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9 TRICIA LYNNE ROTH and KAY HUH

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF SAN MATEO (UNLIMITED JURISDICTION)

12 TRICIA LYNNE ROTH and KAY HUH

13 Plaintiffs,

14 vs.

15 DIVISION 1 ALL SERVICE, INC.; WILLIAM
16 PANTOJA; ROMAN VILLA PANTOJA;
17 MONICA PANTOJA; and DOES 1 through 50,
18 Defendants.

Case No. CIV 468850

PLAINTIFFS' TRIAL BRIEF

Date: March 9, 2009

Time: 9:00 a.m.

Dept: Presiding Judge

Date Complaint Filed: December 28, 2007

19 **I. INTRODUCTION**

20 This matter arises from an automobile accident in which Defendant Roman Villa Pantoja,
21 (72) ran a red light and crashed into Plaintiff Tricia Roth (41), rendering her a quadriplegic.

22 Plaintiffs Tricia Roth and her husband, Kay Huh, are represented by Mary E. Alexander and
23 Jennifer L. Fiore of Mary Alexander and Associates, P.C.

24 Plaintiffs seek an order to strike the answer and a default judgment against Defendant
25 Division 1 All Service, Inc. ("Division 1") because it is a suspended corporation (it has been
26 suspended since January 1, 2008 and it answered in May 2008). Plaintiffs' seek a proof up
27 judgment against Defendant Roman Pantoja. Plaintiffs have settled with Monica and William

1 Pantoja. Plaintiffs have an assignment of rights for bad faith judgment against their insurers,
2 Colony and Lincoln General.

3
4 **II. FACTS OF THE INCIDENT**

5 On Monday, September 11, 2006 at approximately 10:00 a.m., Roman Pantoja, was
6 driving a red Chevy pickup truck along East Hillsdale Boulevard toward Highway 101
7 (eastbound). He failed to stop at the stoplight though other traffic was stopped in adjacent lanes
8 and in the opposite direction. As he was in the intersection, he saw that the light was red. He
9 crashed into Tricia Roth's Volvo which had entered from Franklin Parkway approaching the
10 onramp to Highway 101 South. East Hillsdale Boulevard has a speed limit of 35 miles per hour,
11 but Pantoja pickup was going about 38-42 MPH at impact. It struck the Volvo in the right front
12 fender at about 45 degree angle. The force of the impact caused Tricia to be thrown about in the
13 car, breaking her neck at C6-C7 and rendering her a quadriplegic. When her car came to rest she
14 was unable to move.

15 At the intersection, Tricia had the green light. She was driving straight through the
16 intersection toward the onramp of 101.

17 The impact caused Tricia's car to spin and it came to rest at the eastern end of the
18 intersection. Mr. Pantoja's vehicle went into the crossroad at the southeast corner of the
19 intersection and struck a pedestrian crossing attenuator and the freeway entrance sign. See
20 photographs of Tricia's car and Pantoja's car.

21 An eye witness, Francisco Moreno, was stopped at the red light westbound on East
22 Hillsdale Boulevard. He was driving a Peterbilt semi-truck and was able to see the accident as it
23 occurred. He had an unobscured view (higher than other vehicles) and the weather was clear.
24 See photographs of the intersection.

25 In his deposition, Mr. Moreno testified that as he waited at the stop light, he saw a red
26 pickup truck on the other side of the intersection heading eastbound on E. Hillsdale toward the
27 intersection. There were no cars stopped in the lane that the pickup truck was traveling in, but

1 cars were stopped for the red light in the other two eastbound lanes.

2 As red pickup truck approached the intersection, Mr. Moreno observed that it was
3 traveling at 40 to 45 miles per hour (consistent with accident reconstruction estimates). Mr.
4 Moreno saw Pantoja go through the red light as he saw Tricia's Volvo heading southbound on
5 Franklin. Mr. Moreno testified that he saw Pantoja's truck crash into Tricia's car.

6 Following the accident, Mr. Moreno called 911. He got out of his car and approached
7 Tricia's car. He saw her slumped over in her car and injured but still in her seat belt. The
8 airbags of her car had deployed. Tricia told him that she had pain in her back.

