SPINNING AS WELL BEFORE COMING TO  
7 REST, SO THERE WAS -- A SUBSTANTIAL FORCE WAS APPLIED TO  
8 MS. ROTH.

9 ROMAN PANTOJA WAS IN THE COURSE AND SCOPE OF  
10 EMPLOYMENT. AND I AM NOT SURE, YOUR HONOR, IF YOU WANT TO HEAR  
11 THOSE ISSUES AT THIS POINT OR IF YOU'D LIKE TO RESERVE THOSE FOR  
12 WHEN I TALK ABOUT DIVISION 1.

13 THE COURT: IT'S YOUR CHOICE.

14 MS. ALEXANDER: OKAY.

15 MR. PANTOJA, IN HIS DEPOSITION, TESTIFIED THAT HE  
16 WOULD -- WHEN ASKED WHAT DID HE DO ON THAT DAY, HE SAID, "I  
17 NORMALLY WAKE UP AROUND 4:30, 5:00 IN THE MORNING," AND THAT'S  
18 WHAT HE DID ON THIS PARTICULAR DAY. AND THEN I ASKED, "WHAT DID  
19 YOU DO WHEN YOU WOKE UP?" "USUALLY, GET READY TO HAVE COFFEE AND  
20 THEN HEAD TO THE OFFICE." THIS ACCIDENT OCCURRED ON MONDAY  
21 MORNING AT 10:00 A.M.

22 AND A PICKUP TRUCK, WHICH WE WOULD MAKE AN OFFER OF  
23 PROOF, IS USED IN THE BUSINESS. IT'S OWNED BY MONICA PANTOJA,  
24 WHO WORKS AT DIVISION 1, AS KIND OF A JOB-SHARING SITUATION WITH  
25 ROMAN PANTOJA, DOING THE OFFICE WORK. THE BUSINESS IS A HAULING  
26 AND DEMOLITION COMPANY. THEY USE TRUCKS IN THEIR BUSINESS. AND

1           THOUGH MR. PANTOJA WORKS IN THE OFFICE, HE ALSO GOES OUT OF THE  
2           OFFICE FREQUENTLY. GOES TO THE OFFICE TO OPEN UP EARLY FOR  
3           PROJECT WORK TO BE DONE ON A PARTICULAR DAY.

4                   ON THIS DAY, WE HAVE THE INVOICES FOR TWO PROJECTS  
5           BEING DONE; ONE UP IN VACAVILLE, AND THE OTHER IN SAN FRANCISCO.  
6           AND THIS BUSINESS, DIVISION 1, WHERE ROMAN PANTOJA WORKED, IS IN  
7           SOUTH SAN FRANCISCO. SO THE LIKELIHOOD IS THAT -- IN FACT,  
8           THERE WAS TESTIMONY FROM WILLIAM, THE CFO OF THE COMPANY, THAT  
9           ON THAT DAY THE PROJECTS PROBABLY WOULD HAVE LEFT, THE MEN WOULD  
10          HAVE LEFT TO GO ON TO WORK AT ABOUT 7:00 A.M. SO THAT ROMAN  
11          WOULD HAVE INDEED, AS HE TESTIFIED, GOTTEN UP EARLY AND GONE  
12          INTO WORK THAT DAY TO OPEN UP.

13                   AND WHAT HE WOULD DO, HE TESTIFIED TO, IS HE WOULD GET  
14          THE LIST OF TOOLS THAT THE MEN WERE GOING TO USE FOR THEIR WORK  
15          AND GIVE THAT TO THE MEN, AND THEY WOULD PULL THE TOOLS, PUT  
16          THEM IN THEIR TRUCKS FOR THE DAY'S WORK. WITH TWO JOBS TO DO,  
17          ALL THE EMPLOYEES THAT WERE ON THEIR PAYROLL, FIVE OF THEM WERE  
18          EMPLOYED ON THOSE TWO PROJECTS THAT DAY. AND THAT ROMAN PANTOJA  
19          WOULD ALSO TAKE THESE WORK TRUCKS, HE WOULD DRIVE THEM DOWN THE  
20          STREET TO BE REPAIRED FROM TIME TO TIME, AND HE WOULD ALSO GO  
21          OUT FOR SUPPLIES.

22                   AND THAT'S WHAT HE WAS DOING ON THAT DAY. IT IS OUR  
23          CONTENTION HE HAD GONE TO THE DOLLAR STORE IN SAN CARLOS TO PICK  
24          UP SUPPLIES, SODAS AND COOKIES, THINGS THAT THEY HAVE ADMITTED  
25          THAT THEY USE IN THEIR BUSINESS. THEY KEEP SODAS AND SUCH AT  
26          THEIR BUSINESS. GIVEN THE TIME OF DAY OF 10:00 A.M., GIVEN THE

1 WORK THAT WAS BEING DONE, HE WAS HEADED TOWARD WORK, HEADED  
2 TOWARD 101, GOING -- HE TESTIFIED HE WAS GOING TO GO NORTH ON  
3 101.

4 WHO DID HE CALL AFTER THIS ACCIDENT HAPPENED BUT  
5 WILLIAM, THE PRESIDENT OF AND CEO OF DIVISION 1, AND WILLIAM  
6 CAME TO THE SCENE. ROMAN IS PART OWNER OF DIVISION 1. AS OF  
7 THE DATE OF INCORPORATION AND AT THE TIME OF THE CRASH, HE WAS A  
8 TEN PERCENT HOLDER OF DIVISION 1. HE OWNS 200,000 SHARES OF THE  
9 CORPORATION. HE HAD AUTHORITY TO SIGN CHECKS THAT WERE \$1,000  
10 OR LESS. HE ALSO HAD AUTHORITY TO SIGN, ALONG WITH -- ALL  
11 CHECKS HAD TO BE SIGNED, ALONG WITH WILLIAM PANTOJA, CEO, AND BY  
12 ROMAN.

13 ALL OF THE VEHICLES OWNED BY THE COMPANY WOULD BE  
14 DRIVEN BY ROMAN FROM TIME TO TIME. THOUGH THIS VEHICLE, THIS  
15 RED CHEVY WAS REGISTERED UNDER THE NAME OF MONICA PANTOJA, THE  
16 VEHICLE WAS USED -- AS TESTIFIED TO BY THE MEMBERS OF THE  
17 COMPANY, WAS USED -- AND ROMAN SAID IN HIS DEPOSITION, WAS USED  
18 FROM TIME TO TIME FOR BUSINESS, AND THAT MONICA'S OTHER CAR WAS  
19 ONE THAT SHE WOULD TAKE FROM TIME TO TIME AS WELL AND, IN FACT,  
20 HAD IT THAT DAY. SHE WAS IN SCHOOL UP AT SKYLINE COLLEGE.

21 SO THAT THE VEHICLE BETWEEN THOSE TWO THAT ROMAN WOULD  
22 USE, THAT VEHICLE WAS THE ONE THAT WAS AVAILABLE FOR HIM FOR  
23 WORK THAT DAY. AND THERE'S ALSO TESTIMONY THAT THE TRUCK WAS  
24 INSURED WITH ROMAN, SR.'S NAME ON IT AND WITH WILLIAM, THE  
25 PRESIDENT OF THE COMPANY, SO THAT THIS IS A COMPANY WHERE THE  
26 PEOPLE WHO RUN IT ARE ALL FAMILY MEMBERS INTERCHANGING THEIR

1 VEHICLES, AND THAT THE VARIOUS BUSINESS CARS WERE SO -- AND THE  
2 PERSONAL CARS USED FOR BUSINESS AS WELL -- THAT THEY WERE SO  
3 INTERACTIVE WITH THEIR VEHICLES THAT IT'S CLEAR THAT ROMAN ON  
4 THIS DAY WAS IN THE COURSE AND SCOPE OF EMPLOYMENT.