9 Mr. Moreno testified that Mr. Pantoja did not attempt to assist Tricia, but merely asked Mr.
10 Moreno whether Tricia was all right. Mr. Moreno testified that Pantoja only came as close as 6 or 7
11 feet to the car. Later, Mr. Moreno observed that a man and a woman arrived at the scene and joined
12 Mr. Pantoja. (This was William and Nancy Pantoja).

13 Tricia was transported by ambulance from the scene to Stanford University Hospital. Her
14 car sustained total damage as did the Pantoja truck.

15 16 **III. LIABILITY**

17 **A. Roman Pantoja**

18 Roman Pantoja was completely at fault for the accident. The light was red in his direction
19 at the intersection and cars in the other lanes had stopped, but he ran the red light at a high rate of
20 speed in total disregard for the safety of others.

21 Roman Pantoja caused the collision by failing to stop for the red traffic signal in violation of
22 California Vehicle Code § 21453a which states:

23 "A driver facing a steady circular red signal alone shall stop at a marked limit line,
24 but if none, before entering the crosswalk on the near side of the intersection or, if
25 none, then before entering the intersection, and shall remain stopped until an
indication to proceed is shown, except as provided in subdivision (b)."

26 This violation of the vehicle code constitutes negligence *per se* on the part of Defendant
27 Roman Pantoja.

1 **B. Liability of Division 1 All Service**

2 Plaintiffs contend that Roman Pantoja was driving one of the business cars and was
3 within the course and scope of his employment with Defendant Division 1 All Service Inc. at the
4 time of the crash.

5 Division 1 pays Roman \$2,000 per month (\$1,000 every two weeks) regardless of the
6 hours he works or which days he works. (Roman Depo. at 23:14-18.) No hours kept on Paychex
7 for Roman. Roman worked about 20-24 hours a week and did not keep track of hours. (Roman
8 Depo. at 23:8-1; 180:18-20.) He was paid for September 2006 (Roman Depo. at 122:13-14.)

9 Roman wakes up every morning at 4:30 to 5:00 a.m. (Roman Depo. at 67:7-15.)
10 Roman testified that it was his routine to get up early in the morning and go to work:

11 67:8 Q. On the day of the accident, on September 11, what time did you get up?

12 A: I normally wake up around 4:30, 5:00 in the morning.

13 Q: Is that your best recollection that that's when you woke up on that day?

14 A: Yes

15 67:17 Q: And what did you do when you woke up?

16 A: Usually get ready to have coffee and then head to the office.

17 Though Mr. Pantoja tried to back track from this testimony for this particular day, this
18 demonstrates his usual routine. He frequently goes to the office early to open up for the workers
19 for an early job start, even on days he might not stay to work in the office. The accident
20 happened at 10 AM on a Monday.

21 Defendants have failed to produce any documents showing that Roman was not working
22 on the day of the accident. No one has testified as to what Roman was doing that day other than
23 Roman himself.

24 The following evidence tends to prove that Roman was acting in the course and scope
25 when picking up office supplies for Division 1. Monday was a workday. Roman worked on
26 Mondays. (Roman Depo. at 55:4-5.) He worked on Mondays depending on workload. (Roman
27 Depo. at 55:22-56:17.)

1 There were two Division 1 jobs on September 11, 2006. Five men were required for Vacaville &
2 Saks (SF) jobs. (See Invoices.) The workers left South San Francisco at 6:30 to 7:00 a.m.
3 Roman went into the office that morning to let them in. Roman would go in early to open office
4 when had early job; therefore probably gone in that morning. (Roman Depo. at 54:17-55:1.) "It
5 was early in the morning when" he left. (Roman Depo. at 70:9-12.) He opened early once or
6 twice in September 2006. (Roman Depo. at 66:5-9.) Division 1 Rented tools in Redwood City
7 and San Mateo. (Roman Depo. at 62:13-23.)

8 Roman drove alone. He did not have passengers or his wife, Yolanda. (Roman Depo. at
9 70:9-12.) Roman drove down the Peninsula, which is within the area Division 1 does work.
10 Division 1 Rented tools in Redwood City and San Mateo. (Roman Depo. at 62:13-23.)

11 Roman drove a pickup truck that was used for business purposes. He drove it to work.
12 (Roman Depo. at 48:24-49:7.) He used the pickup to get and transport supplies. (Roman Depo.
13 at 34:23-35:5.) He used the truck to pick up and transport tools. (Roman Depo. at 38:14-39:12.)
14 Division 1 used pickups trucks in business; workers loaded tools into them and used pickups for
15 transporting tools. (Roman Depo. at 58:20-59:25.) The truck involved in the accident had
16 commercial plates. According to his insurance agent, Roman solicits business.