5 I'D LIKE TO MENTION, TOO, YOUR HONOR, WHILE WE ARE ON  
6 LIABILITY, THAT THERE IS NO CONTRIBUTORY NEGLIGENCE ON THE PART  
7 OF MY CLIENT, TRICIA ROTH. THAT SHE WAS LAWFULLY DRIVING WITH A  
8 GREEN LIGHT, AND THAT SHE HAD HER SEATBELT ON AND THAT SHE WAS  
9 ENTERING THE ONRAMP OF SOUTHBOUND 101.

10 THAT IS MY PRESENTATION AS TO THE LIABILITY. AND I  
11 WILL SUBMIT AS I HAVE ENTERED INTO EVIDENCE THE -- I MEAN, HAVE  
12 MARKED BY THE CLERK OUR EXHIBITS. I WOULD DRAW YOUR HONOR'S  
13 ATTENTION PLEASE TO OUR EXHIBIT 2, WHERE WE HAVE VEHICLE  
14 PHOTOGRAPHS SHOWING THE CRASH. THE DAMAGE TO THE VOLVO IS ALSO  
15 SHOWN IN EXHIBIT 3, AND SHOWS THAT THE AIRBAGS WERE DEPLOYED IN  
16 THOSE PHOTOGRAPHS.

17 EXHIBIT 4 SHOWS THE INTERSECTION WITH THE VARIOUS  
18 VIEWS, THAT ROMAN HAD A CLEAR VIEW OF THIS INTERSECTION, A CLEAR  
19 VIEW OF THE LIGHT, AND IT WAS ALSO A CLEAR, SUNNY DAY. THERE  
20 WAS NO OTHER FACTORS THAT CONTRIBUTED, OTHER THAN HIS  
21 INATTENTION. ON EXHIBIT 5, WE SHOW THAT THE VEHICLE VOLVO WAS  
22 COMPLETELY TOTALED WITH A DAMAGE REPAIR OF \$21,679. I SUBMIT  
23 THAT ONLY TO SHOW HOW TERRIBLE THIS IMPACT WAS.

24 AND THE REGISTRATION IN EXHIBIT 6 SHOWS THAT THE  
25 OWNER -- REGISTERED OWNER WAS MONICA, BUT AS YOUR HONOR RECALLS,  
26 I PRESENTED EVIDENCE THAT THIS VEHICLE WAS USED FOR BUSINESS AND

1 THAT ROMAN WAS ON BUSINESS AT THE TIME OF THIS ACCIDENT.

2 EXHIBIT 7, I MENTIONED EARLIER, SHOWS THE SPEEDS.  
3 THIS IS BY OUR EXPERT, MICHAEL BRAUN, WITH BOSTER, KOBAYASHI,  
4 WHO HAS TESTIFIED TO THE SPEEDS AND DONE THE RECREATION. AND HE  
5 ALSO DID A SIMULATION OF THE ACCIDENT AND ATTACHED A DRAWING OF  
6 THE INTERSECTION THAT SHOWS THE CARS ENTERING THE INTERSECTION,  
7 AND THEN WHERE THEY WERE IN THE MIDDLE OF THE INTERSECTION WHEN  
8 THIS CHEVY PICKUP TRUCK STRUCK THE VOLVO.

9 EXHIBIT 8 IS THE ARTICLES OF INCORPORATION, WHICH  
10 SHOWS THAT WHEN ROMAN PANTOJA WAS A STOCKHOLDER AND PARTIAL  
11 OWNER THE CORPORATION.

12 I HAVE SOME PHOTOGRAPHS OF TRICIA ROTH IN EXHIBIT 9 AS  
13 SHE WAS BEFORE THIS ACCIDENT. SHE WAS VERY ACTIVE; SWIMMING  
14 HORSEBACK RIDING. AND ALSO, A PARTICULAR INTEREST THAT SHE AND  
15 HER HUSBAND HAD WAS BALLROOM DANCING. THEY WERE VERY GOOD AT  
16 IT, AND IT WAS VERY IMPORTANT TO THEM, ONE OF THEIR ACTIVITIES  
17 THAT THEY ENJOYED TOGETHER.

18 I'D LIKE TO MOVE NOW TO DAMAGES, UNLESS YOUR HONOR HAS  
19 SOME QUESTIONS OF ME.

20 THE COURT: NO QUESTIONS. GO AHEAD.

21 MS. ALEXANDER: THANK YOU.

22 AT THE TIME OF THIS ACCIDENT TRICIA WAS 41-YEARS OLD,  
23 AND SHE AND HER HUSBAND, KAY, WERE LIVING IN THE APARTMENTS THAT  
24 ARE NEAR THIS INTERSECTION WHERE THE CASH OCCURRED. AND KAY HUH  
25 IS A VERY FINE, EDUCATED RESEARCHER IN DEVELOPING CANCER DRUGS  
26 AND WORKS UP IN EMERYVILLE. HE WAS AT WORK AT THE TIME OF THE

1 ACCIDENT. AND TRICIA WAS HEADED TOWARD SAN JOSE, WHERE SHE WAS  
2 TAKING COURSES IN ENGLISH.

3 BEFORE THIS, THEY HAD MET UP IN SEATTLE, AND SHE WAS A  
4 SOFTWARE ENGINEER PROJECT MANAGER FOR MICROSOFT. SHE WAS A VERY  
5 HIGH EARNER. SHE HAD A DEGREE IN MANAGEMENT INFORMATION  
6 SYSTEMS, AND SHE WAS VERY SUCCESSFUL IN HER CAREER AS A SOFTWARE  
7 DEVELOPER. THEY HAD BEEN MARRIED FOR SIX YEARS. SHE'D GROWN UP  
8 IN WYOMING, WHICH IS ONE OF THE REASONS SHE WAS SO INTERESTED IN  
9 OUTDOOR ACTIVITIES.

10 THEY WERE MARRIED IN SEATTLE. AND KAY HAD COME DOWN  
11 TO HIS JOB IN EMERYVILLE TO WORK ON A CANCER DRUG DEVELOPMENT,  
12 AND THEN A LITTLE BIT LATER TRICIA MOVED DOWN HERE. LIKED HER  
13 JOB AT MICROSOFT. THEY WERE SEPARATED A LITTLE BIT OVER A YEAR  
14 WHILE SHE FINISHED UP HER WORK THERE, AND SHE MOVED DOWN TO THE  
15 BAY AREA. SHE WAS GETTING SETTLED ENJOYING CALIFORNIA.

16 THEY HAD A THOUGHT THAT THEY MIGHT GO FOR ABOUT A YEAR  
17 OR TWO TO KOREA, WHERE KAY IS FROM. AND SHE WANTED TO WORK  
18 WHILE SHE WAS THERE, SO SHE HAD THIS THOUGHT THAT SHE WOULD  
19 TEACH ENGLISH AS A SECOND LANGUAGE WHILE THEY WERE IN KOREA. SO  
20 THAT'S WHY SHE WAS GOING TO SCHOOL DOWN IN SAN JOSE AT THE TIME  
21 OF THE ACCIDENT.

22 HER PLAN, THOUGH, WAS TO GO BACK TO -- WHEN THEY  
23 RETURNED FROM KOREA, IF THEY DID DO THAT, FOR HER TO RETURN TO  
24 THE SOFTWARE INDUSTRY AND HER FORMER CAREER, WHICH SHE HAD BEEN  
25 SO SUCCESSFUL AND WAS A GREAT INTEREST AND VERY MUCH A PART OF  
26 WHO SHE WAS.

1 SO IT WAS WITH THAT SETTING THAT THIS ACCIDENT  
2 OCCURRED. A TIME IN THEIR LIVES WHEN THEY WERE VERY MUCH  
3 INVOLVED WITH CAREERS AND THEIR PLANS. AND AFTER BEING MARRIED  
4 SIX YEARS, THEY WERE VERY MUCH IN LOVE AND VERY MUCH ENJOYING  
5 THEIR ACTIVITIES HERE IN CALIFORNIA, INCLUDING BALLROOM DANCING  
6 AND THE OUTDOORS.

7 WHEN THIS ACCIDENT HAPPENED AND THE PARAMEDICS CAME  
8 AND TOOK HER FROM THE AUTOMOBILE, TOOK HER TO STANFORD, THE MRIs  
9 AND X-RAYS SHOWED THAT SHE HAD A COMPLETE INJURY TO HER SPINAL  
10 CORD AT C6, C7. AND THE FRACTURES TO HER VERTEBRAE HAD SEVERED  
11 HER SPINAL CORD. SO THE SURGEONS AT STANFORD IMMEDIATELY TOOK  
12 HER IN FOR SURGERY TO REPAIR THE FRACTURES TO THE SPINAL CORD  
13 AND TO STABILIZE THE SPINAL CORD.

14 AFTER THAT SURGERY THERE WAS VERY LITTLE HOPE THAT  
15 THAT SURGERY WOULD IMPROVE HER PARALYSIS AND, INDEED, IT DID  
16 NOT, BUT THAT SHE HAD THE FRACTURE AT C6, C7. THERE WAS ALSO A  
17 MINOR FRACTURE AT C1. SHE WAS TRANSFERRED -- THE ACCIDENT WAS  
18 SEPTEMBER 11TH, AND ON SEPTEMBER 14TH SHE WAS TRANSFERRED DOWN  
19 TO SANTA CLARA VALLEY FOR THEIR SPINAL CORD REHABILITATION UNIT.  
20 AND SHE WAS A PATIENT THERE FOR TWO MONTHS UNTIL NOVEMBER 14TH.

21 AND THERE SHE HAD ACUTE INPATIENT HOSPITALIZATION AND  
22 ALSO REHABILITATION. SHE WAS ACTUALLY ON MECHANICAL VENTILATION  
23 DURING THE TRANSFER. AND I MUST POINT OUT THAT THROUGH ALL THIS  
24 SHE WAS IN GREAT PAIN, THAT THE PAIN OCCURS WHEN THERE IS AN  
25 INJURY TO THE SPINAL CORD, EVEN THOUGH THE BODY IS CUT OFF FROM  
26 THE SPINE, THE BODY PERCEIVES AND THERE IS BOTH PHYSICAL AND

1 WHAT WE CALL NEUROGENIC PAIN. AND SHE ALSO HAD A DEEP VEIN  
2 CLOT. THERE WAS AN INJURY TO HER THIGH, LEFT THIGH, AND THEY  
3 HAD TO PUT IN A VENA CAVA FILTER, AND THAT STAYED IN UNTIL  
4 MARCH 23RD, 2007, TO PREVENT A CLOT FROM GOING INTO HER LUNGS.

5 SHE IS SOMEONE WHO, DESPITE THIS DEVASTATING INJURY,  
6 WORKED VERY HARD TO GET BACK AS MUCH ABILITY AND FUNCTION AS SHE  
7 COULD WHILE AT SANTA CLARA, TAKING THE OCCUPATIONAL THERAPY AND  
8 PHYSICAL THERAPY. AND TO TRY TO LEARN HOW TO, AS MUCH AS SHE  
9 COULD, BE INDEPENDENT IN HER ACTIVITIES OF DAILY LIVING. SHE  
10 HAD -- AFTER SHE WAS HOME, HAD REHAB WITHOUT WALLS. REHAB  
11 WITHOUT WALLS CAME IN AND GAVE HER RETRAINING ON ACTIVITIES OF  
12 DAILY LIVING AND HOW TO USE THE DEVICES THAT SHE HAS BEEN GIVEN  
13 TO HELP HER WITH HER ACTIVITIES.

14 SHE'S BEEN FOLLOWED BY HER PHYSICIANS. AND THEN ON  
15 DECEMBER 6, 2006, SHE SAW DR. ALLMAN, WHO NOTED THAT -- THIS IS  
16 AT STANFORD -- THAT SHE WAS EXPERIENCING A DECREASE IN HER  
17 ABILITY TO MOVE HER ARMS. SHE HAS, AFTER THE ACCIDENT, MOVEMENT  
18 BUT NO ABILITY TO GRASP THE THUMB AND THE FOREFINGER TO REACH  
19 AND PICK THINGS UP. SHE HAS SOME MOVEMENT, GROSS MOVEMENT OF  
20 HER ARMS, BUT SHE WAS EXPERIENCING TINGLING AND NUMBNESS AND A  
21 DECREASE IN HER FUNCTION.

22 ON JULY 19, 2007, AN MRI SHOWED THAT SHE HAD DEVELOPED  
23 WHAT'S CALLED A SYRINX, S-Y-R-I-N-X. AND IT'S LIKE A CYST THAT  
24 DEVELOPS ON THE SPINE. THAT'S WHAT WAS CAUSING HER PRESSURE ON  
25 HER SPINAL CORD AND CAUSING HER TO LOSE SOME OF THE FUNCTION  
26 THAT SHE DID HAVE. AND THE PHYSICIANS THEN DID, ON

1 SEPTEMBER 17, 200- -- SEPTEMBER 12, 2008, SHE HAD A SURGERY TO  
2 FIX AND REMOVE THE SYRINX, AND SHE WAS RELEASED ON  
3 SEPTEMBER 17TH.

4 SO SHE HAD ANOTHER SURGERY AT STANFORD DONE BY  
5 PHYSICIAN, DR. JACKSON, AT PALO ALTO MEDICAL CLINIC, A  
6 NEUROSURGEON THERE. DR. JACKSON HAS TESTIFIED, AND I WOULD MAKE  
7 AN OFFER OF PROOF, THAT HE DOES HAVE CONCERNS ABOUT WHETHER THIS  
8 MAY OCCUR AGAIN AND THAT SHE MAY HAVE DECREASE IN HER FUNCTION.  
9 TO DATE, SHE'S BEEN STABLE SINCE THAT SURGERY, AND TO A LARGE  
10 DEGREE BECAUSE SHE WORKS SO HARD TO TAKE CARE OF HERSELF TO DO  
11 HER EXERCISES, TO DO THE REHABILITATION THAT SHE NEEDS AT HOME  
12 SO THAT SHE MAINTAINS THE FUNCTION THAT SHE HAS.