17 Monica left the pick up for him to use. It was Roman's only vehicle for personal
18 transportation in 2006. (Roman Depo. at 52:19-53:12.) If he was not using the pickup it was
19 parked in front of his house. (Roman Depo. at 60:4-7.) Roman was the principal driver for the
20 pickup. (Roman Depo. at 140:2-141:24.) There was no carseat in pickup on day of accident (See
21 photos.) Monica not driving pickup on day of accident because lack of carseat. In fact, Monica
22 got Chevy Tahoe after she had son, who is five years old. (Monica Depo. at 39:29-40:2; 42:22-
23 25.)

24 Monica was not working at Division 1 in September 2006. Monica started working at
25 Division 1 in 2007. (Form Rog. 2.6 Response – worked there from 2007 to present; Verified
26 Response to Supp. Rog – No change to 2.6.) She worked at Skyline College between 2004-2006
27 ((Form Rog. 2.6 Response; Verified Response to Supp. Rog – No change to 2.6.)

1 There are no payments to Monica on Division 1 payroll from September 2005 to October 2005
2 (payroll records)

3 Even if Monica was working at Division 1, she was at school the day of the accident.
4 Monica received the call about accident mid-morning during exam at Skyline. (Monica Depo. at
5 47:4-6.) Monica did not go to Division 1 before school. (Monica Depo. at 50:22-51:25.) That
6 left the phones, stocking, all stuff - unattended all day; a day there were 2 jobs with all 5 men out
7 (excluding the Pantoja's) (See Invoices & Paychex records.) Monica only worked about 10-15
8 hours a week then. (Monica Depo. at 31:24-32:4.)

9 The Saks Invoice was issued on September 11, 2006. No one else worked in the office
10 besides Roman and Monica. (Roman Depo. at:54:21-52:4.) Who but Roman prepared the
11 invoice if William was out all day and Monica too. William testified that he was usually gone all
12 day. (William Depo. at 39:18-19.) There is the question as to who faxed in payroll that day.
13 Roman works on payroll. (Monica Depo. at 23:12; 23:25-24:2; 26:8.)

14 Roman drove Division 1 vehicles for service. He took vehicles for oil changes, service,
15 tune ups, etc. (Roman Depo. at 54:21-52:4.)

16 It is more likely than not that Roman arrived at 6:00 a.m. to open the shop for the
17 workers. Roman arrives at 6:00 a.m. (most of time arrived at 6:00 a.m.). (Roman Depo. at 58:7-
18 12.) If Roman had gone into the office and workers left at 7:00 a.m., then at about 8:45 a.m. -
19 Roman left the office. At about 9:10 a.m., he arrived at the Dollar Store (25 minutes - Roman
20 Depo. at 69:4-8.) Between 9:10 to 9:45 a.m., he shopped for about 30 minutes. (Roman Depo.
21 at 69:24-70:1.) Between (:45 to 9:50 a.m., he left the store about ten minutes before accident.
22 (Roman Depo. at 79:18-20.)

23 If he did go home from office, then he left there to get supplies. Roman testified that he
24 sometimes went home after opening office; then returned later to office. (Roman Depo. at 57:8-
25 20.)

26 On the day of the accident, Roman bought supplies. He purchased soda and cookies;
27 William saw the sodas and cookies in bed of pickup. (William Depo. at 96:11-14.) Sodas were

1 kept at the office. (William Depo. at 41:7-10.) The canned food, supplies and everything that
2 was in the back of the pickup were transferred to Nancy Pantoja's car. (Roman Depo. at 103:7-
3 15.)

4 After the accident, he was heading towards work. It was the same route if going back to
5 work. (Roman Depo. at 79:6-9.) He was going on 101 North. (Roman Depo. at 75:14-16;
6 103:16-25.)

7 Roman called William – the President and CEO of Division 1 – after the accident.
8 (Roman Depo. at 34:11-13; 97:7-9; William Depo. at 14:1-7; 32:3-5.)