13 HER CURRENT DIAGNOSES ARE -- TECHNICALLY, THEY CALL IT  
14 TETRAPLEGIA. WITH THE SPINAL CORD INJURY AT C6, C7, SHE HAS  
15 WHAT'S CALLED A NEUROGENIC BLADDER, WHICH MEANS SHE HAS NO  
16 CONTROL OVER HER BLADDER. SHE HAS TO BE CATHETERIZED FOUR TO  
17 SIX TIMES A DAY, AND THAT'S BEING DONE CURRENTLY BY HER PRIVATE  
18 CARE GIVERS, FAMILY MEMBERS AND HER HUSBAND. SHE HAS A  
19 NEUROGENIC BOWEL, WHICH MEANS SHE HAS NO CONTROL OVER HER  
20 BOWELS, AND SO SHE HAS TO HAVE A BOWEL PROGRAM.

21 SHE HAS NEUROGENIC VASCULOPATHY, MEANING THAT SHE HAS  
22 DIFFICULTY CONTROLLING HER BODY TEMPERATURE. SHE HAS TO BE IN  
23 AN ENVIRONMENT THAT HAS CONTROLLED TEMPERATURE, AND ALSO TROUBLE  
24 WITH HER BLOOD PRESSURE. SHE HAS NEUROGENIC SKIN, WHICH MEANS  
25 THAT SHE HAS TO BE WATCHED FOR DECUBITUS ULCERS, BREAKDOWN OF  
26 THE SKIN, ANY LESIONS. SHE HAS RECURRING URINARY TRACT

1 INFECTIONS, NUMEROUS PER YEAR BECAUSE OF CATHETERIZATION. AND  
2 SHE'S IN CONTINUING RISK FOR HAVING URINARY TRACT INFECTIONS.

3 THE PAST MEDICAL BILLS, WE HAVE PRESENTED IN OUR  
4 BRIEF, AND WE HAVE IN OUR STATEMENT OF DAMAGES PRESENTED THOSE.  
5 THE NUMBER IN OUR BRIEF IS \$1,557,131.66. THAT IS A LITTLE LESS  
6 THAN \$100 OFF FROM WHAT I PUT INTO THE SPECIAL DAMAGES. THERE  
7 OBVIOUSLY WAS ANOTHER BILL, THE SPECIAL DAMAGES AND THE DEFAULT  
8 STATEMENT OF DAMAGES IS \$1,555,091. OF COURSE, THIS CARE IS  
9 CONTINUING. AND WE HAVE ALSO INCLUDED IN THAT NUMBER THE VALUE  
10 OF THE PAST MEDICAL THAT IS ATTENDANT CARE, OF WHICH SHE IS  
11 ENTITLED.

12 THIS ONGOING CARE THAT SHE NEEDS IS SET FORTH IN A  
13 REPORT THAT'S ATTACHED AS EXHIBIT 10, A VERY FINE PHYSIATRIST.  
14 PHYSICAL MEDICAL PHYSICIAN, DR. ALEX BARCHUCK, CAME TO TRICIA'S  
15 HOUSE AND EXAMINED HER AND ALSO LOOKED AT THE DEVICES THAT SHE  
16 USES, THE DEVICES THAT SHE NEEDS, AND HAS RENDERED HIS OPINION  
17 ABOUT THE CONTINUING CARE THAT SHE NEEDS.

18 SHE'S GOING TO NEED CONTINUED CARE OF A PHYSICAL  
19 MEDICINE PHYSICIAN, A PAIN SPECIALIST TO TRY TO HELP HER WITH  
20 HER ONGOING PAIN, A NEUROLOGIST/NEUROSURGEON TO BE FOLLOWED BY  
21 INTERNAL MEDICINE, ORTHOPEDIST, PLASTIC SURGEON,  
22 GASTROENTEROLOGIST, DERMATOLOGIST, PODIATRIST, DIETICIAN,  
23 CARDIOLOGIST AND NEUROLOGIST. ALL OF THESE THAT NEED TO MONITOR  
24 HER AND HELP HER WITH HER CONTINUING MEDICAL CARE.

25 OF PARTICULAR NOTE IS THE FOUR TO FIVE TIMES THAT SHE  
26 NEEDS TO BE CATHETERIZED, WHICH NOT ONLY INTERFERES WITH HER

1 DAILY LIFE BUT THAT SHE NEEDS ROUND-THE-CLOCK CARE FOR THAT AS  
2 WELL. IF, IN THE FUTURE, SHE'S NOT ABLE TO HAVE THIS DONE BY A  
3 FAMILY MEMBER OR PRIVATE CARE NURSE AND SHE HAS TO GO TO AN  
4 AGENCY FOR THE ATTENDANT CARE, THAT WOULD HAVE TO BE DONE BY AN  
5 LVN, LICENSED NURSE, WHICH WOULD BE EVEN MORE EXPENSIVE AND  
6 WOULD REQUIRE THAT SHE BE A LICENSED NURSE CARETAKER ROUND THE  
7 CLOCK, BECAUSE THE CATHETERIZATIONS ARE AROUND THE CLOCK.

8 SHE NEEDS HELP WITH HER ACTIVITIES OF DAILY LIVING TO  
9 TRANSFER FROM BED TO WHEELCHAIR, TO GET HER UP IN THE MORNING,  
10 TO HAVE HER BOWEL PROGRAM IN THE MORNING, TO TRANSFER INTO A  
11 SHOWER, HAVE SOMEONE WASH HER HAIR. SHE CAN BRUSH HER TEETH.  
12 SHE HAS A DEVICE WHERE SHE CAN HOLD HER TOOTHBRUSH. IT'S HARD  
13 FOR HER TO -- SHE CAN'T REACH TO COMB HER HAIR. SHE CAN FEED  
14 HERSELF, AGAIN, WITH A DEVICE THAT SHE CAN HOLD ONTO WITH HER  
15 HAND. AND SOME OF THE OTHER ACTIVITIES OF DAILY LIVING THAT SHE  
16 CANNOT ASSIST WITH HERSELF.

17 SHE HAS A LITTLE -- SHE HAS A CELL PHONE THAT SHE PUTS  
18 ON AN EVERY HOUR ALARM, AND EVERY HOUR SHE HAS TO MOVE AROUND,  
19 MOVE IN HER WHEELCHAIR AROUND AND LEAN OVER TO TRY TO STRETCH  
20 HERSELF. THE PURPOSE OF WHICH, ONE, IT HELPS CONTROL HER PAIN;  
21 TWO, IT HELPS RELIEVE PRESSURE FOR THE SKIN ISSUES. SO SHE HAS  
22 A DEVICE TO HOLD ONTO THE PHONE, AND SHE CAN FLIP THAT OPEN.

23 DR. BARCHUCK HAS SAID THAT HER LIFE EXPECTANCY IS  
24 REDUCED BY FIVE TO TEN PERCENT BECAUSE OF THESE INJURIES, AND WE  
25 HAVE TAKEN THAT INTO ACCOUNT IN OUR CALCULATIONS. TAKING  
26 DR. BARCHUCK'S RECOMMENDATION, OUR EXPERT, CAROL HIGHLAND, WHO

1 IS A VOCATIONAL REHABILITATION EXPERT HAS DONE A REPORT, AND  
2 THAT'S AT PAGE 12. AND SHE HAS OUTLINED THE COST FOR ALL OF  
3 THESE THINGS THAT DR. BARCHUCK SAYS THAT SHE WILL NEED,  
4 INCLUDING THE ROUND-THE-CLOCK MEDICAL CARE, THE ATTENDANT CARE.

5 THE MANUAL WHEELCHAIR THAT SHE WILL NEED, AN  
6 ADJUSTABLE BED, VAN, LIFTS, A SPECIALIZED COMPUTER. AND SHE  
7 ALSO MAY NEED ELECTRICAL STIMULATION IN THE FUTURE, ACCORDING TO  
8 DR. JACKSON. BUT WE HAVE NOT -- IN LOOKING AT THIS, ATTENDANT  
9 CARE AND THE HOUSING MODIFICATIONS ARE ALL INCLUDED IN HERE.

10 THE NUMBERS THEN THAT CAROL HIGHLAND HAS PRESENTED,  
11 THOSE WERE TAKEN BY OUR ECONOMIST, DR. ROBERT JOHNSON, WHO THEN  
12 CALCULATED THE PRESENT CASH VALUE OVER HER LIFETIME. THOSE ARE  
13 SUMMARIZED IN EXHIBIT 13, WHICH FOR THE MEDICAL CARE, MEDICAL  
14 EXPENSES COMES TO \$10,758,944. THE HOUSEKEEPING AND HANDYMAN  
15 EXPENSES ARE \$207,007.

16 TURNING TO THE WAGE LOSS, WHICH IS INCLUDED IN THE  
17 DR. JOHNSON'S REPORT, DR. BARCHUCK, AS A PHYSICIAN, SAID THAT  
18 SHE'S NOT ABLE TO WORK IN THE FUTURE. AND CAROL HIGHLAND HAS  
19 ALSO, AS A VOCATIONAL REHABILITATION PERSON, OPINED THAT SHE'S  
20 NOT GOING TO BE ABLE TO WORK IN THE FUTURE. NOT THAT TRICIA  
21 DOESN'T WANT TO. THAT WOULD BE HER GOAL, WOULD BE ABLE TO  
22 RETURN TO HER FORMER LIFE. BUT DR. BARCHUCK AND CAROL HIGHLAND  
23 HAVE BOTH SAID SHE'S NOT GOING TO BE ABLE TO RETURN, AND SO THAT  
24 THAT HAS BEEN CALCULATED BY DR. JOHNSON.

25 NOW, THERE'S TWO SCENARIOS THAT WE PRESENT. THE FIRST  
26 SCENARIO WOULD BE IF SHE RETURNS TO BEING A SOFTWARE CONSULTANT

1 SOFTWARE PROGRAM MANAGER. AND WE HAVE ASSUMED THAT THEY WOULD  
2 HAVE, BUT FOR THIS ACCIDENT, GONE TO KOREA -- FINISHED HER  
3 EDUCATION FOR TWO YEARS, GONE KOREA FOR ABOUT A YEAR AND  
4 RETURNED. AND WE HAVE ALSO INCLUDED IN THIS SOME TIME FOR HER  
5 TO GET BACK INTO THE WORKPLACE.

6 BUT THAT SCENARIO WOULD BE ABOUT \$100,000 PER YEAR OF  
7 WAGE LOSS. AND THAT THAT COMES TO PRESENT CASH VALUE OF  
8 \$2,493,351. THAT'S \$2,493,351. THE SECOND SCENARIO THAT WAS  
9 USED BY DOCTOR -- I MEAN, MR. JOHNSON, WAS BASED ON CAROL  
10 HIGHLAND, SAYING THAT SHE ALSO, BASED ON HER EXCELLENT WORK  
11 HISTORY AND TRACK RECORD WITH MICROSOFT, THAT SHE COULD RETURN  
12 TO WORK AS A SOFTWARE CONSULTANT PROGRAM -- SOFTWARE PROGRAM  
13 MANAGER WITH ABOUT \$290,790 PER YEAR, AND THAT SCENARIO WAGE  
14 LOSS AT \$7,038,991.

15 AND I WOULD ADD THAT THESE NUMBERS DO NOT INCLUDE  
16 BONUSES AND THE THINGS THAT SHE WAS EARNING IN THE WAY OF  
17 BONUSES FROM MICROSOFT. THIS IS JUST STRAIGHT WAGES, SO IT'S  
18 ACTUALLY A VERY CONSERVATIVE NUMBER BASED ON WHAT SHE COULD HAVE  
19 DONE. AND WE HAVE PUT IN ON THE STATEMENT OF DAMAGES, THE LOSS  
20 OF EARNINGS.

21 FINALLY, YOUR HONOR, WE HAVE INCLUDED IN YOUR BINDER A  
22 DAY-IN-THE-LIFE FILM THAT WOULD SHOW WHAT IT'S LIKE ON A DAILY  
23 BASIS FOR TRICIA ROTH AND THE KIND OF CARE THAT SHE NEEDS AND  
24 WHY IT IS SO LABOR INTENSIVE TO HELP HER AND TO TAKE CARE OF  
25 HER. AT EXHIBIT 11, THERE'S SOME PHOTOGRAPHS OF SOME OF THE  
26 DEVICES AND MODIFICATIONS THAT HAVE BEEN MADE TO HER HOME AND

1 HER WHEELCHAIR. SHE HAS STANDING CARE, WHICH IS ONE OF THE  
2 RECOMMENDATIONS OF HER PHYSICIAN AND DR. BARCHUCK, TO HAVE HER  
3 STAND FOR SOME PERIOD OF TIME. THIS CHAIR ACTUALLY PUTS HER IN  
4 A STANDING POSITION. IT'S VERY HELPFUL IN HELPING MAINTAIN HER  
5 BODY. SO THOSE PHOTOGRAPHS AND THE DAY-IN-THE-LIFE SHOW THE  
6 AMOUNT OF CARE AND EQUIPMENT THAT SHE NEEDS.

7 FINALLY, YOUR HONOR, THE INJURIES THAT TRICIA ROTH  
8 HAVE SUSTAINED MAKES HER DEPENDANT ON HER HUSBAND AND OTHERS FOR  
9 HER DAILY NEEDS. IT IS A LIFE OF FRUSTRATION AND PAIN. BUT SHE  
10 IS SOMEBODY WHO HAS, DESPITE THESE OBSTACLES, KEPT A BRIGHT  
11 ATTITUDE AND WORKS HARD TO KEEP HER ACTIVITIES OF DAILY LIVING  
12 TO DO AS MUCH AS SHE CAN. BUT SHE'S NEVER GOING TO WALK AGAIN.  
13 SHE'S NEVER GOING TO BE ABLE TO ENJOY THOSE ACTIVITIES OF  
14 HORSEBACK RIDING, SWIMMING AND BALLROOM DANCING.

15 AND HER HUSBAND, KAY, WHO HAS BEEN EXTRAORDINARILY  
16 REMARKABLY DEVOTED, TAKING CARE OF HER, DOING HER BOWEL PROGRAM  
17 IN THE MORNING BEFORE HE GOES OFF TO WORK, HE TAKES CARE OF HER  
18 IN THE EVENINGS AND ON WEEKENDS. AND HE HAS SUBSTANTIAL LOSS OF  
19 CONSORTIUM. HE HAS BECOME HER CAREGIVER. HE LOVES HER DEARLY,  
20 AS IS EVIDENT IN HIS CARE OF HER, BUT HIS LOSS IS TREMENDOUS.  
21 WE HAVE PUT IN OUR STATEMENT OF DAMAGES A LOSS FOR TRICIA OF  
22 PAIN AND SUFFERING OF 15 MILLION AND FOR KAY, 5 MILLION.