9 In addition, Roman owned, in part, Division 1. As of the date of incorporation, January
10 2003, and at the time of the crash, Roman was (and is) a 10 percent shareholder of Division 1.
11 He owns 200,000 shares of the corporation. Defendant William Pantoja is a 70 percent
12 shareholder and President and CEO. Defendant Monica Pantoja is a 10 percent shareholder and
13 an officer. The remaining 10 percent belongs to Roman Pantoja, Jr.

14 Defendant Roman Pantoja, Sr. has authority to sign any Division 1 checks that are \$1,000
15 or less. All checks more than \$1,000 must be signed by Roman Pantoja, Sr. and William
16 Pantoja. (See Articles of Incorporation for Division 1 All Service, Inc. & Minutes of First
17 Meeting.)

18 All the vehicles owned by the company are driven by Roman, Sr. to the repair shop. He
19 is the one that takes care of the registration and insurance paperwork. In fact, Roman drives the
20 1999 Ford Expedition daily, which is insured by Division 1. He drove the 1999 Expedition to his
21 deposition on October 17, 2008. (Roman Depo. at 148:8-149:3.)

22 The Division 1's auto insurance policy is in the name of Roman, Sr. and was sent to his
23 address. This policy, in his name, insures vehicles used for business purposes. (Roman Depo.
24 145:5-146:13) A 2001 Ford truck was recently bought by Division 1 and is insured by Roman.
25 (Roman Depo. at 165:21-25.) In December 2008, Roman was added to Division 1's auto policy
26 with Allstate. Division 1 obviously wants he covered to drive their vehicles.

27 In 2006, Roman Pantoja was the registered owner of 1985 Chevy El Camino (and

1 currently), the 1986 Chevy half-ton truck (until two months ago). (Roman Depo. at 158:22-
2 159:22). In September 2006, Monica Pantoja was the registered owner of the 1994 Chevy truck.
3 (See DMV Registration for the 1994 Chevy pickup truck.) However, the truck was insured on
4 Roman Sr.'s CSAA policy with William, the President of the company, listed as a principal
5 driver. Several business cars were listed on Roman Sr.'s 2006 CSAA policy. It is likely that
6 Monica became the registered owner because Roman Sr. was trying to protect his assets as he
7 was facing a civil judgment for failing to pay over \$72,000 in insurance premium. The final
8 judgment of \$85,558.50 was entered against him in May 2006. In June 2006, Roman refinanced
9 his home taking approximately \$616,000 in equity out of the house. He obtained the money two
10 days before satisfying the judgment. Those monies were used to pay off judgments against the
11 business.

12 "Every" owner of a motion vehicle is liable under Cal. Veh. Code § 17150. There may
13 be several "owners" of an automobile under section 17150. The Court of Appeal in *Savnik v.*
14 *Opah Hall* (1999) 74 Cal. App. 4th 733, 741, explained: "One or more persons may be an
15 'owner,' and thus liable for injuries of a third party, even though no such 'owner' possesses all of
16 the normal incidents of ownership." (quoting *Springmeyer v. Ford Motor Co.* (1998) 60 Cal.
17 App. 4th 1541, 1571-1572) (citing *Stoddard v. Peirce* (1959) 53 Cal.2d 105, 115). The issue in
18 *Savnik* was whether the Plaintiff Conant, a passenger in the uninsured vehicle being driven by her
19 partner, was an owner of the vehicle for purposes of limiting her recovery to economic damages
20 under Proposition 213. The vehicle was registered in Conant's name. The Court of Appeal
21 found that the evidence Plaintiff did not contribute any funds to buy the vehicle and did not drive
22 it supported the jury's finding that she was not an owner, and was, therefore, entitled to the
23 noneconomic damages award. *Savnik*, 74 Cal. App. 4th at 742-743. The Court held: "Vehicle
24 ownership is a fact question for the jury to determine in light of all the circumstances." *Id.* at
25 742. "Registration is merely one 'incident' of ownership." "A certificate of registration does not
26 necessarily or conclusively establish true ownership; . . ." *Id.* at 743 (citations omitted). *See also*
27 *California State Automobile Assn. v. Foster* (1993) 14 Cal. App. 4th 147, 151 (holding "DMV

1 At the Emergency Room at Stanford, Tricia was examined and had x-rays taken which
2 revealed fractures at C6 and C7 of her cervical spine and she was admitted to the Surgical ICU for
3 further workup and stabilization. Later that day, she was taken to the Operating Room with the
4 Orthopedic Spine Team led by Dr. Todd Alamin. She underwent an open reduction followed by an
5 anterior cervical fusion at C6-C7. She was administered steroids for 23 hours and was given
6 Fentanyl. On her third day at Stanford, Tricia had an episode of hypotension with her blood
7 pressure at 80's/40's and bradycardia to 50's. She was administered a dopamine drip. She was also
8 unable to swallow and the doctors at Stanford recommended placement of a feeding tube.