23 AND WE WOULD ASK THAT YOUR HONOR COMPENSATE THEM IN  
24 THOSE AMOUNTS FOR THIS TERRIBLE LOSS. THANK YOU VERY MUCH.

25 THE COURT: THANK YOU.

26 LET'S ADMIT ALL OF THE EXHIBITS IN THE BINDER. ARE

1 THERE ANY OTHER EXHIBITS YOU'D LIKE ADMITTED?

2 MS. ALEXANDER: WELL, THE DAY-IN-THE-LIFE IS ACTUALLY  
3 EXHIBIT 14.

4 THE COURT: YES. AND THAT CAN BE ADMITTED AS A CD OR  
5 DVD. SO WOULD YOU MOVE INTO EVIDENCE EXHIBITS 1 THROUGH 15  
6 ATTACHED TO THE BINDER THAT YOU HAVE PROVIDED TO THE COURT?

7 MS. ALEXANDER: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. I WILL ADMIT EACH OF THOSE.  
9 THAT INCLUDES THE DECLARATION OF MR. MORENO AND THE GROUP  
10 EXHIBITS. THEY WILL EACH RECEIVE ONE NUMBER AS SUBMITTED TO THE  
11 COURT. THE TRIAL BRIEF, IF IT HASN'T ALREADY BEEN FILED WILL BE  
12 FILED. AND WE HAVE COPIES OF THAT. WE WILL TAKE ALL OF THAT.

13 (PLAINTIFFS' EXHIBITS 1 THROUGH 15, PREVIOUSLY MARKED,  
14 WERE ADMITTED INTO EVIDENCE.)

15 MS. ALEXANDER: YES. THE TRIAL BRIEF.

16 THE COURT: DID YOU FILE IT SEPARATELY? THIS IS AN  
17 ORIGINAL HERE, SO I CAN FILE THIS ONE?

18 MS. ALEXANDER: YES.

19 THE COURT: ALL RIGHT.

20 MS. ALEXANDER: AND I HAVE A COPY, IF YOU NEED A COPY  
21 OF THE BINDER.

22 THE COURT: I THINK JUST THE ORIGINAL WILL BE  
23 SUFFICIENT.

24 AND MS. ROTH -- AND HOW DO YOU PRONOUNCE --

25 MS. ALEXANDER: KAY "HUH".

26 THE COURT: -- AND MR. HUH ARE PRESENT?

1 MS. ALEXANDER: YES, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 AND, MS. ROTH, YOU HAVE HEARD ALL OF THE STATEMENTS  
4 MADE BY YOUR ATTORNEY TODAY. IF YOU WERE TO TESTIFY ABOUT THE  
5 THINGS THAT YOU HAVE PERSONAL KNOWLEDGE OF, YOU WOULD AGREE THAT  
6 MS. ALEXANDER'S STATEMENTS ARE ACCURATE?

7 MS. ROTH: YES.

8 THE COURT: AND, MR. HUH, YOU'VE HEARD MS. ALEXANDER'S  
9 STATEMENTS ABOUT THINGS YOU WOULD TESTIFY TO, AND DO YOU AGREE  
10 THAT EVERYTHING MS. ALEXANDER SAID THAT YOU HAVE PERSONAL  
11 KNOWLEDGE OF IS TRUE AND CORRECT?

12 MR. HUH: YES, YOUR HONOR.

13 THE COURT: THANK YOU.

14 BASED ON THE EVIDENCE SUBMITTED TO THE COURT, THE  
15 COURT DOES FIND LIABILITY ON BEHALF OF DEFENDANTS, ROMAN PANTOJA  
16 AND DIVISION 1 AUTO SERVICES, INC. THE COURT SPECIFICALLY  
17 FINDS, BASED ON THE EVIDENCE SUBMITTED, THAT MR. PANTOJA WAS AT  
18 FAULT IN THIS AUTOMOBILE ACCIDENT AND THAT HE WAS ACTING IN THE  
19 COURSE AND SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE ACCIDENT.  
20 THE COURT THEREBY FINDS LIABILITY ON THE PART OF BOTH OF THESE  
21 DEFENDANTS.

22 THE COURT FINDS THAT THE ACCIDENT IN QUESTION DID  
23 CAUSE ALL OF THE INJURIES ESTABLISHED BY THE EVIDENCE SUBMITTED  
24 IN THIS MATTER. AND BASED UPON THAT EVIDENCE -- LET ME JUST ASK  
25 ONE QUESTION ABOUT DAMAGES.

26 MS. ALEXANDER, THE WAGE LOSS IS -- I'M A LITTLE

1 TROUBLED BY THE SECOND SCENARIO THAT WOULD PRESUME, ESSENTIALLY,  
2 A DIFFERENT CAREER WITHOUT ANY INDICATION IN THE EVIDENCE THAT  
3 MS. ROTH WAS EVER EVEN CONTEMPLATING A CHANGE FROM THE KIND OF  
4 EMPLOYMENT THAT SHE HAD.

5 MS. ALEXANDER: ACTUALLY, THE SECOND SCENARIO IS MORE  
6 CONSISTENT WITH WHAT IT IS SHE WAS DOING.

7 THE COURT: I COULDN'T TELL THAT. CAN YOU JUST GIVE  
8 ME A LITTLE MORE INFORMATION ABOUT HOW THAT IS SO? I DON'T KNOW  
9 WHAT HER INCOME WAS BEFORE THE ACCIDENT AT MICROSOFT.

10 MS. ALEXANDER: YES, YOUR HONOR. I THINK I -- FORGIVE  
11 ME. I DIDN'T REALLY GO OVER THAT WELL ENOUGH. IF I COULD ASK  
12 YOU TO TURN TO CAROL HIGHLAND'S REPORT.

13 THE COURT: THAT WOULD BE EXHIBIT 12?

14 MS. ALEXANDER: THAT'S EXHIBIT 12.

15 THE COURT: YES.

16 MS. ALEXANDER: ON PAGE 23 OF HER REPORT, OF  
17 EXHIBIT 12, IT SAYS "VOCATIONAL EVALUATION" AND TALKS ABOUT HER  
18 PAST HISTORY. AND FROM 1996 TO 2004 SHE WORKED AT MICROSOFT AS  
19 A SOFTWARE PROGRAM MANAGER AND HER SALARY WAS 90,000, PLUS STOCK  
20 OPTIONS, WHICH EQUATED TO AVERAGE ANNUAL EARNINGS OF 200,000,  
21 250,000. AND SHE GOES ON TO SAY THAT BECAUSE OF THE INJURIES IT  
22 IS UNLIKELY THAT MS. ROTH WILL BE ABLE TO RETURN TO THE LABOR  
23 MARKET.

24 AND AT THE TIME OF THE ACCIDENT SHE WAS IN THE  
25 EDUCATIONAL PROGRAM. SHE AND HER HUSBAND HAD PLANNED TO MOVE TO  
26 KOREA FOR ONE TO TWO YEARS, WHERE MS. ROTH THOUGHT SHE WOULD

1 EARN A LIVING USING THESE SKILLS. SUBSEQUENT TO THEIR RETURN,  
2 MS. ROTH HAD PLANNED TO WORK AGAIN AS A SOFTWARE PROGRAM  
3 MANAGER. ABSENT HER INJURIES, THERE'S NO REASON WHY MS. ROTH  
4 WOULD NOT HAVE BEEN ABLE TO WORK AS A SOFTWARE PROGRAM MANAGER  
5 AT WAGES COMPARABLE TO HER PAST EARNINGS.

6 A SURVEY OF LOCAL PLACEMENT AND HEAD HUNTING FIRMS  
7 CONFIRMED THAT WAGES FOR THESE POSITIONS TYPICALLY RANGE FROM  
8 90,000 TO 110,000. AND THEN WHAT ROBERT JOHNSON DID WAS THAT HE  
9 TOOK THESE NUMBERS AND ALSO LOOKED AT WHAT WOULD HAPPEN IN THE  
10 FUTURE TO THIS WAGE AND THIS SCENARIO AND WHAT SHE WAS WORKING  
11 AS A PROGRAM MANAGER AND HER DEGREE IN MANAGEMENT INFORMATION  
12 SYSTEMS; AND THEN DEVELOPED THE SECOND SCENARIO, ALONG WITH  
13 CAROL HIGHLAND, AND WHAT HE WOULD EXPECT THE EARNINGS TO COME TO  
14 AND RESULT IN IN THE FUTURE, AND THEN REDUCED THEM TO PRESENT  
15 CASH VALUE.

16 THE COURT: I GUESS I AM -- THESE NUMBERS ARE SO  
17 ENORMOUS, I DON'T WANT TO SPEND AN INAPPROPRIATE AMOUNT OF TIME  
18 ON THIS, BUT EACH NUMBER SHOULD BE PROPERLY ADJUDICATED. I JUST  
19 DON'T SEE ANY -- IF YOU'D LIKE ME TO RELY ON HER ACTUAL INCOME  
20 IN HER LAST YEAR OF EMPLOYMENT WITH MICROSOFT AS THE EVIDENCE TO  
21 SUPPORT SCENARIO TWO, BUT I DON'T ACTUALLY SEE IN HIS REPORT ANY  
22 BASIS FOR SCENARIO TWO, SO I'M STRUGGLING WITH THAT. I DON'T  
23 SEE WHERE HE TELLS ME WHAT THE ANTICIPATED YEARLY INCOME WOULD  
24 BE OR THE WORK ITSELF WOULD BE TO CREATE THE SCENARIO TWO.

25 MS. ALEXANDER: IF YOU COULD LOOK WITH DOCTOR -- I  
26 MEAN, MR. JOHNSON'S REPORT ON EXHIBITS 13, THE ANALYSIS

1 ESTIMATES THAT HER INCOME AFTER RETURNING TO THE WORKFORCE WOULD  
2 BE 290,790 PER ANNUM AS A SOFTWARE CONSULTANT PROGRAM MANAGER,  
3 AND THAT WAS BASED ON INFORMATION ON HER W-2 FORMS.

4 THE COURT: OKAY. GOOD. I DO SEE THAT NOW IN THE  
5 ATTACHMENT TO --

6 MS. ALEXANDER: AND THEN HE ADDED BENEFITS OF  
7 28.1 PERCENT --

8 THE COURT: UH-HUH.

9 MS. ALEXANDER: -- OF THE EXPECTED AND ATTACHED THE  
10 DISCOUNT RATE. BUT, AGAIN, SO IT'S BASED ON HER W-2s AND WHAT  
11 BOTH HE AND CAROL HIGHLAND EXPECTED -- EXPECT FOR THE FUTURE  
12 WAGE INCREASES IN THE FUTURE, TAKING INTO ACCOUNT -- I BELIEVE,  
13 THOUGH, THAT HE HELD THE PERCENTAGE FRINGE BENEFITS THE SAME AT  
14 28.1 PERCENT FOR A LIFETIME, AND SO THIS WOULD BE FOR A WORKING  
15 LIFETIME.

16 THE COURT: THANK YOU FOR WALKING ME THROUGH THAT. I  
17 HAD NOT SEEN THAT BEFORE. THAT'S HELPFUL.

18 MS. ALEXANDER: IT IS COMPLICATED.

19 THE COURT: YEAH.

20 BASED ON THE EVIDENCE BEFORE THE COURT, THE COURT WILL  
21 AWARD DAMAGES IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANTS IN  
22 THE FOLLOWING AMOUNTS: FOR ECONOMIC DAMAGES, THE COURT WILL  
23 AWARD \$1,557,131.66; FOR FUTURE MEDICAL DAMAGES, \$10,758,944;  
24 FOR FUTURE HOUSECLEANING AND MAINTENANCE, \$200,007; FOR FUTURE  
25 WAGE LOSS, THE COURT IS PERSUADED THAT MS. ROTH'S INCOME WOULD  
26 CONTINUE AS IT HAD AT THE LEVEL OF HER PROFESSIONAL ATTAINMENT

1 AT MICROSOFT AND WILL AWARD DAMAGES UNDER SCENARIO NUMBER TWO  
2 WAGES FOR FUTURE WAGE LOSS OF \$7,038,991.

3 FOR NON-ECONOMIC DAMAGES, THE COURT WILL AWARD  
4 MS. ROTH PAIN AND SUFFERING IN THE AMOUNT OF \$15 MILLION AND  
5 EMOTIONAL DISTRESS DAMAGES IN THE AMOUNT OF \$5 MILLION. FOR  
6 MR. HUH, THE COURT WILL AWARD LOSS OF CONSORTIUM DAMAGES IN THE  
7 AMOUNT OF \$5 MILLION AND LOSS OF EARNINGS IN THE AMOUNT OF  
8 \$30,000. TO THE EXTENT THAT THE STATEMENT OF DAMAGES IN REGARD  
9 TO DIVISION 1 WAS SLIGHTLY LESS, OF COURSE, THE AMOUNT OF  
10 DAMAGES WILL BE CONTROLLED BY THE STATEMENT. IT'S A DE MINIMUS  
11 AMOUNT, BUT I DO RECOGNIZE THAT VERY MODEST DIFFERENCE.

12 IS THERE ANYTHING ELSE THAT YOU NEED FINDING ON FROM  
13 THE COURT?

14 MS. ALEXANDER: NO. I BELIEVE THAT'S IT. THANK YOU  
15 VERY MUCH, YOUR HONOR. I APPRECIATE IT VERY MUCH.

16 THE COURT: ALL RIGHT.

17 MS. ALEXANDER, THANK YOU FOR THE EXCELLENT JOB OF  
18 DESCRIBING THIS CASE AND GIVING THE COURT THE EVIDENCE THAT IT  
19 NEEDED.

20 TO MS. ROTH, MY HEART GOES OUT TO YOU.

21 MS. ROTH: THANKS.

22 THE COURT: THERE ARE NO WORDS THAT I COULD SAY THAT  
23 COULD EASE YOUR PAIN, AND IT HAS MOVED ME GREATLY TO LISTEN TO  
24 YOUR STORY. I CAN ONLY WISH YOU THE BEST. I AM FULL OF  
25 ADMIRATION FOR YOUR OPTIMISM AND YOUR TENACIOUSNESS IN REGAINING  
26 THE LIFE YOU SO RICHLY DESERVE; AND TO YOUR HUSBAND, FOR HIS

1 LOVE AND DEVOTION TO YOU. YOU ARE BOTH VERY LUCKY TO HAVE EACH  
2 OTHER. UNDER THESE CIRCUMSTANCES, ONE COULD NOT WISH FOR  
3 ANYTHING MORE.