9 On September 14, 2006, Tricia was transferred by ambulance from Stanford to the spinal
10 rehabilitation unit at Santa Clara Valley Medical Center in San Jose. Her discharge diagnosis from
11 Stanford was:

- 12 1. Severe spinal cord injury at C6-7 resulting from 100% anterior dislocation of C6
13 onto C7.
- 14 2. Comminuted fracture of the lateral elements of C6 as well as a laminar fracture of
15 C6 extending into the spinous process of C6 with involvement of the foramen
16 transversarium at this level, raising the concern for possible vertebral artery injury.
- 17 3. Comminuted fracture of the right anterior ring of C1 with a possible second fracture
18 of the right posterior element of C1.
- 19 4. Fracture of the C7 facet as well as of the left cervical rib at C7.

20 Tricia was a patient at Santa Clara Valley Medical Center from September 14, 2006 to
21 November 14, 2006 in the acute inpatient rehabilitation unit and received medical and nursing care,
22 along with physical, occupational and speech therapy. While at Santa Clara, Tricia was on
23 mechanical ventilation and was transitioned to room air. She had dysesthetic (burning) pain at C5
24 and C6 for which she was prescribed Neurontin and Vicodin. She developed heterotopic
25 ossification of the hips (abnormal bone growth). During her hospitalization, she developed deep
26 vena clots and had to undergo placement of an inferior vena cava filter which was not removed
27 until March 23, 2007. She also developed a retroperitoneal bleed.

Following her discharge, Tricia received home outpatient rehabilitation services from
Gentiva Rehab without Walls. Treatment was two to three times per week from November 15,
2006 to February 9, 2007 and included bed mobility, ADL re-training, tub/car slide board transfers,

1 family/caregiver training, fabrication and modification of adaptive equipment, hand splints, and
2 wheelchair mobility.

3 On December 6, 2006, Tricia was seen in follow-up with Dr. Alamin at Stanford. Dr.
4 Alamin noted that Tricia had no intrinsic hand or finger function but was able to grasp things in her
5 hands in a "power grip" position. He took x-rays which showed that the hardware was in place but
6 there was a small anterolisthesis of C5 at C6.

7 As time went by, Tricia began to experience progressive numbness and tingling to both
8 arms, specifically her thumbs, index fingers, palms and forearms. She continued to be followed by
9 doctors at Stanford and at her primary care provider, Palo Alto Medical Foundation.

10 An MRI taken on July 19, 2007 revealed a large syrinx (abnormal fluid cavity which can
11 affect neurological function) at C6 and C7 with a stellate lesion.

12 Tricia was experiencing worsening numbness and spasticity in her arms and hands. She
13 also was having increasing muscle spasms in her trunk and legs. Her neurogenic bladder was
14 causing her to experience frequent urinary tract infections. On July 30, 2008, an EMG and nerve
15 conduction study was performed. It showed severe bilateral axonal loss lesions proximal to the
16 dorsal root ganglion at the C8 level.

17 Tricia was also suffering from chronic pain which was unrelieved by medication. Her
18 doctors felt that some of the pain could be attributed to the syrinx at C6. On September 12, 2008,
19 Tricia underwent surgery at Stanford to remove the syrinx which is similar to an abscess and which
20 can recur even after surgery. She was released from the hospital on September 17, 2008 and
21 required home health care by Gentiva Rehab Without Walls for 2 months following the surgery.

22 Tricia has required constant attendant care since the accident. Her family members take
23 care of her during the week and her husband Kay has full responsibility on nights and weekends.
24 Kay has lost time from his job as a Senior Scientist at Novartis and was not given an annual bonus
25 in 2007.