4 MS. ALEXANDER, I THINK THAT'S EVERYTHING. WE'LL TAKE  
5 CARE OF ADMITTING ALL THESE THINGS. I DON'T THINK YOU NEED TO  
6 STAY. AND YOU WILL PRESENT A JUDGMENT TO THE COURT.

7 MS. ALEXANDER: I HAVE A JUDGMENT HERE. I HAVE THE  
8 FORMS, YOUR HONOR. I HAVE THREE OF THEM. WHAT IS, I GUESS, A  
9 LITTLE UNCLEAR TO ME IS WHETHER YOUR HONOR IS GOING TO ENTER  
10 JUDGMENT AS TO EACH DEFENDANT OR TO ONE.

11 THE COURT: IT'S REALLY UP TO YOU, WHETHER YOU WANT  
12 SEPARATE JUDGMENTS OR A SINGLE JUDGMENT. AS TO THE ECONOMIC  
13 DAMAGES, THEY ARE JOINTLY AND SEVERALLY LIABLE, AND THERE'S BEEN  
14 NO -- YOU KNOW, AS TO THE NON-ECONOMIC DAMAGES, I THINK A SINGLE  
15 JUDGMENT WOULD BE SUFFICIENT, BUT THAT'S YOUR CHOICE. IF YOU  
16 WOULD PREFER SEPARATE JUDGMENTS, I WILL BE GLAD TO CONSIDER THAT  
17 AS WELL.

18 MS. ALEXANDER: AND I GUESS THAT --

19 THE COURT: DO YOU WANT TO THINK ABOUT IT?

20 MS. ALEXANDER: I DON'T THINK IT MATTERS AS LONG AS  
21 IT'S CLEAR THAT THEY'RE JOINT AND SEVERALLY LIABLE ON THE FORM.

22 THE COURT: HAVE YOU MADE IT CLEAR ON THE FORM? DID  
23 YOU DO IT THAT WAY?

24 MS. ALEXANDER: NO. I ONLY MADE THIS OUT AS TO  
25 DIVISION 1, BECAUSE I WAS JUST EXPECTING TO GET A DEFAULT ON, SO  
26 I BROUGHT THAT PAPER. SO WOULD YOUR HONOR --

1 THE COURT: I THINK IT'S BETTER IF WE HAVE -- YOU  
2 KNOW, I COULD NOT MAKE FINDINGS ON DAMAGES AGAINST -- OR  
3 LIABILITY AGAINST DIVISION 1 WITHOUT CONCLUDING THE CASE AS TO  
4 MR. PANTOJA, BECAUSE WE CAN'T HAVE INCONSISTENT JUDGMENTS. SO  
5 WE HAVE NOW DONE THAT, AND NOW THERE CAN BE CONSISTENT  
6 JUDGMENTS. SO WOULD YOU LIKE TO -- IF YOU WANT TO MAKE A  
7 MODIFICATION IN IT, YOU CAN SUBMIT IT TO ME TOMORROW OR THE NEXT  
8 DAY, IF YOU'D LIKE.

9 MS. ALEXANDER: ALL RIGHT. SO IT SOUND LIKES WE'RE  
10 DECIDING ON ONE JUDGMENT, MEANING ONE FORM TO FILL OUT.

11 THE COURT: SEEMS THAT WAY.

12 MS. ALEXANDER: YES.

13 THE COURT: AND IT'S A JUDGMENT BASED ON THE COURT  
14 RECEIVING EVIDENCE. IT WAS BY DEFAULT AS TO DIVISION 1, BUT THE  
15 COURT DID RECEIVE FULL EVIDENTIARY SHOWING OF DAMAGES.

16 MS. ALEXANDER: YES. I CHECKED OFF "AFTER COURT  
17 TRIAL."

18 THE COURT: YES.

19 MS. ALEXANDER: THE JURY WAS WAIVED; THE COURT  
20 CONSIDERED THE EVIDENCE.

21 THE COURT: CORRECT.

22 MS. ALEXANDER: OKAY.

23 THE COURT: ALL RIGHT. AND ARE THE AMOUNTS  
24 CONSISTENT?

25 MS. ALEXANDER: I DID NOT FILL OUT THE AMOUNTS. I WAS  
26 NOT PRESUMPTUOUS TO DO THAT, SO...

1 THE COURT: I UNDERSTAND. SO YOU HAVE A FORM  
2 JUDGMENT, AND THAT INCLUDES MR. PANTOJA?

3 MS. ALEXANDER: I CAN MAKE IT THAT WAY. THE ONE I  
4 BROUGHT WAS JUST AS TO DIVISION 1.

5 THE COURT: OKAY. SO DO YOU WANT TO TAKE IT BACK TO  
6 YOUR OFFICE AND WORK ON IT?

7 MS. ALEXANDER: I THINK THAT WOULD BE BEST.

8 THE COURT: OKAY. THAT WOULD BE FINE. JUST SUBMIT IT  
9 DIRECTLY TO ME, NOT DOWNSTAIRS IN THE CLERK'S OFFICE. AND THEN  
10 I WILL SIGN IT, AND WE WILL GET THAT BACK TO YOU.

11 MS. ALEXANDER: ALL RIGHT.

12 THE COURT: IS THERE ANYTHING ELSE THAT WE NEED? AND  
13 DID YOU WANT TO PREPARE A FORMAL ORDER ON THE DENYING THE MOTION  
14 TO INTERVENE?

15 MS. ALEXANDER: I WOULD LIKE TO DO THAT.

16 THE COURT: WHY DON'T YOU DO THAT. THAT WILL BE  
17 HELPFUL AS WELL. I WILL WAIVE THE 24-HOUR RULE FOR ENTERING THE  
18 JUDGMENT. YOU MAY SUBMIT IT AS -- I KNOW YOU'RE ANXIOUS TO GET  
19 THAT DONE. AND THEN WE'LL SIGN IT. I WILL SIGN IT AND SEND  
20 THAT BACK OUT TO YOU.

21 MS. ALEXANDER: ALL RIGHT. THANK YOU VERY MUCH.  
22 THANK YOU, YOUR HONOR, FOR YOUR LISTENING TO THIS CASE, AND I  
23 APPRECIATE VERY MUCH YOUR KIND WORDS TO THE PLAINTIFF AND FOR  
24 YOUR INSIGHT INTO THE CASE. THANK YOU.

25 THE COURT: THANK YOU. ALL RIGHT.

26 YOU'RE GOING TO FOLLOW-UP AND SEND US THE ORIGINALS

1 WITH THE STATEMENT OF DAMAGES WITH THE PROOFS OF SERVICE?

2 MS. ALEXANDER: YES, I WILL. THANK YOU.

3 (WHEREUPON, THE MATTER WAS CONCLUDED.)

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

DEPARTMENT NO. 3

HON. BETH LABSON FREEMAN, JUDGE

TRICIA LYNNE ROTH, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 DIVISION 1 ALL SERVICE, )  
 INC., )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

CASE NO. CIV 468850  
REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN MATEO )

I, CHRISTINE M. PEREZ, OFFICIAL REPORTER OF THE  
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO,  
DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 39,  
INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE  
PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

DATED: MARCH 10, 2009

  
\_\_\_\_\_  
CHRISTINE M. PEREZ, CSR #10945  
OFFICIAL REPORTER