26 Tricia's current diagnoses are:

- 27 1. C6-C7 fracture dislocation, status post fusion

- 1 2. C6 ASIA A spinal cord injury
- 2 3. Tetraplegia
- 3 4. Neurogenic bladder
- 4 5. Neurogenic bowel
- 5 6. Neurogenic vasculopathy
- 6 7. Neurogenic skin
- 7 8. Recurrent urinary tract infections]
- 8 9. Status post spinal cord untethering/syrinx decompression, 9/12/08
- 9

10 **V. PAST MEDICAL EXPENSES**

11	Stanford Medical Center – Facility and physician	\$470,015.97
12	Santa Clara Valley Medical Center	\$457,206.77
13	Mills Peninsula Hospital	\$43,386.47
14	Palo Alto Medical Foundation	\$76,810.18
15	Mark Sontag, M.D.	\$299.00
16	Gentiva Rehab Without Walls	\$63,712.00
17	3T MRI Menlo Atherton	\$9,450.00
18	Insight Health Corp., dba Redwood City MRI	\$425.00
19	American Medical Response	\$2,440.87
20	Apria Healthcare	\$682.92
21	National Seating and Mobility, Inc.	\$24,454.44
22	CCS Medical Supplies	\$31,837.18
23	Purchase of van to accommodate wheelchair	\$59,652.22
24	GPS and back-up camera for van	\$753.07
25	Brookstone – Therapeutic mattress for hospital bed	\$1,417.92
26	Prescription medication	\$4,755.59
27	Assistive devices, maid service, OTC medications, etc.	\$4,509.06

1 Past Attendant Care \$305,323.00
2 **TOTAL PAST MEDICAL SPECIALS** **\$1,557,131.66**

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VI. FUTURE MEDICAL CARE NEEDS AND EXPENSES

Tricia has no sensation in her legs and very limited use of her arms. She is in constant pain and requires assistance with her daily care needs.

Tricia has been evaluated by Alex Barchuk, M.D., a board-certified specialist in Physical Medicine and Rehabilitation. He is Director of the Trauma and Spinal Cord Rehabilitation Program at Kentfield Rehabilitation and Specialty Hospital in Kentfield, California. It is his opinion that Tricia will require medical monitoring and treatment from the following medical specialties:

- Physical Medicine and Rehabilitation Specialist;
- Pain Specialist;
- Urologist;
- Neurosurgeon;
- Internal Medicine;
- Orthopedist;
- Plastic Surgeon;
- Gastroenterologist;
- Dermatologist;
- Podiatrist;
- Dietician;
- Cardiologist; and
- Neurologist.

Tricia also has future care requirements in the following areas: physical therapy, occupational therapy, therapy after tendon release surgery, medications, hospitalizations, emergency room visits, medical tests including lab tests and radiology/MRI's, and medical procedures.

1 Tricia needs specialized equipment for mobility (electric and manual wheelchairs and a van
2 with lift). She also needs assistive devices/durable medical equipment including a standing frame,
3 hospital bed, a sliding board, and bowel and bladder program supplies.

4 She must be catheterized 4-6 times per day because she has no bladder control. She can not
5 do this herself and must have a caregiver remove and insert the catheter. If she has to use an
6 outside agency for attendant care in the future, she will need round the clock licensed nurse (LVN)
7 to do the catheterizations.

8 Dr. Barchuk also states that Tricia requires full time attendant care to assist her with her
9 activities of daily living, administration of medication, home physical therapy and transportation.
10 She also needs skilled nursing care, chore services and home maintenance assistance. She needs an
11 ADA compliant home. Her life expectancy is reduced by 5-10% because of her injuries according
12 to Dr. Barchuk. See Dr. Barchuk's report,.

13 The costs of this care have been determined by Carol Hyland, a vocational rehabilitation
14 expert. See Carol Hyland's report. She has listed the costs for physicians, physical therapy,
15 medications, future procedures, attendant care, assistive devices, van, chore services and the other
16 care needs that are outlined by Dr. Barchuck.

17 //

18 Dr. Robert Johnson, an economist, (See Robert Johnson's report) has determined that the
19 present value of this future care is as follows:

20	FUTURE MEDICAL EXPENSES	\$10,758,944.00
21	HOUSECLEANING & HANDYMAN EXPENSES	<u>\$207,007.00</u>
22	TOTAL MEDICAL AND CHORE EXPENSES	\$10,965,951.00

23 24 **VII. WAGE LOSS FOR TRICIA AND KAY**

25 Tricia holds a Bachelors degree in Management Information Systems from the University of
26 Arizona and had worked in computer software at Microsoft for 15 years. She was a Software
27 Developer and Program Manager until 2004, earning \$160,000 per year. She moved to the Bay

1 Area with her husband, Kay Huh. At the time of the accident, Tricia was a graduate student at San
2 Jose State University with a goal to earn a Masters in English.

3 Ms. Hyland, vocational rehabilitation expert, has determined that Tricia will not be able to
4 return to work given her physical disabilities. Dr. Barchuk, physical and rehabilitation expert, also
5 has the opinion that she will never be able return to work.

6 Prior to the accident, Tricia was earning \$170,000 at Microsoft. Prior to the incident,
7 Plaintiff planned to finish her graduate degree and live for approximately a year in Korea with
8 her husband. They planned to return to California, which would have been around September
9 2009, and she planned to resume her prior career as a Project Manager in the software industry.

10 Her total loss of earning capacity at her young age and high earning capacity means that she
11 has a high wage loss. There are two scenarios that were calculated by the economist Robert
12 Johnson. See Robert Johnson's report.

13 **Scenario 1**

14 This estimates that for the remainder of 2009, if she had not have been injured, that her
15 income would be \$33,000 and thereafter to be \$100,000 per year as a software consultant/software
16 program manager (based on Carol Hyland's information) with benefits:

17 **SCENARIO 1 EXPECTED INCOME** **\$2,493,351**

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19 **Scenario 2**

20 This estimates that Ms. Roth's expected Income for the remainder of 2009 to be \$95,961
21 and in 2010 and thereafter to be \$290,790 per year with benefits:

22 **SCENARIO 2 EXPECTED INCOME** **\$7,038,991**

23
24 Kay's past wage loss is estimated to be at least \$30,000 and continuing. The value of his
25 past care services provided to her are
26

27 **VIII. SUMMARY OF SPECIAL DAMAGES**

1	Past Medical Expenses		\$1,557,131.66
2	Future Medical Expenses & Attendant Care		\$10,965,951.00
3	Future Lost Income – Tricia	Scenario 1	\$2,493,351.00
4		Scenario 2	\$7,038,991.00
5	Past Lost Income – Kay – in excess of		<u>\$30,000.00</u>
6	TOTAL SPECIAL DAMAGES		\$15,046,433.66 to \$19,592,073.66

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8

IX. EFFECT ON TRICIA’S LIFE

9 At the time of the accident, Tricia was an active woman who was enjoying life with her
10 husband. She had earned a degree in Management Information Systems and was successful in her
11 career as a software developer. She and her husband, Kay, had been married for 6 years. She grew
12 up in Wyoming and took pleasure in many outdoor activities, including swimming and horseback
13 riding. See photographs of Tricia Roth attached. “

14 Following the accident, Tricia lives in a life of pain and frustration. She is dependent upon
15 her husband and extended family for her basic needs. Her days are spent in her wheelchair – taking
16 medication, attending medical appointments and physical therapy sessions, performing home
17 exercises and complying with a strict medication routine as well as a bowel and bladder program.
18 She has had to undergo dangerous surgeries and numerous hours of painful physical therapy. Her
19 relationship with her husband has changed to one of patient and caregiver. She has worked hard to
20 improve as much as possible, but she will never walk again.

21
22

X. LOSS OF CONSORTIUM

23 Due to the accident and Tricia’s resulting injuries, Kay Huh has suffered loss of love,
24 companionship, comfort, care, assistance, protection, affection, society and moral support.
25 Before the accident, the couple enjoyed spending time together and had many plans for their
26 future. Kay has now become a caregiver. He works during the day at a demanding job and
27 returns home at night to take care of Tricia. He is responsible for all her care needs on nights and

1 weekends, including turning her several times during the night, changing her catheter, helping
2 her dress and administering her medication.

3
4 **XI. CONCLUSION**

5 Due to the negligence of Defendants, Tricia Roth has suffered a life-altering injury,
6 quadriplegia. She requires ongoing medical treatment and constant attendant care. Kay Huh has
7 suffered the loss of the companionship of his wife, the ability to do things they used to do, and he
8 has become her caregiver. Plaintiffs seek full and fair compensation for their losses.

9
10 Respectfully submitted,

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12
13 By 

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